

The Change of the of the Real Estate Status in the Acquisition Law - A Comparative Study

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Abstract

Due to establishing public benefit projects, some real estates change positively or negatively in terms of improving their value. In these cases, although the real estate owners did not do anything against the law, the legislator obligates them to pay for the improvement of their real estate, whether the improvement included the part of the property remaining after the acquisition of a part of the property or in return for improving real estate that was not affected by the acquisition. Moreover, legislator requires to compensate the previous owner for damages that befall his property as a result of working on public benefit projects. The legislator determines one year for the fall of the compensation claim. One of the important results of the current study is that the legal basis for obligating owner of the exchange for improvement is the rule of fines for sheep. The source of this commitment is the law. However, legal adaptation to oblige the owners of real estate that has improved, whether part of it has been acquired or that has improved without acquisition, as a royalty and not a fee as the legislator called it. In this study, we presented a number of suggestions and recommendations to the Iraqi legislator to amend Act (41,38,37) regarding the exchange of improvement. We have also recommended the amendment of Act (52) concerning the dropping which we suggested that it starts from the date of completing the project.

Introduction

Private property is safeguarded and cannot be acquired. To protect this right, most modern constitutions have stipulated the prohibition of expropriating private property except for public benefit with a fair compensation. Act (23 / Second) of the Iraqi Constitution of 2005 stipulates that "Second - Acquisition is not permissible except for the purposes of public benefit with a fair compensation, and this shall be regulated by law." Furthermore, The Egyptian Constitution of 2014 states in Act 35 that "Private property is safeguarded, the right of inheritance is guaranteed, and it is not permissible to impose receivership on it except in the cases stipulated in the law. The property shall not be acquired except for the public benefit and in return for a fair compensation paid in advance according to the law." Moreover, special laws are enacted to define the procedures that must be followed to expropriate property, otherwise these procedures will be considered subject to appeal and revocation (Iraqi Acquisition Law No. 12 of 1981, published in Al-Waqi` Al-Iraqiya No. 2817 on February 16, 1981; The amended Egyptian Acquisition Law for the Public Benefit No. 10 of 1990). Since the acquisition is only valid for the public benefit; i.e. to establish projects of a societal character such as constructing

bridges, opening or expanding roads, or establishing parks, then the value of real estate changes positively or negatively through its improvement or damage due to the establishment of these projects. The legislator arranged for the authority to administer a right whereby the owners of real estate whose value has improved to pay sums of money in exchange for this improvement in addition to what the owner owns of his land without an allowance if he does not acquire from the area equivalent to a quarter of it or more. The legislator also obliges those whose land has not been acquired and the value of their property has improved due to the projects established by the government with these amounts. He also obligates the expropriating body to compensate the owners of real estate that were damaged due to the establishment of public benefit projects even if the real estates were not acquired or part of them was acquired. Furthermore, the acquisition laws set short periods of time according to which requests for compensation for damages achieved by real estate due to these projects are dropped, which may lead to the loss of the rights of owners of damaged properties due to the establishment of public benefit projects. There is no study that investigates the change of real estate due to projects of public benefit and their practical and legislative issues which is why we conducted the current study.

Research Questions

In addition to the constitutionality of the legal texts or lack of them, these texts that impose sums of money on real estate owners in exchange for improvement of their properties, there are many questions that must be answered which are:

- 1- What is the legal basis of obligating the owner to compensate for the negative change, and what is the legal basis under which real estate owners commit to the sums of money for the improvement of their properties?
- 2- What is the legal adjustment in exchange for improvement?
- 3- Are the owners of the acquired real estate the only concerned with the financial sums arising from the improvement, or does this include any property owner whose value improves due to actions carried out by the management?
- 4- How can the concerned parties, whether the owner or the real estate owners, object to the compensation for improvement or other kinds of compensations?

Moreover, the current study answers other sub-questions.

The Limits of the Study

This study deals with the provisions of real estate change in the Acquisition Law, the Iraqi Municipal Fees Law, and the Egyptian Law of Acquisition for Public Benefit according to the analytical and comparative method. It also deals with jurisprudence and exposure to its legal views.

The Concept of Real Estate Change

The condition of the property changes by the action of the owner if he demolished it or if he demolished it and rebuilt it again. It may also change by the action of others such as if the neighbor builds a five-star hotel which would lead to an increase in the value of the neighboring properties. In comparison, private real estate may be damaged as a result of the actions of the next-door neighbor such as if the

neighbor wanted to build a hotel with multiple floors which required him to dig bases and add columns that led to the cracking of the walls of the neighboring properties. These kinds of the changes are outside the scope of the current study because the term 'real estate change' in the Acquisition Law has a different meaning, and compensation for change is based on a legal basis that can, in principle, be described as a private basis. To explain the concept of 'real state change', we divided this study into two sections: the first one defines real state change and the second one explains its legislative nature.

Definition of Real State Change

The change in real estate according to the law of acquisition is characterized by having a special meaning. The state may impose fees on those who demolish their homes and then rebuild them. Fees may be imposed in some laws on those who add a certain number of floors, or for some of the services provided by municipalities such as paving streets and sidewalks (Municipalities revenues No. 130 of 1963, amended, and the schedule of fees attached to the law, published in the Official Gazette (Al-Waqi'i Al-Iraqiya) number 870 on 10/12/1963). In reality, all these actions are not considered as a change in the real estate in the Acquisition Law. To find out the special meaning of the change in the acquisition law, we must analyze and extrapolate the texts of the Iraqi acquisition law and the comparative law. The texts of the acquisition law show that the change may be in the form of an improvement in the property or in the form of damage to the property due to the establishment of public benefit projects as we explained in the following sections.

Positive Change (Improvement in the Property)

Most of the acquisition legislation in Iraq stipulated the imposition of a cash consideration or the taking of a part of the land area of the acquired real estate that is being improved due to the acquisition without an allowance. Article (1) of Act (3) of the Iraqi Acquisition Law No. (54) of 1970 stipulated that "An amount that does not exceed a quarter of the real estate's land area shall be taken without an allowance in exchange for an improvement and usufruct or an increase in the value of what is left due to the works of public benefit." Furthermore, Act 20 of the Iraqi Acquisition Law No. 57 of 1960 stipulated that "What does not exceed a quarter of the land area of the real estate shall be taken free of charge in return for increasing the value of what remains of it due to works of public benefit." It is worth noting that the Iraqi Acquisition Law No. 43 of 1934 did not consider real estate improvement. All the laws stated previously have been repealed by Law No. 12 of 1981. The legislator has dedicated the provision of acquiring the legal quarter without replacement in the Public Roads Law No. 1 of 1983 on 1/1/1983 in Article (Second of M / 4), stating that "It is taken without the legal quarter allowance stipulated in the Acquisition Law." Act (37) of the Iraqi Acquisition Law No. 12 of 1981 amended stipulates that "The real estate that does not exceed a quarter of the area of the real estate's land shall be acquired without consideration if it is established to the estimation committee that there is an improvement, location, or benefit in the remaining part of it and in its value due to the acquisition."

