Melot, Romain

Conference Paper

Conflicts over compensation of expropriation. The case of farmland in France.

52nd Congress of the European Regional Science Association: "Regions in Motion - Breaking the Path", 21-25 August 2012, Bratislava, Slovakia

Provided in Cooperation with:
European Regional Science Association (ERSA)

Suggested Citation: Melot, Romain (2012) : Conflicts over compensation of expropriation. The case of farmland in France., 52nd Congress of the European Regional Science Association: "Regions in Motion - Breaking the Path", 21-25 August 2012, Bratislava, Slovakia, European Regional Science Association (ERSA), Louvain-la-Neuve

This Version is available at:
https://hdl.handle.net/10419/120580

Conflicts over compensation of expropriation. The case of farmland in France.

Romain MELOT
INRA-Sadapt
16, rue Claude Bernard
75005 PARIS
romain.melot@agroparistech.fr

Introduction

Eminent domain is a tool commonly found in the arsenal of public infrastructure developers alongside other tools of land regulation such as zoning or urban planning. Condemning land for public use through eminent domain is more and more common in France, as it is in other countries, and is illustrated by the fact that local authorities in France have become by far its principal users, measured both by the number of development projects and by surface area. While exercising eminent domain remains the prerogative of the French State, local authorities (towns, counties or their economic interest groups and delegating bodies) are indeed the most likely beneficiaries of projects and therefore assume control of land development.

Another phenomenon contributes to the extended use of eminent domain. The days when land expropriation was reserved for large public infrastructure projects have long since passed. Public authorities now regularly resort to eminent domain to manage ordinary urbanization, combining it and connecting it to zoning policy and urban planning. The trivialized way in which eminent domain is implemented provokes controversies in local debates and disputes among local residents and farmers. This is a good place to obtain an overview of the myriad aspects of transformation at play in rural and urban-fringe areas. Indeed, land condemnation for "public use" can be conveniently applied to two phenomena which significantly contribute to the urbanization of farmland: urban sprawl (through the extension of industrial, commercial and private use construction) and city-initiated public infrastructure projects (transportation, land reclamation…).

In the context of an increasing disappearance of farmland, disputes involving the just compensation of owners or users of land condemned for public use provide us with a privileged vantage point from which to analyze the pressure exerted on this land, particularly on the urban-fringe and specifically in France's largest urban center, the Greater Paris area. Paradoxically,

very few property owners actually go to civil court to contest the condemnor's offer of compensation. According to administrative data on land condemned for public use, around 10% of the total is involved in a claim. The use of eminent domain by public authorities, therefore, remains largely a hypothetical affair. The threat is executed only when the land holder refuses the taking by mutual consent and provokes the property transfer through court order, strictly speaking, through the exercise of eminent domain. While eminent domain is only rarely exercised, it is precisely the existence of these marginal situations (the possibility, always present in the negotiation, of expropriation) which conditions the vast majority of cases of acquisition by mutual consent. Likewise, the tenor of judicial proceedings is conditioned, in return, by the standard profile of negotiated settlements within the framework of eminent domain affairs.

The issue raised in this article, through the analysis of this body of disputes, is, therefore, the role played by the courts in the matter. In fact, study of the agricultural land expropriation cases leads us to paint a much more contrasted picture of the situation than the one sometimes puts forth of the court as a simple record-keeper of condemnors' offers. Not only does the mere notion of *farmland* imply a variety of situations, but the court also turns out to be a genuine battleground for opposing expectations.

From a legal sociology perspective, the research presented here aims to show that the legal claims strategies in matters of land expropriation cannot be satisfactorily explained without taking into account observable judicial practices at a local level. Indeed, the characteristics of real estate assets, both their private use and public management, are essential elements which explain why within the framework of public use projects, either negotiated settlement or, on the contrary, referral to court, is prescribed as the relevant context for determining compensation.

This review of the current state of the law concerns two aspects which are different but both strongly nested in local land systems. First, we find the situation of individuals with regard to the rights they possess over real estate assets. Indeed, when we speak about land expropriation, it is above all in relation to the stakes behind owners' property rights. But the law also provides for the protection of the rights of non-owners, such as lease-holders endowed with land-use rights whose business interests may be adversely affected by land development projects. As discussed further in the paper, this situation is unavoidable when dealing with the expropriation

of land supporting economic activity in which land leasing is a widespread practice, such as agriculture in France.

