

Compulsory Purchase as an Administrative Procedure – Based on Finnish Legislation and Experiences

Kauko VIITANEN, Finland

Key words: Compulsory purchase, expropriation, eminent domain, compensation, Finland

SUMMARY

The paper discusses compulsory purchase as an administrative procedure. In many countries the procedure is handled in courts and it is very complicated and time consuming. The present system in Finland based on legislation from 1977 is an administrative procedure lead by cadastral surveyors. There are already a lot of experiences in Finland, so we are able to present the system and analyse its strengths and weaknesses. In addition, there are similar types of procedures for almost the same purposes, which make the analysis even broader.

The main objective of the paper is to examine the possibility to make the procedure of compulsory purchase more efficient. It is based on studies done in the Institute of Real Estate Studies and the Institute of Law, Department of Surveying at the Helsinki University of Technology during the past few years. It is hoped that the paper may contribute to the development of compulsory purchase procedures in the future also in other countries.

The subject belongs to the subject areas of Commission 9, but also Commissions 8 and 7.

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1. INTRODUCTION

The ownership on real property is protected by Constitution in most countries. This has also been included in the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 1 states that “Every natural or legal person is entitled to the peaceful enjoyment of his possession”. Because of the nature of real property the right of ownership can, however, not be unlimited, but a right to interfere in it, when necessary, has been reserved for the society. For example, should the society need a land area of a real property for a street the owner has to convey land for that purpose, if not voluntarily then by compulsion. There are normally strict preconditions for the interference in order not to harm the functions of the free market, as can even be seen from the above mentioned European Convention, which continues “No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”.

As mentioned, compulsory purchase is not the primary method for land acquisition, but presumes that the land acquisition has not been possible in any other way. For example, it is stated in the Finnish Act on Expropriation (4 §) that compulsory purchase shall not be enforced if the purpose of the acquisition can as well be achieved in some other way. In Germany the State shall choose for compulsory acquisition a method with minimum harm (Fickert 1991; Peltola 1997; Heinonen 2001). This means, for example, that land readjustment has to be used instead of expropriation if it will fulfil the objectives desired and voluntary agreement has not been achieved. Further, it is stated e.g. in Finland that compulsory purchase shall not be used if the inconvenience for private outweighs the public advantage.¹

The requirements mean that there are many obstacles in the use of compulsory purchase. This has led to a special permission procedure where the requirements for a compulsory purchase will be decided, and the real acquisition process cannot be started until these requirements are met. In many countries these procedures are seen so complicated and time consuming that compulsory purchase will hardly be used. In Finland, however, there is a common opinion that compulsory purchase is easy and fast to carry out, although it is not often used even here, except when acquiring land for roads, railways, and power lines.

¹ Similarly in Sweden (Expropriation Act 2:12 §; Kalbro 2001 p. 14).

In this article the Finnish compulsory purchase procedure is examined to find out some possible strengths but also weaknesses in the procedure.² The main objective is to bring material in the discussion whether or not compulsory purchase can be developed to an effective, fair and accepted method in land acquisition. The terms “compulsory purchase” and “expropriation” shall be understood as synonyms in this article.

2. THE REGULATION SYSTEM OF EXPROPRIATION IN FINLAND

According to the Finnish Constitution Act property is secured, and a law on compulsory purchase for public interest with full compensation may be passed in a normal legislative order. In Finland there is a general enactment concerning compulsory purchase, the Expropriation Act. It is always applied when no special legislation on compulsory purchase exists. The Act contains provisions for the common basis of compulsory purchase, the procedure and the compensation. There are also some other laws, e.g. the Land Use and Planning Act, the Water Act, the Public Road Act, the Real Estate Formation Act, the Expropriation Act for Defence Purposes, and the Nature Protection Act including provisions concerning compulsory purchase. The Water Act, the Public Road Act and the Real Estate Formation Act also have their own rules on the compulsory purchase procedure.

In Finland the compulsory purchase procedure has two phases. The expropriation permit is handled in an administrative permit procedure. The compulsory purchase, including determination of compensations, is executed in expropriation proceedings by a special administrative organ, an expropriation committee, lead by a cadastral surveyor with the exception of the Water Act, where the special Water Court is the executing organ. The procedure according to the Water Act will not be treated here.

