

Evolution of Land Nationalization in the Iranian legislation system

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Abstract: Evolution of Land Nationalization in Iran falls into four time periods. The first period began with ratification of Nationalization of Forests and Pastures Act in 1962. Article 1 of this Act announces all natural pastures and forests national, even if they were previously occupied and owned by persons. In this act and until 1985, no way and reference was predicted to protest it. The second period started with the approval of Article 56 of Protection and Exploitation Act in 1067. This article set a commission to address the complaints of people about nationalization of their lands. This period continued 1988 that an article was ratified and a commission with different combination and presence of a judge was set to address the complaints of people. The third period began with establishment of commission of aforesaid article ratified in 1988 and continued until the dissolution of this commission according to Article 9 of Increased Productivity in Agriculture approved in 2010. Final decision and verdict was only taken by the only judge of commission. With the ratification of aforesaid act the Commission was dissolved and addressing the complaints has been appointed to special courts in the center of provinces. It is obvious that in these three periods decision were made with the idea of majority of members in the commission of Article 56. In the next period and after the legal establishment of commission in 1988, the right of verdict and final decision making was assigned exclusively to the member judge. In recent period in 2010, the commission as an expert group consisting of representatives of trustee organizations of national lands and local representatives was eliminated and the judge himself make decision about this important issue even without the need to obtain expertise. This is against the increasing complexity of issues related to the identification of the nature of lands and a movement from collective decision to individual decision.

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1. Introduction

1.1. Issue description and necessity of research:

The result of national land identification can be the conflict of this recognition with possession right of people on the identified land. The reference which addresses the objections about the primary detection of government (Ministry of Agriculture) in the case of a national land and its mechanism are of great importance. In other words, the result of addressing the objection of people to national lands identification results in expropriation in some cases. Given the importance and sensitivity of expropriation, mechanism, executive procedure, rules and orders, and composition and features of addressing reference should be anticipated by legislator in the best and safest form. The way government identifies the national lands and the mechanism to address the objections have been divided into four historical periods in the present paper. The legal developments of these four periods were analyzed and some solutions were suggested to reform the shortcomings of the current practice. Addressing the objections has been changed from collective decision to individual decision and obligatory use of expertise has been optional.

2. Material and Methods

In terms of objective, this paper is an applied one and is placed in the domain of development of practical knowledge of land and property rights, especially land nationalization by the government. In terms of subject, it is related to law and nationalization issues. Research method was qualitative and descriptive method was also used in review of issues. The study covered all across the country. Information was obtained from reading books, articles, electronic references on the law and also laws passed since 1962

1.2. Theoretical foundations

As law falls into public and private, this division spread to domain and the domain of property outside the will of people and under the control of government was called public domain (Nove, Alexander. 1991). Article 544 of Civil law of France defines domain as the right to use or transfer for the Lords unless the law denies it in some cases. Article 1204 of Iran's Civil code also defines it as the widest right on property which is undeniable unless by the law. Kant, a famous France philosopher, believes that supreme owner cannot seize any piece of land as private domain and it belongs to people. According to Article 22 of the Constitution of Islamic Republic of

Iran, prestige, wealth, lives, rights, housing, and jobs of people are protected from violation and Article 44 has supported private domain with some conditions (Craig, Daniel .1978).

Article 31 of Iran's Civil Code says that no property can be alienated from the possession of its owner except in accordance with a legal order. On the other hand, the government has special legal instruments and tools to ensure public service management. Expropriation within the law is one of these tools, so exercising the regulations of land nationalization which implies a kind of expropriation is one of the examples of applying the rule (Michael Lipton.2009). Although nationalization of lands is within applying the rule, we should see that it is a case in which the right of private individuals can be threatened or expropriated due to the preference of public interests over private interests and whether there are legal provisions for the exercise of this public preferential right or not (Deininger, Klaus W.2003). Nationalization of forests law is a preferential rule in terms of land nationalization, but its scope should not be excessively expanded and domain of people should not be ignored.

2.2. Position of national lands in various lands in Iran's law:

In a general classification, land and property falls into two categories including private and public (governmental). As far as reclamation or abandonment is concerned, lands are divided to dead, arid, and working lands (Borras, Saturnino M.2006). National Land may also be placed in any of these types but is subjected to its own legal definition.

3-1- Dead lands: Article 27 of Iran's Civil Code defines dead lands as lands which have fallen into disuse and on which are neither habitations nor cultivation. The term "disused" can also include the lands which were previously used for cultivation and then became dead.

3-2- Arid lands: Paragraph D of Article 1 of Legal Bill of Land Transfer ratified in 1972 defines arid lands as lands which had already been reclaimed but have become abandoned due to continuous lack of operation for five years without any excuse.

