

Variations in the Application of the Benefit Principle in the Process of Determining Compensation for the Expropriation of Real Estate

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Abstract: The objective of this article is to determine the extent to which the inclusion of the benefit principle affects the amount of compensation in expropriation procedures for road investments. An additional area of research is the identification of discrepancies in the practical application of this principle in the context of administrative court case law. The analysis examines the practical consequences of adopting different interpretations for specific properties subject to expropriation. It demonstrates how the chosen interpretation of the benefit principle affects the calculated compensation. The findings indicate the need to revise the regulations regarding the methodology for estimating real estate value, which forms the basis for determining compensation for expropriation.

Keywords: real estate value, benefit principle, court case law

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1. Introduction

The expropriation procedure is most often used for road construction purposes. The development of the public road network, its ongoing expansion and modernization, is the foundation of the country's long-term economic and societal development. Prior to joining the European Union in May 2004, Poland had the least developed road infrastructure among all candidate countries at the time [1].

In order to intensify road construction, an act on special rules for the preparation and implementation of public road investments (referred to as the "Special Road Act") [2] was passed, which facilitated the acquisition of land for these purposes. Based on this Act, decisions on granting permits for road investments are issued.

The decision to authorize the execution of road investments is a type of consolidated administrative decision [3] that has several key effects, including:

- determining the location of a road investment;
- approving the division of real estate;
- expropriating rights to properties located within the boundaries of an investment;
- approving the construction design and granting a building permit;
- limiting the use of adjacent properties to enable the reconstruction of technical infrastructure and roads of other categories (if necessary).

These decisions result in the acquisition of real estate by operation of law, which thereby constitutes an act of expropriation. Compensation for eligible entities is determined in separate proceedings, often at a later date than the date of expropriation and transfer of the property to public entities.

The process of determining compensation is fraught with problems, including the unresolved legal status of real estate expropriated by operation of law [4].

A controversial issue concerns the compensation system grounded in the so-called "benefit principle." This principle states that the value of real estate for expropriation compensation purposes is determined according to its current use, unless the intended use of the real estate, consistent with the purpose of expropriation, results in a higher value [5].

According to the author of publication [6], eliminating the benefit principle would be a manifestation of social justice. The author argues that compensation should be provided for what is expropriated.

Publication [7] addresses the issue of whether to continue applying the benefit principle in the procedure for estimating real estate value when determining compensation. It identifies specific elements that should be incorporated into compensation calculations to reflect the compulsory nature of real estate acquisition rather than relying solely on the benefit principle.

Compensation issues continue to generate dissatisfaction among expropriated owners, with questions raised not only about the amount itself but also about the

forced deprivation of rights [8]. In some countries, such as Ghana, forced land acquisition has had a negative impact on socio-economic conditions, including landlessness, poverty, and increased tensions in state-community relations [9]. However, in many cases, expropriation is necessary for the needs of society, social and economic development, and environmental protection. Best practices in this area are discussed in publication [10].

The expropriation procedure for road investments differs in other countries, for example in Germany [11], where the land acquisition process includes the following elements:

- preliminary negotiations for voluntary disposal;
- an application for expropriation;
- a formal expropriation procedure during which the property's designation for public purposes and the fulfillment of other expropriation criteria are assessed, and compensation is determined.

In Germany, approximately 10% of properties designated for public purposes are subject to expropriation. The remaining 90% are acquired through civil law agreements [12].

In France, the expropriation process for public investments consists of two stages [13]: an administrative stage and a judicial stage, in which the expropriation judge rules on expropriation and determines the amount of compensation.

A separate issue is the restriction of ownership rights to properties designated for public purposes in local plans before actual expropriation, which is referred to as "legal confiscation without expropriation" [14]. Compensation is typically based on economic loss directly resulting from the acquisition of a property [15] and does not adequately compensate the expropriated party for the impact that the construction of new infrastructure may have on the land in question [16].

The issue of insufficient compensation for farmers whose land is expropriated for the mining industry in China is discussed in [17]. In African countries, customary real estate rights are insufficiently considered in compensation for expropriated properties [18].

Another issue [19] is whether the effects of changes in land use and development value should be considered if only part of a property is subject to compulsory acquisition. This issue was also addressed in [20] due to the decline in the value of the remaining land.

Delays in compensation payments to former owners should be viewed negatively [21]. This is undesirable even though the right to compensation for the loss of ownership of real estate, for example, in Poland, is not subject to a statute of limitations and a party to expropriation proceedings may claim it at any time [22]. However, the need to update a valuation report due to the passage of time should be taken into account [23]. In the case of expropriation of real estate for public purposes, compensation may also be claimed by the mortgage creditor [24]. The process of

settling compensation claims in Poland is prolonged, in part due to former owners and perpetual usufructuaries challenging the proposed compensation amount, as well as raising objections to valuation reports regarding the estimated value of land and its components [3]. Ambiguous regulations also pose a problem.

Compensation in Poland does not include the costs and fees associated with acquiring new real estate, which particularly affects owners who are forced to relocate [25]. Therefore, it would be justified to increase the compensation by including the costs of acquiring replacement real estate, relocation costs, temporary rental of an apartment [26], and also changes in income and lost profits [27].

