

Compensation System of Japan

----- *Just Compensation*
means

Full Compensation -----

Tsuyoshi Kotaka

President of

Japan Organization for Land Acquisition and Compensation
/ Professor of Shinshu University School of Law

I

**Outline of
Land Acquisition Process
and Just Compensation**

1. OUTLINE OF LAND ACQUISITION PROCESS

[1] Land Expropriation Law(Act No.219 of 1951)

Under Article 29, Paragraph 3 of the constitution, **the Land Expropriation Law** was enacted in 1951 as a general statute concerning compulsory acquisition of land for public purpose.

[2] Law of Special Measure for Land Acquisition (Act No.150 of 1961)

In addition, **the Law of Special Measure for Land Acquisition** provides a procedure for urgent expropriation for projects that are especially needed for the social and economic life of society and are expected to be accomplished urgently.

[3] Acquisition by negotiation

In general, land acquisition for public projects is not done by procedure under the Land Expropriation Law but by mutual **negotiation** among the project initiator, the landowner, and interested parties.

2. OUTLINE OF JUST COMPENSATION

[1] Compensation Concerned with Private Property

“The Guideline of Standard for Compensation for Loss Caused by Acquisition of Land for Public Use”

(Cabinet Decision, June 29, 1962, revised, December 12, 1967, revised, July 2, 2002)

[2] Compensation Concerned with Public Facilities

**“The Guideline of Standard for
Compensation for Public Loss Caused
by Execution of Public Project”**

(Cabinet Decision, February 21, 1967)

II

Types and Contents of Compensation

The Constitution of Japan

Promulgated on November 3, 1946

Came into effect on May 3, 1947

CHAPTER III RIGHTS AND DUTIES OF THE PEOPLE

Article 29. The right to own or to hold property is inviolable.

Property rights shall be defined by law, in conformity with the public welfare.

Private property may be taken for public use upon just compensation therefor.

Full Compensation

“**Just Compensation**” provided in Art 29, Para. 3 of the constitution should be “**Full Compensation**”, which means the objective value of the acquired property (**fair market value**) should be provided for compensation.

SUPREME COURT

Under the Land Expropriation Law, compensation for loss should be **full compensation**, that is, the property value of an aggrieved person does not change before and after condemnation, and the amount should be sufficient enough to acquire alternative land nearby which is equivalent to the land taken.

[Sup. Ct., October 18, 1973, 27 Minshu 9, 1210 [1973]]

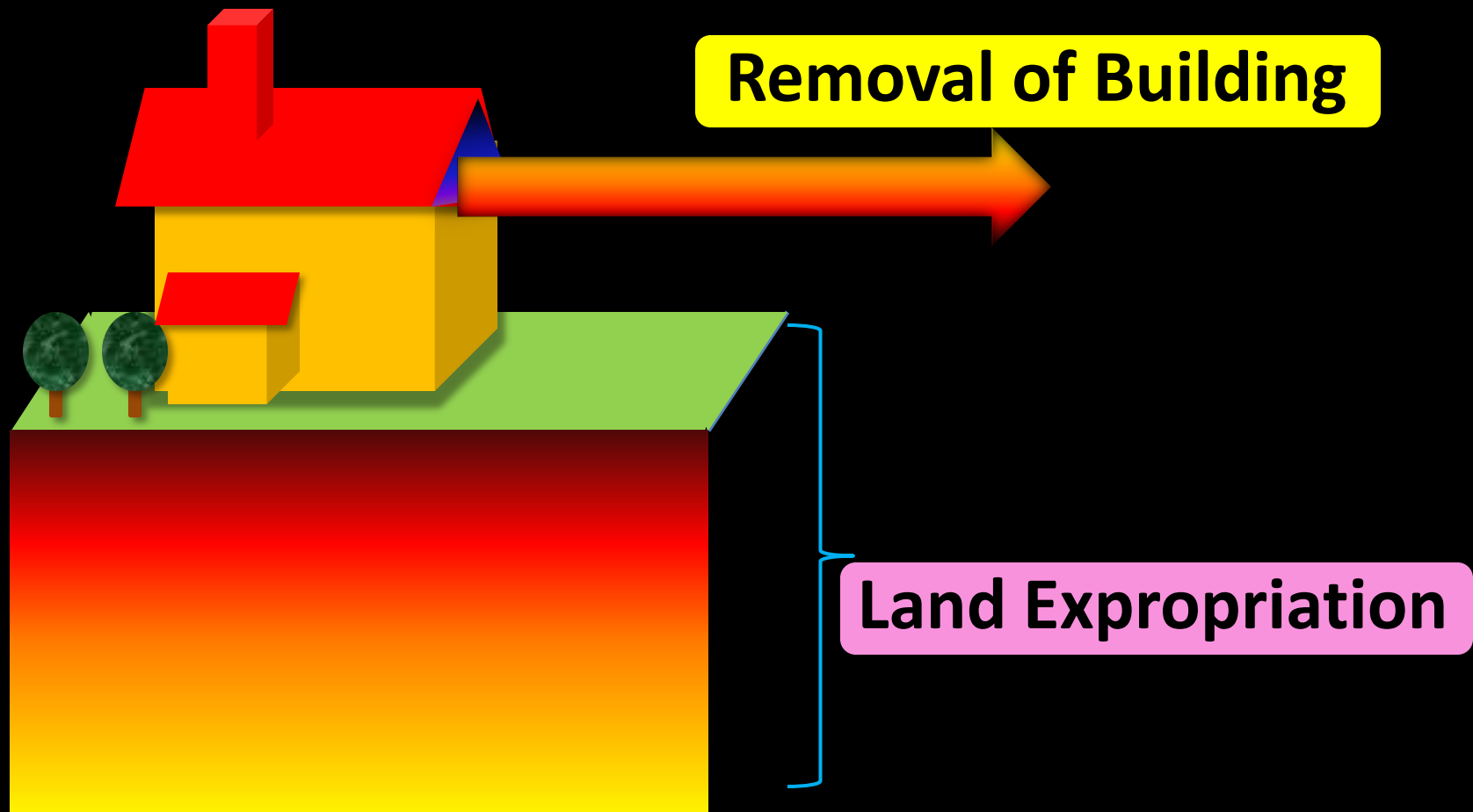
Satisfying the following three requisites makes compensation just.

