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## The procedures of land acquisition for public roads construction : similarities and differences on the example of selected countries

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Acta Scientiarum Polonorum. Administratio Locorum 9/4, 129-142

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2010

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej [bazhum.muzhp.pl](http://bazhum.muzhp.pl), gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

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## THE PROCEDURES OF LAND ACQUISITION FOR PUBLIC ROADS CONSTRUCTION – SIMILARITIES AND DIFFERENCES ON THE EXAMPLE OF SELECTED COUNTRIES

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**Abstract.** The activities connected with public roads construction in Poland has increased significantly during last years. Unprecedented scale of these investments, resulted from the country's accession to the European Union and co-hosting the European Football Championships in 2012. The different activities planned and executed last years revealed many weak points of law and constrained legislative changes. In this paper the basic assumptions and fundamental rules concerning legal procedures of land acquisition for public roads construction has been described. At first a brief information on what a term "public road" means and how the roads has been classified according to Polish legislation was given. The article shows the similarities and differences between the procedures of land acquisition according to the Polish legal acts especially in terms of the entities involved in them or administrative acts causing deprivation or restriction of rights. It also compares solutions adopted in Poland to the German and Norwegian ones. The conclusions are as follows: the example of Poland shows a real diversity of land acquisition procedures. There are procedures, that omit the negotiation stage, there are also ones that cannot be accomplished without it, foreign procedures presented in the paper are similar to the Polish Real Estate Act's one, in terms of the entities involved in the procedures one can notice bigger disparity.

**Key words:** acquisition of land, legal procedures , public roads

### INTRODUCTION

In Poland, like in many countries, public authorities either on national or local level are responsible for different kind of object and infrastructure construction. The construction of roads is the one among others important aim of these entities

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According to Public Road Act the term “road” means: “building facilities, together with road engineering, equipment and installations representing technical and utilitarian integrity, designed to carry traffic, located in the road lane” [Act 1, 1985]. The basic stage of classification of public roads into categories is based on the criteria of roads’ function in the road network. More detailed classifications into classes depend on both the access criteria and the technical and functional features shows table 1.

Table 1. Road classification in Poland

Tabela 1. Klasyfikacja dróg w Polsce

| Road categories<br>Kategorie dróg   | Road classes<br>Klasy dróg                           |
|-------------------------------------|--|
| National road – Drogi krajowe       | Highway* – Autostrada*                               |
| Provincial road – Drogi wojewódzkie | Motorway* – Droga ekspresowa*                        |
| County road – Drogi powiatowe       | Upper main road – Drogi główne ruchu przyspieszonego |
| Communal road – Drogi gminne        | Main road – Drogi główne                             |
|                                     | Summary road – Drogi zbiornicze                      |
| * Roads with limited availability   | Local road – Drogi lokalne                           |
| * Drogi z ograniczonym dostępem     | Driveway – Drogi dojazdowe                           |

Source: Authors' own study on the basis of Public Road Act... [Act 1, 1985], The Minister of Transport... [Regulation 1, 1999]

Źródło: Opracowanie własne na podstawie Public Road Act... [Act 1, 1985], The Minister of Transport... [Regulation 1, 1999]

Although both classifications shown above are regulated in separate legal acts the categories of roads and the road classes are strongly correlated, which means that particular road categories can have only particular road classes. For example: national roads can have only highway, motorway, upper main road and exceptionally main road class, whereas communal roads can have only local road, driveway and exceptionally summary road class. Classification of roads into road categories is very important in terms of legal procedures of land acquisition for road building investments because it determines the kind of administrative entities involved in the procedures and the kinds of necessary administrative acts [Dąbek 2007]. Details connected with that will be introduced in the further part of the article. At this stage one should be given an explanation on what conditions have to be fulfilled in order to give road particular category and how it is made.

One of the conditions is that the road has to be given particular status. Different authorities assign the status of different road categories. In terms of national roads Ministry of Infrastructure confirms roads' status in ministry's directive. Provincial roads' status is confirmed by province assembly in its' resolution. County council for county roads and municipal council for communal roads assign their statuses in their resolutions. In order to classify road to each category, particular authorities have to meet another condition – connected with property rights. According to the Public Road Act the land that the road is located on has to belong to particular authorities. The land under communal roads has to belong to the commune, under

county roads to the county etc. It is worth noting that the public act regarding public road classification does not have enfranchising character. It commands authorities to acquire land under roads.

