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Demolitions of Homes and Seizures of Land of the Bahá'í Minority in Iran: A (Constitutional) Property Law and International Law Perspective

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Abstract

The Bahá'í community in Iran has been persecuted by the Islamic Republic for decades. Their members have not been able to worship in peace or exercise other fundamental rights and have been denied access to basic services. Farm seizures and the demolition of homes have also become commonplace. In 2019 and 2020 three Iranian courts approved such land seizures, holding that the landownership held by individual Bahá'í was illegitimate because their religion posed a threat to the Iranian state. This contribution examines these judgments from constitutional-law and international-law perspectives. It demonstrates that the seizures already fall foul of Iranian law because the seizures infringe fundamental rights of the Bahá'í under the Iranian constitution and the faith of an individual cannot justify such infringements. This contribution further shows that for similar reasons, the Iranian courts do not adhere to international best practice in constitutional property law. Also, the courts have failed to protect the religious and property rights of the Bahá'í under international human-rights treaties.

Constitutional Property Law – Confiscation – Expropriation – Freedom of Religion – Housing Rights

1. Introduction

The Bahá'ís are considered the largest non-Muslim religious minority in Iran.¹ Fueled by hatred and misinformation, both state and non-state actors have been persecuting the Bahá'ís for decades. A particular episode of this persecution, which is at the core of this contribution, took place recently in the village of Ivel, around 330 km east of Tehran.

The village of Ivel is situated in Mazandaran Province in the northern part of Iran, near the Caspian Sea. The Bahá'í community was established in Ivel around 1860, and by the end of that century, half of the population of Ivel were identified as Bahá'ís. Though once a thriving community of farmers and small business owners, the Bahá'ís of Ivel have faced severe persecution over the last decades. Since the 1940s, many of them have been forced from their homes, imprisoned, harassed and their properties demolished.² But despite these persecutions, the Bahá'í farmers were able to work their land. Iranian courts subsequently ordered their farmland to be seized, leaving the farmers unable to make a living and leaving dozens of families internally displaced and economically impoverished.³

The Iranian courts held that the Bahá'ís had 'a perverse ideology' and therefore no 'legitimacy in their ownership' of any property. The illegality of their ownership legitimised the seizures. In reaction to the judgments, Ms Evin Incir, MEP said at a webinar on 4 February 2021 that the "systematic expropriation of Bahá'ís in Iran is part of a strategy to impoverish Bahá'ís and try to banish them from the country."⁴ 'Expropriation' is a property-law term in many jurisdictions that refers to compensable government takings of land for a public purpose such as the construction of a road. The use of this term in the context of the seizures in Iran seems inappropriate and raises the question of what actually happened in Ivel from a legal perspective. This case study seeks to classify the actions of the Iranian government from a property-law

¹ Minority Rights Group International, 'Iran, Bahá'í'. Available online: <https://minorityrights.org/minorities/bahai-7> (accessed on 25 August 2022).

² Bahá'í Community of Canada, Office of Public Affairs, 'An Open Letter to the Chief Justice of the Islamic Republic of Iran', 5 February 2021. Available online: <https://openletter-ivelbahais.ca> (accessed on 25 August 2022).

³ BIC, Bahá'í Persecutions website, 'An Open Letter to Iranian Authorities on Recent Farm Seizures'. Available online: <https://iranbahai-persecution.bic.org/sites/default/files/PDF/English/020342E.pdf> (accessed on 25 August 2022). BIC, '#ItsTheirLand: Unprecedented reaction makes voice of persecuted Bahá'ís in an Iranian village global'. Available online: <https://news.bahai.org/story/1495/> (accessed on 25 August 2022).

⁴ BIC, 'Webinar held at European Parliament on systematic expropriation of Baha'is in Iran'. Available online: <https://www.bic.org/news/webinar-held-european-parliament-systematic-expropriation-bahais-iran> (accessed on 25 August 2022).

perspective and to evaluate whether Iran acted contrary to its own law or its international obligations.

Section 2 sets out the facts of the case. Due to the scarcity of scientific literature on the Bahá'í, the factual analysis primarily draws on the judgments of Iranian courts and online publications of NGOs. Section 3 contains the legal analysis of the case. The legal analysis comprises a review of Iranian constitutional provisions, a review of literature on constitutional property law and a review of international human rights treaties. Section 4 concludes this contribution.

2. Factual Situation

In late 2020, two Iranian courts issued orders that led to the confiscation of land owned by twenty-seven Bahá'ís in Ivel by declaring the ownership thereof illegal, basing their conclusions on the religious beliefs of the owners. These rulings follow decades of persecution of this religious minority, not only in this village, but in the whole country.⁵ This part introduces the Bahá'í Faith, describes the history of their persecution in Iran, and sets out the legal battle against discrimination in general and seizures of their farmland in Ivel in particular.

