

# Ryszard Źróbek

---

## Some problems of compulsory acquisition of land for public purposes

---

Acta Scientiarum Polonorum. Administratio Locorum 9/4, 151-159

---

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.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

## SOME PROBLEMS OF COMPULSORY ACQUISITION OF LAND FOR PUBLIC PURPOSES

Ryszard Żróbek

University of Warmia and Mazury in Olsztyn (Poland)

**Abstract.** The compulsory acquisition of land for public purposes has been a delicate issue and needs special procedures. European legislation affecting central of land use. There are some principles in Europe for legislation on compulsory acquisition of land. Important is protection of due process and fair procedure. The constitutions of many countries provide the protection of private property rights and the power of the government to acquire land with just compensation. This paper analyses some procedures of real estate expropriation with brief look on laws protecting property rights in Poland.

**Key words:** compulsory purchase, protects ownership, procedure, public interest

### INTRODUCTION

Sustainable development requires governments to provide public facilities and infrastructure. Such facilities need to be located, thus governments should provide appropriate real estate. The acquisition of needed real estate is usually done through the bilateral agreement, thus in many countries the adversarial approach found is rather unique in common law. However, there are countries where legal regulations allow compulsory purchase – expropriation. Although the negotiating position of state units and private land proprietors is unequal, compulsory purchase does not necessarily bring losses for the land owner. Expropriation is therefore an exception from the general civil principles related to the transfer of real estate ownership rights and in this case many formal restrictions and procedures have to be followed. European legislation affecting control of land use and land ownership. The concept of a social obligation of property is where the state wishes to the inadequate use of land to a penalty of compulsory purchase.

This paper analyses some procedures of real estate expropriation with the brief look on national laws protecting property rights in UE (i.e. Poland).

---

Adres do korespondencji – Corresponding author: Ryszard Żróbek, Katedra Gospodarki Nieruchomościami i Rozwoju Regionalnego, ul. Romana Prawocheńskiego 15, 10-724 Olsztyn, e-mail: rzrobek@uwme.edu.pl

## PROCEDURES RELEVANT TO THE COMPULSORY PURCHASE OF LAND IN SOME EUROPEAN COUNTRIES

The main act, which protects ownership and the right of succession, is the constitution. However, public purposes sometimes require governmental units to intervene in private ownership. Any intervention into ownership should be an absolutely exceptional measure and is allowed solely for just compensation.

The compulsory acquisition of land has been a special issue. Governments are under increasing pressure to deliver public services. There are some conflictual and inefficient aspects of the proces of expropriation of real estates to public purposes.

This process also brings tension for people who are threatened with dispossession [FAO 2010].

Each country has its own set of regulations (eg the constitution and special acts). Relevant laws often designate the head of government or a specific minister as the person empowered to authorize the functions associated with compulsory acquisition. Some countries afford experiences about the place of local participation in the compulsory purchase process. Somethimes legal intervention in land has concentrated upon areras which, owing to special circumstances.

There are some examples of regulations concernring to compulsory acquisition of land and compensation in particular countries in Europe.

The base act in the Kingdom of Belgium is the constitution. Article no 16 says:

“No one can be deprived of his property except the case of expropriation for a public purpose, in the cases and manner established by law, and in return for a fair compensation paid beforehand”, and in article no 17:

“Punishment by confiscation of assets cannot be made”.

More information is in the constitution of the Czech Republic concerning this procedure. In article no 11 there are as regulations:

- 1) Everybody has the right to own property. The ownership right of all owners has the same statutory content and enjoys the same protection, inheritance is guaranteed.
- 2) The law shall specify which property is essential for securing the needs of the whole society, development of the national economy, and public welfare.
- 3) Ownership is binding. It may not be misused to the detriment of the rights of others or against legally protected public interests.
- 4) Expropriation or other forcible limitation of the ownership right is possible only for the benefit of society and should be based on existing law ensuring compensation.

