

THE JUST ENDEMNIZATION IN THE EXPLOITATION FOR PUBLIC UTILITY IN THE TIMORESE LEGAL SYSTEM.

Alexandre Gentil Corte Real Araújo, Lídia Gomes, Carlos Boavida Tilman, João Américo, Urraca Magno Corte Real de Araújo, Artur Natalino Corte Real Araújo

**Correspondence:* Alexandre Gentil Corte Real Araújo

Received: 22 June 2023; *Accepted:* 25 June 2023; *Published:* 30 June 2023

Citation: Alexandre Gentil Corte Real Araújo. THE JUST ENDEMNIZATION IN THE EXPLOITATION FOR PUBLIC UTILITY IN THE TIMORESE LEGAL SYSTEM. AJMCRR 2023; 2(7): 1-10.

Abstract

Introduction: Expropriation for public utility and established in article 54^{or} paragraph^{3 of the} Constitution of the Republic Democratic of Timor-Leste (CRDTL) is common to the legal system of the vast majority of the state, but the legal requirements and administrative processes by which this prerogative is exercised in each of them and mostly different. With all the legislation create the Law no. 8/2017 of 26 April on expropriations for public utility, to protect the rights over real estate of citizens and communities. To the extent that they must obtain the just indemnity that is sufficient calculations with adequate and fair payments, but in reality, not yet the just indemnification.

Objective: to make known to the citizens or owners of real estate the right to contest when someone violates their right to obtain just indemnation, despite contributing to the state, we must have adequate and fair counterparts with the expenses for their appropriate through the obtainment of just indemnization so that we weigh to obtain a dignified housing.

Methodology: We used the deductive methodology in this elaboration, because all the research is done through the library and other references were consulted on the internet as an auxiliary means.

Discussion: The ordinary legislature establishes in law 8/2017 the and office for the calculation of the value of the compensation through is the market value to fix that the compensation is fair to expropriated, not and sufficient to guarantee a fair compensation because there are some imoveis that it does not have a commercial value, but it has a personal value thatis not easily compensated. In Timor-Leste,

many people who suffer because of expropriation and do not receive fair compensation from the state, because ours is still at the beginning of development and society is obliged to sacrifice its ownership for the development of its country.

Conclusion: The just compensation in the expropriation in the public utility in the Timor-Leste legal system, considered with duty of the state to make expropriation of the amount of the indemnity before the expropriated, the implementation in the capital of the nation cited by (Corte Real AG & Tilman CB, 2023).

KEYWORDS: Fair Compensation, Exploration, and Legal Planning

INTRODUCTION

In Timor-Leste this prerogative and many times presented as an absolute power of administration. The interpretation of expropriation is often conveyed by the public administration and politics and that, when the state needs a property for any public purpose, whether they want it or not, its holder has to accept and offer his right without challenge, often the expropriation proceedings do not meet the legal requirement, the indemnity is not sufficient and not determined by the administration, justified only by the obligation of each one to contribute to the development of one way. The expropriation for public utility and established in Article 54(3) of the Constitution of the Democratic Republic of Timor-Leste (CRDTL) is common to the legal system of the vast majority of the State, but the legal requirements and administrative processes by which this prerogative is exercised in each of them and, mostly different. With all the legislation create the Law no. 8/2017 of 26 April on expropriations for public utility, to protect the rights over real state of citizens and communities. To the extent that they must obtain just compensation that is sufficient calculations with adequate and fair payments, but in reality, not yet just indemnity.

The purpose of this is to make known to citizens or property owners the right to contest when someone violates their right to obtain just indemnity, although contributing to the State, we must have adequate and fair compensation with the expenses for their property through the obtainment of just indemnity so that we weigh to obtain a decent housing. Expropriation is contingently reserved in the Constitution of the Democratic Republic of Timor-Leste, hereinafter of the CRDTL, in Article 54(1)³ and regulated ordinarily in law 8/2017 of 26 April, however, does not contain its concept. Expropriation and the action and effect of expropriation. This verb refers to the conduct developed by the public administration to deprive the property of a private of his right, in the context of an indemnity, with for example to deprive a house or a land of the private individual for a public interest purpose. Expropriation is an instrument which the administration uses to implement state plans, by extending the right of ownership and in particular for the purpose of pursuing public interest.

