*Gianluigi De Mare
*Antonio Nesticò
**Ciro Amato

A participatory procedure for estimating expropriation compensation

A logical/assessment model for the application of Article 21, Presidential Decree 327/01

Keywords: **Expropriation for public use, estimation of compensation, participatory procedures, ADR, alternative means of dispute resolution, expert witness.**

Abstract[1] This paper illustrates the application of the procedures for the activity of the Technical Board as called for in Article 21 of the general law for quantifying compensation for expropriation. By comparing other of alternative dispute resolution techniques and with specific focus on the valuation issue, this paper will propose a protocol for rationalizing the procedure and for reaching consensus on the assessment.

INTRODUCTION AND OBJECTIVES

In the current economic climate, the government can resort to the sale of its available assets to pursue a balanced budget and to generate resources that can help promote recovery through government actions and regional development.

This condition, and in close correlation to it, contrasts with another one in which the activation of new investments requires the acquisition of private property by institutions (especially land, but also buildings) for carrying out planned redevelopment and regeneration projects.

For many years, modern planning (Mattia, 2010; Morano, 2010; Curto, 2007; Ponz de Leon Pisani, 2007; Marzaro Gamba, 2005; Stanghellini, 2005) has referred to instruments like the dreaded transfer of development rights, bonuses and development credits. Notwithstanding these instruments, the main procedure for implementing urban growth is still expropriation for public use.

For decades, the expropriation question has stirred the passions of involved stakeholders regarding regulatory, legal and estimative issues.

Since 2003, the application of the General Expropriation Law (TU, in Italian, Testo Unico – literally Single Text. The abbreviation TU will be used throughout) has allowed the sector's progressive reorganization with the introduction of procedures that increase the degree of participation of citizens involved in expropriation procedures.

Among these, primary importance is given to the Technical Board as per Article 21 of the TU. The legislator has great hopes that this instrument can facilitate the rationalization of the assessments of the compensations for the expropriated property - sacrificed in the name of public interest (the Administration has the power to sacrifice a private interest in the name of an overriding public interest by implementing special measures).

Article 21 regulates two alternative procedures for estimating final compensation. The first thirteen paragraphs contain the detailed regulation of the Technical Board, an organ composed of

*Associate professor and researcher of Evaluation in the Department of Civil Engineering, University of Salerno
**Lawyer and Head of the Legal Department of Agroinvest spa - Urban Transformation Company

1 This paper can be attributed equally to the authors.

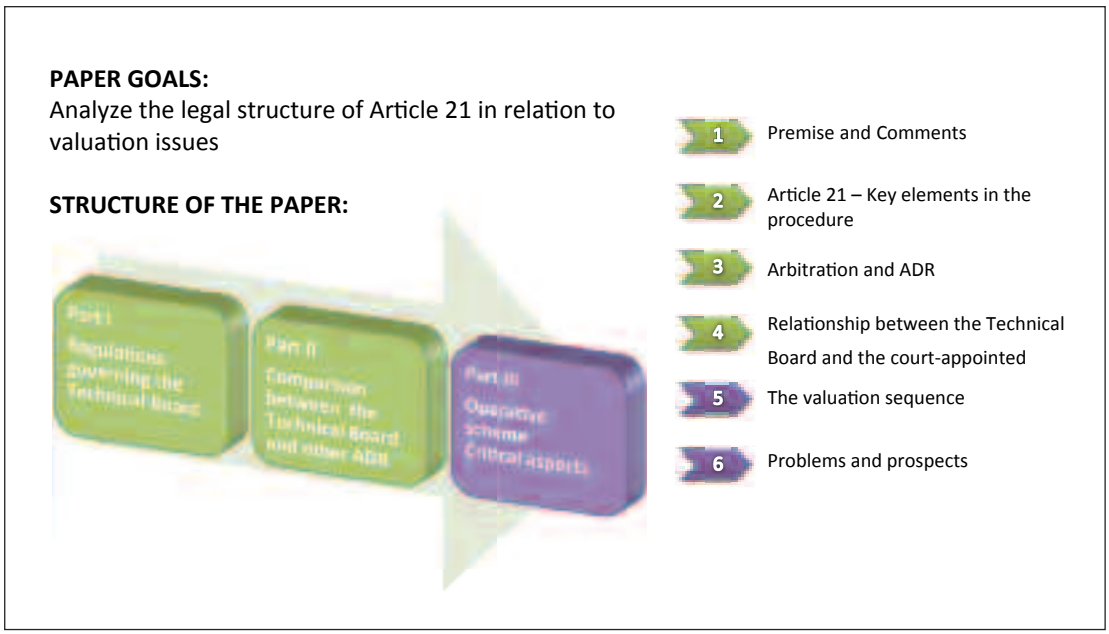
representatives of the parties involved in the expropriation proceedings and a court-appointed non-partisan member. The second procedure (Paragraph 15) concerns the possibility of applying the Provincial Expropriation Commission (Article 41), when the collective procedure has not been activated.

This paper will first reconstruct the regulatory framework for the definition of compensation by the Technical Board. It will then analyze the specific valuation issues involved.

The discussion is organized in three successive stages. First, the TU rules disciplining Technical Board will be recalled and discussed. Then the broad family of the legal instruments (ADR) available to the Technical Board will be discussed as alternatives to the court in dispute resolution.[2] Finally, a protocol for the innovative and rational implementation of the procedure provided for in Article 21 will be presented.

The following discussion will be carried out according to the steps outlined in Figure 1.

Figure 1 Research goals and structure



ARTICLE 21: KEY MOMENTS IN THE PROCEDURE

As already noted, Article 21 defines the procedure for determining final compensation for expropriation. In particular, Paragraph 2 presents two possible alternatives when an agreement regarding **provisional compensation** has not been reached. These are: application to the Technical Board and request for an estimate by the **Provincial Expropriation Commission**.

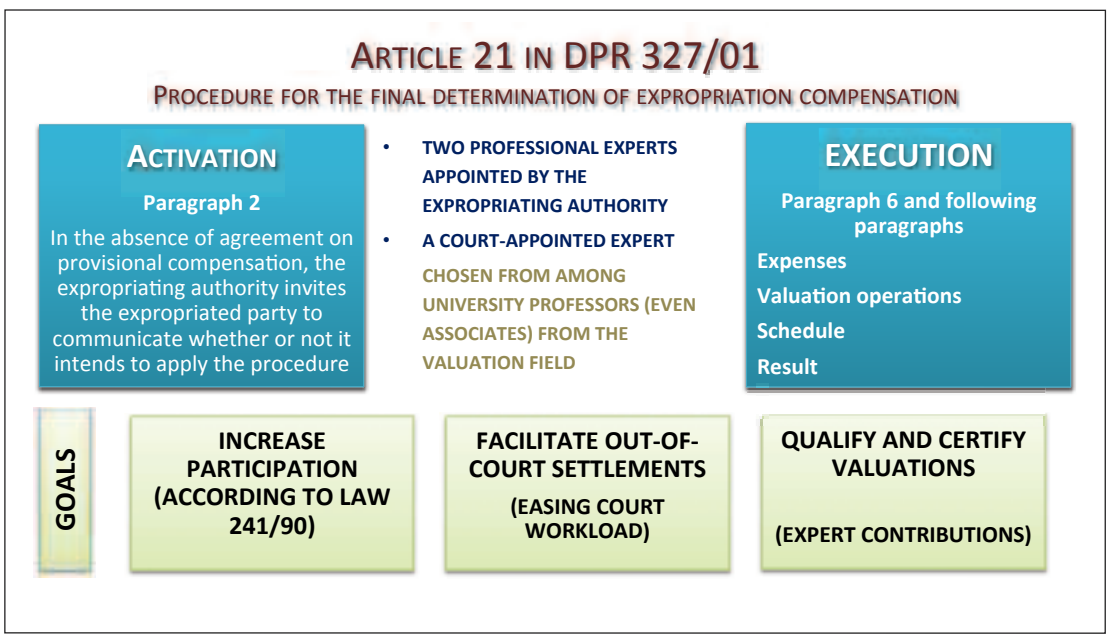
It should also be mentioned that the expropriating party may either accept an offer for provisional compensation within thirty days, in writing, or reject it, either in writing or by implicit silent dissent. Subsequently, the **Expropriating Authority** establishes the lists of owners who have not accepted the compensation offer and sends a notice urging them to communicate their preferred administrative procedure (Technical Board or Commission). Within twenty days of receiving the notice,

2 Particular importance should be placed on this aspect in light of the recent introduction of the regulations on conciliation pursuant to Legislative Decree 180/2010.

owners can express their desire to resort to the Board, indicating the name of the expert of their choice. Subsequently the RUP (Procedure Manager) will appoint the expert designated by the party and another expert selected by the expropriating authority, each representing the different interests involved. A third expert will be selected by the President of the Court having jurisdiction in the area in which the property being expropriated is located. The third expert must be chosen from among the university professors, including associate professors, of valuation, or from expert members enrolled in court-approved registries. The following paragraphs in Article 21 regulate the costs of the Technical Board, the assessment operations to be performed, the procedure schedule and the organization of the estimation process.

After a first analysis of the law, it can be said that the legislator has sought to pursue specific purposes: to increase and ensure the participatory phase in order to involve concerned stakeholders more directly in land development decisions; to decrease the work load on the justice system, relieving it of the burden of a series of procedures that can be resolved outside the courts; and finally, to create a qualification or certification mechanism for the assessments.

Figure 2 Structure of Article 21 and goals of the legislator



As structured, Article 21 contains a series of well-defined procedural indications which are, however, not quite adequate for a full normative definition of the assessment procedure. Therefore, Paragraph 14 refers to the rules of the Civil Code.[3] It noted that this code regulates expert witness operations as well as procedural rules.

The Code also describes the organization of the various commissions designed to operate as alternatives to the standard court procedures for dispute resolution. Among these alternatives, Articles 806 to 840 regarding **Arbitration** are certainly important; and it seems that Article 21 borrows many aspects of the collegiate structure from these articles of the Civil Code.

3 "Subject to the provisions of the TU, the rules of the Civil Code with regard to the surveying operations and their relationships", Article 21 of Presidential Decree 327/01, Paragraph 14.

THE INSTITUTE OF ARBITRATION AND OTHER ADR

The legal nature of arbitration

The arbitration procedure contains various correlations with the collective procedure as described in Article 21. As mentioned, arbitration is regulated by Articles 806-840 of the Civil Code. Historically, arbitration has been an alternative means of dispute resolution, inspired by the mutual desire of the parties to reconcile their differences. In particular, Article 806 points out that the parties use referees to resolve their disputes, provided they do not regard inalienable rights. In fact, arbitration applies only to available rights[4] except in special cases where even the application to available rights is prohibited by law. The overriding goal of arbitration is the reduction of court disputes. However, it should be recalled that, at the origin of arbitration - as well as other procedures for alternative dispute resolution - there is not only the simple attempt to reduce or lighten court workloads, but also the intent to define procedures and specific tools for a variety of existing case typologies, in perfect keeping with the assessment principle that adapts resolution logic to the assessment issue.

In general terms, it must also be said that the reworking of the subsidiarity principle – according to which "the State must intervene in conflict resolution only where the autonomy of individuals cannot find the means for the consensual settlement of conflicts" (Buonofrate, 2006) – by the European legislation has provided strong impetus for the proliferation of alternative instruments for the reduction of litigation. In this view, then, it should also be recalled that the effectiveness of the application of arbitration proceedings and standard judiciary proceedings, although having evidently different doctrinal matrices, is mutually conditioned. In fact, on the one hand, respect for the decisions of the arbitrators by the losing party in a dispute is greatly influenced by the certainty of punishment and the reasonableness of the timing of the court procedures. On the other, the use of ADR and therefore unburdening the court workload, become even more considerable when ADR has a high technical-legal profile due to the expertise and prestige of the members of the judging panels.

Arbitration's underlying logic should, therefore, be well understood, despite the different guidelines for its interpretation. On the one hand, the institution is understood according to private law, and on the other, it is understood in a public sense (D'Ottavi, 2007). The private interpretation gives arbitration specific negotiation content without bearing any relationship to judicial proceedings. So according to this doctrinal current, Board participants do nothing more than prepare material, later summarized in the award, for the benefit of the magistrate. Through the enforceability decree, the magistrate transforms the private process into public legal proceedings giving the award the importance and the form of a judgment. In this way, two parts are defined in the decision-making process: the first, procedural, in which technical aspects are explored; the second (ratification of the award), in which the solution to the technical and legal issues takes on an important role as a true judiciary act. Conversely, the public interpretation, or better yet procedural, while identifying arbitration as an institute of a private nature, argues that the nature of arbitration and the power of judges does not derive from private volition, but from the law that allows such expression of will.

