

The Historical and Judicial Development of The State's Responsibility Without Fault - Compensation for Damages of the Demonstrations as an Example: A Comparative Study

Dr. Yehia Moursy El Nemr

Assistant Professor of Public Law

Kuwait International Law School (KILAW)

Abstract

The right to demonstrate is a fundamental human right in most constitutions worldwide. Yet, many negative implications of this right occur when demonstrations attract criminal elements such as burglars and rioters, so demonstrations give rise to considerable damage to public or private property. The states should not rely on insurance companies to compensate for these damages. Some countries have started to apply the theory of state responsibility without fault to compensate for these damages. Therefore, the study's subject was selected to shedding light on compensating damages caused by violent protests in the United Kingdom, France, Egypt, and State of Kuwait. And the paper tries to focus on the historical and judicial developments of the state's responsibility without fault for the damages caused by the violent protests in these countries.

Moreover, the study focuses on the significant issue of adopting the state's responsibility without fault for the damages caused by violent protests in Egypt and State of Kuwait, the challenges faced, and how to overcome them. To achieve this purpose, the researcher employed a descriptive, analytical, and critical methodology depending on legal provisions in the United Kingdom, France, Egypt, and State of Kuwait. In addition, significant cases of concern will be provided and discussed.

The research concluded that the United Kingdom had adopted a system to compensate those affected by the demonstrations hundreds of years ago in the face of the administrative authorities, before Egypt, the State of Kuwait and France, which were also among the first countries to adopt the theory of state responsibility without error in this regard. However, this type of responsibility has witnessed developments and changes in recent decades.

This research recommends that the compensation for those injured by the riots

include consequential loss profits of a business closed by the riot. Additionally, the Egyptian and Kuwaiti legislators should take the police's strict liability based on their responsibilities seriously to maintain law and order and prevent riots. Furthermore, the government in Egypt and State of Kuwait should establish a bureau to deal with damages caused by riots to compensate those affected in society and make interim payments until that bureau handles those claims.

Key words: demonstration right, damages, responsibility without fault, strict liability, compensation scheme.

I. Introduction

We live in the era of immediate demands, where pressure groups assert their grievances, not through the traditional channels of representative democracy like joined the electoral contest but popular demonstrations. So, people are invited to mobilize and take to the streets because they are tired of parliamentary institutions' slowness to undertake the necessary and the most urgent reforms. Sometimes demonstrations gave rise to considerable damage to public or private property. Violent demonstrations have become a part of daily life. Insurance companies may refuse to compensate their agents for these damages. Hence, the urgent need to compensate them appears. The state will adequately compensate the injured people even though the state has never done anything wrong⁽¹⁾.

Thence, the states should not rely on the insurance companies to compensate injured by riots because there are many reasons why businesses and residents do not take out insurance or have inadequate insurance. The grounds were mainly concerned with affordability, many small businesses are only just viable and cannot afford insurance, still less full insurance for their stock and buildings because the cost of insurance exceeds the risks to their business. Furthermore, the implied contract between the public and the police demands the people to recognize the police's leadership when required and preserve law and order. If they fail to do so, they should be held accountable for their actions and compensate individuals who have been injured.

A. Research Objective and Content

This study focuses on the historical and judicial developments of the state's responsibility without fault for the damages caused by the violent demonstrations, through exposing the history of the compensation system for damages caused by violent protests in the United Kingdom, France, Egypt, and Kuwait. And the necessity of choosing modern systems to compensate those affected by the riots. Furthermore, reasons and justifications for obligating the state to pay those affected by violent demonstrations. Moreover, the possibility of adopting the British and French compensation system for damages caused by the protests in Egypt and Kuwait.

B. Importance of the Study

We are all aware that protests can have positive and negative consequences.

(1) Patrick Kenniff, *Ordre et la Protection du Public: A Qui Revient la Responsabilité pour les Dommages Causés par des Émeutiers*, Les Cahiers de Droit, Vol. 11, Issue 3, Québec, 1970, p.465.

The negative implications occur when demonstrations attract criminal elements such as burglars, arsonists, and rioters. Furthermore, the protesters encouraged a riot or urged others to commit acts of force or violence or burn or destroy property.

Accordingly, the study's subject was selected to shedding light on compensating damages caused by violent demonstrations in the United Kingdom, France, Egypt, and Kuwait due to the increase in the number of violent protests and its damages to individuals and property in the world generally, and especially regarding the countries under study. Furthermore, the comparative analysis approach was followed to make it clear to the legislators in both Egypt and Kuwait the importance of adopting the British or the French compensation system, which will help in guaranteeing the right to demonstrate and achieving social peace.

C. Problem of the Study

The study focuses on the significant issue of adopting the state's responsibility without fault for the damages caused by violent demonstrations in both Egypt and Kuwait, the challenges faced, and how to overcome them.

D. Questions of the Study

This paper answers essential questions concerning the state's responsibility without fault for damages caused by the violent demonstrations. The questions are listed below:

1. What are the reasons and justifications for obligating the state to compensate those affected by violent demonstrations?
2. Is there a better way to immediately compensate the affected by violent demonstrations than having recourse to the courts?
3. What challenges are confronting Egypt and Kuwait to compensate the affected by violent demonstrations, and the recommendations for overcoming those challenges?

E. The Scope of the Study

The scope of the study is limited to the violent demonstrations in only four countries, the United Kingdom, France, Egypt, and Kuwait, to examine the best solutions that have been followed for compensating the affected by the riots.

F. Methodological Limitations

To achieve this purpose, the researcher employed a descriptive, analytical, and critical methodology depending on legal provisions in the United Kingdom, France, Egypt, and Kuwait. In addition, significant cases of concern will be provided and discussed. Moreover, highlight the importance of the states' need to address the responsibility to set up a compensation scheme and arguably one that is effectively regulated, transparent, and publicized.

Accordingly, this paper is divided into three parts: Part I elucidates the current inadequacies of the compensation system and the role of the judiciary. Part II illuminates the increase of the violent protests and the necessity of choosing modern systems to compensate those affected by the riots. Finally, part III explores the possibility of adopting the French and the British compensation system in Egypt and Kuwait.

II. The Current Inadequacies of the Compensation System and the Role of the Judiciary

Part I is dedicated to the discussion of the current inadequacies of the compensation system and the role of the judiciary and consists of four sections. Section A introduces the history of the compensation system in the United Kingdom for damage caused by demonstrations and the role of the judiciary. Section B presents the history of the compensation system in France for damage caused by demonstrations and the role of the judiciary. Section C clarifies the history of the compensation system in Egypt for damage caused by demonstrations and the role of the judiciary. Section D also clarifies the history of the compensation system in Kuwait for damage caused by demonstrations and the role of the judiciary.

