

Determining compensation in compulsory purchase in Finland

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Introduction 1

- In societies based on private ownership expropriation of private property for the public good has been enabled by legislation
- Some reasons:
 - Based on the **monopolistic situation** a landowner could stop a development desired by the society by refusing of a voluntary transfer of his/her land or claiming for an unrealistically high compensation
 - A **landowner may** also, for one reason or another, **be missing or be legally incapacitated**, due to which some sort of compulsory measures are required in any case.
 - Ensuring of **efficiency of land acquisition**, e.g. when acquiring areas for roads

Introduction 2

- Expropriation is not the primary method for land acquisition, but presumes that the land acquisition has not been possible in any other (milder) way.
- For example, it is stated
 - in Finland that expropriation shall not be enforced if the purpose of the expropriation can as well be achieved in some other way
 - in Germany that the State shall choose for compulsory acquisition a method with minimum harm
 - in Finland that expropriation shall not be used if the inconvenience for private outweighs the public advantage

Protocol to the European Convention for the Protection of Human Rights and

Fundamental Freedoms, Article 1

- “Every natural or legal person is entitled to the peaceful enjoyment of his possession.
- **No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law** and by the general principles of international law.
- The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The use of Compulsory Purchase

- It is normally **not the primary method** for land acquisition, but presumes that the land acquisition has not been possible in any other, i.e. voluntary or less injurious way
- In practice it is **not a very widely used** method
- It is often seen as a **complex process** that takes long time and is expensive
 - There are yet examples of well functioning processes
- In addition interference with private ownership by **compulsion is often not considered appropriate**
 - The political decision-makers seem to fear the drop of their popularity if they are in favour for resorting to expropriation
- Furthermore **assessment of compensations** is often seen problematic

Compulsory Purchase and Compensation

--FIG Recommendations for Good Practice
VS.
the Finnish case

<http://www.fig.net/resources/publications/figpub/pub54/figpub54.asp>

The Structure of the FIG Recommendations

General Principles

**Compulsory
purchase
basis**

**Proceeding
of
demarcation
and
registration**

**Proceeding
for
determining
compensati
ons**

Restitution

Proceeding for determining compensations

19 The compensation shall ensure that the affected party's financial position is not weakened. This is meant by the term, *just compensation*.

-Legislation shall define which losses are compensated and which should be tolerated without compensation.

-Legislation should also determine any preconditions for receipt of compensation e.g. nature of tenure, any occupational requirements.

20 The basis and principle terms of compensation shall be defined by law.

Finland

- In principle yes
- In principle yes
- Not totally clear
- Yes

21 The law shall also determine

- who is to be compensated
- the valuation date
- principles of the payment of the compensation
- who will fix the amount of compensation payable
- process by which compensation is fixed, agreed, appealed, paid and the rate of and extent to which interest may be paid on any outstanding amount.

Finland

- Yes
- Yes
- Yes
- Yes
- Yes

22 The law shall **ensure just compensation** and ensure that all items of loss which flow naturally and reasonable from the process and outcome of acquisition and development are compensable.

Legislation may provide **different bases** on which different losses may be determined, subject always to overriding outcome that the **affected party's financial position shall not be weakened.**

Thus legislation may define the base or the bases which of the following to be assessed in compensation:

22 cont. Compensation for

Finland

- the **object taken** • Yes
- **compulsorily purchased rights** • Yes
- **severance and injurious affection** to land held with land taken and to those who are not expropriated but whose land is nevertheless reduced in value as a result of the acquisition and subsequent development and its operation • Yes
- **damages or disturbance** • Yes
- all **surveyors and legal costs** (also including compensations for those whose land is not expropriated but merely depreciated in value). • Not fully

23 If a residence or a business is compulsorily purchased, the compensation shall be sufficient for a **replacement** dwelling or a replacement business establishment which corresponds to compulsorily purchased property in physical conditions as well as economic and location attributes.

24 Compensations shall be determined so that the affected party's **financial status does not suffer** a loss because of taxation.

