

# **Expropriation in Finland**

**Petri Lukin, Finland**

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## **SUMMARY**

According to the Finnish Constitution, expropriation of real property is possible for public needs. Expropriation is regulated through the so-called Expropriation Act, which regulates the grounds for an expropriation permit and the expropriation procedure. In addition to the Expropriation Act, there are three other Acts regulating the expropriation procedure and the granting of expropriation permits.

In principle, an expropriation permit that is granted by the Council of State is needed to proceed with an expropriation. However, certain legally binding plans can also be the grounds for a right to expropriate. Such plans include a road plan of a highway and a local detailed plan. In addition, it is possible to expropriate reliction areas and parts of plots ipso jure.

Each year, 'only' 20-30 expropriation permits are granted. However, some 200-300 expropriations that are based on a road plan or a local detailed plan and more than 500 expropriations of reliction areas are initiated annually.

The main tasks of an expropriation survey is to define in detail the property to be expropriated and to determine compensation. In some expropriation surveys, the right to expropriate is decided and land consolidations are performed.

## **1. GROUNDS FOR EXPROPRIATION**

### **1.1 Permits as Grounds for Expropriation**

According to the Finnish Expropriation Act, an expropriation permit granted by the Council of State is in principle needed to proceed with the expropriation. In practice, the permit is granted by the Ministry responsible for the administrative sector in question. For example, the expropriation permits for conservation areas (nature reserves) and undeveloped land are granted by the Ministry of the Environment and those concerning power lines and gas pipelines by the Ministry of Economic Affairs and Employment. Before the permit is granted, the owners of property to be expropriated are heard either in writing or in person (*viva voce*) at a meeting held for that purpose. Once a permit has been granted, it can be appealed in the first instance in the Administrative Court and further in the Supreme Administrative Court. In the decision to grant an expropriation permit it is also possible to grant a so-called preliminary right to take possession. This means that the expropriation survey can be started as soon as the permit has been granted, but not finished until the permit has entered into force. In principle, permits are granted more or less in accordance with the application

and appeals are only rarely successful in court. The Council of State grants between 20 and 30 expropriation permits each year. The handling of an expropriation permit usually takes between 6 and 12 months and appeal proceedings last approx. 1 year in each court.

If the application for an expropriation permit concerns the construction of a power line, natural gas pipeline, etc. and the application is not opposed or the expropriation is minor importance, the expropriation permit is granted by the National Land Survey. Between 15 and 20 such permits are granted each year.

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## **1.2 Officially Confirmed Plans as Grounds for Expropriation**

The confirmation of a certain plan can also authorise the right to expropriate and in such cases, a separate expropriation permit is not necessary. Usually, such plans are either a road plan for a highway, a plan for a railway or a local detailed plan. The local detailed plan authorises the expropriation of common areas, such as streets, parks or plots of public buildings. In fact, the number of expropriations based on a plan is several times the number of expropriations based on a permit by the Council of State. Before a plan is approved, it is presented in public and drafts of the plan are published. Property owners are provided with an opportunity to comment on the plans. Decisions to approve a road or railway plan or a local detailed plan can be appealed in the Administrative Court in the first instance and further in the Supreme Administrative Court. In spite of a pending appeal concerning a road or railway plan, the expropriation survey can usually be started when the plan has been approved. In contrast, when the expropriation is based on a local detailed plan, it can only be started when the plan has entered into force.

## **1.3 Expropriations *Ipsso Jure***

When the expropriation concerns a reliction area, a jointly owned area or a part of a plot, the cadastral surveyor decides the right of expropriation directly on the basis of the Property Formation Act. Those parts of this Act that concern the expropriation of property were enacted in the constitutional order of enactment, meaning that expropriations by private landowners are also possible. At the FIG Working Week, Kalle Konttinen will hold a separate presentation about the expropriation of reliction areas in Finland.

# **2. EXPROPRIATION PROCEDURE**

## **2.1 The Expropriating Authority**

The vast majority of expropriation surveys are performed by cadastral surveyors employed by the National Land Survey. In most expropriation surveys, decisions are taken by a so-called expropriation commission consisting of the cadastral surveyor and two trustees selected by the municipality (cf. laymen at the district courts). The cadastral surveyor usually makes the decisions in expropriations of reliction areas, jointly owned areas and parts of plots.

In cities where the municipality keeps the Cadastre, a cadastral surveyor employed by the municipality can expropriate a part of a plot in conjunction with a parcelling survey. There are only approx. 10 such municipal expropriation surveys each year. Municipal expropriations of parts of plots are only possible in the larger cities (mainly Helsinki, Espoo, Vantaa, Tampere, Turku and Oulu). Other municipalities delegate such expropriation surveys to the National Land Survey.