A. The History of the Compensation System in the UK for Damage caused by Demonstrations and the Role of the Judiciary

In England, for many hundreds of years a compensation system was levied against administrative arrangements at local government level. Following disturbances in Trafalgar Square in London in 1885 involving the Social Democratic Federation, the Riot (Damages) Act 1886⁽²⁾ was enacted. It replaced the 1827 Remedies Against the Hundred Act (a Hundred being a local tax-raising body akin to a local authority).

According to the Riot (Damages) Act 1886, any person whose residence, shop,

(2) Riot (Damages) Act 1886, [25th June 1886].

or property is damaged or destroyed during a riot is compensated by the police authority. The Act imposes strict liability on the police, which means that the compensation must be paid if the claim meets the requirements outlined in the Act. The claimant does not need to prove that the police were at fault or take them to court ⁽³⁾.

The Riot (Damages) Act not only requires police to compensate people and businesses whose property is damaged in a riot, but it also requires them to compensate insurers who have paid out on insurance claims from their customers affected by the riot. Especially if there was a riot, they were could not anticipate or ask their customers to do so. It seems that the United Kingdom is unique in the legal protection to both the uninsured and insurance companies in a riot. ⁽⁴⁾. The Riot (Damages) Act 1886 (the Act) obliges police authorities to compensate those whose property is damaged by a riotous. There is no need to prove fault⁽⁵⁾.

A similar provision to the Riot (Damages) Act 1886 exists in Northern Ireland. Where the government runs a compensation mechanism for criminal damage. When agricultural property or property exempt from rates under the Rates (Northern Ireland) Order 1977⁽⁶⁾ suffers a loss due to malicious or wanton destruction, the plan compensates the owner. For property not covered by these definitions, it must be demonstrated that the damage was caused unlawfully, maliciously, or wantonly by three or more people gathered riotously or tumultuously, or as a result of a malicious act committed on behalf of, or in connection with, an unlawful association, or an act of terrorism.

In the event of riots or other criminal damage, the Criminal Damage (Compensation) (Northern Ireland) Order 1977⁽⁷⁾ provides for claims to cover the cost of repairs or reinstatement, as well as a reduction in the market value of the property, damage to stock, contents, fixtures, consequential loss, and damage to vehicles ⁽⁸⁾.

In 2016 the British legislature promulgated the Riot Compensation Act

(3) Neil Kinghan, Independent Review of the Riot (Damages) Act 1886, Report of the Review, Home office, London, September 2013, p.2.

(4) *Ibid.*, p. 14.

(5) Jonathan Morgan, Strict Liability for Police Nonfeasance, the Kinghan Report on the Riot (Damages) Act 1886, Vol. 77, No. 3, Modern Law Review, John Wiley & Sons, London, UK, May 2014, p.434.

(6) Rates (Northern Ireland) Order 1977, 1977 No. 2157 (N.I. 28), [21st December 1977].

(7) Criminal Damage (Compensation) (Northern Ireland) Order 1977, 1977 No. 1247 (N.I. 14), [26th July 1977].

(8) Neil Kinghan, *supra* note 3, p.10.

2016⁽⁹⁾ to repeal the Riot (Damages) Act 1886 and make provisions about types of claims, procedures, decision-making, and limits on awards payable concerning a new compensation scheme for property damaged destroyed, or stolen in the course of riots.

Regarding the Courts' position in the United Kingdom, in 2002, a riot at the Yarls Wood Immigration Detention Centre in Bedfordshire did extensive damage. It was owned and run by private operators, to which the Home Secretary had contracted out its management. The Detention Centre's operators brought a claim against the Bedfordshire police under the Riot (Damages) Act 1886. In this case, *Yarl's Wood Immigration Ltd v Bedfordshire Police Authority (Yarl's Wood)*, Beatson J held at first instance that the claims were outside the Act's scope because the claimant operators were themselves public authorities. However, the Court of Appeal held that there was no such limitation in the Act, accordingly, the operators' claim could proceed to trial⁽¹⁰⁾.

The researcher supports the legislator's position in the Riot (Damages) Act 1886, the Rates (Northern Ireland) Order 1977 and the Riot Compensation Act 2016. Which protect the rights of individuals affected by riots more effectively than the position of the French legislator, while emphasizing our severe criticism of the legislator's position and the judiciary in Egypt and Kuwait refuse to compensate those affected by the riots based on the state's strict liability.

B. The History of the Compensation System in France for Damage caused by Demonstrations and the Role of the Judiciary

Gatherings and demonstrations may cause harm to individuals, and the question arises about their right to obtain compensations for those damages in France. Based on the theory of the state's responsibility without fault⁽¹¹⁾. The French legislator issued Act No. 83-8 on the division of competences between the municipalities, the departments, the regions, and the state on 7 January 1983⁽¹²⁾. Article (92) of it stipulates that «the state shall bear civil liability for losses and damage resulted from a felony or misdemeanor inflicted to individuals and property, and committed using force or violence, through

(9) Riot Compensation Act 2016, [23rd March 2016].

(10) *Yarl's Wood Immigration Ltd & Ors v Bedfordshire Police Authority* [2008] EWHC 2207 (Comm), (30 September 2008).

(11) See, Ahmad Kodmani, *La responsabilité de l'État sans faute du fait des engagements internationaux: Devant le juge administratif français*, Université d'Angers, Angers, France, 2015, p.22.

(12) *Loi n° 83-8 du 7 janvier 1983 relative à la répartition de compétences entre les communes, les départements, les régions et l'État.*

armed and unarmed gatherings, demonstrations, and such action may be brought against the municipality in cases, where it bears liability».⁽¹³⁾

This Article was repealed by the law of February 21, 1996⁽¹⁴⁾, and the text of that Article was adopted again in Article «L. 2216-3» of the General Law for Territorial Assemblies⁽¹⁵⁾, found today in Article «L211-10» of the Internal Security Law⁽¹⁶⁾, which establishes the state's liability based on social risks. Article-No. «L211-10» of the Internal Security Act mentioned above stated that: «The State shall bear civil liability for losses and damage resulted from a felony or misdemeanor inflicted to individuals and property and committed using force or violence, through armed and unarmed gatherings and demonstrations, either against the people or property.

The State can take recourse action against perpetrators of the harmful act, under the conditions stipulated in Chapter I of Subtitle II of Title III of Book III of the Civil Code. It can also take recourse action against the municipality in cases where it bears liability.» The text of article «L211-10» of the Internal Security Act has not changed since its adoption in Act No. 83-8 on the division of competences between the Municipalities, the Departments, the Regions, and the State on 7 January 1983.

The researcher believes that the theory of the state's responsibility without fault for the damage caused by gatherings and protests can be applied to the damage caused by the «Yellow Vest Movement» in France. Therefore, the jurisprudence believes that the study of this movement is an opportunity to study the theory aforementioned for the damage caused by felonies and misdemeanors committed through the gatherings, protests, and riots, which stipulated in Article «L211-10» of the Internal Security Law⁽¹⁷⁾. Thus, damages resulting from riots⁽¹⁸⁾ and demonstrations brought against the state or cities shall be compensated⁽¹⁹⁾.

(13) *Ibid.*

(14) Loi n° 96-142 du 21 février 1996 relative à la partie Législative du code général des collectivités territoriales.

(15) Code général des collectivités territoriales, Dernière modification: 20 avril 2019.

(16) Code de la sécurité intérieure, Dernière modification: 29 avril 2019.

(17) Pierre Jean-Meire, La responsabilité sans faute de l'État du fait des attroupements ou rassemblements, 6 décembre 2018.

<https://www.village-justice.com/articles/responsabilite-sans-faute-etat-fait-des-attroupements-rassemblements,30175.html>, (Dernière visite 4 Sept. 2021).

(18) See for example: Mohammad Reda Al-Nemr, The State's Responsibility for Compensating for Judicial Faults, National Center for Legal Publications, Cairo, 2010, p.34.

(19) See for example: Ismat Abdel Majid Bakr, Council of State (Majlis al-Dawla), Dar Al Kotob Al Ilmiyah, Beirut, 2011, p.349.

The researcher supports the position taken by the French legislator to compensate those affected by violent demonstrations and imposed liability without the claimant's need to prove that the police were at fault.

The jurisprudence emphasizes⁽²⁰⁾ that third parties in administrative police activity benefit from applying the theory of state responsibility without fault. Because the basis in this activity is fault liability theory, and this fault should be severe. The first theory is applied in the case of using administrative police dangerous weapons. Counsel d'état in France applied it when it ruled a compensation for the heirs due to the death of a third party, while the administrative police were trying to arrest a suspect using firearms⁽²¹⁾.

Regarding the Courts' position in France, the Court of Cassation has followed the same route regarding the damages caused to third parties resulting from firearms by the judicial police⁽²²⁾. Counsel d'état in France does not consider bats⁽²³⁾ and tear gas grenades hazardous tools⁽²⁴⁾.

After, France has faced a significant crisis due to the damages caused by the "Yellow Vest Movement", burning cars, smashing windows, and attacking buildings, and the perpetrators remain anonymous. Moreover, the problem arises for individuals whom insurance companies will not compensate. But fortunately, these individuals will benefit from applying the theory of state's liability without fault according to Article L. 211-10 of the Internal Security Law, which was formerly Article No. «L. 2216-3» of the Law on Regional Gatherings⁽²⁵⁾.

However, the rulings of Counsel d'état require proof of fault to obtain compensation for the activity of the security forces, whether their action was positive⁽²⁶⁾ or negative⁽²⁷⁾, which if applied to the "Yellow Vest Movement",

(20) See for example: Georges Vedel et Pierre Devolvé, *Droit administratif*, Tome 1, Presses Universitaires de France (PUF), Paris, 1992, p.598; Jean-Michel De Forges, *Droit administratif*, PUF, Paris, 1993, p.323.

(21) C.E., Ass., 24 juin 1949, Consorts Lecomte, N° 87335.

(22) Cass.1re Civ., 10 juin 1986, N° 84-15740.

(23) C.E. Sect., 8 juill. 1960, Petit, Rec. 463.

(24) C.E., 16 mars 1956, Époux Domenech, Rec. 124.

(25) Code général des collectivités territoriales, Abrogé par Ordonnance n°2012-351 du 12 mars 2012, Article (L. 2216-3).

(26) C.E., Ass., 12 février 1971 Rebatel, n° 72495.

(27) C.E., sect., 29 avril 1987 Consorts Yener, n° 46313-46314.

they would not get any compensation⁽²⁸⁾.

Counsel d'état in France confirmed in a ruling issued on December 7, 2017, that it is insufficient to preclude the state's liability for the damages caused by the demonstrations, even if there were demonstration organizers, and the intent to harm people and destroy property, notwithstanding hundreds of participants in the protest⁽²⁹⁾. This ruling applies to the damages caused by the "Yellow Vest Movement"⁽³⁰⁾.

There are three conditions that should be met to determine the state's responsibility for the damage caused by gatherings and demonstrations⁽³¹⁾: Damages are caused by the actions of demonstrations or gatherings, and without resistance from the police, Damages were the result of felonies or misdemeanors that were committed by assemblies or demonstrations, and the crowd or gathering committed the damage.

Therefore, Counsel d'état in France applies the theory of state responsibility without fault for the damages caused by the demonstrations if the conditions as mentioned above are met, even if the victim is an artificial public person, where it ruled to compensate Roscoff municipality for the damages caused by the farmers' demonstrations that took place on June 19, 1992⁽³²⁾, furthermore, it ruled to compensate insurance companies that paid large sums of money as compensation to their clients for the damage caused to them by the demonstrations⁽³³⁾. And it did not rule for compensation if felonies or misdemeanors did not cause the damages, as the damages caused by burning tires on roads⁽³⁴⁾ or caused by individuals utterly separate from the

(28) Barthélémy Lathoud, Manifestations des «gilets jaunes» et responsabilité sans faute de l'État pour les dégâts, 5 décembre 2018.

<https://www.village-justice.com/articles/manifestations-des-gilets-jaunes-responsabilite-sans-faute-etat-pour-les-degats,30165.html> (last visited Sep. 4, 2021).

(29) C.E., 7 décembre 2017, Commune de Saint-Lô, n° 400801.

(30) Jean-Louis Vasseur, Les Manifestations Des «Gilets Jaunes» et La Responsabilité de L'État pour Les Dommages Dus Aux Attroupements et Rassemblements.

<https://www.seban-associes.avocat.fr/la-responsabilite-de-letat-pour-les-dommages-dus-aux-attroupements-et-rassemblement-et-les-manifestations-des-gilets-jaunes/> (last visited Sep. 4, 2021).

(31) Pierre Jean-Meire, supra note 17.

(32) C.E., 18 novembre 1998, La commune de Roscoff, N° 173183.

(33) Code des assurances, Dernière modification: 1 avril 2019, Article (L. 121-12): « L'assureur qui a payé l'indemnité d'assurance est subrogé, jusqu'à concurrence de cette indemnité, dans les droits et actions de l'assuré contre les tiers qui, par leur fait, ont causé le dommage ayant donné lieu à la responsabilité de l'assureur... ».

(34) C.E., 26 mars 2004, La société mutuelle d'assurances la mutuelle du mans assurances I.A.R.D., N° 243493.

demonstration⁽³⁵⁾.

While it ruled to compensate the damages caused by indelible paint on marble steps⁽³⁶⁾, and the excess of operating expenditure for the owners of commercial projects⁽³⁷⁾. Counsel d'état in France also ruled to compensate a student for the injury caused to his left foot due to the fall of a barrier, while high school students tried to storm the school door violently, and that the student was not participating in the demonstration⁽³⁸⁾.

Moreover, the Administrative Court of Lyon ruled on January 5, 2021, obligating the state to compensate the concessionaire for all damages caused by the “Yellow Vests” protests to his car parks, based on Article «L. 211-10» of the Internal Security Law, which establishes the civil state's liability for damages caused by demonstrations and gatherings⁽³⁹⁾.

The researcher supports the French courts' position for not deprive the injured of compensation for the damages caused by the demonstration just because they were present at the location of the protest. Furthermore, compensate all those affected by the «Yellow Vest Movement» in accordance with the law.

Notwithstanding the above, the researcher criticizes the French legislator and judiciary's position, which compensates those affected by the riots after having recourse to the court, which will take a long time in addition to the financial cost. The state needs to address the responsibility to set up a compensation scheme, which grants compensation to individuals directly from the state and grants interim compensations to those affected by riots, just as the United Kingdom does.

C. The History of the Compensation System in Egypt for Damage caused by Demonstrations and the Role of the Judiciary

In Egypt, The Supreme Council of the Armed Forces (SCAF) issued a decision regarding establishing the Health and Social Care Fund for the martyrs and victims of the January 25 Revolution⁽⁴⁰⁾. The first article stipulated that: “A

(35) C.E., 12 novembre 1997, La compagnie d'assurances générales de France (AGF), N° 150224.

(36) C.E., 6 décembre 1999, Me Patrick OUIZILLE, N° 192795.

(37) C.E., 6 avril 1990, la société Compagnie financière et industrielle des autoroutes (COFIROUTE), N° 112497.

(38) C.E., 19 mai 2000, Région Languedoc-Roussillon, n°203546.

(39) TA Lyon, 5 janvier 2021, SARL Philippe Védiaud Publicité, n°1904879.

(40) The Supreme Council of the Armed Forces regarding establishing the Health and Social Care Fund for the martyrs and victims of the January 25 Revolution, Decision No. 128/2011, Official Gazette, No. (26) bis, 2 July 2011.

fund shall be established under the name of the “Health and Social Care Fund for the martyrs and victims of the January 25 Revolution and their Families. It shall have a legal personality and be affiliated with the Council of Ministers, and its main headquarters shall be in the city of Cairo.” Furthermore, the Council of Ministers has issued several decisions in this regard.

Then the Egyptian legislator issued Law No. 16 of 2012 regarding compensation for the heirs of the martyrs of the January 25 Revolution⁽⁴¹⁾. The first article stipulates that “The heirs of each of the martyrs of the January 25 Revolution shall be paid a one-time lump sum payment of one hundred thousand pounds, and distributed to the legitimate heirs according to the legal right share (*legitima portio*) of each of them, taking into account the deduction of what was previously paid.”

The researcher criticizes the aforementioned law because that special legislation will be applied only to the injured and the heirs of the martyrs of the January 25 revolution. From my perspective, it would have been better to enact a law that applies to all the damage caused by the violent demonstrations, without limiting it to the January 25 revolution, to achieve social justice among all the Egyptian people.

Regarding the Courts' position in Egypt, the administrative courts reject the theory of state's liability without fault and consider it a form of no-fault insurance. Thence, it is not permissible to adopt it without explicit provisions from the legislator. Therefore, the Supreme Administrative Court ruled that: “Liability without fault is a form of no-fault insurance, which should be enacted by law; otherwise, we are faced with a vague theory overburden the public budget in future.”⁽⁴²⁾ It also ruled that «The texts of the Civil Code and the Egyptian State Council Law (*Majlis al-Dawla*) are conclusive of its adoption of the theory of liability based on fault”⁽⁴³⁾.

Accordingly, «the basis of the state's responsibility is the fault, damage, and the causal link exists between the party at fault and the damage.»⁽⁴⁴⁾ As the Court of Cassation ruled on March 18, 1992, not to compensate a person who was not a participant in the demonstration and was injured by random shooting

(41) Law No. 16 /2012 regarding compensation for the heirs of the martyrs of the January 25 Revolution, *Official Gazette*, No. (13) bis, 26 March 2012.

(42) Supreme Administrative Court, Case No. 2487, Year 6, 19 May 1962.

(43) Supreme Administrative Court, Case No. 1519, Year 2, 15 December 1956.

(44) Supreme Administrative Court, Case No. 1345, Year 38, 15 April 15 1995; Supreme Administrative Court, Case No. 2859, Year 38, 15 November 1997; Supreme Administrative Court, Case No. 5799, Year 43, 6 June 2001.

by the police during the dispersal of a demonstration,⁽⁴⁵⁾ and also ruled on November 19, 1959, not to compensate a woman who was shot while on the balcony of her house while the police were dispersing a demonstration⁽⁴⁶⁾.

Furthermore, it ruled that «Not to compensate individuals for the disturbances, unrest, riots and the measures taken by the government to prevent the situation from worsening during January 17, 18 and 19, 1977,»⁽⁴⁷⁾ and that «Not to compensate individuals for damages caused by protests that erupted on January 26, 1952»⁽⁴⁸⁾. And the riots during football matches⁽⁴⁹⁾. Thus, the Egyptian courts confirm its refusal to apply state strict liability for the damages caused by the riots⁽⁵⁰⁾.

Furthermore, after the January 25 revolution, the Egyptian government did not pay compensation to the owners of shops and companies located in Tahrir Square, which witnessed many violent clashes, and put concrete barriers preventing access to these shops and companies, which caused many damages⁽⁵¹⁾.

The researcher strongly criticizes the position of the Egyptian judiciary that refuses to compensate the victims of the riots, to whom the special laws on compensation for the victims of the January 25 revolution do not apply. On the contrary, the Egyptian legislator and the courts should follow the French legislator's position as a first step to compensate the affected based on the state's strict liability. Afterwards, set up a state compensation scheme as the United Kingdom does in these matters.

