

Consideration of Public Interest in Land-Use Designation and Land Exploitation in Iran

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Abstract: Land use designation system has been developed to determine the manner of land use in cities, and fulfill other objectives such as guiding and organizing urban spaces, identifying constructions and adapting them to the urban planning systems. This system is executed by a commission referred to as Article 5 Commission of the Law on Urban Planning and Architecture which, as a reference of land-use designation and change assigned with the responsibility of conducting reforms and modifications in the detailed plan, is required to carry out adjustments in compliance with the regulations. This process is followed by reviewing and conducting expert analyses with the aim of creating balance in land uses and urban structures so as to fulfill the goals of the upstream documentations, especially the Comprehensive Plan as well as the public interest. One of the major criteria inland-use designation is the establishment of compatibility with public interest because basically, the primary function of all laws is to serve public interest. To this end, the Administrative Justice Court is acknowledged as the authority to supervise the protection of public interest in land-use designation and urban plans. In fact, the administrative judge possesses the jurisdiction and authority to resort to tools such as rendering certain decisions illegal or beyond the scope of the enactor's authority in order to fulfill the legislator's intended goals which include safeguarding values such as public interest, public benefit, and the provision of public services. The present article seeks to examine and evaluate the performance of Justice Court with regard to the adjustment and coordination of the approvals of Article 5 Commission with public interest. Results of the study indicate that the Court has assumed a dual function in this regard. In other words, where land use was incompatible with public interests, the Court adopted the approach of annulment or modification of the administrative decisions made for land-use designation or change, and when resort to public interest resulted in violation of private rights, the abuse of public interest was not authorized.

Keywords: Article 5 Commission, Urban Planning Supreme Council, Public Interest, Land Use, Administrative Justice Court

INTRODUCTION

Land has long been highly regarded as a source of fulfilling human requirements, with an increasing significance today thanks to population growth and demand of the new population to shelter. "Land is a commodity with certain characteristics that distinguish it from other commodities. These characteristics are as follows: 1- Land is limited in quantity. 2- It cannot be physically destroyed, although its appearance may change. 3- It is used for money investment in most countries. 4. It is a commodity that no one can live without. In other words, man is inevitably in need of occupying space and part of the earth. 5- It is immortal and in addition to its various applications, it provides the land owner with great economic security"¹. The culture of urbanization, the increasing population growth, and the influx of villagers to cities have supplemented the growing importance of the value and status of land in urban areas, along with the housing and related services it provides. As a significant starting point for any urban development, including housing, industry, service provision and infrastructure,

land is an integral component of life. Land, therefore, can be assumed to have three basic dimensions as follows: 1. As a natural resource (like water and the air) whose utilization is vital for habitation and life, and whose protection for future generations is critical 2. As a property within the framework of private ownership, a commodity which can be possessed, purchased and sold for personal gain and income, and 3. As a generator of a sense of enormous economic and social security for its owner²". Land-use type in urban areas is restricted by public interest and private ownership. There are times when a certain form of land use is recognized as having harmful environmental or social impacts, while at other times, the same use appears to be beneficial to certain citizens in terms of economic benefits. A cement-producing plant, for instance, while being economically useful for the country, would adversely impact the society's health if located in the city center because of its pollution, thus creating a conflict between economic benefit and public interest. Awareness of this conflict of interest (the conflict between private interest and public interest as well as the conflict between economic interest and natural resources) underscores the necessity and importance of land-use planning. Nowadays, urban land use in advanced planning systems in the world has taken the form of land preparation, spatial planning and national, regional and local bodies planning to ensure its optimal use. In general, it can be argued that the development of land-use system in each urban community, land division methods, and land use for different activities and services reflect the interplay of a set of diverse environmental, economic, social, political, and legal factors³".

A. MAIN QUESTIONS

Based on the foregoing introduction, the main research question is as follows: "How can the required sanction for land-use designation and change be created?", and these secondary questions include: "To what extent is public interest adaptable to an effective individual's enjoyment of land ownership rights? and What role can be played by the Administrative Justice Court in this regard?".