Unlike in Poland, compensation in the UK for expropriated real estate [28] includes, in addition to the market value, intangible losses related to expropriation, as well as the costs of relocation, the adaptation of replacement premises, and, in the case of businesses, temporary and permanent loss of profits. Compensation is determined at the time of the deprivation of rights to the land.

In Sweden, the basis for determining compensation for expropriation is the so-called "tax value" (corresponding to the Polish "catalog value"), which is approximately 75% of the market value. The author of publication [29] states that the compensation provisions of the CPK Act are consistent with the general assumptions of expropriation law and thus reproduce its unclear solutions regarding the determination of the amount of compensation.

Currently, the so-called "benefit principle" introduced in Polish expropriation regulations is the subject of extensive discussion in Poland. This principle involves adopting the intended use resulting from the purpose of expropriation when estimating the value of real estate, provided that it results in a higher value.

The origins of the benefit principle date back to the 1970s and 1980s, when agricultural land was seized en masse, primarily for residential construction purposes. This principle involved increasing compensation for farmers, especially when the farm was the only source of income. This was intended to compensate for the loss not only of real estate as an object of ownership, but also of a source of income [26].

According to the author of publication [6], the benefit principle is controversial because there is no justification for increasing compensation based on the purpose of expropriation. Importantly, the norms defining the benefit principle are interpreted differently; in practice, two different interpretive views prevail.

Publication [30] points to a dualism of administrative court case law in interpreting the provisions defining the benefit principle.

It is a flawed interpretation [31] to assume that the implementing regulations fully govern the issue of determining the market value of land designated for or occupied by public roads and that "in this respect, they are *lex specialis* with respect to other regulations relating to the valuation of expropriated real estate."

In legislation, namely [5], and special acts, including the CPK Act [32], it is assumed that compensation should correspond to the market value of the expropriated right. According to [29], endorsing this position does not constitute agreement on

how to increase or decrease this value in specific situations, and therefore does not imply agreement in relation to the achievement of a specific social purpose.

The benefit principle does not apply in other countries [26]. For example, in the French Expropriation Code, the designation of property for a public purpose has no influence on the compensation process [13]. Similarly, in Germany [6], when determining compensation, no change in the value of the real estate resulting from the planned expropriation is considered [33].

In the British legal system, the principle of not taking into account the benefit of expropriation is referred to as the “no-scheme rule” [34]. This principle has been regulated in the Land Consolidation Act since 1961.

A similar structure is in force in Canada [35]. Publication [7] addresses the advisability of continuing to apply the benefit principle in the procedure for estimating the value of real estate for the purpose of determining compensation. Due to the compulsory nature of real estate acquisition, compensation should consider other elements besides the benefit principle.

2. Analysis (State) of the Problems

An analysis of administrative court case law in Poland indicates that there are divergent views on determining the value of real estate taken over for public roads, particularly regarding the application of the benefit principle. According to the current model, the benefit principle requires real estate to be valued according to the most advantageous use for the expropriated party. This procedure is not applicable in most Western European countries.

Appraisers interpret the benefit principle in different ways, resulting in unequal situations for expropriated individuals regarding the amount of compensation determined. Furthermore, the mechanism for determining compensation based on the benefit principle raises significant doubts in the case law of administrative courts.

Current research aims to identify problems related to the inconsistent application of this principle, due to, among other things, imprecise regulations, and divergent lines of judicial case law.

The objective of this article is to answer the following questions:

- To what extent does the consideration of the benefit principle affect the amount of compensation in the compensation procedure for road investments?
- How are the norms defining the benefit principle interpreted when determining compensation for expropriation for road investments in the context of administrative court case law?
- What discrepancies exist in the practical application of this principle?
- To what extent do differing views in judicial decisions affect the amount of compensation?

An additional research area is to determine, using the example of a selected city, the following:

- the scope of real estate acquired by operation of law for the purpose of implementing road investments pursuant to the Act [2];
- the scope of real estate acquired by operation of law as a result of geodetic separation for roads [5];
- the amount of compensation for expropriation in the above procedures.

The research thesis of the article is that compensation regulations require modification to ensure uniform application of the benefit principle in expropriation compensation proceedings.

3. Materials and Methods

The subject of this research is the regulations and procedures for determining compensation for the expropriation of real estate designated for road investments. Court case law was analyzed to determine how the standards governing compensation procedures are interpreted in the context of the benefit principle. The research also addressed discrepancies in the practical application of this principle in light of court case law.

To illustrate the scale of the problem, quantitative research was conducted using a selected area (the city of Krakow) as an example. The research covered:

- the area of land expropriated for the municipality under decisions authorizing the implementation of road investments in 2014–2022;
- compensation for expropriated land under decisions authorizing the implementation of road investments in 2014–2022 and compensation for land acquired by operation of law for the benefit of the municipality as a result of its designation for roads in the spatial development plan, in 2003–2023.

The above quantitative research concerns the analysis of data obtained from the Treasury Department of Krakow City Hall. This data comes from compensation proceedings for real estate expropriated for the benefit of the municipality and the City Treasury based on decisions permitting road investments, as well as from real estate acquired as a result of land designated for roads within the city.

