

“Compulsory Land Expropriation in EU; Land takings in Greece ”



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Contents

- **Current EU Trends & Good Practices – FIG Publication 54 on Compulsory Purchase & Compensation**
- **Private Ownership in Greece & compulsory purchase**
- **“Public Purposes” That Allow Land takings in Greece**
 - Restrictions or land taking through zoning regulations**
 - Land taking for enforcing a city plan**
 - Land taking for the construction of public works**
- **Greek Legislation for Land Expropriation**
 - Procedures, Responsibilities, Compensation**
- **Examples from Greece - Findings**

General Principles in free market economies

- Land Acquisition should be mostly arranged by **Voluntary Agreements** (sales, land exchange, resettlement/rights to return, voluntary land consolidation, etc); - old methods & practices ? (ineffective, unfair, unpopular)
- **Compulsory purchase** *in Europe since 1810*
e. g., German Law: “the method with the minimum harm” should be used
e.g., Finland, Sweden: “..if the inconvenience to private owners outweighs the public advantage”
- **For public use only**
recently, in Finland, USA for private interest as well; countries in economic need? (private interest / public interest: creation of new jobs, increased tax revenue); the public benefit should always be well documented
- **By administrative (Scandinavian approach) or court procedure**
e.g., Sweden: both methods; cadastral procedure faster, flexible
e.g., Finland: roads, railways, power lines; executed by a committee lead by a cadastral surveyor

General Principles in free market economies

Valuation methods for compensation have been developed & adopted

“just compensation” :

Landowner’s financial situation shall remain the same

No loss- No gain : Compensation should be adequate to achieve “financial equivalence”

i.e. France: market value, loss of rent, trading loss, moving expenses, dismissal benefits, severance damages

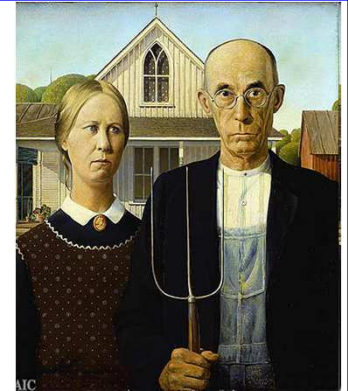
Still in many countries: weak rules & practices, limited know-how, inadequate compensation

Re-establishing the trust between the state & citizen



Acquiring authority's needs:

- **A speedy timeframe**
- **Low cost process** both for taking title & possession of land & for fixing & payment of compensation
- **No external costs**
- **Sufficient resources available**



Affected occupants' (users & owners) needs:

- **Involvement, Transparency & Information**
- **Avoidance of compulsory purchase/ legitimate**
- **Proper planning & negotiation process/ appeals**
- **Fair compensation/ all losses/ depreciation**
- **Poor, incapable, women/men, landlords/tenants, formal/informal, indigenous, customary should be recognized & respected/ assisted**

