Compulsory Purchase in the Transitional Countries of Central and Eastern Europe

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Abstract. *Until the ending of Communist rule in Central and Eastern Europe, the objective of compulsory purchase was the achievement of a socialist society in which the ownership of the means of production, including land, was to be collective rather than private. Compulsory purchase legislation and laws on ownership were used to expropriate private property. After 1990 the newly elected democratic governments changed the constitutions to permit and protect private ownership of land. However, compulsory purchase is essential in a market economy to deal with certain aspects of market failure. These include the need to facilitate the provision of collective goods, such as infrastructure and utility networks, and regeneration where the state may need to disrupt a prisoners' dilemma situation. In spite of their commitment to the inviolability of private property, the transitional economies have had to develop compulsory purchase procedures and means of assessing compensation.*

Key words: compulsory purchase; transitional economies; Bulgaria; Hungary; Romania; Russian Federation; United Kingdom.

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The processes that have been developed should, in principle, be fair, accountable and open and be compatible with the requirements of the European Convention on Human Rights. The procedures are generally plan-led with the plans having been developed by democratically accountable bodies. There is usually a separation between the acquiring and confirming body so that those affected can appeal against the terms of the acquisition. However, there do seem to be more limited opportunities to challenge the fundamental basis of a compulsory purchase order than is found in some Western European countries. Normally acquisition is by agreement so that the adversarial approach found in common law countries is not the norm. This places less significance on how the compensation is computed as far as the proprietor is concerned but not the taxpayer. For some countries compensation is based upon market values. Earlier in the transition process official values were used. In countries where public finances are under pressure or there were weaknesses in the way in which the state divested itself of its property and civil society is weak, there is the temptation to use administrative powers to secure the transfer of property to the state or to reduce the compensation that is paid. Whilst International and European Valuation Standards may have produced a degree of consensus amongst professional valuers as to how compensation should be determined, the state is not always a party to this.

1. Introduction

Between 1988 and 1990 Communist rule came to an end in Central and Eastern Europe. The governments that took their place had a different ideological perspective on the private ownership of property. The private ownership of the means of production had previously been considered by Communist governments to be one of the hallmarks of capitalism. During the transition from centrally planned to market economies the countries in Central and Eastern Europe amended their constitutions so as to permit the private ownership of land and real estate and to protect the peaceful enjoyment of private property. For example, the Constitution of the Russian Federation, adopted in 1993, declared that private property rights were protected by law and should receive equal protection to state and municipal rights. The term nationalisation no longer appears in the Constitution, Civil Code, or other codes and laws. Similarly, Article 17 of the Constitution of the Republic of Bulgaria, adopted in 1991, guaranteed the inviolability of private property with expropriation only being permitted if the needs of the state or municipalities cannot otherwise be met and after fair compensation (Grover et al., 1999). Similar provisions exist in article 13 of the Hungarian Constitution (2003) and article 44 of the Romanian Constitution (2003). Private ownership of the means of production thus became lawful and protected. Property was returned to private ownership through privatisation and restitution. No longer did the state and collective bodies have a monopoly over the ownership of such property. If the state wished to make use of private property that the owner was unwilling to sell, it therefore needed to exercise powers of compulsory purchase. It could no longer just order a

change of use. Since private property rights were now protected, land could not be expropriated but, rather, fair compensation had to be paid. By implication, since real estate was now traded between willing buyers and sellers, the state ought to pay as compensation at least the price that a private purchaser would be willing to pay.

The transition from centrally planned to market economy involves the redirection of the state's powers of expropriation away from the pursuit of an ideology that is opposed to the legitimacy of the private ownership of the means of towards using these powers to intervene in cases of market failure. Governments in market economies have powers to expropriate private property in order to manage property markets effectively in situations of market failure and in the interests of enhancing the welfare of their citizens. The challenge for transitional economies has been how to adapt systems of expropriation created to achieve the very different objective of destroying private property markets to the achievement of these new aims.