The Bahá'í Faith and Its Persecution in a Nutshell

The Bahá'í Faith originated in the mid-19th century in Iran and its followers, Bahá'ís, believe in principles such as the oneness of God and the oneness of religion, the oneness of humanity, freedom of religion and thought, the development of spiritual qualities, freedom from prejudice, the progressive revelation of religious truth, equality of men and women, harmony between science and religion, and the importance of education.⁶ These principles do not always overlap with the Iranian interpretation of Shi'a Islam. For this reason, while the Bahá'ís have been oppressed in Iran since the inception of their religion, their persecution took a turn for the worse with the Islamic regime ousting the Shah from power in the 1979 Islamic Revolution. And, besides the discriminatory policy of the government against Bahá'ís, they continue to be major targets of social stigma and violence.⁷

⁵ See for more recent cases of seizure of land from the Bahá'ís: BIC, 'Seizures of Baha'i irrigated farms in the midst of Iranian water crisis', 5 December 2021. Available online: <https://www.bic.org/news/seizures-bahai-irrigated-farms-midst-iranian-water-crisis> (accessed on 25 August 2022). They report about seizure of Bahá'í owned land in the village of Kata. Regarding the confiscation of properties belonging to six Bahá'ís in the province of Semnan, see BIC, 'Iranian government to seize Baha'i properties: BIC calls for international support', 25 August 2021. Available online: <https://www.bic.org/news/iranian-government-seize-bahai-properties-bic-calls-international-support> (accessed on 25 August 2022). And, Diane Ala'i, representative of the BIC to the UN on Twitter on 8 November 2021, available online:

<https://twitter.com/DianeAlai/status/1457660619600060420> (accessed on 25 August 2022), about seizure of Bahá'í owned land in the village of Roshankoo. And again, in January 2022 the property of a Bahá'í, Sheida or Sheyda Taeed, was seized by the government, see reporting on Twitter by the Center for the Support of Human Rights (CSHR), available online: <https://twitter.com/CSHRIran/status/1483375978621681668> (accessed on 25 August 2022).

⁶ The Bahá'í Faith, 'What Bahá'ís Believe'. Available online: <https://www.bahai.org/beliefs> (accessed on 25 August 2022).

⁷ US Department of State, 'International Religious Freedom Report for 2020', p. 35. Available online: <https://www.state.gov/wp-content/uploads/2021/05/240282-IRAN-2020-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> (accessed on 25 August 2022).

The Bahá'ís form Iran's largest non-Muslim religious minority, though it is uncertain what the precise numbers are at this point in time. On 21 August 1981, all nine members of the National Spiritual Assembly, the elected national governing council for the Iranian Bahá'ís, were abducted and killed. On 13 December 1981, eight of the nine newly elected members of the National Spiritual Assembly were arrested, and executed two weeks later. Two years later, on 29 August 1983, the government announced a ban of all Bahá'í administrative and community activities,⁸ after which the Bahá'í community formally dissolved its institutions. Since then, there has been no record of their numbers. The number 300,000 dates from that time, and it is still being used by lack of any more recent numbers.

In December of 1990, Ayatollah Khamenei instructed President Rafsanjani to address “the Bahá'í Question”, referring the issue to the Supreme Council of the Cultural Revolution (SCCR). From the text, it can be derived that Ayatollah Khamenei was seeking concrete policy advice. The SCCR came up with a document, “The Bahá'í Question”, calling for the blocking of the progress and development of Iran's Bahá'í community and for the Bahá'ís to be denied education.⁹ Confiscation of Bahá'í properties, holy places as well as individual properties, has been part of Iran's systematic campaign of economic, cultural and social persecution against the Bahá'ís since the Islamic Revolution, and forms part of the government's effort to destroy the Bahá'í community as a viable entity in the country.¹⁰ As phrased by the Iran Human Rights Documentation Centre: “The 1991 [...] memorandum makes clear that Khamenei's intention to exclude Bahá'ís from mainstream Iranian life, block the development of their faith, and perhaps most sinister of all, ‘destroy’ their cultural roots outside the country”.¹¹

Late 2020, a series of raids took place on twenty Bahá'í-owned homes; security agents required the owners to hand over their property deeds. Economic strangulation has long been part of

⁸ BIC, ‘The Bahá'í Question Revisited, Persecution and Resilience in Iran, A Report from the Bahá'í International Community’, October 2016, p. 59. Available online: https://www.bic.org/sites/default/files/pdf/iran/thebahaiquestionrevisited_final_160839e.pdf (accessed on 25 August 2022).

⁹ Iran Human Rights Documentation Center, ‘A Faith Denied: The Persecution of the Baha'is of Iran’, section 6.2. Available online: <https://iranhrdc.org/a-faith-denied-the-persecution-of-the-bahais-of-iran/> (accessed on 25 August 2022).

¹⁰ BIC, “‘An extraordinary wave of support’: Muslim leaders and government officials denounce Iran's persecution of Baha'is”, 18 February 2021. Available online: <https://www.bic.org/news/extraordinary-wave-support-muslim-leaders-and-government-officials-denounce-irans-persecution-bahais> (accessed on 25 August 2022).