In terms of public law, it is essential to take into account local judicial practices, not only to understand the structure of disputes between condemnor and condemnee, but also to explain the decision to go to court. Regulatory practices in matters of urban development projects clearly influence the nature of building permits associated with developed and undeveloped sites. The type of zoning, the building code for construction and extension of existing structures and building standards for public infrastructure projects (land reclamation, roadbuilding, electricity, water…) are all factors which directly influence land value estimates. It seems reasonable, then, to posit the idea that land disputes often directly reflect local urban building codes and, consequently, policies implemented by local authorities. We wish to further underline the fact that eminent domain is very often exercised within the context not of large infrastructure projects but of ordinary urban development. Recourse to 'public use' prerogatives is thus used as a complement to urban planning policies.

The Context of Farmland Condemnation

The necessary recognition of customary law practices

The analysis of judicial disputes, and, more generally, of the expropriation practices in France, is of particular interest on a comparative level insofar as French law is situated in an intermediary position in relation to other judicial systems (Azuela, Herrera, & Saavedra-Herrera, 2009). As comparative law studies have shown, expropriation law in France, as far as compensation is concerned, is midway between the legislation of countries like Germany, which have rather generous compensation policies, and that of countries like Canada, which have more restrictive policies. Within this template, the French situation is quite similar to the mid-range American one, beyond the significant differences in legislation between the different states of the union (Alterman, 2009).

To that we might add that it is important to put the differences between the two sides of the Atlantic into perspective through the detailed observation of their respective legislations and jurisprudence. Characteristics of American law which are considered highly favorable to landowners such as 'regulatory taking' have their equivalent in the French judicial system and

their scope of application seems somewhat narrow in the United States. Conversely, changes imposed by the European Court of Human Rights seem to point in the direction of a decrease in the prerogatives of the French State, in particular, in the area of property appraisal values (Jacobs, 2008, 2009).

France is often considered as one of the first nations to equip itself with a strong and centralized State. This historical heritage was accompanied by the implementation of a codified legal system as of the beginning of the nineteenth century. However, on this point as well, comparative law research highlights the fact that a strong presence of the State and the existence of a codified system of laws are not necessarily decisive factors in the adoption of landowner-friendly legislation. Moreover, the political history of legislative changes in the matter are seldom rectilinear. Thus, through the 1930's, French law was organized around a jury trial system, considered as favoring generous compensation, before the legislation evolved in a more restrictive direction. This evolution intensified in response to the country's needs to rebuild itself during the post-war period.

To draw up a complete profile of the state of the law, one must remember that a systematic evaluation of the owner's situation can lead to very different results depending on whether one confines oneself to expropriation law or whether one investigates more globally the body of legal rulings which impacts the rights of the latter vis-à-vis the State and local authorities. Thus, German law proposes more generous compensation criteria than French law in matters of land expropriation but imposes strict rules in terms of urban codes leading to a situation which practically prohibits hold out behavior on the part of landowners.

Understanding the logic behind the use of courts in matters of expropriation comes down to trying to identify the reasons why owners prefer a dispute to the negotiated sale of their property. This question has been investigated through economic research but in an indirect manner. Economic theory treats the subject of judicial dispute as a particular type of hold-out strategy, that is to say, behavior characterized by the landowner's reluctance to sell. It is true that in matters of eminent domain, these two phenomena are closely linked insofar as a refusal to sell on the part of the landholder often provokes in a quasi-mechanical way the intervention of a judge. Public authorities in this case have no other choice but to mandate the judicial transfer of the property and request that a judge set compensation.

The highlighting by economic theory of retention strategies results in an explanation of disputes (or the breakdown in negotiations) in terms of moral hazard. The behavior of landowners is analyzed through the manner in which they anticipate future compensation, from which they may benefit thanks to public use projects. The compensation is in this way considered to be at the origin of a distortion of the investment. It incites landowners to overinvest in their real estate (increasing its value through development, for example). This over-capitalization may lead to an escalation in price capable of blocking the public use project by increasing its cost beyond what is deemed acceptable by local authorities. This interpretation in terms of moral hazard actually leads to a reorientation of the debate on the nature of compensation toward one concerning the criteria for recourse to eminent domain. According to this angle, public authorities would have to in fact give up a project once it became clear that the net profits of such a project for the community risk being outweighed by the optimal yield owners have attributed to their assets (Blume & Rubinfeld, 1984; Blume, Rubinfeld, & Shapiro, 1984; Fischel & Shapiro, 1988).

Based on the hypothesis of moral hazard, economic research on the subject has put forward the existence of various costs which may explain the breakdown of negotiations between owners and public authorities and consequently the land hold-out attitude. It is first of all, and in a general way, the simple result of a high transaction cost triggered by the mechanism of over-investment described above. Other factors such as the fragmented nature of a property may also exacerbate matters. A public use initiative will be considered as even more expensive for a community if the lots are fragmented and the number of landowners numerous (Miceli, Sirmans, 2007). Inversely, the prospect of a small compensation could limit hold-out, but is sometimes considered a risk linked to mediocre upkeep of the land and low investment due to the existence of a demoralization cost stemming from anticipated losses (Fischel & Shapiro, 1988).

Research studies based on the moral hazard hypothesis remain rather evasive regarding rules at the disposal of public authorities to absorb private land rent and, generally, do not explore the impact property rights and local regulations on hold-out strategies. Furthermore, they do not rely on empirical data but rather on those of a theoretical nature. In particular, the hypothesis of investment distortion is not supported by an observation of market prices or estimates formulated within a judicial or mutual consent context. It is difficult to make general extrapolations based on this hypothesis insofar as many cases of expropriation concern undeveloped land, which is

more often the object of inflated valuation than overinvestment. In addition, landowners in this situation do not control investment decisions involving infrastructure (roads, clean-up or electricity), a domain in the hands of the public sector.

Other studies, inspired within the framework of political economics, insist, on the contrary, on strategies devised by public sector players, which help explain mediation in favor of consensual acquisition or dispute (Munch, 1976). This angle of investigation benefits from a shying away from a focus on owner-based strategies insofar as the hold-out behavior and, in fine, the decision to go to court, is the result of a rational calculation on the part of both owners and the deciding authority for a public use project. Hence, inflated compensation strategies may be observed on the part of local authorities desirous of pushing a project through quickly so as to avoid contentious delays. Seemingly irrational differences between the property value and the public authority's offering price may thus be explained when taking into account the time factor, a burden weighing solely on the project developer. In a more radical manner, this research further points out that economically unattractive projects generate nonetheless generous compensation offers when the proffered aim is above all political or when local economic interests aggressively lobby local politicians for their backing (Garnett, 2006). The findings of such research benefit from a position of empirical observation. However, they make it difficult to formulate general conclusions since the data are based on an analysis of specific projects. We propose to weigh these hypotheses against the empirical analysis of a corpus of judicial claims, based on the targeted issue of farmland expropriation.

Field of study

The field of study is composed of a total of 170 judicial claims cases involving agricultural properties. These cases were under the jurisdiction of the greater Paris area – Melun, Versailles and Pontoise. No other farmland-related cases were identified in the other jurisdictions of the outlying areas surrounding Paris. All judgments were rendered during 2007, which is our year of reference. The total of takings in question corresponds to a little less than two hundred *hectares* (nearly 500 acres), expropriated through twenty declarations of eminent domain for a variety of public uses. This total corresponds to an area about the size of the 1st district ("*arrondissement*") of Paris. The study was conducted as part of a wider research program carried out in conjunction with the Division of Civil Affairs of the Ministry of Justice, covering the activities of the

expropriation jurisdictions for the whole of the national territory for the period of reference. The scope of the present study is limited to the analysis of claims relative to the compensation of condemnees, to the exclusion of other types of cases adjudicated by the expropriation jurisdictions (setting prices for assets covered by ROFR, public easements with compensation for owners, claims linked to the forced acquisition of private property by public authorities, etc.)

Judicial proceedings as the setting for competing claims

The court as arena for dispute?

In eminent domain proceedings, a certain number of claims correspond to the profile of "uncontested" cases. Cases in which the court sides entirely with the Taker in the absence of alternatives formulated by an absent and unrepresented landowner fall into this category. But contrary to certain areas of civil dispute, this type of case is far from being the norm in cases of compulsory takings (23% of cases). Eminent domain proceedings and compensation decisions often seem to derive, in the above case, from the failure on the part of the landowner to respond to official offers, from a delay in the identity of the latter or from the fact that the landowner's financial interests are limited (which is often the case in the condemnation of a leasehold, as we will see later).

