

ADEQUATE COMPENSATION IN COMPULSORY ACQUISITION OF LAND IN THE ALBANIAN TRANS ADRIATIC PIPELINE PROJECT

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Abstract. The aim of this paper is to research the process of compulsory acquisition of land and its fixtures in the Trans-Adriatic Pipeline project in Albania from the perspective of the affected persons. The legislation of Albania as well as international principles concerning compulsory acquisition of property was analysed. Examined also was the process of how legal and institutional framework is applied in determining adequate compensation to landowners who are mostly small rural farmers. Findings are based on analysed documents, scientific publications, and interviews with community leaders, ombudsmen of Albania and more than 80 family representatives from 32 villages in three regions of Albania whose land property rights were affected due to the Trans-Atlantic Pipeline project. The compensation mechanism and landowner point of view regarding the compensation process were also examined. The findings of this research reveal that the compensation paid to the landowners is inadequate and incompatible with the national and international principles, which prescribe compulsory acquisition of land and land use rights. The conclusions consist of considerations that need to be taken into account in order to achieve the highest maximum level of restoration of livelihood for affected persons.

Key words: compulsory acquisition, livelihood restoration, adequate compensation, Trans Adriatic Pipeline, Albania.

JEL code: R3, K11, Q15

Introduction

The Trans-Adriatic Pipeline (TAP) is a part of the Southern Gas Corridor, a 3500 km long pipeline project to transport gas from the Caspian and Middle Eastern regions to Europe. It is planned that 215 km of the total TAP are to be built in Albania. It is unavoidable that such a large project will affect privately owned land parcels located along the planned pathway of the gas pipeline. The realization or protection of public interests cannot be achieved without exercising the rights of ownership over privately owned movable or immovable properties (*Expropriations and Temporary Takings of Private Property for a Public Interest*, 1999). The involuntary or compulsory alienation or easement of these properties is necessary, which means that affected individuals do not have the right to refuse land acquisition, nor the restrictions placed on land use (EBRD Performance Requirement 5, 2014). Compulsory acquisition (involuntary resettlement) refers both to direct or physical displacement (relocation or loss of shelter) and indirect or economic displacement (loss of assets or resources, or loss of access to assets or resources that leads to loss of income sources or means of livelihood) as a result of project related land acquisition or restrictions placed on land use

(Environmental and Social policy, 2014). In the case of TAP, the types of compulsory acquisition applied are: 1) land purchase; 2) long-term land lease (approximately 50 years); 3) short-term land lease; 4) land easement in cases when TAP does not own the land, but has the right to enter it (for maintenance works, for example) and places certain restrictions on how the land is used for the life-cycle of the pipeline (Land easement and acquisition explained, 2016).

The commitment of this research is to examine the process of land alienation or easement determination, devoting the most attention to the verification of the adequacy of compensation and the attitude towards the project from the point of view of the affected persons consisting mostly of landowners in rural areas, whose livelihood is greatly affected. Research was conducted regarding the ongoing situation surrounding the TAP project from the perspective of affected persons. Interviews were conducted with more than 80 family representatives from 32 villages along the TAP in the regions of Korca, Berat and Fier. The purpose of the interviews was to find out the opinion of the affected people, how they found the process of compulsory acquisition to be and especially the land compensation process. The purpose of the

interviews was also to determine the main problems encountered during the course of the land alienation process. In the research process, the main compulsory acquisition principles were determined according to Albanian and international legislation and analysis was done as to how they are complied with in the acquisition of land process.

Usually, in compulsory acquisition, the main consequences are the displacement of large numbers of landowners and their families (Cernea, 2008), the loss of their assets and often a completely changed lifestyle, which can even be described as traumatic (Taka, et al., 2015). In the case of TAP, the displacement of landowners is not as prevalent as land use restrictions placed upon the land (certain restrictions on how the land can be used). Most affected persons are small landowners who cultivate orchard trees, olives, oranges, limes etc.

Those who cultivate crops primarily receive compensation in the form of a short-term lease and are able to continue their agricultural activities. Thus, they do not have major objections towards compulsory acquisition and the offered compensation.