Finland

- Compensation strives to this but this is not the rule in Finland; this only limits the the cut of the decrease of compensation due to planning gain
- Mainly yes

25 If there are **losses** which are considered **unsure or unlikely or cannot be assessed** at the time of the proceedings, there shall be a possibility for compensation if these losses actualize in the **later stage**.

26 It shall be clearly stated in law if the **impact from the project or the CP** is taken into account when assessing the value of the object.

-It shall be made clear whether or not the gains in the value of land arising from the project are deducted from the compensation payable (**betterment deduction**).

Finland

- Yes
- Yes in the negative side
- It's said that they can be deducted but in practice not normally followed

27 In particular in the case where CP is for public purpose undertaken by **other than a public body, profit-sharing** principles shall be determined by law.

28 Compensation for the object shall in the first instance be determined based on **market value**.

-If market value cannot be determined, the compensation for object shall be based on **fair value**.

Finland

- No, but in practice in some cases followed
- Yes
- Yes in my mind but not said clearly

29 The valuation process and the valuations shall be done according to the **International Valuation Standards (IVS)**, or other recognised valuation standards.

30 Inaccuracy of the valuation shall be taken into account when determining compensation so that the **expropriator bears the risk for inaccuracy.**

Finland

- In practice followed well but this is not a requirement
- No, except in Act on expropriation for defence purposes

31 Compensation shall be directed to those **whose economic status is adversely affected** by the CP.

-The parties who are entitled to compensation shall be specifically identified within legislation and CP.

-Customary, family, women's, societal forms of property and informal possession rights shall be included and recognised within the process of implementing powers of CP.

-The rights of the legitimate **mortgage holders** shall be secured.

-Compensation shall be **deposited** according to the legal structures of the country when owner is unknown, ownership in dispute, lien threatened, etc.

Finland

- Yes
- Yes
- Not relevant but is most likely done in this way
- Yes
- Yes

32 Compensations shall be paid **prior** to the taking of possession by the authority.

-In the case of **pre-possession**, compensation of the object, or an advance payment based on the expropriator's estimated amount of compensation, shall also be paid **prior to the pre-possession**.

-If the **residence or source of livelihood** is compulsorily purchased, there shall be a reasonable time between the date compensation is paid and the date of possession

Finland

- Main rule.
- Yes, but not for full amount
- Yes

32 cont.

-The part of compensation, which is under dispute as at the date of possession, shall be **deposited** with the courts and managed in accordance with national legislation.

-It shall be defined in the law **whether the possession is possible if the compensation has been appealed**, especially in the case of a residence or business.

Finland

- Yes
- Yes

33 Compensation shall be paid in money.

- If the party who conveys the property agrees, the compensation can be paid in **alternative ways**, such as land and corporate shares, or through proceedings such as land swap.

34 Compensation shall be paid in a single once and for all payment.

- For components other than compensation for object, **annual payments** of compensation can be used, if the party who conveys agrees to such regular payments and legislation enables it.

Finland

- Yes, main rule. There are also cases where land exchanges can be used even by compulsion.
- Yes, main rule.
- Depending of the Act and cases there are this kind of option too

35 Interest shall be paid on outstanding compensation from the valuation date or possession date, depending on which is earlier, till the full payment is made.

Finland

- Yes

36 The payment of compensations shall be made **in due time**

-The payment of compensation shall be **controlled** by the body responsible for the procedure.

-**If** the compensation is **not paid on time**, the affected party shall have the right to **force payment** through the court process or, assuming that the authority has not taken possession and commenced development, to require that the compulsory purchase shall be **annulled**.

-In such circumstances, the authority shall be liable to pay the **affected party's costs** as well as higher than usual levels of interest on the outstanding amount of compensation.

