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EMINENT DOMAIN IN FINLAND

The Highlights of the Finnish Way of carry out a Compulsory Land Purchase for Public Interest

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Abstract

In western societies based on private ownership, expropriation of private property for the public good has been enabled by legislation. Such legislation may have issued from the hindrance of developments required for the public good caused by the landowner, possibly in a monopolistic position, when refusing a voluntary transfer of his land or demanding an unrealistically high compensation. Some landowners may also, for one reason or another, be missing or legally incapacitated, due to which some sort of compulsory measures are required in any case. Another reason may also have been the ensuring of efficiency of land acquisition, as prior to modern data registers and equipment, in particular, the management of projects encompassing large areas has been very laborious.

Expropriation (compulsory purchase or acquisition in the United Kingdom or eminent domain in US) is not, however, the primary method for land acquisition, but presumes that the land acquisition has been impossible to achieve in any other way. For example, it is stated in the Finnish Act on Expropriation of Immovable Property and Special Rights that expropriation must not be enforced if the purpose of the expropriation can be achieved in some other way.

In expropriation cases the applicant, which is usually the state or a municipality but may also sometimes be a private company, such as a natural gas supplier, has to have an expropriation permit or license, which in simple cases is granted by National Land Survey of Finland (NLS). This takes place prior to a cadastral expropriation land survey held by NLS. When it concerns building a new highway or a new railroad, the expropriation permit is granted after an exact plan and planning process by the Ministry of Transport and Communications. In some cases it is The Finnish Transport Agency that confirms a road plan for public road. Very important cases such as high-voltage power lines, nature reserves, harbors or airports are handled by the Cabinet of
Ministers. In these cases NLS is responsible organising the cadastral survey for mapping and assessing the properties to be expropriated.

According to Finnish law it is possible for the cadastral surveyor in connection with cadastral surveying procedure such as parcelling, coercive land exchange, reallocation or expropriation to take final legal decisions on issues such as land disputes, border disputes or other property disputes. The cadastral surveyor has this statutory mandate. It is prescribed in section 184 of the Real Estate Formation Act as follows:

“If before the beginning of the cadastral procedure a dispute is pending in a court of law whose settlement may influence the result of the cadastral procedure, the cadastral procedure may not be completed before the dispute is settled. If such a dispute arises after the beginning of the cadastral procedure, it shall be settled during the cadastral procedure.”

Thus the cadastral surveyor, who is either a state official or a municipal official, has in certain cases the same mandate as a district court to solve disputes. Appeal against the decisions given by a cadastral land surveyor can be made to the Land Court and from LC to the Supreme Court.

The cadastral surveyor and the two laymen have the mandate to value the properties and damages to properties and real estates in connection with a cadastral survey for expropriation. Each property has to be assessed primarily to its market value. This concerns mainly farmland, plots and the land for zoning near urban areas. The information for valuation is usually obtained from the purchase price register which is maintained by NLS. So called public purchase witnesses, who are a kind of notaries but who only attest documents and deeds, are obliged to send information about real estate transactions to the NLS for entry into the purchase price register. This is why the purchase price data in the register is very nearly up-to-date. There is a long tradition for cadastral land surveyors who handle expropriation cases to use the data in the
purchase price register. As a result of expropriation surveys, the transfer of possession and ownership transfers are completed in accordance with decisions taken during the process by the cadastral surveyor and assisting two laymen.

For example the road administration officials who represent the state of Finland are able to make agreements regarding property ownership prior to expropriation. In larger infrastructure projects in urban areas it also happens in practice that the entrepreneur obtains most of the properties by contracts before the cadastral procedure (In US condemnation) is initiated.

The Finnish expropriation system which is carried out by a cadastral surveyor is a very flexible and agile way of putting big infrastructure projects into effect. The cadastral surveyor is responsible for mapping of the areas which are necessary for the project. Besides that, the cadastral surveyor defines the boundaries and places the boundary markers in the terrain. Land valuation for determining the compensation is one very important part of the expropriation survey carried out by the cadastral surveyor working for NLS. All compensations for expropriation are decided ex officio. Participating in expropriation survey meetings which are led by the cadastral land surveyor with two laymen, is voluntary for landowners. The District Court or Land Court need not give a verdict regarding compensations if no appeal is made. The interests of both parties, i.e. the landowners and the expropriator are taken into account by the cadastral surveyor, who has to be an impartial person leading the procedure.

