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# Specific Issues Referring to the Real Estate Expropriation**

## 1. Legal Terminology Referring to the Real Estate Expropriation

According to article 112 passage 3 of the Law on the Real Estate Management [3], "real estate expropriation means depravation or limitation by legal decision of the ownership right, perpetual usufruct or any other property or tenancy right referring to real estate."

So the legal definition of real estate expropriation does not comply with the etymology of the word "expropriation", because includes all the cases of any rights to real estates, including the broadest, after the ownership right – right to perpetual usufruct.

As a result, expropriation would mean forced removal of:

- the ownership of real estate of land, building, apartment or locum,
- perpetual usufruct of the land belonging to the State Treasury or the unit of local self-government,
- usufruct,
- easement of ground or personal property,
- co-operative property right to an apartment or locum.

Expropriation does not include mortgage, although it makes a collateral problem referring to a real estate, mortgage loan and also lien, the latter by definition referring to a movable item. The purpose of expropriation is getting the land under development. The investors will build on the land, which is to be their property or perpetual usufruct. Depriving a person of the usufruct, easement or co-operative right is the consequence of taking away the property or perpetual usufruct right to the land. The exceptions shall refer to the cases of development

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planned on the land belonging to the State Treasury or a local self-government unit. The remaining rights to real estate, not being property rights, such as rental agreement, leasing or lending and permanent rule over the expropriated real estate expire within 3 months from the day when the decision on expropriation comes to power.

Expropriation of real estate, in the sense of the substantive law, also means the limitation of property rights attributed to the real estate, without taking away the ownership or perpetual usufruct. This can be deprivation of the right to use the whole real estate or its part for the period of time defined in the decision, or for the indefinite period of time, if required for the purpose indicated by the Law (art. 124–126 of the Law [3]).

## 2. Subjects of Expropriation Procedures

The subject of expropriation can be any natural person and/or legal person, also a foreign citizen. In this sense the Law does not make any limitations. The only property that cannot be expropriated is the one belonging to the State Treasury. This does not refer to the expropriation of perpetual usufruct or limitations in other property rights connected with the real estate. Thus, making the public investment for the benefit of the unit of local self-government on the land belonging to the State Treasury, e.g. a road, is possible by getting the ownership of the land (or its perpetual usufruct) by Civil Law agreements. According to art. 13 of the Law [3], real estates of these subjects can be subdued to trade. In particular, they can be sold, exchanged, surrendered, given into perpetual usufruct of be a subject of gift between the State Treasury and the unit of local self-government. In the agreement of gift the purpose for which the real estate is given is defined. The gift of a real estate being a subject of the State Treasury is given by the head (*starosta*) of the county (*powiat*), fulfilling the tasks of central administration, with the permission of the head (voivode) of the province (voivodeship).

The real estate can be expropriated only in favour of the State Treasury or the unit of local self-government. The State Treasury and units of local self-government are the only subjects authorised to acquire a real estate through its expropriation. This does not mean that the investment in this area must be carried out by the State Treasury, municipality (*gmina*), county (*powiat*) or the self-government of the province (voivodeship). The real estate, after expropriation, can be given without payment, also in the form of the gift, to a partner, whether private or a joint venture mentioned in art. 19 passage 1 of the Law of 28$^{th}$ July 2005 on the Public--Private Partnership (Journal of Law No. 169, item 1420) as a contribution of the public subject to the implementation of public tasks, within the public-private

partnership, taking into account art. 25 on the Public-Private Partnership, Journal of Law of 2005 year, No. 169, position 1420, with later amendments). The expropriated real estate can also be sold to another subject, with the call for bids, and the proper organ (art. 68 passage 1 of the Law) can even, with the permission of the proper voivode, the county or voivodeship council, give the reduction of the price established during the call for bids, if the real estate is sold as an apartment, for the purposes of technical infrastructure or other public use. This also refers to the sale to the State Treasury or other unit of local self-government.

