

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

David HUNT, United Kingdom

Keywords: expropriation; compulsory purchase; eminent domain; compensation.

SUMMARY

This paper considers the features an efficient expropriation regime concentrating on the issue of compensation, 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. This land may not be owned by the authorities and must be purchased, with the owner often 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 these 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 paper 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. Five issues emerged in the course of the study that formed a framework for appraising expropriation regimes. One of these issues, full compensation, is the focus of this paper. The investigation concentrated on the role of the surveying professional, and although the Romania was the subject, the findings have relevance for other transitional and post-transitional economies, particularly European former-communist nations.

1. INTRODUCTION

The intention behind this research was to identify the factors in the expropriation process that lead to satisfactory outcomes, and which could therefore be used to measure the suitability of the legislation and the mechanisms of implementation, including how valuers, affected persons and other stakeholders such as the state authorities and legal professionals engage with the processes. Through the examination of the practice in the subject country it should be possible to appraise the expropriation regimes fitness for purpose and determine any deficiencies.

Arguably, the professional best placed to estimate the amount of compensation for expropriated real estate is the valuation surveyor (appraiser). Initially, three key research questions were identified before research commenced:

- *What are the causes of unsatisfactory outcomes in the expropriation process?*
- *How do valuation professionals engage with the expropriation processes?*

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 (11576)
David Hunt (United Kingdom)

FIG Congress 2022
Volunteering for the future - Geospatial excellence for a better living
Warsaw, Poland, 11–15 September 2022

- *How can the legal mechanisms be improved to avoid delays to the delivery of new infrastructure while ensuring satisfactory outcomes for stakeholders?*

2. LITERATURE REVIEW

The study of existing literature looked at international best practice to consider what advice has been published globally and led by the three key research questions. Guidelines from international bodies, international financing institutions (IFIs) and other academic research were reviewed. This revealed the various indicators that helped build an evaluation framework.

2.1 International Guidelines

The United Nations (UN) and its various agencies have produced several publications regarding land management and related topics, but until recently there was very little concerning best practice for expropriation mechanisms. The UN's Food and Agriculture Organization (FAO) produced a Good Governance in Land Tenure and Administration study (GGLTA), with the aim to explain best practice in key areas of land governance (Grover et al., 2007). Despite being over 15 years old, the document was relevant as it identified critical issues, including a subsection that explained how poor governance may prevent fair compensation from both being paid at all or to those with weaker rights, such as licence holders or sharecroppers. Section 4.26 '*valuation systems and the need for revaluations*' explains the need for appraisers to adopt appropriate valuation methods. Weak governance is described as often being a symptom of flawed or ambiguous legislation, an ineffective judiciary or fragmented institutional mechanisms (Grover et al., 2007, pp. 13, 20). There may also be risks of potential abuse of the regime, but well-trained professionals, such as planners, valuers and lawyers who adhere to ethical standards, and are monitored through review processes could help reduce these.

More recently, the FAO published its Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs). These were created to provide a framework that would be applicable globally to deal with growing problems such as food security, poor governance of property rights or even state abuse (such as large-scale land grabs) in the developing world (Margulis and Porter, 2013). The VGGTs include specific chapters on formal and informal tenure systems, expropriation and property valuation with section 16.3 discussing fair and prompt compensation (FAO, 2012). Although they are orientated towards solving economic resource problems, focussing on populations at-risk or in danger of marginalisation, they can be a useful tool for evaluating expropriation law (Jansen, 2020).

2.2 International Financing Institutions

More recently, The International Finance Corporation (IFC), a member of the World Bank Group (WB), published a draft Good Practice Handbook on Land Acquisition and

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 (11576)
David Hunt (United Kingdom)

FIG Congress 2022
Volunteering for the future - Geospatial excellence for a better living
Warsaw, Poland, 11–15 September 2022

Resettlement (LAR) (2019) to aid governments in land acquisition, with recipients of loans delivery of new capital infrastructure being expected to follow this advice. The handbook includes frameworks on entitlement and on how to approach the valuation for compensation of different types of assets, as well as transaction and disturbance costs, with Module 2 Task 4 *'Developing Compensation Entitlements and Negotiation Compensation Packages'* being pertinent to this research (2019). The WB started reviewing individual countries in the early 2010s, by way of Land Governance Assessment Frameworks (LGAFs). These use 27 Land Governance Indicators (LGIs) to evaluate the effectiveness of governance in land management (Deng, 2014). One LGI is particularly relevant to compensation, namely LGI 12 *'Transparency and Fairness of Expropriation Procedures'*. The LGAF has been used to review the land governance situation in around 40 countries, with approximately half of these being in Africa, while only four looked at Europe (Ukraine, Moldova, Georgia, and Croatia); these four can be considered peer countries to Romania.