Every process of road construction has its' beginning in the planning stage. Determination of public investments locations or land uses, in general, takes place in local land use (zoning) plans . In cases when there are no local land use plans all the elements are determined in decisions on the location of public investments.

Land use plans are prepared on the municipal level, nevertheless they have to include all the upper provisions (provincial, county, national). As far as issuing decision on the location of public investment is concerned, the entity responsible for it depends on the spatial importance. Decisions concerning public investments of national and provincial importance are issued by mayor in consultation with marshal. Decisions concerning public investments of county and municipal importance are issued by mayor.

Having determined all most important issues in the planning tools mentioned above road authorities are capable of taking particular steps for road formation in the surveying sense:

- property division,
- land consolidation and division.

The first way is the most common way of road realization. Land consolidation and division in comparison to land division finds use rarely on Polish ground. Because of the fact that road realization methods are closely related to the procedures of land acquisition (there are procedures that cause both road formation and land acquisition) further information on that subject will be complemented in the next part of the paper devoted to legal procedures of land acquisition.

## **LEGAL ASPECTS OF LAND ACQUISITION FOR PUBLIC ROADS**

Speaking about land acquisition for roads construction one thing needs clarification. The definition of road introduced in the former part of the article had a rather general meaning, nevertheless describing all the elements that create road and mentioning that road is a "building facility (...) located in the road lane" Public Road Act... [Act 1, 1985] it indicated the scope of necessary land acquisition during public road investments. In order to understand it one have to understand the meaning of the road lane, because its' definition is much more closer to the definition of a property. According to Public Road Act road lane is an "isolated with demarcating lines land together with the space above and below the surface, where they are located, the road construction works , technical equipment associated with the operation, preservation and maintenance of traffic, as well as equipment related to the management needs" Public Road Act... [Act 1, 1985]. So the statement "land acquisition for public roads" is "land acquisition for public road lanes".

Legal procedures of land acquisition for public road lanes differentiate, depending on the road category and the aim of investment. The most important legal acts regulating them are:

- The Real Estate Management Act dated 21 August 1997,
- The detailed principles of preparing and executing public roads construction investment projects Act dated 10 April 2003,
- The Act on preparation of the final tournament of the UEFA European Football Championships EURO 2012 dated 7 September 2007.

All the procedures mentioned below are based on three ways of property legal status regulation:

- civil agreement,
- expropriation,
- taking property over by virtue of law.

## **PROCEDURE OF LAND ACQUISITION ON THE BASIS OF THE REAL ESTATE MANAGEMENT ACT**

The planning stage of the whole procedure regulated by the Real Estate Act starts with either land use plan or with a decision on public road investment location. As soon as the planning issues are settled the procedure of land acquisition can start. Initiation of expropriation must be preceded by the negotiations for the acquisition by agreement, which take place between the governor executing the task of public administration, and the people entitled to different property rights (ownership, perpetual usufruct, limited rights). In the case of expropriation of property executed at the request of the local authorities, executive bodies carry out their negotiations.

Initiation of proceedings for the expropriation of the Treasury shall be ex officio, and for local government – at the request of its executive body. Initiation of the office may also be due to a complaint lodged by the person who intends to pursue the objective of the public. Initiation expropriation takes place after the expiry of two months to conclude an agreement, designated in writing to the owner, usufruct user, as well as a person who is entitled to limited rights set up on the property. This period is counted from the date of completion of negotiations which is set by the governor [Źróbek and Walacik 2008]

The initiation of expropriation proceedings take place on delivery of the notice to the parties or the date specified in the notice of initiation, displayed at the office of the county district, after the expiry of two months. After the initiation of expropriation proceedings governor, carries out an administrative suit. The notice on issuing decision is given by an announcement or in other form customary accepted in a given locality.

The decision on property expropriation includes:

- determination of expropriation public purpose,
- property identification according to the land register, and by the real estate cadastre,
- determination of the rights to be expropriated,
- properties' owner or user identification,
- identification of the person entitled to limited rights set up on property,
- obligation to provide replacement premises,
- compensation determination.

