

## **L'indemnisation lors des achats forcés de propriétés résidentielles au Bélarus**

*L'acquisition forcée est utilisée dans de nombreux pays pour assurer le renouvellement du tissu urbain. Cet article analyse l'indemnité versée pour l'achat forcé de propriétés résidentielles au Bélarus. Il examine la législation et des études de cas et utilise les critères de la valeur vénale pour estimer la situation des propriétaires dépossédés avant et après l'acquisition de propriétés résidentielles.*

*L'article montre que l'indemnisation au Bélarus est assurée sous différentes formes et que les protections des propriétaires résidentiels sont si fortes – qu'en fait, les indemnités versées au propriétaire sont souvent supérieures à la valeur vénale. L'article conclut par une analyse des avantages et inconvénients de l'actuel système d'indemnisation.*

## **Compensación en la compra forzada de propiedades residenciales en Belarús**

*La adquisición por expropiación se emplea en muchos países para velar por la renovación urbana. En este artículo se aborda la compensación otorgada por la adquisición por expropiación de propiedades residenciales en Belarús. Se examinan la legislación y estudios de casos y se aplica el criterio del valor de mercado para estimar la situación de los propietarios de tierras desposeídos antes y después de la adquisición de propiedad residencial.*

*En el artículo se muestra que la compensación en Belarús se proporciona de diferentes maneras y que la protección de los poseedores de propiedad residencial es bastante fuerte: en la práctica, la indemnización pagada a los propietarios es con frecuencia superior al valor de mercado. El artículo concluye con un examen de los aspectos positivos y negativos del actual sistema de compensación.*

# Compensation in compulsory purchase of residential property in Belarus

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*Compulsory purchase is used in many countries in order to ensure urban renewal. This article looks at compensation paid for the compulsory purchase of residential properties in Belarus. It examines legislation and case studies and uses the criterion of market value to estimate the position of dispossessed landowners before and after residential property acquisition.*

*The article shows that compensation in Belarus is provided in different forms and that protections for residential property owners are quite strong – indeed, compensation paid to property owners is often above the market value. The article concludes with a discussion of both the positive and negative aspects of the current compensation system.*

## INTRODUCTION

The security of property rights plays an important role in economic development. However, the state almost always retains the power to take land from the landowners against their wishes. The right of the state to acquire land by compulsory purchase affects the possibility for the owners concerned to extract benefit from their investment. The only protection for these owners is to receive adequate compensation. The procedure regulating land takings has to balance the interests of buyer, seller and third parties and minimize the transaction costs of the process. For the transitional economies of Eastern Europe, a satisfactory system of compensation for compulsory purchase is one measure of the extent to which they have developed an efficient property market (Grover, 1999).

This issue is currently of great importance in Belarus, especially in the city of Minsk. Approximately 10 percent of the city area is occupied by individual housing. The quality of most of this housing is low. Given the great demand for and lack of housing in the city, the renewal policy intends to transform low-density areas to high-density ones.

Among residential properties, approximately 4 500 land parcels are not allowed to be privatized and instead are destined to be demolished in the long run (according to the master plan). In this situation, proper compensation is the only way of offsetting the negative consequences of compulsory purchase.

The urgency of the problem is demonstrated by the adoption of new measures concerning the determination of losses, ordering and conditions of payment that came into force in January and March 2007.

The compulsory acquisition of residential real property can mean housing deprivation for the owners and their families. As a result, the state must protect them from homelessness. Moreover, as dispossessed owners are frequently not satisfied with the compensation they receive, one question that must be asked is whether the compensation paid is high enough.

The aim of this article is to analyse whether the compensation paid to dispossessed residential property owners in cases of compulsory acquisition guarantees security of land tenure and can

be considered fair. Specifically, this article considers the compulsory purchase of single-family houses; it does not examine the issues of partial takings or third-party interests. In order to form an objective picture, the problem was investigated through an analysis of legislation and case studies with the underlying concept that the creation of a fair system of compensation “has regard to the *de facto* situation rather than allowing claims on the often uncertain strict *de jure* rights” (UN ECE REAG, 2000).

### **LEGAL BASIS FOR COMPENSATION IN COMPULSORY ACQUISITION IN BELARUS**

Land acquisition in Belarus is regulated by a large number of legal acts, such as the Constitution, Civil Code, Land Code, Housing Code, a number of acts of the Council of Ministries, and Presidential Decrees. One reason for this large number of acts lies in the fact that land and buildings are acquired separately.

Land acquisition is in fact the acquisition of “interest” in the land and is strongly linked to the “holding right”. In Belarus, the land-tenure system is quite complicated. In the past, there were different orders of compulsory acquisition for private land and state land or land that is held in life heritable possession or lease right. However, since January 2007, the rules for compensation have been the same.

