

A Framework for Appraising the Legislation and Implementation of Expropriation for Public Utility in Post-transitional Countries: Full Compensation and the Role of the Valuer

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Key words: Land management; Urban renewal; Valuation; expropriation; compulsory purchase; eminent domain; property rights; compensation

SUMMARY

This paper identifies the features of an efficient expropriation regime, highlighting the potential areas of concern that might lead to unsatisfactory outcomes.

New infrastructure projects require three ingredients – construction materials, a labour force, and land on which to build. Because this land is often not owned by the government, it must be purchased and in many cases the owner will be unwilling to sell. There is a long-recognised right of the state to take property in these situations, and national laws, rooted in human rights legislation, provide for just compensation for the affected. The use of compulsory purchase powers is almost always controversial, and it is long recognised that there are negative effects (such as an interference with private or community life, or destruction of livelihoods) that may not be easily compensated through cash payments. This work is based on the conclusions of research undertaken in the summer of 2021, which examined how the powers of compulsory purchase are exercised in Romania and whether or not they were a barrier to the delivery of new infrastructure. The research concentrated on the role of the surveying professional, and although Romania was the focus, the findings have relevance for other transitional and post-transitional economies.

The original aim of the study was to critically review how surveyors engage with the legal processes, and to consider if the current expropriation regime was fit for purpose, i.e. if there were deficiencies in some areas that needed improvement. The professional best placed to estimate the amount of compensation for taken real estate is the valuation surveyor, however conversations with professional colleagues revealed a reluctance to get involved in this type of work. This formed an initial line of enquiry, which soon evolved into a wider consideration of expropriation and its

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implementation.

The research developed a framework of five issues (property rights, suitable land registry, full compensation, resettlement, and protection of vulnerable or marginalised groups, and transparency) that qualitatively appraised both the legal regime ‘on paper’ and how it worked in practice, drawing on the experiences of valuation surveying professionals and other stakeholders. Case studies were also used to illustrate how effective the compulsory purchase mechanisms work.

The research found serious gaps in safeguarding policy and governance. It calls on the surveying profession to engage with the expropriation mechanisms in order to take a leading role in developing best practice.

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