The European Bank for Reconstruction and Development (EBRD), a trans-national investment bank, was originally created to help fund development in the former communist countries of Central and Eastern Europe, with a goal to build liberal market economies, with loans available to private commercial borrowers. The EBRD published the Resettlement Guidance and Good Practice document (RGGP), with the aim to use case studies from the bank's experience to illustrate concepts (EBRD, 2017). As the title suggests, the emphasis of the document is resettlement, describing in detail the safeguarding measures required – acknowledging the special risks to marginalised and vulnerable peoples. Although the tone of the document appears to be concentrated on the Global South, there is a lot of relevance to the region under discussion – some of the example cases involved countries of the Balkans, including vulnerable groups such as Roma communities; in this respect, RGGP 4 *'Asset Inventory and Valuation'* is useful in providing valuation guidance. The guide's focus (the EBRD's policy is compensation through providing alternative land, rather than with cash) again highlights the lack of information on valuation procedure, although it does use 'replacement cost' and 'replacement value' (albeit interchangeably), with both defined as market value of expropriated assets plus transaction and relocation costs.

In 2019 the EBRD published another document, the Environmental and Social Policy Guidelines (ESPGs), which set out requirements that manage social and environmental risks of loan projects (EBRD, 2019). Performance requirement 5: *'Land Acquisition, Restrictions on Land Use and Involuntary Resettlement'* (PR5) provides a compliance template for use when land will be acquired as part of an investment project. PR5 underlines the need for correct governance in involuntary resettlement, noting that dispossessed persons are at risk of long-term impoverishment. There is also a stress on minimising land acquisition through alternative designs in order to curtail expropriation and as a part of this process the EBRD requires borrowers to undertake surveys on the social and economic situation of potentially affected parties.

The European Investment Bank (EIB) is an older organisation, owned by EU states and mostly active within member countries, providing loans and guarantees for projects that will stimulate growth and EU cohesion. Its Environmental and Social Standards (ESS) provide another

framework for appraising potential projects, emphasising environmental, social, and cultural aspects (2018). Chapter 6 deals with land acquisition but is primarily concerned with rights protection, the habitability of housing, and security of tenure for displaced persons. In common with the EBRD advice, compensation is recognised as extending beyond the value of property, to include costs associated with acquiring alternative properties. Compensation is based on ‘replacement cost’ which will be the fair compensation for the land’s potential yield, whereas for buildings it is based on labour and construction material prices. Residential land and any agricultural crops should be compensated at market value. The standards also state that removal costs, utility connections, transfer and property registration taxes are compensatable, recognizing that true equivalence goes beyond simply offering property market value.

2.3 Wider Academic Research

For many years there was only limited research in comparative expropriation practices and the majority of studies from the last decade were produced by academics with legal backgrounds. As such existing conclusions are often through the lenses of lawyers, tending to concentrate on legal aspects. Where literature considers valuation good practice, the need for suitably qualified expertise is usually highlighted – but this is typically given little attention compared to other topics.

Tagliarino (2017) considered legal frameworks in 50 developing countries analysing the provisions for valuation and the extent to which each complies with international valuation standards. The study centred on ten questions (valuation compensation indicators) that combine to allow a rating of each expropriation regime. This built on his earlier work (2016) that looked at responsible land governance in 30 developing countries using 24 ‘*indicator*’ questions to test how expropriation laws measured against the UN’s guidelines on expropriation, resettlement, and compensation, namely the VGGTs. None of the subject countries in Tagliarino’s study are geographically close to Romania – although some are or were previously communist regimes. The indicators that appeared to be of particular interest to Romania include issues pertaining to compensation and its calculation (Tagliarino, 2017, p. 6):

- *Is compensation payable in alternative land as an alternative or in addition to cash?*
- *Must compensation be afforded prior to the taking of possession or within a specified timeframe?*
- *Does the law allow for assessors to follow alternative methodology (e.g., ‘replacement cost’) instead of a ‘fair market value’ when calculating compensation in cases where land markets are weak or non-existent?*

One criticism of Tagliarino’s later study is the use of ‘*fair market value*’ in calculating acceptable compensation. This term is not fully defined and is not a valuation base recognised by the International Valuation Standards Council (IVSC). Despite this, the limitations of market value approaches are discussed, and the indicators used in both studies were a useful starting point for building a suitable framework for appraising Romanian expropriation valuation practice.

A Europe-centred resource is the Routledge Handbook of Contemporary Issues in Expropriation (2019) edited by Plimmer and McCluskey. This is a compendium comprising chapters on specific topics, the majority of which analyse a single country's expropriation practice, although some chapters look at specific regions or projects. Romania is not represented, however there are several chapters that are of interest, providing critiques of legal frameworks in states considered as comparable to Romania, being both geographically close and having transitioned from communist planned economies to free markets (Czech Republic, Estonia, Moldova, Poland and Russia).

The handbook's first chapter, Compulsory Purchase in Developing Countries (Grover, 2019), reported on a major study into the expropriation regimes. The research compiled data from three sources – LGAFs, Bertelsmann Transformation Indices (BTIs) and the WB's Doing Business surveys. Since its creation in 2003, the BTI has been recognised as one of the best sources of data for evaluating states undergoing political transformation. This is due to its thorough methodology of assessment, going beyond governance issues to include economic and social change (Volkel, 2015). One BTI indicator that stood out in Grover's research considered the strength of property rights, noting that full compensation for expropriation may not be accessible where rights are not well defended (2019, p. 15).