As a matter of fact, it by no means obvious to consider decisions which benefit from the agreement of both parties (21% of the sample total) as situations favorable to the condemning authority. It is true that in some of these cases, there is no genuine judicial debate: from the outset, the condemnor requests the intervention of the judge with the single aim of having a settlement validated. The condemnor seeks to give more weight to a transaction carried out amicably and which will thus be given a reference value.[1] However, the judge could also be asked to validate a pending agreement resulting from ongoing negotiations, after which the condemnor agrees to increase the compensation offer. Taking the case to court thus turns out to

[1] Furthermore, the condemnor may wish to have a settlement validated by a judicial decision insofar as the judgment is endowed with the probative force of an authentic act

be rewarding for the condemnee, who through the lever of an official claim, manages to turn a breakdown in negotiations in his favor.

If we investigate more specifically the condemnees' chances of success when there is a confrontation between their claims and the offers of the condemning authority, it makes more sense for the analysis to stick to situations which arise within the scope of what we could call "the dispute arena." By this expression, we mean the body of cases where opposing claims are confronted and for which the judge must truly hear a case and decide between distinct scenarios. If, in this way, we set aside the cases in which the condemnor triumphs without glory and without having had to confront an alternative offer and focus on decisions where the judge hears a case and decides it through the assessment of various scenarios (the situation for a little more than half of the cases), the situations in which the court amends the compensation upward appear very frequently (68%).[2]

Eminent domain disputes…often without landowners

The right to compensation concerns any material prejudice for which the link with the compulsory taking is direct and certain. Hence, the same real estate asset may be the object of distinct prejudices: that of the landowner deprived of the value of his property, but also that of the person deprived of income procured from economic activity for which the land is a support. This problematic is particularly relevant in France where legislation favorable to the protection of leaseholders has vastly promoted tenant farming. In a region such as the greater Paris area, more than 80% of arable farmland is cultivated through indirect farming.

Cases involving tenant farmers occupy a place of their own in the civil dispute arena of eminent domain. In our sample, one case in three adjudicated by expropriation jurisdictions is an "agricultural eviction" case where the farmer, who is a simple leaseholder, is compensated solely for the loss of earnings, by a "lost usage" indemnity rather than a "dispossession" compensation. Yet, it is essentially in the cases of eviction that the issue of economic prejudice linked to the disruption of farming activity is raised. Indeed, there are very few landowners who, in addition

[2] To that may be also added a small number of cases (7% in our case sample) in which, despite the absence of legal submissions filed by the condemnee, the judge increases compensation by following the government appraisor's estimate.

to their dispossession compensation, will claim indemnity for lost usage due to the loss of farming income. This is either because they know nothing about the farming sector or because they have given up this activity.

Agricultural eviction cases present an unusual profile as well, insofar as the role played by collective negotiation, as a backdrop for individual disputes, is more important than in other types of cases. In fact, the tax administration concludes memoranda of understanding with farming representatives (Chambers of Agriculture and farm-sector trade unions, etc.) with a view to set indemnity brackets designed to serve as reference points for future takings. These negotiated scales concern both dispossession and loss of usage indemnities. While the method of comparative assessment seems to be the one of choice for condemning authorities in order to estimate dispossession indemnities, Takers systematically refer to these negotiated brackets for loss of usage compensation. Consequently, the claims of evicted tenant farmers are most of the time focused on other types of compensation, a shift in focus that alters the tenor of disputes, as we shall see next.

That which is incidental is not necessarily insignificant…

The principle according to which any material prejudice having a direct and certain link with the transfer of property must be compensated justifies the idea that for the same target of eminent domain, prejudices other than dispossession or eviction may also be open to indemnification. Compensation for these prejudices, qualified as ancillary, is added to the principal indemnity for dispossession or displacement.