The impact of differing interpretations of the benefit principle on the amount of compensation for expropriated real estate was analyzed. The study was conducted using the example of a property located in the city of Krakow, acquired by the municipality pursuant to a decision permitting the implementation of a road investment. The characteristics of this property were determined, including its intended use in the spatial development plan. Further analyses were subsequently conducted to determine its approximate value. Transaction prices were analyzed

for real estate designated for roads and greenery on the local market in the first half of 2025 in the Nowa Huta district. The approximate value of the expropriated property was then determined in two variants, based on different interpretations of the benefit principle. This allowed for a presentation of the economic consequences of applying different interpretations of the benefit principle in compensation proceedings.

4. Results and Discussion

4.1. Selected Data on the Expropriation and Compensation Process

A significant aspect of expropriation procedures under the Special Road Act [2] is the determination of compensation, which in practice often requires clarifying the legal status of land taken over for public roads. Properly determining the condition of a property, and therefore correctly determining the amount of compensation, is crucial for the rational spending of public funds while simultaneously taking into account the legitimate claims of former owners. The process is based on the correct estimation of a property's value for the purposes of determining compensation. Inconsistent interpretations of the standards governing compensation procedures pose a significant problem in practice.

To illustrate the scale of the problem, the area of land expropriated under the Special Road Act [2] and compensation paid in the city of Krakow between 2014 and 2022 are presented below (Table 1).

Table 1. Land expropriated in 2014–2022 under decisions authorizing the implementation of road investments and the amount of compensation

Expropriated Land	Area [ha]	Compensation [PLN]
Road investments for the Municipality of Krakow	53.4567	184,872,811
Road investments for the City of Krakow – a city with district rights	23.1323	75,544,320
Total	76.5890	260,417,131

Source: own research based on data from the City Treasury Department of the Municipal Office of Krakow

During the implementation of road investments in the analyzed period, land with an area of 76.5890 ha was acquired by the Municipality of Krakow and the City of Krakow – a city with district rights, and compensation for real estate expropriated by operation of law was determined in the total amount of PLN 260,417,131.

Compensation claims also apply to properties acquired by operation of law, geodetically designated for roads under Article 98 of Act [5].

Under this provision, for plots of land geodetically designated for public roads, whose ownership rights have been withdrawn from the previous owner, compensation is due in an amount agreed upon between the previous real estate owner and the competent authority. In the absence of agreement, at the request of the owner, compensation is determined according to the rules and procedures applicable to the expropriation of real estate.

In 2003–2023, a total of 794 agreements were concluded for plots designated for roads, and 99 decisions were issued, based on which compensation was paid (Table 2) in the amount of PLN 91,192,527 for the acquired land area of approximately 41 ha. These actions enabled the owners to obtain compensation for the loss of land, and the city obtained a reserve of land needed for the construction of traffic routes.

Table 2. Compensation for land designated for roads in 2003–2023

Year	Land Area [ha]	Amount of Compensation [PLN]
2003–20023	approx. 41	91,192,527

Source: own research based on data from the City Treasury Department of the Municipal Office

The amount of compensation was determined using the benefit principle, meaning that in many cases it was higher than the market value of the expropriated properties. In assessing the effects of the benefit principle, the differences between the prices of land, e.g., agricultural land and road land, are important. Publication [7] presents the results of an analysis by the Ministry [2] of data provided by the General Directorate for National Roads and Motorways (GDDKiA), which conducts the largest number of expropriations of properties for public purposes. To illustrate the effects of the benefit principle, several specific expropriations of properties for roads in various locations in Poland that took place between 2020 and 2022 were compared. The analysis provided examples of differences (Table 3) in the amount of compensation for expropriation of agricultural land resulting from the application of the benefit principle.

Research has demonstrated that for the expropriation of land with an area of 53.8301 ha, compensation based on the benefit principle was determined at approximately PLN 59,923,019. Assuming the current designation of the real estate, i.e., eliminating the benefit principle, the amount of compensation for the land would be approximately PLN 4,157,130, that is, over 13 times less.

The current research supplements and extends the aforementioned analyses and focuses on the ambiguous legal norms defining the benefit principle, as well as on divergent case law and examines their economic implications.

Table 3. Compensation differences for expropriated agricultural land

Location	Average value of 1 m ² of agricultural land [PLN]	Value of 1 m ² of land designated for road construction [PLN]	Area of expropriated real estate [m ²]	Amount of compensation paid [PLN]	Amount of compensation without considering the benefit principle [PLN]	Difference in compensation due to the benefit principle [PLN]	Difference in compensation [%]
Węgierska Góra	3.00	32.33	3,247	104,975.51	9,741.00	95,234.51	977
Smardzew	3.00	36.00	15,000	540,000.00	45,000.00	495,000.00	1,100
Lućmierz	3.00	35.90	20,000	718,000.00	60,000.00	658,000.00	1,096
Warsaw Wilanów	50.00	650.00	25,000	16,250,000.00	1,250,000.00	15,000,000.00	1,200
Radziejowice Przeszkoda	8.00	50.00	18,000	900,000.00	144,000.00	756,000.00	525
Gadka, Kolbiel, Otwock	6.00	45.00	1,289	58,005.00	7,734.00	50,271.00	650
Kmiecin, Nowy Dwór Gdański	5.50	43.56	363,223	15,821,993.88	1,997,726.50	13,824,267.38	692
Poznań – Konin section	5.00	500.00	40,000	20,000,000.00	200,000.00	19,800,000.00	9,900
Kamień, Szemud municipality	8.43	105.25	52,542	5,530,045.50	442,929.06	5,087,116.44	1,148
Total	-	-	538,301	59,923,019.89	4,157,130.56	55,765,889.33	1,341