The Iraqi legislator has referred in this text to a case of real estate change, which is a state that the remaining part of the property improves upon the acquisition of part of it. If the acquisition of a part of a property makes the location of the remaining part of it after the acquisition better than it before the acquisition, or the utility of that part has increased and the improvement in the site or in the utility leads to an increase in the value of the remaining part after the acquisition, then the property has improved.

From the concept of violating the above text, we monitor two cases with which it cannot be said that there is a change in the real estate. The first case is the total acquisition of the real estate. If the property is completely acquired, it cannot be imagined that there will be an improvement in it since its area has become completely within the acquired project. The second case is the acquisition of part of the real estate without changing the location or the benefit of the rest of the area. The courts in Iraq have followed the text of Act 37 of the Acquisition Law in more than one case. This text states that “It has been proven to the Appraisal Authority that the acquisition leads to an improvement in the location of the property which is aimed to be acquired partially as it will overlook the highway, which increases its value.” (Baghdad Appeals Court, Al-Rusafa Federal Court / Cassation Commission, No. 906 / Acquisition / 2013 on 7/16/2014: Unpublished decisions). It also states that “If the acquisition leads to an improvement in the location of the property or the benefit of the remaining part of it and an increase in its value....” (Decision of the Federal Supreme Court 12 / Federal / Media / 2008 on 1/8/2008: Unpublished).

Furthermore, the Iraqi legislator stipulated that the property would improve without acquiring it. Act (41) of the Acquisition Law stipulated that “If the property located within the boundaries of the capital's municipality or the municipalities has an increase in its value, due to an improvement in its location, such as its appearance directly on the streets, squares, parks, bridges, or roads, or when its front expands or expanding the street, square, or park on which the property is located without being acquired partially, its owner is required to pay a fee to the capital or the competent municipality.” In this assumption, the law stipulates that the improvement occurs due to the establishment of public benefit projects without the acquisition of any part of the property. This type of improvement was restricted to being within the boundaries of the Capital Municipality. Consequently, if public benefit projects lead to an improvement in the property without acquiring any part of it, and the property is outside the boundaries of the capital or municipality, it is not subject to the provisions of this text. This text restricted the meaning of improvement to an increase in the value of the property, and it specified the cases in which the property is considered improved, which are:

- 1- The real estate directly overlooks streets, squares, parks, bridges, or roads.
- 2- The front of the real estate expands.
- 3- The expansion of the street, square, or park on which the real estate is located.

It seems that these cases are exclusive, despite the presence of (sufficient) analogy, because saying otherwise will lead to expansion of the interpretation of the text and the inclusion of other real estate which did not overlook the street, the square, or the park; its front did not expand; and the street, square, or the park on which the property is located did not expand. Consequently, the cases mentioned by the legislator does not make sense and it would be sufficient for him to be satisfied with the criterion of improvement and increasing the value of the property for any reason whatsoever. If we imagine an increase in the value of real estate in one of the city's neighborhoods due to the establishment of a park in that neighborhood, then all real estates will be included in the fees mentioned in the text of Act (41) above if we say that the legislator intended the example in enumerating the cases mentioned in the article. While we see that the text is applied exclusively to the real estate that overlooked the park or its front expanded because of the park, or because of the expansion of the park on which the property is located, which is the closest to the intention of the legislator as we believe.

On the other hand, the Egyptian legislator has distinguished planning projects outside cities and urban planning projects. The legislator obligated the assessment committee if the value of the part that was not acquired increased due to public benefit work in other than planning projects inside cities, to take into account this increase in the compensation estimate. Act (17) of the Egyptian amended Acquisition Law for the Public Benefit No. 10 of 1990 stipulates that "If the value of the part whose ownership has not been acquired is increased due to public benefit activities other than urban planning projects, this increase must be taken into account ... in estimating compensation." (Published in the Official Gazette). In contrast, in the case of urban planning projects, if the acquisition is limited to a part of the real estate and the authority in charge of planning works believes that the owner's retention of the remaining part of the property does not contradict the purpose of the project to be implemented, then the owner is obligated with the rest of the owners whose properties have improved without acquiring any part of it to pay half the actual costs of constructing or expanding the street or square that led to this improvement. Act (19) of this law states that "Owners of real estates that undergo improvement due to public benefit works in planning projects in cities without taking part of them are required to pay for this improvement but this does not exceed half of the actual costs of constructing or expanding the street or square that resulted from this improvement. The provisions of the previous paragraph shall apply if the acquisition of urban planning projects is limited to a part of the real estate and the authority in charge of the planning activities believes that the owner's retention of the remaining part of the property does not conflict with the purpose of the project to be implemented."

The position of the Iraqi and Egyptian legislators can be approached as follows:

- 1- The Iraqi legislator considered the criterion of improving the location or benefit of the remaining part of the property which leads to an increase in the value of the property mainly in compensation. In contrast, the Egyptian legislator stipulated the criterion of increasing the value of the remaining part without indicating the location or benefit of the real estate.
- 2- The Iraqi text is absolute in all the appropriations, whether they were made within the municipality's borders or outside the municipality's borders in the case of partial acquisition. However, if real estate improves without acquisition, it is restricted to public benefit projects within the boundaries of the capital's municipality. Likewise, the Egyptian legislator did. He differentiated the provinces of acquisitions urban planning projects.

Negative Change (Damage of the Real Estate)

The Iraqi acquisition law stipulated three cases of negative change which are as follows:

- 1- No benefit of the remaining part in partial acquisition

The law permits the owner to request the acquisition of all his real estate if the remaining part of it cannot be used in the case of partial appropriation. Act (49) of the Iraqi Acquisition Law stipulated that "The owner, in the case of partial acquisition, may request the acquisition of the whole property if the remaining part of it cannot be used." Act (21) of the Egyptian acquisition of property for the public benefit law stated that "The real estate, part of which is required to be acquired in its entirety, shall be purchased if the remaining part of it cannot be used." In other words, the harm that the legislator intended in this regard is the impossibility of using the remainder of the property after appropriating part of it. If the benefit decreases then it is not considered a harm. Accordingly, the Iraqi

courts ruled "... if the remaining part of the property cannot be used, then the court must decide to acquire the entire property" (Rusafa Federal Court of Appeal Decision No. 67.68 / C B / 2010 on 3/11/2010: Unpublished decision).

We suggest that the text includes the case of diminishing the benefit in the remaining part in order to do justice to the owner. Our justification is the title of section four included in Act 49 of the Acquisition Law which is 'damage due to acquisition'. We think that diminishing the benefit is a disadvantage.