3-3- Working lands: Forni defines working lands as settled and fallow lands, in contrast with arid and dead lands (**Forni**, N. 2001). There is no criterion for detecting settled and fallow lands in regulations and it has been often handed to the customs. Article 5 of the Urban Land Law ratified in 1987 defines working lands as lands that have been settled and reclaimed and now is exploited by the owner.

3-4- National lands: Article 2 of Nationalization of Forests and Pastures Law ratified in 1962 defines

national lands as all forests, pastures, natural groves, and forest lands.

Considering this definition, separation of national lands from arid and dead lands should be always a controversial issue (Sinha, R. 1984), but national lands identification and protesting it have been predicted in the regulations which are discussed in this paper.

3.2. Identification and separation of national lands from private lands:

National land identification firstly entered the legal literature of Iran with the ratification of Nationalization of Forests and Pastures Law in 1962. Article 1 of this law says that all natural forests and pastures are public property and belong to government, unless they were already possessed by individuals. The way primary detection and separation of national lands from other lands has not changed but the procedure of protesting the objection of lands has significantly changed. The use of accurate digital cadastre maps has been always improved. Cadastre can be used in land and property management in two forms; cadastre in specific concept in order to prove public, governmental, and private domain and cadastre in general concept which is comprehensive and includes all social, cultural, economic, and physical information (Stub kjaer, 2006; Dale & McLaughlin, 1998, 35). Nowadays, digital forms of cadastre maps with high accuracy are used in national land identification and addressing the objections of people. Real estate and Documents Registration Organization has taken measure to prepare and apply cadastre maps. Recently, they have been planned to be used in information technology systems. Given the major changes in addressing the objections of people about nationalization of lands, developments can be studied in four periods as follows.

1.3.2. First period: Ratification of Nationalization of Forests and Pastures Act (1962-1967)

Natural forests and pasture were announced national by this act. According to articles 2, 3, and 4 of this act, non-national lands and forests (exceptions of Article 1) are as follows: "Forests surrounded by arable lands which are placed in plain forest lands of north within the range of documents of official domain of people. Facilities, rural houses, arable lands, and gardens placed within the domain documents of forests and pastures which have been constructed before the ratification of this act." The main point and what individuals object is that a piece of land involves either the definition of Article 1 (national) or Article 2 (non-national). In this period that the Law of Objection and Exploitation of Forests and Pasture was ratified, there was no reference to address the objections of people.

2.3.2. Second period: Ratification of Article 56 of law until 1988

After the ratification of Protection and Exploitation of Forests and Pastures Act in 1967, the commission of Article 56 of this law was designated to address the objections of people to the nationalization of their claimed land. Detection of national resources was assigned to the Organization of Natural resources by an amendment of this law and the time to make complaint was decreased to one month. The followings are some of the features of the Commission in addressing the objections of people:

- 1- According to Article 56, a commission consisting of governor, head judge, and supervisor of natural resources was set to address the objections and any decision in this commission by the idea of majority.
- 2- The committee was consisted of two representatives of state agencies and a judge which questions its impartiality.
- 3- Committee composition was more depended on political and judicial officials in each city rather than experts and representatives of specialized organizations.
- 4- According to Article 56 of aforesaid law, decisions of this committee are definite and binding.

3.3.2. Third period: Ratification of Article (1988-2011)

The law of mandating the disputed lands was ratified in 1988 and replaced the Commission of Article 56 by new one. This commission consisted of seven members including the director of Agriculture and Jihad organization, the Head of Natural Resources and Watershed Directory, member of Agriculture Jihad with the recommendation of General Director of Natural Resources and Watershed and confirmation of Agricultural Jihad head, member of land transfer committee introduced by Director of Land Affairs of Province, a judge introduced by General Director of Justice, and two members of Islamic Council of city or the tribes if needed.

The followings are some of the features of this Commission in addressing the objections of people:

- 1- According to the Article ratified in 1988, a commission consisting of representatives of trustee organizations, local representatives, and a judge was set to address the objections but only the judge had the right to decide.
- 2- Committee composition was more impartial than the previous one.
- 3- Committee composition was more depended on the presence of experts and the representatives of specialized organizations and also two trustful individuals, but the way they were chosen was not clear and fair.

4- Decision of this committee could be appealed in the Courts of Justice in two stages. Despite of its merits, this created the fourth period of developments in detection of national and non-national lands.