The indicators used by the WB in its LGAFs provide a scorecard for measuring land governance capabilities and are a starting point for considering the effectiveness of expropriation regimes even if the frameworks were not designed for making comparisons. Furthermore, as Grover highlights, LGAFs are also backed by expert judgement on how legal mechanisms are implemented, rather than being simple surveys of policy (2019, p. 2). As with Tagliarino's research, Grover's study did not include Romania as it was not subject to LGAF examination. While fewer countries were reviewed than in Tagliarino's research, the use of a wider variety of data sources to inform the evaluation, as well as the geographical, cultural and political nature of the four European neighbouring countries means that this study was useful in contributing to the evaluation framework.

The chapters on Estonia (Tiits and Tomson, 2019, p. 82) and on the Czech Republic (Radvan and Neckar, 2019, p. 71), provide useful lessons from countries with a shared history with Romania of post-communist economic transition. These lessons include the success of built-in mechanisms that allow parties to come to agreements on compensation (and associated costs). Estonia has a robust arbitration process; while the Czech experience is that the initial expropriation process takes around two months, resulting objections and appeals can add delays of many years affecting around one third of planned new roads. The law was also only recently altered in the Czech Republic to relieve the affected party from transfer taxes (Radvan and Neckar, 2019, p. 78), which opens the question for research into Romanian practice:

- *Is the principle of equivalence recognised in Romanian compensation settlements?*

Those affected by compulsory acquisition should be left no better or worse off after the action. All costs associated with the transfer of land (such as state taxes, stamp duties, professional fees) must be met by the acquiring authority.

2.4 Developing an Evaluation Framework

In addition to full compensation, four other issues were addressed by the research – property rights, suitable land registry, resettlement and the protection of vulnerable or marginalised groups, and transparency and consultation – issues outside the scope of this paper, being associated to broader aspects of land governance.

Summary of existing transnational guidance on the issue of full compensation

- FAO GGLTA 4.26 – Valuation Systems and the Need for Revaluation
- VGGT 16.3 – Fair and Prompt Compensation
- LGI 12 – Compensation Paid for All Rights Regardless of Registration
- EIB ESS 6 – Involuntary Resettlement
- EBRD RGGP 4 – Asset Inventory and Valuation
- EBRD ESP PR 5 – Valuation of Affected Lands and Assets
- IFC (WB) LAR Module 2 Task 4 – Developing Compensation Entitlements

3. RESEARCH DESIGN AND METHODOLOGY

The research strategy centred on selecting the indicators as revealed by the literature review, to develop an evaluation framework. This framework was then applied to Romanian law and practice, to produce a ‘*snapshot*’ of the expropriation regime, which could then help identify strengths and weakness, perhaps suggesting areas for improvement as well as topics for further research. It became clear early on in the process that qualitative methods were most suitable for answering the key research questions, as the attributes and effects of law, and procedure are not easily quantifiable.

3.1 Secondary Research

The initial literature review highlighted key issues for the evaluation of expropriation practice. Once the pertinent issues were identified, the secondary research moved to focus on Romania, using academic publications, professional journals and online media. Expropriation can seriously affect livelihoods, and there is scope for corruption or scandal. The newsworthiness of the topic meant that output from online and print media was often useful in providing pointers for examples to investigate, albeit acknowledging that media can be politicised, and any use of news output should focus on facts. There was also body of judicial cases from the national tribunals and courts of appeal, the Romanian High Court of Justice and Cassation and the European Court of Human Rights. These provided interpretation for gaps in the law, while offering cases of the expropriation process in action which contributed to answering the issues and which could be measured using the developed framework.

3.2 Personal Interviews

The structured interview method was considered as the best form of data collection to gauge the opinions of valuers working in the field. Existing research, such as Tagliarino (2016 and 2017) and Grover (2019) was desktop research of existing guidelines and legislation, and therefore lacking the implementation aspect. The current study hoped to fill this gap in the research. It was intended that this would provide understanding on local opinions of research themes which would not be available through research of the literature, or through questionnaires (which would involve an inflexible set of questions).

3.3 Selection of Participants

The research proposal envisaged a number of willing interview participants from which a suitable sample would be selected. This follows the '*key informant*' method of selection, which is considered an effective and efficient way to collect in-depth data (Fellows and Liu, 2015). The list of potential participants included qualified Romanian valuers and other professionals with a role in the expropriation process. An unexpected barrier among valuation professionals was that several were reluctant to contribute, believing their input would not be useful due to not having experience, when in fact their perceptions of this field of valuation would possibly give insight into reasons why valuers may not take on expropriation instructions. A total of 13 valuation professionals were invited to participate, of whom five were unsuitable due to the reasons mentioned above, and a further three did not respond to requests.

