


**JUSTICE OF COMPENSATION FOR APPROPRIATION FOR THE PURPOSE OF
OPENING ROADS IN JORDANIAN LAW (A COMPARATIVE STUDY)**

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| ARTICLE INFO | ABSTRACT |
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| <p>Article history: Received: January, 22nd 2024 Accepted: March, 22nd 2024</p> | <p>Objective: This study aims to define the concept of fair compensation, and how the Jordanian constitution gives the ordinary legislator the authority to determine the nature of fair compensation so that he may stipulate deducting part of the property free of charge, or did the constitutional legislator grant the ordinary legislator the authority to determine how to estimate the value of fair compensation as stated in Comparative legislation.</p> |
| <p>Keywords: Acquisition; Fair Compensation; Free Quarter; Opening Roads; Jordanian Law.</p> | <p>Theoretical Framework: The study employs a theoretical framework rooted in distributive justice theory, particularly drawing upon the perspectives of Rawls, Nozick, and Sen, the study evaluates the principles underlying fair compensation and its practical application in legal systems.</p> |
|  | <p>Design/Methodology/Approach: This study follows a comparative analytical descriptive approach in dealing with the position of comparative legislation on fair compensation in the first requirement, and we will devote the second requirement to the position of the Jordanian legislator on fair compensation stipulated in Jordanian legislation.</p> |
| | <p>Result: The results of the study showed that appropriation for the public benefit has become recognized in constitutions and comparative legislations, as these legislations have defined the procedures for obtaining real estate to be appropriated in order to achieve the public benefit, and these legislations also included the principle of the owner's right to receive fair compensation that compensates the damage caused as a result of appropriation.</p> |
| | <p>Research, Practical & Social Implications: The study concluded that the legislations have differed in how to estimate fair compensation, some of which stipulate that the compensation must be complete without taking into account the impact of ownership on the remaining parts of the property and neighboring properties, and some of which introduced the concept of a free quarter such as the Jordanian law of ownership in the acquisitions of roads. This study came to show the fairness of the free quarter deduction in the acquisition of roads in the Jordanian acquisition law compared to what is applied in the comparative legislation.</p> |
| | <p>Originality/Value: The study provides original insights into the concept of fair compensation in Jordanian law, offering recommendations for legislative reforms to enhance distributive justice in expropriation cases.</p> |
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**A JUSTIÇA DA COMPENSAÇÃO DE APROPRIAÇÃO PARA ABERTURA DE ESTRADAS NA LEI
JORDANIANA (ESTUDO COMPARATIVO)****RESUMO**

Objetivo: Este estudo tem como objetivo definir o conceito de compensação justa e como a Constituição da Jordânia concede ao legislador ordinário o poder de determinar a natureza da compensação justa, de modo que ele possa estipular a dedução de uma parte da propriedade gratuitamente, ou o legislador constitucional concedeu ao legislador ordinário o poder de determinar como estimar o valor da compensação justa, conforme estabelecido na legislação comparada.

Estrutura Teórica: o estudo emprega uma estrutura teórica enraizada na teoria da justiça distributiva, baseando-se especialmente nas perspectivas de Rawls, Nozick e Sen, o estudo avalia os princípios subjacentes à compensação justa e sua aplicação prática nos sistemas jurídicos.

Projeto/Metodologia/Abordagem: Este estudo segue uma abordagem descritiva analítica comparativa ao abordar a posição da legislação comparada sobre compensação justa no primeiro requisito, e dedicará o segundo requisito à posição do legislador jordaniano sobre compensação justa estipulada na lei jordaniana.

Resultados: os resultados do estudo mostraram que a apropriação para benefício público foi reconhecida nas constituições e nas legislações comparadas, uma vez que essas legislações definiram os procedimentos para a obtenção de bens imóveis a serem apropriados para alcançar o benefício público, e essas legislações também incluíram o princípio do direito do proprietário de receber uma indenização justa para compensar os danos causados como resultado da apropriação.

Implicações Sociais, Práticas e de Pesquisa: o estudo concluiu que as legislações diferiram na forma de estimar a compensação justa, algumas das quais estipulam que a compensação deve ser total sem levar em conta o impacto da apropriação nas partes restantes da propriedade e nas propriedades vizinhas, e algumas das quais introduziram o conceito de espaço livre, como a lei jordaniana de apropriação em aquisições de estradas. Este estudo veio para demonstrar a justiça da dedução do quarto livre na aquisição de estradas na lei de aquisições da Jordânia em comparação com o que é aplicado na legislação comparada.

Originalidade/Valor: O estudo fornece uma visão original sobre o conceito de compensação justa na lei jordaniana, oferecendo recomendações para reformas legislativas a fim de melhorar a justiça distributiva em casos de desapropriação.

Palavras-chave: Aquisição, Indenização Justa, Bairro Livre, Abertura de Estradas, Lei Jordaniana.

**LA JUSTICIA DE LA INDEMNIZACIÓN POR APROPIACIÓN PARA LA APERTURA DE
CARRETERAS EN LA LEGISLACIÓN JORDANA (ESTUDIO COMPARATIVO)****RESUMEN**

Objetivo: El presente estudio tiene por objeto definir el concepto de compensación justa, y cómo la Constitución jordana otorga al legislador ordinario la facultad de determinar la naturaleza de la compensación justa para que pueda estipular la deducción de una parte de la propiedad a título gratuito, o bien el legislador constitucional otorgó al legislador ordinario la facultad de determinar cómo estimar el valor de la compensación justa tal como se establece en la legislación comparada.

