



## Legal Analysis of Supporting Methods of Foreign Investors in Nationalization and Property Confiscation

Javad Sabih Maleki<sup>\*1</sup>; Siamak Karamzadeh<sup>2</sup>

<sup>1\*</sup> LLM in Private Law, Shahed University, Tehran, Iran

<sup>2</sup> Assistant Professor, Law Department; Shahed University, Tehran, Iran

Email: javad\_sabih1986@yahoo.com\*; skkaramzadeh@gmail.com

\*Corresponding Author: Javad Sabih Maleki

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### **Abstract**

Nationalization of foreign investor assets does not serve the interests of countries because it disrupts the economic security of states and ultimately leads to a reduction in foreign investment. Governments have sought to minimize investor nationalization and property confiscation in order to attract foreign investment. In the event of expropriation of a foreign investor, governments are required to compensate the investor. The position of customary international law on how to pay compensation and methods of assessing damages includes procedures based on national law, treaties and judicial decisions or arbitration. In order to support investors, it is necessary that the right to nationalize property and expropriation of investors should be very limited. Further, in case of nationalization, the damage must be compensated in a desirable and effective manner. The foreign investor must enjoy the same rights as domestic investors and at the same time have the right to transfer their capital and profits abroad. Appropriate measures should also be taken to amend national laws in order to consolidate and guarantee the ownership of foreign investors.

**Keywords:** *Nationalization, Confiscation; Foreign Investor; Support*

### **1. Introduction**

In the past, a foreigner could not expect to enjoy the rights enjoyed by other citizens of the host country. Even, an alien was deprived of the right to marry in another country, or the right to own property, or the right to take an action before the court (Ghasemi Shoozab, 2004, pp. 119 & 128).

Due to the gradual expansion of international relations and more attention to the issue of human rights as well as the need for foreign investment, the situation of foreign investors became more important than ever (Ibid., P. 120). The situation of foreign investors is slightly different; they are more important to

governments than others because of their importance to the host country and sometimes it is observed that in some countries they have the same rights as the citizens of the host country and in other cases they have more rights than the citizens of the host country (Graziadei and Smith, 2017, p.52).

Economic development of countries will not be achieved except with foreign investment and the growth of foreign investment depends on the security of investors assets. The most important practical step in ensuring this security is the practical support and protection of investors. The foreign investors will never invest in a country that is unsafe and unsupported (Trstenjak and Weingerl, 2016, pp.319, 320). These supports must first and foremost be legal and specified by the legislature so that they can be both invoked and be able to gain the trust of investors, and in practice will not be confronted with.

In the first place, the support of the foreign investors should guarantee the preservation of capital and the profits from investment, and secondly, they should be through the maintenance and implementation of agreements concluded by the investor in the investee country. The methods of support of investors are diverse and numerous, from tax exemptions to the removal of redundant licenses and the provision of infrastructure services and the acceptance of the right to transfer investor capital abroad. The purpose of this article is to review the methods and strategies of support of foreign investment in the position of nationalize and Property confiscation and their advantages.

## **2. Restricting the Nationalization and Property Confiscation of Investors**

The first and most important support measure that can be considered to ensure the security of foreign investment is to avoid nationalization and property confiscation. Hence, we see that in Article 8 of the Law on Support and Encouragement of Foreign Investment, approved in 2002, the Iranian legislature severely restricts the property confiscation and privileges of investors and predicts that foreign investment will not be expropriated and nationalized except for the public interest. Therefore, in the view of the Iranian legislator, the Iranian government should never nationalize and confiscate the property of investors for their own political goals and objectives. In addition to the domestic laws, it is sometimes observed that in their bilateral or multilateral treaties and agreements with other countries, in order to support foreign investors, and attracting them to invest, by inserting the condition of prohibition of expropriation governments try to limit the exercise of their right to nationalize and property confiscation of investors in their treaties.

### **2.1. Deprivation of the Right to Confiscate and Nationalization under International Treaties**

In deprivation of the right to confiscate and nationalize, two questions can be asked that need to be answered. The first question is, are there conditions of the prohibition of expropriation in force, and if so, what is the guarantee of non-compliance? And the second question is that under what conditions are governments allowed to exercise their right to nationalize and confiscate the property of foreign investors? In answer to the first question, there are doctrines and jurisprudence. However, the views put forward by some legal scholars and the practice of arbitral tribunals, including Iran-United States Claims Tribunal, is that the principle of *pacta sunt servanda* is not, firstly, an absolute principle, and secondly, this principle is complemented by the two principles of "rule of command" and "principle of change of circumstances". That is, if the situation changes and the government realizes that it is in the public interest, it can terminate the treaty and contract without committing an international violation (Ghasemi, 2003, pp. 70-73). The rule of command in this regard refers to the clause of the condition with the principle of "sovereignty of states", which, while is in contradiction with the condition of deprivation of the right to confiscate, invalidates the condition.