There are a number of ways to receive compensation for a residential property – for example, monetary compensation or alternative rehousing. The latter can be in the form of:

- the construction or purchase of a house equivalent to the one demolished in terms of accomplishment and total area;
- the purchase of an apartment located in the same city or town (or for small settlements in the same district) with a total area of 15–20 m<sup>2</sup>/person registered in the house acquired (apartment size is based on the minimum social housing standards established in Belarus);
- transfer of the house to another land parcel granted by local authority if technically possible.

The last two possibilities are additional guarantees provided by the Housing Code.

Until January 2007, the basis of monetary compensation was unclear and determined by “appraisal commissions”. These consisted of surveyors, representatives of financial departments of the local authority and others at the discretion of local authorities or at the landowner’s request. There was no obligatory condition to have a qualified valuer in the commission. Since 2007, compensation has been assessed by a limited number of state organizations using qualified valuers.

According to the new regulations concerning the determination of compensation stemming from building demolition, the monetary compensation takes into account:

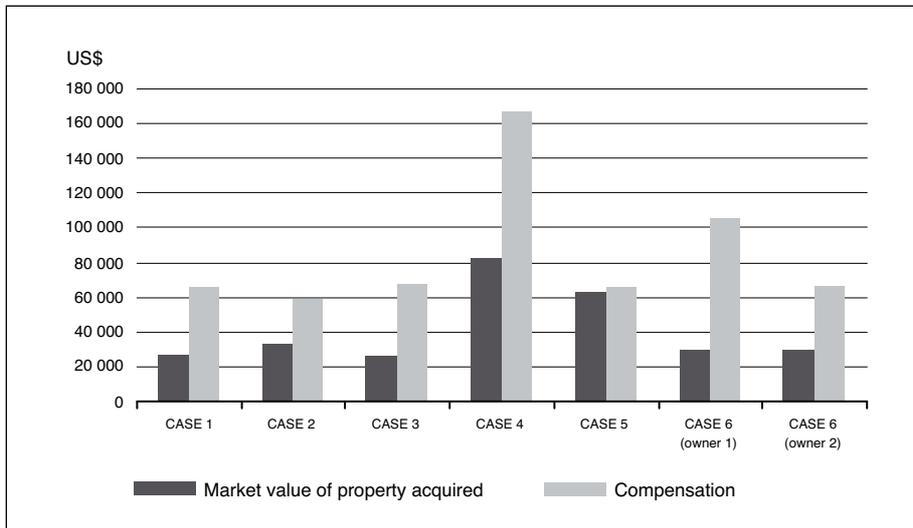
- the value of constructions (for a single-family house the value should be equal to the market value but not less than construction cost less depreciation [the depreciated reproduction cost]);
- the cost for relocation of constructions;
- the losses caused by the disturbance or limitation of landowners, users, lessees;
- the profit lost.

The date of the compensation payment is the date of the state registration of house purchase agreement but not earlier than the date of the termination of the land right. The latter is made by the decision of the local authorities.

The compensation is paid by the body to which the land is transferred but not by the state or local authority. This feature is common to the former communist counties (Grover, 1999).

### **CASE STUDIES**

For the purpose of this research, actual compensation was compared with the market value of the expropriated property, as this is the most commonly used basis for compensation throughout the world (Jackson, 2001; Murning *et al.*, 2001; Viitanen, 2002; Kalbro, 2004; Colwell and Trefzger, 2006). The choice of properties was determined primarily by the availability of the necessary data that could enable



**FIGURE 1**  
**Comparison of compensation in monetary terms**

comparisons, their close location to one another (to simplify market valuation) and the acquiring party (state building company and private developer). In all cases, the land was acquired by compulsory purchase for residential redevelopment.

All properties were appraised using a sales comparison approach (IVSC, 2005). In this approach, the market value of a property is determined using information about similar properties that have recently been sold on the market. The residential property market is the most developed in Minsk and the sales comparison approach can be used with an acceptable degree of accuracy.