There are clearly defined legal facilitations for a subject that intends to make an investment for a public purpose. According to art. 122 of the Law, in cases defined in art. 108 of the Administrative Procedures Code, the *starosta* carrying the task in governmental administration, can, by the power of decision, grant the subject willing to implement a public investment with the permission to overtake the real estate immediately after getting the decision of the real estate expropriation, if the delay could make the implementation of the defined public purpose impossible. This decision can be put under the regime of immediate implementation. Consequently, if issuing the decision of expropriation requires prior division of real estate, the decision accepting the plan can be put under the regime of immediate implementation.

## 3. Expropriation of Real Estate is an Administrative Procedure

Expropriation real estate, is a procedure of administrative law. Expropriation can only be made by an administrative procedure, regulated only by a legal act in the rank of statute and ended by the ultimate administrative decision. Not only the regulations of the Law on the management of real estates are applied, but also the Administrative Procedures Code. No expropriation of real estate is carried out before an ordinary court, with ordinary court procedures. Referring to the possibilities of claiming against the ultimate decision, this decision made by a proper administrative organ, can be overturned by the Supreme Administrative Court.

The expropriation cannot be by the force of law. Thus transferring the property of real estate by the force of law (art. 98 or the Law on the management of real estates) to the municipality, county, voivodeship or State Treasury if a parcel of land taken from a real estate was given for the purpose of public road whether municipal, county, voivodeship or national scale, if the division of the land was made on the request of the owner or user of perpetual usufruct is not expropriation The singled out piece of land changes the owner on the day when the decision confirming the division of the real estate became ultimate or the decision came in force.

For the parcels, singled out for new public roads or extending existing roads, compensation is paid in the amount agreed between the owner or user of perpetual usufruct and the proper organ. It is possible to propose another real estate in exchange, as compensation. In this case – the regulations of art. 131 of the same Law are applied – referring to the expropriation of real estate. If such an agreement is not made, on the request of the owner or user of perpetual usufruct, compensation shall be established in the form of money and paid according to the rules and procedures applied at the expropriation of real estate. The decision on the division of real estate has, in the matter of changing the owner of the parcel meant to be converted into a public road, a declarative character. A respective body makes a request to present in the land registration the rights of the commune (*gmina*), county (*powiat*), voivodeship or State Treasury to the parcels of land designed for public roads or extending the existing public roads. These rights shall be included into the land registration and this is based on the ultimate decision confirming the division.

The same problem refers to the consequences of art. 73 of the Law of 13th October 1998 – Regulations Introducing the Statutes Reforming Public Administration (Journal of Law No. 133, item 872, with later amendments), according to which – the real estates taken for public roads, but not being a property of the State Treasury or the units of local self-government on the day of 31st December 1998; with the day of 1st January 1999 became the property of these subjects by the power of law. The declaratory decision was (until 31st December 2005) to be made by the voivode, on the request of authorized persons. The compensation had to be established and paid according to the rules and in the way defined in the regulations on compensations for the expropriated real estate by the owner of a public road. This is also important that, if the public road is to be built on a part of a real estate, the division of real estate shall be made, without issuing the decision of the division.

## 4. Public Purpose and Public Interest

Art. 21 passage 1 and 2 of the Constitution of the Republic of Poland of 2nd April 1997 (Journal of Law No. 78, item 483) states that "The Republic of Poland shall protect the property and the right of inheritance. Expropriation is acceptable only if made for public purposes and with a proper compensation."

Public purposes are clearly named and indicated in art. 6 of the Law. They make a catalogue that is not closed, but can be amended only in the form of a Law. For example, in 2003 searching, recognizing, mining and deposition of lignite with the opencast method was included into the list of public purposes (point 8, sentence 2).

The request for expropriation should include: a public purpose, the implementation of which requires taking the real estate, the way the real estate has been used so far and the state of its management. The abstract and sketch from the local management plan and the map should be enclosed into the request for expropriation, and – if there is no local management plan – the decision on establishing the localization of the investment for the public purpose. Public purpose must be named in the way defined in a proper point of art. 6 of the Law.