D. The History of the Compensation System in Kuwait for Damage caused by Demonstrations and the Role of the Judiciary

In Kuwait, The question arises about the application of the theory of state responsibility without fault to compensate the injured by riot, in accordance with Article 23 of the Police Act No. 23 of 1968⁽⁵²⁾, which states:

(45) Court of Cassation, Civ., Case No. 1675, Year 55, 18 March 1992.

(46) Court of Cassation, Civ., Case No. 279, Year 25, 19 November 1959.

(47) Court of Cassation, Civ., Case No. 357, Year 56, 4 January 1990.

(48) Court of Cassation, Civ., Case No. 36, Year 31, 10 March 1966.

(49) Court of Cassation, Civ., Case No. 307, Year 34, 21 March 1968.

(50) Sherif Ahmed Al-Tabbakh, *Civil Defenses in the Light of Judiciary and Jurisprudence: Part 3, Dar Al-Adala*, Cairo, 2015, p.91.

(51) Abdallah Khalil, *Map of Transitional Justice in Egypt since January 25, 2011 Revolution*, Without Publisher, Cairo, 2015, p.427.

(52) The Police Act No. 23 of 1968, *Official Gazette*, 26 May 1968.

«Compensation for damage to persons or property due to exceptional security measures shall be in accordance with the decision issued by the Minister of the interior, provided that Reserving the right of people to challenge decisions issued to compensate them before the judiciary.»

The jurisprudence considers that the previous article applies the theory of state responsibility without fault for the damages caused by the violent demonstrations, and the legislator referred to the Minister of the Interior to issue a decision explaining the provisions of this compensation. Unfortunately, this decision was not issued in the riots that took place in Kuwait in what is known as «The Khaitan Riots», and neither the Court of First Instance⁽⁵³⁾ nor the Court of Appeal⁽⁵⁴⁾ responded to this legal defense despite it being raised during that lawsuit⁽⁵⁵⁾.

Nevertheless, the Administrative Chamber in Kuwait refuses to adopt the theory of state's liability without fault, in accordance with Article 4 of Decree-Law No. 20 of 1981 establishing the Administrative Chamber in the Court of First Instance⁽⁵⁶⁾. Therefore, the basis of the state's responsibility is the fault, damage, and the causal link between the party at fault and the damage⁽⁵⁷⁾.

The Administrative Chamber ruled that: «The Decree-Law No. 20 of 1981 establishing the Administrative Chamber in the Court of First Instance have adopted the theory of state's liability based on fault.» It also ruled the responsibility of administrative authorities based on the seriousness of the fault, not the seriousness of the damage⁽⁵⁸⁾.

Consequently, Kuwait's Court of Cassation ruled on September 3, 2018, that: «Not to compensate individuals for the damage caused by disturbances, demonstrations, and riots, unless they prove that there was a failure by the security forces in the performance of their duty»⁽⁵⁹⁾. Moreover, the Court

(53) Courts of first instance (civil, commercial), Case No. 297/2001, 25 January 2003.

(54) Court of Appeal (civil), Case No. 436/2003, 13 October 2003.

(55) See, for example, Saleh Nasser Al-Otaibi, Responsibility of the Security Services for Compensating Damages Caused by Demonstrations and Gatherings: Commentary on the Court of Appeal, Civ., Case No. 436/2003, 13 October 2003, Academic Publication Council, Kuwait University, 2011, pp. 333-338.

(56) Decree-Law No. 20 of 1981 establishing the Administrative Chamber in the Court of First Instance, *Official Gazette*, No. 1344. Amended by Law 61 of 1982, *Official Gazette*, No. 1449.

(57) See, for example, Mahmoud Sami Jamal Al-Din, Administrative Judiciary in Kuwait, Academic Publication Council, Kuwait, Kuwait University, 1998, pp. 465-467

(58) Court of Cassation, Admin., Case No. 122, Year 2010, 16 April 2013.

(59) Court of Cassation, Civ., Case No. 3030/2017 and 3060/2017, 3 September 2018.

of First Instance ruled not to compensate the individuals for the damages caused by the demonstrations and disturbances known as The Khaitan Riot on October 30 and 31, 1999⁽⁶⁰⁾, where thousands of people demonstrated and caused harm to persons and property. The court found no fault in the security forces' activity and confirmed that the state's responsibility is based on fault. Furthermore, this ruling was upheld by the Court of Appeal ⁽⁶¹⁾.

However, The jurisprudence⁽⁶²⁾ considers that the court could have compensated individuals in the incident mentioned above based on the theory of exceptional circumstances in accordance with Article 23 of the Police Act No. 23 of 1968, which stated that: «Compensation for damage to persons or property due to exceptional security measures shall be in accordance with the decision issued by the Minister of the interior, provided that reserving the right of people to challenge decisions issued to compensate them before the judiciary.»

The Court of Appeal also rejected considering these demonstrations as public ordeals and disasters, according to the text of Article 25 of the Kuwaiti Constitution⁽⁶³⁾, which stated that: «The State shall guarantee the solidarity of Society in bearing burdens arising from catastrophes and public calamities.»

The researcher severely criticizes the Kuwaiti judiciary's position, which followed the approach of the Egyptian judiciary of refusing to compensate those affected by violent demonstrations, not to apply the state's strict liability. Instead, the state should follow the position of the French legislator in applying the state's strict liability or applying the state's compensation scheme to immediately compensate those affected by the riots, as the British system applies to these claims.

Consequently, the state's obligation to compensate for the damages caused by the riots does not mean that the state has committed a mistake that caused those damages, so this responsibility can be established based on social solidarity among the members of society⁽⁶⁴⁾.

(60) Courts of first instance (Civil, commercial), Case No. 297/2001, 25 January 25 2003.

(61) Court of Appeal, Appeal, No. 436/2003, 13 October 2003.

(62) See, for example, Saleh Nasser Al-Otaibi, *supra* note 55 at 310-311.

(63) Kuwaiti Constitution, 11 November 1962, Article 25.

(64) Younes Al Shamkhi, The State's Responsibility to Compensate the Third Party for Damage Caused by the Riots: Commentary on the Administrative Chamber's Decision of the Court of Cassation, No. 4, Issued on January 8, 2015 File No. 2/4/2166/20132166/4, Special Double Issue: 134-135, Moroccan Journal of Local Administration and Development, Morocco, May 2017, p.444.