Source: own research based on [12]

4.2. Divergences of Opinion on the Application of the Benefit Principle in the Compensation Determination Process Based on Court Case Law

The amount of compensation is determined after obtaining an expert's opinion on real estate value [5]. When selecting the appropriate approach, method, and technique for real estate valuation, the expert considers, in particular, the purpose of the valuation, the type and location of the property, its intended use in the local plan, the condition of the property, and available data on prices, income, and characteristics of similar properties. Pursuant to § 49 (1) of implementing Regulation [36], the market value of a property for the purposes of determining compensation for properties expropriated or acquired by operation of law under the Act of 10 April 2003 on special rules for the preparation and implementation of public roads investments [2] is determined by taking into account the condition of the property on the date of the decision, the price of the property on the date of determining the compensation, and its intended use while disregarding the findings of the decision.

An analysis of administrative court case law indicates divergent views regarding the principles for determining the value of real estate acquired for public roads under Act [2]. These differences concern, among other things, whether compensation for a property covered by a road investment permit decision (Polish: ZRID), which on the decision date was designated for a public road, should be based on terms specified in § 49 of the 2023 Regulation [36] or whether the benefit principle, as set out in Article 134 (4) of the Real Estate Management Act [5], should be taken into account.

Under § 49 (4) of Regulation [36], if a property that was designated for a road investment on the date of the decision was expropriated or taken over by operation of law for the implementation of that road investment, the market value is determined by assuming that the property's intended use predominates among the adjacent land, unless the value can be determined by considering the transaction prices of road properties.

However, Article 134 (4) of Act [5] states that if the intended use of a property, consistent with the purpose of expropriation, increases its value, the value of the property for compensation purposes is determined according to the alternative use resulting from that intended use.

The application of the above-mentioned regulations has given rise to doubts and discrepancies in interpretation, and consequently, at least two leading lines of case law have emerged regarding the understanding of the benefit principle.

According to the first view (**View 1**), the principle arising from Article 134 (3) and (4) of the Act should be applied [5]. At the same time, it was stated that § 49 (4) of the 2023 Regulation [36] (formerly § 36 (4) of the 2004 Regulation [37]) should not be treated as a special provision in relation to Article 134 (4) of Act [5].

In the courts' view within this line of jurisprudence, conflicts of legal norms are resolved according to the hierarchical rule; therefore, where there is doubt as to

whether the provisions of an act and a regulation can be reconciled, priority should be given to the act. This means, in the opinion of the panels representing the first view, that the only permissible method of determining the value of real estate for compensation purposes is to base it on a comparable property designated for road construction whenever the purpose of expropriation increases the value of the expropriated real estate, unless such a method of determining the value is not possible due to the lack of similar properties.

Judgments adopting this interpretation indicated that, in order to determine the value of a property for purposes of determining compensation for real estate expropriated for a road investment, the following steps should be followed to comply with the benefit principle [38, 39]:

1. determine the value of the property according to its current use (i.e., the intended use prior to expropriation);
2. determine the value of the property according to an alternative use resulting from a use consistent with the purpose of expropriation (i.e., road use);
3. compare these two values to determine whether the use consistent with the purpose of expropriation (road use) results in an increase in value;
4. indicate the greater of these two values as the market value of the real estate, which is the basis for determining the amount of compensation.

Therefore, above-mentioned procedure should be followed in order to comply with the benefit principle.

According to the second view (**View 2**), the application of the rule in Article 134 (3) and (4) of Act [5] was excluded where there was an increase in the value of real estate resulting from its intended use consistent with the purpose of expropriation. The adjudicating panels concluded that § 49 of Regulation [36], establishing detailed principles for the valuation of real estate expropriated for public roads, comprehensively governs the determination of the market value of land designated and acquired for public roads. In this respect, it is *lex specialis* with respect to other regulations relating to the valuation of expropriated real estate, including Article 134 of Act [5].

The determination of the value of real estate acquired for roads under the special act based on road transactions, invoking the benefit principle under Article 134 [5], was deemed inadmissible. Courts representing this view held that, to take into account the benefit principle, § 49 of the 2023 Regulation [36] should be applied. According to it, if the use of real estate consistent with the purpose of expropriation increases its value, the market value of the real estate is determined as follows [40]:

- the value of plots of land designated for new public roads or for the widening of existing roads is the product of the value of 1 m² of land from which these plots of land were designated and their area;
- the value of real estate occupied by public roads is the product of the value of 1 m² of land with the predominant use among the adjacent land and its area, increased, based on real estate market research, by no more than 50%.

A similar view follows from the judgments: [41], [42], [43], and [44]. Due to divergent views in court case law, a seven-judge panel of the Supreme Administrative Court adopted Resolution [45] on May 27, 2025.

According to its content, the determination of the value of real estate expropriated or acquired by operation of law pursuant to Act [2], which on the date of the decision was designated for a road investment, should be made in accordance with § 49 (4) of Regulation [36] and, under the previously applicable § 36 (4) of the repealed Regulation [37], taking into account the benefit principle specified in Article 134 (4) of Act [5].