2- Physical damage to the remaining part of partial acquisition

In case of partial acquisition, the owner deserves compensation if the remaining part of the property after the acquisition is physically damaged. Act (50) of the Iraqi Acquisition Law stipulates that "if partial acquisition leads to material damage to what is left of the real estate, then the owner deserves compensation for that." For example, the project is to construct a bridge and the drilling and installing the columns leads to cracks in the buildings of the remaining part, or damage to the implants as a result of the dust raised during the construction of the project. This is an application of the objective liability because the work carried out by the owner, even if it is permissible, should not harm others. If any damage occurs as a result of these actions, the responsibility of the acquirer arises and he shall be obliged to compensate for the damage he inflicts on others.

3- Physical damages that affect real estate without expropriating it

The owner of the property that suffers any physical damage as a result of the construction work in the project, and if the acquisition does not affect it, deserves compensation for these damages. Act (51) of the Iraqi Acquisition Law states that "if the implementation of the project leads to material damage to a real estate that is not affected by the acquisition, the owner may claim compensation." In this context, owners of properties not named after the acquisition are entitled to compensation. Moreover, if the implementation of the project resulted in realized material damage, even if it is in the attached property, provided that the change does not diminish the benefit or does not lead to material damage, the entity that owns the project is not obligated to compensate. Act (53) of the Iraqi Acquisition Law states that "If the implementation of the project leads to a change in the method of utilizing the real estate that has not been affected by the acquisition, the owner has no claim for compensation." However, the Egyptian legislator provided for the first case only when the remaining part could not be used in the case of partial acquisition. He did not stipulate the second and third cases. We believe that the general rules regarding liability for the harmful act allow landlords who are financially damaged due to the establishment of public benefit projects, to claim compensation; especially since the Egyptian legislator did not immunize the administration in these actions from being sued against them. In other words, these works, even if they are acts of public benefit, are not among the acts of sovereignty.

Thus, we can infer that a change of real estate in the Acquisition Law means "the change in the state of real estate, positively or negatively, due to the establishment of public benefit projects, whether the positive change is an improvement in the utility of the property or its location, and whether the negative change is a harm to the utility of the property or it is material damage."

Conditions of Real Estate Change

There are many conditions to real estate change to be considered in the Acquisition Law as explained in this section.

The change is the Result of the Establishment of a Public Benefit Project

The acquisition law in force did not stipulate this condition directly, but it did mention it in the reasons for enacting the law. The reasons for the legislation of the Iraqi acquisition law No. 12 of 1981, as amended, states the following: "Acquisition Law No. 54 of 1970, despite the many amendments that have been made to it, no longer keeps pace with the development taking place in the country and what the national development plans require in terms of the necessity to simplify the acquisition procedures in order to secure the speedy completion of the acquisition process, to enable the state departments and the socialist and mixed sectors to achieve their objectives and projects. Moreover, this law has not remained the only law that regulates the acquisition of real estate for the purposes of public benefit." Neither the law in force nor the law that preceded it referred to the nature of public benefit projects, in contrast to the repealed Iraqi acquisition law No. 57 of 1960 which states in Act (2) that "a- the following are considered public benefit items: 1. Open and expand streets, graveyards, gardens, and public sport fields; 2. Establish basins for the construction of ships, docks, warehouses, and what is related to harbors and yards that are used for the aforementioned purposes; 3. Construction and expansion of roads, bridges, railways, airports, telephones, telegraphs, wireless, radio, television, and other means of public communication; 4. Opening and constructing canals, waterways, cauldrons, water stores and reservoirs, and other works of benefit to agriculture, irrigation, river navigation, management of river affairs, establishment of dams, and other works related to flood control; 5. Establishing hospitals, health institutes, shelters, prisons, orphanages, schools, and charitable institutes managed or supervised by the government; 6. Government buildings, municipalities, and semi-formal institutions; 7. Construction of sewers to drain water, withdraw filth, drain swamps, and rehabilitate lowland and salty lands; 8. Establishing barracks, military buildings and yards necessary for military parades, firing fields, aviation squares, and other matters required for military purposes; 9. Business related to the investment of the country's natural resources and facilities, projects of water liquefaction, enlightenment, and public health services carried out by the government, municipalities, or any person contracted with the government in a concession agreement; 10. Matters that the Iraqi government undertook by virtue of a treaty or agreement ratified by law to acquire real estate in implementation of its provisions; 11. Create a new neighborhood; 12. Actions intended to improve and beautify the city or improve health affairs; 13. Building departments, stores, laboratories, and model farms related to the work of the competent departments according to their own laws; 14. Establishing markets and stores required by health reasons and modern urban conditions for the purpose of selling or storing food items; 15. Government housing projects and homes intended for the housing of employees in official and semi-official departments." On the contrary, the Egyptian law in force stipulated in Act (2) the projects that are considered public benefit projects and are almost identical to the abrogated text explained above.

Finally, we can say that the Iraqi legislator's approach in the law in force is preferable by being silent about enumerating public benefit projects in order to prevent any conflict that may occur between the administration and the landlord because the administration's need to establish public projects is renewable and the types of public benefit projects are also not limited to what has been stated in the

legal text. We prefer to leave the matter to the discretion of the court when the dispute is presented to it.

Improvement in real estate due to the establishment of public benefit projects

The Iraqi legislator specified the way of real estate improvement which includes physical improvement or benefit improvement. This improvement should lead to an increase in the value of the remaining part in case of partial acquisition, whether the real estate is inside or outside the boundaries of the municipalities (Act (37) of the Iraqi Acquisition Law in force; Act (17) of Egyptian Law of Acquisition of Real Estate for the Public Benefit). The same case is applicable if projects are implemented for public benefit such as gardens, parks, roads, and bridges or in case of expanding streets inside the boundaries of the municipality without acquisition which leads to an increase in the value of the real estate (Act (41) of the Iraqi Acquisition Law in force; Act (19) of the Egyptian Law of Acquisition of Real Estate for the Public Benefit).

Damage Due to the Establishment of Public Benefit Projects

The Iraqi legislature specified the type of damage in each case, whether the damage occurred to the landlord as a result of appropriation or it occurred to others because of the establishment of public benefit projects. The inability to benefit from the remaining part of the property in partial acquisition was considered a harm that permits the landlord to request the complete ownership of the property (Act (49) of the Iraqi Acquisition Law in force; Act (21) of the Egyptian Acquisition Law for the Public Benefit). Furthermore, the acquirer is required to compensate in case of a physical damage to the remaining part (Act (50) of the Iraqi Acquisition Law in force).

In all cases, the acquirer is obliged to compensate the owners of non-acquired real estate if the public benefit projects lead to material damage to their real estate even if the acquisition does not affect it (Act (51) of the Iraqi Acquisition Law in force). The Iraqi legislator considered in Act (52) switching sites of easements as material damage that enables landlords to claim compensation. There is nothing in Egyptian law that corresponds to these texts.

The Owner of the Damaged Property Claim Compensation

The Iraqi and Egyptian legislators, in case of a positive change, did not require that a request be submitted by the landlord since he is obligated to pay the improvement fee. However, this is stipulated when that damage is achieved due to partial acquisition or due to the establishment of public benefit projects without acquisition. They have set a period for submitting the application, otherwise the right to claim compensation will be forfeited. We will detail that regarding the exposure to the right of real estate owners to challenge the estimation.