2.1 Expropriation Permit Procedure

Compulsory purchase according to the Expropriation Act requires an administrative permit. However, if the right to expropriate is directly granted in a law or included in some environmental permit or some confirmed scheme, no separate permit is needed (Exp. Act 5 §). The authority also has the power to decide on the applicant’s right to take possession of the property in advance, or in cases where no separate permit to expropriate is needed the power lies on the expropriation committee (Exp. Act 59 §). The permit can be granted if the compulsory purchase is needed for public interest, if the purpose cannot be suitably achieved in some other way, or if the harm caused to the private interest is not bigger than the profit to the public need (Exp. Act 4 §). There are no exhaustive lists on the appropriate purposes but the decisions are made by the authority case by case in accordance with the legal practice and the changing conditions. If the compulsory purchase is based on other laws concerning expropriation the appropriate purposes and provisions for expropriation, i.e. the specific basis for expropriation, are specified in the Act. In certain situations they also allow expropriation for a private need. (Korhonen 1997).

² The compensations were earlier discussed at FIG Washington D.C. in Viitanen 2002.

The main permit authority is the Council of State (Exp. Act 5 §). If the permit is applied for an operation listed in the Act, e.g. for railway, power line, natural gas pipe, etc., and it is not opposed by the parties, the permit decision is made by the District Survey Office, i.e. the Cadastral Authority. The same applies also if the compulsory purchase is of smaller importance. The expertise of the District Survey Office has been justified in the Government Bill (1975:179) by stating that the offices have traditionally had the competence to decide on certain rights or obligations to expropriate based directly on laws (i.e. the Land Use and Building Act, the Real Estate Formation Act, and the Public Road Act) and thus have good expert knowledge and experience in questions concerning compulsory purchase. The decision is normally made by the head of the Office, the Chief Surveyor. He or she normally has a M.Sc. degree in Surveying from the Department of Surveying at the Helsinki University of Technology, in the future most probably in the Degree Programme of Real Estate Economics.

Other laws concerning compulsory purchase have their own regulations on the permit authority. According to the Land Use and Building Act the permit authority is the Ministry of Environment³, in the Water Act it is the Water Court, and in the Public Road Act the Ministry of Transport and Communications.

The applicant has to include in the application for expropriation permit such an account on the intension that the permit authority is able to evaluate the necessity of the compulsory purchase, as well as the existence of the expropriation right. These also include proper maps and drawings, account for the owners and right holders with their addresses, and information on the planning situation, if required (Exp. Act 8 §). The authority has a duty to clarify what kind of account is needed and where it is to be found. The owner of the property and the holder of a usufruct (i.e. occupants) have a right to be heard before the permit can be granted. They might have given a written statement where they accept the compulsory purchase beforehand, but if not, they have the right to give a statement on the application within a time frame (30 to 60 days) set by the authority. In some cases a special meeting for hearing can be arranged. The same right to be heard is also vested in the municipality and some other authorities as well. The holders of other rights have a possibility to watch their interests in the execution of the compulsory purchase. (Korhonen 1997)

The permit shall include information of the property to be expropriated but the detailed definition may be left to the execution proceedings (Exp. Act 10 §). Although the parties must present evidence to support their views the obligation to seek clarification and to take care of the evidence lies mainly on the deciding authority. This makes the parties' need for professional help smaller than what would be the case if the civil procedural rules on the burden of proof were applied, and the rights of the owner party do not depend as much on the quality of his or her representation in the permit procedure. (Korhonen 1997)

The decision of the permit authority may be appealed to the Administrative Court and/or to the Supreme Administrative Court according to the rules of the Act on Administrative Procedure in Administrative Courts.

³ See e.g. Hurmeranta 2002.