According to the Supreme Administrative Court, the statutory benefit principle under Article 134 (4) requires that the basis for calculating compensation for expropriated real estate be the intended use that is more favorable for the owner due to the increase in its value resulting from the investment attractiveness linked to the purpose of the expropriation. The determination of this value must be based on the more favorable intended use of the expropriated real estate, which would result in a higher value and, as a result, increase the compensation. A different interpretation would violate the principle of exclusively statutory restrictions on the exercise of constitutional freedoms and rights, as set out in Article 31, Section 3 of the Constitution of the Republic of Poland.

The Supreme Administrative Court found that applying the benefit principle better fulfills the constitutional standard of protection of real estate rights and the related right to just compensation, as referred to in Article 21, Section 2 of the Constitution of the Republic of Poland. However, the interpretation set forth in the resolution is unclear and, consequently, cannot yield uniform procedures.

4.3. The Impact of Divergent Case-Law Views on Compensation Amounts: an Example Based on a Selected Parcel of Real Estate

Ambiguous regulations and divergent interpretations in court decisions make it difficult to correctly determine the value of real estate for compensation purposes in road expropriation cases. This poses a challenge for real estate appraisers and administrative bodies implementing compensation procedures, particularly with respect to the application of the benefit principle. To illustrate this issue, this section analyzes how the competing interpretations of the benefit principle affect the valuation of real estate for compensation purposes. The economic consequences, depending on the adopted interpretation, are presented in two variants, illustrated by reference to a selected parcel. The first variant accords with View 1 as expressed in the case law, while the second variant is based on View 2.

The analysis involved a property located in Krakow, the Nowa Huta cadastral unit, expropriated for the construction of a public road pursuant to a decision authorizing the implementation of a road investment. According to the spatial development plan, the property is designated as green space. The owner is entitled to

compensation for the expropriation of the property effected by operation of law in favor of the Municipality. A study was conducted on the local market value of this property. The aim was to present, in an approximate form, the effects of differing interpretations of the benefit principle in the compensation process.

The market analysis showed (Table 4) that unit prices of road properties in Krakow on the local market in the first half of 2025 in the Nowa Huta district ranged from PLN 200 to PLN 800/m². An average price of PLN 500/m² was assumed. Meanwhile, prices of properties designated for green spaces in the same market in the Nowa Huta district ranged from PLN 60/m² to PLN 140/m². An average price of PLN 100/m² was assumed.

Table 4. Transaction prices of real estate designated for roads and green spaces on the local market in the Nowa Huta district in the first half of 2025

Purpose of Spatial Development Plan	Transaction Price Range [PLN]	Average Unit Price of Land [PLN/m ²]
Roads	200–800	500
Green spaces	60–140	100

Table 5. Characteristics of the expropriated real property

Property Characteristic	Details
Geodetic data of the expropriated property	cadastral district 49 cadastral unit: Nowa Huta, Krakow
Intended use in the spatial development plan	green space
Intended use under the decision authorizing a road investment	road
Type of road under the decision authorizing a road investment	municipality
Property area [m ²]	400
Type of real estate development	undeveloped; paved ground surface
Type of area served	highly urbanized areas with nearby commercial and service facilities
Restrictions	none

The characteristics of the expropriated property were determined (Table 5) and the approximate value was calculated in two variants based on different interpretations of the benefit principle (Table 6).

Variant I. The approximate value was determined taking into account View 1 in the case law, based on Article 134 [5] and transactions involving road properties. The average unit value is PLN 500; therefore, the approximate value of the entire property is PLN 200,000. Under this interpretation, applying Article 134 [5], even though the property was designated for green spaces, the amount of compensation, taking into account the benefit principle, is PLN 200,000.

Variant II. The approximate value was determined taking into account View 2 in the case law, i.e., based on § 49 of Regulation [36], and based on transactions involving properties designated for green spaces, increased by 50%. The average unit value of green spaces is PLN 100/m², so the value of the entire property, taking into account the 50% increase, is PLN 60,000. With this interpretation, the amount of compensation – considering the benefit principle – is PLN 60,000 (Table 6).

Table 6. Determining the approximate value of an expropriated property in two variants, in accordance with divergent case law

Conditions	Variant I According to View 1	Variant II According to View 2
Legal basis for the adopted methodology	art. 134 [5]	§ 49 [37]
Type of transactions considered in the valuation	transactions involving traffic areas	transactions involving green spaces
Additional indicators	–	increase of up to 50%
Unit value [PLN/m ²]	500	100
Value of the entire property [PLN]	200,000	60,000

Comparing the compensation amounts for properties with an area of 400 m², significant differences can be seen depending on the valuation method, which in turn results from the chosen interpretation of the benefit principle. The value of a property according to Variant I is approximately 3.33 times higher than the value according to Variant II.

5. Summary and Recommendations

The research confirms the negative impact of ambiguous standards and, consequently, divergent interpretations of the benefit principle on compensation claims arising from expropriation. The ambiguous nature of the provisions concerning the benefit principle leads to significantly different compensation amounts being awarded in comparable cases of expropriated properties.

The significance of the problem is demonstrated by the scale of application of standards relating to the benefit principle. For example, in Krakow, between 2014 and 2022, a total of 76.589 ha of land was expropriated based on decisions permitting the implementation of road investments, and compensation of over PLN 260 million was paid. The amount of compensation for land designated for roads was determined to exceed PLN 91 million.