Marco Teórico: El estudio emplea un marco teórico enraizado en la teoría de la justicia distributiva, basándose en particular en las perspectivas de Rawls, Nozick y Sen, el estudio evalúa los principios subyacentes a la compensación equitativa y su aplicación práctica en los sistemas jurídicos.

Diseño/Metodología/Enfoque: Este estudio sigue un enfoque descriptivo analítico comparativo al tratar la posición de la legislación comparada sobre la compensación equitativa en el primer requisito, y dedicaremos el segundo requisito a la posición del legislador jordano sobre la compensación equitativa estipulada en la legislación jordana.

Resultados: Los resultados del estudio mostraron que la apropiación para el beneficio público ha sido reconocida en las constituciones y legislaciones comparadas, ya que estas legislaciones han definido los procedimientos para la obtención de bienes inmuebles para ser apropiados con el fin de lograr el beneficio público, y estas legislaciones también incluyeron el principio del derecho del propietario a recibir una indemnización justa que compense el daño causado como resultado de la apropiación.

Investigación, Implicaciones Prácticas y Sociales: El estudio concluyó que las legislaciones han diferido en la forma de estimar una indemnización justa, algunas de las cuales estipulan que la indemnización debe ser completa sin tener en cuenta el impacto de la apropiación sobre las partes restantes de la propiedad y las propiedades vecinas, y algunas de las cuales introdujeron el concepto de cuarto libre como la ley jordana de apropiación en las adquisiciones de carreteras. Este estudio vino a demostrar la equidad de la deducción del cuarto libre en la adquisición de carreteras en la ley jordana de adquisiciones en comparación con lo que se aplica en la legislación comparada.

Originalidad/valor: El estudio proporciona una visión original del concepto de compensación justa en la legislación jordana, ofreciendo recomendaciones para reformas legislativas que mejoren la justicia distributiva en los casos de expropiación.

Palabras clave: Adquisición, Compensación Justa, Barrio Libre, Apertura de Caminos, Derecho Jordano.

1 INTRODUCTION

All comparative laws allow real estate expropriation for public use. Paying fair compensation to the owner of expropriated real estate by the law is difficult. Some laws require full compensation equal to the value of the property, while others require a free quarter, meaning the owner receives some of the property for free. Jurisprudence questioned the constitutionality of not compensating the property except for the portion that exceeds a quarter of the expropriated property's area. It supports texts that allow the free deduction of expropriated property within a quarter of its area, despite the judiciary applying them and considering them constitutional.

However, the study will analyze fair compensation in Jordanian law and comparative legal frameworks for expropriation for public benefit, especially in road development projects. The study examines distributive justice theory, including Rawls, Nozick, and Sen, by highlighting ethical considerations in compensation practices. The study examines Jordanian compensation mechanisms to ensure fairness and justice for road development victims. Comparative analysis with other legal systems informs policymakers and practitioners about legal reform and policy enhancement. The study will emphasize the importance of fair compensation for expropriation to preserve property rights. The research aligns Jordanian law with international expropriation standards and obligations, ensuring compliance with various agreements and conventions and upholding the country's property rights and public infrastructure development commitments. This comprehensive approach highlights the study's importance in addressing complex legal, social, and international compensation mechanisms issues in Jordan.

This study defined fair compensation and asked whether the Jordanian constitution gave the ordinary legislator the authority to determine the nature of fair compensation so he could stipulate deducting part of the property free of charge or how to estimate fair compensation as stated in Comparative legislation. The first requirement will examine comparative fair compensation legislation, and the second will examine Jordanian fair compensation legislation.

2 LITERATURE REVIEW

2.1 THE FIRST REQUIREMENT: THE CONCEPT OF FAIR COMPENSATION IN COMPARATIVE LEGISLATION

In this requirement, we discuss the concept of fair compensation in comparative constitutions and legislation by clarifying the constitutional provisions related to compensation resulting from expropriation for the public benefit, and applying these provisions in the legislation of those countries.

2.1.1 Section one: fair compensation in French law

The French constitution has adopted what was included in the Declaration of Human and Citizen Rights issued on August 26, 1789, with regard to the right to own property, as Article (17) of the Declaration stipulated that “the property right is inviolable and sacred, and no one may be deprived of it, unless public necessity so requires.” after ascertaining legally and clearly that it was required and that fair compensation had been paid.

In application of this constitutional text, Article L.321-1 of the French Expropriation Law stipulates that "the compensation granted shall cover all direct and material damages and any damages caused by the expropriation."

This provision allows the owner of the expropriated property to obtain compensation for all material and other damages caused by the expropriation, regardless of the type of expropriation, whether it is for the construction of public utilities or for the purposes of opening or expanding roads without linking the amount of compensation to the purpose for which the expropriation was made, or the consequences that follow. On that, such as increasing the value of the remaining part of the expropriated property, as confirmed by the text of Article (545) of the French Civil Code, which states, “No one may be compelled to transfer his ownership except for reasons related to public interest, and with fair and prior compensation.”