¹¹ Iran Human Rights Documentation Center, ‘A Faith Denied: The Persecution of the Baha'is of Iran’, section 7. Available online: <https://iranhrdc.org/a-faith-denied-the-persecution-of-the-bahais-of-iran/> (accessed on 25 August 2022).

Iran's persecution of the Bahá'ís. Further, the Bahá'ís are barred from working in the public sector, their shops are sealed, Bahá'í employees are dismissed from their workplaces, and they are denied university education.¹²

The Bahá'ís of Ivel are low-income agricultural workers with no other assets and means of earning a livelihood but their homes and agricultural land.¹³ This local community came into existence shortly after the creation of the Bahá'í faith, and forms one of the oldest Bahá'í communities in Iran and comprised about half of the village of Ivel.¹⁴ The Bahá'í families in Ivel participated in social, economic and cultural developments, including the starting of a school for children of all religious backgrounds and carrying out measures to improve the hygiene and health of all community members.¹⁵

The persecution of Bahá'ís in Ivel started with non-residents strongly inimical to the Bahá'í faith that periodically sought to stir up the local population against the Bahá'í community, resulting in intermittent persecution, ranging from life-threatening to less harsh forms of harassment. Already in 1941 gangs from outside incited local citizens to attack the Bahá'ís. Bahá'ís were arrested, severely beaten, subjected to extortion, and their houses and possessions were plundered. They were subsequently banished to a village some seven kilometers away from Ivel. Only months later, when the situation had eased somewhat, were they able to return to their homes.¹⁶ That same year, on 25 November 1941, the head of the village council, Mirza Agha Jan Jazbani, a Bahá'í who was well respected by the villagers, and even the nearby districts, was killed for his beliefs.¹⁷

¹² Radio Farda, 'Baha'i Homes Reportedly Raided In Cities Across Iran', 23 November 2020. Available online: https://en.radiofarda.com/a/30964835.html?fbclid=IwAR3of3_oC0g3ZKsKLEwaHPSAqFzoWtt3uH246sDKspociGGtOrYeCksv9-4 (accessed on 25 August 2022). BIC, 'Baha'i International Community HRC46 Item 4', 9 March 2021. Available online: <https://www.bic.org/statements/bahai-international-community-hrc46-item-4> (accessed on 25 August 2022). Iran Human Rights Documentation Center, 'A Faith Denied: The Persecution of the Baha'is of Iran', 'The Denial of Education to Bahá'í Students'. Available online: <https://iranhrdc.org/a-faith-denied-the-persecution-of-the-bahais-of-iran/> (accessed on 25 August 2022).

¹³ Bahá'í Community of Canada, Office of Public Affairs, fn 2.

¹⁴ BIC, 'The Baha'is of Ivel: Undaunted spirit'. Available online: <https://www.bic.org/news/bahais-ivel-undaunted-spirit-0> (accessed on 25 August 2022).

¹⁵ IranWire, 'Muslim Leaders and Former Canadian MP Denounce Confiscation of Baha'i Homes', 16 February 2021. Available online: <https://iranwire.com/en/features/8966> (accessed on 25 August 2022). BIC, fn 3.

¹⁶ IranWire, fn 15. BIC, fn 14.

¹⁷ Bahá'í Community of South Africa, 'Baha'is of Ivel, Happening now, people around the world join together to draw attention to the persecution of the Bahá'ís of Iran. #ItsTheirLand'. Available online: <https://www.bahai.org.za/bahais-in-ivel/> (accessed on 25 August 2022).

Another incident occurred in the mid-1950s, when a member of the newly-established “Hojjatieh” society arrived in Ivel. The Hojjatieh is a semi-clandestine traditionalist Shia organisation, founded on the premise that the most immediate threat to Islam was the ‘heresy’ of the Bahá’í faith, which had accordingly to be eliminated.¹⁸ When this member of Hojjatieh proved unsuccessful in his attempts to drive a wedge between the Muslims and the Bahá’ís in the village, he attempted to prevent their cows from grazing in the same grassland, alleging that Bahá’í cows were ‘unclean’.¹⁹

Following the victory of the Islamic Revolution, the persecutions systematically continued and increased. Confiscation of Bahá’í-owned properties in Ivel began in the early years after the Islamic Revolution. The Bahá’ís were denied access to health clinics and other institutions, the very ones they had helped establish; teachers found various means to persecute Bahá’í students, including by failing them in their exams, and the 100-year-old Bahá’í cemetery in the village was confiscated and sold for conversion into residential property.²⁰

On 28 June 1983, the clergy and local authorities incited the Muslim crowd in the village and nearby communities to take the Bahá’ís out of their homes, direct them into a bus that had been prepared outside of the village, transport them to the nearby provincial capital Sari, and leave them there. However, upon their arrival in Sari, the authorities protested and opposed this plan, and made the bus with the Bahá’ís return to Ivel. But the village did not allow the Bahá’ís to return to their homes, and instead more than 130 Bahá’ís, including children and elderly, were locked in a local mosque, held captive for three days without food and water, and pressured to renounce their faith.²¹ When that failed, they were allowed to return home. However, that same night, they were attacked by villagers, leading to the expulsion and displacement of the Bahá’ís of Ivel.²²

Since this event, most of the Bahá’í homes have remained unoccupied, either because their residents fled incidents of violence or as a result of official displacement. Many of them only return to the village during the summer to plant and harvest their crops and tend to their

¹⁸ Iran Press Watch, ‘The Baha’is of Ivel: Undaunted spirit’, 11 July 2010. Available online: <http://iranpresswatch.org/post/6193/the-bahais-of-ivel-undaunted-spirit/> (accessed on 25 August 2022).