It is argued that the transition in compulsory purchase systems from centrally planned to market economies involves two challenges. One is the creation of procedures to expropriate private property that ensure that fundamental human rights – in particular, the peaceful enjoyment of private property – are not breached. Most of the transitional countries in Central and Eastern Europe have adopted the European Convention on Human Rights. Article 1 of Protocol 1 (Council of Europe 1952) states that no-one shall be deprived of his possessions except in the public interest, subject to the conditions provided for by law and by the principles of international law. The other challenge is to provide for adequate compensation for those whose property has to be expropriated so that they are not made worse off by the process. Clearly the two processes are linked as the protection of human rights with respect to property requires not just a fair procedure for its expropriation but also adequate compensation. The Hicks-Kaldor adaptation of the Pareto welfare principle states that a project can be said unambiguously to increase welfare only where the gainers are able to compensate the losers and still be better off. Otherwise the gainers will have enriched themselves at the expense of the losers rather than society as a whole having become better off.

Whilst it is not a difficult process to create a fair system of compulsory purchase procedures that, for example, provides for legitimacy of the decision, transparency and openness in the process, and the right of victims to challenge the process and to appeal against the decision, ensuring that fair compensation is paid to the victims is a much more difficult process since it requires a sophisticated system for valuing losses. Moreover, this has had to be created in societies which have no recent history of valuing private property and in which valuation systems based on open market values for use in a variety of circumstances have had to be created from scratch.

2. The transition from expropriation to compulsory purchase

The constitutional protections for private property adopted after 1990 in the countries

of Central and Eastern Europe are in marked contrast to the Soviet era when private rights over real estate were largely abolished. The Second All-Russian Congress of Soviets in 1917 issued a decree on land which made all land in the Soviet Union the property of the State. The 1936 Federal Constitution placed an absolute prohibition on civil transactions relating to land. These provided the legal basis for the expropriation of private property that took place under Communism. The 1936 Soviet constitution was extended to Estonia, Latvia, Lithuania, and Eastern Poland after their annexation in 1940. It became the inspiration for the constitutions and legal structures put in place by the Communist governments of Central and Eastern Europe after they came to power between 1946 and 1949. For example, the Hungarian Constitution of 1949 was modelled on the 1936 Soviet one.

Private ownership of land was mainly restricted to small rural plots for personal cultivation and some residential property (Vondracek, 1975). The tenure rights that existed permitted the tillage of the land and the erection of buildings. State bodies had rights of operational management. In practice, there were significant variations between Communist countries as some governments pursued a policy of collectivisation, whilst others redistributed land from large estates to smallholders. For example, the proportion of agricultural land in individual tenure in 1990 was 77% in Poland and 92% in Slovenia, but only 5% in Slovakia and Latvia, 6% in Estonia and Hungary, and 9% in Lithuania (Lerman, 1999). In 1985 only 15% of Bulgarian housing was in state or municipal ownership with most families purchasing their own housing (Hoffman, Koleva, 1993).

Under the Soviet system, the right to use land was allocated, and could be withdrawn, by the state. Compulsory purchase as such could not take place as private property rights capable of being expropriated no longer existed. Rather the state could withdraw, resume, or reallocate occupancy or use rights. The withdrawal of land occupancy could result in losses for which compensation was payable assessed by a commission. However, compensation was generally not paid by the state but by the body to whom the land was transferred (Vondracek, 1975). In other words, the beneficiary directly compensated the loser rather than the state compensating the loser on behalf of society. Losses that could be compensated included the value of expropriated buildings and crops, the costs of reinstatement at another location, the costs of tillage and improvement for which revenue had not been received, and damage to other buildings as a result of the expropriation. Thus, the Soviet system provided compensation for the loss of the occupier's immovable property, for disturbance, and for injurious affection, but not for the value of the land taken, since this was already the property of the state. The body from which the land was taken had enjoyed occupancy, but not ownership, rights and the compensation related to these.

The rules for valuing compensation were generally based upon depreciated replacement cost rather than the worth to the injured party. Thus compensation was based upon the labour embodied in the immovable and working capital lost rather than its

exchange value. Generally, physical losses were compensated but "there is very small room for compensation for worsening of land values owing to acts of public policy" (Vondracek, 1975, p. 238). Until the Kosygin reforms of 1965 (Dyker, 1992), which introduced the notion of profit as an incentive for enterprises, there was debate as to whether the losses that could be compensated were the diminution of property or the diminution of the interest in the property. The latter contained the implication that losses of unearned income could be compensated. Households, whose residences were taken, would generally be re-housed. However, this could be in accommodation that satisfied local space norms even though it was inferior to the property taken. The system may have operated in a manner that compensated the occupier for losses that were equal to what a representative occupier might have experienced, but could be less than the losses actually incurred.