**Key Words:**

Just and fair compensation, expropriation, eminent domain, public use, expropriation cadastral procedure, demarcation, cadastral land surveyor, land and border dispute solving, land consolidation, coercive land exchange, appeal
Eminent Domain in Finland

In this text, the substance of the expropriation proceeding is discussed in two parts. Firstly the concept of “public interest” is considered. Secondly, the concept of “just and fair compensation” is the subject. The text deals with the protection of ownership (or freehold) to a property, especially in circumstances when there is a need of public interest to use the property in some other way. Compulsory purchase (expropriation) is to be used if the benefits to the society exceed the inconvenience and harm caused affected parties, who are disadvantaged by the process of land taking and the subsequent development. The principal purposes for which land can be taken shall be clearly identified in legislation. The basis of compulsory purchase has to be legitimate.

In western societies based on private ownership, compulsory purchase of private property for the public good has been enabled by legislation. Such legislation may have issued from the hindrance of developments required for the public good caused by the landowner, possibly in a monopolistic position, when refusing a voluntary transfer of his land or demanding an unrealistically high compensation. Some landowners may also, for one reason or another, be missing or legally incapacitated, due to which some sort of compulsory measures are required in any case. Another reason may also have been the ensuring of efficiency of land acquisition, as prior to modern data registers and equipment, in particular, the management of projects encompassing large areas has been very laborious. Compulsory purchase (eminent domain) is in most countries an important tool for acquiring land for the purposes of public use, even if land acquisition can often be arranged through other means, such as voluntary agreements. Compulsory purchase should ensure that land can be purchased for adequate development opportunities for the wider public benefit, while individual land rights and social sustainability are as fully protected as is possible throughout the process.
Regarding the Concept

In this text the Scandinavian term of *expropriation* is mostly used meaning compulsory purchase in Finland. As it was stated above *expropriation* is not, however, the primary method for land acquisition, but presumes that the land acquisition has been impossible to achieve in any other way. For example, it is stated in the Finnish Act on Expropriation of Immoveable Property and Special Rights (Expropriation Act) that expropriation must not be enforced if the purpose of the expropriation can be achieved in some other way. Thus, compulsory purchase shall not be the preferred tool for the acquisition of land.

The proceeding of demarcation and the proceeding of determining compensations are carried out during the expropriation cadastral procedure. The basis and the principle of terms of compensation shall be defined by law. The expropriation must not weaken the affected party’s financial position. Compensation shall be paid to those, whose economic status is adversely affected by the compulsory purchase. According to international standards the compensation should be sufficient for a replacement dwelling or replacement business establishment, which corresponds to the compulsorily purchased property in its physical condition as well as economic and location attributes. In Finland the law does not completely correspond these standards.

Compensation for the object is determined based on market value. The valuation has *de facto* to be done according to IVS (International Valuation Standards) or other recognized valuation standards but this obligation is not included in the written Finnish law. Compensations have to be paid prior to the taking of possession by the expropriator. There are three basic types of compensations. Compensation of the object (1) has to be paid if the whole or part of a real property is taken (physically). Compensation of severance and injurious affection (2) is relevant if there remains inconvenience, i.e. the use of the remaining property becomes difficult. Valuation is hereby based on decreased income or on decreased market value. Compensation of
damages (3) is assessed and paid if the losses are short term. In these cases, the valuation is usually based on costs.

*Process*

There are certain general and universal principles, which include FIG Publication NO. 54 concerning compulsory purchase and compensation. This publication contains recommendations for good practice. First of all, as it was stated above, expropriation shall not be the preferred tool for the acquisition of land. Secondly, the expropriation shall be implemented with respect for the rights of affected parties. The expropriation shall be legitimate and transparent. The principles of *fair trial* and *access to justice* have to be followed. Also, incompetent persons have to be appropriately protected. The scope of expropriation must be determined so that it causes the least harm to affected parties, while ensuring that the project for which land is taken can be implemented effectively. The expropriation should be implemented without delay and the time limit for starting the proceeding shall be established in legislation. Where the expropriator intends to purchase only part of individual’s land, a formal opportunity shall exist that allows or includes the provision for the dispossessed party to inquire whether there is to be a partial or total purchase of their property.