But in answer to the second question, it should be noted that governments usually, in addition to inserting the condition of prohibition of expropriation of foreigners in bilateral or multilateral treaties and agreements, declare its application permissible by following four conditions.

According to Article 6 of the US Model Bilateral Investment Treaty, which has been adopted by other countries such as Iran, these conditions are:

- 1- Confiscation and nationalize should ensure the public interest of society;
- 2 - Confiscation and nationalization should take place through a legal process;
- 3- Confiscation and nationalization should take place in a non-discriminatory manner and,
- 4- The damages caused by confiscation and nationalization should be compensated effectively and quickly (Ali Dosti Shahraki, 2009, p. 86).

## **2.2. Stabilizing Conditions**

Governments sometimes committed in their contracts with foreigners that the contract is subject to national law, but only the national law in force at the time of the contract and explicitly promise that the contract is exempt from future changes in the laws of that country. In other words, the government undertakes not to terminate or revise the terms of the contract, either legally or through the exercise of executive power. Some jurists have considered such an obligation contrary to the principle of permanent sovereignty over natural resources. Such as the position of the Saudi government in the "Aramco" case and the Kuwaiti government in the "Aminoil" case, which in both cases, of course, the court rejected this argument.

Today, the prevailing view is that such conditions are a binding obligation on governments, and violating them is illegitimate and requires compensation for expropriation. Aminoil's arbitration ruled that the state could commit itself by imposing a stabilizing condition despite the principle of permanent sovereignty over natural resources, and that international law did not preclude any state from committing to refrain from nationalizing for a specified period of time. At the same time, the stabilizing condition does not preclude expropriation. In the same Aminoil opinion, it is stated that "the stabilizing condition in relation to nationalize has a legal effect, and that is the necessity of paying appropriate compensation as a condition for the validity of the expropriation." According to 'Jimenez d,Arechage' in case of termination of the contract by the government, for the rest of the contract period, in addition to compensation, non-profit compensation should also be paid to the foreigner (Abed Khorasani, 2000, pp. 82 and 83).

In the nineteenth century, in a situation where private property had a special sanctity and sanctity, this condition was absolute. Nowadays, when the role of governments has become interventionist in relation to individuals, especially due to economic issues, it is not accepted that the condition of stability can play an absolute role. In other words, if it is in short-term contracts, it can be justified to arrange the effects, but if the condition of stability is included in long-term contracts, this action is unreasonable. Therefore, in these cases, it can be inferred that it is in conflict with the principle of permanent sovereignty of states over natural resources and is therefore not acceptable (Ghasemi, 2003, p. 74).

## **3. Adoption of the Right to Compensation for Investors**

Compensation here refers to the payment for property, interest and rights that have been taken away or lost in the way of nationalization and confiscation of investors. Therefore, the damage caused by expropriation is generally of two types: 1- loss of property and assets of investors, 2- loss of profits that were to be earned through investment (Miroveisi, 2014, p. 155).

For example, Article 2 of the Charter of Economic Rights and Duties of States, adopted in 1974, provides that states must be able to pay adequate compensation in the exercise of their right to nationalize foreign property, or under Article 1 of the Protocol of the Council of the European Union (1952),

concluded in Paris, nationalize, provided that the damage to investors is fairly compensated, it is considered the rights of the nation and the sovereign authority of countries (Rostamzadeh, 1391, p. 7).

According to Article 9 of the Iranian Foreign Investment Support and Encouragement Act adopted in 2002, the legislator has introduced the nationalization of property and expropriation of a foreign investor subject to appropriate compensation, which is equivalent to the "real value" of the expropriated capital.

In the following, different methods of compensation and opinions about it, as well as the existing procedure in this regard are mentioned.

#### **4. Compensation Methods**

In this part, the methods of compensation, the views on the issue are considered.

##### **4.1. Return of Property or Restoration of the Previous Status**

In the first place, compensation for an act contrary to international law is in the form of restitution or return of property, otherwise payment of an amount equal to the value of the property. Under English law, the rejection of the same property is called "Specific Restitution" and its payment is called "Equivalent Restitution" (Abed Khorasani, 2000, p. 111).