## **2.2 Decisions Taken at an Expropriation Survey**

At an expropriation survey, the following matters are usually handled:

- The decision concerning the right to expropriate is made (expropriations of reliction areas, jointly owned areas and parts of plots).

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- The object of the expropriation is determined in detail (map, boundaries marked in the terrain, documents).
- The area to be expropriated is either formed into a property or a right-of-use is registered in the Cadastre.
- The preliminary right to take into possession is decided (expropriations of common areas based on a local detailed plan).
- Necessary road adjustments and land consolidations are done (in very few expropriation surveys).
- Compensation is determined for property to be expropriated and for the nuisance and damages to the remaining property resulting from the expropriation or project.
- Compensation is determined for costs due to the supervision of one's interests (only expropriations performed by municipalities and the State).

In expropriation surveys, the most important task is determining compensation. It also demands the most work. The expropriation permit has usually been granted before the expropriation survey is initiated.

Most decisions during an expropriation survey are made *ex officio*. The survey can go ahead even if some landowners are neither present nor represented at the cadastral survey meetings.

### **2.3 Appealing Expropriation Survey Decisions**

It is possible to appeal almost all decisions taken at an expropriation survey. The time of appeal is 30 days following the completion of the survey, although an extension is reasonably easy to obtain. The appeal is decided by a special court known as the Land Court. It is possible to apply to the Supreme Court for leave to appeal the decision of the Land Court. Leave to appeal is usually only granted when the court's decision acts as a precedent to guide legal usage.

## **3. WHAT AND HOW MUCH IS EXPROPRIATED?**

### **3.1 Who Expropriates and How Much is Expropriated?**

Expropriation surveys where the applicant is the State demand the most work, but private landowners account for the greatest number of expropriation survey applications. Below is a rough classification of expropriation survey applicants in 2016:

- |                     |                           |
|---------------------|---------------------------|
| - State             | 170 expropriation surveys |
| - Municipalities    | 100 expropriations        |
| - Energy companies  | 50 expropriations         |
| - Private customers | 650 expropriations        |

Expropriations where the applicant is the owner of a private property usually only concern one property. In contrast, in one expropriation of a highway or power lines, dozens of properties may be affected by the expropriation survey. When the applicant is a municipality, the expropriation survey usually affects between 1 and 10 properties.

### **3.2 Road surveys and other expropriations by the State**

The vast majority (85% or 150 surveys) of expropriation surveys where the applicant is the State are road surveys. Almost all highway areas that are needed for road construction projects are expropriated. The State only attempts to voluntarily purchase the most valuable pieces of land. Compensations granted in road surveys amount to between 5 and 10 million euros per year. Road surveys where highway areas are expropriated concern approx. 1,000–1,500 property units each year. They also demand the most work from cadastral surveyors who perform expropriation surveys. The advantages of the system are that it is efficient and effective, as well as impartial from the landowners' viewpoint. Expropriations of highway areas are done on the basis of the Highways Act. The general Expropriations Act is also implemented where applicable.

At the start of a road survey, the areas needed for the highway are taken into possession so that construction can start as soon as possible. In smaller road construction projects, compensation is usually determined once the road has been completed, but it is possible to receive preliminary compensation as soon as the land has been taken into possession. These fairly small or ordinary expropriation surveys usually last between 1 and 3 years. In large road construction projects, the aim is to determine compensations within a year of the start of construction and before the completion of the road construction work. Compensations for the inconvenience and damages caused by the road construction project are determined during a so-called second stage survey following the completion of the road.

In addition to highways, most State-initiated expropriation surveys concern railways and nature reserves. Sometimes, the State also expropriates plots for public buildings and land for the Finnish Defence Forces. The expropriation procedure concerning railway areas is similar to that of highways. Railway areas are expropriated on the basis of the so-called railways act (Finnish: Ratalaki). Almost without exception, the State expropriates land with title (ownership rights).

### **3.3 Municipal Expropriations**

Municipalities usually expropriate street and park areas that conform to the local detailed plan. In addition, municipalities expropriate land for plots of public buildings, parking lots and undeveloped land. All areas above ground level are expropriated with title. However, below ground level only the right of use is expropriated. Below ground level, space is needed for water and sewage pipes and the metro underground train system.

