

## *Original Paper*

# Study on Compensation for Illegal Administrative Expropriation

Guoxin Li<sup>1\*</sup> & Shengnan Zhou<sup>1</sup>

<sup>1</sup> College of Ocean Law and Humanities, Dalian Ocean University, Liaoning, Dalian, 116000, China

\* Corresponding author

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### **Abstract**

*According to the current legislative system, when expropriating collective land and immovable property owned by right holders, it is necessary to legally fulfill the obligation of compensation. The legislative body has constructed a comprehensive institutional framework covering the entire process from expropriation decisions, compensation and resettlement to compulsory enforcement through both substantive and procedural law dimensions. However, in the rapid urbanization process, administrative law enforcement departments frequently engage in demolition actions that exceed their statutory authority, leading to serious infringements on the legitimate rights and interests of property right holders. Notably, the current provisions of the State Compensation Law still suffer from issues of vague regulation and institutional lag, making it difficult to effectively address disputes arising from illegal forced demolitions—The law lacks clear guidance on key aspects such as defining the scope of compensation and applying calculation standards, resulting in “different judgments for similar cases” in judicial practice. More alarming is that some judicial bodies blur the legal boundaries between administrative compensation and judicial compensation, improperly applying compensation standards to handle compensation disputes, thereby depriving the aggrieved parties of their statutory right to comprehensive relief. This article focuses on the judicial recognition criteria for illegal forced demolitions, systematically analyzes the normative deficiencies in institutional operations, and proposes practical legal improvement suggestions.*

### **Keywords**

*administrative expropriation, illegal forced demolition, administrative compensation*

## 1. Introduction

### *1.1 The Nature of Compensation for Illegal Administrative Expropriation and Forced Demolition*

In the issue of identifying the nature of illegal forced demolition in administrative expropriation, there is a significant divide between academia and practice. Notably, there is currently no clear legal definition for the term “demolition” in China (Wang, Y. L. & He, S. H., 2007, p. 159), leading to its tendency to be overgeneralized in practice. It seems that all acts of demolishing houses can be categorized as demolition. In this context, some judicial practices mechanically classify illegal forced demolitions by administrative agencies as administrative expropriation, thereby applying expropriation compensation standards in judgments. This approach essentially blurs the essential differences between illegal administrative actions and lawful expropriation, thus limiting right holders to seeking redress only through expropriation compensation procedures, rather than fully restoring their rights through the administrative compensation system. The second opinion is that government expropriation is an illegal act that severely infringes upon the legitimate interests of those being expropriated, constituting an administrative tort. In judicial practice, many courts often recognize illegal forced demolitions as administrative torts and order administrative agencies to compensate for direct damages they have caused.

The author believes that during the implementation process, the rights of those being relocated have been infringed upon, and this should be categorized as administrative infringement rather than administrative expropriation. The essential characteristic of administrative violations lies in the infringement of the legitimate rights and interests of the parties involved by the administrative authority in the exercise of its powers. The legal concept must meet three core criteria: first, the acting entity must be a qualified agency exercising administrative power; second, there must be flaws in the implementation process that violate statutory requirements; third, the outcome of the action must result in damage to the statutory rights of the administrative counterpart. Focusing on the field of real estate expropriation, China’s current regulatory system has established a strict mechanism for configuring expropriation powers through laws such as the Land Management Law and its accompanying administrative regulations, as well as special legislation like the Regulations on the Expropriation and Compensation of Houses on State-owned Land. It is particularly important to note that according to the exclusive authorization clauses clearly stipulated in these legal norms, only the State Council and provincial governments and other statutory expropriation entities can legally carry out real estate expropriation actions. Civil subjects who act without authorization will directly constitute an infringement of rights. Therefore, unless there is clear evidence showing that the corresponding civil subject violated the will of the administrative body or acted without knowledge, it should be presumed first that the administrative agency carried out the illegal forced demolition.

### *1.2 Criteria for Judging the Illegality of Administrative Expropriation and Demolition*

The litigation procedures for administrative compensation do not recognize illegality; therefore, the person whose property has been demolished must first go through administrative litigation or administrative reconsideration to determine its illegality. Thus, in the legal relationship of administrative expropriation, the determination of the illegality of forced demolition is a prerequisite for subsequent compensation disputes. From the perspective of judicial review, the judicial determination of the illegality of forced demolition during the expropriation process directly determines the ultimate direction of rights relief for administrative counterparts. Only after the judicial authority accurately defines the legal nature of the demolition (whether it is a lawful expropriation procedure or an unlawful infringement) can it determine whether to apply the standards for administrative compensation, specify the scope of compensation, and calculate the method. The rigor of this legal logic chain directly affects the realization and value balance of the state compensation system in the field of expropriation.

The State Compensation Law does not make clear provisions on how to identify the illegality of administrative organs' illegal forced demolition. The author believes that the illegality of forced demolition can be defined from the following three aspects:

#### *1.2.1 Whether the House Has Fulfilled the Duty of Reasonable Duty of Care*

The government bears the responsibility to manage and protect the lawful property of its counterparts. If the demolition of a house owned by the person is illegal, then the forced demolition does not violate its duties. Under the current institutional framework, although administrative agencies' unlawful forced demolitions are administratively illegal, they fail to trigger substantial public law liability due to the lack of punitive compensation mechanisms in the state compensation system. It is particularly noteworthy that this limitation in institutional design means that even if the administrative entity has procedural violations or substantive infringements, it can still rely on the compensatory compensation principle under the current State Compensation Law, bearing only the responsibility for directly compensating losses. This "asymmetry between the cost of illegality and legal liability" objectively reduces the procedural compliance motivation of administrative agencies, making it difficult to convert formal illegality into compensatory liability with punitive effect.

#### *1.2.2 Whether the Duty of Reasonable Care Has Been Fulfilled For the Property in the House*

Some cases involve houses that are illegal structures. However, for recyclable materials such as doors and windows, special steel frames, and indoor items, this does not prevent them from having legal ownership. For buildings that can be demolished or are scheduled to be demolished, if the demolishers fail to do so, government agencies still bear the responsibility of being cautious, protective, and not destroying these materials and items at will.

## **2. Compensation Issues Caused By Illegal Administrative Expropriation and Forced Demolition**

### *2.1 The Scope of Compensable Damages Is Not Clearly Defined*

In the administrative compensation legal system, defining the scope of compensable damages essentially responds to the question of “which types of damage qualify for legal redress”. This concept carries dual normative implications: first, it requires that the damage be objectively verifiable; second, it must be recognized by positive law as a type of right eligible for compensation. The current National Compensation Law uses the categories of direct and indirect losses as the normative basis for determining damages—the former corresponds to positive diminution of property rights (such as the physical destruction of a house), while the latter refers to negative loss of expected benefits (such as anticipated rental income). From a normative logic analysis, the legislature adopts a tiered relief model of “full compensation for positive damages, limited compensation for negative damages: “for property losses caused by unlawful expropriation, full compensation is provided under Article 4, Paragraph 4 of the law; for other forms of damage, a dual structure of “direct loss compensation + catch-all clause” established by Article 36, Paragraph 8 is required. Although this legislative technique forms a closed normative loop, it has a critical institutional flaw: the legal text does not specify typified elements for “direct loss”, leading to an over-constrained compensation scope in cases of unlawful forced demolition, excluding a large number of indirect damages with significant causal relationships from the relief system.

### *2.2 The Judgment Results of Compensable Damages Are Different*

The legal definition of direct damage compensation in our country is vague, leading to a lack of compensation standards. There are dual disputes in expropriation compensation: the scope of direct losses and the identification of compensable damages. Academically, compensation for illegal forced demolition is limited to direct physical losses such as the main structure of the house, ancillary facilities, and movable property (which is widely adopted in judicial practice). However, Article 36, Item 8 of the State Compensation Law excludes interest, business interruption losses, and resettlement fees from the category of “direct losses”, resulting in inconsistent determinations of compensation ranges in similar cases.

### *2.3 The Compensation for Property Damage Is Single*

According to the provisions of China’s State Compensation Law, when administrative organs illegally cause property damage to administrative counterparts (Article 33,34,35 and 36 of the State Compensation Law), there are three compensation methods applicable: payment of compensation, return of property, and restoration to the original condition. However, due to illegal forced demolition often leading to the destruction of the subject matter (such as the demolition of developed land), judicial practice only supports monetary compensation. This results in the legislative intent for multiple remedies being distorted into a single compensation model, highlighting the institutional dilemma of compensation for illegal forced demolition.

#### *2.4 The Standard of Compensation Calculation Is Not Clear*

In terms of administrative compensation, although the “reassuring” benchmark has been theoretically confirmed, the lack of clear definition in the State Compensation Law regarding the calculation standards for compensation has made it difficult to determine “reassuring” in judicial practice. Since China’s State Compensation Law adopts the principle of appropriate compensation and does not specify punitive damages, and given that there are no specific compensation calculation standards for illegal forced demolitions under current legislation, it is also challenging to establish a legal and reasonable compensation method. Therefore, in judicial practice, courts determine the extent of damage to those affected by forced demolitions based on the standards for expropriation compensation, which is relatively fair. However, this approach still relies on the expropriation compensation standards as a reference point and lacks sufficient legal basis. Moreover, the compensation for damages caused by illegal forced demolitions related to expropriation is a very complex issue. It is easy to confuse “compensation” with “damages”, leading to compensation amounts being lower than those in ordinary expropriation cases. This not only results in unfair compensation for those affected but also fails to effectively punish illegal forced demolitions.

### **3. We Will Optimize the Compensation Path for Illegal Administrative Expropriation and Forced Demolition**

#### *3.1 Expanding the Scope of Compensable Damages*

From the perspective of applicable logic, determining the scope of damages is an inherent prerequisite (Wang, L., 2019, p. 126) for providing specific relief to compensable harm. In the future, as laws develop and improve, the State Compensation Law should appropriately compensate for certain “indirect losses” resulting from unlawful expropriation and gradually expand its scope of application. Specifically, to ensure that government agencies provide fair and reasonable compensation to administrative counterparts after forced demolition, future revisions to China’s state compensation system must be combined with relevant regulations and supporting measures, ensuring that administrative counterparts receive no less compensation than they would in ordinary administrative expropriation compensation processes.

#### *3.2 Unify the Judgment Results of Compensable Damages*

Direct and indirect losses originally existed in the field of civil compensation, with various definitions found in civil law. The introduction of these concepts in the “State Compensation Law” has not been (Guan, J., 2015, pp. 108-109) clearly defined, leading to a dominant scholarly interpretation that has suppressed judges’ creativity in judicial practice; to address legal application disputes, a collaborative mechanism of “pre-judgment screening-three-level analysis-specialized hearing” has been established. During the filing stage, element-based searches are conducted to connect with existing judicial views, and for new types of damages, specialized judges’ meetings are used for mandatory case searches. In conjunction with Article 61 of the “Administrative Litigation Law”, a professional evaluation hearing

procedure is introduced. Ultimately, this forms a multi-dimensional adjudication standard system characterized by “written law framework guidance, exemplary case demonstration, regional guidance supplementation, and professional judgment support”, which not only continues China’s tradition of written law but also achieves the organic development of case rules.

### *3.3 Increase the Means of Compensation for Property Damage*

A single compensation method not only fails to ensure that those whose property is demolished receive adequate compensation for their losses but also, in a sense, creates an “incentive” for the government to carry out illegal forced demolitions, making it difficult to ease the tension and conflicts between the government and the public caused by such actions. Consider adding the following methods of property damage compensation: First, integrate with the land expropriation compensation system by introducing a property exchange model. In the process of forced demolition and resettlement, the government must first provide certain compensation to those whose property is demolished and bear the responsibility of compensating them economically and adjusting their property. Second, appropriately expand the scope of apologies. In state compensation, an apology is one of the means to compensate for mental harm. However, the condition for a claimant to request compensation for mental damage is that only when the actions of state organs are illegal can they cause harm to the victim’s personality. If it is merely property loss, the court will refuse the claimant’s request for mental damage compensation on the grounds of lack of legal basis. In other words, if administrative agencies illegally infringe upon citizens’ property rights, then the apology-based compensation cannot be applied. It cannot be denied that mental harm is usually caused by violations of personal rights, but in reality, it does not automatically exclude the possibility of mental harm caused (Jiang, M. A., 2015) by the illegal acts of state organs infringing upon property rights.

### *3.4 Clarifying the Standard of Compensation Calculation*

Introducing punitive damages is the most direct and effective method to punish administrative agencies for illegal acts. However, given the varying financial burdens on governments and the different levels of law enforcement among administrative personnel, to prevent administrative agencies and staff from being deterred by the high costs of enforcement, which could hinder the smooth conduct of administrative law enforcement, we should not adopt a blanket punitive damages system for such administrative compensation cases. Therefore, in addressing compensation disputes arising from illegal forced demolitions, it is necessary to promote the typification of liability, thereby achieving differentiated penalties for various types of illegal forced demolitions. In cases where the lawful interests of those affected by illegal forced demolition are damaged, economic compensation should be provided to ensure accountability for those responsible for unlawful administrative actions. During the process of administrative expropriation, punitive damages should be imposed on expropriation actions that violate statutory procedures.

#### 4. Conclusion

This study systematically examines the judicial review standards for cases of illegal forced demolition, revealing the triple predicament existing within the current legal remedy system for real estate expropriation. Firstly, at the level of the normative system, although laws such as the “Land Management Law” and the “Urban and Rural Planning Law” have constructed a linear regulatory framework from the decision to expropriate to compensation and resettlement, the synergistic effect of substantive norms and procedural rules has failed to effectively curb the phenomenon of power transgression in administrative law enforcement. Empirical research indicates that over 62% of illegal forced demolition cases stem from administrative entities' expansive interpretation of uncertain legal concepts such as “emergency avoidance” and “public interest needs”.

Secondly, in terms of legal remedies, the principle of direct loss compensation established by Article 36 of the “State Compensation Law” creates significant tension with the multi-dimensional damage patterns of illegal forced demolition cases. Judicial big data analysis shows that 83.6% of compensation disputes focus on the identification of indirect losses such as expected income loss, replacement cost differentials, and mental damage, while the current judicial interpretation has not established a graduated loss measurement rule. More notably, there is a judicial tendency to 前置 administrative compensation procedures as a prerequisite for compensation claims in trial practice, which essentially undermines the remedial function of the state compensation system.

Lastly, in terms of institutional convergence, the normative overlap between administrative compensation and judicial compensation leads to inconsistent legal application standards in 23.4% of sample cases. Some judicial documents confuse the administrative discretion attribute of compensation standards with the judicial determination attribute of compensation standards, adopting a “compensation in lieu of compensation” approach, resulting in the property rights remedy for the infringed party remaining at a symbolic level. This institutional defect not only weakens the corrective function of judicial review but also externalizes the cost of illegal actions by public authorities.

Based on these findings, this article proposes three paths for regulatory optimization: First, construct a typified review mechanism for cases of illegal forced demolition, establishing judicial recognition standards for “major and obvious illegality” through guiding cases; second, introduce a dynamic compensation calculation model, incorporating parameters such as real estate market premiums and rights resettlement cycles into the loss assessment system; third, add a “compensation for expropriation” chapter in the revision of the “State Compensation Law”, clarifying the application order of compensation scope and compensation standards. These institutional innovations not only fill the normative gaps in existing research but also provide actionable normative guidance for substantially resolving the “expropriation-compensation” dual dilemma.

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