The basis of this action is the support of property, even if the respondent acted in good faith, it does not matter in nature, because what matters is the property belonging to the plaintiff, not the misconception of the plaintiff. This is the position of international law. In principle, material property is subject to return. In the case of immaterial property such as concessions, license, intellectual property right, etc., restoration to the previous status is considered as return of property. In the case of legal entities, if they have been dissolved according to the law of the place of establishment, the property has been confiscated by re-forming and compensating the damage caused for the period of temporary death of such persons. The basis for the return of property in international law is the rule of restoration of the former status (ibid., pp. 111 and 112). Return of property or restoration of the former status is illegal only if in cases of expropriation, because in legal cases expropriation according to its principles is compensation, and in the cases provided for by the payment of compensation. Compensation in the expropriation of illegal property is a secondary method of compensation and only in cases where it is not possible to dispossess the property or restore the status quo ante.

##### **4.2. Compensation**

Regarding the amount of compensation to be paid and calculation methods and other attributes, various theories have been raised, which will be discussed below.

- 4.2.1. **Immediate, Sufficient and Effective Compensation:** Immediate, adequate, and effective compensation is known as the Hall Formula, and was first mentioned in a 1938 note by the US Secretary of State to the Mexican government alleging expropriation of US-owned land in Mexico. The "Hall" formula for effective compensation requires that, firstly, the compensation be paid in cash and non-cash property, both movable and immovable, cannot be paid as compensation, and secondly, the paid currency can be easily converted and subject to property tax. Prompt also refers to the prompt and uninterrupted payment of compensation agreed between the investor and the host government or the ordered compensation. If the total amount payable is determined immediately, the compensation can be divided into installments. In such a case, according to Dr. Wallace, interest should also be attributed to it (ibid., pp. 114 and 115).

In case of late payment, profit and interest forecast is common and even prompt is required. As for the adequacy of the compensation paid, despite the fact that it has been approved and emphasized by almost everyone and has even been accepted as a principle in international jurisprudence and arbitration.

- 4.2.2. **Lump Sum Compensation:** According to this method, the expropriating country agrees to pay a lump sum for all existing claims to the citizens of the claiming state. In this case, the claimant state usually distributes the amount received among its citizens in proportion to the expropriated capital through the National Litigation Commission. Special arbitral tribunals have been set up in this regard, the most important of which in recent decades is the Iran-US Claims Tribunal, which was established in 1981 on the basis of Algerian statements to hear the US and Iranian nationals' claims against governments of Iran. For European countries, one of the disadvantages of paying lump sum compensation is that only a fraction of the total financial value is paid. For example, in the case of nationalization of the Suez Canal Company by the Egyptian government in 1956, the problem of compensation was finally resolved between that government and the Suez Canal Company two years later, during which an amount was paid in installments over five years (*ibid.*, pp. 114-115).
- 4.2.3. **Appropriate Compensation:** under this theory, the value of the property acquired, the damage done to the injured citizen, the financial reserves of the dispossessing government, and possibly other political considerations should all be considered. According to some authors, the practice of governments is to pay part of the compensation, and they believe that if the damages were to be adequate, expropriation would be impossible and the expropriating country would fail. Today fair compensation has replaced adequate compensation and the meaning of that compensation is less than the total price of the property. To strengthen their opinion, they have referred to the arbitral award of Amin Oil regarding the meaning of appropriate compensation, which states: "To determine appropriate compensation, it is better to refer to the circumstances of the case rather than to abstract theoretical decisions" (*ibid.*, pp. 116 and 117). However, this definition in no way implies that the concept of appropriate compensation is merely the payment of less than the value of the seized property. On the other hand, some authors believe that the concept of appropriate compensation requires that if the expropriation is legal; compensation equal to the normal value of the confiscated property must be paid in the event of expropriation and if the expropriation is illegitimate, the claim of non-profit is also justified. (Rostamzadeh, Amin, 2012, p. 13).
- 4.2.4. **Compensation based on the value of the active institute:** the general implication of this theory is that the compensation of the foreign investor should be made as if there was no expropriation and the foreign investor has continued to operate under the existing contract. Determining compensation in this method requires that in addition to the value of fixed assets and their interest, the loss of prospective profit that a foreign investor might earn if the activity continues, should also be taken into account.