Compulsory purchase violates one of the central tenets of a market economy, namely that transactions take place between a willing buyer and a willing seller so that each believes he will be better off, in his own estimation, as a result of the trade. The compulsory nature of the transaction means that one party does not believe that he will be better off otherwise the sale would have been voluntary. However, governments in market economies need powers to expropriate private property under certain circumstances. Infrastructure projects, that benefit society as a whole, could be prevented by the opposition of a few landowners who happen to possess individual parcels along their proposed route unless the state (or private body approved by the state) has the power to acquire compulsorily. Similarly, the state needs the power to prevent the last individual owners, who hold out in such a situation, from commanding a monopoly price for their land – in effect holding society to ransom – in return for not blocking the project.

Urban regeneration may require government intervention because of a prisoners' dilemma effect in which individuals may be obliged to act in ways which are not in their own best interests, but which offer the only rational response to a situation in which co-operation with other landowners is not possible (Rothenberg, 1967). This can arise because part of the value of any property is determined by the neighbourhood in which it is located. A property produces externalities or spill-over effects on other properties. The rational response in such a situation is to minimise maintenance so as to maximize the benefits from the externalities generated by neighbouring properties, whilst contributing the least external benefits to them. Such behaviour can result in the creation of slums if all property owners behave in this way, since all the properties in an area will become run down as each owner seeks to maintain his property at a level that is below the average. However, the cycle can be broken by government intervention to assemble sites for regeneration and to pump-prime private investment. Essentially, governments in market economies require powers of compulsory purchase to respond to certain situations in which there is market failure.

3. The development of compulsory purchase powers

The development of compulsory purchase powers in Romania during the transition period provides a typical illustration of the process. Law no. 33/1994 permitted compulsory purchase for reasons of public utility after fair compensation and following a court order. Public utility can be for national or local reasons. The law set out both a test to be met to justify the use of compulsory purchase and a process that sought to achieve a fair outcome. Impartial adjudication should come through the courts. Acquisition can be by government-appointed bodies, where it is in the national interest, and by counties, municipalities, towns, and communes, where it is in the local interest. Utility companies and public works concessions, such as providers of roads, do not have powers of compulsory purchase and so cannot pursue infrastructure developments that require these independently of the state or county authorities. A similar situation exists in Hungary. The state and local municipalities are entitled to acquire property by compulsory purchase under Law no. 24/1976, with other bodies that may need to make use of compulsory purchase having to justify that this is in the public interest as set out in the Law no. 4§/1, for example for town planning purposes, and work in conjunction with the State or a municipality. Similarly Article 17 of the Constitution of the Republic of Bulgaria provides the legal basis for the state and municipalities to acquire private properties in order to satisfy public needs. This was given effect through article 101 of the Ownership Act 1951 (amended 1996). This Act formerly provided the basis in law for the expropriation of private property during the Communist era, and some of these powers remained in the amended form. Under Bulgarian law, as in other countries in the region, the property of the state and municipalities can be *public* or *private* property. Compulsory purchase is permitted under the Territorial, Urban and Rural Development Act only if the outcome is to increase the amount of *public* property. These are principally for the construction of public utility networks, the provision of green belts and open areas, schools, hospitals and public buildings, and the construction of social housing. The transitional economies thus developed a philosophy of when the use of powers of compulsory purchase is justified and processes by which it could be achieved.

The development of compulsory purchase powers did not always proceed smoothly. In Russia problems arose with compulsory purchase in the 1990s because different elements of the legal infrastructure were changed at different times. This resulted in incompatibilities which were not resolved until the new Land Code was adopted in 2001. The first part of the Civil Code of the Russian Federation was adopted in 1994, with Chapter 17, containing articles concerned with compulsory purchase and compensation. Between 1994 and 2001 the adoption of a new Land Code was delayed by opposition in the Duma to the replacement of the Soviet Land Code, which was based upon the socialist principle of public landownership. During this period the official land code remained the old land code of the Russian Federation Soviet Socialist

Republic, though it was subjected to a number of corrections and alterations made by Presidential Decree or Order. These included Presidential Order N2287 of 1993 that provided for compensation for the proprietor and user in the event of compulsory purchase. A confused situation therefore existed in which the Civil Code, that was intended to put compulsory purchase on to a basis more appropriate to a market economy, had been agreed, but could not come into effect until the new Land Code had been adopted.

In Russia the state, federal objects and municipalities are permitted to appropriate land by means of purchase only in exceptional situations to satisfy important state and municipal interests, unless land is not being used for the established purpose or where there have been legal violations. Article N238 of the Civil Code also allows compulsory purchase where property cannot belong in law to a person or where land has been used for an inappropriate use. For example, the Land Code prohibits foreign physical and juridical persons from owning agricultural land. If they acquire such property, say by inheritance or as a result of trading, they must dispose of it or a state or municipal body will organise its compulsory sale. Compulsory purchase involves the state or municipality auctioning the property with the proprietor receiving the proceeds less administrative costs. Where private owners come into possession that is restricted from private ownership, such as streets and ecological, cultural and historical sites, they must sell them to the appropriate state or municipal body. Whilst the Land Code forbids the privatisation of such objects, for example article 85 prohibits the privatisations of streets, this may have happened in the past when privatisations were less well organised. The Land Code was not adopted until after the main period of privatisation.

Where there have been legal violations, appropriation other than by purchase can take place, including confiscation on Court order. During the period of rapid privatisation, proper procedures may not have been precisely followed so the scope for pursuing appropriation following legal violations may be more widespread than at first sight appears. In such cases compensation is payable for expenditure undertaken by the proprietor but not for the loss of market value. Nationalisation may no longer be part of the Russian constitution or legal code, but acting on past infringements is a way of transferring real estate to the state or municipality. In the absence of the means of making acquisitions compulsorily, the search for legal violations may be an important aspect of compulsory purchase. Past violations of privatisation procedures and more recent breaches of license terms, or tax or environmental laws may result in title being less secure than it might appear. In particular, recent violations of environmental regulations and license agreements have led to alterations in the ownership in oil extracting companies in Eastern Siberia and Sakhalin. There are constraints on the expropriation of residential property in these cases because of protections of human rights. Poor systems of monitoring real estate may also limit the use of these powers.

During the transition process the countries of Central and Eastern Europe have re-orientated their systems of compulsory

purchase so that they enable governments to fulfil the functions in a market economy of tackling market failure and away from the socialist objective of securing public ownership of the means of production. They have sought to do so in ways which protect private property and which satisfy the European Convention of Human Rights. In doing so, it could be argued that they have provided powers of compulsory purchase that are more limited than can be found in some market economies, both in terms of the purposes for which compulsory purchase can be used and the range of bodies that can make use of them. An emphasis is placed upon purchase by agreement as is often to be found in countries with codified systems of law (Dowdy, Jackson, McCafferty, 1998) rather the more adversarial approach found in common law countries like the UK.

4. The development of compulsory purchase processes

It could be argued that for compulsory purchase to be fair, the process should be transparent and open. Owners and occupiers of property ought to be informed at early stage about proposals that may affect their property. For the process to be a participatory one, they and other interested parties should have the opportunity to make representations about and objections to the proposal. The decision to proceed with the project should not be made by the body that proposes it. In other words there ought to be a separation between the acquiring authority and the confirming one as the former clearly has a vested interest in the outcome and cannot be seen to have acted fairly or in a disinterested fashion. Interested parties should be able to appeal to an independent body other than the acquiring authority. This helps to make the acquiring body accountable for its actions.

In Romania, as compulsory purchase can only be pursued in support of the public interest, a preliminary study is conducted to determine whether such a declaration can be made. The work must be approved and registered in the town plans of the area where it is to be undertaken. The document declaring that the proposal is in the public interest is publicised through a notice at the local council headquarters, in the Official Journal of Romania, and in local newspapers unless the work relates to national security. The natural and legal persons who hold real property rights must be notified within 15 days of publication. They may file objections to the mayor of the municipality where the property is located within 45 days from the receipt of the notification, who must register the objections and compensation claims. A commission set up by the government or a delegation of the county council has 30 days in which to resolve objections. The acquiring authority and owners of real property rights can appeal its decisions to the Court of Appeal. The Court verifies that legal conditions have been met and can set the amount of compensation where the parties cannot agree this. In essence, interested parties can mount a legal challenge to the declaration that the work is in the public interest but there is no public inquiry into this at which interested parties can be represented. However, the expectation is that the purchase will be by agreement with the Court of Appeal acting as the arbitrator if

the acquiring authority and property owners cannot agree terms or compensation.

Hungary also requires acquiring authorities to inform owners and all other persons who can suffer from compulsory purchase, such as occupiers, tenants, and users of compulsory purchase proposals. This is done by the public administration office, the county or Budapest according to the location of the property. Affected parties may request the legal revision of the decision and the proposed compensation. In the court hearing into this, property owners have the right to present evidence. As in Romania, owners and other interested parties can challenge the decision to acquire and the proposed compensation, but they do not have the ability to make representations about or to challenge the basis of the proposal.

In Bulgaria the process of compulsory purchase is also plan-led. An urban development plan showing that the property is assigned for meeting public needs provides justification for compulsory purchase. A state body makes a proposal to the Ministry of Finance and Ministry of Regional Development and Public Works, with the Regional Governor giving his opinion on the request. If the proposal is accepted, the Regional Governor sends a notice to treat to the owner. Owners have one month in which to object in writing to the Regional Governor. If agreement cannot be reached with the owner, then a compulsory purchase order is made, which sets out the public purpose being served by compulsory acquisition, the description of the property, and the compensation to be paid. Owners have one month in which to appeal against the order. The court of appeal adjudicates on the lawfulness of the order and the acceptability of the compensation terms. The procedures used by municipalities for compulsory acquisition are similar. A majority of council members must approve the proposal, which must bring into effect an urban development plan. The mayor informs the owners of property. If agreement to purchase the property is not obtained, the municipal council takes a decision to acquire it compulsorily.

In Russia the reasons for compulsory purchase appear in article N49 of the Land Code and include meeting international obligations and the need for real estate for energy, utilities, defence, transport and cosmonautical purposes. This includes the provision of energy, utility and transport networks. The decision requires the federal, regional or municipal body to approve regulations and the process is accompanied by public discussion. The owner of the plot must be informed in writing at least one year before the compulsory acquisition. The decision must be entered in the land register and the owner notified of this. If earlier entry into the property is required, this can be achieved only with the agreement of the owner. The owner can challenge the decision to acquire compulsorily through the courts. If agreement cannot be reached about price or conditions of acquisition, the acquiring body can send the redemption suit to Court, but this must be within two years of sending the first notice to the owner.

The systems of compulsory purchase in the transitional economies have a number of similar features. Owners of property have the right to object to the acquisition, the terms, and the proposed compensation. Appeal can

be made to the courts which can set the terms of the acquisition and compensation. However, implicit in the processes is the expectation that the acquisition will normally be by agreement. Therefore the acquisition is compulsory in the sense that it takes place at a time determined by the acquiring authority rather than at the choice of the owner.

By contrast, the British system tends to assume that the acquiring authority and property owners will not reach agreement. Rather, the process will be an adversarial one in which the acquiring authority will have to seize the property and impose compensation on the affected parties. This may be related to the notion that those whose property is being acquired are generally only entitled to compensation for their loss based upon the market value of the property. Households and small businesses can benefit from additional compensation, in effect, as recompense for the acquisition being compulsory, but the norm has been for compensation to be only based on the market price. Therefore owners are likely to be entitled to compensation which is below the price at which they would become a willing seller. The compensation will be at the exchange value of the property, but is likely to be less than the worth placed upon it by the owner. The emphasis on acquisition by agreement in Central and Eastern Europe could mean that the compensation is closer to the owner's perception of the worth of the property, particularly if the compensation takes the form of an alternative property, such as another residential apartment, which may be superior to the one being surrendered. It is perhaps not surprising in these circumstances that more emphasis is placed in Britain upon the right to object to the proposal in principal and not just to the terms and conditions of the acquisition.

The British system allows interested and affected parties to challenge the basis of the proposal and not just the proposed terms for acquisition of the property and compensation to be paid. Objectors can include those who object fundamentally to the scheme, such as environmental campaigners objecting to why a road or an airport should be built at all, as well those, like community groups, who may accept the need for the scheme but object to its location. Environmental groups frequently use inquiries to challenge the assumptions that lie behind proposals, such as the estimates of traffic growth used to support a road building proposal and to express views such as that higher taxation of petrol would eliminate the need for the road! Normally a public inquiry under an inspector appointed by the minister will be held to hear the objections and objectors can make representations in writing or in person and can be legally represented (for further details of the procedures see Denyer-Green, 2005). The process is therefore a quasi-judicial one. The minister as the confirming authority is informed by the inquiry in making his decision and can modify the order rather than accepting or rejecting it. The inquiry and the ministerial decision can be challenged in the courts. In such an adversarial system, the participative nature of the process may not be surprising. How far objectors can really challenge the proposals is open to question as they generally have fewer resources than the acquiring authority. Nonetheless, the inquiry system provides a way in which the basis of a proposal can be kept in the political

arena. Compulsory purchase should not be seen as just a technical issue but is concerned with fundamental values and the balancing of competing interests. It is an issue of governance. The British system includes a number of safeguards for affected parties that gives the impression that it is a more transparent, open and participative one than those in the transitional economies of Central and Eastern Europe. This may also be because of its adversarial nature and the use of exchange values. It may also reflect the historical legacy that compulsory purchase is an illegal act at common law (Plimmer, 2007) that has been permitted by Parliament only in certain limited situations. Allowing challenges to the fundamentals assumptions behind a compulsory purchase proposal does not seem to be a part of the processes adopted in Central and Eastern Europe. Whilst this may reflect the more adversarial nature of compulsory purchase in Britain, it could also be the result of differences in the desire to hold the government accountable for its decisions and the willingness of the government to be transparent and open in its decision making processes.

5. Reverse compulsory purchase

The state and municipalities can make decisions that have adverse impacts upon property owners. For example, the withdrawal of consent or implied consent to undertake a development can reduce the market value of a property. The publication of plans for future development, such as the line of a high speed railway link, can make it impossible to sell properties in the meantime even though eventually compulsory purchase will take place. Thus owners may be forced to hold on to properties that they need to sell, for example, due to relocation for employment reasons or inheritance, until the compulsory purchase order is eventually made. This could be years after the original publication of the plans. An important question is whether in these circumstances owners can compel public bodies to acquire their properties ahead of when they wish to and at the market value prior to the announcement of the plan rather than the value after the announcement.

In the UK proprietors can enforce compulsory purchase where a town planning decision, including a listing a building as a historic one, has made a property incapable of beneficial use. Compensation can also be claimed where changes in development consents or implied consents cause losses of value. Blight orders can be used to compel purchase where the publication of plans has blighted properties so that they can no longer be sold or sold at the previous market value. The threat of having to use precious capital expenditure resources for these purposes rather than directly to undertake capital works for the direct benefit of its citizens makes British municipalities wary of making decisions, particularly in town planning, that might force them to make such acquisitions. These can be regarded as an important safeguard against arbitrary changes to actual or implied planning consents and premature publication of plans that might blight an area, though examples can also be found where municipalities are unwilling to confront businesses which have adverse effects on an area for fear that these provisions will be exercised.

Russia also has a system of reverse compulsory purchase where the actions of a state or municipal body have resulted in it being impossible to use a property. This could happen if a site is to be used for public access. However, deterioration in the market value as a result of a decision does not of itself give the proprietor the right to demand the public acquisition of the property. Situations in which the right is exercised are rare. In Hungary owners can institute reverse compulsory purchase when the value of a property has been blighted by a proposed development or if there is a change in town planning consents. In Bulgaria, where a development is due to take place in stages, the Territorial, Urban and Rural Development Act empowers an owner to oblige the acquiring authority to purchase all the properties at the first stage rather than when the phases require. The notion of a reverse compulsory purchase by which owners can enforce compensation from the state or municipality does not appear to exist in Bulgaria or Romania.

6. Compensation

In Romania Law no. 33/94 provides for compensation to be payable for the value of the property taken and any other losses caused to the owner or any other party with an interest in the property. Those entitled to compensation are any who have an interest in the property and not just those with ownership rights, including use rights, easements, and tenants. Those living in residential properties, including tenants, must be re-housed. The value of the property is calculated using comparable evidence from other sales. Other losses are compensated according to the evidence submitted of the damages suffered. The Court appoints an Expert Commission to determine the compensation with one expert being appointed by the Court, one by the acquiring authority, and one by the person whose property is being acquired compulsorily. Valuation is by professional valuers though owners can appeal against these. The acquiring authority is obliged to pay the fees of the valuers and the court costs. A similar situation with respect to compensation exists in Hungary. The compensation is calculated by the public administration office of the county or Budapest and is based upon the market value. Unlike the UK where compulsory purchase is treated as a disposal of an asset and is subject to capital gains tax, in neither Romania nor Hungary is tax payable on the compensation. The UK has roll-over relief if the compensation is invested in replacement property.

Compulsory purchase can result in losses in addition to the land taken. There may be disturbance if a household or business has to be relocated. In both Hungary and Romania such losses are compensated so that the owner is not made worse off as a result of the compulsory acquisition. Losses can include loss of profits, relocation costs, and losses such as unharvested crops. If a business has to be closed as it cannot be relocated, the losses that result can be compensated. In Romania compensation as a result of disturbance is not the result of explicit laws but such compensation is customary. There may be damage to neighbouring property in addition to the land taken or only part of the land maybe taken.

In Romania there is no explicit statutory basis for compensation but claims can be made. Where part of the land is taken, the claim can be made upon the difference between the value of the property before and after the expropriation. In Hungary compensation is payable for damage to neighbouring property based upon the market value of the loss.

Compulsory purchase does not necessarily bring losses for the owner. For example, part of the land may be taken for the building of a new road. This may make development possible on the remainder that would either previously have been impossible or would not have been granted town planning approval. In such circumstances the owner might be made better off even though he has lost part of his land. Under these circumstances the question arises as to whether any compensation ought to be paid. In Britain there is a setting off process designed to ensure that the owner does not receive compensation as well as the benefit from increased value of the remaining property. In other words compensation is only for losses so if there are no losses only a symbolic payment is made for the land taken so that a contract of sale can exist. Hungary also has a process by which compensation can be set off against any increase in value of the remaining property.

During the transition period, many of the countries of Central and Eastern Europe have developed a valuation infrastructure that makes compensation for the land taken using market values feasible. There are trained professional valuers who follow accepted international valuation practice. In Romania, ANEVAR, the National Association of Romanian Valuers, undertakes the training of valuers. The qualifications needed to enter its training programmes are a degree or higher education diploma in economics, technology, law, or architecture. Members must complete two years supervised practice and prepare an individual valuation report. About 300 persons each year obtain formal qualifications as real estate expert valuer from ANEVAR. There are approximately 6,500 ANEVAR members, of whom 2,800 are real estate valuers, and over 150 affiliated firms. Members must follow the code of conduct and can be disciplined for not doing so. They are expected to follow International Valuation Standards. In Hungary Magyar Ingatlanszövetség, the Hungarian Real Estate Association (MAISZ) was established in 1991. It has 550 members, including 110 individuals and 330 valuation companies. In 2003 it created a certification body EUFIM, which was accredited to EN ISO 17024 in 2005. MAISZ promotes technical standards and enforces an ethical code. There tends to be the use of European Valuation Standards rather than International ones. A comparison of the valuation methods used in Greece, Hungary, Romania, and the UK as part of the Leonardo da Vinci project RO/05/B/P/PP175018 indicated that there are many similarities in the methods employed by valuers in the four countries. This is unsurprising in view of the influence of International and European Valuation Standards and the globalisation of major valuation firms.

This description of the current situation with respect to compensation in Hungary and Romania is not so very dissimilar to that

found in the UK. The ten countries of Central and Eastern Europe that joined the European Union had to satisfy the condition that they must have a functioning market economy. Therefore to find compensation based upon market values is not surprising. However, at earlier stages in the transition period the ability to generate market valuations was less developed and such issues may still be encountered. In Bulgaria the Local Taxes and Fees Act 1997 (most recently modified in 2004) provides a methodology for the determination of tax valuations, which could be used for the computation of compensation where owners and the acquiring authority were unable to reach agreement. The key variable is the normative value per square metre modified by the type of structure, the use to which the buildings were put, the area in which the property was located, and the external and internal infrastructure. Values were depreciated according to the age of the buildings, with different rates for different types of structure. The methodology used to determine the normative values can be traced back at least as far as the 1979 Regulation on Prices of Real Estate and is concerned more with the cost of real estate rather than its market value.

It is one thing to have laws that provide for adequate compensation; it is another for this to be paid. Although in Russia compensation includes the market value of the land and real estate objects on it and the loss of income from the business, the calculation of compensation is complicated by the legal situation with respect to property rights and the process by which privatisation has taken place. In Russia, as in Hungary and Romania, there is a valuation professional body, the Russian Society of Appraisers, which has adopted the International Valuation Standards. At issue is not whether professional practice has embraced the notion of compensation based upon market values but whether the government is willing to do so. The owner of real estate objects, such as buildings, may not be the owner of the land. The privatisation process may have resulted in the real estate objects being privatised together with businesses whilst the land remained in public ownership and was rented by the enterprise on a long or short term basis. The authorities can hinder the enfranchisement of the freehold, which has an impact upon the compensation. The rights of occupancy being temporary have a limited value, particularly if a high discount rate is applied to the interest because of the risk.

The calculation of compensation is a potential source of dispute between proprietors and the state and municipal bodies. Partly this is the result of there being relatively few precedents and partly because of the limited extent to which there is a well-developed and efficient property market. The values recorded in official documents, such as technical inventorisation and taxation ones, differ from the real market values by orders of magnitude, sometimes more than tenfold. Terms like “equivalent value” and “fair compensation” are not clearly defined or well understood. For example, should the market value be that just prior to the publication of the compulsory purchase decision or just after, a particular issue as values often rise on the publication of the decision? The absence of a specific

compulsory purchase law does not help.

The relationship between state bodies and proprietors is not of equals. The state has a number of ways of pursuing its interests, including the use of town planning and tax regulations, and these administrative devices can be used to put pressure on the proprietor. These can serve to minimize expenditure by public bodies. The arbitration court tends to favour state rather than private interests. There are weaknesses in court practice in observing the interests of physical and juridical persons during compulsory purchase. Independent valuers are not accorded sufficient authority for their valuations to be recognised by both sides in disputes and, indeed, valuers may not operate with objectivity in a way that is genuinely independent of their client's wishes. Similar issues arise at the municipal level and these are coupled with the more limited resources of municipalities and regular deficits in municipal budgets. Compensation is more a matter of what is "possible" than what is "equivalent". Creating a culture based upon equivalent value requires the development of Russian civil society, but open discussion of the issue promises advances in this respect.

7. Conclusions

The countries of Central and Eastern Europe have had to change their systems of expropriation from pursuing the objective of state or collective ownership of the means of production to using powers of compulsory purchase to tackle issues of market failure in a market economy. They have had to introduce compulsory purchase processes that are equitable, accountable and open and which satisfy the European Convention on Human Rights, though when compared with the UK there seems to be less potential for objectors to challenge the fundamental basis for a compulsory purchase order or the assumptions that lie behind it. The development of market-based compensation was slower than that of the procedures. In the late 1990s, as the Bulgarian system shows, compensation was typically based upon official norms. However, compensation is now generally based on market values. In common with other codified systems of law emphasis is placed on acquisition by agreement rather than the more adversarial approach found in the UK. This could mean that compensation is based upon the worth of the property to the proprietor rather than its exchange value. In Russia there are issues about the determination and payment of compensation but for Hungary and Romania there has been a degree of convergence with valuation practices in Western Europe. This is probably a reflection of the impact International and European Valuation Standards. Whilst the valuation profession throughout Europe has tended to accept these, this is not necessarily true of governments. Ultimately, compulsory purchase valuations are statutorily-determined and reflect the wishes of governments. These may not coincide with the consensus of professional opinion.

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