Basic Law of the Federal Republic of Germany says in article no 14:

1. Property and inheritance right are guaranteed. Their content and limits are determined by statute.
2. Property imposes duties. Its use should also serve the public wealth.
3. Expropriation is permissible only for the benefit of society. Compensation has to be determined due to equitable balance between the public interest and the interests of those affected. Regarding disputes about the amount of compensation, recourse to the courts of ordinary jurisdiction is available.

According to article no 15 “Land, natural resources, and means of production can, for the benefit of the society, be transferred to public ownership or other forms of collective enterprise by a statute regulating the nature and extent of compensation”. In Germany it was possible provided the alternative ground for compulsory acquisition where land was consistently and to a significant extent inadequately farmed.

According to the constitution of the Italian Republic private ownership shall be recognized and guaranteed by laws which shall determine the manner by which it may be acquired and enjoyed, and its limits, in order to ensure its social function and to make it open to all.

Private property, in such cases as are provided for by law, and with payment of compensation, may be expropriated for reasons of common interest.

The law shall establish the rules of legitimate and testamentary succession and its limits, and the rights of the State on inheritance.

Constitution of the Kingdom of the Netherlands says in article no 14:

1. Expropriation may take place only in the public interest and on prior assurance of full compensation, in accordance with regulations laid down by or pursuant to Act of Parliament.(...)
2. In the cases laid down by or pursuant to Act of Parliament there shall be a right to full or partial compensation if in the public interest the competent authority destroys property or renders it unusable or restricts the exercise of the owner's rights to it.

For the constitution of the Republic of Poland very important for compulsory purchase procedure is article no 21:

1. The Republic of Poland shall protect ownership and the right of succession.
2. Expropriation may be allowed solely for public purposes and for just compensation.

According to article no 46 property may be forfeited only in cases specified by statute, and only by virtue of a final judgment of a court.

This can be said, that (art. 64):

1. Everyone shall have the right to ownership, other property rights and the right of succession.
2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.
3. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.

In the United Kingdom there is “Human Rights Act” concerning with compulsory purchase, where is article 1 named “Protection of Property”. Pursuant do this provision every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions 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.

Protection of ownership rights is guaranteed in Europe by the constitution. Moreover, in this legal act some other detailed norms can be found. In Poland the constitution:

- a) grants everyone the right of ownership, other property rights and the right of successions,
- b) indicates that all property rights are legally protected on an equal basis for everyone,
- c) indicates that the right of ownership may only be limited in exceptional cases.

The constitutional principles are also reflected in other provisions of the Civil code and Real Property Management Acts. On the contrary, during communism in Central and Eastern Europe, compulsory purchase was perceived as the achievement of a socialist society (the ownership of the means of production, including land, was to be collective rather than private) [Grover et al. 2007]. New governments, elected after 1990, introduced significant changes in this matter.

There are some principles for legislation on compulsory acquisition [FAO 2008]. These principles for legislation this procedure should include:

- a) protection of due process and fair procedure;
- b) good governance for reduce the abuse of power and opportunities for corruption;
- c) equivalent compensation as the loss resulting from the compulsory acquisition of land in money or alternative land.

The constitutions of many countries provide for both the protection of private property rights and the power of the government to acquire land without the willing consent of the owner. Some countries have broadly defined provisions for compulsory acquisition, while those of other countries are more specific (eg. Ukraine, Belarus).

The laws governing compulsory acquisition are part property law and part of administrative law [FAO 2008].

## **GENERAL CHARACTERISTICS OF COMPULSORY ACQUISITION OF LAND. CASE STUDY – REPUBLIC OF POLAND**

Expropriation procedures can be applied only to the real estate located in the area which is intended for public purposes in the local development plan.

Expropriation means depriving someone or restricting someone's rights through administrative decision. The rights are usually connected with ownership, perpetual usufruct (long term of lease of public land) or other property right on the real estate. Expropriation is an exception to the general civil right of ownership transfer. Its proceedings have to be preceded by an attempt to acquire the real estate by concluding a contract – negotiations. During the negotiations, a substitute real estate can be offered. The transfer of a substantial right to the State Treasury or to units of local governments becomes effective on the day the expropriation decision becomes final. The expropriation decision can be appealed.