- [1] All actual losses caused by an acquisition of property **should be compensated fully.**
- [2] Criteria of calculation of loss should be socially objective, that is, by **fair market value**, and no consideration should be made to either special conditions or the subjective and emotional value of aggrieved persons (*Art.7, Art.8, Para.4 of the Guideline of Standard for Compensation for Loss Caused by Acquisition of Land for Public Use*).

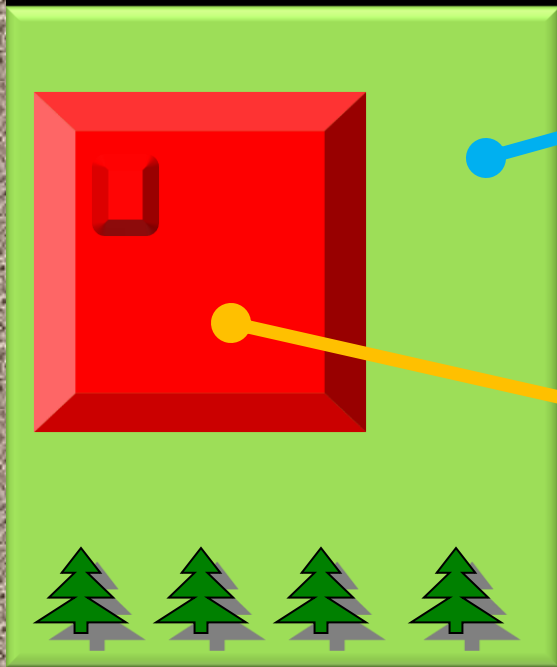
[3] The standard date for calculating compensation for land is **the date of the notification of the project recognition** under the provision of Art.26,para.1 of the Land Expropriation Law (*Art.71,LEL*).

On the other hand, when land is acquired through agreement, not condemnation, the date of calculation is **the date of conclusion of the contract** (*Art.47 of the Guideline*).

Compensation for Loss by Land Expropriation



Compensation for Loss by Land Expropriation



[1] **Compensation for Rights**
Compensation for **Land**

[2] **Compensation for Ordinary Loss**
Caused by Land Taking

Compensation for **Removal of Building**
Compensation for **Business Loss**
etc.

COMPENSATION FOR RIGHTS

Compensation for Land

Influence of Project

Price Increase

Price Decrease

belong to Project Initiator

Land to be Expropriated

Market Price

Amount of Compensation

Speculation or Expectation

The revision rate corresponding to the changes of prices
(Land Expropriation Law § 71)

Fixed Price

The fair price calculated by considering the transaction prices of the similar lands in the neighborhood

Land Expropriation Law

Ruling for Acquisition of Right

Notification of Project Recognition

Planning

Amount of Compensation for Land in the Land Expropriation

SUPREME COURT

“Just Compensation” provided in Article 29 Paragraph 3 of the Constitution means that a fair price rationally calculated on the basis of transaction prices prevailing in the economic condition at the time of land acquisition, but it need not completely accord with the transaction price.

Since the compensation for the loss caused by expropriation shall be made finally by the ruling for acquisition of land, the amount of compensation for acquisition of land shall be made concretely by the ruling (Art. 48 Para. 1 of the Land Expropriation Law), the amount of compensation should be calculated on the basis of the price prevailing at the time of the ruling.

As to the concrete calculation method, Art. 71 of the Law provides that the amounts of the compensation concerning the land to be expropriated shall be the amounts obtained by multiplying the fair prices as the date of the notification of the project recognition calculated by considering the transaction prices of similar lands in neighborhood and other factors by the revision rate corresponding to the change of prices during the period between the date and the date when the ruling for acquisition of land is given.

The change of transaction prices in neighborhood generally influenced by the project concerned. But there is no ground the owners of the land to be acquired shall be able to enjoy the same amount of land price as the prices added to lands in neighborhood by the project and the change in prices occurred to the land to be acquired belong to the project initiator or the project initiator should bear.

(Sup.Ct., June 11, 2002, 56 Minshu 5,958[2002])

COMPENSATION FOR ORDINARY LOSS Caused by Land Taking

EX. Compensation for removal expenses
Compensation for business loss

Compensation for Ordinary Loss ;

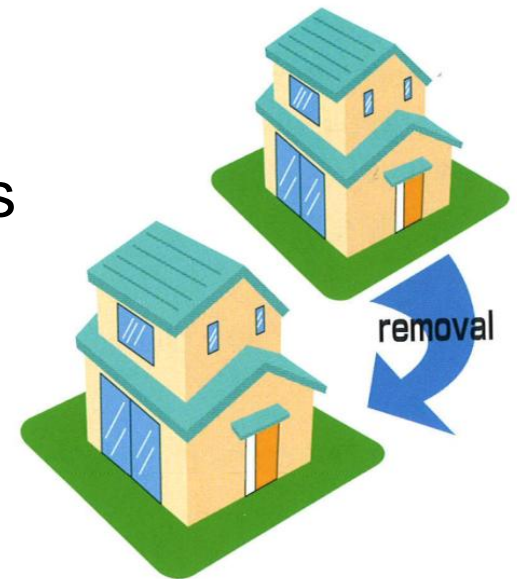
for which any landowner who is deprived of rights to land can claim compensation, under usual circumstances, for unavoidable economic loss caused by condemnation, but he or she cannot claim for loss under special circumstances.

Compensation to Owners of Building

[1] Compensation for removal of buildings

When there is a building on the land recognized to remove, the method of the removal is determined after considering the construction, uses and other conditions of the building, the necessary expenses shall be calculated and compensated.

Typical methods to remove buildings are “rebuilding method”, “towing method” and “conversion method”.



[2] Compensation for removal of structures

With regard to structures such as the door of a gate, a fence, a lumber room, concrete-covered ground or steps and others, necessary expenses for the removal shall be calculated and compensated.

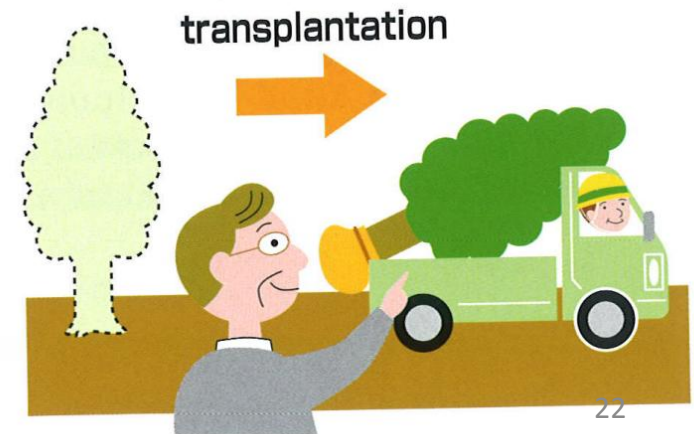


[3] Compensation for Standing Trees

Calculation methods of standing trees vary to the use or kinds of the trees. For some sort of garden trees, the necessary expenses for transplantation (digging up, transport, planting and others) shall be usually calculated and compensated.

For other sorts of standing trees, the necessary expenses for cutting down (cutting down, transport and others) shall be usually calculated and compensated.