2.1.2 Section 2: Fair Compensation in Egyptian Law

Article (35) of the Egyptian Constitution of 2014 states that “private property is inviolable, and the right of inheritance is guaranteed, and it is not permissible to impose custody over it except in the cases indicated in the law, and by a judicial ruling, and property is not expropriated except for the public benefit and in exchange for a fair compensation paid in advance in accordance with the law.”

The Egyptian Law of Expropriation of Real Estate for the Public Benefit No. (10) of 1990 stipulated in Article 1 (1) that “the necessary real estate for the public benefit and compensation for it shall be expropriated in accordance with the provisions of this law.”

Article (6) of the law amending the Real Estate Expropriation Law for Public Benefit No. 187 of 2020 stipulates that “compensation is estimated according to the prevailing prices at the time of issuance of the public interest decision, plus twenty percent (20%) of the value of the estimate.”

We note that the Egyptian legislator did not provide for a free deduction from the value of compensation for expropriated real estate for the purposes of opening roads or other things, but rather made it equal to all types of expropriation, and added to the value of compensation twenty percent of the value estimated by the competent committees, ignoring any improvements that may occur. On the remaining parts of expropriated real estate.

And that the Egyptian legislator assumes that all types of expropriation lead to an improvement in the value of real estate, and the owner is compensated for this supposed increase in the expropriated part of the real estate, in the interest of justice and equality between the owners of the expropriated real estate and the neighboring real estate that was not covered by the expropriation.

2.1.3 Section 3: Fair compensation in Belgian law

Belgian legislation required the appropriator to pay full and advance compensation to the expropriated owner. Article (16) of the Belgian Constitution issued on October 14, 2012 confirms this principle, which states that “any owner who finds himself deprived of his property due to expropriation in the public interest shall be granted fair and prior compensation by the public authority.”

Article (14) of the Belgian Expropriation Act emphasized this, as it stated that "property may not be expropriated except by virtue of fair and prior compensation."

The Belgian Constitutional Court clarified that the principle that fair compensation within the meaning of Article (16) of the Constitution requires, in principle, full compensation for the damage suffered, and the compensation must correspond to the amount payable in order to obtain real estate of the same value as the property that was deprived. Including the person whose property has been confiscated.

And the addition of the Belgian Court of Cassation that compensation must include all damages incurred by the party whose property has been confiscated and which represent a causal link to the expropriation.

Article (18) Clause (1) of the Expropriation Law stipulates that when determining compensation, all damages incurred by the owner as a result of confiscating or diminishing his rights shall be taken into consideration.

We note that the Belgian legislator did not provide for the free quarter, but rather required that the compensation be fair and complete. However, it is permissible in the event that the expropriation leads to an improvement or increase in the value, to take this increase into consideration when estimating the compensation. Whereas, Article (22) of the Expropriation Law states that "If the implementation of projects of public interest leads to an increase in the value of the remaining part of the expropriated property, the owner of the remaining part is required to contribute to the costs of the project because of this increase."

2.1.4 Section 4: Fair compensation in Swiss law.

Article (12) of the Swiss Constitution stipulates that: "1- Expropriation is permitted only in cases of public benefit determined by law and the completion of the project is compatible with the public interest. 2- In the event of property being expropriated or restricted to the extent of confiscation, fair and full compensation shall be paid".

The Swiss legislator adopted the text of Article (12) and included it in Article Two of the Expropriation Law as a constitutional requirement.

Article (23) of the Swiss Expropriation Act states: However, "compensation must cover all direct and definite damage to the owner as a result of the confiscation or diminution of his rights." It includes the market value of the confiscated property. Clause (4) of Article (24) also

stipulates that "the increases or decreases in value resulting from the business of the expropriating entity shall not be taken into account."

According to the text of Article (26) Clause (1) of the Swiss Expropriation Law, the expropriator must repair the damage resulting from the loss of some advantages when the remaining part in all cases benefited from them in a permanent manner without expropriation.

Article (26) Clause (2) states, "The expropriator has the right to claim a set-off by compensating for the private capital gains from which the remaining part of the expropriation benefits. Nevertheless, the cases in which the special legislation provides for the collection of a contribution for this added value are excluded." Swiss law focuses on the principle of fair compensation so that expropriation does not impoverish or enrich the expropriated party. The owner must pay full compensation given to the other party.

We note that Swiss law requires that compensation be given for all damages incurred by the expropriator as a result of expropriation procedures without distinguishing between expropriation for road or other purposes. Also the Swiss legislator

In Article (26) Clause (2) it is permitted for the expropriator, in the event that the expropriation leads to an increase in the value of the remaining parts of the property, to make a offset between the capital gains resulting from the expropriation and the compensation amount. This text covers all types of appropriation except for the cases stipulated in the special legislation that regulates how to deal with the added value resulting from the appropriation.

2.1.5 Section 5: Fair compensation in Iraqi law.

Like the rest of the constitutions, the Iraqi constitution required the payment of fair compensation for expropriated real estate, as Article (23) of the Iraqi constitution of 2005 stipulated that "...Second: It is not permissible to expropriate property except for purposes of public interest in exchange for fair compensation, and this shall be regulated by law." However, the Iraqi expropriation law provided for free expropriation. Despite this, as Article (37) of the Iraqi Expropriation Law No. (12) of 1981 and its amendments stipulated that "not more than a quarter of the land area of the property shall be expropriated (without allowance), if the estimation body proves an improvement, location or benefit, the remaining part." of it and increase its value due to the appropriation, and the compensation in this case is limited to the facilities and plantations included in the expropriated area.

