How to compensate the damage caused by the violation of private property by the government?

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Abstract

In parallel with the individuals growing desire to increase the property owned their entities, governments also in order to consolidate their power and to deal with any internal or external threat attempt to create a strong economic background. Due to contrast between these two approaches, a conflict is created between private property and public property. Thus even in governments that claim to have the respect for private property, invasion to it in different ways is emerged. Violation of private property today is a concern for human societies and of issues raised in this area is the damage caused by the violation of this type of property by the government. Given that in some cases the government to apply the rule, with codification of some rules molest to private property of people and causes the restriction and sometimes the expropriation of private individuals and this has a destructive role on social status and lead to reduction in motivation for business and consequently economic downturn this question arises how the government compensates the damage caused by the violation of private property? Of achievements of the current descriptive-analytic study is explaining the methods of compensation from private owners by state that by agreement between the owner and the executive, the granting of compensation or concession to private owners and paying the value of property owned by the government is done.

Keywords: compensation, private property, the state, violation, the price of the swap.
Introduction
To provide the public interest and based on social necessities the governments taking measures which inevitably leads to a violation of the private property of individuals. In this regard, government decrees or secondary laws and specific laws are enacted that give the authority to the government limit the principle of despotic dominion.

Although there is authority for the government, but the government also have some obligations that the state is obliged to comply with them. In these conditions, the government's most important task is the compensation of the damages to private owners. For those who caused them damage due to implementation of a government plan, compensation and reparations, is the most important element in the process of property acquisition. Because this reparation, is considered as an alternative for their right which has been missed. Accordingly, the legislature in addition to passing laws violating private property has proposed the compensation practices for owners and in each of the laws special mechanism has been set for it.

Although these rules in terms of quality and quantity of compensation in some cases have conflict with each other, but each of them somehow have followed the principle of respect for private property. On the basis of governing principle in the Iranian legal system executive organs basically required to pay compensation and indemnity for damages to the owners violated rights that following types of damages and compensation practices by the government will be discussed.

The concept of private property
Owner literally means the Lord, the owner and who have something and who can come in and seize it, and "ownership" or “property” with bare infinitive of "quality" means the owner (Moein, 1983, 3712). In legal terminology "ownership" or “property” means the right to use and exploit and transfer a thing in any form except where the law has exceptions. In our civil law the property has not been used in objective and legislator has considered both the objective and benefit. In Islamic jurisprudence, and legal domination is called property and the ownership or property is a trait that is used in this sense. Thus, it has been said home property, marking that land ownership rights (leveling right), interest property and so on (Jafari Langroodi, 1984: 599). Thus, "property is a permanent right, whereby the individual can in domain of rules allocated seizure of property to him/herself and use all interests of it" (Consistory, 2012: 110). The word "private" literally means bites, features, exclusive, individually and has came in front of the "public" (Moein, previous: 1426).

Private property in the legal term is a right, under which (basically) people can be in advantage of themselves dominate the ownership of the property. In this meaning the terms of private property, private property and individual property are also used (Jafar Langroodi, 2001: 47 and 48).
The concept of violation (infringement)

Violation literally means the break, destroy and break the covenant and cancel the order that has been mentioned (Moein previous: 4793). The meaning of private property violation include both the deprivation and limitation of it. Violation to private property right of people is not always reflected in the deprivation of it and in some cases without complete loss or deprivation of this right, violation to it only emerged in limitation of it which both of these issues can be raised in the form of property violation (infringement).

"Deprivation" suggests the elimination of a right to mind, and "limitation", suggests limiting only the part of a right to mind. While "violating" is a concept behind these two which in some way will be included both of these two concepts.

Compensation practices for private owners by the government

In the Iran law, there are different ways to provide equity in the limits of public projects and reparations of damages to the people that in this regard can be referred to agreement between the owner and the executive organ, paying property owned by the state, the exchanged (swap) property to private owners as well as granting concessions to private owners.

2_1_ The agreement between the owner and executive organ

This method is done through compromise between the executive organ and owner of equity and in the form of owner contracts which are signed by requirement and acceptance of both parties. Private owners can by the use of contracts such as sale, rental, the peace of other and certain and uncertain contracts, transfer their property rights, including the right of ownership, usufruct, easement, agriculture right and … to executive organ (Beheshtian, 1982: 248).

In most of the laws that have been adopted in the implementation of public plans of state as well the agreement between the owner and the executive organ as the first way of compensation for private owners has been noted.

As we read in clause (a) of Article 50 of the Water Act and how nationalization of it: "determining the price of land and by agreement between the executive organ and its owners comes into action."

Also the clause (a) of Article 16 of the Electricity Act provides same sentence in this regard: "The price of land is determined by agreement between the executive organ and their owners ".

With the passage of the law of the acquisition (ownership) on 17.11.1358 (Persian date) that somehow transform the laws that had been enacted earlier about how the people property owned by government for implementation of development planning and special rules entered in Iran's legal system. Article 3 of this act, as well as former acts required that "a fair price for the land ... is determined by agreement between the executive organ and the owner or owners and rights holders.

But note 1 of this Article provides that only if the compensation of losses is not exceeds one million riyals, relevant references directly can pay the compensation of damages. But, "... if the amount of the transaction or damage any of the owners is more than one million Rials, the cost of buying property or damages and transaction must be approved by the Council provided for in Article 71 of the public accounts and in the case of the municipal approved by city council.
It is worth noting that with the approval of public accounting in the 01.06.1366, (Persian date) Article 84 was replaced with former Article 71 and subsequently tenders law that was passed in the Persian date Bahman 1383, to the extent that related to tenders and not auctions _ Article 84 is repealed and now is the provided composition in Article 28 of this law which should be the criterion for action (Zargoosh, 2011: 174).

Given usually the price of all property owned by the executive organs cost is more than 1,000,000 Rials mentioned in clause 1 of article 3 of the law of the purchase and ownership, it should be stated that the implementation of the agreement between the owners and executive organs are practically is cancelled. Unless the legislative by adopting some measures concerning the adjustment of this amount (cost) taking into account the inflation index, provide the possibility to apply the method again.

2.2_Paying the cost of property owned by the government
One of the most common methods of compensation of losses for private owners, is paying for property owned by the state. In reviewing the laws and regulations on property owned by the governments of the five terms about evaluating the price of this property are seen including: fair price, a fair price for the day, the price of the day, the price of and expertise regional price. In this section we discuss the nature of any of these terms.

2.2.1_Fair price
In most laws and regulations that executive agencies according to it, attempt to ownership, the term of "fair value" as a benchmark to pay cost is seen. So that in Article 3 of the law of the purchase and ownership ... the legislator has decreed " fair price for land, buildings, constructions, installations and other rights and damages by agreement between the (executive organ) and the owner or owners and rights holders is determined. "

The term "fair value" usually is associated with the agreement between the owner and the executive organ. If in the Additional Note 3 to Article 20 of the Executive Regulations of urban land (approved 28.06.1390 in Persian date) has been decreed: "Basically, the cost of land, buildings and ... necessarily is determine by agreement between the executive organ and the owner or owners and the right holders. "

2.2.2-Day fair price
As you can see, the legislator in 1339 (Persian date) had predicted a mechanism for calculation of fair value and based on which the "fair price" means the price of land a year before the announcement of the government's decision. But the term "fair price day" set forth at the end of this article does create ambiguity and it seems that legislator using the term has retreated from its previous definition and the aim of the use of this term is to calculate the day price for land under acquisition so that the determination of price be closer to justice. This issue is also seen in Article 5 of the law of the purchase and ownership of 1358 (Persian date). So that legislature has stipulated in this article: " The determining criteria for price is calendar day fair prices of land and buildings and facilities

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and the similar rights and damages in area of plan operations without taking into account the effect of the plan on their price."

2-2-3-Day price
The single article of the law "how to buildings, municipal property and land calendar required for municipals" approved in Persian date 28.8.1370 provides:
In all the laws and regulations that municipalities are allowed to possess legitimate buildings, estate and land of people, in case of disagreement between the municipality and the owner, the price of buildings, real estate and land must be paid in calendar day prices."
In the note 1 of the same single article it has been stated that the day price is determined by official expert panel of justice that the members of this three members board, one by municipal choose, one by owner or the right holder and third member by parties are appointed.

2-2-4- Expertized Price
Paying the expertized price of owned property by the government in all the laws that have been put on public projects has been anticipated that after identifying by experts, they based on technical principles and taking into account all aspects attempt to evaluation and calculation of their damages. Price set by experts, depending on the law governing the issue can be determined day price, day fair price or fair price. Therefore for this purpose it is appropriate in cases where the referring is done by experts to the court, in the expertise contract it is indicated that experts must calculate the "day price" of property or "fair value" of property is considered.

2-2-5-Zone (regional) prices
This method of property valuation is seen only in one type of laws violating private property which based on the amendment 9 on of Article 9 of the Land Act approved in Persian date 22.6.1366 is took place. In a way that state calendar has been based on the zone (regional) price (transaction value). Of course in the same law (act) upscale price located in the land law and other legal rights was calculating on the basis of official opinion of justice expert and fair value.