Participants without a valuation background were included to gain more information on decision-making process on the part of the authorities, as well as in jurisprudence and on safeguarding issues. Three other interviewees participated, including a Judge of the Second Tribunal (Appeal Court City of Oradea), a representative of a campaign group focused on large infrastructure projects (Asociația Pro Infrastructura Bucharest) and a planning official from again the City of Oradea Council's Real Estate Directorate who lead the expropriation team until spring 2021.

3.4 Pre-participation questions

A list of questions was drafted to form the structure of the interviews and was sent to each participant ahead of the session, if requested. The first section of the questions included initial questions about the respondent – name, years of valuation experience, qualifications etc. The second section included questions specific to the valuer's experience of expropriation – if they had not directly accepted an instruction, had a client asked in the past that was refused? It was hoped that this would draw out the barriers to participation. A final section of questions was based on Tagliarino's compensation valuation indicators (2017, p. 6), as these were considered to be useful questions that will answer the key issues.

3.5 Interviews

When interviewees had exceptional experience of the subject the discussions benefited from moving away from the pre-set questions towards free-flowing conversations, allowing them to develop their responses and give valuable additional insight. As the research proceeded, some questions were removed as unnecessary, while others were expanded. This was not unexpected, as interviews are inherently ‘naturalistic’ and the researcher’s knowledge will grow with each participant as the questions will evolve (Blaxter, Hughes and Tight, 2001).

4. DATA PRESENTATION AND ANALYSIS

The evaluation framework developed from the literature review was applied to the Romanian expropriation regime. The extent to which local practice provides for full compensation was considered using the research from various international institutional and financial guidelines, the legislation itself, court decisions, published research as well as the results from the structured interviews. The equivalence principle that guides full compensation means that the affected party should be left no better or worse off than they were prior to the action (Denyer-Green, 2019, p. 48). Where the literature mentions cash compensation for expropriated property, the agreed amount should reflect the replacement cost, defined as market value plus transaction costs (EIB, 2018, p. 44; EBRD, 2019, p. 41; IFC, 2019, p. 48). It is easy to see that there may be situations where this would not be sufficient to fully provide equivalence.

4.1 Calculating Compensation

Tagliarino’s indicator questions (above) ask if alternative land can be provided in lieu of a cash payment. Romanian practice traditionally prefers giving a cash payment to the expropriated, this is because the authorities do not hold a reserve of land to provide as an alternative, and state-owned housing has not been a priority with the existing stock undersupplied and often in a poor condition due to neglect (Turcu, 2017).

The second indicator question asks if compensation is paid either before taking possession or within a specified timeframe. One Romanian researcher noted that rights are often infringed by expropriation – as compensation is paid after the transfer, while the constitution states that this should be paid prior to the transfer of property rights (Nicolcescu, 2019, p. 115).

Good practice is to consider each situation on its own merits, using the standard approaches (Tagliarino, 2017, pp. 9-10). Tagliarino’s third indicator also asks if the law allows for valuers to follow alternative methodologies, mentioning replacement cost as an alternative. Various IFIs published advice as to valuation methodology, with the EBRD noting that many countries use cadastral value for determining compensation. Romania’s prescribed method is linked to the notary’s grid. Each county chamber of notaries updates their county’s notary’s grid annually using data from all property transactions over 250,000 RON (approximately 50,900 EUR in August 2021). The data is organised by locality and includes information on the type of property and number of rooms among others, intended to be for information only and not to

be relied upon for property valuation. The notary's grid has a useful application in taxing property transactions, but as each property has unique characteristics, an average market price per square metre for a location would be inappropriate (Vascu, 2015). A recurring comment in the structured interviews was that valuers were often wary of this methodology for calculating the value of land taken. In one participant's opinion, representing the expropriating authority, the reason for mandating use of the notary's grid was due to a perception that market value was only an estimation, and that the state was possibly paying too much in expropriation cases. Moreover, the same interviewee argued that the notary's grid offered a higher amount of compensation than the market value for land in rural area, citing the 20% of rural cases that contest the amount in court as opposed to the 80% of urban cases he dealt with. Using the output from notaries was seen to be a way to bring a more rigorous approach to the methodology.

In situations where there are no comparable sales, it is difficult to estimate market values. Nicolcescu (author and sitting judge) considers this as one of the few occasions when using the notary's grid would be beneficial (2019, p. 100). Furthermore, despite the repeated reservations of both ANEVAR (the Romanian National Association of Authorized Valuers) and the valuation expert interviewees, the notary's grid is compiled by ANEVAR members, under instruction from the local county chamber of notaries. The compilers clearly caveat the work as being a departure from ANEVAR's valuation standards in the reports themselves (ANEVAR, 2017), however almost each valuer interviewed was unaware that fellow members contributed. Two interviewees both discussed their experience of expropriation valuation. Around ten years ago when new legislation was passed, there was no guidance on methodology and as the market was extremely opaque the notary's grid was the best indicator of value. The solution was to take the output from the notary's grid and add a small percentage to compensate for a forced sale.