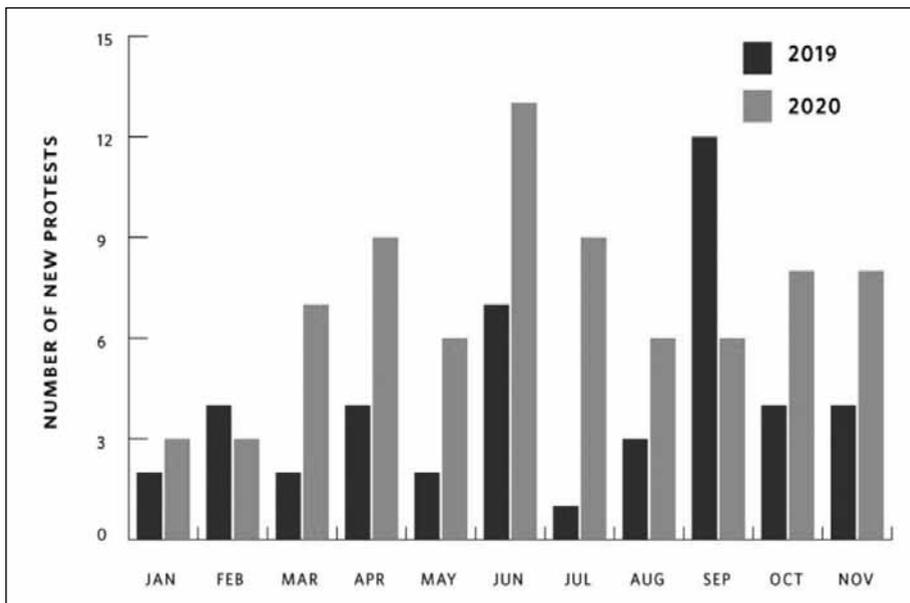
III. The Violent Protests and The Necessity of Choosing Modern Systems to Compensate those Affected by The Riots

Part II is dedicated to exploring the violent protests and the necessity of choosing modern systems to compensate those affected by the riots and consists of three sections. Section A introduces the marked increase in violent demonstrations. Section B presents the reasons and justifications for obligating the state to compensate those affected by violent demonstrations. Section C clarifies compensation the personal injury and damage to vehicles caused by demonstrations.

A. The Marked Increase in Violent Demonstrations

Data from Carnegie's Global Protest Tracker show that already in April 2020, the number of new protests rose to a high level: approximately one new significant anti-government protest every four days. As the chart below shows, the rapid proliferation of new protests continued for the rest of the year⁽⁶⁵⁾.

Figure 1. Significant New Anti-government Protests in 2019 and 2020⁽⁶⁶⁾

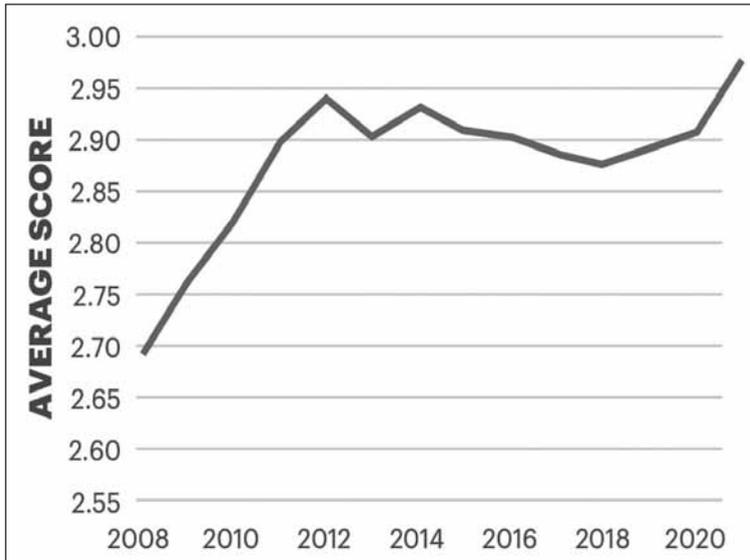


(65) Benjamin Press, Thomas Carothers, Worldwide Protests in 2020: A Year in Review, Carnegie Endowment for International Peace, Washington D.C., 21 Dec. 2020, pp. 1-2.

(66) Source: Global Protest Tracker, Carnegie Endowment for International Peace, Washington D.C., 2020, p.2.

There was also a considerable increase in violent demonstrations, which rose 244% between 2011 and 2019. Europe recorded the most significant number of protest events globally, with 1600 protest events recorded between 2011 and 2018. Figure 2 shows the trend for key indicators on violent demonstrations⁽⁶⁷⁾.

Figure 2. Violent demonstrations⁽⁶⁸⁾



Increases in protests across the world characterized 2019. France, Chile, Mexico, Hong Kong, and elsewhere had large protests, often resulting in violence. This year opened with ongoing, daily demonstrations in France. France’s *Mouvement des gilets Jaunes*, or Yellow Vests Movement, held near-constant demonstrations, often leading to clashes with police⁽⁶⁹⁾.

In Egypt, during the 2008 resurgence of the labor movement and strike wave that began in the industrial city of Mahalla—the most significant strike wave since the 1940s—the average number of protests per day in 2008 was only 3.9. The average number of protests in 2009 was 4.4, and in 2010 it was 5.8. from

(67) Institute for Economics & Peace, *Global Peace Index 2021: Measuring Peace in a Complex World*, IEP, Sydney, June 2021, p.3.

(68) Source: EIU, UNHCR, IDMC, UNODC, IEP calculations, *Ibid.*, 34.

(69) *Ibid.*

the beginning of June 30, 2013, until December 31, 2015, the Global Database of Events, Language, and Tone (GDELT) recorded 54,677 protests⁽⁷⁰⁾.

In Kuwait, there are many protests, but the vast majority of them are peaceful⁽⁷¹⁾. Nevertheless, there were many non-peaceful demonstrations. For example, on October 30-31, 1999, the riots took place in Kuwait in what is known as «The Khaitan Riots.» The troubles began when an Egyptian broke a plate in a shop owned by a Bangladeshi and refused to pay for it. The two men exchanged words, and the police were called. The arrest of the Egyptian led to rioting by other Egyptians. One hundred twenty people were injured, which lasted for two days, widening the circle of rioters, disturbance, and unrest⁽⁷²⁾.

In light of those statistics that show the marked increase in violent demonstrations over the world, the researcher criticizes the position of the French's legislator, which, although it applies the state's strict liability, but requires that the affected by the riots resort to the court, which will take a long time in addition to the financial cost.

The researcher strongly criticizes the legislator and judiciary's position in Egypt and Kuwait, which refuse to apply the state's strict liability to compensate the affected by the riots. According, the governments in Egypt and Kuwait should apply the state's compensation scheme to compensate the injured by riots immediately, without the need to prove that the police were at fault or take them to court, as the British compensation system.