The transition of ownership to the State Treasury or to the local government unit takes as soon as the real estate expropriation decision becomes final. Expropriated property, pending its use for the purpose for which the expropriation took place, renders the previous lease owner at his request.

The final decision on expropriation of real estate is the basis for entry in the land register. Entry is made at the request of governor or executive authority, if the property was expropriated for the benefit of this unit. Renting or leasing of the expropriated property expires three months from the date on which the expropriation decision becomes final. The procedure of land acquisition according to The Real Estate Management Act dated 21 August 1997 was shown on the figure 1.

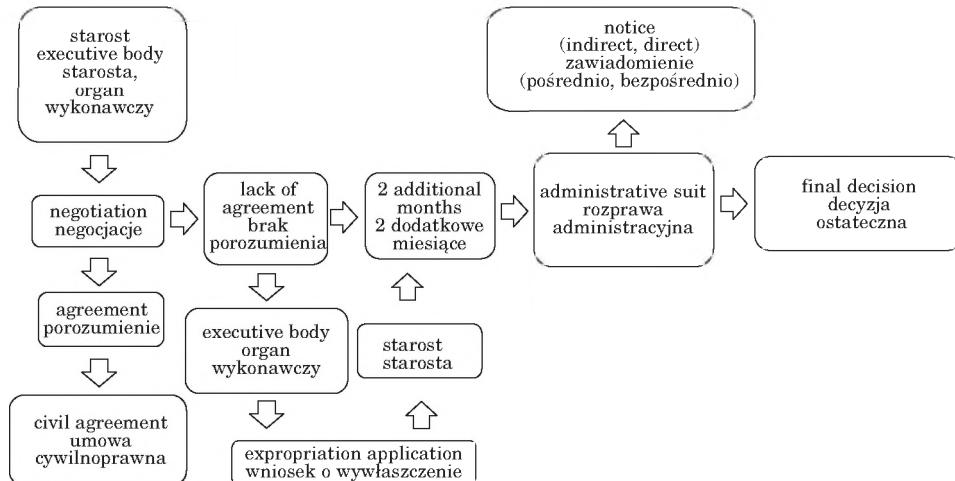


Fig. 1. Land acquisition procedure according to Real estate management act

Rys. 1. Procedura nabywania gruntów według Ustawy o gospodarce nieruchomości

Source: Authors' own study on the basis of The Real Estate [Act 2, 1997]

Źródło: Opracowanie własne na podstawie The Real Estate [Act 2, 1997]

### **LAND ACQUISITION ON THE BASIS OF THE DETAILED PRINCIPLES OF PREPARING AND EXECUTING PUBLIC ROADS CONSTRUCTION INVESTMENT PROJECTS ACT**

In terms of the following procedure so called planning stage has a different shape. It is combined with the preparation and implementation stage, which means that particular decision that is issued here not only deals with the planning issues but also property ownership and building permit matters.

Governor in relation to national and provincial roads, or the starost for the county and local roads issue the decision on road investment implementation at the request of the competent manager of the road (within 90 days). As soon as the administrative suit starts governor or starost sends a notice on that to all the parties involved in the process (property owners, perpetual usufruct users etc). Moreover

he gives a notice on that in provincial offices, municipal offices, websites and local press. From the date of the notice property owned by the State Treasury or local government units, subject to decision on road investment implementation cannot be traded. If the property is sold in contravention to the prohibition the act is void. The scope of decision on road investment implementation is much more broader than the decision on investment location. The decision contains (the most important elements in terms of the article's subject has been underlined):

- requirements for road links with other public roads, including their category,
- land demarcation lines,
- conditions resulting from the need for environmental protection, protection of cultural monuments and the contemporary needs of defense and state,
- requirements for the protection of the legitimate interests of third parties,
- **approval of the division of property,**
- **designation of properties or their parts according to real estate cadastre, which will become the property of the Treasury or the local authorities,**
- **approval of a construction project,**
- alternative arrangements if necessary.

Governor in relation to national and provincial roads and the starost for the county and local roads deliver the decision on road investment implementation and inform about it in the same way as in the case of initiation the process of issuing decision. The notice about issuing decision contains information about the place where parties can read it. The decision on road investment implementation can be appealed to a higher degree of authority, which is:

- governor in terms decisions issued by the starost
- the Minister of Infrastructure in terms of decisions issued by the governor.