The prejudices which farmers might claim for compensation are impressively diverse in nature. Thus, in the different judgments setting compensation for condemned farmland, we find claims relative to modalities of breach of tenant-farming contracts or claims of prejudice linked to damaged land as well as issues concerning the disruption of economic activity. Some farmers, for example, file a claim for a specific indemnity linked to the loss of a stable or autonomous economic situation (the case for tenant-farmers whose long-term leases afford them judicial protection). Others demand that the enhancements brought to the land over time (indemnity for "land and crop improvements") be taken into consideration. Some claimants raise the issue of

the difficulties created by the fragmenting of parcels, a dissection of land which implies extra wear and tear on farm vehicles due to added mileage.

One consequence of the proximity of farmland to the urban zones characteristic of large metropolitan areas like the Paris region is the continual extension of infrastructures linked to urban sprawl. In eminent domain cases involving farmland, claims for ancillary indemnities are thus often linked to the devaluation of the surplus land leftover. This is in particular the case for takings which destructure a farm and make it more complicated and costly to keep the activity viable. The most commonly found arguments are those relative to the dismantling of a farm or to potential crop loss. The destructuring and dismantling of farms and farmland is argued on the basis of prejudice generated by successive takings. The overlapping effect, at a regular pace, of public works projects (e.g. highway links progressively developed for the "Francilienne" expressway) and creeping urban sprawl have resulted in the repeated amputation of numerous farms in the Paris region. Farmers often find themselves facing situations of "potential crop loss." The consequence is that they cannot maintain production at the same level of profitability. Remaining parcels are insufficient, and their configuration makes it hard for farm vehicles to get around them. Meanwhile, the farm buildings have become over-sized for the land which is left.

The "whittling away" of farmland is thus carried out through both the poorly controlled spread of new space-hungry urban development or "sprawl" and the progressive densification of the highway grid which sometimes goes so far as to push rural spaces into an inextricable vice grip. A striking illustration of this is provided by the disputes generated by the development of the Paris bypass or ring-highway, where in certain areas the overlapping in the phases of road construction lead to extreme situations.

In one case involving a farm located in the town of Tremblay-en-France (*département* of Seine-St-Denis), a farmer filed a claim for compensation against "successive takings." She was the target of three successive phases of takings on her land over a period of fifteen years. The combined effect of the development projects was a 40% reduction in the size of her property! In another case in the same *département*, a grain producer who claimed he was no longer in a position to profitably farm his land, which had been reduced to a bare minimum, successfully demanded that the expropriating authority proceed with a "total taking," that is to say, the acquisition of the whole of the parcels which the farmer held, including those which were not

within the perimeter of the planned development project. These extreme situations in which the destructuring of farm holdings is significant by reason of successive takings, which may end up compromising the viability of any farming activity, lead to a displacement of the dispute. From a punctual confrontation between a developer and a farmer, the dispute now falls into the realm long situated within the evolution of urban-influenced territories of open-space, little by little dissected by public works.

Claims relative to incidental compensation thus play a significant role in eminent domain disputes. When condemnees file compensation claims, the latter include ancillary indemnification in one case out of four. The final compensation obtained through such claims remains highly limited since their cumulated amount represents on average only 14% of all compensation awarded per case. It constitutes without a doubt one of the important elements which the condemnees take into account in their decision to refuse a negotiation (and thus, indirectly, to provoke a dispute). Indeed, while the final indemnities awarded by the court on the grounds of ancillary prejudice are proportionally modest, they represent a sizeable portion of total claims submitted (28% on average, or twice the sum retained by judges), a figure which tends to show the importance they play in the dispute strategies devised by the targets of eminent domain.

Claims of reparation for prejudice suffered other than that covered by the principal compensation play a prominent role in agricultural eviction cases since this type of indemnity represents on average close to half (45%) of all financial claims filed by displaced farmers. The specific situation of agricultural displacement cases results from the fact that "loss of usage" indemnities are by nature lower than those for "dispossession." But it can also be explained by the high amount of ancillary claims accompanying this type of legal dispute. In fact, in a certain number of eviction cases, the only real financial issue involves incidental prejudice, as the displaced farmer does not contest the main loss of usage compensation, which usually falls within the collectively negotiated brackets.