4.2 Adequacy of Compensation

The principle of equivalence as in the case of the Czech Republic (described in section 2.3) is relevant, as postulated above and supported by the EIB's ESS. In a 2019 article in an online financial news portal, a Romanian valuer and author claimed that one problem with the expropriation process is that many affected owners receive less compensation than they are entitled (Vascu, 2019). The author describes how there is a risk that the acquiring authority will usually instruct a valuer to estimate the likely market value of the land. This will be compared to the figures in the notary's grid, and the lower figure adopted as the proposed amount – which may be a departure from the expert's opinion. Dispossessed owners who are unaware of their rights may be wary of paying court costs to dispute the offer, or to instruct a professional. One interviewee, a judge, explained that court fees start at 200 EUR for a legal expert, but with other professionals and costs this can easily rise to total 2000 EUR before the trial starts. The sum would be reimbursed by the expropriator, but only if the pursuants win the trial, and is awarded higher compensation than in the original offer. The interviewee further stated that in practice the compensation amount is increased in most cases by courts, but that the value is decided somewhere in the middle of what the expropriating authority offered, and the value suggested by an expertise board comprising 3 valuers. This is because judges may

sometimes have no confidence in the valuers, believing that they not really know what the market value is. The amount decided by the court cannot be lower than that offered by the expropriator or higher than the one proposed by the claimant (Romitan, 2020, p. 290). The judge also has the option to award a compensation amount equal to that decided by another judge in a similar case (Nicolcescu, 2019, pp. 108-109; Romitan, 2020, p. 290).

4.3 Title Issues

The literature suggests that there is a problem when expropriation affects land-users who lack good title. Proof of ownership is required for compensation, however in Romania there are a variety of reasons as to why occupiers of land may have formal rights. The use of land without any formal agreement is common, and the costs of registration either after restitution, sale-purchase or inheritance may dissuade users from obtaining good title (Green Partners, 2017). One interviewee gave an example of a new motorway junction which required land on which a local farmer had planted fruit trees, without having formalised occupation. There was no eligibility for compensation for land taken, although there maybe was a risk of impoverishment through deprivation of an economic asset. One of the LGAF indicators is that all rights should be compensated irrespective of title registration (LGI 12, part 1), while the EBRD's PR 5 states that there is a risk of hardship when expropriation does not take account of economic losses and that through improving process transparency, such as through socio-economic surveys in the planning stages, this can be avoided (EBRD, 2019).

4.4 Loss Due to Severance

Another phenomenon that emerged through the course of the research, but which appeared non-existent in the literature, is injury to land due to severance. This is when land is partially taken (and compensation paid), but the value of land remaining is reduced, losing a benefit of scale or shape enjoyed when part of the original, larger un-severed plot. It does not appear to be addressed in the Romanian expropriation legislation. Such occurrences are not uncommon, as revealed by the structured interviews with one valuer interviewee describing where part of a field used for agricultural purposes was taken to be used as a new junction serving a major new highway. Compensation was paid for the land taken, however there was a part of a field left with the owner, who could no longer economically use the land due to its (now) small size and unusual shape. Therefore full equivalence was not achieved – the compulsory acquisition action left the affected party worse off than before. It is possible that the remaining land would appreciate in value to the new road bringing easier access, however as noted by Tagliarino above, each situation should be considered on its own qualities.

Whether there is an increase or decrease in value, the LGAF indicators discuss the extent to which the compensation offered allows the party to maintain the same economic status as previously (WB, 2013, p. 29). A solution to the problems of severance might be a '*before-and-after-valuation*', where the full depreciation would form the basis of compensation. Alternatively, the claimant could request the authority take the remaining land as well, which Nicolcescu describes as permissible due to a principle of protection of a private interest (2019b,

p. 99). In the above situation the owner found themselves unable to make a claim, although in theory they might have raised a court action against the expropriator – this could be due to a perception that the court process is lengthy, costly and uncertain. The interviewed judge mentioned that the process is bureaucratic and lengthy both before and in court; a trial followed by an appeal can last up to two years.

4.5 Robustness of Process

One final issue that leads to risks of affected parties not receiving full compensation relates to the procedure for determining compensation. A 2009 gap analysis on Romanian expropriation law by the WB warned that there was a lack of consistency in valuations, and this undermined confidence in the profession (2009, p. 37). The LGAF states that valuations should be transparent, with methods applied uniformly and on established, accessible principles (WB, 2013, p. 45).

Two interviewees mentioned that an optimal solution would be for the compensation amount to be decided and awarded before the adjudication phase as the law stipulates. One interview participant mentioned that the already overwhelmed court system would be spared having to deal with hundreds of court cases if authorities accepted a negotiation phase, while another working for the city authority agreed in principle to increase the notary's grid by an unspecified percentage to hopefully bridge any gap in value. It could be seen as an abuse of process if the authority relies on the ignorance of the owner or on their fear of the expense and uncertainty of court. A final point is that when the expropriator pays the costs, these will be borne by the taxpayer, and the expense and overburdening of the court system could be avoided if the expropriator acted fairly without obliging the affected party to take court action.