B- RESEARCH CONCEPTS:

1. The Concept of Land Use

Land use is, in fact, one of the components of urban planning. Simply put, factors such as the type of use and combination of spaces required for optimal application of lands and properties are anticipated in urban planning as a part of government policies to control the limited resource of land. These plans determine the requirements of each city for different residential, cultural, and educational areas, etc. Land-use designation system, therefore, encompasses the issues of determining land-use type in the city, directing and organizing urban spaces, and designating the structures and the manner of their adaptation to each other and to the urban systems".

2. The Concept of Public Interest

The term "interest" literally means profit, gain, benefit, and earning, and is the opposite of the word "harm". Similarly, a "utilitarian" is someone who is solely driven by his own interests, and seeks gain eagerly in any way⁴". A group of people believe that "the concept of public benefit is as extensive as the concept of "public" itself, while others consider it a highly relative, random and flexible concept that differs according to time and space⁵". Having elucidated the concept of public interest, one must identify the reference and the protectors of public interest in executive authorities' decisions making on urban plans and land use.

3. The Concept of Detailed Plan

"Detailed plan is approved subsequent to the Comprehensive City Plan for the purpose of implementing executive plans, specifying the detailed plans and steps of actions for each property. Preparation of detailed plans is necessary due to the general nature of upstream plans. In other words, a detailed plan is an area where the comprehensive plan approaches the action and execution level, the land and ownership status are clarified, and the mechanism of urban management to control

and monitor urban space and land use is completed. ”⁶Thus, a detailed plan is based on the general criteria and standards of the Comprehensive City Plan that include the manner of urban land use at different city levels and the exact location and area of land for those levels, the precise and detailed status of the traffic network in relation to population and construction density in urban units, and the priorities related to areas of improvement, renovation, development and resolution of urban problems and the location of all different urban factors. A number of scholars have described the aims of the detailed plan approval in accordance with Article 5 of the Law on establishing the Supreme Council for Architecture as follows: “The ultimate aim of the detailed plan is to implement the principles and objectives of the urban community plan to improve and enhance the quality of the environment, eliminate shortages, organize neighborhoods, increase the regulatory capacity of the urban management mechanism, and create balance in the uses and urban structures at different levels so as to establish coherence and order in urbanized structures, and prevent interference in the functioning of each structure⁷. ”

C. THE RELATIONSHIP BETWEEN PUBLIC INTEREST AND LAND-USE DESIGNATION BODIES

1. Article 5 Commission and Public Interest

As noted above, the investigation and approval of detailed urban plans and land-use change are among the major tasks of Article 5 Commission of the law on the establishment of Architecture and Urban Planning Supreme Council of Iran which are performed in the light of the upstream body’s approvals, i.e. the Architecture and Urban Planning Supreme Council. In the duties mentioned in the Commission, public interest factor is included under the laws and regulations which Article 5 Commission is required to obey. Compliance with the general requirements set forth in paragraph 2 of Article 2 of the law on the establishment of Architecture and Urban Planning Supreme Council of Iran, for example, which is decided by the said Council is regarded essential for Article 5 Commission, and in case Article 5 Commission approvals are not in compliance with the approvals of the Architecture and Urban Planning Supreme Council of Iran, there will be created the possibility of revocation.

2. Comprehensive Plan and Public Interest

One of the important provisions that Article 5 Commission is required to follow in order to review and approve detailed urban plans is the Guideline for Determination of Comprehensive City Plan (approved by the Architecture and Urban Planning Supreme Council of Iran, dated 14/03/1985). In the guideline which seeks to disambiguate and resolve problems of identifying the basis for the comprehensive plan under Article 5 of the law on the establishment of Architecture and Urban Planning Supreme Council, there exist terminologies from which the matter of public interest can be deduced. “The presence of requirements and plans of population growth”, “development and national, economic and environmental priorities, land productivity and development constraints, such as water scarcity as the most important factor in determining the type of productivity” (no. 1-2, Paragraph a), “general lines, network communication systems and facilities such as urban railroad, airport, etc. (no. 1-3, Paragraph b), preservation of historic buildings and landscapes, and the natural scenery (no. 3-5, Paragraph b), general architectural aspects of urban landscape, texture and building according to traditions, culture and climatic features (no. 3-6, Paragraph b), and environmental protection (no. 3-7, Paragraph b)” are issues that can be inferred from the Guideline for Determination of Comprehensive City Plan regarding public interest protection.