3. EXECUTION OF COMPULSORY PURCHASE

The compulsory purchase is executed in the expropriation proceedings by an expropriation committee, which consists of a cadastral surveyor from a District Survey Office, in practice, and two lay members. The confirmation of the object, boundaries, and compensations are all determined in the same proceedings. The procedure is laid down in the Expropriation Act although some other laws including expropriation have their own, slightly different procedural rules, e.g. the Public Road Act. Although expropriation proceedings are administrative because it is led by a State officer (cadastral surveyor) the general administrative procedural rules are not applied in the proceedings but the rules in the Expropriation Act and in the Real Estate Formation Act.

The cadastral surveyor acts as a chairman of the expropriation committee. For every proceeding the chairman is appointed by the District Survey Office. In practice the chairman has to have a M.Sc. degree in Surveying from the Department of Surveying at the Helsinki University of Technology. The post of lay member is a municipal position of trust. Each municipality elects at least six lay members every fourth year. A lay member shall be familiar with the local conditions and matters in real estate, and as a member of expropriation committee the lay member answers for the legality of his or her actions as an official. The chairman of the committee appoints two lay members among the elected persons. The chairman and lay members normally carry out the whole proceeding in the same composition. The committee can call special experts to assist if the matter to be handled so requires, e.g. in forest valuation. (Korhonen 1997; see also Kuusiniemi & Peltomaa 2000, Yli-Laurila 1995 and Hatunen 1992)

The expropriation committee has power and obligation to decide on all matters required to execute the decision of the permit authority. This means that they have the power to interfere in private ownership, which means that they act in a way as a court. The committee confirms the expropriated object, maps and demarcates it, identifies and describes the property rights to be expropriated, carries out the necessary land exchanges (i.e. reallocations of land pieces) and relocation of private roads, decides on the reparation of damages, as well as on the service fees, decides on the seizure and inspection of the property if possession is taken in advance, takes care of the necessary property formation, determinates the expropriation compensations, and draws up an expropriation decision.

The leading principle of the expropriation proceedings is the principle of judicial investigation (Korhonen 1997). This means that “full service” is provided to the parties. They need not perform any measures. It is the expropriation committee, in fact the cadastral surveyor especially, that takes care of all the necessary stages in the expropriation. The committee carries out the proceedings, investigates the claims, and makes decisions as a duty, i.e. *ex officio* (see also Hollo 1984). The committee has to notify all persons whose property is directly concerned in the expropriation. This means that all matters arising during the proceedings have to be determined. The committee is not bound by the claims of the parties but all relevant material has to be acquired and taken into consideration by the committee. The parties may present oral and written claims and follow the procedure, but even if they do

not react their matters are settled. The committee also has to settle the disputes arising during the proceedings which otherwise would be settled in a court. According to Hyvönen (1976) the principle of judicial investigation advances the owner's right for full compensation because the amount of compensation does not depend on the quality of his or her representation in the proceedings or on the possibilities to present evidence.

The authority of the parties to make decisions is very limited. They have the power to determine on the object of expropriation, agree on the compensations, and the expropriator can withdraw from the expropriation. If the members of the committee are not unanimous the committee will make the decisions by voting. The decisions on technical matters are, however, made by the cadastral surveyor alone. (Korhonen 1997)

The costs of the proceedings are paid by the expropriator. The property right owner is also entitled to be compensated for the necessary costs, such as travelling, expenses for professional help, and loss of earnings. Also a cost-free trial may be granted. (Korhonen 1997)

The decisions of the expropriation committee can (normally) be appealed after finishing the proceedings. The appeal has to be addressed to the Land Court, which is a special composition in a few local courts. The decision of the Land Court can be appealed to the Supreme Court, the highest general court in Finland, if it grants a leave to appeal. The Land Court applies civil procedural rules, not administrative, although the expropriation committee is an organ of administrative nature. The grounds of appeal have not been limited, which means that the Court is competent to full review of the decisions. The Land Court is lead by a judge. One of the members is a Land Court engineer who shall have a M.Sc. degree in Surveying. (Korhonen 1997)

The expropriation procedure ends when the decisions are valid, the compensations have been paid, and the proceedings have been registered in the cadastre and land register. The legal effects are bound to the registration. (Exp. Act Ch. 5)

According to other laws the expropriation procedure is very similar. In fact, also the normal cadastral proceedings, such as subdivision, land consolidation, boundary disputes, private road survey, etc. are very similar as process and executing organ, i.e. they are handled by a cadastral surveyor.