¹⁹ Iran Press Watch, fn 18.

²⁰ Iran Press Watch, fn 18. BIC, fn 10.

²¹ Iran Press Watch, fn 18. BIC, fn 10.

²² Bahá’í Community of South Africa, fn 17.

properties. This required written permission from the police and the court. And during their short stays, the Bahá'ís were then regularly harassed.²³

Then again, in 2007, six of their houses were burned. On 23 June 2010, homes belonging to some 50 Bahá'í families were demolished and set on fire, with four bulldozers and several trucks.²⁴ At the time, reports indicated that 90 percent of Bahá'í-owned homes had been demolished in the village. These demolitions were part of a long-running campaign to expel Bahá'í from the region. The authorities would not hesitate to try and take their homes and farms away from them. Their plan was for the Bahá'ís never to return to Ivel so that their lands could be taken over.²⁵

The Legal Battle Against Discrimination and Farm Seizures

Since 1983, the Bahá'ís in Ivel have tried to appeal for their rights in writing and in person to, amongst others, all government institutions, the leader of the parliament, and the judicial system. Throughout the years, many grievances and complaints²⁶ have been filed with the authorities in Kiasar at the provincial level, and even in the highest offices in Tehran. In some cases, the verdicts have been in favour of the Bahá'ís, though all attempts to put such positive verdicts into effect at the local level have proven impossible. The local authorities claimed that, in the face of opposition from local residents, there was nothing they could do, while in fact, the authorities are indifferent.²⁷ As indicated by Iran Press Watch, an independent research organisation, “In every case, knowledge of the demolitions or the motive behind them was denied by local government officials. In some cases, the verdicts have been in favour of the Baha'is. However, authorities claimed that there was little they could do to implement the decisions in the face of the opposition Baha'is face from local residents.”²⁸

²³ Bahá'í Community of Canada, Office of Public Affairs, ‘Land Confiscation and Mass Displacement of Bahá'ís in Iran’. Available online: <https://opa.bahai.ca/areas-focus/situation-iran-yemen/ivel/> (accessed on 25 August 2022).

²⁴ Iran Press Watch, ‘Land Confiscation and Mass Displacement of Baha'is in Iran’, 26 January 2021. Available online: <http://iranpresswatch.org/post/21752/land-confiscation-mass-displacement-bahais-iran/> (accessed on 25 August 2022). BIC, ‘Homes demolished in campaign to drive Baha'is out of Iranian village’, 28 June 2010. Available online: <https://www.bic.org/fa/node/2178> (accessed on 25 August 2022).

²⁵ Bahá'í Community of Canada, Office of Public Affairs, fn 23.

²⁶ BIC, Bahá'í Persecutions website, ‘Baha'is’ appeal bill against court ruling on their lands in Ivel’, 14 December 2019. Available online: <https://iranbahaipersecution.bic.org/archive/bahais-appeal-bill-against-court-ruling-their-lands-ivel> (accessed on 25 August 2022).

²⁷ Iran Press Watch, fn 24. Bahá'í Community of South Africa, fn 17.

²⁸ Iran Press Watch, fn 24.

Regarding some seizures of Bahá'í farmland, most of which occurred in 2010, Branch 54 of the Special Court for Article 49 of the Constitution in Tehran issued a final and binding order on 1 August 2020, forming “a final settlement of the assets left behind without supervision by the locals belonging to the perverse sect of Baha’ism”, and allowing the seizure of Bahá'í farmland in Ivel.²⁹ The Court found that the landownership held by the Bahá'ís was illegal, endorsing a decision of the preliminary provincial court of 4 November 2019 (Special Court for Article 49 of the Constitution, Mazandaran Branch).³⁰ The basis for these judgments is Article 49 of the Iranian Constitution, which declares the Iranian government responsible for confiscating all wealth accumulated through illicit means.

In a separate but related lawsuit, 27 Bahá'ís from Ivel litigated against eleven individuals who had been involved in the demolition of Bahá'í homes and in the seizure of their land in June 2010. This procedure took place before the Court of Appeal of Mazandaran (Branch 8). The lawyers for the Bahá'ís never had the chance to see the files in order to prepare for their case,³¹ and this Court of Appeal held an extraordinary session on 13 October 2020 and rejected the lawsuit, finding the ownership of the Bahá'í homes and farmland in Ivel to be illegitimate.³² In the same procedure, the Court of Appeal also endorsed a *Sitád-i-Ijrá'íy-i-Farmán-i-Imám* (The Execution of Imam Khomeini’s Order, known as EIKO) in Sari to sell the farmlands and lands owned by Bahá'ís.³³

It seems that the developments in Ivel are not the end of this specific method of persecution by the Iranian government. On 22 November 2020, over a hundred government agents raided the shops and homes of Bahá'í in seven cities throughout the country and demanded they hand over their property deeds;³⁴ in August 2021, the properties belonging to six Bahá'ís in the province of Semnan are at risk of being confiscated, again based on Article 49 of the Constitution. The

²⁹ BIC, Bahá'í Persecutions website, ‘Court of Appeal in Tehran, Special Court for Article 49 of the Constitution confirms ruling to confiscate Baha'i properties in the Village of Ivel’, 1 August 2020. Available online: <https://iranbahaipersecution.bic.org/archive/court-appeal-tehran-special-court-article-49-constitution-confirms-ruling-confiscate-bahai> (accessed on 25 August 2022).

³⁰ BIC, Bahá'í Persecutions website, ‘Decision of the Special Court for Article 49 of the Constitution in Mazandaran concerning properties of Ivel Baha'is’, 4 November 2019. Available online: <https://iranbahaipersecution.bic.org/archive/decision-special-court-article-49-constitution-mazandaran-concerning-properties-ivel-bahais> (accessed on 25 August 2022).

³¹ Bahá'í Community of Canada, Office of Public Affairs, fn 2.

³² BIC, Bahá'í Persecutions website, ‘Final Verdict of Provincial Court of Appeal in Mazandaran to confiscate the properties of the Baha'is of Ivel’, 13 October 2020. Available online: <https://iranbahaipersecution.bic.org/archive/final-verdict-provincial-court-appeal-mazandaran-confiscate-properties-bahais-ivel> (accessed on 25 August 2022).

³³ Bahá'í Community of Canada, Office of Public Affairs, fn 23.

³⁴ BIC, fn 3.

only justification put forward for these confiscations is that the properties belong to Bahá'í institutions. However, as previously described above, all Bahá'í institutions were formally dissolved in 1983. Further, all the institutions' properties were confiscated after the Islamic Revolution and consequently, no properties currently belong to Bahá'í institutions in Iran. Similar to the confiscated properties of Ivel, the Semnan properties will also be transferred to the EIKO organization, controlled by the Supreme Leader.³⁵

The BIC further reported on 5 December 2021 that Bahá'í irrigated farms had been seized in the village of Kata in the midst of Iranian water crisis,³⁶ and also in the village of Roshankoo Bahá'í owned land has recently been seized.³⁷ And again, in January 2022 the property of a Bahá'í, Sheida (or Sheyda Taeed), was seized by the government.³⁸

³⁵ BIC, international support, fn 5.

³⁶ BIC, water crisis, fn 5.

³⁷ Ala'i, fn 5.

³⁸ CSHR, fn 5.

3. Legal Analysis

This section first sets out the court judgments finding the landownership held by Bahá'ís illegal. It puts the judgments into the context of provisions of the Iranian Constitution and questions whether the judgments observe these provisions. Against the background of the wide use of 'expropriations' as a term to refer to the seizures of farmland, this section then examines the category of state action appropriate for the seizures and tests the seizures against the typical requirement for such state action. The basis for this assessment is comparative research on constitutional property law. Lastly, this section describes the requirements for such seizures of landownership under international law and scrutinizes whether the seizures comply with these requirements.

Analysis of relevant court decisions

On 1 August 2020, Branch 54 of the Special Court for Article 49 of the Constitution in Tehran issued a 'final and binding' order to seize the Bahá'í farmland, concluding that it was illegal for Bahá'ís to own property in the village of Ivel. In so doing, the Special Court confirmed the decision of the preliminary (lower) provincial court (Special Court for Article 49 of the Constitution, Mazandaran Branch) of 4 November 2019, which ordered the confiscation of all Bahá'í properties that had not been seized already. In a separate but related lawsuit, Branch 8 of the Court of Appeals of Mazandaran Province ruled in favour of the persons who had demolished Bahá'í homes and seized farmland in June 2010, drawing the judgments of the other courts.

These decisions prompt the question of why the ownership held by the Bahá'ís was declared illegitimate. The reasoning of the provincial court is rather simple.³⁹ It considered that the Bahá'ís "took up residence in the region with intent to spread its perverse belief and ideology, and while occupying fertile lands in the area, registered the lands in their names, and for the purpose of establishing their power and spreading their perverse ideology, [...]." The court found that the Bahá'ís had collaborated with the previous, more laicist regime and was still collaborating with foreign entities working against the Islamic state, and that the Bahá'ís threatened the well-being of the Muslim population. The court deduced the perversity of the

³⁹ Special Court for Article 49 of the Constitution, Mazandaran Branch, Judgment of 4 November 2019. Available online: https://iranbahaipersecution.bic.org/sites/default/files/PDF/English/004731E_0.pdf (last accessed 25 August 2022).