Thirty-two villages in three regions of Albania (Figure 1) were visited and interviews with community leaders, ombudsmen of Albania and more than 80 landowners were conducted from July 3-8, 2016, within CEE Bankwatch network Fact Finding mission in Albania:

- 1) Korçe (Korçe) region: Turan, Kuc, Kapshticë, Bilisht, Cangonj, Manurisht, Ravonik, Trestenik, Vranisht, Zemblak;
- 2) Berat (*Berat*) region: Kutalli, Squepur, Poshnje, Pobrat, Konishbalte, Otlak, Fushe-Peshtan, Uznove, Vodice, Bregas, Ullinjas, Mbrakull, Vertop, Orizaj, Buzuq, Corovoda, Munushtir;
- 3) Fier (*Fier*) region: Strum, Kavaklli, Seman, Petove, Verri.



Source: *The Pipeline Route*. <https://www.tap-ag.com/the-pipeline/route-map>

Fig. 1. **The Trans-Adriatic Pipeline Route in Albania**

Legal considerations

A wide range of terms based on each country and its traditions is used to describe the power of government to acquire private rights to land or real property for the needs of the state or the public (or society) - compulsory acquisition (alienation, purchase, expropriation), involuntary resettlement, (compulsory) takings, forced land acquisition, eminent domain (dominium eminens) etc.

Governments (society) have always reserved the right to restrict individual subjective rights to property without the consent of the landowner; therefore, they are guaranteed but not untouchable. The land interests of the landowner are balanced with the rights of other individuals and the interests of the public as a whole. In order for compulsory acquisition to take place, the following three basic internationally recognised elements need to be respected: 1) transactions must be done for public purpose (the public good); 2) private property must be alienated according to law - expropriation can only be decided by the Council of Ministers based on an application by the requesting agency or requesting private entity (*Albanian Law on Expropriations and Temporary Takings of Private Property for a Public Interest*, 1999); 3) property must be alienated for prompt, adequate (effective, full) compensation.

The legal framework of compulsory acquisition in Albania consists of the international principles set out in the *European Convention for the Protection of Human Rights and Fundamental*

Freedoms, in the Constitution of Albania and in Albanian law on Expropriations and Temporary Takings of Private Property for a Public Interest. Laws which are associated with the compulsory acquisition process are the Albanian constitution, the *Albanian law On Registration of Immovable Properties*, and the *Civil Code of the Republic of Albania*.

The European Convention for the Protection of Human Rights and Fundamental Freedoms prescribes the fundamental imperative that compulsory acquisition of property may only be used for purposes which are in the public interest and subject to the conditions provided for by law and by the general principles of international law.

International principles in the case of compulsory acquisition of property, which are accepted by potential lenders (international financial institutions) to finance TAP - Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB), the World Bank's International Finance Corporation (IFC) are incorporated in the "Environmental and Social Impact Assessment in Albania", document which prescribes that compensation for permanent and temporary land acquisition will be carried out according to Albanian regulations and "EBRD Performance Requirement 5.

The TAP project is promoted by the European Commission as a project of common interests and as a strategic asset for Europe's energy security by increasing the diversity of their gas suppliers. The project is created to help Central and South Eastern European countries diversify their sources of gas suppliers. The Southern Gas Corridor aims to expand the gas transportation infrastructure so that gas can be transported to the European Union (EU) members from the Caspian Basin, Central Asia, the Middle East and the Eastern Mediterranean Basin (EU Regulation No 347/2013). Geopolitical analysis leads to the conclusion that the best strategy for the EU is to have gas sources that include gas suppliers from

at least two countries from the Caspian and Middle Eastern regions (Bilgin, 2009).

Does this provide enough foundation for TAP to be acknowledged as a project of common interests? The question of public interest (public purpose or public good) is often discussed regarding projects requiring forced land acquisition. There exists a great variety of national laws, requiring the definition of public purpose. Some countries define public purpose with a list of land uses; however, others, for example Albania (Art. 8. *Albanian Law on Expropriations and Temporary Takings of Private Property for a Public Interest*, 1999), leave the definition of public interest open-ended (Lindsay, 2012), thus the notion of "public interest" is necessarily extensive (Case of Jahn and Others v. Germany, 2005). The public purpose of the TAP is under scrutiny for the following reasons: 1) it may not be in complete agreement with the EU climate change principles (Macalister, 2016); 2) question of human right abuse in Azerbaijan and Turkey need to be taken into consideration (Macalister, 2016); 3) project may not bring benefits for the Albanian economy in the long term perspective; 4) gas demand in the EU is falling due to structural shifts within the European economy, changing consumption patterns and significant progress on energy efficiency (Dufour and Gaventa, 2015); 5) the holder of TAP in Albania is a private joint venture company registered in Switzerland; however, a privately promoted project can also be recognised as being in the public interest (Epstein, 1985; Susette Kelo et al., petitioners v. City of New London, Connecticut et al., 2005). "Private compulsory purchase" (Kalbro and Lind, 2007) can be in the public interest; however, such cases require a higher compensation level (Epstein, 1985; Kalbro and Lind, 2007). Therefore, taking into consideration these many aspects, TAP is to be viewed as a project that is being realized for public interest. Many private landowners also recognise that the

TAP project is strategically significant to Albania and for all of Europe.

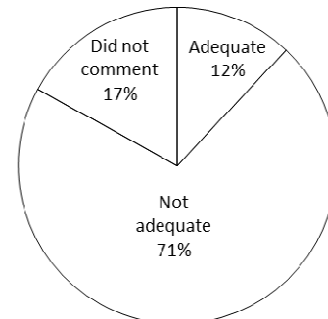
Limited practical application of the legal and institutional frameworks in Albania

Compulsory acquisition is used by governments in most countries around the world and almost always is controversial. With such transactions no one should be neither impoverished nor enriched, however this is not always the case. The golden mean is covenant, which satisfies both sides in such a way that the landowner feels as if his property had not been taken (Epstein, 1995) i.e. that there is a complete restoration of livelihood, as well as compensation for extra expenses, and public interests are achieved. A widely accepted form of compensation is "resettlement with development". This provides an opportunity for development and improvement of livelihood for those resettled due to compulsory displacement (Cernea, 2008; McDonald et al., 2008). However, in Albania, this development cannot be observed, because Albanian legislation does not embrace the internationally recognised requirements that the standard of welfare affected landowners at the end of the project should be higher than at the beginning of the project or, at least, remain at the same level as before (Taka et al., 2015; EBRD Performance Requirement 5., 2014).

Conducted interviews with landowner family representatives reveal that the compensation offered by TAP is mostly viewed as inadequate for the value of the asset (Figure 2). This high level of dissatisfaction with the compensation volume as well as other conditions give credence to the fact that the unfulfilled high expectations of landowners (Komu, 2014) are not the only reason for the dissatisfaction of compensation.

Interviews with affected landowners revealed that "failure to comply with the law" was present in the acquisition process, i.e. what is prescribed by law regarding the compulsory acquisition mechanism does not work in its practical application. The result is the high level of

dissatisfaction and confusion for people impacted by the construction of the TAP gas pipeline (Roggenbuck, 2016) and the violation of national and international compulsory acquisition principles.



Source: authors' calculations and construction based on interviews with affected landowners

Fig. 2. Landowner's opinion regarding compensation level

The following number of problems in the process of compulsory acquisition was identified after conducted interviews with community leaders, ombudsmen of Albania and landowners as well as after analysis of documents and scientific publications: 1) problems with property rights uncertainties; 2) problems with the compensation procedure and the grievance mechanism; 3) lack of clarity about the role of different actors and the process of valuation; 4) lack of compensation for consequential damages.

1. Problems with property rights uncertainties

According to Albanian Law on Registration of Immovable Properties and the Civil Code of the Republic of Albania, the Immovable Properties Register is administered by The Immovable Property Registration Office of Albania under the control of the Ministry of Justice. Since 1994, ownership titles and other real rights must be registered in the Immovable Properties Register. Beginning in 1990, the new transformation process required the creation of private ownership in Albania (Rama, 2013) and the reforms are still in progress (According to the Doing Business data, in the category "Registering property" Albania took 107th place in the world in 2016). A number of property right

uncertainties were observed: 1) lack of information for landowners related to unregistered or inaccurately documented property rights; 2) lack of a clear functioning administration system of immovable property rights (Rama, 2013); 3) poor administration of the Immoveable Registry and Cadastre; 4) lack of documentation held by affected families and the complicated land sharing system within families due to the traditional Albanian law (*kanun*), which dictates that property rights are registered by the head of family; 5) different legal definitions for agricultural, forest, pasture, urban housing, commercial, industrial and other lands or properties, creating so a highly complex system with many gaps and overlaps (Rama, 2013); 6) there is a huge number of illegal constructions without proper property rights. They have been subjects of numerous informal transactions without proper documentation and clear property rights.