2-3-Granting of compensation (swap) of the property to private owners
Another method of compensation of damage (loss) for private owners is granting the property swap of owned property to private owners. In this way, instead of paying owned property, a property as swap of owned property by the government instead is given to private owners. This compensation (swap) can be a part located in the project in the same place or in another place.
Article 6 of the law of the purchase and ownership in this regard provides: "In the cases where the executive organ deems appropriate and in the case of owner satisfaction the compensation (swap) of similar national or state lands owned by government land is provided and is delegated to with maintaining criteria in laws and regulations relating to owners. In this case, determining the price of compensation (swap) and swapped (compensated) is the consideration of the Panel of Experts referred to in this law.
However, using this method for compensation from private owners actually about some of the personal rights such as easement, which considered in the scope of the project isn’t possible and in these cases the only way to compensate the loss suffered by owners should be considered the
calendar and the evaluation of its value and paying it in Rial; but in many other instances of property rights, including right to businesses is legitimate and possible.

As the article 7 of the law of the purchase and ownership ... in this case provides: the executive organ is allowed instead of paying business right in the case the of owner satisfaction commit delegate a business place within the limits to right owner."

About how to apply this method shall be expressed, firstly, contrary to the method of payment the value of owned (acquest) property which is part of government's obligations in project, the compensation of these properties to owners is within the jurisdiction of the state.

This means that the use of this method depends on the recognition of the organ executing the plan and there is no obligation for the government, even if there is compensated (swap) property. This can be taken from some statements made by the legislator in Articles 6 and 7 of the law of the purchase and ownership ... such as, "In cases where the executive deems appropriate" or "executive organ is authorized " (Ibid: 201).

Secondly, accepting the compensated (swap) of owned property by the owners is not required. In other words the realization of compensation through the swap of owned property, required the consent of the owner or right holder and even if the government tries to give compensation (swap) to owners swap which its Rial value is more than the value (price) that the owner is entitled to receive it, there is no obligation for the owner of its adoption (Ibid: 202).

Third: Merely an agreement between the owner or right holder and implementing agency of plan organ for giving compensation (swap) the value of owned property is not enough. The criteria set forth in the laws and regulations in this regard should be respected, as well as determining the cost of the compensation (swap) and compensate (swapped) is the responsibility of expert bodies enshrined in law (Ibid 204).

2-4- Granting concessions to private owners

In the some laws that applying of them led to violation of private property, the legislative in the form of concessions to owners has considered some measures to redress (compensation). In the other words hereby the holder of right for the loss of his/her right, obtain concessions from the government which can lead to provision a form of reparations or compensation of suffered losses to him.

For example, can be noted concessions (privilege) that because of implementation of land reform laws and the enactment of the act (law) of "divide and sell the leased properties to tenant farmers", which were awarded to owners that with application of the rules of land reform wide restrictions was entered on their property rights. For example, pursuant to the Article 5 of that law, estate sellers who covered by that law could using the value of the installment bills which were receiving for property prices from farmers buyer, invest in industrial and civil affairs. Also pursuant to clause (amendment) 1 of this Article, the owners using received installments bills from farmers could attempt to develop and prosperity of uncultivated and established lands (Safai, previous: 180).

Another example of a granting these form of privileges can be seen in the new stage of subsidies targeting. As mentioned earlier, with the implementation of targeted subsidies law and the implementation of the clause (a) of Article 7 of that law and deprivation of the upper class of
society to get this right, the legislator has deprived this right from upper class of society. Thus, in order to compensate for these people the government has sought granting other concessions (privileges) in the form of giving government partner card. Although about the quality and quantity of this decision we have no correct we have so far, but it should be considered such concessions that government has put on the agenda to compensate for persons.

Of other concessions (privileges) granted by the government to private owners can be cited concessions (privileges) municipalities due to lack of adequate financial liquidity and the ability to pay in compensation of equity, they grant to them. These concessions (privileges) are emerged in three forms and in the form of granting density, land use change and make a initiation, which we will describe these three cases.

2-4-1- Granting density
A means of compensation for equity public initiatives located in public plans of municipality is granting density to private owners. Due to limitations in a city such as water restrictions and limitations related to education and health facilities, some limitation would be caused for the population of a city and the areas of that city. Therefore, due to existing limitations the building construction and the amount of buildings which can be created from a specified piece of a land would be limited. Rules pertaining to permissible levels of building are determined in urban development projects and therefore, the owners are prohibited to construction beyond the licensees (Beheshtian, previous: 273). About the concept of density must be stated that density is giving the license to increase authorized area for construction. For example, the land that based on a detailed plan can only be a maximum of three floors, are given the license to construction three-story in excess of the limit. (Zargoosh, previous: 207).