The costs of the expropriation procedure are to be carried by the expropriator. Access to justice means that the right to appeal to independent court has to be ensured. Affected parties have the right to represent themselves. The parties can also always use an attorney, expert or agent. Reasonable expenses are to be paid by the expropriator. When determining compensation, inaccuracy of the valuation has to be taken in account so that the expropriator bears the risks of any inaccuracy.
The expropriation procedure in Finland consists of two phases. These phases are the procedure of granting the license to expropriate and the expropriation cadastral procedure.

The expropriation permit is granted in the most important infrastructure projects by the Council of Ministers in Finland, i.e., the Finnish Government. In certain cases Ministries can give expropriation permits. The permit is always granted prior to the expropriation cadastral procedure. When the Finnish Government or Ministry grants the license to expropriate, the eventual appeal by landowner is handled by administrative courts. In certain very important cases it is the Supreme Administrative Court, which passes the final resolution. The expropriation cadastral procedure can be set in motion even if the final resolution regarding the expropriation Permit case has not passed.

The expropriation permit is always needed. In some minor cases the permit is granted during the ongoing expropriation cadastral survey by the cadastral surveyor. The permission could also be based on official confirmation of a zoning plan. This permit and many other common rules have been defined in common expropriation legislation. In minor cases in the zoning area, for example, decision is made by an independent expropriation committee when the expropriation regards carrying out a spatial plan which already has legal force.

As clarified below, granting the expropriation license depends on if there is public interest to carry out the project. In national legislation public interest may be defined by or can include terms such as public use, public purpose or benefit to society. The land acquisition should be based on a weighing of interests. Costs of application, development and compensation, however, may not be a reasonable measure to determine the weighing of interests. The benefit to public good may outweigh the losses and infringement caused to the private parties affected in many cases but not always as it is stated in FIG Publication (2010) No. 54.
There has been a lot of discussion in Finland about what “public interest” means in practice (*de facto*). This concerns the first phase of the expropriation procedure that has been described above. As already mentioned, the substance of the public interest is contextually cleared up in connection with expropriation permit. It is up to the highest political authorities in Finland to determine if a certain infrastructure project fulfills the requirements of the public interest. In the United States there has been discussion of the concept of public use (Somin et al 2015). It is evident that the public use has a connection with the Scandinavian concept of public interest. In the United States, discussion has concerned the conflict between the broad and narrow views of public use. The Supreme Court’s controversial decision in 2005, *Kelo v. City of New London* has reinvigorated a longstanding debate concerning the difference between these two views. According to the Supreme Court’s decision the US Constitution permits government to take property from one private owner and give it to another for purposes of “promoting economic development”. The broad definition of public use holds that a public use is anything that might potentially benefit the public in some way. By contrast, the narrow definition counts as a public use only the transfer of the condemned property to government ownership, or to private entity that has a legal obligation to serve the entire public, such as public utility or a common carrier.

The broad view of public use has before SC’s decision 2005 in *Kelo v. City of New London* been dominant. (Somin et al 2015) According to the broad view, the government can take private property for almost any purpose it wants. After the *Kelo* decision, the negative public and elite reaction has shattered the already existing consensus and the narrow view of public use has also gained support. The critics have been worried that under the banner of economic development, all private property has become vulnerable to being taken and transferred to another private owner, so long as it might be upgraded—i.e., given to an owner who will use it in a way that the
legislature deems more beneficial to the public—in the process. The broad view of public use has also included the use of eminent domain for private roads, for example. (Somin et al. 2015)

In Finland private roads are not an object of expropriation. When a private property is without access to a highway or other public way, for example, another privately owned property can be used as a private road for the first property if a cadastral surveyor in a cadastral procedure makes decision regarding the road easement and compensation. The procedure is legitimate but it is not based on the Expropriation Act.

Usually land is needed for important construction or infrastructure projects, such as for the projects that serve public welfare and extensive group of people. The benefits to the public must be larger than the disadvantages for private owners. When contemplating who decides when the “public interest” demands “taking of land by force” (expropriation), following aspects are important. In principle the legislators define the substance of public interest. Politicians can enact laws for expropriation for certain purposes or enact common laws, which give the right to expropriate whenever certain needs appear (for example for main road construction or nature reserve).