Bahá'í faith from the faith being confirmed as “heretical and nejasat (ritually unclean)”. The court concludes that “there is no legitimacy in their ownership” and that to contain Bahá'í ‘corruption’ and ‘deception’ and to prevent the Bahá'í faith from spreading, it was imperative that the Bahá'ís be deprived of the land. The basis for this decision is Article 49 of the Constitution. The court vested the ownership in the *Sitád-i-Ijrá'iy-i-Farmán-i-Imám*. The Special Court in Tehran endorsed the judgment and did not add to this reasoning.⁴⁰ The Court of Appeal of Mazandaran Province also subscribed to the reasoning, concluding effectively that the persons who had demolished homes and seized farmland had not violated any law because the landownership held by the Bahá'ís was illegitimate.⁴¹

There seem to be two essential parts of the argument of the courts on why the ownership held by Bahá'ís is illegitimate. The first component is that the Bahá'í faith is incompatible with the dominant religion or ideology in Iran and is perceived as a threat to the Islamic state. The second component is that there is no distinction between the Bahá'í faith and individual followers of the faith. Each Bahá'í bears the supposed flaws of their group and is identified with their group. For this reason, if the ownership held by Bahá'í institutions is illegitimate, the ownership of individual Bahá'ís will also be illegitimate.

Iranian Constitutional Law

The position of the Bahá'ís as owners under the Iranian Constitution is not as precarious as the judgments suggest. The wording of the Constitution already creates a favourable first impression. There is constitutional protection of property, such as landownership, under Iranian law. Article 22 of the Constitution affirms that property is inviolate, except in cases sanctioned by law. Article 47 further specifies that “[p]rivate ownership, legitimately acquired, is to be respected. The relevant criteria are determined by law.” The Constitution thus makes a distinction between legitimately and illegitimately acquired property and only protects legitimately acquired property. The proof of the illegitimacy of property is regulated by law; there is, however, a presumption that property is legitimately acquired. The onus of proof thus rests on those who want the property to be declared illegitimate.

⁴⁰ Branch 54 of the Special Court for Article 49 of the Constitution, Judgment of 1 August 2020. Available online: <https://iranbahaipersecution.bic.org/sites/default/files/PDF/English/020233E.pdf> (last accessed 25 August 2022).

⁴¹ Court of Appeal of Mazandaran Province, Branch 8, Judgment of 13 October 2020. Available online: <https://iranbahaipersecution.bic.org/sites/default/files/PDF/English/020232E.pdf> (last accessed 25 August 2022).

Article 47 seems to fortify the position of Bahá'í owners. At first glance, Article 49 does not seem to detract from their protection. This provision specifies what has to be considered as illegitimate property and tasks the state with confiscating illegitimate property. It reads as follows:

“The government has the responsibility of confiscating all wealth accumulated through usury, usurpation, bribery, embezzlement, theft, gambling, misuse of endowments, misuse of government contracts and transactions, the sale of uncultivated lands and other resources subject to public ownership, the operation of centers of corruption, and other illicit means and sources, and restoring it to its legitimate owner; and if no such owner can be identified, it must be entrusted to the public treasury. This rule must be executed by the government with due care, after investigation and furnishing necessary evidence in accordance with the law of Islam.”

This protection of property under Articles 47 and 49 also has a procedural side. If the property is presumed to have been acquired legally, the finding of legitimacy can only be made by a competent court through a fair trial, after “after investigation and furnishing necessary evidence”.⁴² The confiscation of property can be considered a form of punishment, a punishment imposed on the perpetrator of a criminal act or misconduct.

There is a number of grievances that make the judgments appear dubious at best, already from a domestic-law perspective. As has already been pointed out with regard to the procedure before Branch 8 of the Court of Appeal, it does not seem that the court afforded the appropriate procedural protection to the Bahá'ís. Also, at least outside the Iranian context, the religious or non-religious activities of the Bahá'ís by no means fall under any of the categories mentioned in Article 49. By contrast, the provincial court expressly mentions ‘corruption’ as a characteristic of the Bahá'í community, which may allude to collaboration with the past regime and foreign entities. References to perversion and being ritually unclean may suggest that the court finds that the Bahá'ís use ‘other illicit means’. This very broad interpretation is disconcerting because it criminalises normal religious activities. To understand (but not to approve of) the court’s perspective, one needs to consider that the Bahá'ís are not recognised

⁴² H. Raesi, ‘On the confiscation of properties belonging to non-Muslims in Iran’, BIC, Bahá'í Persecutions website, 16 February 2021. Available online: <https://iranbahai persecution.bic.org/sites/default/files/PDF/English/020325E.pdf> (accessed on 25 August 2022).

as a religious minority by Article 13 of the Iranian Constitution and thus do not enjoy freedom of worship or the freedom of association under Article 26.

While the domestic legal foundation for the unfavourable treatment of the Bahá'ís as a religious community is unstable at best, individual Bahá'ís have been denied essential constitutional protection under Iranian law.⁴³ As has been pointed out above, the Bahá'í institutions ceased to exist in the 1980s. The judgments fail to distinguish between the supposed flaws of these religious institutions and the individual members, effectively criminalising members of a religious minority going about their daily lives. This approach fails to take into account important rights of the Bahá'ís as individuals. Article 23 of the Constitution prohibits the “investigation of individuals’ beliefs” and declares that “no one may be molested or taken to task simply for holding a certain belief.” This provision appears to preclude the identification of the Bahá'í faith and their individual members, and the courts’ application of Article 49 to individual members therefore seems to be flawed. Also, Article 31 entrenches the right to housing of every Iranian national, regardless of belief. Article 33 further prohibits individuals to be ousted from their residence, unless the law prescribes this. In light of these provisions, the courts should have declared illegal the demolition of homes and the seizure of farmland or at least have provided for alternative accommodation.

The Judgment of the Iranian Courts from a Comparative Perspective

At a webinar, Ms Evin Incir, MEP referred to the actions of the Islamic Republic as ‘systematic expropriations’. There are different types of state action affecting property rights, and expropriation is a specific type of state action. As each type of state action is subject to different requirements, a useful comparative analysis of the Iranian judgments is only possible if we know the category that the seizures fall into.

The starting point of comparative constitutional property law is that the national constitution protects property from state interference.⁴⁴ Articles 22 and 47 of the Iranian Constitution perform this function in Iran. Then, there are generally three categories of state action affecting

⁴³ Bahá'í Community of Canada, Office of Public Affairs, fn 2.

⁴⁴ Van der Walt, A.J.; Walsh, R. Comparative Constitutional Property Law. In *Comparative Property Law, Global Perspectives*; Graziadei, M., Smith L., Eds.; Edward Elgar: Cheltenham, UK, 2017, pp. 193-215.

constitutionally protected property.⁴⁵ Expropriation is the first category and is a term used in a lot of European jurisdictions. Under German law, for instance, it is defined as unilateral state action whereby the state acquires specific property rights to use them in the public interest.⁴⁶ Think of the construction of a public road for which the state needs to acquire land, but the owner refuses to sell the land to the state. In such situations the power to expropriate property makes sure that public projects can be implemented against the will of the owner. The purpose of ‘expropriation’ as a legal concept is to ensure that in such situations, the state *always* has to pay compensation, at least in money, and follow strict requirements and special procedures.

The seizures of Bahá’í farmland do not constitute expropriations. The land was not taken to use it in the public interest. Also, in some cases, the seizures were not even effected by state authorities, but by non-state actors.

The other types of state action are regulation of property and other restrictions. While regulation refers to a direct definition of the rights and obligations of the holder of property, other restrictions could be any other impairment of property rights. An example of regulation would be that the state limits the amount of water that an owner can extract from a lake on their property. A mere impairment of a property would be that the state allows a company owner of another property to run a factory whose emissions affect the use of the property.

A particular type of regulation is confiscation.⁴⁷ When an item is in and of itself harmful, is used for harmful purposes, or is likely to be used for such purpose, the owner may forfeit their ownership and the state may confiscate the item. Think of drugs or weapons. The reasoning of the Iranian courts suggests that the Bahá’ís and, by association, their property pose a threat to the public interest. To the extent that the seizures were effected by state actors on the basis of Article 49 of the Constitution, the Iranian state seems to have regulated the Bahá’í property through confiscation. To the extent that non-state actors have seized the land, the Iranian state has failed to meet a constitutional obligation to protect property from third parties. This would seem to fall under the category of other restrictions.

⁴⁵ Akkermans, B. A comparative overview of European, US and South African constitutional property law. *EPLJ* **2018**, 7(1), 108-143.

⁴⁶ Bundesverfassungsgericht, Judgment of 6 December 2016, *NJW* 2017, 217, 224.

⁴⁷ Van der Walt, A.J. *Constitutional Property Law*, 3rd ed.; Juta: Cape Town, South Africa, 2011, pp. 311 *et seq.*

These types of state action have in common that neither regulation nor other restrictions attracts compensation immediately. However, to be legitimate from the perspective of what must be considered best practice globally, they need to meet with certain requirements. In particular, they need to serve a purpose in the public interest and be a proportionate means to realise that purpose.⁴⁸ A public purpose could be to resolve a threat to the public interest, typical purpose of confiscation. However, this sub-section has shown that even in the Iranian context, individual Bahá'ís holding their individual beliefs and going about their daily lives can hardly constitute a threat to the Islamic Republic. Even if there were a menace to the Iranian state, the seizure of farmland would not be proportionate. One requirement of proportionality is the necessity of the state action. Stricter control of the religious and non-religious activities, which already take place, would certainly be a milder and equally effective means than demolitions and seizures to contain the supposed threat to the Islamic Republic. Another requirement of proportionality is that the adverse impact of the state action does not outweigh the achievement of the public purpose. It is utterly out of proportion to deprive people of their homes and livelihoods to contain the supposed threat posed by their religion. In short, the Iranian state has by far failed to observe best-practice standards.