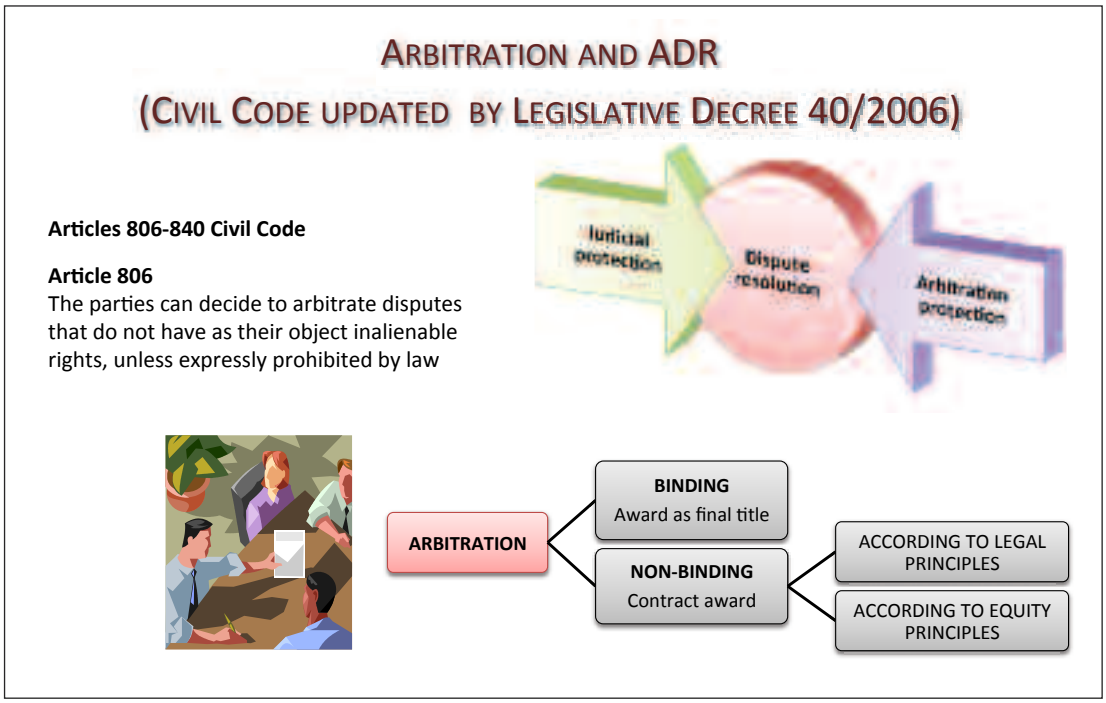
Here, then, are the two interpretations: on the one hand the private/negotiation approach in which arbitration is essentially a compromise between the parties and on the other, the public/future-oriented approach, in which arbitration and alternative forms are configured as a true passage of a judiciary nature.

In very brief terms, arbitration can be distinguished in binding and non-binding arbitration. The characteristic element of binding arbitration, which responds strictly to the procedure established by the Civil Code, is its result. In fact, the award is enforceable, once ratified by the magistrate, and

4 Inalienable rights are those whose availability is not dependent upon to the bearer of that right (right to life, to a name, etc.) who cannot give it up or transfer it to others. Conversely other rights are available rights, such as property rights.

can only be challenged on procedural grounds. Conversely, non-binding arbitration is presented as a contractual award whose substance can be challenged when it is developed both in accordance with legal principles as well as principles of equity. The difference lies in the fact that arbitration, even if non-binding, which develops according to law, has remarkable respect for procedural rules, while equity-based arbitration gives greater space and freedom of action to the judges involved in the procedure.
In summary, the Technical Board in Article 21 would seem to propend towards equity-based non-binding arbitration.

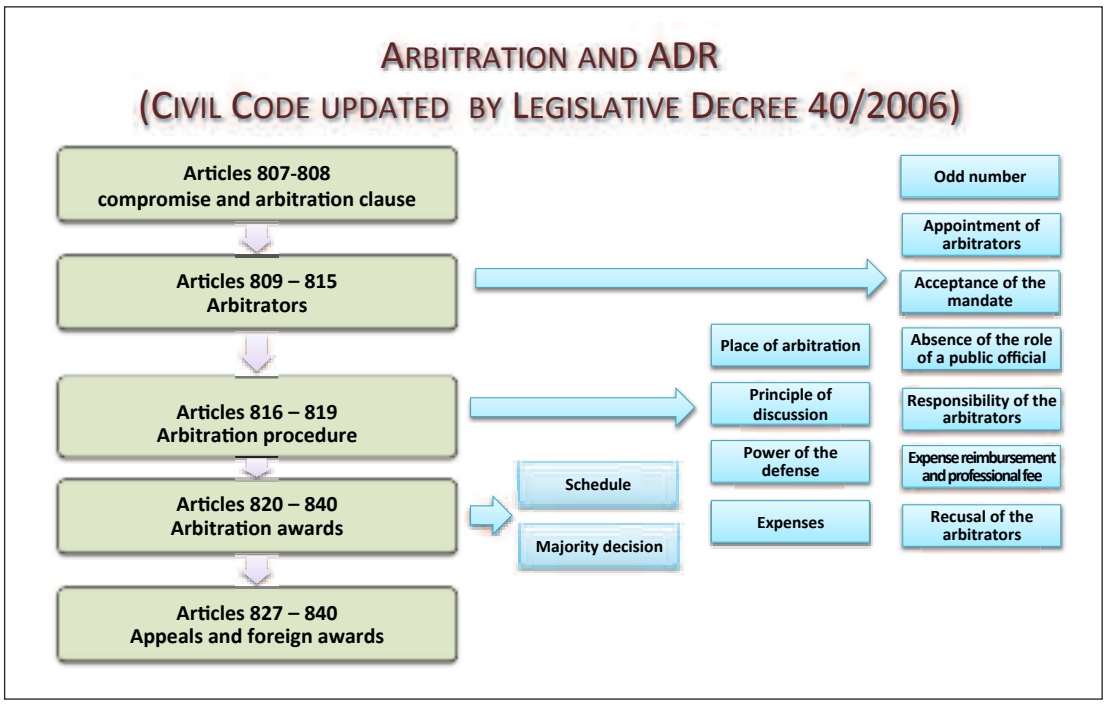
Figure 3 Arbitrations regulations and underlying logic



The rules of arbitration

Articles 807 and 808 of the Civil Code identify the so-called compromise and the arbitration clause. When a contract is signed, the parties may introduce the arbitration clause indicating arbitration for the settlement of any disputes; conversely, compromise is an agreement determined once any objection has already arisen between the parties. As seen in Article 21, the use of the Technical Board is optional, although it is foreseen by law.
Articles 809 to 815 contain the provisions regarding arbitrators. The first issue concerns the number of arbitrators according to the Civil Code (Article 809) which must always be an odd number. It would seem, however, that an even number can be accepted if the president's vote is doubled.