Qualified valuers do participate at each stage of the valuation process – they compile the notary's grid, estimate the amount of compensation the expropriating authority will offer, and they form panels of experts witnesses when courts settle compensation disputes. Nevertheless, some valuers are hesitant to engage with the process, with one interviewee explaining that there will be reservations over using information that has partially unknown provenance and which cannot be easily verified (referring to the notary's grid). Interviewees also explained that engagement with the court system could also be lengthy and uncertain, and that *“you get paid the same whether it is two days' work or twenty,”* a fact that would deter valuers from taking on expropriation instructions. Fees for instructions are usually set depending on the value of the property, not the time taken to complete the work or the costs needed to travel to some of the rural locations where infrastructure construction is taking place. In the same timeframe more lucrative commercial instructions could be completed. One interviewee representing a national non-governmental institution monitoring large infrastructure projects explained that there is no reason for Romanian qualified valuers not to engage in the process, as it requires only knowledge of some of the particular laws, and an understanding as to how to interpret documents and information sources. That said, he understands that many professionals are reluctant to work with the state authority as there is a perception of corruption, adding that this is something that may have been true many years ago, but which has almost totally disappeared due to the EU's involvement in funding large infrastructure projects. Another judge interviewee

explained that databases of qualified local valuers are used for where the court appoint an expert, selected by lottery. This is done to ensure that there no favouritism to a single service provider and is an example of good practice.

5. CONCLUSIONS

The analysis referred the practice of compensation back to the main guiding literature, e.g. the VGGTs and the LGAF's LGIs, the publications by the EBRD and EIB. These were also a suitable starting point for evaluating the regime, as were the indicators considered by Tagliarino (2016, 2017) and Grover (2019), with the latter's point on full compensation not being achievable due to weak property rights proving true in the case of Romania.

Answers to the three original research questions emerged from the analysis. The first question was: *What are the causes of unsatisfactory outcomes in the expropriation process?* This concentrates on the side of the affected members of the public, referring to situations where they are left worse off than before the action, i.e. full equivalence is not achieved. At a minimum, this could mean receiving a monetary sum lower than the value of the taken property or in extreme cases impoverishment through loss of livelihood or being left with substandard accommodation, and with all the associated risks. The law may be implemented by expropriating authorities without any safeguarding measures in place, i.e. no socio-economic surveys, no public notice of proposals for the expected expropriation corridor, no real opportunity to participate in the process, including any resettlement plans, with the exception of IFI-financed projects. Furthermore, because the compensation amount is based on the notary's grid is often very low, any chance of getting a fair compensation closer to the market value is only decided in court making it a financially and time-costly affair for the expropriated party. There does not appear to be any provision to compensate stakeholders for cases where remaining land suffers injurious affection from severance and disturbance costs associated with moving, or finding new properties is not well defined.

The second question was: *How do valuation professionals engage with the expropriation processes?* Valuers are involved throughout the process as the law requires, however, their valuation expertise is merely advisory, the compensation amount being decided by courts. The interviews showed that many chose not to participate at all for several reasons. One is economic – there is more lucrative work available, where there is often a certainty both of repeat work and of being paid on time. This is compounded by a process that might involve an unknown number of days to complete the instruction, including travel and accommodation, for a set fee and which may take until a court decision is made in order to receive payment.

Valuation professionals are crucial to the expropriation process. The profession does not seem to benefit from a good reputation as Romanian legislation is unclear on valuation standards and procedures. Other reasons for reluctance to engage by many professionals include being unaware of the law, the duration of court proceedings, in addition to economic factors. The

opportunity cost reason will be unsurmountable unless new mechanisms are introduced to make the compensation dispute process more efficient, such as by settling the compensation amount outside of court.

The final question was: *How can the legal mechanisms be improved to avoid delays to the delivery of new infrastructure while ensuring satisfactory outcomes for stakeholders?* There are several suggestions in the literature or proposed from the interviews and the approaches by IFIs give clear examples of good practice. The study concluded that there were definite shortcomings in the current legislation that have an impact on delivery. The current procedure is also open to abuse by local expropriating authorities who may attempt to limit compensation paid. This can be achieved through again using below-market values and keeping affected parties uninformed as to rights for expressing grievances forcing people to appeal to the court system for higher compensation. The fact that the court trial is expensive and lengthy may also deter those on low incomes from formally disputing said amounts.

The research concluded that reform of the expropriation mechanisms is necessary, specifically calling for renewal of the expropriation law including clarification of the methodology of valuation to adopt international ethical standards, establishing compensation based on market value to include consequential loss and reduce the number of disputes (Vascu, 2019; Tagliarino, 2017, p. 2). Payment should also be prior to the expropriation, as delaying compensation is unconstitutional. There are several reasons why full equivalence may not be achieved due to the Romanian expropriation regime and these changes would reduce unsatisfactory outcomes by awarding full compensation to expropriated parties, who in turn could be less likely to oppose compulsory purchase initiatives (that might delay the delivery of new infrastructure) or appeal the awarded compensation (which may be a burden on a congested court system).