And Article (38) of the same law added that “if the expropriated area (without allowance) is less than a quarter of the public area of the property, and it is proven to the estimation body that the expropriation leads to an improvement, location or benefit, the remaining part of it and an increase in its value, the expropriator of it is obligated to pay the value of it.” What completes a quarter of the general area of the land before expropriation.

The Iraqi legislator linked expropriation without compensation to the extent of improvement that occurs to the remaining part of the expropriated property, and expanded the concept of improvement to include real estate that benefits from expropriation even if it is not covered by expropriation, as Article (41) of the expropriation law stipulates that “if it occurs to the property The property located within the boundaries of the Municipality of the Capital or the municipalities has an increase in its value, due to the improvement of its location, such as its direct appearance on the streets, squares, parks, bridges, or roads, or when its frontage expands, or the expansion of the street, square, or park on which the property is located, without expropriating part of it. Its owner pays a fee to the capital’s secretariat or the municipality The competent authority is equivalent to a quarter of the difference between the value of the public area of the land (without buildings and plantings) before the start of the project, and its value after its implementation. Through this text, we note that the Iraqi legislator took the concept of improvement in general, whether the real estate that has been improved has been allocated for expropriation or not, which means Application of the principle of justice to all properties that benefit from the expropriation procedures.

The Iraqi Federal Supreme Court confirmed the constitutionality of Articles (37 and 38) of the Iraqi Expropriation Law No. (12) for the year 1981, which permits the appropriation of a quarter of the land area without consideration, and its compatibility with the text of Article (23) of the Iraqi Constitution of 2005, as it stated in its ruling: “When noting Articles (37 and 38) of the Expropriation Law No(129 of 1981 contested as unconstitutional and inconsistent with Article (23/2) of the Constitution, and it was found that they do not contradict the provision of Article (23/2) of the Constitution, but rather that they constitute a sound application of them, because the fair compensation intended by the constitutional text does not mean compensation with money Rather, it may be by another means that may be achieved in improving the location or benefit of the remaining part of the property and increasing the value due to appropriation. The same is the case when the expropriated pays what completes a quarter of the public area of the property, because this represents the increase that occurred in the value or benefit of the part that is not expropriated, and this increase in The value or benefit is the fair compensation

for the expropriated from it, which is intended by the constitutional text referred to above, otherwise we will be facing a case of illegal enrichment on the part of the expropriated party at the expense of the expropriating party, so he decided to reject the discriminatory appeal and ratify the distinguished decision....".

2.2 THE SECOND REQUIREMENT: FAIR COMPENSATION IN JORDANIAN LAW

For us to stand on the extent of fairness of compensation in Jordanian law, it is necessary to clarify the position of the Jordanian legislator on fair compensation, as well as the position of jurisprudence and judiciary on this, and then assess the soundness of the legislator's position on fair compensation for the appropriation of real estate.

2.2.1 The first section: the position of Jordanian law on fair compensation

Article (11) of the Jordanian Constitution stipulates that "no one's property may be expropriated except for the public benefit and in exchange for fair compensation as specified in the law."

Based on this text, the Jordanian Appropriation Law No. (12) of 1987 was issued, which became part of the current Jordanian Real Estate Law of 2019 (Chapter Nine), as Article (178) of this law states that "only real estate may be expropriated for a project that achieves public benefit." In exchange for fair compensation and in accordance with the procedures set forth in this chapter.

Article (190) of the Real Estate Law of 2019 specified the bases for estimating fair compensation, as it stipulated that "when estimating fair compensation for the decision issued to acquire the property consensually or judicially, the following bases are taken into account:

When estimating the compensation for the absolute appropriation of the real estate, or any right in it, the estimated value of the expropriated real estate is taken into account when the expropriation decision is issued, in accordance with the principles of estimating real estate values in force.

It is considered a fair compensation for appropriating the real estate or any right in it, the estimated value of the expropriated real estate, according to the provisions of paragraph (a) of this article, or the value of the sales made on the same real estate or similar real estate adjacent to it from the reality of dealings in the real estate register.

In Article (192), the Jordanian legislator excluded appropriations allocated for the purposes of road construction or expansion, or for the purposes of housing projects, from the application of Article (190), which defines the bases for fair compensation, as Article (192) of the Real Estate Law of 2019 stipulates that “a- expropriate without compensation not exceeding (1/4).

A quarter of the area of the real estate for the purposes of constructing or expanding a road, and not more than (1/4) a quarter of the area of the expropriated part thereof for the purposes of constructing government housing, provided that the expropriated part of it is allocated without compensation for the construction of roads in this housing.

B. The total area of the real estate expropriated without compensation, by one or more expropriation decisions for any of the purposes mentioned in Paragraph (a) of this Article, may not exceed 1/4 of the area of the expropriated property.

C. When calculating (1/4) a quarter of the property’s area for the purposes of this article, it is the area of the property prior to the first expropriation without compensation made for it, and this does not affect the transfer of ownership of the property from its owner to another, or the division of the property into more than one section.