Figure 4 The articles of the Civil Code regulating arbitration



The controversy regarding the number of members of the arbitration panel, in the case of the Technical Board, has given rise to different interpretations in the literature. Some (Loro, 2007), in accordance with the TU, seem to refer to the possibility of a Technical Board made up of only two members. In fact, the lexicon of Paragraph 3, which speaks of appointment by the expropriating Authority of two technical members and not of the appointment of a third, seems to leave room for a first collective form with only two members. This form can be integrated with a third court-appointed member,[5] if one of the parties expresses interest in such a solution. The idea of only two arbitrators would also be justified in terms of the savings on the third expert's fee, so that he/she should be called into question only in deadlock situations. The law, on the other hand, also presents evidence to support the odd number theory. In particular, two factors seem decisive. The inability to make decisions by majority vote in a Board with an even number of arbitrators and the time limits imposed for the preparation of the estimate starting from the appointment of the third technical member (Paragraph 3).

As mentioned, the appointments concerned in Article 21 refer to specific mechanisms. In civil law, arbitrators are appointed by the parties (Article 810) and, in their absence, the task can be delegated to the President of the Court having jurisdiction. The President usually appoints the President of the Board. Acceptance (Article 813) by the nominees must be in writing and can simply be represented by the signing of the minutes of the first meeting.

In the Arbitration Committee, the components do not play the role of a public official. Therefore, it is necessary to make some observations regarding the subject of their responsibilities (Article 813*ter*, as updated by Decree 40/06).

5 Note that in the Law 3/05, Art. 16, Paragraph 1, of the Puglia Region provides for the appointment of the third member of the Expropriation Authority, where there is agreement between the parties on the name of the candidate. Otherwise, appeal is made to the Court President.

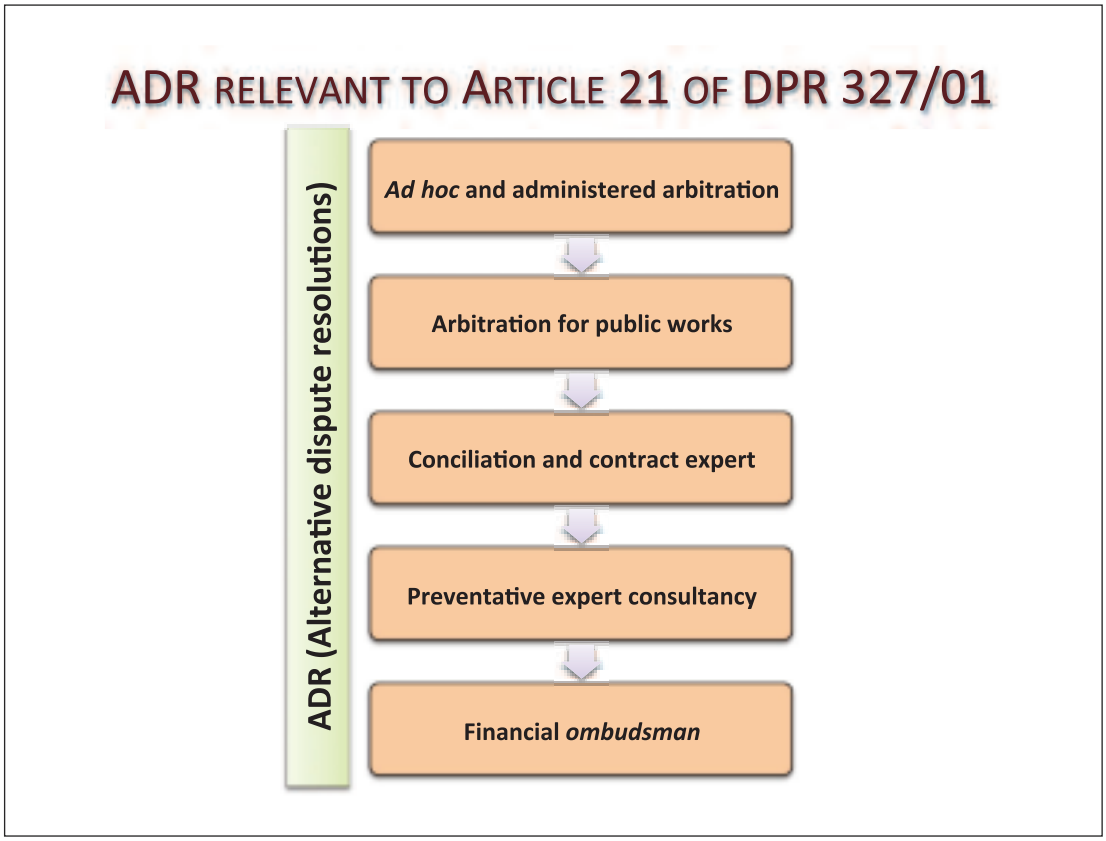
Regarding the merits of the decision, arbitrators are not responsible for the correctness of the adopted resolution. The law provides that the arbitrators respond to Law 177/1988, which regulates the judge's responsibilities.
Instead, members have important responsibilities regarding any intentional or negligent behavior regarding omissions or delays in standard procedures that might hold up or prevent the issuance of the award (D'Ottavi, 2005).
Finally, the section regarding the members of the Arbitration Committee concludes with a discussion of issues concerning the remuneration of the arbitrators and the conditions for their recusal.
Current case law is still not unanimous regarding the first aspect and is influenced by the established practice whereby arbitrators can determine their own fees. Today, this principle is valid if the members are authorized in writing by the parties; otherwise the President of the Court having jurisdiction is called upon to decide the question.
In Article 21 of Presidential Decree 327/01, the fees (Paragraph 6) of the Technical Board are established in reference to professional fee structures. The Court of Appeals is still the seat for settling any disputes, especially today since standard fee structures have been abrogated.
The recusal of arbitrators is possible if the issue regards minors, a situation of unsound mind or if there is some relationship, correlation, knowledge between the arbitrator and the party that nominated him/her. In matters of ethics or ethical professional behaviour, the indications are of such significance as to generate a rare moment of unity among the interpreters of the doctrine; within the Arbitration Committee, individual subjects form an *unicum*, in which they must relinquish the role of consultants appointed by one or another party. "Attention should be paid to this point, because it often happens that the parties (and sometimes the technical arbitrators, albeit in good faith), misinterpret arbitration functions and procedures, confusing those functions with that of the expert witness" (Patrone, 2007). This means that, in arbitration, as well as in the Technical Board, the member designated by a party must seek to withdraw from representing that party and to try to integrate fully within the judging organ. In particular, the first task of the arbitrator is to reveal all ties with the party involved. That is why, in reference the composition of the Technical Board, as opposed to what one may think, it is a good practice if the expropriating Authority does not appoint as its own representative the expert who estimated the provisional compensation or drew up the project, as he/she will tend to defend his/her work; just as the expropriated party should not involve the expert consulted in the initial phases of the expropriation procedure. In this way, positions do not become entrenched and the conciliatory objective, which is the basis of collegial activity, can be pursued.
Articles 816 - 819 of the Code concern the arbitration procedure itself. In particular, the place of arbitration must be as neutral as possible with respect to the residences of the parties; in the absence of agreement, Rome is indicated. During the procedure, the fundamental principle of adversarial proceedings must be protected giving the possibility of the parties to reply. On this point, Presidential Decree 327/01 also devotes space to the parties' ability to express themselves during the course of the proceedings. In fact, Paragraph 8 provides that "The interested parties can also attend the procedures with trusted representatives, make comments and submit written and oral documents, which the experts must take into account".
Articles 820 - 826 relate to the schedule and procedures for the decision. In the first version of the Code (1940), the time-frame for the issuance of the award in the Arbitration Committee was only 90 days. Today this has been increased to 240 days, with a supplement of 180 days in case of the appointment of an expert witness. Article 21 imposes a maximum of 90 days for the completion of activities, unless there are specific reasons for postponements.
The decisions of the Arbitration Committee shall be made by majority vote in a conference of the arbitrators. It is not necessary that the referee be identified and it is not necessary that the arbitrator