The expropriator and the one who has the competence to declare the public utility of the expropriation, in accordance with Law No. 8/2017 of 26 April, Article 34. No. 1, it is part for the Council of Ministers

to make a declaration of public utility, and it has the right to indemnification by virtue of that condition. The beneficiary of expropriation is the entity which requests the declaration of public utility (Art 33). To the competent organ to prologize and stand it, in favor of whom the expropriation, that is, that the one who assigns the object of expropriation to pursue inter this public through expropriation, in this case is the direct administration of the state.

public utility, but we try to explain us much as possible. As we do not know, the state may, at any time, deprive someone of his property and the rights inherent in them by force of expropriation. However, the state must also show the expropriated that the object of his property is subject to expropriation and for public utility or interest put in public. Thus, our legislator explains the reasons for public utility such as those provided for in article 4. No 3° of the law: 8/2017.

As we have said before, although our Constitution does not rule on expropriation, but I have defined the conditions of expropriation as provided for in Article 54° No. 3 of the CRDTL, determines that. *"and expropriation for utility pública a so has a fair mediate place in accordance with the law."* This article has a further need for expropriation: it must serve as a public utility, it can only happen for payment of a just indemnification and it has to be long in order to take a real expropriation, if it is not true that one of them will no longer be able to, we find relatives an expropriation for public utility. Therefore, the concept of public utility is linked between interest and a public interest and private interest, but rather what is prehensible and public interest than private interest. The process of expropriation is also closely linked to the concept of public utility, this link exists from this in the process of procedure to which the expropriation is possible. If the object of the property is to be expropriated must pursue an object of public utility (Article 4 (1) and in the resolution to request the declaration of expropriation, the cause of the expropriation must be duly identified and substantiated in accordance with the law (1) (b) of article 33 of law 8/2017. As the legislation does not determine exactly the assumptions of

Real estate refers to immovable things that are susceptible to expropriation. In our code of civil, in its art. 195 o. n° 1. It designates that the following are real estate: tourist and uraneous goods, waters, trees, shrubs and natural fruits, when they have been connected to the soil, the rights inherent in real estate, the integral parts of the tourist and urban buildings. Rustic building is understood as a limited part of the soil and the buildings existing in it that do not have economic autonomy, and by urban building any definition incorporated in the soil with the land that serves as a place of place (No 2 of the same article). The expropriation of the movable property referred to implies the loss of the property which is the subject of the right of ownership and of property, as for sub o epigraph example, usually occurs and in the possession and of the assets. Expropriation also applies to the obligatory rights of the right, (e.g., lease of the right), which affect immovable property.

We now conjugate the concept of expropriation and public utility. Expropriation for public utility is constitutionally provided for in article 54 (3) of the CRDTL, "Right of private property and data" Be-

fore we talk about the concept of the expropriation of public utility, let us mention a little about private appropriation and gift because both are so closely linked. On the other hand, we have a fundamental right, which is a limitation. The private property is a right which a State gives to its citizens are those with different powers such as to enjoy, enjoy, enjoy, and dispose of a determined good that pertains to them. The use and enjoyment represent in the use of the thing and become proper the fruits which the thing produces the disposition signifies the power to align or burden the good respectful fruits. And although the proprietor has his exclusive right before his own and date, he may be expropriated for reasons of public utility. The expropriation of public utility exists as a memory of private prairie and private property and of and race the solution of the conflict between public interest and private interest through the payment of a just indemnification to the postbags of the expropriated relative their property rights cited by (Corte Real AG & Tilman CB, 2023).

The right of insemination which the state guarantees to the expropriated is not any compensation, but a just compensation provided for it. The just indemnization by expropriation aims to reconstitute the value of the good to be expropriated and exposition of the proprietary that the expropriated held, so that there is no inequality among others who are not expropriated. The state and obligation to give indemnification to the expropriated and compensate him for the loss of the if well creating a corresponding patrimonial situation of equal value. The obligation to indemnify and deal with in article 497 et seq. of the CCT, under a general regime of the obligation to indemnization on the violation referred to above which says the second " *whoever is obliged to repair a damage and more reconfirmation on situation would exist, if not if it had effected the event which required the repair* " and further acknowledged that natural compensation did not fully repair the damage or is excessively harmful to the debtor, in accordance with article 501(1) of the CCT.

THEORETICAL INQUIRY

The just indemnization and an economic guarantee that the state assurances to the expropriated to confession the sacrifice that is requested of him, borne of equal value that the expropriated had at the time of expropriation. As we have already mentioned before, the just indemnization and one of the requisites of validity of the expropriative self and main guarantee of the expropriated legally provided for in the CRDTL in its art.54° n° 3 that says the following " *the expropriation for public utility can only be made by means of the payment of a just compensation* " if the expropriated person is not entitled to compensation, then there will be no expropriation.

The form of the resolve of the compensation is out in article 501 (2) of the CCT. This article deals with the theory of difference, according to which damage is assessed in the sense of property by making a concrete assessment of the changes made to the assets of the injured party. For the assessment of this change, a comparison is made between the actual current property situation of the injured party and his current hypothetical property situation if there were no such thing as being that it is not possible that there is no present property damage. Our constitution, in its art.54°. n.3, does not divide the criteria is compensatory rivers to apply directly to objective,

nor does it indicate in all or mechanisms of evaluation of the damage arising from the expropriation only determines that the compensation must be fair. But the ordinary legislator left the choice criteria for determining indemnities and misall of evaluation. Thus, the legislature establishes in the ordinary law, law 8/2017 that the criteria for the river of the market value for the fix of a fair compensation. Under article 57, the right compensation must cover all the financial costs resulting from expropriation such as: costs of re-store, commercial losses and also values of a non-patrimonial nature.

Fices in the legal capacity of the people or citizens and the administration is obliged to adopt measures providing or providing benefits. Fair compensation and a right of the expropriated which the state guarantees Constitutionally. This compensation referred to and the restitution of the expropriate assets which is sacrificed and offered to the state by means of expropriation in return for the payment of the compensation. The CRDTL is safeguarded in its art.54 o. no 3 and this provided for in art. 56^o. n. ^o. 1 of law 8/2017 that says the compensation for public utility can only be allowed if there

The amount of immovable property and the expropriation by the expropriated is based on the criterion of the market value on the soil and the replacement value of contracts and plans that exist there, on the basis of article 58 of the same law also provides in article 56 of ^{the} 2, if there is agreement between the parties, preference should be given to the payment of compensation through the census of immovable property of the state and in addition the law also establishes a mechanism to safeguard those interested (holders of rights in rem and holders of obligatory rights) who are affected by expropriation in a loss. of life at least equal to that which they were before the expropriation under art. 8^{no}. .4. Law 8/2017, compensation is paid in cash and only the studies provided for are fundamental for the realization of expropriation either for the purpose of compensation or to ensure that this principle of safeguarding and respected, article 18 of the same law. The criteria referred to above must comply with the material principles of the Constitution in particular the principle of equality and proportionality. The administration is prohibited from adopting measures which entail unequal burdens or sacrifices in the legal capacity of the people or citizens and the administration is obliged to adopt measures providing or providing benefits. Fair compensation and a right of the expropriated which the state guarantees Constitutionally. This compensation referred to and the restitution of the expropriate assets which is sacrificed and offered to the state by means of expropriation in return for the payment of the compensation. The CRDTL is safeguarded in its art.54 o. no 3 and this provided for in art. 56^o. n. ^o. 1 of law 8/2017 that says the compensation for public utility can only be allowed if there is a guarantee and made of the payment of the compensation. This payment may only be repaid after the whole process of expropriation has been carried out until the attempt to grant it by private law, to benefit from expropriation, to DNTPCS and the intermediates having agreed on the amount of the amount of the amount to be paid for the property which has been sacrificed (Art. 30 No. 1 all number. A number of laws 8/2017), and to need public this acquisition and drawn up relative the not arrived public or other form established by law for the transmission of the rights in question (art.31^o. n. 1 of the same law). In accordance with article 60 of Law 8/2017, compensation is paid in cash and only applicable once or in and in a specie through the centennial of an equivalent good except parts have been agreed by means of payment of compensation in black or in the centennial and goods or rights (art. 61 o. n 1^o), if there is an agreement between the expropriated and the expropriating entity at the time of the attempted acquisition by means of public law, with paragraph 2 of the same article of importance in the practice of implementation in the

field study cited by (Corte Real AG & Tilman CB, 2023).