Appeals from the decision on road investment implementation are dealt with within 30 days and a complaint to an administrative court within two months. In proceedings before an appeal and before the administrative court decision cannot be waived in whole or conclude that it is invalid when the defect concerns only part of the decision on the section of road, real estate, property. Decision on road investment implementation approves property division so the land demarcation lines established in it become property division lines. Final decision constitutes basis for changes in land registers and cadastre. Properties are taken over by virtue of law for

- the state treasury in terms of national category roads,
- particular local authorities (province, county, commune) depending on the road category (provincial, county, communal),

as soon as the decision becomes final. If on the properties' ownership or perpetual usufruct right limited property rights are set up, they all expire then. If on the property owned by the State Treasury or local government unit perpetual usufruct right was set up it also expires when the decision becomes final. The procedure of land acquisition according to the detailed principles of preparing and executing public road construction investment projects Act dated 10 April 2003 was shown on the figure 2.

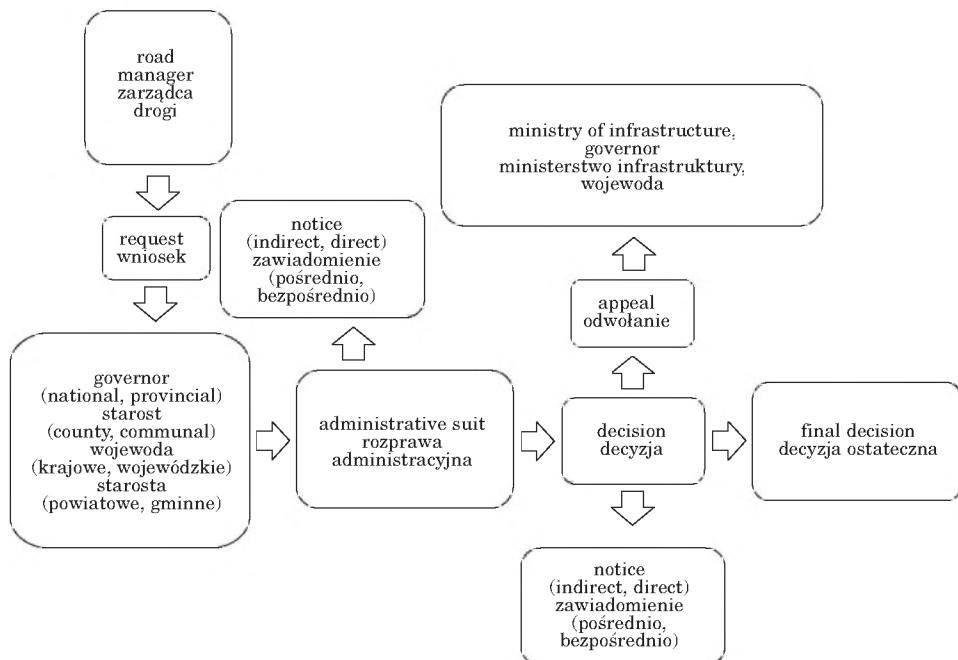


Fig. 2. Land acquisition procedure according to Detailed principles of preparing and executing public roads construction act

Rys. 2. Procedura nabywania gruntów według Ustawy o szczególnych zasadach przygotowania i realizacji inwestycji w zakresie dróg publicznych

Source: Authors' own study on the basis of The detailed principles... [Act 3, 2003]

Źródło: Opracowanie własne na podstawie The detailed principles... [Act 3, 2003]

In terms of Polish nomenclature the Act regulating that procedure has an “incidental character” which means that it works only for a certain period of time. It was accepted in connection with a huge road building concerning many roads projects all over the country that had to be finished within specified dates. It loses its’ power in 31 December 2020. According to the legal acts mentioned so far property rights were taken only by virtue of law. The last Act that deals with the procedures of land acquisition for public roads investments especially in connection with land division and land consolidation introduces two another ways – civil agreement and expropriation.