Dr. The calculation of the expropriated area without compensation shall not affect any special division or organization transactions conducted by the owners on their real estate located within the project area after publishing the expropriation declaration, whether it is within the borders of the municipalities’ areas or outside them.

Article (192) restricted the expropriation of a quarter of the land area without compensation to the issue of constructing or expanding roads, whether they are public roads or roads designated for government housing projects.

And Article (193) of the Real Estate Property Law of 2019 specified cases in which it is not permissible to deduct the free quarter, even if the appropriation is for road purposes, as it stated, “Despite what was stated in Article (192) of this law, compensation is paid in full when the property is acquired for the purposes of projects.” Construction and expansion of roads and government housing in any of the following cases:

- a) not constructing a road in the expropriated part without compensation for the entire expropriated area of the property for the purposes of constructing government housing. In this case, the expropriator is obligated to pay compensation for that part at any time after the completion of the project;
- b) the existence of attached or fixed developments in the expropriated part without compensation of the property, such as facilities, buildings, and plants, prior to the

- issuance of the expropriation decision, whereby compensation is paid for all the existing developments, whatever the purpose of the expropriation;
- c) include the entire area of the property by appropriation;
 - d) the remainder of the expropriated property is unsuitable for reconstruction or use, including expropriation;
 - e) acquisition of real estate for the purposes of constructing a road with limited accesses with specific entrances and exits;
 - f) acquisition of a suspended property.

We note that the Jordanian legislator in the real estate property law and in a chapter on appropriation limited the deduction of the free quarter to expropriations related to the construction and expansion of roads or roads for government housing projects. From the expropriated property satisfied with regard to the improvements made by expropriations in other projects to the improvement tax mentioned in Article (210) of the Real Estate Law No. (13) of 2019, which allows the Municipal Council to impose an improvement tax on the owners of real estate located within the areas organized by municipal councils for their exit as a result of expropriation To the face of the road or widen the road on which it lies or because of the increase in the area of the road face on which it is located, and this tax is specific to real estate located within the planning areas and is limited to improvements that result from opening or widening roads, and does not include other expropriations.

We have seen that the Jordanian legislator specified in Article (190) of the Real Estate Law of 2019 the bases for estimating fair compensation, so that when estimating compensation for expropriated real estate, the applicable and estimated real estate values of expropriated real estate or sales made on the same or similar real estate adjacent to it are taken into account. From the reality of dealing in the real estate registry, that is, the fair compensation must be equal to the actual value of the expropriated property. This compensation is consistent with what the jurisprudence and the judiciary have established in defining fair compensation stipulated in the constitutions as a condition for the expropriation of real estate.

Where fair compensation is defined as "the price that is determined on the basis of any person who wishes to obtain a similar property in an open market."

The Supreme Court of the United States of America defined it as "the price at which the owner accepts to sell if he wants to sell, and the price at which the buyer accepts to buy if he wants to buy."

The dispute over the fairness of compensation in Jordanian law is mainly focused on deducting the free quarter in the case of expropriation for the purposes of constructing and expanding roads, as the positions of jurisprudence and judiciary in Jordan differ between supporters and opponents, and we will clarify the position of both parties.

2.2.2 The second section: the position of jurisprudence and the Jordanian judiciary on deducting the free quarter

The positions of Jordanian jurisprudence and judiciary have varied regarding the constitutionality of texts related to deducting the free quarter in road expropriation compensations, between supporters and opponents:

2.2.2.1 First: the position of jurisprudence.

The text of Article (11), paragraph (a) of the Jordanian Expropriation Law No. 12 of 1987 (Article 192 of the Real Estate Property Law of 2019) has been subjected to sharp criticism by Jordanian jurisprudence, as it contradicts the text of Article (11) of the Jordanian Constitution of 1952. Because the concept of fair compensation means full compensation for the entire area of the expropriated property, and that any compensation that does not include the entire expropriated property will not be fair in any way. And that the constitution's mandate to the ordinary legislator to organize expropriation deals with the expropriation procedures and disputes related to it and does not affect the justice of compensation, which constitutes a clear violation of the constitution and leads to a derogation from the protection decided by the constitution for the right of ownership.

Some also believe that the Jordanian constitution did not stipulate the expropriation of any part of the real estate without charge, but it stipulated that the compensation be fair. However, the expropriation law stipulated that a quarter of the property's area may be deducted free of charge in road expropriations, so the expropriation of a quarter of the property's area without charge is unconstitutional because the constitution did not stipulate that, but rather the text came in the appropriation law, and given the supremacy of the constitution over the rest of the laws, what was stated in the constitution must be applied and not what was stated in the appropriation law.

2.2.2.2 Second: The position of the Jordanian judiciary on the constitutionality of the free quarter

2.2.2.2.1 The position of the Jordanian Court of Cassation

The Court of Cassation recognized the legitimacy of deducting the legal quarter in its ruling issued in 1985, in which it stated, “The deduction of the free quarter in expropriation of roads was prescribed for the purposes of appropriation as a legitimate and permissible action for calculating compensation.”

The Jordanian Court of Cassation also approved the constitutionality of deducting the free quarter contained in the Jordanian Expropriation Law, as it considered that what was stated in the text of Article (11) of the Expropriation Law is an exception to the general rule contained in the text of Article (11) of the Constitution, which requires the payment of fair compensation to the owner who Own his property.