who opposes it sign the award. Instead he/she is expected to sign the minutes of the meeting which concluded the judgment.
This last aspect is particularly important in the Technical Board according to Article 21 there, in fact, questions about appraisals become so complex (also because they are so strongly conditioned by specific jurisprudence to which few evaluators are accustomed) that they often produce very distant positions which are likely to lead the Commission to a real impasse.
Finally, Articles 827 - 840 concern the challenging of the award, which here appears superfluous.

Other forms of ADR

The regulatory framework for the institution of arbitration has been illustrated, and it was pointed out that there is a multiplicity of other ADR instruments whose legal systems contain passages of interest for a more rational interpretation of Article 21. Thus far, only so-called *ad hoc* arbitration has been treated, but there is another type of arbitration called **administered arbitration**.
Ad hoc arbitration is when no non-partisan organization verifies the proper functioning of the Arbitration. Conversely, administered arbitration is referred to when the arbitration proceedings are conducted under the auspices of an institution (which might be the Arbitration Chambers). Its main advantages lie in the logistics (availability of locations equipped for meetings, secretarial services, etc..), and in its qualification through the certification of the arbitrators (these are chosen from lists compiled by the Arbitration Chambers after appropriate training), and finally, in greater cost control since costs are defined by an institution as opposed to single operators.

Figure 5 Alternative Procedures with elements relevant to the Technical Board



Among other forms of ADR is the well-known **public works arbitration**. Originally the Arbitration Committee for public works, as created in the Framework Law 2248/1865, included 5 members nominated by public and institutional appointment. There were no representatives from the construction sector. Today, arbitration for public works, regulated by Legislative Decree 163/2006, Articles 241-243, provides for a three-member board, one of which is designated by the contractor and one by the contracting authority. The third party is appointed by mutual consent or, in the case of disagreement, by the Arbitration Chamber of the Public Contracts Supervisory Authority.

Also of interest are forms of **mediation** and **contract expert witnesses**. Mediation, as apposed to the arbitration approach, is based on the assumption that both parties are willing to limit their own interests with the common aim of reaching rapid resolution. Consequently, while in arbitration the possible total victory of one party exists, in mediation this does not come about because the adversaries use it only when, for obvious reasons of rapidity, they are willing to sacrifice part of their own interests in order to resolve the dispute quickly. The contract expert report is part of the same logic, since the two parties appoint a single expert to find the solution to a purely operational problem that they agree to accept irrevocably.

In line with these assumptions is **prior technical consultancy**, described in Article 696*bis* of the Code as updated by Legislative Decree 40/2006. Before 2006, prior technical consultancy was only used to solve emergency situations in which the judge, before starting a long due diligence phase, needed to verify the existence of the grounds for trial. Today, however, prior technical consultancy can be implemented when disputes involve issues of a certain simplicity so that the judge can appoint an expert to resolve them expediently, in line with the spirit of Article 199 and, therefore, reaching a solution *extra processum* or even *ante processum*.

Finally, one last example of an alternative conciliatory tool is the Financial Ombudsman. It is basically a conciliation mechanism between banks and consumers which finds its origins in Scandinavia in the early 1800s with an instrument that guaranteed citizens rights with respect to public authorities. The most interesting element in this extra-judicial procedure lies in the fact that it was included in the Green Paper on ADR published in February 2002 by the committee of the European Union.

THE HEART OF TECHNICAL/ASSESSMENT RELATED MATTERS IN THE TECHNICAL BOARD

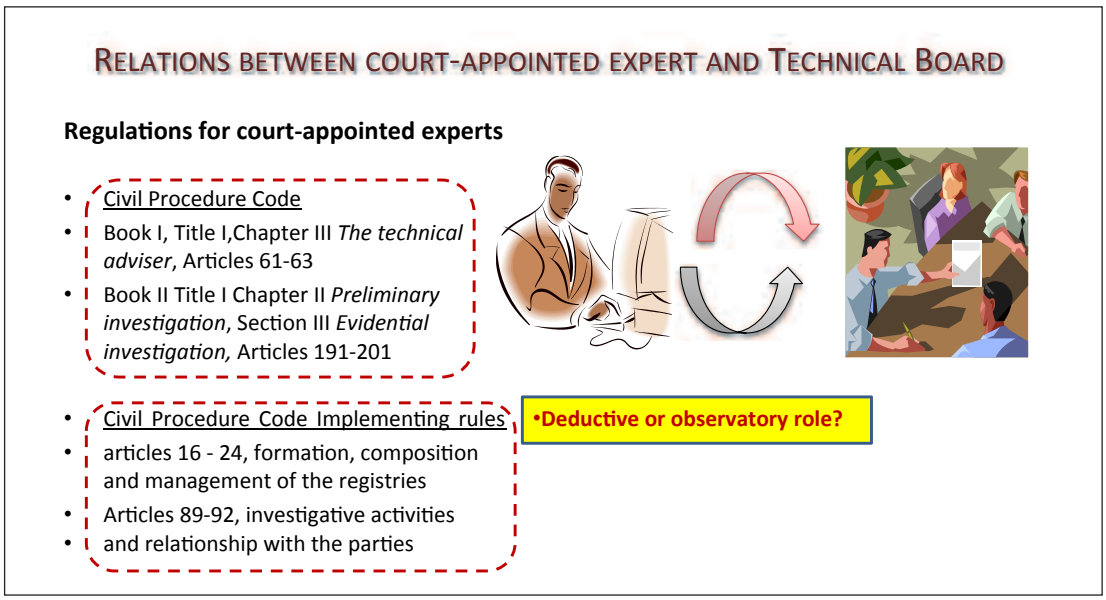
Useful information and guidance on how to design rational and transparent operating procedures for the Technical Board (according to Article 21) derive from all the extrajudicial tools analyzed in this paper. It should immediately be pointed out, however, that the Technical Board has two distinct souls: legal/procedural and technical/assessment-related. There is often the prevalence of one or the other aspect in the tools discussed - or at least a distinct separation of the two functions referring to the different subjects in the procedure.