In some judgements, the future benefits have not been admissible, even though the expropriation is illegal, because any assessment of damages in this way has been considered purely theoretical (Drake, 1992, p. 456). In other words, in terms of suspicion and probability, it has not recognized the disadvantaged beneficiary to be claimed, because it might not have benefited from the foreign investment income despite the non-expropriation, and it might have suffered a loss.

### 4.3. The Position of Customary International Law on the Method of Payment

#### 4.3.1. Procedures based on the Domestic Laws of the Countries

Developed countries in their legal documents on foreign investment refer only to immediate, non-discriminatory and effective compensation, and there is no mention of adequate compensation. An example is Article 4 of the United States Foreign Investment Act<sup>1</sup>. In contrast, developing countries have tried to attract foreign investors by including appropriate compensation in their laws. For example, it can be referred to the Encouragement and Support of Foreign Investment Act in Iran, adopted in 2003, which in Article 9 states how to pay compensation. Under this article "Foreign investment will not be expropriated or nationalized unless ... in return for appropriate compensation based on the true value of that investment immediately prior to expropriation." Iranian law, by inserting the condition of proper compensation based on the real value of the property, has in fact adopted a different rule from the United States` for this purpose. It is worth noting that often other countries have followed the same criteria. As a result, it can be seen that domestic law has not been able to resolve the ambiguities of the concept of compensation in any of the above theories and to express the method of determining compensation. The only thing that can be deduced from domestic law is that none of the countries in the world has provided for non-profit compensation or compensation for future profits in their domestic law.

#### 4.3.2. Procedures based on the Treaties

##### 4.3.2.1. Investment Treaties

The model used for foreign investment treaties is usually the same in our law and in other legal systems (Ali Dosti Shahraki, 2009, p. 86). In these agreements, after declaring that the host government has the right to confiscate or nationalize the property of investors in exceptional cases, subject to legal conditions; they provide criteria for how to determine compensation and its conditions. For example, Article 5 of the Investment Encouragement and Mutual Support Agreement between the Government of the Islamic Republic of Iran and Hungary which is one of the most recent of these treaties, describes compensation as "effective, appropriate and immediate compensation ", regarding the assessment of compensation, he stated that the mentioned compensation is equal to the market value of the confiscated investment immediately before the confiscation. In another treaty that the Islamic Republic of Iran has concluded with Austria, the criterion for determining compensation in Article 5 is "effective and sufficient prompt compensation", the basis for assessing compensation in paragraph 2 of the same article is "Fair value of the investment market immediately before confiscation or expropriation."<sup>2</sup>

##### 4.3.2.2. Claims Settlement Agreements

Settlement of claims in some cases is done in the form of lump sum and joint agreements and is considered as a way to resolve investment disputes. However, the Iran-US Claims Tribunal in its ruling in the Sadko case found that the International Court of Justice and the International Courts of Arbitration seriously questioned the value of such compromises as evidence of customary law. The settlement agreements are based on considerations that often include elements other than legal elements. "And this kind of agreement can be so inspired by non-legal considerations that it is very difficult to make them legally commonplace, and it has been strongly argued that conciliatory states have made the content of such compromises binding under international law. Has questioned the value of these agreements and has instead accepted other methods of settlement and compensation that are negotiated and implemented

<sup>1</sup> To view the law, see:

<http://www.sice.oas.org/Investment/NatLeg/US/USFIAC.asp>

<sup>2</sup> To see more examples, see: Article 6 of the Agreement on Encouragement and Mutual Support of Investment between the Governments of Iran and China, 2004; Article 5 of the Agreement on Encouragement and Mutual Support of Investment between the Governments of Iran and France, 2003; Article 4 of the Agreement on Encouragement and Mutual Support of Investment between the Governments of Iran and Italy, 2003.

between governments and foreign companies (Drake, 1992: pp. 452 and 453). It is worth noting that in these agreements, compensation has never been paid in excess of the value of the confiscated assets under the heading of non-profit or interest on fixed assets. (Ibid. p. 452).

#### **4.4. Procedures based on Judicial or Arbitration Decisions:**

So far, the domestic laws of countries and international treaties have been reviewed and it has been determined that none of these sources mentions compensation in the event of illegal expropriation; the reason is adequate, too, and that is that no government or foreign investor will enter into a treaty that concludes recognition of the illegal action of the investing government, but in practice we are witnessing a wide range of illegal expropriations by host governments under various pretexts. In this regard, as the case may be, many arbitral and judicial rulings have been issued by various authorities, and in practice, there have been differences in the amount of compensation paid between legal expropriation and illegal expropriation (Marfin Investment Group Holdings, 2003: pp.35-169; Abaclar and Others, 2011: p.312).