And the Court of Cassation, in its legal capacity, decided in Decision No. 6350 of 2021 issued on 1/31/2022 not to compensate for the legal quarter in the subsequent expropriation decision to include the entire property, which stated in it, “Whereas the decision of the Court of First Instance to compensate for the expropriation that took place on the plot of land is subject Case No. 68/2011 has gained the peremptory degree, including what was deducted from it within the limits of the legal quarter for free, and that the plaintiff has received fair compensation for the expropriated area that is in excess of the legal quarter after deducting the legal quarter for free. in it again.”

And it confirmed this in its subsequent rulings, where it decided, “The legal quarter is deducted from the expropriation that falls for the purposes of roads, their construction and their opening, as the The appropriation took place for the purposes of the railway line, so this appropriation is not considered to have been completed for the purposes of the roads referred to in Article (2) of the Expropriation Law, and this is what the Court of Cassation settled on.

The Court of Cassation also decided that the deduction of the free quarter for road purposes does not include the facilities built on the property, and ruled, “And since the claim for compensation for trees and facilities on the expropriated part does not apply to it the rule set out in the Expropriation Law regarding deduction of the free legal quarter for the purposes of opening and expanding roads, but rather it applies to it The provisions of Article (11) of the Expropriation Law, which give the owner of the facilities and trees that are built on the

expropriated part the requirement of compensation for them, regardless of whether the expropriated part falls within the free legal quarter or not.

2.2.2.2.2 The position of the Constitutional Court on deducting the legal quarter.

In a recent ruling issued in 2019, the Jordanian Constitutional Court confirmed the constitutionality of the text of Paragraph (1) of Article (11) of the Expropriation Law, which allows deducting a legal quarter for the purposes of opening or expanding roads, and a quarter of the area of the part deducted for the purposes of establishing government housing projects, as it came in her rule.

And since the framer of the constitution established in its eleventh article two principles whose provisions must be adhered to, the first of which is that the goal of expropriation is to achieve public benefit, and the second is that a fair compensation be paid to the owner.

And since the constitution, by saying (as specified in the law), has authorized the legislator to draft a law, in which he is responsible for clarifying the legal mechanisms and means by which there is a possibility to implement the principles of public benefit and fair compensation. These two principles have been established constitutionally and legally since the thirties of the last century, as the Expropriation Law and its amendments of 1931 Published in the Official Gazette No. (293) issued on 2/16/1931, it deals with all the facts related to expropriation, including the issue of deducting the free legal quarter from the expropriated land.

And since the legislator relied on this mandate and exercised his powers that authorize him to make adjustments and comparisons between the various alternatives, which he is independent at his discretion, responding to the requirements of the public interest, and achieving equality between the owner and the owner, the fruit of the adjustments and comparisons was the formulation of Paragraph (a) of Article (11) of the Expropriation Law , challenged for its unconstitutionality, although it was covered by the generality and its flesh was abstraction. And since paragraph (a), it was required that the deducted area be allocated free of charge for the construction of roads in the government housing project.

The provision of Paragraph (a) also required that, in all expropriation operations, compensation be paid for the entirety of what is fixed or attached to the expropriated part.

Whereas the expropriation event would improve the situation of the remaining part after the expropriation, whether it was to open a road, expand it, or straighten its path, or to establish a government housing project as previously mentioned.

And since the objection of the appellant to paragraph (a) of Article (11) of the expropriation law in force, that its ruling constitutes an assault on the right of ownership, is rejected, perhaps it is permissible to impose some restrictions on ownership that are required by its social function.

Whereas, the legitimacy of the appropriation law in paragraph (a) of Article (11), which is challenged as unconstitutional, derives from the provision of Article (11) of the Constitution, which added to the issue of appropriation the guise of public benefit, which makes the defense raised by the appellant in its appeal, regarding the violation of the provision of Paragraph (a) of Article (11) of the Expropriation Law No. (12) of (1987), for the provision of Article (11) of the Constitution, is not based on a sound legal basis, and it is free to respond.”

2.2.2.3 Section Three: Estimating the position of the Jordanian legislator on the free quarter.

By reviewing the position of jurisprudence and the judiciary in Jordan regarding the deduction of the free quarter in appropriations for roads, we note that jurisprudence considers the provision to deduct the free quarter in the Jordanian Expropriation Law to contradict the constitution, since Article (11) of the constitution stipulates the principle of fair compensation, and this includes all types of compensation without exception. While the Court of Cassation and the Constitutional Court considered in the text of Article (11) of the constitution to authorize the legislator to regulate all matters related to expropriation, including how to estimate fair compensation and lay the foundations for His estimate, and that the stipulation of the free quarter in road expropriation is constitutional from the point of view of the two courts, because opening or expanding roads leads to improving the remaining part of the property. And that the free quarter is equivalent to the increase in its value.

While we acknowledge the view of the esteemed Constitutional Court that opening or paving roads or establishing a governmental housing project may lead to an increase in the value of the remaining parts of the expropriated real estate, however, limiting this to road expropriations would constitute a breach of the principle of equality and justice among the owners of expropriated real estate. Because expropriation for the public benefit in all types of appropriation for roads and other purposes may lead to the improvement of the remaining parts of the expropriated property that were not covered by expropriation, as well as the neighboring real estate. Therefore, we believe that limiting the text to deducting the legal quarter in

expropriations for road purposes constitutes a breach of the principle of justice in protecting the rights of owners for the following reasons:

First: Expropriation for the purposes of opening or widening roads does not in all cases lead to an improvement in the remaining part of the property. In many cases, on the contrary, it may lead to a decrease in the value of the remaining part in the event that this part of the property becomes below the level of the road or becomes higher than its level. The same is the case in the event that the appropriation leads to the construction of bridges or spending, as it leads to a decrease in value.