## PROCEDURE OF LAND ACQUISITION FOR UEFA EURO 2012 ROADS INVESTMENTS

The planning stage of Euro 2012 projects (only the one listed in special directive) starts every time with decision on investment location issued by the governor within a month at the request of the target company or other competent

body. As soon as the governor receives the request he is obliged to send a notice on initiation the process of issuing decision to all the parties involved in the process (property owners, perpetual usufruct users etc). Moreover he gives a notice on that in provincial offices, municipal offices, websites and local press. The decision on investment location contains in particular:

- **land demarcation lines,**
- the technical conditions for the project of Euro 2012,
- conditions resulting from a legally protected preservation of the environment, protection of historical and contemporary cultural goods and national defense needs,
- the requirements for the protection of the interests of third parties,
- **approval of the division of property,**
- **the property or their parts, according to real estate cadastre, which will become the property of the Treasury or the local authorities,**
- the time limit for issuing property or empty premises and other facilities (minimum 30 days).

When decision is issued governor delivers it to the applicant and sends a notice to all the involved parties in the same way as in the case of initiation the process of issuing decision. The notice contains an information about the place where the parties can read the decision. Appeals against the decision of governor can be made to the minister of infrastructure. Decision on investment location approves property division so the land demarcation lines established in it become property division lines. As soon as the decision becomes final all the properties included in it become by virtue of law national, local government unit's. If on the properties' ownership or perpetual usufruct right limited property rights are set up, they all expire then. If the property owned by the State Treasury or local government unit has been previously leased or rented, the decision to establish the location of a project for Euro 2012 is the basis for the termination of a lease or rental with immediate effect. Final decision constitutes basis for changes in land registers and cadastre. Before building permit is obtained properties may be used free of charge by the owners or people who had different legal titles to real estate (according to the location decision). The procedure of land acquisition according to the The Act on preparation of the final tournament of the UEFA European Football Championships EURO 2012 dated 7 September 2007 was shown on the figure 3.

The EURO 2012 land acquisition procedure is not the only possible procedure provided for the EURO 2012 road building projects. There is an alternative procedure, already explained, which was supposed to be adopted for all the other road building investments (for all the road categories) but finally found its' application also here (with some exceptions) – the procedure regulated in the detailed principles of preparing and executing public road construction investment projects Act dated 10 April 2003.

Polish legal system has developed a number of different procedures designated for particular public purpose investments – public roads. In order to compare and contrast solutions adopted abroad the authors of the paper presented land acquisition procedures of two other selected countries.

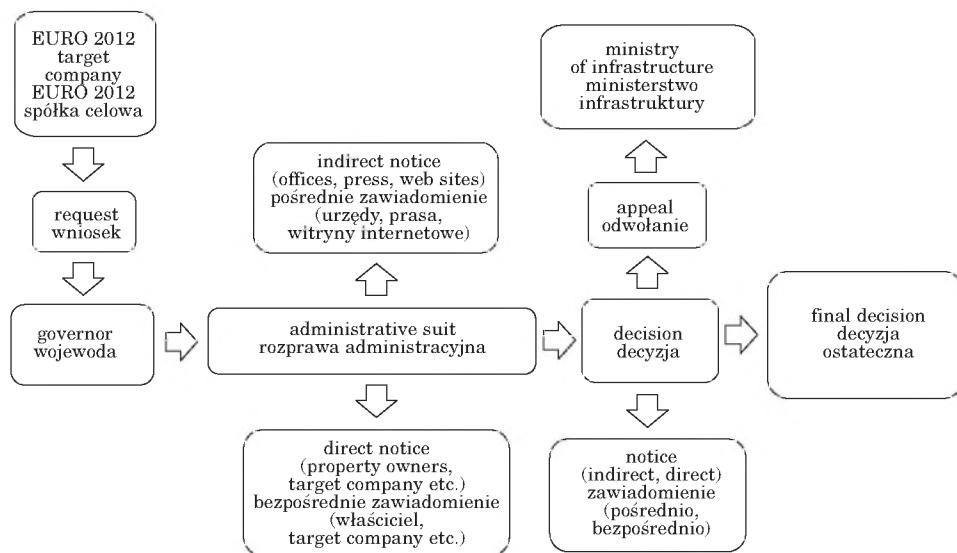


Fig. 3. EURO 2012 land acquisition procedure.

Rys. 3. Procedura nabywania gruntów na EURO 2012.