**Expropriation Cadastral Procedure in Finland (NLS)**

In Finland expropriation cadastral procedure is carried out by cadastral surveyors working for the National Land Survey of Finland (NLS). The National Land Survey of Finland, not the parties, appoints the cadastral surveyor on a case by case basis. It is also permitted according to the law that a municipal cadastral surveyor chairs the expropriation committee, but this does not apply in all cases. The municipality is in many cases a landowner. If this is the case or if the municipality is otherwise a party concerned, it can preclude municipal authority from chairing the
expropriation committee. Usually, a cadastral surveyor working for the NLS is always responsible for the execution of expropriation. The cadastral surveyor is the chair of an independent expropriation committee. The other two members of the committee are two trustees or lay members which are chosen by the municipality where the real estates concerned are situated. Cadastral Land Surveyor always calls the two lay members to a Expropriation Cadastral Procedure among all those persons which are chosen for the task by the municipality. Expropriation takes place in an expropriation procedure enacted in law. Expropriation cadastral procedure can also include solving ownership (freehold) disputes and boundary disputes in connection with the land surveyor’s decision.

The expropriation committee chaired by a cadastral surveyor is a very exceptional solution worldwide. In Sweden, the expropriation system resembles the Finnish system, but not in other countries. Legal decisions regarding demarcation, compensations, boundary disputes and ownership disputes made by the land surveyor is a very flexible and agile way of carrying out an expropriation cadastral procedure. It is an effective system as well and the quality of the decisions regarding compensations has been rather good. Land surveyors have traditionally executed expropriations since the end of 1950’s when the Highway Act was enacted. The same system was enlarged concerning all expropriations at the end of the 1970s when the Expropriation Act was enacted. Authorities and citizens have been quite satisfied with the system and the annual number of appeals to the Land Courts has hitherto been fairly low. In most cases, the decisions made by cadastral surveyors enter into force without any appeals.

Compensations

Compensations are decided in the expropriation cadastral procedure when it regards the Finnish system. The procedure must be objective, impartial and independent. It must be exercised in an ethical manner. Compensations shall be paid in a single once and for all payment.
Compensations are paid according to ownership data recorded in the Land Register (Title and mortgage register). The factual reliability of the Land Register in Finland is very high. If there exists something vague regarding ownership to a real estate which is an object to an expropriation procedure compensation can also be deposited on state bank account. Compensations shall be paid prior to the taking of possession by the expropriator.

Border disputes and certain ownership disputes can be solved by land surveyor during the process (Real Estate Formation Act, section 184). Cadastral surveyor (expropriation committee) is allowed to decide any compensation caused by the infrastructure project. There are, for example, no money limits restricting the powers of the expropriation committee. Appeal against the decisions given by the expropriation committee is made to the land court.

*What is Fair and Just Compensation in Finland?*

According to the Finnish Expropriation Act a landowner has to get a “full compensation” for losses. The full compensation can be regarded as a fair and just compensation. The financial position of the property owner must remain unchanged. Only real financial losses can be compensated, not, for example, subjective assessments. If the project brings profits to the landowner, they can be cut from the compensation. Every landowner has to get a compensation that has been determined according to same principles. The compensation must be assessed without the influence of the purpose of expropriation. It has also to be based on the commonly assessed quality of the object at the time of valuation.

First of all compensation, which enables the owner to get another similar property instead of the expropriated one, can be seen as fair, just and full. The principles of the civil tort law are also valid when the lost or damaged property s concerned. The injured person or his property has
been replaced throughout the entire damage. In other words, he must be put in the position where he would be if an incident would not have occurred. The damage will not be allowed to get rich. The principal ban of getting richer than before the incident through a damage incident set a limit on the principle of full compensation. Thus, the market value of the object added with its acquisition costs represents also the full, just and fair compensation. The “Capital Comparison Method” (“Market Method”) is the most usual way to determine the compensation. If the market method does not reveal the full loss of the owner there are other methods which can be used.

Income from the property can be very high, so the value defined by “Investment Income Method” or according to the yield value, is higher than the market value. For example the construction costs of the building could have been especially high and the “Cost Method” gives a higher result than other methods. These types of values (and valuation methods) can be taken into consideration when determining the compensation.

Property must be valued as a part of the property of the landowner, not that of the expropriator. Cadastral surveyor may choose the method, which produces the highest compensation (value) for the landowner. Doing this the cadastral surveyor has to contemplate that the result of the valuation is reasonable and realistic.