B. Reasons and Justifications for Obliging the State to Compensate those Affected by Violent Demonstrations

The researcher believes that there are many reasons and justifications obligated the state to compensate those affected by violent demonstrations, and the most important is the foremost duty of the police to maintain law and order. If they

(70) Amy Austin Holmes, Hussein Baoumi, Egypt's Protests by the Numbers, Carnegie Endowment for International Peace, Washington D.C., January 2016.
<https://carnegieendowment.org/sada/62627> (last visited 20 Sep. 2021).

(71) Overseas Security Advisory Council (OSAC), Kuwait Country Security Report, Bureau of Diplomatic Security U.S. Department of State, Washington D.C., August 2020, p.2.
<https://www.osac.gov/Content/Report/545c3ee5-eb73-46ea-b59f-1c5da2a0a9c4> (last visited 20 Sep. 2021).

(72) Egyptian workers riot over conditions in Kuwait, Crescent International Vol. 28, No. 18, International Institute of Islamic Thought (ICIT), Washington D.C., 16 Nov. 1999, p.1.
<https://crescent.icit-digital.org/articles/egyptian-workers-riot-over-conditions-in-kuwait>, (last visited 21 Sep. 2021).

fail, and there is a riot, they should be held to account, and they should meet the costs of compensating those affected.

In other words, a riot means the breakdown of law and order, and the police, on behalf of the state, should be held to account, and the principle of strict liability should be retained and compensation paid to the victims. Secondly, if we left the victims to sue the police based on negligence or fault. It might well lead to expensive litigation in courts which could prove more costly than the existing arrangements. Moreover, it might set a precedent for other negligence claims against the police, where the courts have generally found that there is no liability. Thirdly, At the local level, the taxpayers are the ratepayers who pay property taxes. Therefore, taxpayers were expected as one of their primary responsibilities was to ensure that funding was adequate in addition to their responsibility to fund the police and other public services.

Fourthly, the question of police responsibility for a riot should not be assumed but should be the subject of an inquiry. This idea offers the possibility of providing a fairer basis for assessing responsibility for riots and might lead to long-term measures to reduce their incidence and those inquiries always produce agreed conclusions. Nevertheless, more critically, an inquiry-led approach could result in lengthy delays before victims were compensated or complicated pay-back arrangements ⁽⁷³⁾.

Fifthly, there are also considerations about the right to demonstrate peacefully. For example, if the damage is not foreseen or intended, and there is no proper compensation system, it will be an obstacle for people to demonstrate. Therefore, the state should compensate the affected by the damage caused by the demonstration to enhance the right to demonstrate.

Accordingly, the legislator and the courts in Egypt and Kuwait must compensate the injured by riots by imposing the state's strict liability, without the claimant's need to prove that the police were at fault or take them to court.

C. Compensate the Personal Injury and Damage to Vehicles caused by Demonstrations

In the United Kingdom, the Riot (Damages) Act 1886 provides compensation for damage to physical property, buildings, and their contents, whether they are stolen or damaged or destroyed. It does not cover personal injury or damage to vehicles unless they are within the property attacked. The Government has assumed, and the police, that the Act does not provide for loss of income or

(73) Neil Kinghan, *supra* note 3, pp. 11-12.

consequential costs resulting from a riot, business interruption in the language of the insurance industry, and compensation has not covered such costs. The courts have recently affirmed this interpretation⁽⁷⁴⁾. As indicated earlier, in Northern Ireland, the Criminal Damage (Compensation) (Northern Ireland) Order 1977 provides for claims in the event of riots or other criminal damage to cover: the cost of repairs or reinstatement or reduction in the market value of the property, damage to stock, contents, and fixtures and fittings, consequential loss, and damage to vehicles⁽⁷⁵⁾.

In France, compensation will depend on the vehicle owner's insurance contract if a car is burnt or damaged. If the owner had an all-risk contract, this type of contract covers fires and damage. If the vehicle owner cannot be compensated, the latter can apply to the (Compensation Commission for Criminal Infraction Victims) which may grant compensation. However, the vehicle owner must meet certain conditions: a vehicle in good standing, the inability to obtain compensation from other organizations, the offense in France, and the monthly resource limits are respected⁽⁷⁶⁾.

Moreover, the French government compensates the victim of Personal Injury caused by violent demonstrations. Therefore, the state may be required to pay compensation for the property and bodily injury directly or through the insurers. As a consequence, the victim should go to one of the reception points of the local security department (central police station, local reception and investigation service, or neighborhood police unit) to file a complaint and, if there is bodily injury, a medical certificate describing the injuries will be required⁽⁷⁷⁾.

The researcher strongly criticizes the position of the governments in Egypt and Kuwait regarding the refusal of applying the aforementioned principles, which compensate immediately the injured by riots. Unfortunately, the

(74) *Ibid.*, 3.

(75) *Ibid.*, 10.

(76) Clémentine Planson, Cécile Pierre, Responsabilités et dommages causés lors d'une manifestation, Atelier clinique juridique, Université de Paris, Mai 2019, p.2. http://www2.droit.univ-paris5.fr/atelier_clinique_juridique/wpcontent/uploads/2019/07/Responsabilité-des-dommages-causés-lors-dune-manifestation-par-Cécile-Pierre-et-Clémentine-Planson-VDEF-1.pdf (Dernière visite 21 Sep., 2021).

(77) Préfecture de Police Secrétariat Général pour l'Administration Service des Affaires Juridiques et du Contentieux Manifestations Bureau du Contentieux de la Responsabilité, Vous êtes victime de dommages causés lors de manifestations, Publié le 07 avril 2021. <https://www.prefecturedepolice.interieur.gouv.fr/prevention/nos-conseils/vols-violences/vous-etes-victime-de-dommages-causes-lors-de-manifestations> (Dernière visite 21 Sep. 2021).

judiciary and legislator in Egypt and Kuwait refuse to compensate individuals for riots unless it is proven that the police were at fault while dealing with the riots. The researcher suggests that the government in Egypt and Kuwait set up a state compensation scheme to handle these riots claims.

IV. The Possibility of Adopting the French and British Compensation System in Egypt and Kuwait

Finally, part III is dedicated to the possibility of adopting the French and British compensation system in Egypt and Kuwait. And consists of three sections. Section A introduces reasons why the Egyptian and Kuwaiti courts refused the state's responsibility without fault for the demonstrations' damages. Section B presents how to overcome the challenges for the Egyptian and Kuwaiti courts' refusal to apply the theory of state responsibility without fault. Section C clarifies the importance of the setting up a state scheme that would be regulated by an independent regulator to compensate injured by the violent demonstrations.