Source: Authors' own study on the basis of Act on preparation... [Act 4, 2007]

Źródło: Opracowanie własne na podstawie Act on preparation... [Act 4, 2007]

## LAND ACQUISITION PROCEDURES FOR PUBLIC PURPOSE INVESTMENTS IN SELECTED COUNTRIES

The next part of the paper presents legal procedures of land acquisition that has been developed in Norway and Germany. All the information concerning the land acquisition procedures for public purpose investments presented below were based on comprehensive comparative study of three countries: Polish, German and Norwegian, on almost all issues of expropriation, which was presented at the Congress of the FIG in 2010 in Sydney [Walacik and Źróbek 2010, Voss 2010, Steinsholt 2010].

### NORWAY

The main legal acts regulating the procedures of land acquisition for public purpose investments in Norway and setting up a number of principles regarding the process are:

- The expropriation Act,
- The compensation court procedural Act.

The whole procedure of land acquisition for public purpose investments has its' roots in the planning process which, according to the so called principle of positive law permit, limits the use of expropriation to a fixed number of purposes. As soon

as the plan decision is given authorities are given green light for land acquisition procedure. The first step of the procedure includes negotiations which include both public hearing and specific contact with the right holders. When the parties reach an agreement the procedure finishes in the same way as in Poland – by civil agreement. If not, the hearings takes place which can lead both to expropriation decision and valuation decision. Final decisions cause transfer of rights and result in compensation payment.

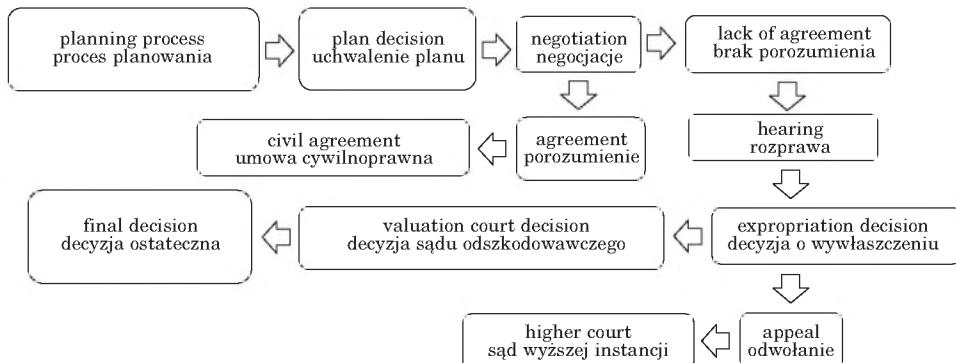


Fig. 4. Norwegian procedure of land acquisition for public purpose investment according to The Expropriation Act and Compensation Court Procedural Act

Rys. 4. Norweska procedura przejmowania nieruchomości pod inwestycje celu publicznego według Ustawy wywłaszczeniowej oraz Ustawy o postępowaniu Sądów Odszkodowawczych

Source: Źródło: Źróbek et al. 2010

## GERMANY

Because of the fact that legal system in Germany is slightly different from Polish or Norwegian one, in order to specify legal acts regarding land acquisition procedures for public purpose investments, one ought to look both at the Federal Acts (e.g. The Federal Building Code) and State's Acts (e.g. State's Expropriation Acts).

The starting point for every land acquisition for public purpose investments in Germany is the so called pre-negotiation stage (not official part of procedure) in which entity interested in land acquisition negotiate the conditions of voluntary agreement with the property owner. The entity gives a “reasonable offer” and documents it in order to have justified reason for starting expropriation procedure if the agreement is not reached. The second stage of the procedure is the preliminary stage. That part of the land acquisition process is very important in terms of the formal procedure preparation. During that stage The Expropriation Authority inspects the whole situation, which means that it gets to know the involved parties, verifies their statements and checks if the applicant tried to buy the property by giving reasonable offer. In order to judge whether the offer was reasonable

or not The Expropriation Authority orders an independent valuation of the property which is done by Valuation Committee or by certified valuers. If the Expropriation Authority comes to a conclusion that the legal conditions for expropriation are fulfilled the formal procedure will be opened. The formal procedure starts with the date of official hearing or trial that the parties are invited to. From that moment the procedure becomes public, because information about it is not only published in local newspapers but also noticed in land registers, nevertheless the fact that it has already been started do not exclude agreement at that stage. If the agreement is no reached the full procedure continues which includes proving that the public purpose investment realization is legitimate, that the transfer of ownership right is necessary and compensation determination. Even when the expropriation procedure reaches such an advanced stage there are still three scenarios it can follow:

- parties can reach an agreement,
- parties can reach a partial agreement – land owner does not question the legitimacy of public purpose investment but disagrees with the amount of compensation,
- parties cannot reach an agreement.