Apart from the legal term "public purpose", in the Law of 27th March 2003 on Spatial Planning and Management [3] the term "public interest" appears and is defined as "generalised goal of objectives and activities, regarding objectified needs of general public or local communities, connected with spatial management" and "investment for the public purpose", i.e. actions of local significance (municipality level) and more than local significance (county, voivodeship and national level), implementing the purposes mentioned in art. 6 of the Law of 21st August 1997 on the Real Estate Management [3]. The needs of public interest must be regarded in the spatial planning and management. The creation and implementation of spatial policy in the municipality, including the acceptation of the document of land use planning for the municipality and local plans of spatial management, except of marine internal coastal waters, territorial marine waters and exclusive economic zone as well as closed areas, belong to the municipality's own tasks. Analyses and studies in spatial management, up to the county level, belong to the county self-government. While the creation and implementation of spatial policy in the voivodeship, including the acceptation of the spatial management plan of the voivodeship, belongs to the tasks of the voivodeship self-government. The task of the Council of Ministers is the creation and implementation of the State's spatial policy, expressed in the concept of the State's spatial management.

Art. 112 passage 3 of the Law on the Real Estate Management states: "Expropriation of a real estate can be carried out if public purposes cannot be achieved in any other way than by taking away or restricting the rights to the do real estate and these rights cannot be acquired by the agreement".

First, one should consider the case of using for public investment a land belonging to the State Treasury, municipality, county or voivodeship. If this land cannot be used, due to the function of the investment, criteria of its situation, e.g. roads, prisons, graveyards etc., one can consider the land belonging to other legal subjects. These criteria should be equally applied both to national and self-governmental legal persons.

There is a legal question connected with the proper management of real estate resources, concerning art. 20–25d of the law of Real Estate Management and – in particular – art. 23, requiring, among others, the resource usage plan. The goal is

effective use of local and national resources of real estates. To achieve this, a proper information system of the real estate management is necessary. Such a system should allow on-line inventory of the actual and legal state of real estates, processing information, analysis and assessment in terms of e.g. municipality's tasks.

A particularly important task is a thoroughly thought management of real estates, to prevent diminishing of the real estate resource by too common sale of land, e.g. to the owners of the neighbouring real estates, so that public purposes could be achieved. Sometimes long-term policy of the management of real estate resources requires purchase of land and decomplexing of parcels for future realization public purposes, or – in wider sense – social goals, without using expropriation of real estates. Certain changes have already been observed in this area. More and more companies offer systems of making the inventory of land and buildings, connecting graphic data with description data, extend their offer by further applications, mutually co-operating and allowing better and better resource management. The example can be the Geotec company, using program Oskar 3.0 for the inventory of land and buildings, program PlanGT connecting graphic data with description data and program RejestrGT, possessing the lists of: prices and values of real estates and the list of decisions on excluding the grounds from agricultural or forest production. Another example is the STRATEG system made by the Geobid, based on the EWMapa program, for integrated management of a local self-government unit.

## 5. Spatial Planning and the Expropriation of Real Estate

Regulations defining the course of administrative procedures in the expropriation of real estate can be found in art. 112–135 of the Law on Real Estate Management and first of all refer to real estates situated in the areas indicated in local plans of spatial management for public purposes, or for which the decision on the localisation of public investment was made. The exception is the limitation of property rights to real estates mentioned in art. 125 and 126, referring to all the real estates, without the connection with the existence of the local plan and destination of these real estates in the local plan.

Thus the local plan of spatial management should define (according to art. 4 of the Law on Spatial Planning and Management): the destination of the area, distribution of public investments and the ways of the management and conditions of building up the area. The exceptions are the areas of marine internal waters, territorial marine waters and exclusive economic zones, for which the determina-

tion on the area management distribution of public investments, the ways of management and conditions of building up the area are regulated by particular regulations of the law of 21 March 1991 on the Marine Waters of the Republic of Poland and Marine Administration (Journal of Law of 2003 year, No. 153, item 1502 with later amendments).