There are three basic types of compensations according to the Finnish Expropriation Act:

1) Compensation of the object

If the whole or part of real property is taken (physically), the compensation of the object is to be defined. Valuation is done as described above.
2) Compensation of severance and injurious affection

If there remains disadvantages regarding the remaining property, compensation of disadvantages is to be defined. e.g. because the use of the property becomes difficult, compensation of severance and injurious affection is to be defined.

Compensation is based on decreased income or on decreased market value.

3) Compensation of damages

For example, the construction work can have caused certain damage.

Compensation is usually based on costs.

Also, other losses could be compensated:

1) Losses of business income

Compensation is based on reliable “proof” of income losses etc.

2) Transferring (resettlement) costs of a building

Compensation is done by costs.

The “expectation” or “speculation” values are usually not to be compensated. Personal injuries like weakening or losing the sense of hearing because of the traffic noise from the new highway are not to be compensated in Expropriation Land Survey procedure.
Appeal against the expropriation cadastral procedure

An appeal against the expropriation permit has to be made to the administrative court in Finland. In certain cases an appeal against the court’s decision can be made Supreme Administrative Court. The expropriation cadastral procedure cannot be ended before the expropriation permit has entered into force. If the expropriation permit is granted by the expropriation committee, an appeal against the permit can be made to the land court.

An appeal against the decision which is given in the expropriation cadastral procedure is made to the Land court. An appeal against the decision of the Land court is made to the Supreme Court, provided the Supreme Court grants leave to appeal. The Finnish system is depicted below.

Figure 1. The Finnish Appeal system in expropriation procedure. (REFA = Real Estate Formation Act)
Land Court Procedure

The Chairman of the Land Court or the judge is a legally trained member of the District Court. The other members are The Land Court Surveyor (including an additional Land Court Surveyor in some cases) and two lay members of the court. The Land Court may also include another legally trained member of the court. In some cases only the Chairman constitutes a quorum in the Land Court.

The land courts deal with disputes and appeals arising from land surveying operations e.g. decisions made in a cadastral procedure. Case types are divisions, partitions, parcellings and easement procedures under the Expropriation Act and the Highways Act. There are eight regional land courts in Finland. Nationwide jurisdiction has not been implemented.

The decisions of a land court can be appealed against in the Supreme Court. In these cases a retrial permit is needed from the Supreme Court. The appeal and application for retrial permit (leave to appeal) is to be made at the same time by the applicant. The main task of the Supreme Court is to establish judicial precedents in leading cases, thus ensuring uniformity in the administration of justice by the lower courts.

The most important function of the Supreme Court is to rule on important points of law in cases which are significant for the entire legal order. The Supreme Court is thereby guiding the administration of justice in future cases. These precedents are usually created in cases for which the applicable Acts of Parliament and Decrees do not provide a clear solution for a question of law or in which there is room for interpretation.
Why is the Finnish Way of Expropriation so agile? A wrap-up

The State has a right to acquire land from landowners, for example for public use at market (average) price, which is full and just compensation. The landowner must transfer his land for public use at market (average) price.

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Thus the cadastral surveyor, who is either a state official or a municipal official, has in certain cases the same mandate as a district court to solve disputes. Appeal against the decisions given by a cadastral surveyor can be made to the Land Court and from LC to the Supreme Court.

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In addition the road administration officials who represent the state of Finland are able to make agreements regarding property ownership prior to expropriation. In larger infrastructure projects in urban areas it also happens in practice that the entrepreneur obtains most of the properties by contracts before the cadastral procedure (In the United States condemnation) is initiated.

The Finnish expropriation system which is carried out by a cadastral surveyor is a very flexible and agile way of putting big infrastructure projects into effect. The cadastral surveyor is responsible for mapping the areas which are necessary for the project. Besides that, the cadastral surveyor determines the boundaries and places the boundary markers in the terrain. Land valuation for determining the compensation is one very important part of the expropriation survey carried out by the cadastral surveyor working for NLS. All compensations for expropriation are decided *ex officio*. Participating in expropriation survey meetings which are led by the cadastral surveyor with two laymen, is voluntary for landowners. The District Court or Land Court need not give a verdict regarding compensations if no appeal is made. The interests of both parties, i.e., the landowners and the expropriator are taken into account by the cadastral surveyor, who has to be an impartial person leading the procedure.
Sources:
