

ARTICLE 44 – HISTORY

The timeline of the decree regarding the General Policies Pertaining to Article 44 of the Constitution.

In the Name of God

The timeline of legislation and decree of the General Policies Pertaining to Article 44 of the Constitution and the laws based on these policies

After the victory of the Islamic revolution and foundation of the Islamic Republic of Iran, and following that, the start of the imposed war [with Iraq], government control over many industries and economic activities seemed unavoidable. As such, Article 44 of the Constitution reserved many of the important and fundamental [economic] activities – including banking, energy, mother or basic industries, and... – for ownership by the government. Ownership of these activities during sensitive wartime conditions was placed in complete control of the government.

A cursory review of Article 44 corroborates the fact that these types of [economic] activities are defined as a government monopoly. According to Article 44 of the Constitution:

- The economic system of the Islamic Republic of Iran is based on the three pillars of government, cooperative, and private sector [activity] and is maintained by correct and ordered planning.
- The government sector includes all large industries, parent industries, international commerce, large mines, banking, insurance, energy, dams and large waterway networks, radio and television, post, telegraph and telephone, shipping lines, roads, railroads and similar things.
- The cooperative sector includes institutions and companies involved in manufacturing and distribution that are established in cities and villages in accordance with Islamic criteria.
- The private sector includes those parts of agriculture, livestock, industries, and services that are supplementary to the economic activities of the government and cooperatives.

At the same time, the text of Article 44 states that:

- ‘Ownership’ in these three sectors is supported by the laws of the Islamic Republic of Iran as long as it conforms to the other principles of this section [of the Constitution that pertains to the eco-

conomic system of the IRI]; is within the realm of Islamic law; leads to economic growth and expansion of the country; and does not cause social harm. Detailed criteria, scope, and conditions for [activity in] these three sectors will be determined by the law.”

This situation continued until the end of the 1360's [~ 1980's]. After the end of the war, the government initiated programs for socio-economic reconstruction in the framework of the first and second development plans aimed at increasing productivity of government companies and a more active presence of the private sector in the national economy. Proceeding on this course, in accordance with the law of the third development plan, the program for privatizing government companies continued by organizing government companies in order to transfer their stocks [to the private sector]. Likewise, throughout the fourth development plan, the principle of privatization was continued based on the same process.

Of course, during this period large economic institutions continued to be operated under government ownership. The economic body of the government therefore was still excessively inefficient such that the government was spending huge financial and managerial resources for running these institutions. It was directly involved in the affairs and management [of these institutions] and itself had become a great but inefficient monopoly in the economic affairs of the country.

Because of this, non-governmental sector activity was inhibited in most major areas of the economy. This was the case despite the fact that, during the first to third 5-year development plans and between the years 1368 to 1384 [1989-2005], there were always important elements [e.g. strong advocates] for establishing the grounds for privatization of smaller government businesses and adjusting government size; and a great deal of approval and affirmation was issued for the presence of the non-governmental sector in various areas of the economy.

However, no noticeable effect was seen in the decrease of activity, influence, or presence of the government in the economy.

Therefore, the presentation of a new interpretation of Article 44 of the Constitution in order to actualize the [original] list of goals of Article 44 was placed on the agenda of the Expediency Council [*Majma' Tashkhis Maslehat*] by order of the Supreme Leader. Finally, the General Policies Pertaining to Article 44 of the Constitution were recommended by this Council as a one-time reinterpretation of this Principle in two stages (the months of *Khordad*, 1384, and *Tir* of 1385 [June and July of 2005 and 2006, respectively]) with the strategy to provide the opportunity for widespread and active presence of the non-governmental sector in the country's economic system, specially in the important sectors of the economy that are specified in Article 44.

These [recommendations] were issued as a decree by the Supreme Leader in 5 articles for the realization of the following goals:

Accelerating national economic growth; expanding ownership to the public at large in order to provide social justice; enhancing productivity of economic entities; utilizing financial, human, and technological resources; increasing competitiveness; increasing the share of the private and cooperative sectors in the national economy; increasing the general level of employment; and reducing the managerial and financial responsibilities of the government in overseeing the economy.

A general summary of the decreed articles is the following:

Article A) National policies for expansion of non-governmental sectors and preventing the expansion of the governmental sector:

An annual decrease of at least 20% of activities listed in Article 44 and privatizing of those instances [e.g. industries] that fall outside of the Principle to other sectors until the end of the fourth 5-year development plan.

Article B) General policies of the cooperative sector:

Increasing the share of the cooperative sector to 25% of the national economy until the end of the fifth 5-year development plan. *

Article C) General policies of the non-governmental sector:

Transferring 80% of the governmental activities and businesses listed in Article 44 to the private sector, publicly traded cooperative companies, and non-governmental public entities and determining the prerequisite for privatization.

Article D) General policies for privatization:

Determining the prerequisites for privatization; [the manner of] spending the income from privatization; setting aside 30% of that income for country-wide cooperatives; partnership with non-governmental sectors [which may control] up to 49% [of any collaborative projects] for developing underdeveloped regions; and completing unfinished projects of government companies while abiding by article A of this decree.

Article E) General policies for enforcing the law and preventing monopolies: Drafting and legislation of laws for supervision by the government via policy-making and implementation of the laws, especially over non-governmental banks.

As mentioned in the text of the policy outlines, by enacting these policies-which have been referred to as an “economic revolution”-the necessary conditions for economic prosperity, expansion of social

justice, realization of the goals of the 20-year prospectus of the country, other programs of economic expansion, and... will be materialized. By establishing the legal prerequisites for the expansion of the capital markets, removal of limitations on privatization, creation of a legal framework for the expansion of the cooperative sector, and decrease of the amount of government management over the economy, the activities of non-government sectors (private and cooperative) will naturally increase.

Since, in the text of this decree, it has been stated that enacting these policies requires the drafting and legislation of new laws or alteration of pre-existing ones, the distinguished government-in a comprehensive initiative-will place the task of drafting a bill from these policy outlines on its agenda.

As a result of these initiatives, finally, "the law for reform of elements of the law of the fourth program for economic, social, and cultural development of the Islamic Republic of Iran and the implementation of the general policies of Article 44 of the Constitution" was passed by the Parliament [*Majles-e Showra-y Islami*] on 8/11/1386 [1/31/2008] and issued to the government on 31/4/87 [7/21/2008].

* The fifth 5-year development plan runs from 2010-2015.

From the website of the Ministry of Economic Affairs and Finance:

<http://asl44.mefa.gov.ir/Portal/Home/ShowPage.aspx?Object=Paper&ID=18448e67-dbe1-4b8d-97f7-6dcadfb86de&LayoutID=b78638cd-b58e-4583-8ee8-6e93875ac0b7&CategoryID=602f4f5f-f182-4d05-8bd1-473f584fcd41>