No. 2-2, Paragraph C of the preparation model of the executive terms and conditions of comprehensive and conductive plans (approved by the Architecture and Urban Planning Supreme Council, dated 4.29.1991) reads: “Industrial areas should be subdivided into different sectors according to the type of industry (services, repairs, non-pollutants, etc.), and on the basis of permissible levels of air pollution, vibration, noise, wastewater, wastes or other factors”. Furthermore, according to Article 49 of the amendment of Articles 43-52 on the manner of reviewing and approving local and national development and construction plans (5/9/2005): “All technical and professional criteria and standards must be taken into account during the review of Comprehensive Plan changes. To prove the adequacy of the review, the following shall be explained to the meeting: 1- Authentication of the necessity to create change in the plan, 2- Suggestion of a suitable land

for replacement which, in case the change is related to public uses, complies with Comprehensive Plan in terms of area and location, 3- Respect to the acquired rights of individuals, 4- Method of service supply and urban infrastructural facilities, and the possibility to modify and relocate the existing networks". These are regulations confirming the protection of public interest in the review and approval of detailed plans⁸.

3. Land-Use Designation and Public Interest

Attention to spatial land-use criteria can be interpreted as consideration of maximum public utility in reviewing and approving land-use and property changes in Article 5 Commission. Land-use plan represents the future pattern of land use in every city, identifying various types of urban uses (e.g. residential, commercial, industrial) and public utilities (such as educational, health, administrative and recreational). In general, location criterion in land use is the standard by which the optimal location of a land use in the city is measured. These criteria for any land use reflect the social, economic and physical status of the cities as well as the people who will benefit it in the future. In other words, local characteristics and the requirements of the city's residents, along with the institutions and organs located in the city comprise the basis for determining the location criteria of urban land-use, the most important of which include:

3-1-Compatibility: one of the major tasks of urban planning is to locate different uses across the city, and to separate incompatible land uses. Uses that produce smoke, odor, noise and crowd should be separated from other uses, especially the cultural, social and residential ones. Spatial separation of functions is not limited to specific activities such as slaughterhouses, leather manufacturing and metalworking only, but to small intruding uses (such as a lumber-cutting shop, a window and door producing shop, or an oil sale stall in a residential area whose inhabitants might be complaining about).

3-2- Comfort: the two factors of distance and time are units for measuring comfort and convenience in location standards, and concepts such as close distance or comfortable distance for life, walking distance, and accessibility to transportation lines and facilities are normally interpreted as comfort and convenience. Ease of access to urban utilities and services required for different uses as well as avoidance of crowd nuisances comprise comfort factors.

3-3-Health (Healthy City): today, adherence to executive health and environmental standards plays an important role in improving spaces, buildings, and industrial sites. Healthy city standards and regulations known as environmental impacts evaluate any urban activity in terms of environmental protection, safeguarding social amenities and protection of cultural heritage. Environmental and hygiene standards, therefore, are enforced to practically control industrial disturbances, and any manufacturing or service performance, even the construction of highways, terminals and airports. In fact, these standards are becoming increasingly important, and now, cleanliness and environmental control criteria are the major and determining factors in any land-use plan.

3-4-Safety: security agents propose specific standards for the location designation of urban activities. Generally, security standards depend on protecting urban installations and defending the city from possible war strikes. Meanwhile, anticipating the manner of city evacuation at the time of danger, predicting shelters, the way they are distributed in the city and the manner of guiding the population toward them are crucial as far as defense issues are concerned. Also, city protection and safety against natural disasters, such as floods, hurricanes and earthquakes are effective location criteria for different activities and uses based on which water courses and the boundaries of streams and rivers are determined in the city by conducting hydrological research, and the construction of any building or activities established in those boundaries are prohibited. Furthermore, sea boundaries are protected in terms of the environment and natural landscapes protection, and creation of safety against storms and floods. In fact, establishment of facilities and activities offshore are only authorized by taking into account the balance of form and structure of the beaches under certain regulations⁹.