The Legal Nature of the Property Change

To clarify the legal nature of obligating real estate landlords to pay money when their real estate changes positively, i.e. when the real estate improves due to acquisition, or obligating the landlords to pay money when the properties of others change negatively through damages to them due to the acquisition, we must answer two questions.

- 1- For which of the five sources of commitment can the recipient's commitment be refunded to pay these amounts?
- 2- What is the legal adjustment with which these sums are described? Are they taxes, fees, or royalties?

The following sections answers these questions subsequently.

The Legal Basis of the Exchange of Changing the Property

The basis for the responsibility of the acquirer on which the legislator relied is to compensate the landlord for damages that befall the remainder of the property in partial acquisition, whether the remaining part is not beneficial (Act (49) of the amended Iraqi acquisition law in force), if it is exposed to physical damage (Act (50) of the amended Iraqi acquisition law in force.), or compensation for material damage to real estate without acquisition (Act (51) of the amended Iraqi acquisition law in force.), is the objective reliability that is based on the idea of taking responsibility (Aluji, 2007: p. 93). If it is said otherwise, the expropriating party may argue that it has not made a mistake since the administration that is in charge of the project is creating a project for public benefit. Consequently, it can get rid of the payment of compensation. Since the damage is the basis of compensation based on the idea of bearing the liability, there is no room for research in the element of error. It is sufficient for the damage to occur because the responsibility of the acquirer to compensate the person who was damaged as a result of the acquisition process in the case of partial acquisition or compensation for the damages that arise as a result of construction work carried out by the acquirer (Alsanhoury, 1956: p.766; Alwarimi, 2015: p.677-679). But the dispute rages on the legal basis if the partial acquisition of the acquirer is obligated not to compensate the landlord for a quarter of the general area of the real estate, and the ownership of the part of the landlord is dispossessed from it without compensation (Act (37) of the Iraqi Acquisition Law in force). Likewise, the owner must pay the value of what completes the quarter if less than a quarter of the public area of the property is acquired (Act (38) of the Iraqi Acquisition Law in force) and the remaining part was charged due to acquisition, or the obligation of non-acquired real estate landlords, which are improved due to the establishment of public benefit projects within the boundaries of the capital's municipality or municipal boundaries, to pay amounts called by the legislator as 'improvement fees'(Act (41) of the Iraqi Acquisition Law in force) and called 'exchange for improvement' by the jurisprudence of financial legislation (Ahmed, 2018: p.58).

Then the answer to the first question is that there is no contract between the acquirer and the landlord so it is an acquisition, even if it is compulsory on the landlord, and therefore the obligation of the acquirer to pay these amounts cannot be returned to the contract as a source of commitment. If we discuss the individual will, we answer that the acquisition process, even if it is at the will of the individual owner, does not allow the obligation of the possessor because the individual will binds itself only (Saad, 2001: p.213) while the acquisition law obliges others to pay sums to the acquirer. Likewise, this obligation cannot be attributed to the harmful act since the landlord did not commit any act that violates the law until his responsibility towards the acquirer is fulfilled. In fact, no one in jurisprudence says so. However, there are those who say that the acquirer's obligation to pay for the improvement of the real estate comes from enrichment without cause. This is confirmed by the Federal Supreme Court in Iraq, which ruled "...because that represents the increase in the value or utility of that part that is not acquired and this increase in value or in the benefit is the fair compensation for the landlord that is

intended by the aforementioned constitutional text.” (The Federal Supreme Court decision (No. 93 of 2014): Published on the Federal Court website). Thus, the Federal Supreme Court has established the responsibility of the landlord, whether by owning a quarter of the public property’s area or by paying what completes a quarter of the public property’s area if the acquisition occurs on less than a quarter of the property’s area according to the rule of enrichment without cause. Since this rule requires the enrichment of one party at the expense of the other, we think that the establishment of utility projects is one of the most important duties of the government, and the expropriating party allocated the expenses of the project regardless of the compensation for the real estate improvement. Moreover, the limits of commitment according to the enrichment without reason is the least of the two values between poverty and wealth (Tulba, 200: p.256). Whereas, the legislature obliged the landlord to pay what completes the value of one-fourth of the public area of the acquired real estate whether it is increased or deducted from what is determined by the enrichment rule without reason. Therefore, we believe that the Federal Court’s decision was correct.

Since only the law remains as the last source for this obligation (Noah, 2020), the basis for the obligation of the landlord to pay for the improvement of the property is the text of the law. We see that the rule of gain by fine is the basis that the legislator has adopted in obliging real estate landlords to pay these amounts given that the acquirer will spend on public benefit projects which will increase the value of real estate. So the landlord has gained because of the project and he must be fined whereas the acquirer has been fined in spending on the project.

Nevertheless, we believe that the provisions of the applicable acquisition law are unconstitutional to oblige the landlord to pay for the occurred improvements due to public benefit projects because it contradicts the text of Act (23 / second) of the Iraqi 2005 constitution, and because the state is responsible for establishing public projects and spending on them.

Legal Adjustment of the Exchange of Changing the Property

In this section we answered the question ‘Is the exchange for the change in exchange for a tax, a fee, or a royalty?’ Before discussing the answer we need to determine the legal adjustment of the improvement exchange because it is one of the categories listed earlier.

Tax is "a compulsory deduction from people's funds for the purpose of contributing to the financing of public expenditures for a particular community or for other purposes such as the desire to create certain economic or social effects within this community." (Mohammed, 1968: p.11). One of the most important characteristics of a tax is that it is imposed without a charge (Alkhateeb, 2008: p.18; Aldamardash & Buraik, 2007: p.211). Therefore, the nature of the amounts required by real estate landlords in return for improving their properties due to the establishment of public utility projects cannot be described as a tax since it is not stipulated in the amended Tax Law No. 113 of 1982 in force.

The Iraqi legislator called the amounts that must be paid by the landlord ‘fees’ (Act (41) of the Iraqi Acquisition Law stipulates that “if the real estate has undergone... an increase in its value due to an improvement in its location, ... without appropriating part of it, its owner must pay a fee ...); however, the jurisprudence of financial legislation sees that it is not a fee. The exchange for improvement is defined as an amount of money imposed on the owner of the real estate in proportion to the special

benefit that returned to his property from works of public benefit carried out by the state or one of the local authorities, such as opening a street or building a new road (Khasawna, 2010: p.112).

The exchange for improvement may be combined with the fee because it is in return for a special service and must be paid in monetary terms to the extent that some considered it a kind of fee. However, each of them differs from the other in several ways, one of which is that the consideration for improvement is paid by the landlord of the property due to the increase in the value of his property as a result of the state's establishment of a public project. The landlord is forced to pay for the improvement as long as his property has benefited from state projects. The fee, on the other hand, allows the person not to pay the monetary fee when refraining from using the service for which this fee is decided (Ahmed, 2018: p.58).