Municipalities usually acquire the title and possession of street areas directly on the basis of the local detailed plan. When a local detailed plan enters into force in an area that has not had such a plan before, the municipality only needs to pay compensation if the street area exceeds 20 percent of the area of a property unit. When a local detailed plan is modified so that area destined for buildings is changed into street area, the municipality must purchase or expropriate the area it needs. In addition, an expropriation survey is needed if the parties cannot agree on compensation. The municipality must purchase or expropriate other common areas that conform to the local detailed plan.

Municipal expropriations of common areas are thus based on a local detailed plan that has entered into force and a separate expropriation permit is not necessary. The right to expropriate is granted in an expropriation survey, if the area has been allocated to the municipality in the local detailed plan in force.

The 'general' Expropriations Act contains regulations on the procedure of expropriations concerning common areas. However, the grounds for expropriation are defined in the Land Use and Building Act. When an expropriation survey concerns common areas, the expropriation commission can grant preliminary permission for taking into possession, if the construction of a street or route for light traffic in a park is urgent. If the preliminary permission is not applied for or not granted, the expropriator takes possession when the expropriation survey has been completed and compensations have been paid.

### **3.4 Expropriations by Private Landowners**

#### 3.4.1 Expropriations by Private Landowners for Public Needs (Energy Companies)

Energy companies apply for between 20 and 40 expropriations each year on the basis of an expropriation permit granted by the Council of State or the National Land Survey. Although the number of expropriations is not large, such expropriations are usually fairly extensive and require a lot of effort. Expropriations concern only larger power lines (main grid), whereas the right to use the land needed for smaller local power lines is either based on a contract or a municipal permit. Although the expropriator is a privately owned business, it is generally considered that these main grid expropriations are done for the public need. Most expropriations where the expropriator is an energy company concern (suspended) power lines and a smaller part concerns natural gas pipelines. In these expropriation surveys only the right to use is expropriated, and the owner's right of possession is limited in consequence. The 'general' Expropriation Act applies to expropriations of power lines and natural gas pipelines.

Expropriations of power lines and pipelines are similar to road surveys, because in general the entire area needed by the new power line or pipeline is expropriated, although often there are contracts to place and pay compensation for the placement of a power line or pipeline. The area to be expropriated is often tens of kilometres in length and concerns hundreds of property units. However, large projects are often separated into several expropriation surveys (e.g. one for each municipality). At the start of the expropriation survey, the expropriator takes possession of the area to be expropriated and construction can start. When possession is transferred, landowners can request preliminary compensation, although final compensations are determined when the project has been completed.

#### 3.4.2 Expropriations by Private Landowners for Their Own Needs

The vast majority of expropriations where the applicant is a private landowner (more than 500 each year) concern reliction areas. There are thousands of lakes in Finland and a long seashore. There are also more than 500,000 summer dwellings (cf. 5.5 million inhabitants) in Finland. Most of these have their own shoreline. Along the shores of the Baltic Sea, isostatic uplift causes reliction areas to appear. Around lakes, eutrophication and lowering the lake's water level are the cause of reliction

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areas. Land and water areas almost always belong to different owners, which means that the owners of shore properties often wish to expropriate and incorporate reliction areas into their properties. Water areas are often jointly owned by dozens or hundreds of property units, which means that it is difficult to purchase a water area or a reliction area.

For historical reasons, there are many jointly owned areas in Finland. These are owned by property units or villages and are used as, e.g., landing places for boats, gravel extraction or plots for schools. These areas have often lost their importance and their administration is difficult due to the great number of shareholders. Consequently, jointly owned areas can often only be used appropriately in conjunction with adjoining properties. For this reason, such areas can be expropriated and incorporated into privately owned property units, in a similar manner to reliction areas. Each year, between 50 and 100 expropriations of jointly owned areas are performed.

The third kind of expropriation that is also available to private landowners is the expropriation of a part of a plot. This kind of expropriation is only possible in areas with a local detailed plan and the plots in such areas. If a landowner does not own all of the land that is designated as a plot in the plan or plot division, the landowner is permitted to expropriate the parts he or she does not already own, directly on the basis of the law, that is, *ipso jure*. Unless all parts of a plot belong to the same owner, it is often impossible to build on it. Thus the expropriation makes it possible to build on the plot when the parties cannot agree on a voluntary purchase. Each year, between 30 and 40 expropriations of parts of plots are performed.

The expropriations of a reliction area, a jointly owned area or a part of a plot are usually small expropriation surveys that concern 1–3 property units. Often, one cadastral survey is sufficient to decide on the expropriation right and the dimensions of the area to be expropriated and for determining compensation. With the exception of Southern Finland and the larger cities, compensations are relatively small.