The important issue is compensation for expropriation. It is established by the county head and mentioned in the expropriation decision, having sought an opinion from a real estate valuer. Compensation has to be equal to the real estate value [Żróbek and Żróbek 2007].

Expropriation can be treated as a common legal instrument leading to the acquisition of real estate, which is necessary to achieve important public purposes.

It has to be preceded by negotiations between public entity and the owner of the real estate. The subject of the negotiations should be the acquisition of the title or another property right by concluding a contract. If real estate, which is necessary for a public purpose, cannot be acquired by purchase, the expropriation procedure is instituted. The real estate can be expropriated only for the benefit of the State Treasury or units of local governments (province, county, and commune).

Expropriation can be executed in relation to the ownership, perpetual usufruct and such restricted rights of property, as real estate use, personal servitude or real easement, cooperative member's ownership right to premises.

Such restricted property rights as lien and mortgage cannot be objects of expropriation.

In 1994, separate regulations were implemented concerning the expropriation of real estate for the purpose of building motorways. According to these rules, provincial governor is responsible for ensuring the compensation which is equal to market value of real estate. Before implementation of such regulations there were not any cases of expropriation, as the protection of ownership right was not an issue of constitutional importance [Kutyla 2007].

Expropriation decisions are issued by the head of a county, within the scope of performing government administration tasks, and appeals are considered by the provincial governor.

The following stages of the real estate expropriation procedure have been identified:

1. establishing the necessity to achieve a public purpose on a real estate;
2. conducting negotiations to acquire real estate by means of concluding a contract (within 2 months);
3. issuing an expropriation decision – instituting the expropriation proceedings administrative trial;
4. establishing the compensation – decision to be taken by the head of the county;
5. appeal, if any, against the decision to grant compensation and its amount;
6. taking the final decision and payment of the compensation.

If real estate has unregulated legal status, the data necessary to identify is taken from the real estate cadastre. The term “real estate with an unregulated legal status” means real estate for which it is impossible to establish the entitled persons because of the lack of a land and mortgage register or other documents related to vested property rights. In such cases, the head of the county should announce the intention to institute the expropriation proceedings. Administrative proceedings are concluded with issuing an administrative decision. The title to the real estate is acquired on the day the expropriation decision becomes final.

The expropriation procedure is presented below (fig. 1)



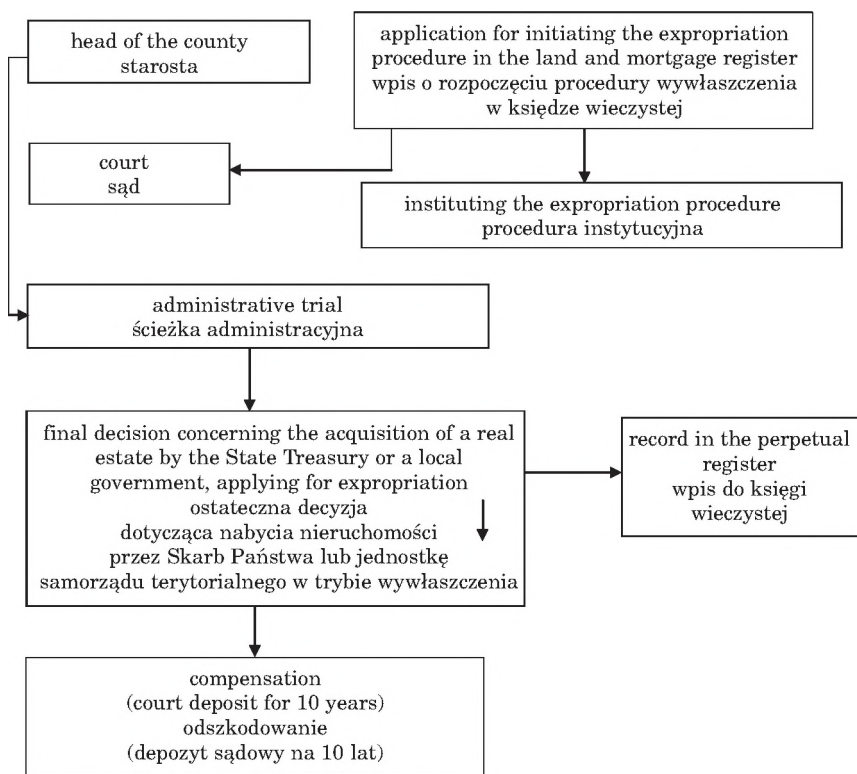


Fig. 1. Particular principles of real estate expropriation

Rys. 1. Podstawowe zasady wywłaszczenia nieruchomości

Źródło – Source: opracowanie własne – own study

The following procedure is applied in the case of expropriating real estate for building a motorway:

- a) the proceedings are instituted upon application from the General Directorate of National Roads and Motorways – if concluding a contract of real estate purchase is impossible (negotiations should last 2 months);
- b) the expropriation proceedings are instituted and the relevant decisions are taken by the provincial governor;
- c) the compensation for the expropriated real estate should be equal to its market value;
- d) the real estate value is determined by real estate valuer;
- e) the compensation is subject to revaluation of the day of payment; the revaluation is done according to the general principles which are in force in the case of return of expropriated real estate;
- f) the compensation is paid from state resources at the disposal of the General Manager of National Roads and Motorways;
- g) the expropriated real estates are transferred by the State Treasury to the General Directorate of National Roads and Motorways for permanent management.

The instituting of permanent management is confirmed by issuing a relevant decision by the provincial governor.

A comparison of selected items of the expropriation procedure, applied according to the provisions of the law of real estate management and the law of paid motorways and the National Road Fund, is shown in Table 1.

Table 1. Specification of selected features related to expropriation

Tabela 1. Zestawienie wybranych cech związanych z wywłaszczeniem

Feature Cecha	Law of selected features related to expropriation Zapisy prawne wybranych cech związanych z wywłaszczeniem	Law of paid motorways and National Road Fund Prawa dotyczące autostrad płatnych i Krajowego Funduszu Drogowego
The body issuing an appropriation decision Organ wydający decyzję	head of county starosta	provincial governor wojewoda
Compensation Odszkodowanie	established by head of the county by means of issuing a decision – based on the real estate market value or, as an exception, based on the replacement cost value detailed principles of establishing compensa- tions for forests, perennial cultures, annual cultivations ustalenie przez starostę w decyzji – na podstawie wartości rynkowej lub, jako wyjątek, na podstawie wartości odtworzeniowej	established by the Provincial governor – based on the market value ustalone przez wojewodę na podstawie wartości rynkowej
The real estate condition at its appraisal Stan wywłaszczanej nieruchomości	as of the date of the expropriation decision na datę wydania decyzji o wywłaszczeniu	as of the date of the motorway location decision na datę wydania decyzji o lokalizacji autostrady
Compensation payment Wypłata odszkodowań	The State Treasury or a local government body (head of the country or an executive body of a local government). The costs are to be borne by the entity which will be carrying out the public purpose Skarb Państwa lub jednostka samorządu terytorialnego (starosta lub organ j.s.t.) koszty związane z realizacją celu publicznego	from the State Treasury resources, being at the disposal of the General Directorate of National Roads and Motorways Z zasobów Skarbu Państwa pozostająca w gestii General- nej Dyrekcji Dróg Krajowych i Autostrad

Source – Źródło: author's study – opracowanie własne

The amendments to the law that governs railway transport and connected issues, introduced in 2005, defined the notion of land for a railway construction and the principles of acquiring real estate for that purpose. Specific regulations concerning real estate acquisition are related to the railways constructed according to the National Development Plan. A railway location decision is issued by the provincial governor upon application from the Minister for Transport.



The provincial governor is obliged to make public the commencement of the proceedings:

- a) by announcement posted up in the commune offices in the area of the planned railway;
- b) in local newspapers.

He also informs in writing the applicant as well as the owners and perpetual usufructuants of the real estates located in relevant area.

A railway location decision should contain:

- 1) area dividing lines;
- 2) technical conditions of the project implementation;
- 3) conditions resulting from the environment and monuments protection regulations;
- 4) requirements related to the protection of infrastructural objects which are used by local governments in accomplishing their tasks, including those related to the communal management;
- 5) the requirements related to the protection of third party rights.