Finally, we find a consensus among the jurists and commentators of public finance and tax legislation on calling the return for improvement "royalty". They defined the royalty as "an amount of money determined by the state and whose payment is limited to a specific class of members of society, which is the class of real estate landlords, in exchange for work carried out by the state which results in a private benefit." (Othman, 2011: p.112; Ahmed, 2018: p.58; Aldamardash & Buraik, 2007: 212). The meaning of royalty in language is "a tribute paid to the ruler as evidence of submission, or it is the right of the feudal lord imposed on his followers." (The Comprehensive Dictionary).

To sum up, the exchange of improvement is an obligation on the landlords of real estate whose amounts increased due to public benefit projects according to the law, and the legal adjustment of these amounts is nothing but royalties imposed by the state on those whose real estate has improved due to the establishment of these projects.

Provisions for Changing the Real Estate

Legislation stipulated substantive and procedural provisions governing real estate change, whether negative or positive, as explained in this section.

Objective Provisions of Real Estate Change

Provision of positive change

We explained earlier that positive change occurs due to a partial acquisition of the real estate because the remaining part may improve. Moreover, implementing projects like parks, streets, and bridges may improve the value of the real estate even if no part of it has been acquired. In the following sections we discussed the provisions of both types of improvement.

Provisions of real estate improvement due to acquisition

Act (37) of the Iraqi Acquisition Law states that "no more than a quarter of the real estate's land area is acquired without consideration if it is proved to the estimation committee an improvement in the remaining part because of the acquisition. Compensation in this case is restricted to what is included in the acquired area." This text entails three images of partial acquisition which are:

- 1- The acquired area is a quarter of the general area of the real estate.
- 2- The acquired area is less than a quarter of the general area of the real estate.

3- The acquired area is more than a quarter of the general area of the real estate.

If the acquired area is one-fourth of the general area of the real estate and the rest has improved according to the estimation committee, then the compensation is limited to the establishments and plantations that are located within the acquired area. Accordingly, the Baghdad Al-Rusafa Federal Appeals Court/ Cassation Commission, ruled in one of its decisions that “That the cassation rule is correct and matches the law... that it has been proven to the Estimation Authority that the acquisition leads to an improvement in the location of the property to be acquired... and therefore the acquirer has the right to acquire (without an allowance) no more than a quarter of the land area of the real estate...” (Decision No. 906 / Acquisition // 2013 on 7/16/2013: Unpublished decision). The acquired area may exceed one-fourth of the general area of the real estate's land, and the estimation agency has proven that the rest of it has improved, in this case the acquired entity is obligated to compensate the landlord for the value of the increase in addition to the value of the establishments or plants in the whole area acquired.

As for the third image, the acquired area is less than a quarter of the public area, and the assessment commission has proven that the acquisition leads to an improvement in the site or the benefit of the remaining part of it and an increase in its value. This image raises a number of questions including the constitutionality of this text, especially since the right to private property is safeguarded by a constitutional text (Act (23 / Second) of the 2005 Iraqi Constitution), and that the one who acquired it did not make any mistake. Although we do not believe the constitutionality of this text, there is a Federal Court decision requiring its constitutionality as follows: “The provision of Acts (38,37) of the amended Acquisition Law No. 12 of 1981 does not contradict the provisions of Act (23 / Second) of the Constitution of the Republic of Iraq and constitute a proper application of it. This is because the fair compensation intended by the constitutional text has been achieved in improving the location or utility of the remaining part of the property and increasing its value due to the acquisition. The same is the case when the owner pays something that completes the value of a quarter of the public area of the real estate because that represents the increase in the value or utility of that part that is not acquired. This increase in value or in the benefit is a fair compensation for the landlord that is intended by the aforementioned constitutional text.” (Federal Court Decision No. 25 / acquisition / 2007 on 8/1/2008: Published on the Federal Supreme Court website). We think the Federal Supreme Court took the right side.

The other question in this context: Is the landlord obligated for the value of the complementary part of a quarter of the area according to its value before the acquisition, i.e. its value considering it is not improved, or to calculate the value according to the value of the complementary part according to its price after improvement? To answer this question consider the following example:

A land with an area of 10 acres, 10% of the area has been acquired, i.e. one acre. The Estimation Commission has proven that the remaining 9 acres of the property have improved. The landlord was required to pay 15% of the general real estate value before the acquisition, i.e. 1.5. The Estimation Commission estimated the value of one acre before the acquisition is one million dinars, and the value of an acre after the acquisition is twenty million dinars. Is the landlord obligated to pay one and a half million for the improvement, or is he obliged to pay thirty million dinars?

Going back to the text of Act (38) of the Acquisition Law, we find that it states the following: “The landlord is obligated to pay the value of what completes a quarter of the public area of the land before the acquisition.” I think ‘before the acquisition’ refers to the area not the value. Thus, the Iraqi legislator was vague in this part. However, I think that the compensation for improvement is the value of what completes a quarter of the public real estate area given that the entity that seizes a quarter of the property is free of charge. In other means, it has the quarter if the real estate improves. If it does not fully acquire a quarter, then it will be the seller of what completes a quarter of the area and the price will be improved by the value of the improved part. What confirms this opinion is what was ruled by the Minors' First Instance Court and upheld by the Court of Appeal in its cassation capacity “2-obliging the landlords... of paying the value of the area of what completes the legal quarter which is 26 square meters estimated by the estimation commission which is (130.000.000) according to the estimation of the square meter (5.000.000 IQD).” (Mahil, 2014: p.228). The price of 5 million dinars per square meter confirms that the estimation committee calculated the area on the basis of its price after the improvement.

The third question is for whom is the payment? Is it for the authority of acquisition, the municipality of the capital, or the Ministry of Finance?

In Act (38) of the Acquisition Law, the legislator remained silent about the party that collects the compensation for the improvement. It may be understood from the text that the party that established the project is entitled to these sums. However, we believe that the authority should be clearly defined and that the collector is the Municipality of the capital according to the text of Act (41) of the law; because the improvement is the concern of the municipality and these sums will be allocated for municipal works, including improving the city itself, especially as Iraq is heading to a decentralized administration system.

In contrast, the Egyptian text is more lenient with the landlord and easier to apply. Act (17) of the Acquisition Law states that “If the value of the part whose ownership has not been acquired decreased or increased due to public benefit activities other than planning projects inside cities, the committee stipulated in Act (6) of this law must take into account this increase or decrease in the compensation estimate.”

Thus, the Egyptian legislator did not take the legal quarter, but rather directed the estimation committees to take into account the increase that occurred due to the improvement of the part of the unused real estate when calculating the compensation. This does not mean that the amount of the improvement diminishes from the compensation, since taking into account does not necessarily mean diminishing the value of the improvement from the compensation. If the legislator wanted that then he can stipulate that matter clearly.

The Iraqi and Egyptian legislators also stipulated the state of real estate improvement without acquisition and restricted the ruling to public benefit projects within the municipal boundaries and the capital's municipality even if they differed in the amount of compensation for improvement.