The legal standards regarding the benefit principle, which originate from Article 134 [5], raise doubts not only about their validity but also about their inconsistent

application. Real estate appraisers apply these provisions inconsistently, which in turn results in court proceedings resolved in equally inconsistent ways. An analysis of administrative court case law indicates sharply divergent views regarding the principles for determining the value of properties acquired for public roads under the benefit principle. At least two leading, mutually contradictory lines of case law have emerged from the application of these provisions.

Based on these divergent views, the estimated amount of compensation due for the selected real estate was analyzed, separately for each interpretation as shown in Table 6. In Variant I, the approximate value was determined considering View 1 in the case law, based on Article 134 [5], using transactions involving road-designated properties, despite the land being designated for green space in the spatial development plan. Under this interpretation, the amount of compensation, considering the benefit principle, would amount to PLN 200,000. This results from relying on road transactions in the estimation procedure, in accordance with View 1.

In Variant II, the approximate value was determined by applying View 2 in the case law, i.e., based on § 49 of the Regulation [36], using transactions involving real estate designated for green spaces, adjusted upward by 50%. Under this interpretation, the amount of compensation, considering the benefit principle, would be PLN 60,000. This analysis illustrates the impact of varying interpretations of the benefit principle on the amount of compensation for a specific property. The compensation under View 2 is more than three times lower than under View 1.

According to legal doctrine, the benefit principle should be eliminated from the Polish expropriation law system. If it remains, it is necessary to modify the imprecise provisions in the Real Estate Management Act [5] and the Valuation Regulation [36]. The aim of the amendment should be to clearly define the method of valuation using the benefit principle and, consequently, the method of determining compensation for expropriation.

The research confirms the need for reforming the regulations regarding compensation for expropriation of real estate to ensure uniformity of procedures and administrative decisions, as well as compliance with the constitutional principle of just compensation.

The analyses conducted meet the research objectives and confirm the thesis presented at the beginning.

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Data Availability

Public data in this article include:

- area of land expropriated for roads and compensation paid for investment projects, sourced from the City Treasury Department of the Municipal Office of Krakow (Public Information Bulletin);
- transaction prices of properties designated for roads and green spaces on the local market.

Use of Generative AI and AI-Assisted Technologies

No generative AI or AI-assisted technologies were employed in the preparation of this manuscript.

References

- [1] Kozłowska M.K.: *Specustawa drogowa jako narzędzie prawne usprawniające realizację inwestycji drogowych w Polsce*. Przegląd Komunikacyjny, R. 73(2), 2018, pp. 28–32.
- [2] *Ustawa z dnia 10 kwietnia 2003 r. o szczególnych zasadach przygotowania i realizacji inwestycji w zakresie dróg publicznych*. Dz.U. 2024 poz. 311 [Act of 10 April 2003 on special rules for the preparation and implementation of public roads investments. Consolidated text: Journal of Laws 2024 item 311].
- [3] Trembecka A.: *Analysis of geodetic and legal documentation in the process of expropriation for roads. Krakow case study*. Geodesy and Cartography, vol. 62(1), 2013, pp. 67–84. <https://doi.org/10.2478/geocart-2013-0004>.
- [4] Trembecka A.: *The influence of undetermined legal status of real properties on the process of determining compensation for properties expropriated for roads*. Świat Nieruchomości, nr 100, 2017, pp. 23–29.
- [5] *Ustawa z dnia 21 sierpnia 1997 r. o gospodarce nieruchomościami*. Dz.U. 2024 poz. 1145 [Act of 21 August 1997 on Real Estate Management. Journal of Laws 2024 item 1145].
- [6] Gdesz M.: *Zasada korzyści w prawie wywłaszczeniowym*. Zeszyty Naukowe Sądownictwa Administracyjnego, nr 1, 2022, pp. 36–48.
- [7] Trembecka A.: *The benefit principle in determining compensation for real estate expropriation*. Geomatics and Environmental Engineering, vol. 17(2), 2023, pp. 89–104. <https://doi.org/10.7494/geom.2023.17.2.89>.
- [8] Rao J., Hutchison N., Tiwari P.: *Analysing the process of compulsory acquisition of land through the lens of procedural fairness: Evidence from Scotland*. Journal of Property Research, vol. 37(1), 2020, pp. 62–84. <https://doi.org/10.1080/09599916.2020.1713859>.
- [9] Larbi W.O., Antwi A., Olomolaiye P.: *Compulsory land acquisition in Ghana: Policy and praxis*. Land Use Policy, vol. 21(2), 2004, pp. 115–127. <https://doi.org/10.1016/j.landusepol.2003.09.004>.