Second: Deducting the legal quarter without compensation for the purposes of opening and widening roads or for housing projects may violate the principle of equality between owners of expropriated real estate, because assuming that opening or widening these roads leads to an increase in the value of the remaining part of the expropriated real estate, the benefit of opening the road is related to the nature of The property and the area located on the road. If we assume that the expropriation included a plot of land with an area of (10) dunums and a piece of land with an area of (20) dunums and that the frontage on the road is the same, then the legal quarter of the first plot is (2.5) dunums while

The legal quarter of the second piece of land is (5) dunums, and if we take into account that improvement usually extends to the front of the land and at a limited depth, the damage to the owner of the piece from which (5) dunums were taken is double in relation to the first plot (2.5) dunums, although what happened On the two plots of improvement is equal, especially in the areas located within the organization whose organization is commercial, as the commercial depth is usually determined by law and does not exceed in the areas of regular planning (16 m) and what is left of the land is not subject to any improvement as a result of expropriation for the purposes of roads.

Third: With regard to expropriation for the purposes of housing projects, taking a quarter of the expropriated area for the purposes of roads for free may also harm the principle of equality between the owners. His land is from a quarter of the value of the expropriated land, while the neighbor benefits in return.

Fourth: There is an improvement tax that can be imposed by the municipal councils, based on the text of Article (210) of the Real Estate Law, in the event that the expropriation of roads leads to an increase in the value of the lands remaining after the expropriation.

The goal of the legislator in taking the legal quarter of road expropriations is as a result of increasing the value of the remaining part after expropriation, and what is the legislator's

opinion on major projects other than housing projects such as expropriations for the purpose of establishing universities and major projects, which often lead to an increase in the value of the remaining parts of real estate, as well as an increase in the value of neighboring real estate which was not covered by the appropriation. On the contrary, some countries, such as France, compensate the owner for the expropriated part if the expropriation results in an increase in the value of the neighboring property, according to the text of Article L. in value for the rest of the property, The judge shall rule on this increase in a separate ruling, the sums of capital gains shall be fully or partially compensated with expropriation compensation.

Fifth: There are some legislations that oblige the administration to pay more than the value of the full compensation, so the committees are required to increase certain percentages on the value of the estimated compensation, such as the Egyptian expropriation law, which requires an increase of (20%) on the value of the established compensation, and it does not stipulate deduction of any part of the compensation Even if the expropriation leads to an increase in the value of the remaining parts of the expropriated real estate or the neighboring real estate.

Therefore, we urge the Jordanian legislator to cancel the text of Article (192) of the Real Estate Law No. (13) of 2019 related to the deduction of the free quarter of expropriated real estate for the purposes of opening or expanding roads or for the construction of housing projects, because this violates the principle of equality, and if it is necessary to take Improvements or an increase in the value of the remaining parts of the expropriated real estate or neighboring real estate is sufficient to impose the improvement tax instead because the improvement tax takes into account the equality of all types of expropriation without exception, by estimating the improvements or the actual increase in real estate values as a result of the expropriation procedures.

3 THEORETICAL FRAMEWORK

3.1 DISTRIBUTIVE JUSTICE THEORY

Distributive justice traces its roots to ancient philosophical inquiries, notably Aristotle's notion of justice as proportional equality. Later, thinkers like John Rawls and Robert Nozick provided seminal contributions to modern distributive justice theory, with Rawls proposing the influential concept of the "veil of ignorance" and Nozick advocating for libertarian principles

of justice. In the framework of John Rawls, he proposes the principles of justice through a hypothetical scenario called the original position, where individuals are behind a veil of ignorance, unaware of their own characteristics or social position. From this position, individuals would choose principles of justice that ensure a fair distribution of resources and opportunities, prioritizing the well-being of the least advantaged members of society. Rawls argues for two principles: the principle of equal basic liberties and the difference principle, which allows for social and economic inequalities only if they benefit the least advantaged. Additionally, Robert Nozick's significantly contributes to distributive justice theory through "entitlement theory," presented in his work "Anarchy, State, and Utopia." Nozick argues that justice is primarily concerned with respecting individuals' rights to their own property and the fruits of their labor. According to Nozick, a just distribution of goods is one that arises from voluntary exchanges or acquisitions where individuals acquire property through legitimate means. He criticizes distributive patterns advocated by Rawlsian theories as coercive redistributions that violate individual rights. Nozick's theory emphasizes the importance of procedural justice and minimal state intervention in economic transactions, championing a libertarian perspective on distributive justice. These theories offer different perspectives on how resources and opportunities should be distributed within a society, reflecting diverse moral intuitions and philosophical commitments.