The Iraqi legislator obligated the owner of the real estate whose property has improved to pay a fee equivalent to one-fourth of the difference between the value of the public area of the land excluding

the buildings and plantations before the start of the project and its value after its implementation, that is, according to the following equation:

Fee value = $\frac{1}{4}$ (The value of the public area of the land without the buildings and the plantations after the implementation of the project - the value of the public area of the land without the buildings and the plantations before the implementation of the project)

He also specified the point of collecting the fee, which is the municipality of the capital or the municipality in which the property is located within its borders (Act (41) of the Iraqi Acquisition Law in force).

On the other hand, the Egyptian legislator obligated all landlords of real estates that have improved because of the project to pay for the improvement so that it does not exceed half of the actual costs of establishing or expanding the street or square that resulted in the improvement (Act (19) of the Egyptian Acquisition Law).

It is noted that the Egyptian legislator is fairer than the Iraqi one because the amount in return for improvement in Iraq may be greater than the value of the project established by the state, while the Egyptian legislator obliges the acquirer with half the value of the project and the landlord with the other half.

It is noted that the Iraqi acquisition law did not stipulate the permissibility of repetition or non-repetition of collection in exchange for improvement without acquisition. The sums collected in return for the improvement, in addition to being contrary to the provisions of the constitution, will be burdensome if they are repeatedly collected from the landlords whenever the municipality carries out public benefit actions which lead to the improvement of the property especially if it had obtained the first time the value of a quarter of the difference between the value of the property before the implementation of the project and its value after the implementation of the project, which are not small amounts. We recommend that the legislator does not stipulate recollection of the fee.

Provisions of the Negative Change

The condition of the property changes negatively through its damage due to partial acquisition when remaining part cannot be used (Act (49) of the Iraqi Acquisition Law; Act (21) of the Egyptian Acquisition Law.) such as if the acquired land is used for agriculture and the remainder of the land after the acquisition becomes an uneconomic area in terms of agricultural exploitation because the land is withdrawn from the road or there is no water for irrigation after the acquisition. The Iraqi and Egyptian legislators have stipulated the possession of all the real estate and stipulated that the landlord must submit a request to the court in this regard. The court shall order the possession of the whole property in case it is proven to the estimation commission that the remaining part is not used.

One explainer of the acquisition law (Yaseen, 2011: p.157) raises a question as to whether the landlord did not submit a request at the time of acquisition to acquire the whole of his property because it was not possible to use the remainder, can he file an independent lawsuit later on and demand the possession of the remaining part of his real estate, since he did not discover that he was affected and that the remaining part is impossible to be useful?

Then he answers that it is permissible to initiate an independent lawsuit even after the acquisition lawsuit has been resolved and his receipt of the acquisition exchange. This ruling is based on the rules of justice. Although we agree with this opinion regarding the permissibility of instituting an independent case to demand the acquisition of the remaining part due to the impossibility of usufruct, we disagree regarding what the judgment is based on. We believe that the legislator has specified the term for the dismissal of the lawsuit for Acts (51) and (50) of the Acquisition Law and has not determined a period for dropping the case for Act (49), which results in the legislator's clear intention that this lawsuit may be lax. On the other hand, the Egyptian legislator determined a period after which all lawsuits arising from the application of the law of expropriation for the public benefit will be dropped, which we discussed later.

What is taken against the Iraqi and Egyptian texts above is that they limit the ruling of damage to the inability to use the remaining part and neglect the case of diminishing the benefit of the remaining part. It is conceivable that it is not impossible to use the remaining part, but the benefit is severely diminished causing harm equal to that caused by the inability to use, which is a legislative deficiency that we call the legislator to avoid.

The Iraqi legislator also stipulated the assumption that the remaining part was physically damaged, such as cracking of the walls of the buildings located in the remaining part or damage to the implants or plants as a result of the construction work in the project. So he obligated the acquiring party to compensate the landlord of the real estate for that damage (Act (50) of the Iraqi Acquisition Law). We find that this text is an application of the general rules of tort liability, but it is a good attention from the legislator in order to eliminate the doubt with certainty; lest someone say that the acquisition allowance is sufficient as a satisfaction for any damages inflicted on the landlord.

Moreover, the law stipulated the obligation of the acquirer to compensate the landlords of non-acquired real estate in case their properties were physically damaged as a result of the implementation of the project (Act (51) of the Iraqi Acquisition Law).

The Iraqi legislator has taken the responsibility of the acquirer out of the scope of the responsibility to change the method of utilizing the property that has not been touched by the acquisition, so the landlord has no claim for compensation (Act (53) of the Iraqi Acquisition Law). For example, if the property before the implementation of the project was exploited as a car showroom and it became unsuitable for this work for any reason and its owner exploited it as nurseries to sell flowers and trees. We believe that changing the method of exploitation of partially acquiring real estate obliges the acquiring party to pay compensation based on the concept of contravening the text of Act (53) of the Acquisition Law since the legislator has singled out non-acquired real estate with this text.

Furthermore, the Iraqi legislator excluded from the scope of the responsibility of the acquirer the easements imposed by the public benefit works on the non-acquired real estate. The landlord may not claim compensation unless these collisions result in a change in the situation and lead to material damage achieved then the project implementing agency is obligated to pay compensation (Act (53) of the Iraqi Acquisition Law).

We did not find in the Egyptian law anything that corresponds to the provisions dealt with in Iraqi law in cases of damage to the remaining part or damage to real estate without acquiring it, or in the case of

changing the status of easements, except for a reference in Act (17) of the law of acquisition for the public benefit which stipulates that “If the value of the part whose ownership has not been expropriated increases or decreases due to public benefit activities other than urban planning projects, the committee stipulated in Article (6) of this law must take into account this increase or decrease in the assessment of compensation.”

I found that the Iraqi legislator was clearer in defining the responsibility of the acquirer or whoever establishes a project for public benefit when causing any harm to the landlords of acquired or not acquired real estate, and that the general rules are sufficient to resolve disputes arising from the establishment of public benefit projects. However, I recommend adding texts in the special laws that lead to speed in resolving disputes and finding solutions.

Procedural Provisions of Changing a Real Estate

The legislator stipulated specific procedures for assessing the compensation for changing the property otherwise it will be challenged. This section discusses these provisions.

Estimation Procedures of the Exchange of Real Estate Change

The acquisition may be consensual or judicial, and compensation may be in kind and it may be monetary. At first glance, it appears that the acquirer and the landlord are free to determine the amount of compensation if the acquisition is consensual. However, the agreement of the will of the parties does not exceed the limits of approval for acquisition after which the acquirer requests the estimation committee to determine compensation in accordance with the rules contained in the Acquisition Law (Acts (4) and (5) of the Iraqi Acquisition Law). As for the judicial acquisition, the owner must submit the acquisition application to the court of first instance of the real estate site (Act (10) of the Iraqi Acquisition Law). In both cases, the exchange is estimated by the estimation commission specified by the law which consists of the following:

- 1- Judge of the court of first instance of the real estate site as president.
- 2- Head of the Real Estate Registration Department or whoever acts on his behalf as a member.
- 3- Head of the Real Estate Tax Department or whoever acts on his behalf as a member.
- 4- Representative of the acquirer.
- 5- Representative of the landlord. If they are many and did not agree then the court assigns one of the experts (Act (6) of the Egyptian Acquisition Law).