D. REVIEW OF THE PROCEDURE OF THE GENERAL BOARD OF ADMINISTRATIVE JUSTICE COURT OF IRAN

In the review of the Administrative Justice Court's public board procedure to acknowledge the opinions of the heads,

counselors and judges of the Court's branches regarding the approvals of Article 5 Commission of Architecture and Urban Planning Supreme Council (urban plans and land-use designation), the judgments rendered within a twenty-four-year period (1991-2015) from the public interest perspective (whether in cases where the Court addressed the need to attend to public interest or in cases it addressed the non-misuse of public interest to undermine private rights) were examined so as to determine the general approach employed by public boards' judgments¹⁰. Results of the review indicated that the majority of complaints were made by natural persons against municipalities or provincial housing and urban development agencies, displaying the deep connection of these institutions' decisions with the acquired-inherent rights of citizens.

Some examples include the public board's judgment no. 488 dated 10.21.2013 on the complaint of "Mr. Bigdeli against Tehran Municipality for revoking paragraph 3 of the proceedings of Article 357 of Article 5 of Commission of the Architecture and Urban Planning Supreme Council of Iran, judgment no. 81.172 dated 8.18.2002 on the complaint of "Mr. and Mrs. Khouban against the Housing and Urban Development Department of Qazvin province for violation of a part of the detailed plan of Qazvin city approved by Article 5 of Commission of the law on the establishment of Architecture and Urban Planning Supreme Council under the title of pathway opening, Messrs. Habib, Vahid and Ebrahim Pourvahhab Berenji and Mrs. Qadrieh Asri's complaint from the Housing and Urban Development Department of West Azerbaijan for revoking parts of the city of Urmia city's detailed plan, etc.¹¹

All of the documentary aspects of complaints revolved around acting against the law, departing from the jurisdiction, and non-implementation of the former judgments of the Administrative Justice Court's public board. Furthermore, the substantiated arguments were based on disagreements with indisputable legal principles, such as rule of dominion and prohibition of detriment as well as the undermining of acquired rights.

In judgment no. 80.56 dated 5.20.2001, the plaintiff declares with regard to the revocation of a part of the provisions of Karaj Comprehensive City Plan that: "The Urban Planning Supreme Council, in the implementation criteria of Karaj Comprehensive City Plan, has mandated the gratuitous possession of minimum proposed capitation service during land divisions in the city area which appears to contradict the legislator's laws and regulations on the appropriation of property required by state agencies and municipalities in various periods of time, and the council has, in principle, acted out of its jurisdiction, and has devised unlawful regulations".

Judgment no. 1232 dated 2.5.2016 on the revocation of the approved note of urban development rules and regulations, Article 5 Commission of Ardabil province's Housing and Urban Development, on pathway width designation states that: "Article 5 Commission shall make decisions within its own jurisdiction and terms of reference, and only with regard to the public alleys and pathways, not the ones under the private ownership of certain individuals. In fact, this action by Article 5 Commission and the municipality is contradictory to the rule of dominion and individuals' legal ownership of movable and immovable properties. ... Considering that the enactment of a specific rule to enforce withdrawal, and decision-making for the private ownership of individuals contravene the rule of dominion, and individual's legal ownership is beyond the legal jurisdiction set forth in Article 5 Commission, such practices by the municipality and the approval of Article 5 Commission have undermined my indisputable rights. As a consequence, ...". Furthermore, the documentary reasons of the plaintiffs are included in judgment no. 74.117 dated 10.7.1995 concerning the annulment of the act of Architecture and Urban Planning Supreme Council of Iran as follows: "The aforementioned act is contrary to all relevant national laws and regulations of the sacred law of Islam, and has no legal validity. First, the subject matter involves the same set of criteria decided for the green space next to the highways which were formerly revoked by the aforementioned judgment of the Court's public board, and failure to enforce the judgments of the Court's public board is tantamount to failure to enforce the provisions of the law. Second, pursuant to Paragraph 2 of Article 2 of the law on the establishment of Architecture and Urban Planning Supreme Council of Iran, the Council has the right to remark on proposals and bills for urban development as well as the regulations relating to urban comprehensive plans, but not to approve and enact the regulations. Third, as a result of the enforcement of the said act, owners seeking to build their lands, renovate or make divisions have to allocate 30 meters of their plot to the city's green space gratuitously. Fourth, the aforementioned act contradicts Articles 4, 22, 47 and 58 of the Constitution as well as Articles 30, 31 and 38 of the Civil Law". Similarly, according to judgment no. 87.517 dated 10.26.2008 on the revocation of a part of Babol city's detailed plan: "Gratuitous land possession of individuals and

collection of their price for financing public utilities of the city in exchange for agreement with land division contradict legal ownership and the rule of dominion as set forth in Article 22 of the Constitution of the Islamic Republic of Iran as well as the provisions of the Civil Law in this regard...”.

In judgment no. 80. 346 dated 1.13.2002 of the Court’s public board, the plaintiff asks: “the approval on Paragraph 3 of the detailed plan of the Architecture and Urban Planning Supreme Council of Iran, related to Fin Garden in Kashan, corresponds to which verses of the Holy Quran and the fatwas of the jurists? If someone buys 100 or 200 meters of land to build a house for himself and his family, the municipality requires him to surrender the land or to pay half of its price. Is this demand legally valid? ...”. In order to convince the public board, the defendant resorted to certain specialized and sometimes rare interpretations of the existing legal regulations as well as the issue of public interest respect, the fulfillment of public needs and permanence in public service provision.

The head of Hamedan Islamic Council, in his defense bill stated that: “as you are already aware, the major part of the revenue of the municipalities are gained from the area of property-use change, and if everyone considers the act tantamount to their rights violation and asks the Court about the legal contradiction of the approvals, there will be numerous protestors of the approvals, and the municipalities’ revenue source will be lost because as no public budget is provided, the municipalities’ expenses must be supplied by the people (judgment no. 13-1121 dated 1.3.2016). Also, the Director General of the Department of Housing and Urban Development of Mazandaran Province, in his defense bill, pointed out that “land division based on the detailed plan has caused demographic and traffic congestion problems, and as a result, has created the need to provide a network of public roads and pathways as well as service utilities, including educational, sports, and green space uses, etc. Therefore, charging a percentage for properties or their price is essential and inevitable. In fact, failure to finance will cause serious problems for the citizens. Municipalities are, hence, obliged to supply for capitations and pathway network in accordance with the criteria and regulations of approved urban plans, both comprehensive and conductive, at the time of land division and enforcement of Article 101 of the Municipalities Act.

Furthermore, this has been set forth in note 4 of the Law on Determining Property Status in State Plans and Municipalities in cases where the property enters the city area.

Also, the legislator, following the amendment of Article 101 of Municipalities Law, has required registration offices, and in certain cases courts, to carry out land division or partitioning within the city area and border based on the map previously approved by the relevant municipality, and the map that the landlord prepares for his land division shall be subject to deducting pathway areas and the municipality’s land share for public services from the total land area, pursuant to the related rules (Note 1). Under Note 3 of the mentioned single-clause bill, lands with the area of more than 500 meters are subject to 25% deduction as public and service capitations supply as well as 25% for land supply to construct public roads and pathways in the city due to the division and partitioning of these lands as per the comprehensive and detailed plan, and the created added value. These shall be collected from the land owner for the division act.