REVIEW OF LITERATURE

Republic Democratic of Timor-Leste, Rule of Law, this means that the state is subordinate to Constitution and the laws. The acts of the State shall be valid if they have been conformed to the Constitution and the other ordinary laws (Art. 1⁽¹⁾ and 2. From RDTL). The state, the organ and agent of the public administration may act only on the basis of law within the limits imposed by law in the sense that it respects the principle of legality. In accordance with this principle, the intervention of the state within the framework of rights, freedom and guarantees may be carried out on the basis of the law. The duties of the state of the RDTL which we are referring to now and in the face of an expropriation for public utility which is provided for in article 54⁽³⁾, namely, the guarantee of just compensation and the realization of the payment of^{the} amount agreed between the individual. Timor-Leste is a year in the beginning of its development, with all the state in need of infrastructure, which must be obtained through expropriation for public utility. As soon as it passes through the plan It is 1 to the end of the public interest which gives rise to the duties of the state the context of Timor-Leste real situation cited by (Corte Real AG & Tilman CB, 2023).

State to fulfill its obligation to satisfy its citizens by the development of the country they have the power to deprive the immovable property and the rights relating to these properties of particular through expropriation, is a rule of guarantee because by conferring on the public powers the power of expropria-

tion in accordance with the law and recognizes to the citizen a guarantee of just compensation and payment of this amount of compensation, that is to say, this article in addition to providing for the right of citizens, the legislator is also established the power and duties of the state that at any time deprive that right by expropriation by reason of pre-sager the interest and public payment of a just compensation. Law No. 8/2017, and of April 26 of the expropriation for utility in its art. 56. On the content of the duties of the state and with the motive of safeguard which cannot be done, because of expropriation, leave the persons affected by it in a situation the worst they were in before the expropriation, and this rule imposes on the state to fulfill its duty of guarantee a just compensation to its citizens them. Although the state has more power to expropriate the property of the individual, it does not mean that the State acts in an arbitrary manner to deprive these goods, the property can of and reproof his owned private gift to the state but in return, of a just compensation o with respect to the principles of equality and professionalism in the sense that, the state forms a more or less equal life and rather that is to treat the expropriated in an equal way with those who are not expropriated in that it is not to know the criteria and compensates what we have already mentioned before, they allow or do not allow equal legal treatment between them because the legislature constitutionally guarantees individuals the same right, the expropriated does not remain in a situation of equality with those who have not been expropriated in or receive compensation between expropriated.

After reaching the amount of compensation, the

state has a duty to repay the amount in question be compensated, i.e., the compensation must be fair, within thirty days. If you do not do your duty there is meaning that the state must guarantee a dignified consequently, which we address below. Under article 54 (3), expropriation may only be carried out before the state has been extended its duty to pay the life, equal to or better than before the expropriation, because for the community, his own and his own (field study research) and the only relationship in his amount of compensation and this must be just. In the life, without the ground his life of his generation and the future will be more vulnerable. The CRDTL guarantees the principle of equality between citizens, so everyone has equal rights and duties, the state when it wants to carry out its plan has to think about social affection in the future so that it treats everyone equally, regulation specially and between the expropriated with those who are not expropriated. We can say that the Timor-Leste legal system on the expropriation of the most power to the state to take away or deprive its fundamental right and particular over its property for the public interest, without there being any other circumstances and reasons that it has implications not the future, whether I want or not, the individual must offer, for the sake of contributing to the development of his country. The development that the state intends to do for the purpose of public interest, but in reserving a better life of its people who are affected by expropriation thus give the room to improve the utility legal system in nation cited by (Corte Real AG & Tilman CB, 2023).