Appeal against railway location decision is examined within 14 days, and a complaint to the administrative court – within 60 days. The provincial governor issues a railway construction license according to the provisions of the construction laws.

The real estate intended for railways, which is owned by local governments, become the property of the State Treasury on the day when the decision becomes final. The expropriated party is entitled to compensation according to the principles applied in property expropriation. The amount of the compensation is established by the provincial governor.

## CONCLUSIONS

Legislation to establish the government's power to compulsorily acquire land should be written clearly and with precision. Important are public controls over land ownership and use. The problem of development is seen as essentially social.

Just before the beginning of market economy in Poland, expropriation was one of the main instruments used to restructure economic system, as well as the real property ownership. The list of public tasks was very long, while the principle of non-equivalent compensation for the expropriated property was followed. Expropriation was very common instrument, even though there was not any economic justification for it and the expropriated properties were used for other purposes than they had been expropriated for.

A radical change of approach took place in late 80's of the last century. At this time, some fundamental changes in expropriation legislation were introduced.

The notion of real estate expropriation includes all the cases of intervention by the state in the rights to the real estate vested in other legal entities [FIG 2010].

The expropriation procedure is complex and it is effective in safeguarding the interests of real estate owners. On the other hand, it can slow down the process of achieving public purposes. The manner of establishing a compensation is

an important factor in the procedure. Such an amount paid to the real estate owner should beyond doubt have a compensatory function.

The obligation to pay compensation arises upon issuing a real estate expropriation decision. Such a decision should specify all the elements of the obligation to pay full compensation (just compensation). The owners of land have to allow the cultivation of the land in so far as the public interest requires.

It is possible to say that constitutional regulations in many countries influence directly the interpretation of other legal acts (i.e. civil codes). The authority conducting expropriation proceedings is obliged to specify precisely the purpose of expropriation on the real estates of a concrete legal provision. The public purposes have to be defined by the law and compensation should be determined. Expropriation can be executed only if the public purposes cannot be achieved in a different manner than by deprivation or restriction of the right to the real estate, and the rights cannot be acquired by concluding a contract (ineffective negotiations with the owner of real estate).

Legislation should include principles of due process and others protections for owners and occupants of real estates.

## REFERENCES

- FAO, 2008. Compulsory acquisition of land and compensation. Rome [Land Tenure Studies].  
FIG, 2010. Hanoi Declaration – Land Acquisition in Emerging Economies, Copenhagen.  
Grover R., Anghel I., Berdar B., Soloviev M., Zavgalov A., 2007. Compulsory purchase in the transitional countries of Central and Eastern Europe. FIG Commission 9 [seminar paper], Helsinki.  
Kutyla M., 2007. Constitutional aspects of protection of ownership right in Poland. UNECE WPLA Workshop, Munich.  
Żróbek R., Żróbek S., 2007. An assessment and proposal changes to the principles and procedures of real estate expropriation after 1945. FIG – Publ., Hong Kong.

## NIEKTÓRE PROBLEMY PRZYMUSOWEGO NABYCIA GRUNTÓW NA CELE PUBLICZNE

**Streszczenie.** Nabywanie nieruchomości na potrzeby realizacji celów publicznych jest sprawą dużej wagi i wymaga zastosowania specjalnych procedur postępowania. Prawo UE efektywnie kontroluje użytkowanie ziemi. W Europie występują podstawowe zasady dotyczące legislacji związanej z wywłaszczeniem nieruchomości. Ważnym zagadnieniem jest ochrona samego procesu oraz stosowanej procedury. W konstytucjach wielu krajów znajdują się zapisy chroniące prywatne prawo własności i jednocześnie dające prawo rządowi do pozyskiwania nieruchomości za słusznym odszkodowaniem. W artykule analizowano procedury wywłaszczania nieruchomości ze szczególnym uwzględnieniem prawa ochrony własności w Polsce.

**Słowa kluczowe:** nabywanie gruntów, ochrona własności, interes publiczny

Zaakceptowano do druku – Accepted for print: 10.12.2010