One common use of this tool that is granting density in excess of the permitted density is the use of this tool for providing ownership right (equity) associated on real estate that part of it is placed in the road widening project. We have seen routinely and are witnessed now that the municipality for paying swap (compensation) of ownership rights (equity) the part of the land (property) located in the widening project, does not pay any payment; but encourages the owner in exchange for his/her rights, construct more buildings in the remaining part of his/her land (property). Such a move, is not but the sale the density, with the difference that in these cases, the municipality receive no payment for delegated or does not get paid for density duty or promise and in contrast, the equity holder does not receive any money for equity (ownership rights) located in development projects, the road widening plan, and these two demands are offset with each other (Beheshtian, ex: 275). The remarkable thing is that the use of this method for compensation for private owners, such as the compensation (swap) of owned property method, subject to the approval of private owners.
2-4-2- Use change

The use change or change is method and type of application of land (property) is located in a city of urban design elements that this application can be for dwell (residential), for business (commercial) and so it and the purpose of the change is to give the owner an opportunity to create that change. According to existing regulations, the determination of application of estate (land) and any change in them is the duties and authorities of Article 5 Commission of the Supreme Council for Planning and Architecture of Iran.

If a person is willing to change the application of his/her land (property), to permit this, have to in addition to the approval of the municipality pay funds entitled "duty for use (application) change" to the municipalities. Today it is considered one of the ways for municipal to business. Thus, municipalities for losses resulting from owning the property of private owners in terms of implementation of their approved projects instead of compensation of loss and damages suffered by private owners, through paying price, attempt giving concession of use (application) change to owners.

For example, the owner whose land (property) has residential use, and much of it is located in the plan, to be allowed to change the rest of his/her land use (application) and use it as a commercial location and for it pay money to municipalities. In this condition usually given the added value is created in the land (property) and considering the benefits associated with it, the owner agrees with it. As a result, instead paying compensation to the owners by granting this privilege compensation comes into action. It is worth noting that the use of this means like the granting of density requires the consent of the owner of equity (ownership rights) as well, otherwise if the right holder not agrees to use this privilege, the municipality for compensate the damages suffered by owner to the owner must follow the principle and take action to pay equity value.

2-4-3- Creating the right of initiation

Initiation as a term, is to increase the value of the land property as a result of a change in the location of the land caused by implementation of the project. In the past, the quality right (quality duty) was used instead of right of initiation and apparently, the first time the Article 8 of passages development Act (law) was that identified such a facility but after Islamic revolution under the single law of “the act of quality right abolition” approved in Persian date 1360/8/28 this right was considered unlawful (in Sharia) and was cancelled, but after the approval of this law became controversial again and the Ministry of Interior after announcement of Legitimacy of closing the VAT resulting from the crossing the street near the lands (property) according to clause (a) of article 43 of the Law of receipt of some government revenues and expenditure in certain cases, passed out a legislation as duty tariff and the right of initiation in a article and four amendments and thus the establishment that until recently was illegitimate and illegal, was revived again with a new title (Zargoosh, previous, 209 and 208).

This condition in widening of the street plans or the inner city projects is happen.

In other words, due to changes in location of the land (property) in plan or scope of it, the value of that land (property) will increase.
For example, if due to widening project a land (property) before the implementation of project was located in a side street and the other part of that, in the corner of Main Street it is natural that this change create added value for the owner. Thus, in such cases instead of paying the value of owned part from executive organ, with no gain of added value resulting from cross streets near the land (property), among the value of lost right and achieved value cambium is done.

**Conclusion**

The motivation to provide the public interest and based on social necessities the governments taking measures which inevitably leads to a violation of the private property of individuals and limit the scope of principle of despotic dominion rule, even in some cases deprive it. This can be done through legislation that is abundant in the Iranian legal system. The motivation of more economic gain for the government can’t be a factor to violate the right of private property of individuals. Governments after the violation of private property in order to protect the public interest are obliged to compensate them.

The compensation practices from private owners by the Government include; agreement between the owner and the executive organ, the granting of compensation or concession to private owners and paying the value of property owned by the government. To avoid the economic downturn and reduction in the motivation for business the government should more than ever put in its agenda the compensation for the owners whose private property is violated due to implementation of public projects and in order to protect the public interest and it will not be possible unless the by legislation rules and laws which involve all the aspects of private property violation and compensation for damage caused by it.
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