#### **4. COMPENSATION IN EXPROPRIATION SURVEYS**

According to Finnish legislation concerning expropriations, the expropriation should not change the financial status of the landowner who is forced to give up land (relinquisher). In other words, the loss suffered by the relinquisher is compensated in full. Primarily, the compensation must be equal to the market value of the expropriated land. In some cases, the compensation can be based on the production or investment value of the expropriated land. Production value is usually used in determining compensation for industrial, retail or office buildings, which are, however, expropriated relatively rarely. Production value is an alternative basis for determining compensation for land areas almost exclusively when the property to be expropriated has been leased on a long lease contract. The investments or costs of a property to be expropriated are almost exclusively used as a basis for determining compensation when it is impossible to determine its market value (e.g., wells, outbuildings, decorative vegetation).

Compensation is determined according to the price at the time of taking possession. If there has been a preliminary taking possession, (final) compensation that is yet to be paid is subject to a so-

called index increase that conforms to the general inflation rate. In addition, an annual interest rate of 6 percent that applies to the higher compensation sum must also be paid.

Compensation for expropriation is entitled to tax relief. Tax exemption applies to 80 percent of the compensation sum and the remaining 20 percent is subject to a capital gains tax of 30–34 percent. No tax is levied on compensations for expropriations of conservation areas.

## 5. REASONS FOR EXPROPRIATION

Almost all areas needed for construction projects are expropriated, either with ownership rights (highways, railways) or rights of use (power lines, natural gas pipelines).

Expropriation may be necessary to acquire other kinds of areas for the following reasons:

- Inability to agree on the price.
- General reluctance to convey land.
- It is necessary to acquire land from several property units and agreement is not reached with all of them > impartial treatment of owners.
- It is impossible to find out who the owner of a property is or the owner cannot be reached.
- A property unit has several owners, meaning that it is technically difficult and may be expensive to get all parties to agree.

## 6. DURATION OF AN EXPROPRIATION SURVEY

Generally, the processing of an expropriation permit usually takes between 6 and 12 months. The duration of expropriation surveys varies dramatically. Expropriations of reliction areas and other fairly small expropriations usually last between 6 and 12 months. In contrast, extensive expropriations of power lines can last 2 or 3 years, because the expropriation survey is not terminated until the construction project has been completed.

When appeals against expropriation permits and expropriation surveys are lodged in court, the process usually lasts between 6 and 12 months in each court. Expropriation permits can be appealed in two courts (in the first instance in the Administrative Court and later in the Supreme Administrative Court). However, an expropriation survey can be started even if the expropriation permit has not yet entered into force. This speeds up the construction work and the expropriation process by as much as 1 or 2 years. An expropriation survey can be appealed in the Land Court. Appeal against the Land Court's decision can be lodged in the Supreme Court, provided it grants leave to appeal.

Approx. 10 percent of all expropriation surveys are appealed in the Land Court. The frequency of appeals varies greatly depending on the type of expropriation. The frequency of appeals is highest in expropriations of conservation areas (40%). The frequency of appeals against municipal expropriations of common areas is approx. 20 percent. The lowest frequency of appeals concerns expropriations between private landowners (reliction areas, jointly owned areas and parts of plots), approx. 5 percent.

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## **REFERENCES**

National Land Survey statistics

Finnish Acts and Decrees

(Translator's Note: When the name of an Act is written with initial capitals, an unofficial English translation is available (e.g., Expropriations Act). When the name contains no capitals (e.g., railways act), the Act has not been translated into English.)

Interviews with authorities that draft expropriation permits (Jyrki Hurmeranta, Ministry of the Environment; Johanna Juvonen, Ministry of Economic Affairs and Employment; Janne-Ville Kinunen, National Land Survey of Finland)

Interview with Mikko Kuoppala representing the power transmission company Fingrid Oyj

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## **BIOGRAPHICAL NOTES**

Academic experience: Master of Science (Tech) Land Surveying, Helsinki University of Technology (1995)

Current Position: Cadastral surveyor Southern Finland, National Land Survey of Finland

Practical experience: Cadastral Surveying and expropriations mainly in Helsinki region 1989 -

## **CONTACT INFORMATION**

### **Mr. Petri Lukin**

Maanmittauslaitos, National Land Survey of Finland  
Kalevankatu 4  
Lohja  
FINLAND  
Phone +358400546813  
Email: [petri.lukin@nls.fi](mailto:petri.lukin@nls.fi)  
Website: <http://www.maanmittauslaitos.fi/en>

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