The frequent coexistence of the two aspects in the Technical Board creates obvious problems. All the more so since the TU calls upon the members of the Board to play a non-partisan role and promote strong internal cohesion, leaving the parties the powers and functions to protect and safeguard their specific interests. This is why the parties should take responsibility, during the preliminary stages, for appointing and involving technical consultants. In practice, however, technical consultancy, or further investigation into the technical/assessment-related issues, is carried out by members of the Board.

Therefore, it is necessary for the members to have a thorough understanding of the fundamental aspects of the technical analyses carried out by the offices or by the expert in his/her capacity as assistant to the judge, because these principles must recalled when the verification of the design and assessment-related factors useful for the decision-making process is carried out.

Juridical elements regarding the expert witness are discussed in Figure 6.

Figure 6 Legal sources for the work of the expert witness



The role of the professional appointed by the judge is to help interpret the facts, an activity that is obviously reserved for the bench.[6] Knowledge of specific technical areas serves to assist the judge in understanding the facts, so that the expert witness supports the court by performing in-depth analyses of the issues that should have already been introduced by the parties, according to Article 2377, since they are responsible for the burden of proof.

This step is extremely delicate and also has great impact on the Technical Board procedure. In fact, it introduces the question regarding the merely probative or preliminary exploratory value of the appraisal activities. Is the activity of the expert or experts limited to the analysis and interpretation of the documents produced by the parties or can they also seek out new sources?

These issues have been debated for many years, but the topic is important within the Technical Board where the deductive or observatory nature of the technical component should be clarified in advance, if not approached at least with great sensitivity prior to the investigation phase. In fact, the appointment of a non-partisan member - like a university professor - with his/her specific competence on the subject, can easily - albeit unintentionally - lead to unfair actions.

In general terms, the technical consultant should be characterized as an observer in the first degree of justice, gradually moving towards a deductive role in the second degree, and if requested in cassation, he/she should take an primarily deductive approach.

By analogy, the Technical Board should be allowed a certain observatory function, especially when the parties do not unexpectedly take over that responsibility.

Regarding the relationship between the legal and technical spheres, it is necessary to recall an important paper by the former Minister of Justice Luigi Scotti (1993) according to which the judge, as *arbiter arbitrorum,* must increasingly rely on technical knowledge in proportion to the dramatic increase in complexity. In fact, conditions should be studied by expert professionals who possess all of the available technical and technological tools.

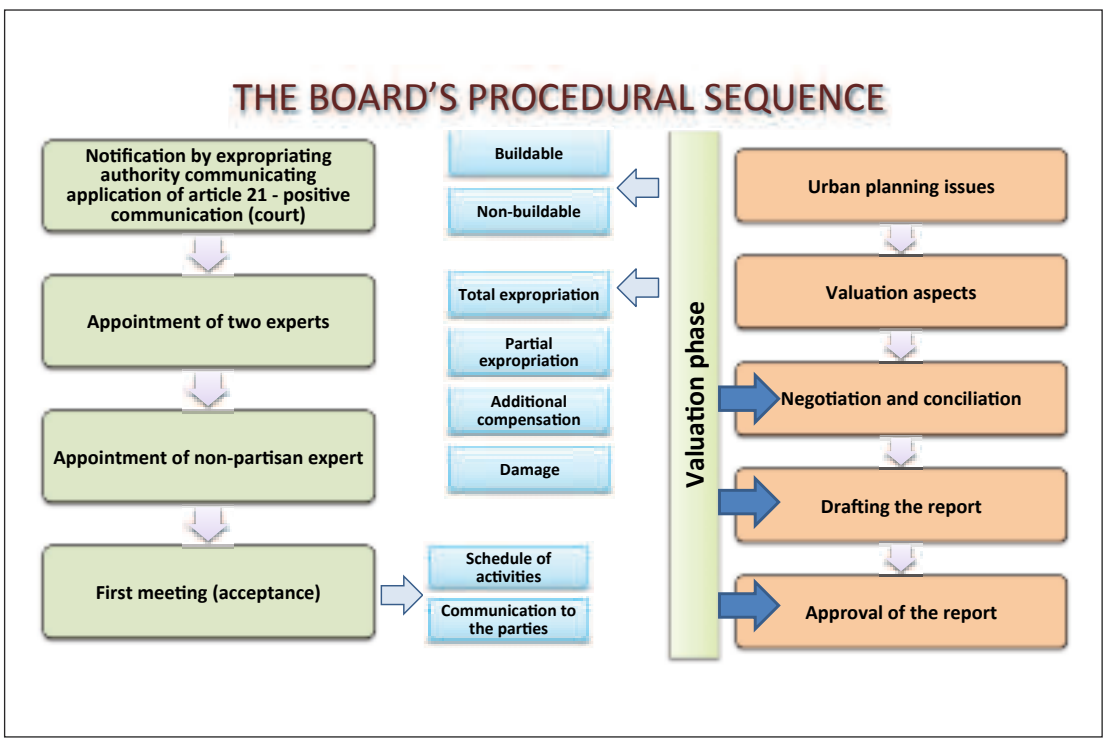
6 It soon becomes clear that in the Technical Board the two functions are embodied in a single organ.

A LOGICAL/ASSESMENT MODEL FOR THE TECHNICAL BOARD

Following the analysis of the legal framework and the different instruments for dispute resolution, both classic and innovative, and the procedure for the Technical Board according to Article 21 of Presidential Decree 327/01, it is possible to discuss a rational sequence for the performance of the board's activities. This can help increase the transparency and reproducibility of the required estimate of the final compensation for expropriation.

As mentioned, the collegial procedure is activated by a communication from the expropriating Authority which makes known the possibility of activating Article 21 within twenty days of notifying the expropriated subjects. If they intend to proceed, they must indicate their expert. The expropriating authority appoints the designated expert, and also its own, as members of the Board and calls for the appointment of a local non-partisan expert by the President of the Court. At first, this often leads to problems, either because the Authority does not transmit the start-up communication to the parties, or because the Court is not activated rapidly enough. The fact is, however, that this last step can also be performed by those being expropriated, according to the spirit of Paragraph 4 of the law.[7]

Figure 7 - The logical/assessment model for the final estimate of expropriation compensation