4.3.2. Fourth Period: Execution of Article 11 to increase agricultural productivity and natural resources ratified in 2010 up to now

According to article 9, "The law for increasing productivity in agricultural sect," ratified in 2010, has raised complaints against government's assessment (pastures and forests organization) based on nationalizing lands to a specific court of law. These courts are established by the head of justice department in the capital city of each province. The main indices in this newly judiciary establishment are:

1. The supervisory reference has changed from a collective combination to a referential one with an exclusive jurisdiction for a judge in order to issue the verdict.
2. The handling court has no necessity to apply the opinion of experts and professional organizations.
3. The court is not required to apply new technologies like satellite pictures, precise agrological experiments and etc. in the mentioned law.
4. Omitting the article commission whose verdict was arguable in the court, the number of stages needed to pursue the objections has decreased.

The court bears more objectiveness toward the previous commissions in comparison with the parties.

4.2. Criticizing the evolution of processing personal objections against nationalizing lands:

1.4.2. Change in the number of members of handler reference:

Alongside the legislative developments of handler references of personal objections against nationalizing lands, the article 56's commission had an integrated combination with the right for every member to issue the verdict, but this right was only bestowed upon the judge in the final article commission, and dissolving this commission, the court of RASA has started to issue the verdict with the individual decision since 2011.

2.4.2. Change in the formation of handler reference:

The article 56's commission had members with high political and bureaucratic levels plus some governmental members, but this formation was non-specialized, while the article commission was formed by most of members from professional organizations. The presence of two members from villages or nomads as a part of one of the parties was the advantage of this commission in comparison with

that of article 56. In the newly established court, only the judge can issue the verdict even without being necessitated to gain consultation approval

3.4.2. Change in the number of consideration stages:

In this regard, the article 56's commission had the fewest stages to pursue the case, because the commission's verdict was definite before the establishment of administration court in 1982. The commission's verdict was objectionable in the courts of law and this meant that the verdict was reissued in both primary and reconsideration stages. Dissolving the commission, the stages have decreased from 4 to 2 since 2011.

4.4.2. Comparison of using professional ideas in different periods:

The article 56's commission had only one expert from the professional organization in its formation, but the number of delegates from these organizations in the first article commission was more. The possibility of their partiality in terms of organizational dependency was moderated with the presence of two local representatives. Having established two special courts in 2010, the constant presence of experts or representatives from professional organizations is canceled in the process of pursuing cases. However, the judge can use the official experts' ideas for a while according to the Iran's judiciary law.

3. Discussions

In the changes made by Iranian legislator during the third and fourth periods, the movement from group decision making to individual decision making is obvious. Also in the previous stages, the representatives of professional organizations which are responsible for the national lands and local representatives were present, which let the judge free from gaining the approval from experts by omitting the commissions and forming special branches of courts according to the law of "Increasing the productivity of agriculture sect" ratified in 2010. This procedure is against the current realities of our society in which affairs are becoming more specialized and sophisticated. However, this fact can't be denied that lodging the secretary of previous commissions in the pastures and forests organization of one of the parties was problematic. But, this was not a big deal, due to the fact that the verdict was objectionable in the courts. Moreover, since the commission's verdict could be reconsidered in two stages of initiation and reconsideration, the stages have increased to four.

Collecting the advantages of both methods in one solution bears no very big problems. The following items are suggested as the strategies to improve the current way of handling the objections.

In other words, decreasing the stages of pursuing people's objections is decreased by one level and special branches of courts are thought to be the valid references of handling these objections according to the law of increasing the productivity in agricultural sect ratified in 2010 and by the initial decision of the government and nationalizing lands. Additionally, the courthouse is more independent rather than the previous regarding the matter. However, considering these two advantages, the value of experts' ideas, technological equipment like satellite pictures and interpretations with the precise and modern experiments on soil to investigate the history of land ownership can't be denied or handed to the judge of the court. Ratification of a law including a special legislation for specific branches for the anticipated courts can provide the dependency of these courts alongside the reduction of the pursuing stages. It can guarantee the following items:

- a. Authoring a special procedure to complete the civil procedure in the certain established courts.
- b. Predicting the compulsory application of advanced technologies like satellite pictures, air maps of different years with technical analyses in the handling procedure.
- c. Predicting the eminent performance of agrological experiments to prove the history of planting in the objected land.
- d. The necessity of verdict issuer to point to the official interpretation of the pictures, images, experiments, unless to issue a verdict against these documents.
- e. The certainty of the issued verdicts by these courts unless they are against the technical documents mentioned in sections 2 to 4.
- f. The necessity of objector to present maps including the universal coordinates to make the next change of situation of objected land impossible.
- g. The lack of reconsideration to the land for which a verdict was once issued.
- h. Predicting the consultation group of court consists of agricultural experts, topography, interpreting satellite pictures, testing the soil, investigating the documents to present a consultation to the judge before issuing the verdict.

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