Good Practice in case of compulsory purchase

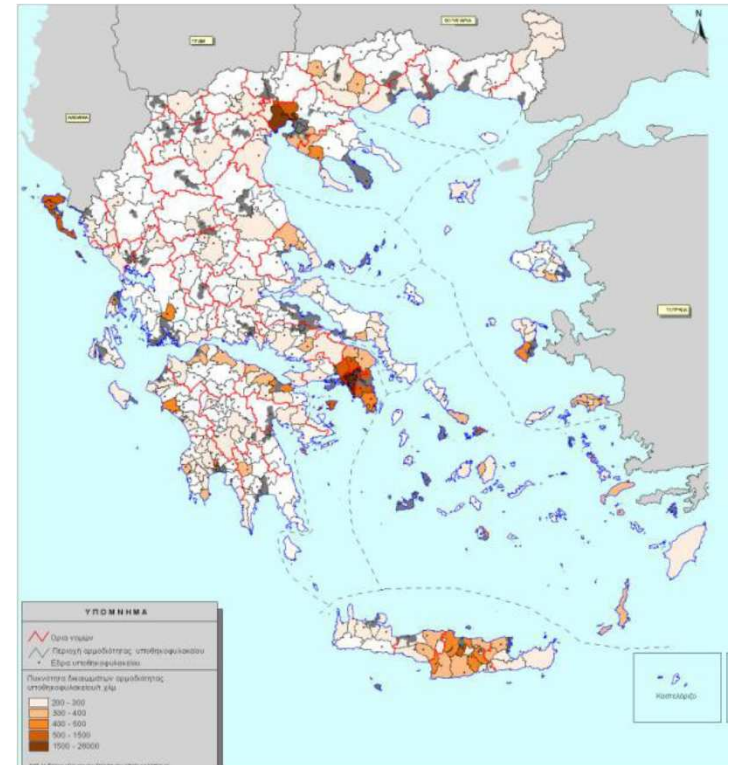
- **Independent body**/ working exclusively within legislation & internationally recognized best practice / **education**, technical & professional **expertise** / code of **ethics**
- **Information** should be communicated in an **understandable** manner
- **Costs / assistance** are to be carried by the **expropriator** (regardless of entitlement)
- **Appeals**: taking of the **actual land**, use of **compulsion**, **purposes**, level of **compensation** / **against the court decisions** / **delays**. Court time should not be wasted; agreements should be reached in advance if possible. *Special land courts / general lower courts / various courts may be involved. Administrative procedures where possible.*
- Based on **weighing of interests**: Public interest ↔ losses caused to private parties
- **Scope**: **minimum harm** (social / economic); objective should **not minimize** award of compensation
- **Compensation**: object taken (for replacement of residence or business), compulsory purchased rights, depreciated in value, damages or disturbance, surveyors & legal costs

General Principles for compensation

- According to **IVS**
- Compensation based on the **Market Value** (highest & best use of land); “**fair**” value
- Inaccuracy of the valuation method (Sweden >25%)
- “**Betterment deduction**” principle
- “**Profit-sharing**” principle (when land is expropriated for profit by other than a public body. Compensation according to the value of the land to the expropriator.)
e.g, Finland: 30-50% of the value
- To **holders of rights** (mortgage holders, too) & to **all those affected**
- Compensations should be **paid prior** to the land taking; **time delay** before the land taking; in **money** or alternative ways (e.g., corporate shares) by agreement; in cases of land **disputes**: deposit and/or loans against future compensation rights;
- **Restitution**

Protection of private ownership in Greece

- Since the establishment of the new Hellenic state Greek Constitution have protected private “ownership” by adopting the French Declaration of 1789, *but without characterizing the private ownership as an “inviolable sacred right”*.
- Constitution of 1975, Article 17: “private ownership on land and real estate is protected by the state...however, ...*the private ownership rights cannot be exercised against the public interest*”
- Emphasizes the “*social content*” of the private ownership *but it does not directly change the private ownership right into a social right* (the *private ownership rights* were expected to be gradually transformed into a *social function*)



- 15-18 million land parcels and 37.2 million ownership and other legal rights

Constitutional constraints on private ownership

- Not only “**ownership**” is seriously restricted by the Constitution, but also **the legislator can (and has in fact) restrict it even further.**
- **Constitution of 1975, Article 24:** introduces the need for **environmental (cultural or natural) protection**, which consists both a *public right* and every *individual citizen’s right*.
- **Constitution of 1975, Article 106:** adopts the “nationalization” institution. **Obligatory involvement of the state (>50%) in private enterprises (monopoly of services and goods)**

Until the first decades of 20th century property rights were fully protected , in a similar manner with the philosophy of the European Court of Human Rights. The situation was reversed during the rest of the 20th century until today



- **The Constitution does not establish a hierarchy of its articles, though. All articles are of equal weight and the application of one should not abolish the power of the other**

Greece entered the European Union in 1981

For 30 years there is much confusion on land & property issues :

- Among the **supreme Greek courts** of Areos Pagos (for civil and criminal law) and the Greek Council of the State (GCS); and
- A continuous contradiction especially between articles 17 and 24, in **the interpretation** of these articles by the Greek Council of the State
- Land owners apply to the European Court of Human Rights (ECHR)

By Law 2000/1991 the institution of “denationalization” is introduced

(so far: Olympic Airlines were denationalized in 2009)

1993: nationalization of urban bus transportation company (Athens-Piraeus)