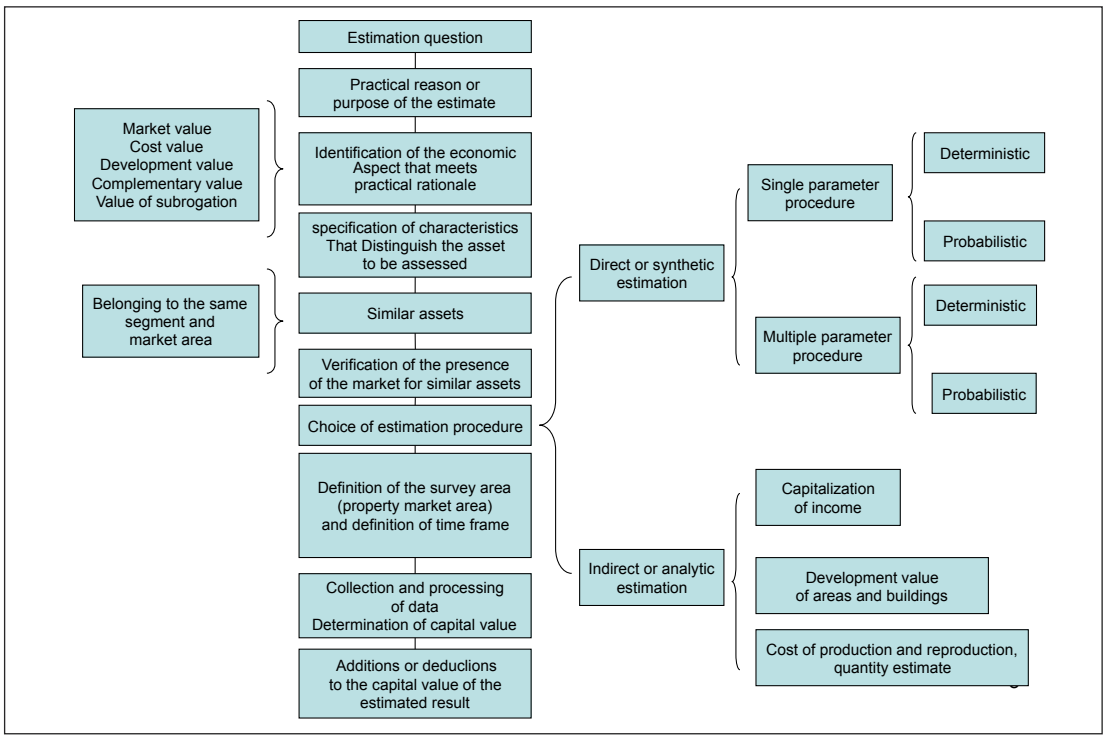


7 It should also be pointed out that the concerned Party may communicate his/her own free will to activate the Technical Board when he/she rejects provisional compensation, even asking - *in extremis* - the administrative court to appoint a Commissioner *ad acta* to initiate the collegial procedure.

Once the external member has been appointed, the parties have 90 days to define compensation.
The discovery phase begins with a first meeting. Normally, the external member contacts the other two to establish the initial date. This is always done by focusing great attention on the communication of the date to the parties concerned (Paragraph 7).
The signing of the first minutes by the three experts means implicit acceptance of their mandate. At this point, it is a good idea to define a schedule of activities and then communicate the expected schedule to the parties involved; in this way the participation principle can be fully respected. In this regard, it is maintained that involving the parties directly only for the purposes of site inspection is less in line with spirit of the law. Therefore, the minutes of all meetings should be transmitted to the absent parties. The definition of the schedule involves all stages of the necessary assessment, which lies at the heart of the entire collegial procedure.
The first evaluation regards planning constraints and parameters and therefore requires specific expertise. The nature of the planning constraints on the properties being expropriated for public use must be verified, especially as to whether they are *espropriativo* or *conformativo*.[8] Site inspection is intended to clarify whether the land in question is buildable or non-buildable, ascertaining whether existing buildings or structures that may be affected by the procedure have been built with licences or not. Explanatory notes by the lawyers of the parties can be requested; opinions and insights of one or more members of the Board particularly versed in the matter can be commissioned.
Clear records of this first phase must be produced, submitting - in case of disagreement - the decision on the nature of the constraint to a majority vote.
The entire Board will then proceed on the basis of the nature of the planning constraints established unanimously or by majority vote. Any member in disaccord will continue to conduct his/her activity based on the mutually decided planning assumptions.
The next step in the procedure regards assessment. Until today, the quantification of the different kinds of properties to be expropriated referred uniquely to the criterion of the most probable market value (De Mare, 2012; Nesticò, 2012), at the time of the estimate or - if earlier - at the time of expropriation. The next steps, in sequence, are: verification of conditions of total or partial expropriation; possibility of additional compensation or awards; possibility of taking take into account any damages inherent in the procedure or physical execution of the work.
Any problem can be resolved with the application of an assessment opinion, a key instrument in the valuation discipline, developed and perfected in today's form (Figure 8) by E. Di Cocco (1960), G. Medici (1972) and F. Malacarne (1984).

8 Regarding this subject, see the abundant case law produced by the Consulta, the Court of Cassation or the Council of State, especially Constitutional Court 179/99 and the Supreme Court, United Sec., 125/01.
Also note that in Italian law planning constraints can be of two types: *conformativo* ("conformative") which are intrinsic to the property itself as defined by zoning laws, limiting their use in the public interest and *espropriativo* ("expropriative") which indicate the localation of municipal public works, roads and services, precluding any private building activity.

Figure 8 Assessment Opinion



It is hardly necessary to point out that, since this is a procedure of public interest, there is a need for - in the drafting of the opinion - documentary evidence of the property's value (Curto, 2007) such as deeds, contracts, decrees, judgments, etc.. These will be used in the direct estimation of the assets, limiting, as far as possible, the use of indirect methods that are often far from transparent for less experienced operators.

Once a first value has been established (in this case also approved unanimously or by majority), the third stage of the proceedings or the settlement procedure can ensue; this is clearly required by the legislation. While respecting the principles of transparency and economy of the public administration, mediation is a prerequisite for reaching any agreement between adversaries, avoiding time-consuming and costly litigation.

For this purpose, it must be said that it is a good idea to develop the first two phases (planning and estimation) through programmed steps, opening any hearings to the parties which they can attend with experts, consultants and legal counsel. In this way, it will be easier for the Board to highlight its motivations and establish direct contact with the citizens whose properties are being expropriated by decreasing the influence that they exert on captious professionals and consultants, sometimes interested only in promoting the juridical implications of the case. This will also permit a detailed understanding of the reasons upon which owners' economic demands are based, freeing the picture from elements of doubt or ambiguity and facilitating negotiation between the parties involved.

In doing so, a phase of negotiation, mediation and argument can be initiated which could lead, as shown, to an effective agreement between the parties. This, among others, could constitute grounds for temporarily suspending the Board's operations (Paragraph 3).