If the third scenario takes place expropriation decision is given, which causes transfer of rights and determines the amount of compensation. First or second scenario obliges parties to conclude a contract under public law which requires an execution order to be effective. German legal system gives parties the possibility

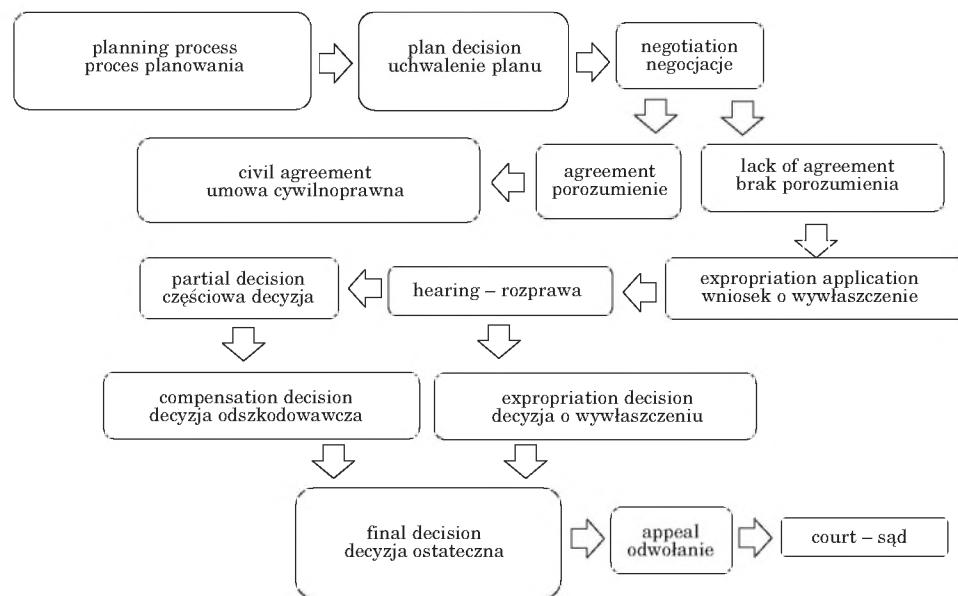


Fig. 5. German procedure of land acquisition for public purpose investment according to the Federal Building Code and States' Expropriation Acts

Rys. 5. Niemiecka procedura przejmowania nieruchomości pod inwestycje celu publicznego według Federalnego Kodeksu Budowlanego oraz przepisów wywłaszczeniowych landów

Source: – Źródło: Źróbek 2010

of appeal to court (maximum 3 instances). The whole procedure of land acquisition for public purpose investment according to the Federal Building Code and States' Expropriation Acts was shown on figure 5.

## SIMILARITIES AND DIFFERENCES IN DESCRIBED PROCEDURES AND FINAL CONCLUSIONS

The procedures of land acquisition for public roads construction in Poland shows a real diversity depending on the road category and the public purpose classification. There are procedures (The Euro 2012 and Special Act's procedures), that because of the special importance of the investments omit the negotiation stage by taking properties over by the virtue of law. There is also a procedure regulated by The Real Estate Act that cannot be accomplished without it. Two the foreign procedures presented in the paper are similar to the Polish Real Estate Act's one. They include the negotiation stage which can be finished with the civil agreement and the hearing which finishes with expropriation decision or at the same time expropriation decision and compensation decision/Valuation court decision. The legal consequences of the procedures cause both transfer of rights and compensation payment. If the parties disagree with them, they can always appeal.