The success of condemnees in the courts: a picture in contrasts

The judge facing appraisal scenarios

In the judicial context, the Taker, the land-tenure office and the court establish compensation estimates. We can estimate, for each, the difference (in percentage) between their appraisal and that of the condemnee, all the while distinguishing between the type of prejudicial indemnity, be it principal or ancillary. For the purposes of this study, we consider only cases which emanate from the realm of what we have called "the dispute arena."[3] Moreover, we have discarded outlying figures which do not fall within standard deviation and concern situations of extreme disagreement (cases in which the condemnee's estimate is more than threefold that of the Taker).[4] Each claim (principal or incidental) filed with the court is thus the object of four distinct appraisals (those of the Taker, of the target of the taking, of the land tenure office and, in the end, the one of the judge him or herself).

As far as principal compensation is concerned, it is striking to notice that in one case out of two, the estimates of the Taker, the land tenure office and the court, all three of them, diverge by at least 40% from those of the condemnee. Analysis of sums awarded by the judge show, however, a greater amplitude than the estimates of the other judicial protagonists. While usually following the appraisal of the Taker and the land tenure office, the judge does not hesitate, on the other hand, to award principal compensation which is closer to the estimate of the target of eminent domain, if not equal to the latter's claims (in about ten cases in the sample). The cases in which the court closely espouses the claimant's estimate generally correspond to ones involving urban growth where the claim of an "added-value situation" is deemed admissible (or what is also referred to as a "privileged situation"). This increased value in price applies to land whose characteristics of location and configuration bring it closer to the market of developable land, without the conditions actually being met for it to qualify as such from the point of view of legal status. The acknowledgement of a privileged situation generally leads the judge either to base compensation on a comparison with other land holdings considered to be in privileged situations

[3] That is to say, proceedings responding to two conditions: the target of eminent domain formulates an estimate (excluding cases where Takers' claims are granted in the absence of the claimant), and this estimate diverges from the offer of the Taker (which excludes, this time, cases in which there is agreement). Following these criteria, we have thus retained 56 claims relative to principal compensation and 81 relative to incidental indemnification (knowing that a single principal claim may give rise to several incidental claims).

[4] The amounts retained for the principal compensation are presented with disregard for the "relocation" indemnity awarded by the court. This lump-sum indemnity, which is generally not contested, aims to help the target of eminent domain cover the costs of acquiring a property similar to the one which was taken.

themselves or, in the absence of adequate terms of comparison, to apply a flat-rate increase with regards to fair market value references which are not endowed with this added value.

It is worth elaborating further on this phenomenon in order to highlight its relevance. Why are targets of eminent domain often tempted to claim a privileged situation? Most of the time, the answer resides in the urban policy decisions adopted by local elected representatives. So as to create ample room to maneuver for urban growth and appeal to constituents, towns tend to designate significant portions of their territory as "urban development zones." Yet, these zones which have been targeted for construction projects are characterized by a very high internal heterogeneity, since we find in such zones areas which can be urbanized in the short term along with other land which is not yet equipped with infrastructure (or perhaps may be sometimes simply undevelopable). In the last case, infrastructure improvements are strictly a conditio sine qua non for urban development to take place, unlike land which is already grid-connected and can be developed quickly, without the constraints of infrastructure enhancements.

Generally speaking, the following signal is sent to landowners whose holdings are legally zoned for urban development but not yet grid-connected: *you're next in line*, during the second phase of development. The policy decision in favor of urban growth, which is rather favorable to landowners, is, to a certain extent, a source of confusion. It leads to the designation of developable plots endowed with different building rights and to fostering a feeling of inequity among landowners whose property is not immediately developable. This feeling of inequity is reflected in the numerous cases where an added value situation claim is at the heart of the dispute. Paradoxically, we can state here as well that the incentive to resort to a legal claim is not to be found in strictly individual considerations, but is rather the consequence of a political preference for urban sprawl policies.

Added value situation claims are thus a significant source of diverging appraisal in terms of assessing the amount of principal compensation. By contrast, diverging appraisals appear as being of a very different nature in the case of incidental compensation. This contrast can be explained by the specific character of the indemnity for prejudices suffered. Unlike principal compensation, which can be evaluated in diverse ways, but whose principle is not in itself questionable (excepting rare cases), incidental compensation in itself may be the object of legal challenges. Relatively uniform differences in appraisal may give way to very heterogeneous