“Public purposes” that allow Land Expropriation in Greece

Restrictions or land taking through zoning regulations

- Expropriation procedure is *scarcely applied* for the protection of the environment (*natural* or *cultural*): as long as some primitive uses are still preserved (e.g., pasture, recreation activity, etc) the restriction of other legal uses has no legal consequence. If compensation is given, *the market value of land in the non-planned areas is totally ignored*



Land taking for enforcing a city plan

- Principle of created “*profit*” “*self-compensation*” (owners must undertake the costs for the land taking for a zone up to 30 meters width from their property boundary); since 1982 *urban land consolidation* - “*in natura*” compensation-land readjustment



“Public purposes” that allow Land Expropriation in Greece

Land taking for the construction of public works

1. “**Self-compensation**” for national roads of up to 50 meters width; compensation did not take into consideration the damage the road would do to the remaining parts of the properties. By law 2971/2001 the “**principle of profit**” or the principle of “**self compensation**” is considered to be **refutable** and the possibility of created “profit” must be decided by the court.
2. Historic **turning point in the Greek Case law**: (decisions of 2004 and 2005 of the European Court of Human Rights) takes into consideration the “**property damage**”



Ad hoc legal arrangements were needed for the Olympic Infrastructure

*Due to their **temporary character** OG could not justify a permanent expropriation of private ownership as such*

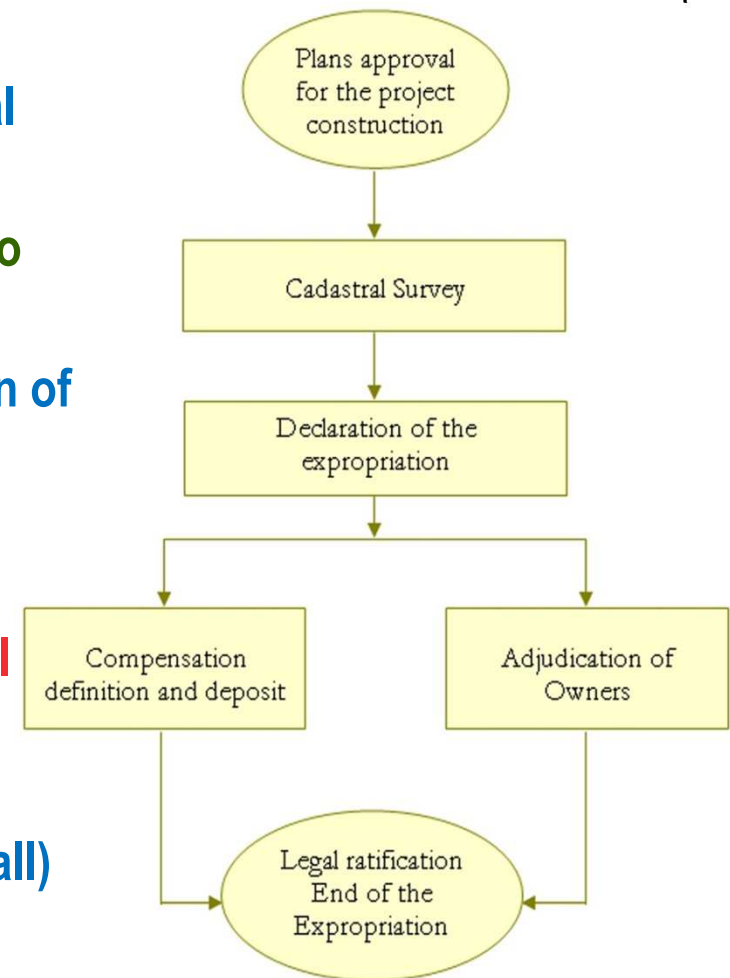
***Special laws for land expropriation** has upgraded such land acquisition to a “national opportunity to satisfy long-term needs of public interest, such as the spatial and urban reform of the greater area of Athens, the **protection of natural and cultural environment**, and the creation of athletic, social, and tourist infrastructure”*