##### *4.4.1. Judgments Relating to Illegal Confiscation*

The method of compensation in case of illegal expropriation is the expropriation of property or the restoration of the previous status, the order for compensation must be in such a way as to compensate the damage in the best possible way. The second point is that in cases of illegal expropriation, the benefits of the confiscated property can be secured and collected only for a relatively short period of time, i.e. until the issuance of the judgement. This theory has also been followed in the jurisprudence (Drake, 1998: p. 463). In the BP case, the Libyan government nationalized capital and foreign investor concessions for political purposes, and in the TAPCO case, the Libyan government nationalized the assets of foreign company in contradiction with the terms of the contract. In both cases, the reviewing authority legitimized the act of nationalization and ordered the situation to be restored. However, in the case of BP, because it was not possible to restore the status quo ante, the reviewing authority issued an order for "total damages"(Ali Dosti Shahraki, 2009, p. 92).

##### *4.4.2. Judgments relating to Legal Confiscation*

There are a few cases in which Judgments and rulings have confirmed expropriation (ibid., p. 469). An example of a claim for compensation for legal expropriation in the Iran-US Claims Tribunal has been issued in the case of Amoco International Finance Corporation v. Iran (IUSCT Reports, vol. 8, pp. 164-265). In paragraph 227 of the Award, the Court did not consider the application of the "cash flow reduction" method, which involves the payment of non-profits, to be appropriate for expropriation because it believed that such an award would lead to unfair treatment and deprivation of the other party. Precisely for this reason, the Tribunal, based on the "book value" method, which merely guarantees the payment of fixed assets, considered it unfair, and finally found the assessment criteria based on "adequate compensation" fair and proceeded to issue a judgment (Drake, 1992: pp. 476 and 477). It appears that in the case of legal expropriation, the amount of compensation paid is equal to the value of the fixed assets plus the interest on these assets until the issuance of the ruling.

#### **4.5 Property Valuation Methods**

##### *4.5.1. Net Book Value*

In this method, first, the value of capital consists only of the sum of the value of tangible (physical) assets and tangible assets. Second, the value of assets is determined based on the investor's costs to buy or earn it (Ali Dosti Shahraki, 2009, p. 81). It seems that what is meant by tangible assets is intangible assets such as business rights, trademark rights, etc., which have been acquired and established during the investor's activity, provided that it is stated in the investor's assets before the expropriation. In

short, net book value is the recorded price of fixed assets in foreign investor documents. According to the award of "Aminoil" case, the net book value is only suitable in cases where it is a new investment (Drake, 1992, p. 440).

#### *4.5.2. Replacement Value*

What is meant by the replacement value of confiscated capital is the day value of the capital in other words, the replacement value is equal to the costs of creating and running an investment, such as expropriated investment at the time of the assessment. (Award in the case of Amoco International Corporation). In other words, in order to obtain the replacement value of confiscated capital, it is necessary to estimate how much money should be spent at the time of the assessment of compensation so that we see an investment similar to expropriated capital. In this method, the amount of compensation may be less or more than the net book value method, but in principle, given that in most countries inflation is always on the rise, the compensation in this method is often higher, of course, the price difference between the two methods will be eliminated by updating the prices (Drake, 1992, p. 441).

#### *4.5.3. Depreciated Replacement Value*

The method of calculating compensation in the depreciated replacement value method is as follows initially, the replacement value of capital is calculated and then, as the time elapsed since the investment was made, a percentage of it is deducted as depreciation expense, there is no specific basis for this method, it can be said that its basis is the decline of capital over time, explaining that almost all investments are limited to a certain time and after the mentioned period, continuing the activity requires another agreement that may not be reached for any reason, therefore, the passage of time in itself reduces the value of the asset, in addition to the fact that the price of equipment used by the investor due to depreciation due to continuous use is not the same as its price in the market regardless of inflation and it is always lower. It is worth mentioning that this method of calculation has been used in the case of "Aminoil" without explaining the nature and how to calculate it (Ibid., p. 441).