REFERENCES

Asociatia Nationala a Evaluatorilor Autorizati din Romania (ANEVAR) (2017) *Pozitia oficiala a asociatiei*. Available at: <https://site2.anevar.ro/pagini/pozitia-oficiala-asociatiei> (Accessed: 24 August 2021).

Bertelsmann Stiftung's Transformation Index (BTI) (2020) *The Status Index: East-Central and Southeast Europe*. Available at: https://atlas.bti-project.org/share.php?1*2020*GV:SIX:0*CAT*ANA:REGION (Accessed: 24 August 2021).

Blaxter, L., Hughes, C., and Tight, M. (2001) *How to research*. Milton Keynes: Open University Press.

Deng, D.K. (2014) *South Sudan Country Report: Findings of the Land Governance Assessment Framework*. South Sudan Law Society. Available at: <https://openknowledge.worldbank.org/handle/10986/28520?locale-attribute=en> (Accessed: 24 August 2021).

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 (11576)
David Hunt (United Kingdom)

FIG Congress 2022
Volunteering for the future - Geospatial excellence for a better living
Warsaw, Poland, 11–15 September 2022

Denyer-Green, B. (2019) *Compulsory purchase and compensation*. London: Routledge.

Doroftei, M. and Dimulescu, V. (2015) 'Corruption risks in the Romanian infrastructure sector', in Mungiu-Pippidi, A. (ed.) *Government Favouritism in Europe: Anticorruption report 3*. Toronto: Barbara Budrich Publishers, pp. 19-34.

European Bank for Reconstruction and Development (EBRD) (2017) *Environmental and Social Policy*. Available at: <https://www.ebrd.com/news/2017/ebrd-launches-new-resettlement-guidance-and-good-practice-publication.html#:~:text=The%20EBRD%20has%20published%20'Resettlement,its%20Environmental%20and%20Social%20Policy> (Accessed: 24 August 2021).

European Bank for Reconstruction and Development (EBRD) (2019) *Environmental and Social Policy*. Available at: <https://www.ebrd.com/news/publications/policies/environmental-and-social-policy-esp.html> (Accessed: 24 August 2021).

European Investment Bank (EIB) (2018) *Environmental and Social Standards*. Available at: <https://www.eib.org/en/publications/environmental-and-social-standards> (Accessed: 24 August 2021).

Fellows, R.F. and Liu, A.M. (2015) *Research methods for construction*. New York: John Wiley & Sons.

Food & Agriculture Organization of the United Nations (FAO) (2012) *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*. Committee on World Food Security (CFS). Available at: <http://www.fao.org/tenure/voluntary-guidelines/en/> (Accessed: 24 August 2021).

Green Partners (2017) *Land Acquisition Framework: The Development of the Romanian Land Transmission System Along Bulgaria- Romania- Hungary- Austria (BRUA)*. European Investment Bank. Available at: <https://www.eib.org/attachments/registers/79724294.pdf> (Accessed: 24 August 2021).

Grover, R., Törhönen, M.P., Palmer, D. and Munro-Faure, P. (2007) 'Good Governance in Land Tenure and Administration' (Vol. 9), *Food & Agriculture Organization of the United Nations (FAO)*. Available at: <http://www.fao.org/sustainable-food-value-chains/library/details/en/c/267231/> (Accessed: 16 April 2021).

Grover, R., Anghel, I., Berdar, B., Soloviev, M. and Zavyalov, A. (2008) 'Compulsory purchase in the transitional countries of central and eastern Europe', *Theoretical and Applied Economics*, 4 (4). pp. 3-18.

Grover, R. 'Voluntary Guidelines for Good Governance in Land and Natural Resource Tenure' (2009) Food & Agriculture Organization of the United Nations (FAO) Land tenure working paper, 9 < <http://www.fao.org/3/ak281e/ak281e.pdf>> accessed 23 August 2021

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 (11576)
David Hunt (United Kingdom)

FIG Congress 2022

Volunteering for the future - Geospatial excellence for a better living
Warsaw, Poland, 11–15 September 2022

Grover, R. (2019) 'Compulsory purchase in developing countries', in McCluskey, W. and Plimmer, F. (eds.) *Handbook of contemporary issues in expropriation*. New York: Routledge, pp. 1-30.

Hancock, B., Ockleford, E. and Windridge, K. (2001) *An introduction to qualitative research*. Sheffield: Trent focus group.

International Finance Corporation (IFC) (2019) *Good Practice Handbook: Land Acquisition and Resettlement*. Washington, DC: World Bank.

Jansen, L.J., Kalas, P.P. and Bicchieri, M. (2021) 'Improving governance of tenure in policy and practice: The case of Myanmar', *Land Use Policy*, 100, pp. 1-23.

Margulis, M.E. and Porter, T. (2013) 'Governing the global land grab: Multipolarity, ideas, and complexity in transnational governance', *Globalizations*, 10(1), pp. 65-86.