Greek Legislation for Land Expropriation

Procedures: normal, extreme -urgent

- Announcement-study, environmental study -optional
direct purchase??, exchange of land ??
- Cadastral survey (or plain field survey, notification to the registrar)
- Ratification of cadastral survey-Joint MD-Declaration of expropriation-publication in GG-corrections of cadastral survey by owners' request
- Valuation committee (and SOE), proposal-
Determination of preliminary compensation (General Court) (or by tax office) –deposit at the Loan and Consignment Fund
- Completion of land taking- ratification (removal, recall)
- Adjudication of owners (General Court decision),
Owners appeal for full compensation (Court of Appeals)



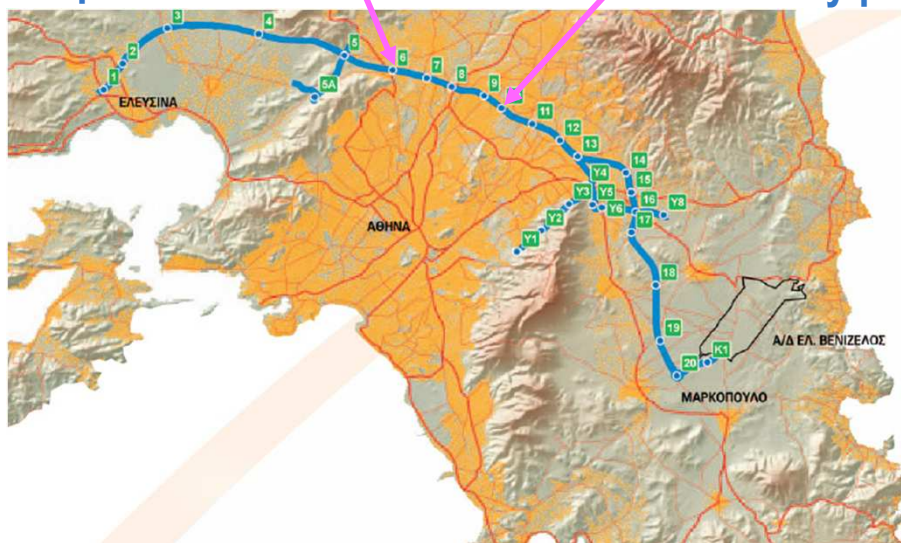
Case study: 4 major Motorway projects (I)



Non-planned area



Within the city plan

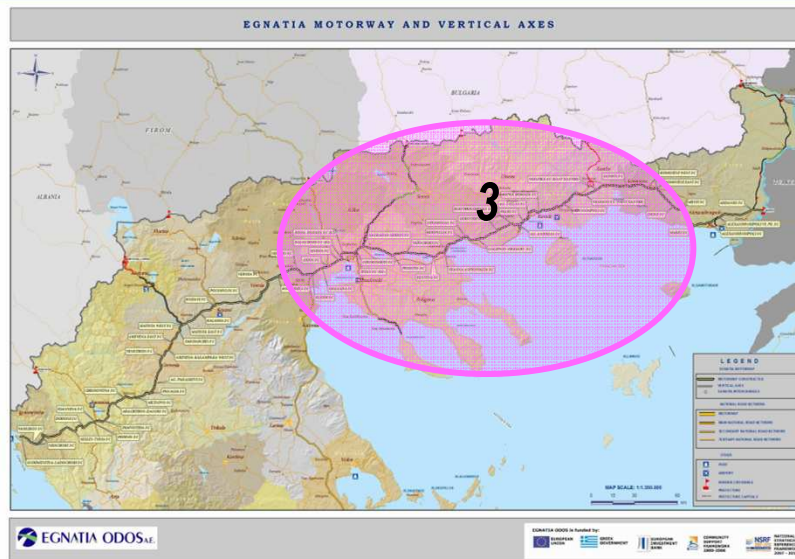


Attiki Odos, length 65 km
Construction period 1995-2004
Construction cost €1.3 billion
Land expropriation cost €813 M
62% of the construction cost



Case study: 4 major Motorway projects

(II)

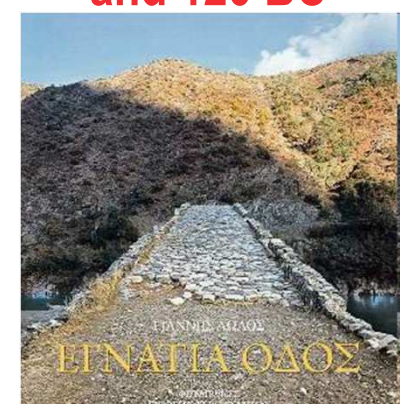
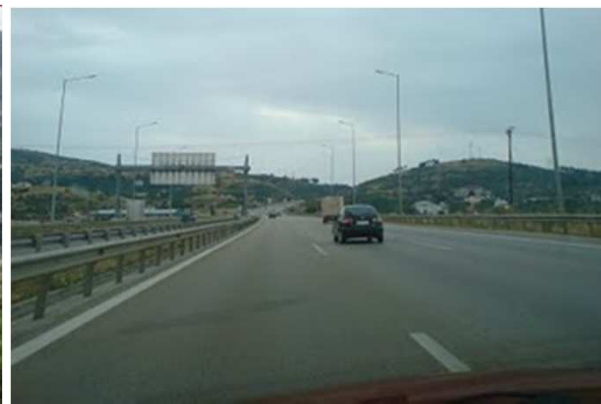


Sample: area of 15 km²

Egnatia Odos, part of the Trans-European Road Network - one of the most modern and high standard road axes in Greece.

It is extended a 670 km length and passes near 332 towns and villages, 30 cultural sites and 6 airports (Historic route)

Built between 146 and 120 BC

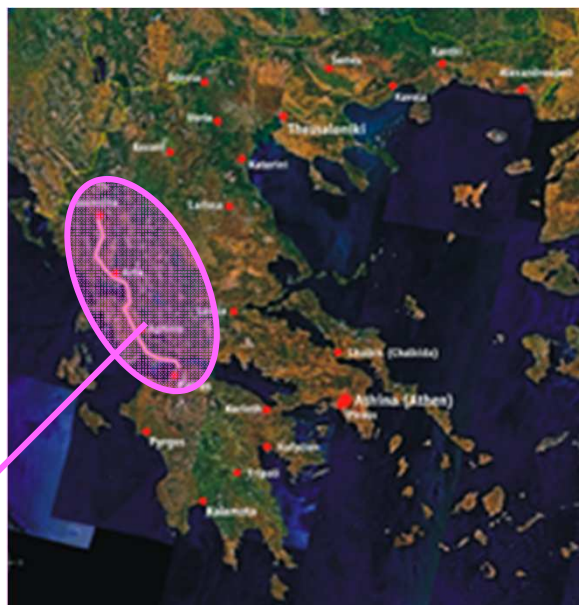


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Case study: 4 major Motorway projects

(III)



Sample: 1,18 km²

Ionia Odos: (under construction) Part of the European route E55

Total length will be 384 km

Completed at around 2012 passing through seven towns

Case study: 4 major Motorway projects

(IV)



Olympia Odos (under construction):
Total distance of 365 km
It will link Athens to Patra, the third largest city in Greece, and along the western coast of the Peloponnesian peninsula, to Pyrgos and Tsakona

Total construction cost: ~ €1.8 billion excluding VAT

Combination of: bank loans (€204 million), toll revenues (€936 million), shareholders' private investment (€200 million) and the Greek State (€550 million). Half of the Greek state subsidy is coming directly from European funds.