RESEARCH METHODOLOGY

We use the method the inductive ideology is based on In Timor-Leste, many people suffer because of expropriation and do not receive fair compensation from the state because ours is still at the beginning of the consultation of the reference books in the library, development and society is obliged to sacrifice its own and given to the development of its country. As auxiliary means. Throughout the research and documentary analysis of knowledge of science and argumentative both legal and literary. for example the construction of the urban road, because of this the state cannot justify the reduction of the value of compensation with the idea that individuals have to contribute to national development, and

DISCUSSION

The compensation which the state guarantees cannot

therefore settle for compensation which does not fully cover their losses. The present ordinary law, I think the researcher, should be revised, in particular to the and the inter regulation of these criteria for the amount of compensation, the by materials, but

your building model, this should be by the value of the updated market, by materials, plus your model of identification, this should be by the value of the updated market, tenor of each plant of the species and offer a new place for people who depend on their own and given to live with conditions Worthy to avoid the increase of poverty of the people and in addition the poor vulnerables in life much better so that all enjoy their rights equally, all must respect the fundamental rights provided for in the CRDTL and UDHR, people can be violate the right of others if we do not stay under the law.

According to art. 62 °. of law 8/2017 , after the administration of the public to comply with all the procedures of expropriation, atis the attempt of acquisition through private law, in which the interested parties can agree on the amount of the amount to be paid for the good and between the others which are published in the newspaper of the Republic the value or amount of just compensation of the object subject to expropriation, it is incumbent upon the public administration within the period not to superior thirty days to expedite the payment of the amount or may apply to the right of the immovable financial fund to make the payment within the same period.

If this is not done by the financial institutions referred to above, the entity would benefit from expropriation or the public administration shall notify the persons concerned of the deposit made on its behalf with a financial institution in accordance with para-

graph 2 of that article. If the payment of the amounts deposited has not been made equal to the amount that was agreed, i.e., being insufficient, the interested parties or the exappropriated may challenge in court.

As we have pointed out above, this judicial function only works if the amount paid to the expropriated person is insufficient. If this happens c er, the expropriated person may challenge the amount received in court, specifying this amount, presenting to the applicant all means of evidence to the court and the court after receiving the request for expropriation within the time limit of the days to present and request all means of evidence. The judge will make an assessment of the evidence and will produce the evidence he deems necessary and make the decisions that fix the amounts due and determine the completion of the deposit that is due, within a period of four days. If, within the prescribed period, the amount which the judge declared in his decision is not deposited, the judge may order payment by seal of the securities provided or arrange for them which is necessary, in particular, to send notice to the service responsible to the state's avenues to replace the entity benefiting from the expropriation, to make the deposit of the missing amount (art. 53 o. of law 8/2017), in accordance with the same law can existing in nation cited by (Corte Real AG & Tilman CB, 2023).

CONCLUSION

We can consider the concept of expropriation as a process that the public administration uses to guide the right of the private property of the individual and deprive his property and transfer that property to the

patrimony of the state by reason of pursuing an end which must have a purpose of public utility. This of public interest by means of the payment of a just compensation also has its assumptions that must be fulfilled by the state, namely civil liability, for the damage fault and causal link; and compensation. This expropriation is regulated in the CRDTL, in article 54. n°. 3. and is specifically regulated in law 8/2017 of 26 April on expropriation for public utility. The first when we are in a situation where it does not imply a violation of a credit of the absolute right of another, if this for convicted of having caused a damage, then must a breach of obligation and cause harm to another person then must be held responsible for that damage. And finally, when we are in a situation where the legal link between parties, only a person who unlawfully violates the absolute right of another.

The subjects who are included in an act administrative for expropriation are the three points: (1). The expropriator and the entity declaring the public utility of a good subject to expropriation; (2). The expropriated person and the individual or rights holder who has suffered because of this expropriation and the who has the right to just compensation, (3). Beneficiary of expropriation: and the entity that exercises the right of ownership of the individual, in this case and the right administration of the state. The compensation to which it refers must be fair, it cannot be any compensation. According to art. 57 before carrying out the expropriation tends to identify the constitutional requirements as follows: Public utility, in order to stand before an expropriation must first show the purpose of the good which is intended to be exposed, the just compensation, and a characteristic of the expropriation by utility public. The criteria for its structure are modulating, commercial losses the values without patrimonial nature. The criteria for the calculation of compensation, utility public. Without this assumption to extradition can be a good basis of the market value on the soil, the replacement value of the contractions and the conditions which exist there. In the calculated compensation are only calculated the damages incurred by the expropriated. After reaching the amount of the sum of the compensation within 30 days. The just compensation in the expropriation in the public utility in accomplished; legality, expropriation must be recognized, according to the laws and is not, and valid. the Timor-Leste legal system, considered with duty of the state to expropriate the amount of the indemnity before the expropriated. In order for a fair compensation to be obtained, it must have the content of the criteria for the calculation of compensation, which is not provided for in our ordinary law in its article 56. The award of fair compensation can be carried out by two entities, it depends on the situation, it can be provided by the administrative function.

Public utility as a general interest of a community, which the entity would benefit from it intends to pursue. There are some pressures for it to be in a situation of public utility. The beneficiary of the expropriation must show that the objects where the expropriation is levied must have a motive of public utility, as an example provided for in article 4 o. n° .3 of Law 8/2017. The objects intended for expropriation are of public utility are identical, since the objects relating to expropriation are the objects

tion and judicial function that exists in Timor-Leste process cited by (Corte Real AG & Tilman CB, 2023).

REFERENCES

1. CAITANO, Marcelo." Manual of administrative law revised and updated by Prof. Doctor Diogo Freitas do Amaral, Vol. II, 10" Editions, Almedina, Coimbra 1991, page 1020
2. AMARAL, Diogo Freitas do "Direito do Urbanismo", [s. 1.], Lisboa, 1993, pag 90.
3. QUADROS, Faust of, "Expropriation by public utility. Dicionário juridico da administração pública", Vol. IV, [s.1.] Lisbon, 1991 pag. 306th
4. COSTA, Salvador, Code of Expropriations and Statute of Expert Evaluators – Annotated and commented, [s.1.], Almedina, 2010, page 18
5. CORREIA, Fernando Alves, "Manual do Direito do Urbanismo", Vol. II, [s. 1.], Almedina Coimbra, 2010, pg.200-201
6. CAITANO, Marcelo, "Manual of Administrative Law" Vol., II, 10a edição. Coimbra. 1994 pag. 888th
7. OLIVEIRA, Fernanda, "Direito do Urbanismo", CEFA, [s. 1], Coimbra, 2001, pag.103
8. TEXEIRA, Gloria, "III Congress of Tax Law", ed 2013, pag. 107
9. CAETANO, Marcelo, "Manual de Direito de Administrativo, Vol II, 10a edição Coimbra. 1994 pag, 1020
10. AMARAL, Diogo Freitas do "Direito de Urbanismo", [s. 1], Lisbon, 1993, pag.90
11. CAITANO, Marcelo, "Manual do Direito Administrativo" Almadina Coimbra, 1991, Vol. II
- Vol, II, 10a edicao, [s, d], pag. 1036
12. CORREIA, Fernando Alves, "Manual do Direito do Urbanismo", Vol II, [s. 1.], Almedina Coimbra, [s. 1] 2010, pg.202-204
13. OLIVEIRA, Fernanda Paula, "Urbanism Law "Curso de Especialização em Gestão Urbanista". 2a edição Coimbra, 2004, pag 88
14. MENEZES, Leitão, Luís Manuel Tele de "Direito das obrigações", Vol I, Introdução da Constituição das obrigações, 8a Edição, Almadina, 2009, pag 283
15. MENEZES, Leitão, Luís Manuel Tele de "Direito das obrigações", Vol I, Introdução da Constituição e obrigações, 8a Edição, Almadina, 2009, pp 402-403
16. MENEZES, Leitão, Luís Manuel Tele de "Direito das obrigações, Vol I, Introdução da Constituição e obrigação, 8a Edição, Almadina, 2009, p. 403
17. VASCONCELOS, Pedro Carlos Bachler the, "Constituting the Annotated Democratic Republic of Timor-Leste" editor Human Rights-Center for Interdisciplinary Research Law School of the University of Minho Gultar Campus, Braga, 2011, page 69-70
18. VASCONCELOS, Pedro Carlos Bacelar the," Constituting the Annotated Democratic Republic of Timor-Leste" editor Human Rights-Center for Interdisciplinary Research School of the University of Minho Gultar Campus, Braga, 2011, page 203.
19. Research article ISSN 2835-6276 <http://www.ajmcrr.com>