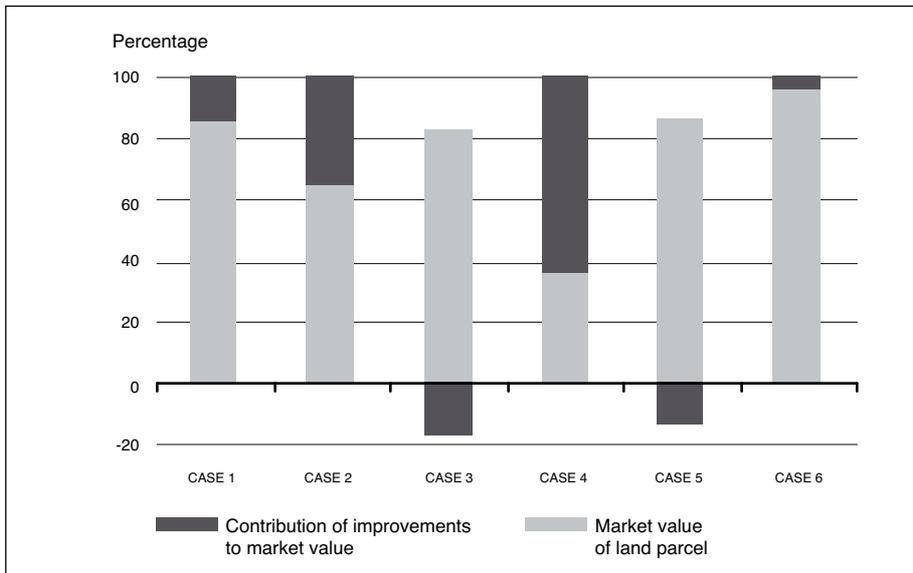
In all cases, agreements between the acquiring party and property owners were signed. However, these had been made under the threat of compulsory acquisition. In those cases where the developer was a state company, the compensation was equal to the minimum level provided for by legislation. In those cases where the developer was a private company, it was not possible to obtain information as to what was used as a basis of monetary compensation. Figure 1 shows the comparison of compensation received with the market value of the property acquired by compulsory purchase.

It can be seen that in all cases the property owners' financial situation improved after the acquisition. On average, the amount of compensation was 2.3 times that of the market value. Only in Case 5

was the amount of compensation close to the market value. However, the treatment of landowners is not equal under the existing system. This is most clearly evident from Case 6. Here, two owners had equal shares in a property but one received compensation that was 1.6 times higher than that paid to the other owner.

As there are several possibilities as to what form compensation takes, the frequency of the different types of compensation paid has been analysed. The most popular form of compensation (56 percent) is alternative rehousing in the form of an apartment corresponding to the equivalent social standards. Only one owner chose equivalent rehousing in the form of new house construction. Monetary compensation was used in 33 percent of cases. In several cases, monetary compensation was combined with an alternative rehousing. Monetary compensation was paid only in cases where the acquiring party was a private company. This can be explained by the uncertainty of the rules for estimating monetary compensation before 2007 when private companies had more flexibility in negotiations.

The quality of the properties acquired by compulsory purchase was estimated using the contribution of construction to the market value of properties. In valuation theory, a number of principles reflect the relation between the components of real property (The Appraisal Institute,



**FIGURE 2**  
**The structure of market value of properties acquired**

2001). One of them is the principle of contribution, which states that the value of any component of a property is measured by how much it adds to market value by reason of its presence or detracts from the market value by reason of its absence. A second one is the principle of balance. Balance is achieved when adding improvements to land and structure will increase the property value. Figure 2 shows the contribution of buildings to the market value of properties for every case analysed.

Only one property (Case 4) was acceptable in terms of housing quality, total house area and necessary engineering services. In Cases 3 and 5, the buildings do not contribute anything to the market value of the real property unit. The market value of the land parcel is higher without the existing buildings. In all other cases, the contribution of the buildings to the total market value of the properties is less than 35 percent. It can be concluded that the quality of these residential properties is low and that their current use does not correspond to their highest and best use. There can be different reasons for this – for example, the poverty of the residents or restrictions imposed by local authorities on reconstruction. In the market, this type of housing is generally bought by rich people for demolition in order to allow new building.

Owners with low-quality housing usually prefer compensation in the form

of new apartments using additional social guaranties provided by the Housing Code. Owners with normal and high-quality housing normally prefer the construction of a new, similar single-family house.

#### **DISCUSSION AND RECOMMENDATIONS**

There is a variety of ways in which compensation for compulsory land acquisition can be settled in Belarus. The owner is free to choose any of them. As noted above, the possibilities are generally divided into two groups:

- compensation in monetary form;
- compensation in the form of alternative rehousing.

There are various ways of obtaining compensation in the form of alternative rehousing. However, the measure of equivalence in cases where the owner chooses alternative rehousing is not clear. This is because valuation is compulsory only where the owner requires monetary compensation. Concerning the purchase or construction of a new house, there is a condition about equivalence of accomplishment and total area with a demolished one. No one compares the market value of two properties. The transfer of a house can be made on another land parcel with a market value that is more or less than that of the property acquired. The conditions governing how apartments are granted are also uncertain. A total

area of 15–20 m<sup>2</sup>/person is considered the minimum social standard. However, the location in the same city or town does not guarantee the same market value as that of the property taken. As a result, property owners can benefit in cases of alternative rehousing but they can also lose. Everything depends on their knowledge of the law.