-
- [10] Keith S., McAuslan P., Knight R., Lindsay J., Munro-Faure P., Palmer D.: *Compulsory Acquisition of Land and Compensation*. FAO Land Tenure Studies, no. 10, FAO, Rome 2008. <https://openknowledge.fao.org/handle/20.500.14283/i0506e>.
- [11] Voss W.: *Compulsory purchase in Poland, Norway and Germany – part Germany*, [in:] *XXIV FIG International Congress 2010: Facing the Challenges – Building the Capacity: Sydney, Australia, 11–16 April 2010*, art. no. 4220, pp. 1–20. https://www.fig.net/resources/proceedings/fig_proceedings/fig2010/papers/ts03f/ts03f_voss_4220.pdf [access: August 26, 2025].
- [12] *Projekt ustawy o zmianie ustawy o gospodarce nieruchomościami oraz niektórych innych ustaw* [Draft act amending the act on real estate management and certain other acts]. Explanatory memorandum. <https://orka.sejm.gov.pl/Druki9ka.nsf/0/AD4D5EA92C7BB028C125886200480ACF/%24File/2349.pdf> [access: August 26, 2025].
- [13] *Code de l'expropriation pour cause d'utilité publique. Article L13-15*. Légifrance. https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006840178 [access: August 26, 2025].
- [14] Coruhlu Y.E., Uzun B., Yildiz O.: *Zoning plan-based legal confiscation without expropriation in Turkey in light of ECHR decisions*. *Land Use Policy*, vol. 95, 2020. <https://doi.org/10.1016/j.landusepol.2020.104598>.
- [15] Šumrada R., Ferlan M., Lisec A.: *Acquisition and expropriation of real estate for the public benefit in Slovenia*. *Land Use Policy*, vol. 32, 2013, pp. 14–22. <https://doi.org/10.1016/j.landusepol.2012.09.007>.
- [16] Bertolinelli M., Fabbri M., Masotto L., Pirani A.: *The distortion of the land market due to plans for the infra-structure of the region: criteria for alternative valuation*. *Aestimium*, 2013, pp. 601–616. <https://doi.org/10.13128/Aestimium-13165>.
- [17] Cao Y., Dallimer M., Stringer L.C., Bai Z., Siu Y.L.: *Land expropriation compensation among multiple stakeholders in a mining area: Explaining “Skeleton House” compensation*. *Land Use Policy*, vol. 74, 2018, pp. 97–110. <https://doi.org/10.1016/j.landusepol.2017.09.003>.
- [18] Kabanga L., Mooya M.M.: *Compensation theories and expropriation of customary real estate rights: A critical review*. *Journal of African Real Estate Research*, vol. 3(2), 2018, pp. 87–106. <https://doi.org/10.15641/jarer.v3i2.487>.
- [19] Kalbro T.: *Compulsory acquisition of land – compensation for development values*, [in:] *Integrating Generations: FIG Working Week 2008: Stockholm, Sweden 14–19 June 2008*, pp. 1–7. https://www.fig.net/resources/proceedings/fig_proceedings/fig2008/papers/ts04b/ts04b_02_kalbro_2769.pdf [access: August 26, 2025].
- [20] Šubic-Kovač M., Rakar A.: *Real estate valuation model for categorised roads for the purposes of legal transactions*. *Geodetski Vestnik*, vol. 54(02), 2010, pp. 253–266. <https://doi.org/10.15292/geodetski-vestnik.2010.02.253-266>.
- [21] Tagliarino N.K., Bununu Y.A., Micheal M.O., De Maria M., Olusanmi A.: *Compensation for expropriated community farmland in Nigeria: An in-depth analysis of the laws and practices related to land expropriation for the Lekki Free Trade Zone in Lagos*. *Land*, vol. 7(1), 2018, 23. <https://doi.org/10.3390/land7010023>.

- [22] Wrześniak I.: *Wywłaszczenie z prawa własności nieruchomości gruntowej pod budowę drogi publicznej – tryb – odszkodowanie*. Przegląd Komunikacyjny, R. 74(8), 2019, pp. 21–27.
- [23] Źróbek R.: *Teoria i praktyka wywłaszczania nieruchomości w Polsce i Niemczech*. Acta Scientiarum Polonorum. Administratio Locorum, t. 5(1–2), 2006, pp. 5–16.
- [24] Brucko-Stępkowski K.: *Odszkodowanie za wywłaszczenie nieruchomości obciążonej hipoteką*. Monitor Prawniczy, nr 4, 2012, pp. 183–190.
- [25] Hełdak M., Stacherzak A., Płuciennik M.: *An analysis of valuation principles of the properties intended for public roads*. Studia i Prace WNEiZ US, nr 45/1, 2016, pp. 281–292. <https://doi.org/10.18276/sip.2016.45/1-22>.
- [26] Wolanin M., Gdesz M.: *Zasada korzyści w wycenie nieruchomości przeznaczonych na cele publiczne*. Nieruchomości C.H. Beck, nr 2, 2022.
- [27] Walacik M.: *Opracowanie zasad ustalania wysokości słusznego odszkodowania za nieruchomości przejęte na cele publiczne*. Wydawnictwo NDB, Olsztyn 2014.
- [28] Fisher G.: *Compulsory purchase compensation: A glimpse of eminent domain in the United Kingdom*. Right of Way Magazine, September – October 2010, pp. 26–29. https://eweb.irwaonline.org/eweb/upload/sep_web_Compulsory-compensation.pdf [access: August 26, 2025].
- [29] Czarnik Z.: *Zakres słusznego odszkodowania przy wywłaszczaniu nieruchomości pod budowę Centralnego Węzła Komunikacyjnego*. Ius Novum, t. 19(1), 2025, pp. 1–14. <https://iusnovum.lazarski.pl/iusnovum/article/view/2002>.
- [30] Dobkowski J., Suwała R.: *Zasada korzyści w wycenie nieruchomości jako element prawa do słusznego odszkodowania za wywłaszczenie*. Przegląd Ustawodawstwa Gospodarczego, t. 77(4), 2024, pp. 10–15. <https://doi.org/10.33226/0137-5490.2024.4.2>.
- [31] Przedzińska J.: *Charakter prawny przepisu § 36 rozporządzenia Rady Ministrów z 21 września 2004 r. w sprawie wyceny nieruchomości i sporządzania operatu szacunkowego: Glosa częściowo krytyczna do wyroku Naczelnego Sądu Administracyjnego z 9 lutego 2017 r. (IOSK 823/15)*. Samorząd Terytorialny, t. 31(12), 2021, pp. 90–94.
- [32] *Ustawa z dnia 18 maja 2018 r. o Centralnym Porcie Komunikacyjnym*. Dz.U. 2024 poz. 1747 [Act of 18 May 2018 on the Solidarity Transport Hub. Consolidated text: Journal of Laws 2024 item 1747].
- [33] *Baugesetzbuch (BauGB)* [German Building Code]. <https://dejure.org/gesetze/BauGB/95.html> [access: August 19, 2025].
- [34] Great Britain. Law Commission: *Towards a Compulsory Purchase Code: (1) Compensation*. The Law Commission Consultation Paper No. 165, TSO 2002. https://www.compulsorypurchaseassociation.org/files/lc291_Towards_a_Compulsory_Purchase_Code1_Summary--compensation-.pdf [access: August 26, 2025].
- [35] Department of Justice of Canada: *Expropriation Act*. R.S.C., 1985, c. E-21. <https://laws-lois.justice.gc.ca/eng/acts/e-21/fulltext.html?wbdisable=true> [access: August 26, 2025].