Obviously, although the private ownership of individuals is respected, and the civil law and the Constitution of the Islamic Republic of Iran have revered it by virtue of numerous principles, social necessities and public interests in cases of urgent conditions as prescribed by the legislator can be regarded as superior to private interests as found in many cases in positive law. Examples include judgment no. 453, dated 10.7.2013, and Tabriz municipality’s reply according to which: “Municipality is a publicly-owned establishment for the people of a city, assigned with major duties, tasks, and obligations to provide public services to the citizens and create order and discipline in the constructions carried out within the city territory as well as the construction of squares, pathways, streets, parks, green spaces, etc. In fact, the plaintiff is mindless of the fact that by issuing a division permit by the municipality and carrying out the division action, the price of the property and the lots will greatly increase, thus benefiting the property owner and the applicant of land division. It is, therefore, not unfair and unlawful at all to dedicate 5% to 10% of the same property to the municipality for the benefit of the public and the citizens. The division duties and share of the municipality are 5% to 10% which comprise a part of the municipality’s efforts to fulfill its public duties towards the citizens (judgment no. 72.12- 3.5.1394).

Other examples include judgment no. 75.59, dated 6.29.1996 comprising the defense of the Director of Legal Affairs of the Ministry of Housing and Urban Development as follows: “Urban development regulations and standards require that during the preparation of large urban lands for the construction of buildings, or the supply and allocation of divided lands to other individuals for building construction, in addition to pathways, part of the land be allocated for educational and service purposes commensurate with the design and area of the land, and training and service units be constructed and used by residents. As the landowners are reluctant to construct educational and service buildings, the government and municipality must, where appropriate, establish suitable educational and service facilities for the use of inhabitants of residential units. Thus, transfer of educational and service lands to the government and municipalities is a necessary component of urban development”. In judgment no. 80.172 dated 8.12.2001, the Director of Legal Affairs of the Ministry of Housing and Urban Development stated that: “Comprehensive plans are normally prepared for ten-year periods after their approval, and their execution priorities are ranked in terms of municipal facilities. The Architecture and Urban Planning Supreme Council of Iran, with the aim mentioned in the introduction part and given the need for larger investment in the construction of greater and more expansive infrastructures, the inadequacy of civil budget for the uniform and simultaneous city construction and its long-term development, has delayed the issuance of permits for the marginal gardens of the city despite overpopulation and the substantiated need of the city to those gardens for environmental reasons in order to prevent the destruction of agricultural lands and marginal gardens. Meanwhile, according to Article 14 of the Urban Land Law enacted in 1987 and Note 2 of Article 2 of the Law on Conservation of Agricultural and Gardens Land-Use adopted in 6.21.1995 pursuant to Article 3 of the Architecture and Urban Planning Supreme Council of Iran, members of the Council approved the act of 11.1.1999 within the scope of their legal powers and duties which is in full compliance with the legal requirements”.

In the meantime, the Administrative Justice Court, through judgments of the public board, acts as a benchmark to preclude violation of the regulations, and ensure the enforcement of rules and approvals of public service providers, and by referring to the existing rules, has attempted not to let public interest fulfillment become an excuse for misusing the granted authorities and violation of natural freedoms of the public by the competent legal authorities.

According to judgment no. 454 of the Public Board, dated 9.27.2013: “Pursuant to Article 5 of the law on the establishment of Architecture and Urban Planning Supreme Council of Iran adopted in 1972 with the subsequent amendments, the task and legal responsibility of the board on the subject matter of the mentioned article is the review and approval of detailed urban plans as well as their changes within the boundaries defined in the detailed plan in Paragraph 3, Article 1 of the Act of Renaming the Ministry of Housing and Urban Development to the Ministry of Housing and Urban Development, and determination of its duties adopted in 1974 with its subsequent amendment. Therefore, enactment of a specific rule is subject to conditioned use change of the desired plots from urban reserve to residential in accordance with the proposed division plan, and the gratuitous allocation of 35% of each plot area to the municipality after the widening as service share is not included in the detailed plans and its relevant affairs. Thus, subject to the regulations, the said Commission shall not have the authority or permission in this regard ...”. Similarly, judgment no. 921, issued in 2.17.2014 states that: “according to Article 4 of the Regulatory Law, part of the financial regulations of the government adopted in 2002, charging any money, commodity or service by the executive organs is subject to the legislator’s authorization. Therefore, the rules set forth in Article 14 of the Urban Land Law of 1988 is related to use change, partitioning, division and separation of gardens and agricultural lands pursuant to the rules of the Housing and Urban Development Ministry, and makes no reference to prescription and appropriation of part of the lands by the municipality or the executive organ. Hence, Parts b and c in Paragraph 1, proceedings dated 8.18.1997 of Shirvan Article 5 Commission, regarding the allocation of sixty percent and sixty five percent of the land, respectively, to the municipality for the execution of the affairs referred to in Article 14 of the Urban Land Act for residential or service uses according to the detailed plan are revoked due to their violation of these laws”.