In terms of the entities involved in the procedures one can notice more differences in the procedures. In Germany there is a special Expropriation Authority which is responsible for the procedure, Valuation Committee which is involved in expropriated property's value assessment, and Higher court in case of appeals. Norway instead of the Expropriation Authority uses Valuation Court which determine the amount of compensation, while in Poland the responsibilities of the Norwegian Valuation Court are given to the Starost or the Governor.

The role of valuers in particular countries is also different. In Poland the amount of compensation is determined on the basis of the report prepared by licensed real estate valuer, in Norway valuers have no formal position in the process (Land Consolidation Judges are by profession valuers), while in Germany the applicant's last offer should be based on the report prepared by licensed valuer or the Valuation Committee.

All the procedures mentioned above ought to regulate properties' legal status as soon as possible, leave no room for any investment accomplishment delay and safeguard the rights of people who lose ownership or use rights of their land, which means that it should follow the principle of balanced interest of the parties. The procedures should combine the appropriate details and the ability to derogate from them in special situations (the principle of flexibility). They should allow equal access to information, expert advice, lawyers, valuers (principle of fairness and transparency) and treat the holders of different property rights in the same way (the principle of uniformity of procedures), while the compensation given for the expropriated property should correspond to the value of the loss or the value of the lost profits complying with the principle of equivalence. [FAO 2008]. Different

countries established different ways of achieving their public purpose investments accomplishment.

The Polish procedure regulated in The Real Estate Act and the two foreign (German and Norwegian) ones fulfill most of the FAO's principles by giving the land owner and the authority the possibility of negotiation. Unfortunately that kind of solution in conflict situations, which occur quite often and in most cases consider:

- the amount of compensation,
- exchange property,
- demands for the whole property buyouts [Trojanek 2010].

can lengthen the whole procedure. That reason for road building investments delays is also stressed by the professionals involved in procedures – Z. Marzec and B. Grzechnik [Marzec, Grzechnik 2010]. In order to shorten land acquisition procedures as much as possible Polish legal system established two other procedures. The aim was achieved indeed, nevertheless the principle of balanced interest between the parties lost its' stability.

The problems concerning public purpose investment realization, especially public roads, are very important and up to date issues. The new proposals of amendments to the Council of Ministers regulation on Real Estate Valuation and Preparation of Appraisal Reports considering, among many, the new rules of expropriation compensation determination only proves that fact.

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## **PROCEDURY PRZEJMOWANIA NIERUCHOMOŚCI POD INWESTYCJE CELU PUBLICZNEGO – PODOBIEŃSTWA I RÓŻNICE NA PRZYKŁADZIE WYBRANYCH KRAJÓW**

**Streszczenie.** Skala inwestycji budowy dróg publicznych w Polsce znacznie wzrosła w ostatnich latach. Wynikalo to przede wszystkim ze wstąpienia do Unii Europejskiej oraz współorganizacji mistrzostw Europy w piłce nożnej w 2012 r. Wzrost ten jednak ukazał wiele słabych punktów w przepisach prawa regulujących te kwestie i wymusił ich zmiany. W artykule przedstawiono podstawowe zasady i założenia procedur nabywania nieruchomości pod inwestycje budowy dróg publicznych. We wstępnie wyjaśniono znaczenie terminu droga publiczna oraz przedstawiono klasyfikację dróg zgodną z polskim ustawodawstwem. Ukazano ponadto podobieństwa i różnice poszczególnych procedur nabywania gruntów ze szczególnym uwzględnieniem organów uczestniczących w nich oraz decyzji administracyjnych powodujących pozbawienie bądź ograniczenie praw do nieruchomości. Rozwiązania stosowane w tej kwestii w Polsce porównano z rozwiązaniami niemieckimi oraz norweskimi. Wnioski są następujące: w Polsce zauważać można znaczne zróżnicowanie procedur nabywania praw do nieruchomości pod inwestycje budowy dróg publicznych, występują procedury, w których pominięto etap negocjacji, a również takie, które nie mogą być prowadzone bez etapu negocjacji. Zagraniczne procedury są zbliżone do procedury regulowanej zapisami Ustawy o Gospodarce Nieruchomościami, natomiast w kwestii organów uczestniczących w procedurach zauważać można duże różnice.

**Słowa kluczowe:** nabywanie gruntów, procedury, drogi publiczne

Zaakceptowano do druku – Accepted for print: 1.12.2010