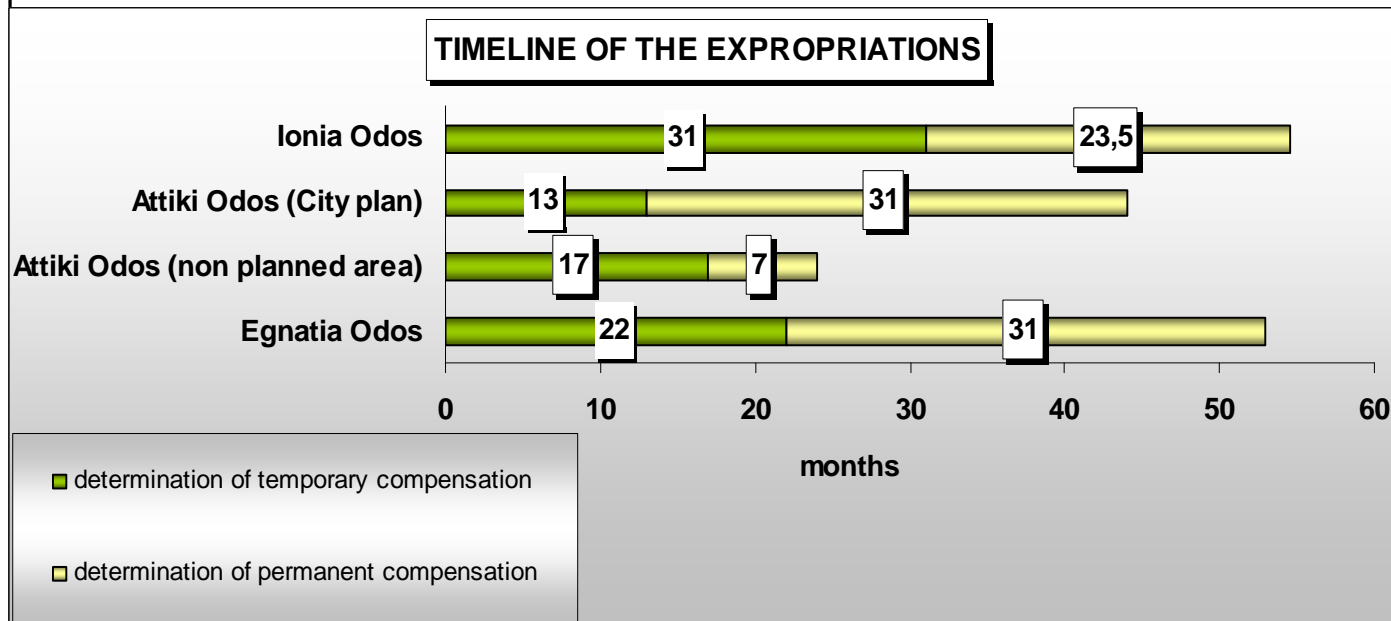
**Expropriation costs for this project are estimated to be €300 million
~16.5% of the construction cost**

Findings

Total expropriation **costs** and **duration** are not comparable

as the expropriated land size, the number of owners, type and number of existing developments, land values, specific reasons for delays (e.g., court postpones, local court workload) vary significantly .

Judicial procedure: **compensation (& adjudication of owners)**



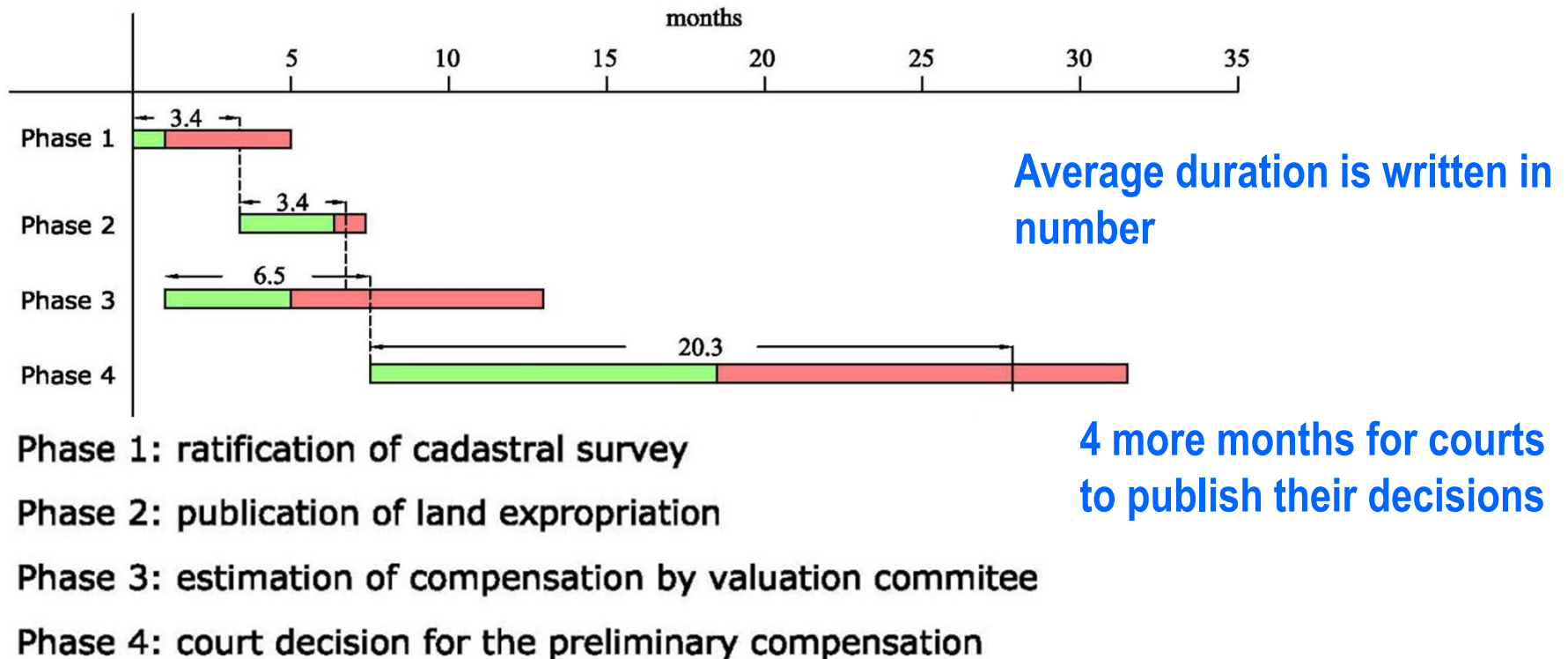
In Attiki Odos
(within the city plan):