divergences and, above all, to a situation where the judge occupies a singular position vis-à-vis that of the Taker or the land-tenure office. In fact, as far as court-estimated incidental compensation is concerned, the general trend is quite the same as in the case of principal compensation (more than half of appraisals are around 40% lower than that of the claimant). Situations in which the judge follows neither the offer made by the Taker nor the opinion proffered by the land-tenure office is, however, more frequent (in 28% of cases, the judge grants the claimant's demands). On the contrary, the representative of the land-tenure office and the Taker, even more so, are reluctant in one case out of two to even admit the principle of incidental compensation and are opposed to its award. Takers offer incidental compensation which is particularly unfavorable since they generally make offers which are at least 80% lower than what the claimant is requesting. The condemnee's chances of success are thus greater in the legal debate surrounding incidental compensation. Estimating the monetary value for this type of particular prejudice, which is often of a more individualized nature and incompatible with standardized methods of appraisal, is difficult. This complexity is without a doubt an element in explaining its singular position.

The "marginal" success of the targets of eminent domain

Within the context of land acquisitions carried out by eminent domain, the situations of the disputes engendered ultimately have a doubly marginal character. First of all, they are marginal in terms of the ratio between the number of claims filed and the total number of amicable settlements. It is revealing that redress proceedings are systematically considered by Takers or their delegating bodies as isolated cases and are often perceived as irrational. The character of these disputes is additionally marginal in terms of the gains obtained by condemnees as a result of these proceedings. The success of the targets of eminent domain (in the broadest sense of the term, which includes dispossessed landowners and displaced tenant-farmers) appears thus as a "marginal" one, insofar as the upward revision of the Takers' offers of compensation by the judge most often results in a relatively minor price difference (lower than 9% in one case out of two).

However, in both cases, this margin has its importance. It is highly likely that the small fringe of those who "hold out" against a negotiation plays a role that surpasses the scope of their reduced number. In fact, the price set for compensation in a judicial setting serves as a reference for

future development projects and, therefore, the Taker will be induced to take it into consideration when planning these projects, a factor which will define the Taker's "rule of thumb" in the long term. This notion is corroborated by the fact that negotiations, rather than schematically breaking down during a legal dispute, often continue within the context of court proceedings, as illustrated by the high rate of court-validated settlements. Moreover, while the gains obtained by condemnees through judicial proceedings often prove to be limited, the latters' claims are more seriously taken into account when they formulate an alternative offer to that of the Taker. From this point of view, in matters of eminent domain, the court as dispute arena fully assumes its role in the adversarial process.

Bibliography

Alterman, R. (2009). Takings *International: A Comparative Perspective on Land Use Regulations and Compensation Rights. Perspective* (American B.). Chicago

Azuela, A. (2007). Taking Land around the World: International Trends in the Expropriation for Urban and Infrastructure Projects. Cambridge, MA.

Blume, L., & Rubinfeld, D.L. (1984). Compensation for Takings: An Economic Analysis. *California Law Review, 72*(4), 569-628. Doi:10.2307/3480447

Fischel, W.A., & Schapiro, P. (1988). Takings, Insurance and Michelmann: Comments on Economic Interpretations of "Just Compensation" Law. *Journal of Legal Studies*17(2), 269-293.

Friedman, L.M. (1989). Litigation and Society. *Annual Review of Sociology, 15*(1), 17-29. doi: 10.1146/annurev.so.15.08189.000313

Galanter, M. (1974). Why the "Haves Come Out Ahead: Speculations on the Limits of Legal Change. *Law and Society Review, 9*(1), 165-230.

Garnett, N. S. (2006). The Neglected Political Economy of Eminent Domain. *Michigan Law Review, 105*(1), 101-150.

Jacobs, H.M. (2008). The Future of the Regulatory Takings in the United States and Europe: Divergence or Convergence? *Urban Lawyer, 40*(1), 51-72.

Jacobs, H.M. (2009). An Alternative Perspective on United States-European Property Rights and Land Use Planning: Differences Without Any Substance. *Planning & Environmental Law, 61*(3), 3-12. doi:10.1080/15480750902309992

Miceli, T.J., & Sirmans, C. (2007). The Holdout Problem, Urban Sprawl and Eminent Domain. *Journal of Housing Economics, 16*(3) 309-319. doi:10.1016/j.jhe.2007.06.004

Munch, P. (1976). An Economic Analysis of Eminent Domain. *Journal of Political Economy,*

84(3), 473-498. doi:10.1086/260455