Finland

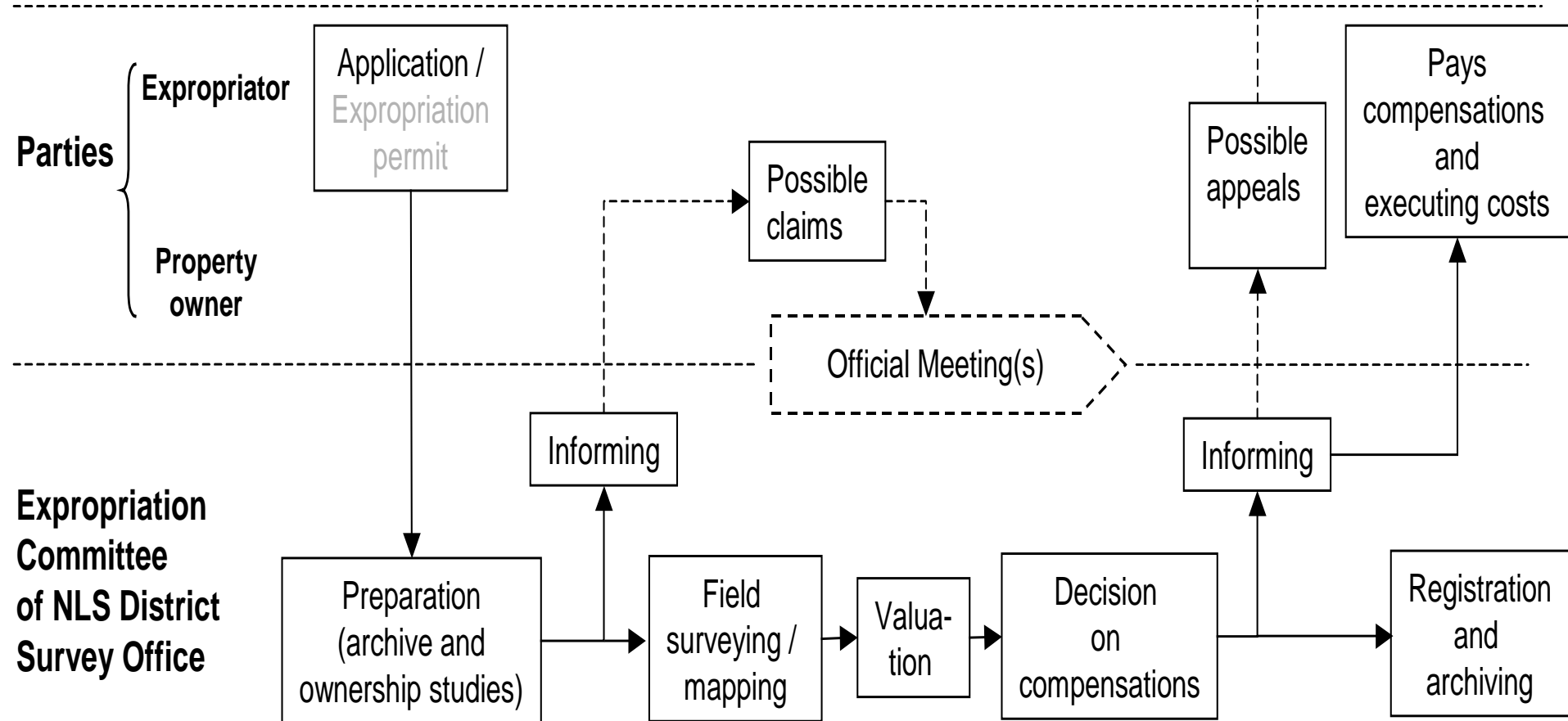
- Yes
- Yes. If not paid in time the CP is annulled in CP according to Expropriation Act. In other acts there are also different rulings.
- Yes

EXECUTION OF CP in Finland

- The **expropriation committee** (cadastral surveyor at NLS and two laymen) has power and obligation to decide on all matters required to execute the decision of the permit authority.
- The committee
 - **Confirms** and demarcates the expropriated **object**,
 - **identifies** and describes **the property rights** to be expropriated,
 - carries out the necessary **land exchanges** and relocation of private roads and other rights,
 - decides on the reparation of damages and on service fees,
 - decides on the **taking into possession** and inspection of the property if possession is taken in advance,
 - takes care of the necessary **property formation and registration**,
 - determinates the **compensations** or accepts **possible agreements** between parties, and
 - draws up an **expropriation decision**.

Expropriation survey process of Finland as a simplified workflow (Heinonen 2007)

Land Court – Supreme Court



Markku Markkula will tell more
about the Finnish land dispute
resolutions at 14-16 in Room A!

Thank you for your attention!

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