4. FINAL REMARKS

Expropriation proceedings described above have been applied in Finland since 1978, i.e. for 25 years. Proceedings according to the Public Roads Act, which are quite similar, have been applied since 1958, and proceedings according to the Property Formation Act actually for 250 years. The experiences are therefore very definite to a large degree, and the sustainability of the procedure already proves its strength and quality.

Prior to the present Expropriation Act compulsory purchase was based on the legislation of 1898, according to which the procedure was executed by an expropriation committee lead by

a lawyer. The procedure was complicated, slow and expensive, and often aroused discontent (Hyvönen 1976). The amended legislation and leaner organisation seem to have led to obvious improvements, and the present procedure hardly ever meets discontent but is considered well functioning.

Some 150 compulsory purchases according to the Expropriation Act are annually brought up in Finland. The average duration of the execution proceedings is less than two years (1.6 years in 2003), which can be considered fairly satisfactory. Compensations are annually paid 5 to 10 million euros (within the range of 2 to 35 million euros in 1994 to 2003). The 184 execution proceedings in 2003 were based on the following:

- Land Use and Building Act 75
- Power transmission lines 28
- Railways 17
- Protection areas 14
- Others 50

(National Land Survey 2004).

Execution proceedings according to the Public Roads Act annually amount to nearly 500 and 2000 km. Real properties affected are some 14.000. The average duration of the proceedings is well over two years (2.2 years in 2003). Appeals against the proceedings are few. 87 proceedings were taken to court in 2003, i.e. 8% of the brought-up execution proceedings. (National Land Survey 2004)

Iina Korhonen (1997) summarizes the advantages in the Finnish expropriation proceedings in a clear way: “The expropriation committee as an executive organ guarantees the rapidity, flexibility and the low costs of the proceedings, since the composition of this organ as well as the procedure as a whole is less rigid than in a court. Since the committee also takes care of the technical enforcement of the procedure, fewer organs are involved in the procedure, which naturally makes it simpler and cheaper. In the Finnish model the versatile expert knowledge needed in the proceedings is seen to be sufficiently guaranteed by having a land surveyor as chairman of the committee and requiring familiarity in real property matters. ... As the committee is responsible for the acquiring of all necessary information and evidence needed in the decision making, no obligations are set on the owners and in this sense their rights do not depend on their capability to present evidence to support their claims or on the quality of their representation. This lessens the risks of the owners’ as well as the parties’ need for professional help or representation. And that, of course, means less costs.” Similar advantages have been presented e.g. by Veikko O. Hyvönen (1976) and Gerhard Larsson (2000) from Sweden who has studied the real property formation proceedings relatively unique to Sweden and Finland.

It is hard to find negative aspects in the procedure. Doubts about the legal competence of the committee are expressed most often because the composition does not include a lawyer. Impartiality of the committee is also a very important aspect. In Finland there have not been bigger problems in the practice. The main reason is probably the education of surveyors. Their M.Sc. studies contain a substantial number of judicial courses, and the students may take their major or minor, or master’s thesis in Real Estate and Economic Law, as there is a

Professor of Law at the Department of Surveying, Helsinki University of Technology, specialised in Real Estate and Environmental Law. In addition, the studies in Real Estate Economics contain a lot of education on the execution process in Land Management and valuation in Real Estate Economics and Valuation. Great majority of those gravitating to cadastral surveyors have studied a great deal of real estate law, land management and real estate valuation. Maintaining the standard and extent of the curriculum is very important for the system of compulsory purchase in the future as well, as its most essential buttress is the competence and expertise of the cadastral surveyor.

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CONTACTS

Kauko Viitanen, Ph.D.
Professor of Real Estate Economics and Valuation
Helsinki University of Technology
Institute of Real Estate Studies
P.O. Box 1200
FIN-02015 HUT
FINLAND
Tel. + 358 9 451 3870
Fax + 358 9 465 077
Email: kauko.viitanen@hut.fi
Web site: <http://www.hut.fi>