2. Compensation procedure and the grievance mechanism

The TAP project coordinators organized a large scale informative campaign to provide written and verbal information as well as consultations to the communities and individuals potentially affected by the project.

The company announced that TAP Land Easement and Acquisition is being conducted in accordance with the international standards of the European Bank for Reconstruction and Development (EBRD Performance Requirement 5, 2014). In communities that might be affected by TAP, the project's subcontractors organise meetings for local people to explain the Land Easement and Acquisition process. However, in the course of interviewing affected landowners, it became clear that the EBRD standards were not being upheld. The following violations of the announced standards were discovered: 1) the majority of the landowners emphasised that the level of compensation is insufficient and cannot lead to the restoration of livelihood (Fig. 2); 2)

regardless of the fact that "EBRD Performance Requirement 5" prescribes that the standards for compensation will be transparent and consistent within the project, there was confusion and a lack of clarity regarding the appeals process and the compensation process (including when compensation was to be received for those who had already signed a contract); 3) information was lacking regarding the actual TAP construction timeline, which left crop farmers with great uncertainty regarding the planting and harvesting of crops in affected areas; 4) it was discovered that few landowners were properly and clearly informed about the appeals process and even of the right to appeal. Few formal complaints had been filed by those interviewed due to lack of awareness of the right to appeal or due to the fear of potential (real or imagined) consequences. The fears included that compensation would be lower or delayed or the state might intervene if the complaint was filed. Hence the principle that "at any point while the expropriation process is on-going the owner has the possibility to continue negotiation and reach agreement with the expropriating agency" set down in the "Livelihood Restoration Framework" is not enforceable; 5) a consequence of the totalitarian rulership throughout Albanian history (Grillot and Cruise, 2014) is a lack of trust by the Albanian people in their government and its institutions, which are namely the bodies to which affected landowners must appeal ("We have no other option", 2016). As a consequence, rural landowners have feeling of fatality and opinion that they disagree with the compensation, but they have no other option.

3. Lack of clarity about the role of different actors and process of valuation

Information of all contractors working on land easement and acquisition for TAP is publicly available. The consulting company ABkons is contracted to support TAP in Albania. Interviews with affected persons revealed the following findings: 1) difficulties distinguishing between the

institutional framework of the Trans-Adriatic Pipeline, the consulting company ABKons, the staff of the Land Registration Office and the local municipality, and their respective roles and responsibilities; 2) Albania cultural tradition does not require the collection and keeping of written documentation. In numerous cases, affected persons had complained about compensation orally, however were unable to identify to whom the complaint was made; 3) The municipality does not have any system for registering grievances or complaints, and they are not able to provide any written material that would describe the steps that affected people could take ("We have no other option", 2016).

4. Lack of compensation for consequential damages

Tree owners are the main group dissatisfied with the compensation amount because consequential damages associated with a reduced business volume are not taken into account in the final compensation. Consequential damages are unique to each individual landowner; therefore, the relationship between the landowner and his agricultural activities and the expropriated property is decisive (Voss, 2010). For example, if a landowner loses a significant amount of his olive trees, the loss includes not only the actual trees but also the reduction of business activities, which fact is disregarded when calculating compensation. In the interviews, many landowners emphasised, that the compensation was insufficient to buy land (to fulfil the principle "land for land" (Taka, 2015)) and to renew entrepreneurship at the previous level, which leads to substantial reduction of business activities.

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Conclusions

From the conducted research, the following can be concluded.

- 1) In Albania, the "failure to comply with the law" is evident in the process of compulsory acquisition, i.e. what is prescribed by law regarding the compulsory acquisition mechanism does not work in its practical application. The result is the high level of dissatisfaction and confusion among the people impacted by the construction of the TAP gas pipeline.
- 2) Currently, the applied compensation methods are not protecting the socio-economic livelihoods of affected persons and the internationally recognised requirement that the standard of welfare of affected landowners at the end of the project should be higher than before the beginning of the project or, at least, at the level that has been before is not respected.
- 3) The lack of a clear functioning administration system for immovable property rights and the number of property right uncertainties can be an obstacle to implementing adequate and full compensation for the compulsory acquisition of land.
- 4) The TAP grievance mechanism is not recognised by affected people, because they consider it as unreliable as a mean of redress.
- 5) Significant lack of trust in the Albanian government and its institutions, namely the bodies to which affected landowners ought to appeal, affect why the landowners fail to file an appeal.

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