The approach adopted by the Board members in judgment no. 71.176, dated 11.21.1992 was as follows: “According to Article 5 of the law on the establishment of Architecture and Urban Planning Supreme Council of Iran, Paragraph 3 of the law on Renaming the Ministry of Prosperity and Housing to the Ministry of Housing and Urban Development, along with the duties description adopted in 7.7.1974 with the subsequent amendment, enactment of a specific rule concerning

land deduction of individual applicants for land division and partitioning from the operation area density under the name of urban development service capitation is not included in the detailed plans approval and their related affairs, and according to the regulations, the Commission has no authority in this regard. Furthermore, the use of individuals' properties to meet the needs and requirements of the city's public utilities, subject to the positive law, must be realized through the purchase and possession of the lands. Therefore, the provisions of Paragraph 9 of Act no. 164 of Article 5 Commission on the postponement of agreement with individuals' property or land division and partitioning until deducting the density or allocating a percentage of the properties under the name of urban service and urban development capitation are beyond the scope of the said commission's authorities, and contradict the positive law on the validity of the principle of legitimate ownership and the effects thereof, and is revoked pursuant to part 2 of Article 25 of the Administrative Justice Court's Act adopted in 1.24.1982".

Judgment no. 83.460 dated 12.12.2004, too, confirms the above argument with the following content: "Concerning the Act no. 130 dated 3.4.1990 of Article 5 Commission, given the fact that the duties of the Architecture and Urban Planning Supreme Council of Iran are set forth in Articles 2 and 5 of the establishment law of the said Council adopted in 1973, authorizing the delegation of specific powers by these authorities to another person, including the mayor of Tehran, specifically on determining density designation and land-use change in different areas and the enactment of mandatory rules on the suspension of legitimate and legal ownership of individuals by obligating them to gratuitously transfer part of their lands and property premise to the municipality which is assigned with the verification and division of lands, in addition to being beyond the scope of the enactor's authorities, contravenes the principles of the Constitution as well as the provisions of the Civil Law on the validity of individuals' dominion over their legitimate possessions and the necessity to respect their rights, and is thereby revoked".

In certain judgments, however, having a society with sufficient public facilities and satisfactory collective welfare takes precedence over protection of the acquired rights of individuals. In judgment no. 87.88, dated 5.4.2008, public board of the Administrative Justice Court, while referring to Article 5 of the law on the establishment of Architecture and Urban Planning Supreme Council of Iran as well as Paragraph 3 of Article 1 of the law on renaming the Ministry of Prosperity and Housing to the Ministry of Housing and Urban Development, stated that:

"...Since the Act has been adopted to preserve the lands on the plot and margin of Zayandeh Rud, and its impact on improving the environment and preventing unauthorized constructions has been approved, the Act is, therefore, not contrary to law". In another judgment, Public board members' perception of amendment law of the Act on supporting the plan for the improvement and renovation of worn-out structures around the shrines of Imam Reza (PBUH) and Fatimah al-Masumah (PBUH) must be interpreted in the context of public interest protection. "...Given the fact that the legislator's decree does not contradict commercial land-use designation in the area around the holly shrines, and Paragraph 3, Part A of the objected Act emphasizes on cultural land-use designation for the plan of the area between the shrines, the Act is not recognized as voidable (Judgment no. 537, 11.4.2013). Also, according to judgment no. 88.185, dated 5.17.2009, "use change of a part of a property with general green-space use to 70 percent green space and 30 percent residential and service use without elaborating the legal aspects and reasons of the change contradicts the rule, and is beyond the commission's scope of authorities". Similarly, judgment file class no. 233.49 states that: "Revision of Lavasan Comprehensive City Plan to protect the water and lake of Latian dam is not beyond the scope of duties and authorities of the Architecture and Urban Planning Supreme Council of Iran, and is not against the law". The judgment stresses the concern of the general public regarding the right of citizens to have a healthy environment whose realization is to the benefit of the public.