One recommendation is that compensation should be assessed in every case (also where it is provided in a form of alternative rehousing) and that the market value should be used as a measure of equivalence. This would decrease the number of dissatisfied persons and allow the procedure to be more transparent for every participant. Dispossessed owners would realize all additional gains they have accrued and, moreover, this approach would provide protection for non-experts.

In general, compensation in the form of alternative reinstatement slows the development process. As a result, its use should be minimized. However, several peculiarities should be taken into account in the case of Belarus:

- significant increases in residential real property prices;
- poor real property markets (few transactions) in some regions;
- uncertain period between valuation date and the date of compensation payment.

Taking into account these conditions and the fact that compensation in the form of rehousing gives more protection for the individuals concerned, it is reasonable to retain it at least in the short run.

Nonetheless, the difference between monetary compensation and alternative rehousing should be eliminated. This refers first of all to depreciation. In the case of monetary compensation, depreciation is subtracted from the market value. However, in the case of alternative rehousing, the owner does not have to reimburse it. Making the conditions for two possibilities equal will facilitate the development process.

Among the non-monetary forms of compensation available in Belarus, it is

necessary to distinguish one opportunity that is not “compensation” for property taken. This is alternative rehousing in the form of granting apartments. The state established this procedure in order to improve living conditions for people at the moment of compulsory purchase of their property. The apartment size is based on the minimum social housing standards established in Belarus and does not depend on the value of the property taken. This is why the additional benefit received by owners should not be treated as compensation.

The new law has brought more clarity and predictability about the basis of monetary compensation – market value. There is also a special requirement that determination of losses (compensation) has to be made by special bodies with qualified appraisers. However, the limitations imposed on private valuation companies are not equitable because appraisers working there have to prove their qualification in the same way as appraisers working for state enterprises.

The additional condition in the law that losses cannot be less than the depreciated reproduction cost is relevant for areas where the value of property is low in terms of market value and where construction costs are more than market value. In these markets, valuations that use a sales comparison approach can be problematic and the great number of adjustments makes the result doubtful. However, the depreciated reproduction cost does not include the land value (while the market value includes the value of both land and buildings). Instead of depreciated reproduction costs, it is more reasonable to use the market value obtained in the cost approach as the lowest level of compensation. Moreover, the estimation of reproduction cost allows the consideration of all improvements made by the property owner. This can cover some excessive improvements to property that are not recognized by the market (equipment for disabled people, luxury improvements, etc.).

Special valuation rules are still lacking in legislation concerning valuation date, highest and best use of the property, consideration of illegal property improvements, disregarding changes in value caused by compulsory acquisition, etc.

The date of valuation is unclear and is not dependent on the date of compensation payment. Given the drastically increasing prices of real properties in Minsk (about 35–40 percent per year), it would be rational to calculate or correct compensation just before payment. The fact of constantly rising prices gives the advantage to taking compensation in the form of alternative rehousing.

As mentioned above, land parcels and constructions are acquired separately. This can lead to confusion during the valuation process and abuse by property owners when they require different compensation for the land parcel and the house. Market value implicitly includes the value of the whole unit (land and buildings). It is necessary to take measures to prevent double compensation.

## CONCLUSION

Compensation in a compulsory purchase procedure is a way of protecting property owners. This article has examined whether the compensation to residential property owners in the case of compulsory purchase in Belarus is fair. In all the cases analysed, the dispossessed owners were better off after acquisition. However, the limited number of cases analysed does not allow a general conclusion. There is also a theoretical possibility that owners can receive compensation that is less than the market value. This could occur under the existing legislation in cases when the owner chooses alternative rehousing because of an absence of compulsory valuation. Undercompensation can occur where the property owner lacks sufficient knowledge of the law. Nonetheless, the safeguards are very strong and owners can always apply for additional benefits.

The compensation rules can be characterized as “too fair” but unstable

in relation to the property owners whose properties are acquired by compulsory purchase. However, the interests of all parties should be balanced. Therefore, it is reasonable to investigate the position of other parties participating in the development process in addition to the general practice of providing social housing for other persons.

In general, only some issues of compensation in compulsory acquisition have been addressed by the new legislation of 2007 – mainly concerning monetary compensation. However, the new law has not brought clarity regarding compensation in the form of alternative rehousing, valuation rules, etc. As a result, the problem needs more complex analysis, and further improvements to the legislation are necessary.

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