Large number of

1. Properties
2. Objections (values)
3. Changes of the study

Findings: Preliminary compensation (~4 years)

Duration of various phases of the compensation process for Olympia Odos



Cadastral surveys: Commissioned in 2005 and delivered to the Ministry in 2007
The use of orthophotos shortens compilation times.

General Findings in all projects

1. Owners have never offered or agreed to sell their properties in advance as they do not trust the state's **valuation methods**

instead

The state has enacted an old law (of 1946) for **requisition** of the property in order to speed up the land takings (40% of the land takings of Olympia Odos is done by this method).

2. Properties are usually **under-compensated** by the General Courts (SOE: market value, committee: self compensation/tax value)

All owners are led to appeal at the **Courts of Appeals** to define a better final compensation including the created damage (which may though be even lower as it was the case in Ionia Odos and the part of Attiki Odos in the unplanned area)

There is a **great variety of decisions** of the Courts of Appeals even for similar and neighbouring properties (under-compensated or over-compensated **without much documentation** in the Courts)

There is an unusual property insecurity in Greece

3. Greek citizens and lawyers are injured due to a difficult and unfair process defined by the numerous laws, regulations and the conflicting case law that characterize compulsory land expropriation in Greece.

4. Causes of such insecurity may be classified as following:

Lack of systematic **scientific education** in compulsory land expropriation law, which is an absolute inconsistency with its practical application; lack of **awareness among lawyers**

Failure of the Greek land expropriation law to be reorganized (in terms of consistency, simplicity and efficiency) and harmonized with EU

Frequent legislative amendments of existing laws, for **ad hoc solutions** (specific legislation to achieve the inflexible time-schedules of certain works)

Frequent changes in the Greek case law without analytical documentation or persuasive reasoning. This fact proves the **lack of general principles for land expropriation.**

Proposals

1. Privileges of the Greek state (and other legal entities that are of similar status) are now of no practical value. Current Law and the Law for extreme-urgent expropriation law are inconsistent with relevant legislation within EU. **Need for radical legal reform.**
2. **Modern valuation methods** and standards should be legally strengthened and enforced
3. Cadastral surveys should use **orthophoto maps** and include boundaries of affected properties
4. Until the operation of the local cadastral offices (to avoid confusion and overlapping) **all cadastral surveys should be plotted in the same reference system and should be maintained in a GIS environment locally.**
5. Difficulties in fund raising: an **update of the land consolidation law is needed**
6. Attention to **improve education especially in the field of European harmonization and increase the citizens' awareness and owners' participation in the procedures**

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