As noted above, the Administrative Justice Court has continuously endeavored not to invade private rights in cases where resort to public interest was leading to the breach of private rights. Furthermore, in cases where the enjoyment of private rights caused harm to the public interest, it justifiably preferred public rights over private rights, thus appropriately enforcing the rule of prohibition of detriment.

CONCLUSION

If ministries, organizations and state corporations (the executive branch of government), municipalities (urban executive branch), and public nongovernmental organizations (legal and independent organizational units) are considered as executors and providers of public services, acting according to the rules and realizing the welfare and well-being of the general public must be regarded among their most important duties. Sometimes, during these efforts, another important justification is given higher priority, and regulation and expurgation of the rules and enactments are performed by taking public interest and benefit into account. Under such circumstances, attempt is made that these priorities justify the actions and practices of the mentioned organizations. Yet, arbitrary exploitations of these broad and dynamic concepts as well as their expansive interpretation may result in the violation of the legitimate rights of citizens and their intrinsic freedom, while their narrow interpretation leads to the effacement and loss of the rights of the majority of the public to have a society with minimum basic amenities and public welfare.

If, however, the protection of public interest in the sphere of society is deemed to be the result of the collective lives of individuals and of the acquired rights of all citizens, regardless of their religion, race, language, etc., the role of the Administrative Justice Court as the judicial authority to investigate complaints, petitions and protests of people against government officials or regulations and the fulfillment of their rights gains great significance. In fact, the administrative judge has the discretion and authority to declare certain approvals as against the law or beyond the scope of authorities of the enactor so as to realize his defined legitimate purposes which include the upholding of concepts such as public interest, public benefit and provision of public services. Although there are only a limited number of Administrative Justice Court's judgments in which protection of public interest are the basis for the revocation or affirmation of Article 5 Commission's approvals, they promise a systematic approach towards the validity and dynamism of fundamental concepts of social structure. In examining the procedure adopted by the Administrative Justice Court's public board, while no explicit reference is made to public interest in the judgments concerning the decisions made by Article 5 Commission 5, it should be noted that obviously, the judges have the tendency to protect those groups of public affairs and properties that ensure the protection of public rights. This triggers hope in the heart of jurists that there is an increasing attention to major issues, such as the protection of the society's interests.

The majority of the judgments rendered by the general board of Administrative Justice Court are based on the observance of the rule of dominion and prohibition of detriment as well as the safeguarding of individuals' acquired rights based on jurisprudence and its specific structure. It is, therefore, necessary for judicial supervisors to take into account all conditions, temporal-spatial contexts, and in general the impact of administrative decisions regarding property uses on public interest in their decision makings and reviews, and determine the validity or invalidity of the relevant administrative authorities of lands and properties from the perspective of public interest and its interpretation as a collective right, i.e. interpretations based on rightful public interests.

NOTES

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13. Of course, one should not disregard the few judgments on the subject matter rendered in favor of legal persons. See judgment no. 79.247, dated 11.5.2000 and no. 1320, dated 11.10.2014 for the General Inspection Office, or judgments no. 37 - 78.49, dated 5.8.1999 in favor of Oghab Housing Cooperative Company - Izadyar Housing Cooperative Company- 12 Farvardin Housing Cooperative Company (Law Enforcement Personnel)- Army Aviation Personnel Housing Cooperative Company - Tehran Revolutionary Guards Housing Cooperative Union or judgment no. 75.59, dated 6.29.1996 in favor of Mazandaran Province Jihad of Construction Housing Cooperative.

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