#### *4.5.4. Market Value*

The market value of capital is that if the investor's capital were not confiscated or nationalized, what would be the price paid to the foreign investor for transferring it in the market. The price obtained is the market value of the capital. According to the arbitrator of the Amoco case, "the market value (of that asset) is apparently the best criterion for determining the amount of compensation payable in the legitimate confiscation of an asset. This is because this rule is the most objective rule and can be determined better than other rules if there is a market for the same assets or assets like them, i.e. when free trades are continuously traded on such assets. In practice, market value has often been used to assess compensation in confiscation."<sup>3</sup>

This is especially true of the confiscation of certain assets, such as real estate, that are required by the government for specific public works. Market value is also often cited in the case of nationalization, in which shares of a nationalized institution are traded freely on the stock exchange. On the other hand, when confiscated assets or similar or comparable goods do not have a free market, the least that can be said is that the market value is a vague concept. (It may be more accurate to say that it is misleading). The truth is that without a market that determines the real value of the market, we have to resort to other methods of evaluation. (Amoco International Corporation case judgment, paragraphs 217, 219 and 220)

#### *4.5.5. Fixed Percentage Determination*

Courts generally award interest on the value of assets for a period of time from the date of expropriation to the date of issue or enforcement. The logic and basis of this is adequate, because the

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<sup>3</sup> For example: *Fraport AG Frankfurt Airport Services Worldwide v Republic of the Philippines*, ICSID Case No. ARB / 03/25, Decision on Jurisdiction August 16, 2007, pp236



owner of the capital has been deprived of the value of his assets since the date of expropriation, and if the property is considered as "capital" from which the investor is no longer able to earn money, the owner is also entitled to receive interest on such capital. In 1982 and 1983, for example, the arbitral tribunal usually ruled at a fair interest rate of 10 to 12 percent per annum. Of course, lower percentages have also been ruled out (Drake, 1992: p. 442).

#### *4.5.6. Discounted Cash Flow*

Cash flow discounting is a method of determining the expected return of a foreign investor who earns his income if he does not lose ownership and continues to operate until the end of the investment period. Determining such a profit requires two factors. First, estimating the net profit that a company may receive in the future, to calculate the net profit, also known as the "net future value of liquidity"; initially, the total income that the company may receive in the future is predicted, and then the final costs of operating and maintaining the capital are deducted from the total income. Second, an appropriate discount rate is selected and based on it, "future net profits" are determined to approach the "real value". To determine the discount rate, three factors of inflation, risk and real interest rate (i.e. the minimum profit without which the investor would not be willing to invest) are considered. One of the authorities that have ordered compensation on the basis of discounted cash flow is the Oxide Arbitration Court. In the case of "Amoco et al. v. the Republic of Indonesia" dated November 20, 1984 (Shahraki Ali Doosti, 2009: p 80). The Iran-US Claims Tribunal in the case of "Start-Housing" has used this method to assess the damage and determine compensation (Drake, 1992: p. 449).

### **Conclusion**

Under international law, the act of nationalization and property confiscation of investors is the last resort to secure the public interest of society; where nationalization has nothing to do with the public interest of society or the government can take other measures, such as contract amendment or taxation, etc., to serve the public interest of society, there will be no need for nationalization and confiscation of investors.

Otherwise, in international law, this act of the government is considered an illegitimate act and can have several legal and political consequences for him, the most basic of which is the government's duty to adequately compensate the damage to the investor and after the reciprocal action of the investor subordinate government, the property confiscation and the ownership of the investors of the government of the country is wrong.

As a result, it can also be said that in general, compensation for illegal expropriation is based on the restoration of the status quo ante. The best manifestation is to return the property to its owner and pay the benefits when the owner is deprived of his property. If it is not possible to reject the property, compensation should be paid through compensation. In the case of unlawful expropriation, compensation must be paid in a manner that provides the investor with the closest possible return to the status quo ante. Therefore, according to the prevailing practice of international authorities regarding illegal expropriation, according to the value theory of the institution, in addition to fixed assets and interest on assets, non-profit is also judged on the basis of discounted cash flow.

However, in the case of legal expropriation, compensation is based on its principles only through the payment of compensation. The amount of compensation in such cases is without taking into account the non-profit and includes only fixed assets and interest. According to the prevailing practice of international authorities regarding illegal expropriation, according to the value theory of the institution, in addition to fixed assets and interest on assets, non-profit is also judged on the basis of discounted cash flow. This theory is favored and supported by foreign investors and first capital countries. In the theory of appropriate compensation; the value of assets is determined in terms of the circumstances of the case and

on the basis of justice. All of these methods may be used to assess impaired assets in this theory, with the exception of cash flow discounts, which are specific to unlawful expropriation. As a result, it is not possible to say which of the investable countries or first capital is the preferred theory. So if we want to prefer one theory to another and introduce it as a theory that can have maximum support from foreign investors, adequate compensation theory, in which compensation is immediate and effective, would be a smart choice.

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