Applicable Obligations of the Islamic Republic under International Law

Iran has signed both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. These agreements must be observed by Iran. The judiciary is tasked with investigating violations of rights (Article 156 No. 1 Iranian Constitution). The courts should therefore have investigated a violation of Article 17 of the Universal Declaration of Human Rights. This provision states that everyone has the right to own property and that nobody shall be arbitrarily deprived of his property. There is no reasonable doubt that belonging to the Bahá'í community cannot constitute a justification for a deprivation of property. The seizures are certain to be arbitrary since they happened on prohibited grounds. Article 18 of the Declaration guarantees the freedom of religion and Article 2 prohibits any discrimination based on religion. Any seizure inspired by the religion of the owners would thus be illegal. This conclusion is confirmed by the International Covenant on Civil and Political Rights, which

⁴⁸ See literature in the previous footnotes.

prohibits any discrimination based upon religion and enshrines the freedom of religion in Article 18.

Whilst Article 47 of the Constitution protects legitimate ownership of property, it is Article 49 of that same Constitution that the courts now use for the seizure of property of Bahá'ís, on the basis that it was illegitimately acquired.

4. Conclusions

The Bahá'í community of Iran has been persecuted since its inception, and their situation deteriorated after the 1979 Islamic Revolution. Recently, Iranian courts have approved the seizure of land from Bahá'í in the village of Ivel, relying on the mere fact that the Bahá'í adhere to this religion. Confiscation of properties of Bahá'ís has been part of Iran's systematic campaign of economic, cultural and social persecution of the adherents of this religion, in an effort to destroy this faith community as a viable entity in the country.⁴⁹ While the Bahá'í have tried to appeal to the authorities to address this ongoing persecution, and while in some cases the courts ruled in their favour, all attempts to put such positive verdicts into effect at the local level have proven impossible. The local authorities blamed their indifferent attitude on opposition from residents, claiming there was nothing they could do.⁵⁰

In 2020, two separate courts found that the Bahá'í held no legitimate ownership and confirmed the legitimacy of the seizure of the property of the Bahá'í. The courts rely on Article 49 of the Constitution, mandating the Iranian government to confiscate all wealth accumulated through illicit means. In this case, the illicit means was that the Bahá'í exercised their religion, which the courts poses a threat to the well-being of the Muslim population.⁵¹ The Court of Appeals of Mazandaran Province even reached the conclusion that the private persons who had demolished homes and seized farmland had not violated any law because the landownership held by the Bahá'í was illegitimate.

Our legal analysis shows that these rulings cannot be reconciled with Iranian constitutional law itself, in particular Article 23 (the protection of individuals' beliefs), Article 31 (the right to housing) and Article 33 of the Constitution (prohibition of ousting individuals from their residence). Even if the seizures served a legitimate public purpose, they would be utterly disproportionate with respect to the alleged threat posed by the Bahá'í faith. Moreover, the measures violate international best practice in constitutional property law and international human rights treaties, ratified by and thus binding on Iran.

⁴⁹ BIC, fn 10. Iran Human Rights Documentation Center, fn 11.

⁵⁰ Iran Press Watch, fn 24. Bahá'í Community of South Africa, fn 17.

⁵¹ Special Court for Article 49 of the Constitution, Mazandaran Branch, Judgment of 4 November 2019, fn 39; Court of Appeal of Mazandaran Province, Branch 8, Judgment of 13 October 2020, fn 41.

It is feared that these legal decisions will form a precedent for further seizures of Bahá'í properties, rendering any progress of the Iranian Bahá'í community impossible. In fact, it seems that the developments in Ivel are not the end of this specific method of persecution by the Iranian government. On 22 November 2020, over a hundred government agents raided the shops and homes of Bahá'í in seven cities throughout the country and demanded they hand over their property deeds;⁵² in August 2021, the properties belonging to six Bahá'ís in the province of Semnan were confiscated;⁵³ the BIC reported on 5 December 2021 that Bahá'í irrigated farms had been seized in the village of Kata in the midst of Iranian water crisis,⁵⁴ and also in the village of Roshankoo Bahá'í owned land has recently been seized.⁵⁵ And again, in January 2022 the property of a Bahá'í, Sheida (or Sheyda) Taeed, was seized by the government.⁵⁶

⁵² BIC, Bahá'í Persecutions website, fn 3.

⁵³ BIC, international support, fn 5.

⁵⁴ BIC, water crisis, fn 5.

⁵⁵ Ala'i, fn 5.

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Conflict of interest:

Author Hoops declares no conflict of interest. Author Van der Voort declares that she is working for Bahá'í-community in the Netherlands, which represents the Bahá'í in the Netherlands.

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