Nicolcescu, A.M. (2019) *Exproprierea pentru cauza de utilitate publica*. Bucuresti: Universul juridic.

Radvan, M. and Neckar, J. (2019) 'Expropriation from the wider perspective in the Czech Republic', in McCluskey, W. and Plimmer, F. (eds.) *Handbook of contemporary issues in expropriation*. New York: Routledge, pp. 71-81.

Romitan, C.R. (2020) 'Expropriation for Reasons of Public Utility in Romanian Law', *Proceedings of the 18th International RAIS Conference on Social Sciences and Humanities, 17-18 August*. pp. 284-292. Available at: <https://econpapers.repec.org/paper/smoapaper/036rc.htm> (Accessed: 24 August 2021).

Rusu, M., Florian, V., Tudor, M., Chitea, M., Chitea, L. and Rosu, E. (2011) 'Land related disputes and conflicts in Romania', *Agricultural Economics and Rural Development*, 8(1), pp. 127-145.

Schwab, K. (2019) *The Global Competitiveness Report*. World Economic Forum. Available at: [Global Competitiveness Report 2019 | World Economic Forum \(weforum.org\)](https://www.weforum.org/publications/global-competitiveness-report-2019) (Accessed: 24 August 2021).

Tagliarino, N.K. (2016) 'Encroaching on land and livelihoods: how national expropriation laws measure up against international standards', *World Resources Institute Working Paper*, Washington, DC. Available at: www.wri.org/publication/encroaching-on-land-and-livelihoods (Accessed: 24 August 2021).

Tagliarino, N.K. (2017) 'The status of national legal frameworks for valuing compensation for expropriated land: An analysis of whether national laws in 50 countries/regions across

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 (11576)
David Hunt (United Kingdom)

FIG Congress 2022
Volunteering for the future - Geospatial excellence for a better living
Warsaw, Poland, 11–15 September 2022

Asia, Africa, and Latin America comply with international standards on compensation valuation’, *Land*, 6(2), pp. 1-29.

Tiits, T. and Tomson, A. (2019) ‘Acquisition for public purposes and valuation in Estonia’, in McCluskey, W. and Plimmer, F. (eds.) *Handbook of contemporary issues in expropriation*. New York: Routledge, pp. 82-93.

Turcu, C. (2017) ‘Mind the poorest: Social housing provision in post-crisis Romania’, *Critical Housing Analysis*, 4(2), pp. 54-66.

Vascu, A. (2015) *Despre evaluare si verificarea evaluarii*. Bucuresti: Hamangiu.

Vascu, A. (2019) *Scopul si metodologia grilei notarilor trebuie clarificate in lege*. Available at: <https://financialintelligence.ro/adrian-vascu-scopul-si-metodologia-grilei-notariale-trebuie-clarificate-in-lege/> (Accessed: 24 August 2021).

Volkel, J.C. (2015) ‘Complex Politics in Single Numbers? The Problem of Defining and Measuring Democracy’, *Middle East Critique*, 24(1), pp. 67-81.

World Bank (WB) (2009) *Land Acquisition/ Involuntary Resettlement Policy Framework for Romania Municipal Services Project*. Available at: <https://documents1.worldbank.org/curated/en/498101468106145452/pdf/RP3940Box345561IC10ECA1LAPF1P088252.pdf> (Accessed: 24 August 2021).

World Bank (WB) (2013) ‘Annex 5: Explanatory notes for Indicators and Dimensions’, *Land Governance Assessment Framework: Implementation Manual*. Washington, DC: The World Bank. Available at: <https://www.worldbank.org/en/programs/land-governance-assessment-framework#5> (Accessed: 24 August 2021).

World Bank (WB) (2014) *Moldova – Land Governance Assessment Framework (LGAF): Final Report*. Washington, DC: World Bank. Available at: <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/843141504857423593/moldova-land-governance-assessment-framework-lgaf-final-report> (Accessed: 24 August 2021).

World Bank (WB) (2020) *Doing Business 2020*. Available at: <https://www.doingbusiness.org/content/dam/doingBusiness/country/r/romania/ROM.pdf> (Accessed: 24 August 2021).

BIOGRAPHY

David Hunt MSc MRICS FHEA is a chartered valuation surveyor who started his career in statutory valuations for the UK government. From 2006 to 2014 he worked in commercial valuation across Central and Eastern Europe, spending several years in Ukraine, Romania and Poland. Since 2015 he has been based in the UK working for the University College of Estate Management in Reading where he teaches on several property valuation courses as well as being the programme leader for the access and transition programmes.

CONTACT INFORMATION

David Hunt
Academic Delivery Manager - Foundation & Access
University College of Estate Management
Horizons, 60 Queen's Road,
Reading, RG1 4BS
United Kingdom
Email : d.hunt@ucem.ac.uk
Website : <https://www.ucem.ac.uk>

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 (11576)
David Hunt (United Kingdom)

FIG Congress 2022
Volunteering for the future - Geospatial excellence for a better living
Warsaw, Poland, 11–15 September 2022