However, the distributive justice theory is a cornerstone in legal and philosophical discourse, aiming to address how resources, opportunities, and burdens are allocated among members of a society. Within this framework, various principles emerge, including equality, need, and merit. John Rawls' seminal work, "A Theory of Justice," posits the principle of justice as fairness, advocating for a society where inequalities are arranged to benefit the least advantaged. Amartya Sen's capabilities approach extends this by focusing on individuals' abilities to achieve valuable functionings. These theories have profound implications for legal systems worldwide, including Jordanian law. In the context of compensating for appropriation to open roads, distributive justice theory underscores the necessity of equitable distribution of benefits and burdens among stakeholders. This implies that any appropriation must consider not only the immediate utility of the road but also its impact on the well-being and opportunities of affected communities. Utilizing a comparative study approach, the present study can draw upon these theories to evaluate Jordanian law's effectiveness in ensuring distributive justice concerning road development projects.

Moreover, the implications of distributive justice theory extend beyond mere material distribution to encompass procedural fairness and participation. As articulated by political philosopher Robert Nozick in "Anarchy, State, and Utopia," the entitlement theory emphasizes the just acquisition and transfer of property, stressing individual rights and freedoms. In the context of road development in Jordan, this implies that the process of appropriation must adhere to transparent and participatory procedures, where affected parties have a voice in decision-making and fair compensation for any loss incurred. Martha Nussbaum's capabilities approach further emphasizes the importance of individuals' agency and opportunities to participate fully in societal affairs. Hence, the present study will not only end with distribution of resources but also the fairness of procedures involved, ensuring that all stakeholders, particularly marginalized communities, have a genuine opportunity to influence outcomes. By integrating these insights into the study, it will provide valuable recommendations for enhancing the legal framework governing appropriation for road development in Jordan, thereby advancing distributive justice principles in practice.

4 METHODOLOGY

This study follows a comparative analytical descriptive approach in dealing with the position of comparative legislation on fair compensation in the first requirement, and we will devote the second requirement to the position of the Jordanian legislator on fair compensation stipulated in Jordanian legislation.

5 RESULTS AND DISCUSSION

Through our study of the concept of fair compensation in Jordanian and comparative legislation, the results of the study revealed that:

1. All comparative legislation and Jordanian legislation related to expropriation for the public benefit stipulate that the owner of expropriated property must be compensated fairly.
2. Comparative legislation and Jordanian legislation differed in how fair compensation is calculated, as some legislation stipulated that the owner be given compensation for the full value of the property and its contents according to its real price, regardless of the consequences of increasing or decreasing the value, and some of them added

percentages, such as the Egyptian legislation, to the real value For expropriated real estate to take into account the increase in value in neighboring real estate, and others, such as Jordanian and Iraqi legislation, took the free quarter in exchange for increasing the value of expropriated real estate.

3. Some legislations sought to find a balance between appropriation and its effects of increasing or decreasing the value to determine fair compensation.

6 CONCLUSION

Legislations have differed in how to estimate fair compensation, some of which stipulate that the compensation must be complete without taking into account the impact of ownership on the remaining parts of the property and neighboring properties, and some of which introduced the concept of a free quarter such as the Jordanian law of ownership in the acquisitions of roads. This study came to show the fairness of the free quarter deduction in the acquisition of roads in the Jordanian acquisition law compared to what is applied in the comparative legislation. Based on the findings of this study, the following recommendations were deemed necessary:

1. That the Jordanian legislator cancel Article (192) of the Real Estate Property Law No. (3) of 2019 related to the free quarter of expropriations related to the construction and expansion of roads and for the purposes of constructing government housing, because it does not achieve justice in dealing with the effects of expropriation.
2. Taking into account the view of the legislator to take into account the improvements that occur as a result of expropriation related to the benefit operating in estimating fair compensation, we recommend that the legislator replace Article (192) of the Real Estate Law by stipulating that when estimating the value of fair compensation, the increase in value or Its decrease in relation to the part of the real estate that has not been expropriated and the adjacent real estate.
3. We recommend the Jordanian legislator to correct the text of Article (210) of the Real Estate Property Law No. (13) of 2019 related to the tax, so that it includes all types of expropriation, whether it is for the interest of municipalities or for the interest of public authorities instead of the free quarter, because the imposition of the improvement tax provides justice, so that The effects of appropriation are taken into consideration for everyone.

Furthermore, we spotted some certain limitations the study encountered. Firstly, the research relies heavily on legal analysis and theoretical frameworks without incorporating empirical data or case studies. Without empirical evidence or real-life cases, the study's findings may lack practical applicability and robustness. Therefore, future research work on this should be more detailed empirically.

7 SUGGESTIONS FOR FUTURE WORK

Future studies could complement the legal analysis with empirical research, such as case studies or surveys, to explore stakeholders' perspectives and experiences regarding fair compensation in expropriation cases. This would enhance the understanding of the practical implications of legal provisions and theoretical frameworks.

Researchers should conduct a more extensive comparative analysis by examining fair compensation practices in a broader range of jurisdictions worldwide. This would provide a more comprehensive understanding of global trends and best practices in expropriation law, contributing to more informed policy recommendations.

Integrating insights from other disciplines, such as economics, sociology, or political science, could enrich the analysis of fair compensation issues. For example, economic theories of property valuation or sociological perspectives on justice could offer complementary insights into the complexities of expropriation cases.

Further research works should focus on longitudinal studies tracking the implementation and impact of legislative changes in expropriation laws over time could provide valuable insights into the effectiveness of legal reforms and their implications for distributive justice.

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