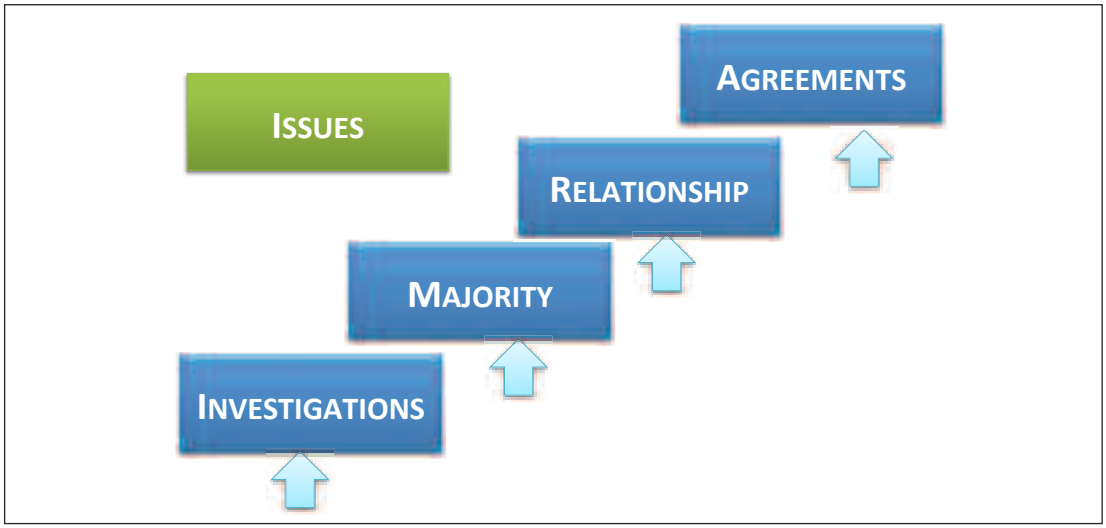
If the parties agree and the expropriation order has not yet been emanated, it is possible to implement the voluntary transfer of ownership. Otherwise, the results of the agreement will be implemented by

the Board in its report. In case of disagreement, however, the Board will draft its report in accordance with the findings of the first two phases.
It is important that the Board produce a report representing the organ's deliberations. The opinion of a dissenting member, if the report is approved by majority, will be safeguarded by the minutes produced during the early decision-making stages.

CONCLUSIONS

The Technical Board, according to Article 21 of Presidential Decree 327/01, is the synthesis of a series of legal instruments useful for the extra-judicial settlement of disputes. The basic logic derives from these (and mainly from Arbitration) and addresses shared dispute resolution and multiple operational criteria necessary for improving a judgment's reliability. The specific nature of the issues to be addressed is characterized by their peculiarities especially evident in the integration of the functions of inquiry and judgment attributed to members of the Board.
The Technical Board is vested by the legislator with great responsibility for resolution in accordance with the principle of reconciliation, so much so that the law indicates a preference for university professors from the valuation discipline as non-partisan members of the Board; this adds greater clarity, in keeping with the role, in safeguarding the principles of the discipline and highlighting the correlations with case law produced by the lower courts.

Figure 9 Issues to be addressed for the optimization of the decision-making instrument



The decades-long experience conducted by the authors of this paper in various Technical Boards, however, leads us to point out the continued existence of inadequate qualifications of the Technical Boards, too often composed of professionals devoid of specific knowledge in the expropriation field. The necessary sharing of integrated knowledge in the urban planning, legal and valuation fields strongly narrows the selection of persons and organizations involved in ablative events. Thus arises the urgent need to establish a registry of skilled technicians recognized by law. Only in this way can it be possible to optimize the tool created by the legislator in Article 21 applying in full the law's guiding principles.
With the clear intention of simplifying the work of the commissions involved in the field, the logic/assessment protocol illustrated in the preceding pages should support clear and transparent expropriation procedures with final compensation established through a collegial process.

References

Buonofrate, A., Giovannucci Orlandi, C. (2006), *Codice degli arbitrati*, Torino, UTET.

Curto, R., Coscia, C., Fregonara, E., Grella, S., Margaria, A. (2007), *Osservatorio immobiliare: l'infrastrutturazione dei dati per il monitoraggio del mercato immobiliare*, in 11^ Conferenza Nazionale A.S.I.T.A, ATTI. Torino (Italy) 6 - 9 novembre 2007.

Curto, R. (2007), *Stimare e valutare per creare valore attraverso il patrimonio pubblico di interesse storico architettonico*, in Estimo e valutazione. Metodologie e Casi studio, Roma, DEI - Tipografia del Genio Civile.

De Mare, G., Macchiaroli, M. (2012), *La stima dell'indennità di esproprio delle aree non edificabili – Criteri e procedimenti alla luce della Sentenza 181/11*, in "La nuova indennità di esproprio per le aree non edificabili", Piove di Sacco (PD), Exeoedizioni.

Di Cocco, E. (1960), *La valutazione dei beni economici*, Bologna, Calderini.

D'Ottavi, F., Mastrocola, C., Mele, E., Racco, C. (2007), *Manuale teorico-pratico dell'arbitrato*, Padova, CEDAM.

Lenoci, D. (2011), *Le procedure primarie di ADR. L'arbitrato*, Milano, Hoepli.

Loro, P., Melloni, I. (2007), *L'articolo 20 D.P.R. 327/2001*, Piove di Sacco (PD), Exeoedizioni.

Malcarne, F. (1984), *Storiografia dell'Estimo in Italia*, Genio Rurale n. 47, Bologna, Edagricole.

Marzaro Gamba, P. (2005), *Credito edilizio, compensazione e potere di pianificazione: riflessioni a margine delle nuove leggi regionali sul governo del territorio – Il caso della legge urbanistica veneta*, Rivista giuridica di Urbanistica, n.4.

Mattia, S., Oppio, A., Pandolfi, A. (2010), *Forme e pratiche della Perequazione Urbanistica in Italia,* Milano, F. Angeli.

Medici, G. (1972), *Principi di estimo*, Bologna, Calderini.

Morano, P. (2010), *La stima degli indici di urbanizzazione nella perequazione urbanistica*, Firenze, Alinea.

Nesticò, A., De Mare, G. (2012), *La stima dell'indennità di esproprio nella sentenza 181/11 della Consulta*, in Territori n. 8, Bologna, Editrice Compositori;

Patrone P., Piras V. (2007) *Contract e project management*, Firenze, Alinea.

Ponz de Leon Pisani, G. (2007), *Perequazione*, in Contesti, rivista del Dipartimento di Urbanistica e Pianificazione del Territorio, Università di Firenze, 2/07.

Scotti, L. (1993), *Contributo tecnico-scientifico nel processo e discorso fra le due culture*, in Documenti giustizia, Roma, Ministero di Grazia e Giustizia.

Stanghellini, S. (2005), *Perequazione urbanistica in Veneto: una retrospettiva rivolta al futuro,* in Urbanistica dossier n. 76, Roma, INU Edizioni.