The estimation committee determines the value of the expropriated property only and it does not look at the compensation elements in terms of lost earnings or subsequent losses. Furthermore, the Federal Court of Cassation rulings have repeatedly used the term acquisition allowance in its decisions (Federal Court of Cassation Decision, No. / 2295 / Civil Authority / 2016; Federal Court of Cassation Decision, No. / 2579 / Civil Authority / 2016: Unpublished decisions.).

Therefore, we call on the legislator to replace the term (compensation) with the term (allowance) in the resources that are intended to estimate the acquired property in the acquisition law in force.

This study investigates the exchange of the change in the real estate only which is why we excluded the exchange of the acquisition from the scope of the current study. The exchange for change takes three forms as explained below.

In Kind Allowance for Improvement of the Remaining Part of the Acquired Real Estate

In this context, the legislator assumes that the part of the acquired area exceeds a quarter of the total area of the property. If it is proven to the estimation committee that the remaining part of the property has improved in terms of its location or in terms of its utility and the improvement is due to acquisition, then the estimation committee should not count a quarter of the total area of the property when calculating the expropriation allowance.

If the area of the property before the acquisition was 10 acres and 3 acres were acquired, and it was proven to the estimation committee that the remaining area of 7 acres has improved in terms of its location or utility, then the estimation of the acquisition allowance is limited to the calculation of half an acre. Thus the acquirer as if he pays in exchange for the improvement A kind allowance which is 2 and a half acres of the acquired property (Act (37) of the Iraqi Acquisition Law).

It is taken against this provision that the Iraqi legislator has not put an end to the value of improvement. The value of a property may increase significantly and the last one will rise normally, thus the two properties are said to have improved and the previous ruling applies to them, i.e. taking away a quarter of the total area of the property without an allowance. Therefore, we believe that the Egyptian provision is more just because the legislator directed that the value of the part whose ownership has not been acquired increases or decreases due to acts of public benefit, taking into account this increase or decrease in the estimation of compensation (Act (18) of the Egyptian Acquisition Law). Therefore the authority will take into account each case separately considering the amount of the increase when calculating compensation, which is the closest to justice.

In Kind and Monetary Exchange for the Improvement of the Remaining Part of the Real Estate

Here, the legislator suggests that part of the acquired area is less than a quarter of the total area of the property. If it is proven to the estimation commission that the remaining part of the property has improved in terms of its location or in terms of its utility and the improvement was due to acquisition, then he appropriates this part without an allowance as if the acquirer has paid in kind this part in exchange for the improvement of the property. The legislator is not satisfied with the in-kind allowance, but rather the owner is obligated to pay the value of what completes a quarter of the total area of the land before acquisition, i.e. he is required to pay a cash allowance in exchange for this area remaining in his ownership (Act (38) of the Iraqi Acquisition Law). For instance, If the total area of the property before the acquisition is 10 acres, and 2 acres of it is acquired then the provision according to the Iraqi legislator is not to calculate any allowance for the expropriated area. In other words, it is transferred to the acquirer without an allowance and the landlord is obligated to pay the value of half an acre.

The question that the legislator did not answer is ‘Is the value of what completes a quarter of the area on the basis of the real estate price before it improved or after it improved?’

I believe that the estimation body should calculate the value of the complementary area of a quarter of the property's area on the basis of the value after the improvement of the property, since the intention of the legislator was to take a quarter of the property's area when the property improves without an allowance. Retaining part of this quarter in his ownership is like a process of selling from the acquirer, therefore the time of transfer of ownership of this area is the time when the value is paid by the landlord.

A Monetary Allowance for the Improvement of the Real Estate without Acquiring any Part of it

In this case, the owners of real estate that are located within the boundaries of the Capital Municipality whose values increased after the implementation of public benefit projects are required to pay an amount equivalent to 1/4 (the value of the public area of the land after the implementation of the project - the value of the general area of the land before the implementation of the project) providing that the estimation commission estimates this payment (Yaseen, 2011:p.152-155). However, the legislator eased the harsh method of collection and permitted the property landlord to request from the Municipality of the Capital or the competent municipality to pay annual installments for the improvement provided that it does not exceed twenty installments (Act (46) of the Iraqi Acquisition Law). The Iraqi legislator called these allowances 'fees'.

In contrast, the Egyptian legislator obliges real estate owners to pay for the improvement not to exceed half of the actual costs of establishing the project (Act (19) of the Egyptian Acquisition Law).

We prefer the Egyptian text over the Iraqi one because the cost criterion for the project adopted by the Egyptian law is a fixed standard, and that charging property owners whose properties have improved because of the project is half the costs closer to justice.

Compensation of Real Estate Landlords for Damages to their Real Estate Resulting from the Establishment of Public Benefit Projects

There are many cases of damage to real estate due to the establishment of public benefit projects as we stated earlier. The damage may affect the remaining part of the property after part of it is acquired (Act (50) of the Iraqi Acquisition Law), and it may affect real estate that is not affected by the acquisition (Act (50) of the Iraqi Acquisition Law). We believe that compensation for damages is outside the scope of the estimation commission and the court should seek the assistance of experts to estimate the compensation, provided that the compensation includes direct physical damage and that it includes subsequent loss and lost gain in accordance with the rules of tort (Albakri, 1970: p.138).

We did not find a text corresponding to the Iraqi text regarding compensation for damages to real estate as a result of actions undertaken by the owner in establishing public benefit projects. The text was satisfied with the general rules for reparation for the damage that befalls the owners of the damaged real estate. We favor the position of the Iraqi legislator in the special provision for cases of damage to avoid any doubt about holding the acquirer responsible for damages and the judiciary's aid in resorting to the special text without the general one.

Appeal the Estimation of the Change of the Real Estate

It is permissible to the acquirer and the landlord to object to the Chairman of the Estimation Commission within 10 days from the date of notification with the decision of the estimation commission that inevitably includes the acquisition allowance in the consensual acquisition because parties' consent is focused on accepting the acquisition only, then the consensual acquisition procedures are considered as if they did not occur (Article 1 & 2 of Act (6) of the Iraqi Acquisition Law). If the acquirer insists on establishing the project, he may follow the judicial appropriation path.

The Egyptian legislator, on the other hand, obligated the acquirer to deposit the amount of compensation estimated by the estimation commission within 30 days from the date of the estimation decision and then display the estimation statements at the headquarters of the Survey Directorate located in its real estate district, at the mayor's headquarters, and at the headquarters of the local unit for a period of one month. The landlords and the party requesting the acquisition shall be notified of this offer by a registered letter with acknowledgment of receipt, and this offer shall be preceded by a week's notice in the Egyptian Al-Waqi'a Gazette and in two widespread daily newspapers (Acts (6) and (7) of the Egyptian Acquisition Law).