* Purposes to use standing trees include garden trees (for ornamental purpose), standing trees in forest (goods), harvesting trees and others.



Other Expenses caused by Removal

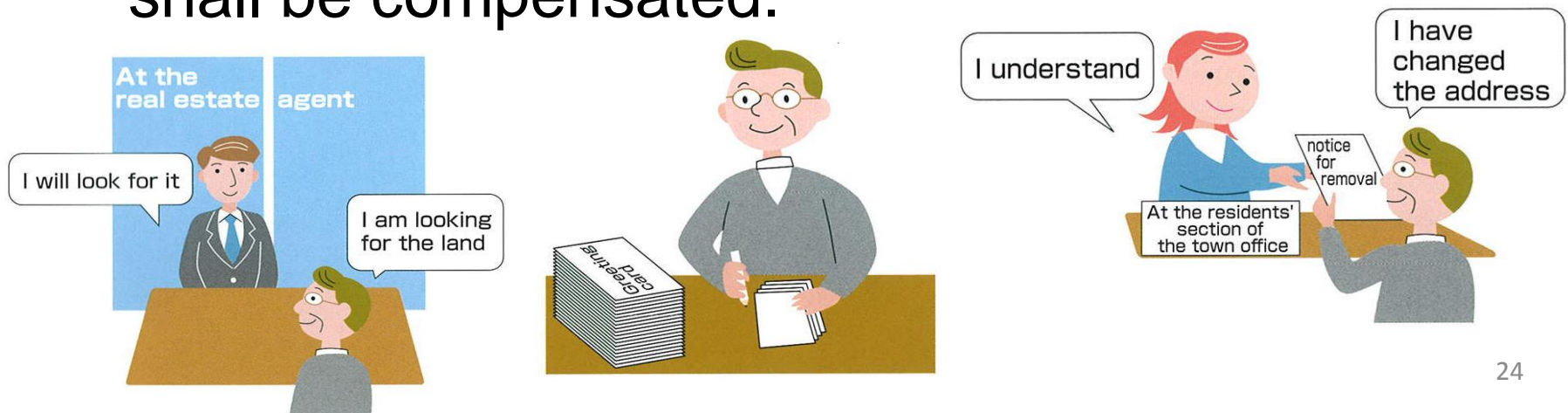
[1] Removal of Movable Property

Movable properties involved in the removal of building (furniture and household effects, goods, materials and others) shall be compensated with the necessary expenses for packing, transport and others.



[2] Miscellaneous Expenses on Moving

For expenses supposed to be paid for the removal of buildings and others,
“expenses to look for new place”, “necessary expenses for legal procedures such as notification for removal of house”, “expenses to give notice to acquaintances the move” and others shall be compensated.



Compensation for Tenants

If it is extremely difficult for the tenants to continue leasing building from the current lessor due to the removal of the building, ordinarily necessary expenses to rent the same level of building as tenants have lived in shall be compensated.

(for instance, removal expenses of movable properties, miscellaneous expenses on moving, premium and others)



Compensation to People running Business

If there is reason to believe that a business is required to suspend its operation temporarily due to the removal of the store, the following losses shall be calculated and compensated.

- loss of earnings during the period requiring the suspension (loss of income for self-employment)
- necessary expenses incurred by business assets during the period requiring suspension, including taxes and public charges on business properties.
- suspension allowance for the employees during the period requiring suspension



SUPREME COURT

Ordinary loss caused by land acquisition provided in Art. 88 of the Land Expropriation Law means economic and property loss which is an unavoidable, socially objective loss that the aggrieved person suffers from compulsory land acquisition, and it does not include non-economic value.

Historic or academic value in the regard through which national history, and the life and culture of ancient times could be understood generally puts no additional value on the economic or property value as real estate and gives no influence on its market value. Cultural value in this regard cannot be calculated into economic value, and loss of its value could not be compensated under the Land Expropriation Law.

(Sup. Ct. , January 21, 1988, 1270 Hanrei-Jiho 67 [1988])

SUPREME COURT

When a regulatory statute provides scientific standards, such as rules that dangerous equipment shall be kept some distance from certain facilities, and violation against the regulatory standard brought by the construction of a road that made the property owner do something such as remove facilities in order to meet the standards above and he suffered from loss by removing his facilities, **compensation for such loss, provided in Art. 70, Para. 1 of the Road Law, is not required simply because the loss by exercise of police power becomes actual.**

(Sup. Ct. , February 18, 1983, 37 Minshu 1, 59 [1983])