A. Reasons why the Egyptian and Kuwaiti Courts Refused the State's Responsibility without Fault for the Demonstrations' Damages

As mentioned earlier, the Courts in Egypt and Kuwait reject the theory of state's responsibility without fault and considers it a form of no-fault insurance, and thence, it is not permissible to adopt it without explicit provisions from the legislator⁽⁷⁸⁾, as well as it will overburden the public budget⁽⁷⁹⁾. Furthermore, the applying of the Civil Code requires to prove that the police were at fault. Moreover, the courts refused to apply the theory of exceptional circumstances to compensate the injured by riots⁽⁸⁰⁾.

The researcher strongly criticizes these traditional reasons on which the judiciary in Egypt and Kuwait relies for refusing to compensate those affected by the riots. In conformity with recent developments that compensate those affected by the riots based on the state's strict liability. Consequently, the governments in Egypt and Kuwait should set up state's compensation schemes to compensate the injured by riots immediately without the need to resort to the courts or prove that the police were at fault.

(78) Supreme Administrative Court, Case No. 2487, Year 6, 19 May 1962.

(79) *Ibid.*

(80) Court of Cassation, Civ., Case No. 3030/2017 and 3060/2017, 3 September 2018.

B. How to Overcome the Challenges for the Egyptian and Kuwaiti Courts' Refusal to Apply the Theory of State Responsibility without Fault

The researcher recommends that the Egyptian and Kuwaiti legislators amend the law of the Egyptian State Council (*Majlis al-Dawla*) and the law of the Administrative Chamber in the Court of First Instance in Kuwait to make it competent in all disputes related to demonstrations, disturbances, unrest, and riots in order to apply the administrative law's justice principles to compensate the injured from violent demonstrations.

Furthermore, the absence of the provisions for that liability does not prevent that courts from adopting it without waiting for the legislators to enact a law. Moreover, the courts in Egypt and Kuwait should not oblige individuals to bear the damages resulting from the legitimate activity of the state concerning the damages resulting from demonstrations, disturbances, unrest, and riots.

When it comes to the Constitutional controls, the researcher believes that the constitutional legislator explicitly obligates the state to compensate the individuals without fault for the damages caused by the demonstrations and stipulates that damage should be severe and affect specific individuals, along with the right of the state to have recourse action against the one who caused those damages.

As concerns the legislative controls, the researcher recommends that the legislator enact a law that details the conditions for applying the theory of state responsibility without fault to prevent the differences between judicial decisions and specify, without limitation, the cases of applying that theory. Also, the legislator should periodically amend the provisions that stipulate the state's responsibility without fault to add other cases that meet social changes.

Regarding practical controls, the study urges the courts in Egypt and Kuwait to have a positive role in adopting the theory of state responsibility without fault for the damages caused by the protests, in the case of the constitution, and the legislators did not adopt it.

C. Setting up a State Scheme that would be Regulated by an Independent Regulator to Compensate Injured by the Violent Demonstrations

This paper is really about the interplay between judicial values and theories regarding the state's role and responsibility. Reconciling these values is almost impossible without setting up a state compensation scheme regulated by an independent regulator. In the absence of a state scheme, individual

compensation cases are always going to be complicated.

As the Government of the United Kingdom did in the August 2011 riots decided immediately that it would provide police authorities with the funds, they needed to meet the total cost of claims under the Riot (Damages) Act. The Prime Minister said that the Government would “stand behind” the police in meeting costs under the Riot (Damages) Act and that there was “no cap at all” on claims under the Act, additionally to the Riot (Damages) Act, the Government was setting up several schemes to help businesses and people made homeless by the riots.

Accordingly, there are many schemes put in place in the UK after the August 2011 riots, such as the Recovery Scheme, to be funded jointly by the Department for Communities and Local Government and Her Majesty’s Treasury, to meet local councils’ immediate costs in “making safe and clean areas affected by the riots.” Moreover, the High Street Support Scheme is funded to support local councils in reducing business rates for affected businesses, emergency financing repairs, and taking steps to encourage retail customers back into affected areas.

A philanthropic High Street Fund was founded alongside these Government grants by a group of businesspeople led by Sir William Castell to assist small businesses impacted by the riots. In addition, the Home Office changed the form for submitting compensation claims under the Riot (Damages) Act and increased the time limit for filing claims from 14 to 42 days. The uninsured Claims made against Metropolitan Police increased from 240 on Feb 12 to 432 on Aug 12 due to cases being transferred by the Home Office Bureau before its closure⁽⁸¹⁾.

Accordingly, the researcher highly recommended that the government in Egypt and Kuwait set up a state compensation scheme. Then, an independent regulator would regulate that to compensate injured by the violent demonstrations. Furthermore, these governments should make interim payments until the competent bureau handles those claims.

V. Conclusion

This subject was selected to shedding light on compensating damages caused by violent demonstrations in the United Kingdom, France, Egypt, and Kuwait due to the increase in the number of violent protests and their damages to individuals and property. The researcher employed a descriptive, analytical,

(81) Neil Kinghan, *supra note 3*, pp. 4-5.

and critical methodology to clarify compensating those affected by violent demonstrations.

The researcher expected that Egypt and Kuwait would be among the countries that protect those affected by the riots and that France was one of the first countries compensating the affected by riots based on the state's strict liability. Nevertheless, it became clear through the research that in England, for many hundreds of years, a compensation system was levied against administrative arrangements at the local government level. Furthermore, the British compensation system provides better protection for those affected by violent demonstrations than the French system.

The research methodology helped answer the questions of the study concerning the reasons and justifications for obligating the state to compensate those affected by violent demonstrations. The answer is the essential duty of the police to maintain law and order. If they fail, and there is a riot, they should be held to account, and they should meet the costs of compensating those affected.

The better way to immediately compensate the affected by violent demonstrations than having recourse to the courts is the state's compensation scheme based on strict state liability, followed by the United Kingdom. Moreover, the research methodology clarified the challenges are confronting Egypt and Kuwait to compensate the affected by violent demonstrations and the recommendations for overcoming those challenges by applying strict state liability and the state's compensation schemes to compensate those affected by the riots. Moreover, this study assists the governments in Egypt and Kuwait consider the various options available to compensate the affected by the violent demonstrations.

Recommendations

This study highly recommends that the compensation for injured by the riots should include consequential loss profits of a business closed by the riot. Moreover, the Egyptian and Kuwaiti legislators should take the police's strict liability based on their responsibilities seriously to maintain law and order and prevent riots. Furthermore, the government in Egypt and Kuwait should establish a bureau to deal immediately with damages caused by riots to compensate those affected in society and settle their claims directly. Moreover, the governments in Egypt and Kuwait should make interim payments until the competent bureau aforementioned handles those claims.

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