The concerned landlords may object within thirty days from the date on which the statements are presented (Act (8) of the Egyptian Acquisition Law). Rejecting the objection in the Egyptian law does not lead to the abolition of the acquisition procedures as is the case in the Iraqi law because the Egyptian legislator equated the procedures and judgments between consensual and judicial acquisition. The view of the Egyptian law is preferred because the abolition of consensual acquisition procedures in Iraqi law will lead to the acquirer resorting to judicial acquisition which will be a waste of time and money because the judiciary will start the procedures again. It is also noted that the Egyptian legislature obligated the acquirer to deposit the acquisition allowance before presenting the estimation statements and communicating them to the real estate owners. The parties' objection has no effect on this deposit. The Iraqi legislator, on the other hand, obligates the acquirer to deposit the expropriation allowance sixty days after the date of his notification of the estimation committee's decision and not to object to it (Act (61) of the Iraqi Acquisition Law).

In case of the real estate improvement, the landlord has the right to object at the court of first instance of the real estate site within 15 days from the date of informing him of the estimate list. The court's decision is subject to appeal before the Court of Appeal in its cassation capacity, and the cassation decision is final since it is not subject to correction (Act (45) of the Iraqi Acquisition Law).

We believe that the year is long enough, but we call on the legislator to start the year from the date of the end of the project until the owner of the property is finally sure of the damages that affect his property due to the implementation because the implementation of the project may continue for 5 years and the damage occurs in the fourth year, for example, and the property owner finds that the date for the lawsuit has occurred whereas the rights that had been created for him were forfeited as a result of the damage.

In contrast, the Egyptian legislator has set a period of 4 months from the date of the statement period to object to the acquisition allowances, otherwise the objection will be deemed worthless (Act (9) of the Egyptian Acquisition Law).

What was stated in the Iraqi text about the timeframe for the loss of the right to object and initiate a lawsuit in case of changing the property positively or negatively is preferred so that the concerned parties have sufficient time to claim their rights arising from the establishment of public benefit projects.

Results

- 1- The change due to the establishment of public benefit projects is once positive through the improvement of the real estate, so the landlord of the property is obligated in return for this improvement, and once negative through the physical damage so the owner must compensate the real estate landlords.
- 2- We concluded that the legal basis for obligating real estate landlords in exchange for improvement is the law because it is one of the sources of commitment and based on the rule of fines for gain not the rule of enrichment without cause as stated in a ruling of the Federal Supreme Court.
- 3- It turns out that the legal adaptation to oblige real estate owners in exchange for improvement due to public benefit projects without their acquisition is nothing but a royalty according to the financial concept and not a fee as the Iraqi legislator called it.
- 4- It became clear to us that the dissatisfaction of the acquirer or the landlord about the estimation in the consensual expropriation fortifies all procedures, and the acquirer may take the judicial acquisition path.
- 5- The exchange for improvement takes three forms: in kind, if a quarter of the general area of the property is acquired; in cash and in kind, if less than a quarter of the general area of the property is acquired; and it may be monetary if the property improves without acquiring any part of it.
- 6- The legislator set a one-year period for compensation requests arising from the negative change, and it is counted a period of lapse.

Recommendations

- 1- We recommend that the Iraqi legislator amends Acts (38) and (37) of the Acquisition Law and cancel the ruling for a quarter of real estate improvement to be as follows: "If the value of the part of the acquired property increases or decreases due to the establishment of public benefit projects, the estimation body must take into account this increase or decrease."
- 2- Amend Act (41) of the Acquisition Law to be as follows: "Owners of real estate that undergo improvement due to public benefit works within the boundaries of the capital's municipality without taking part of it provided that this does not exceed half of the actual costs of establishing the project that caused this improvement."
- 3- We recommend that the legislator be satisfied with the provisions of judicial acquisition in order not to waste time, effort, and money if the procedures are forfeited because one of the parties does not accept the estimate or refer the acquisition file to the court of first instance of

the real estate site in case one of the parties rejects the estimate instead of nullifying the procedures.

- 4- We recommend that the legislator make the period for the loss of compensation lawsuits arising from the work of public projects (a year) to start after the completion of the implementation of the project instead of starting from the project start date.

Bibliography

1. The Comprehensive Dictionary.
2. Almuheet Comprehensive Dictionary.
3. Lisan Al-Arab.
4. Almuhami, I. A. Compensation between error and harm. Alexandria: University Culture Foundation.
5. Tulba A. (2000). Mediator in civil law, enrichment without reason, residue, undue payment. Modern University Office.
6. Khasawna, J. S. (2010). The science of public finance and tax legislation between theory and practice. (1st ed.). Amman: Wael Publishing House.
7. Al-Khatib, K. S. & Tafesh, M. F. (2008). Scientific and Practical Foundations in Tax Accounting. Amman: Al-Hamid House for Publishing and Distribution.
8. Ahmed, R. N. (2018). Public Finance and Financial Legislation in Iraq. (3rd ed.). Beirut: Dar Al-Sanhoury.
9. Othman, S. A. (2011). Public Finance - Contemporary Analytical Introduction. Alexandria: University House.
10. Yassin, S. A. (2011). Al-Wajeez in Explaining the Acquisition Law. (1st ed.). Baghdad: The Legal Library.
11. Al-Bakri, A. (1970). Explanation of Civil Law, Provisions of Commitment, Implementation of Commitment, Part 3. Baghdad: Al-Zahraa Press.
12. Al-Sanhouri, A. A. (1956). the Mediator in Explaining the New Civil Law. (1st ed.). Cairo: Egyptian Universities Publishing House.
13. Mahl, L. M. (2014). Mukhtar from Baghdad / Rusafa Federal Court of Appeal in its discriminatory capacity. Baghdad: Al-Kitab Press.
14. Muhammad, M. A. (1968). Study on Introduction to Tax Science. (2nd ed.). Egypt: Dar Al Maaref.
15. Al-Demerdash, M. M. & Braik, S. Y. (2007). The Economics of Public Finance. Egypt: Academy of Specialized Studies.
16. Al-Awji, M. (2007). Civil Law, Civil Liability. Beirut: Al-Halabi Legal Publications.
17. Saad, N. A. & Mahmoud, M. M. (2001). Basic Principles of Law: The Theory of Commitment. Alexandria: Knowledge Institute.
18. Salal, H.A. (2020). Forms of fault creating E-Tort liability. PalArch's Journal of Archaeology of Egypt / Egyptology, 17(7), 11237 - 11244. Retrieved from <https://archives.palarch.nl/index.php/jae/article/view/4487>.
19. Al-Alwarimi, N. A. (2015). The property owner. (1st ed.). Tunis: Publications of Al-Atrash Specialized Book Complex.
20. Noah, M. (2020). Acquisition, The Arabic Encyclopedia, the specialized legal encyclopedia. arab-ency.com.