- [36] *Rozporządzenie Ministra Rozwoju i Technologii z dnia 5 września 2023 r. w sprawie wyceny nieruchomości*. Dz.U. 2023 poz. 1832 [Regulation of the Minister of Development and Technology of 5 September 2023 on real estate valuation. Consolidated text: Journal of Laws 2023 item 1832].
- [37] *Rozporządzenie Rady Ministrów z dnia 21 września 2004 r. w sprawie wyceny nieruchomości i sporządzania operatu szacunkowego*. Dz.U. 2021 poz. 555 [Regulation of the Council of Ministers of 21 September 2004 on of real estate valuation and the preparation of valuation report. Consolidated text: Journal of Laws 2021 item 555].
- [38] Wyrok Naczelnego Sądu Administracyjnego z dnia 8 maja 2023 r., sygn. akt I OSK 929/22. LEX nr 3559082 [Judgment of the Supreme Administrative Court of 8 May 2023, case file no. I OSK 929/22. LEX No. 3559082]. <https://orzeczenia.nsa.gov.pl/doc/688ACC8E63> [access: March 1, 2026].
- [39] Wyrok Naczelnego Sądu Administracyjnego z dnia 20 października 2023 r., sygn. akt I OSK 1423/22. LEX nr 3697339 [Judgment of the Supreme Administrative Court of 20 October 2023, case file no. I OSK 1423/22. LEX No. 3697339]. <https://orzeczenia.nsa.gov.pl/doc/70BFF33988> [access: March 1, 2026].
- [40] Wyrok Naczelnego Sądu Administracyjnego z dnia 20 września 2019 r., sygn. akt I OSK 538/19. LEX nr 2769295 [Judgment of the Supreme Administrative Court of 20 September 2019, case file no. I OSK 538/19. LEX No. 2769295]. <https://orzeczenia.nsa.gov.pl/doc/8BB0A45646> [access: March 1, 2026].
- [41] Wyrok Naczelnego Sądu Administracyjnego z dnia 2 października 2019 r., sygn. akt I OSK 5/18. LEX nr 2769121 [Judgment of the Supreme Administrative Court of 2 October 2019, case file no. I OSK 5/18. LEX No. 2769121]. <https://orzeczenia.nsa.gov.pl/doc/B4C334027A> [access: March 1, 2026].
- [42] Wyrok Naczelnego Sądu Administracyjnego z dnia 26 kwietnia 2023 r., sygn. akt I OSK 518/22. LEX nr 3565675 [Judgment of the Supreme Administrative Court of 26 April 2023, case file no. I OSK 518/22. LEX No. 3565675]. <https://orzeczenia.nsa.gov.pl/doc/9D8ACA4029> [access: March 1, 2026].
- [43] Wyrok Naczelnego Sądu Administracyjnego z dnia 13 lipca 2023 r., sygn. akt I OSK 1341/22. LEX nr 3595069 [Judgment of the Supreme Administrative Court of 13 July 2023, case file no. I OSK 1341/22. LEX No. 3595069]. <https://orzeczenia.nsa.gov.pl/doc/37E41BA7C6> [access: March 1, 2026].
- [44] Wyrok Naczelnego Sądu Administracyjnego z dnia 8 listopada 2023 r., sygn. akt I OSK 1595/22. LEX nr 3659102 [Judgment of the Supreme Administrative Court of 8 November 2023, case file no. I OSK 1595/22. LEX No. 3659102]. <https://orzeczenia.nsa.gov.pl/doc/F1FFFDB790> [access: March 1, 2026].
- [45] Uchwała Naczelnego Sądu Administracyjnego z dnia 27 maja 2025 r., sygn. akt I OPS 1/24. ONSAiWSA 2025/4/51 [Resolution of the Supreme Administrative Court of 27 May 2025, case file no. I OPS 1/24. ONSAiWSA 2025/4/51]. <https://orzeczenia.nsa.gov.pl/doc/E2325B4B70> [access: March 1, 2026].