Only in case of the lack of the local plan of spatial management, the localisation of public investment can be made in the written decision of the localisation of public investment. The procedure of making a local plan is preceded by making a study of the conditions and directions of the spatial management of the municipality, regarding the principles defined in the concept of spatial management of the country, deciding the strategy of the development and the plan of spatial management of the voivodeship and the strategy of development of the municipality, if the municipality has such a document.

In the study one should regard the conditions resulting from art. 10 of the law, among others:

- needs and possibilities of the development of the municipality;
- directions of the development of the systems of communication and technical infrastructure;
- areas on which the public investments of local and more than local significance are to be made, according to the decisions of the plan of spatial management of the voivodeship and the decisions of the programs of governmental tasks;
- the areas for which the municipality intended to make a local plan of spatial management, including the areas requiring the conversion of agricultural and forest lands for purposes other than agriculture or forestry.

Making the study takes time and requires many actions of administrative bodies. A detail procedure of making it is regulated by art. 11–12 of the Law on Spatial Planning and Management [3].

If the council of the municipality failed to create the study or make changes in it, or – while making the study, failed to define the areas of the location of public investments of national and voivodeship significance, covered by the plan of spatial management of the voivodeship or in the governmental programs, the voivode, after taking actions to decide the deadline for the realization of these investments and the conditions of introducing these investments into the study, should call the municipality to make the resolution on creating the study or making adequate changes in the study, within a determined period of time. If this is not made by this deadline, the voivode shall make the local plan of spatial management or introduce changes it for the area, where the negligence in the municipality occurred, in the range necessary to allow the realization of public

investment and shall issue a provisional enactment related to this. The plan accepted in such a way involves the same legal effects as the local plan spatial management (art. 12, passage 3).

Only if the valid "study" occurs, one can take technical and legal actions connected with the local plan of spatial management to decide on the destination of the areas, including public investment. Here the order is the following:

- The head of the municipality (*wójt* – in a village municipality, *burmistrz* – mayor of a town or *city president* – mayor of a city above 100 000 inhabitants) makes the analyses referring to making the plan and the degree of the compliance of predicted solutions with the decisions included in the study, prepares geodetic materials for the plan and decide necessary range of town and country planning works. The local plan does not refer to closed areas, but is compulsory if required by separate regulations.
- The council of the municipality shall accept a resolution on starting the local plan of spatial management, by their own initiative or on the request of the head of the municipality. An integral part of such a resolution is a graphical enclosure presenting the borders of the area included into the project of the plan. The local plan can include a fragment of the municipality. Only in case when – as a result of the of the accepted plan – the destination of the agricultural land or forest land has been changed into other purposes the plan should be made for the whole area indicated in the study.
- The head of the municipality shall make the project of the local plan, including a text part and graphical part, according to the notes in the study and separate regulations, referring to the area covered by the plan. In the local plan, among others the requirements resulting from the needs of the formation of public space are compulsory.

When the council of the municipality takes the resolution on starting a local plan, the head of the municipality shall (subsequently): announce in local press, by a public announcement and in the way customary accepted in this locality the information on the resolution on starting a plan, defining the form, place and deadline for sending the requests referring to the plan, not shorter than 21 days from the day of the announcement; inform in a written form proper institutions and bodies on the resolution to make decisions and comments on the plan, look through the requests, make the project of the local plan together with the environmental impact assessment, make the prediction of financial effects of the acceptance of the local plan, get the opinions on the project of the plan and the decisions are made together with the same organs as for the study. Additionally the heads of municipalities bordering with the area covered by the plan shall be informed about public investment of local significance (art. 17, points 6 and 7).

For later expropriations of real estates the following is particularly significant:

- getting permissions from proper organs, according to art. 7 of the Law of 3rd February 1995 – on the Protection of Agricultural and Forest Land (Journal of Law No. 16, item 78, with later amendments) on the converting of agricultural and forest land into other purposes;
- public exposition of the project of the plan with the environmental impact assessment to be looked into, for at least 21 days;
- public discussion on the solutions accepted in the project of the plan;
- the fact that natural and legal persons and organization units with informal legal status can bring up comments referring to the plan;
- possibilities of introducing changes into the project of the local plan, resulting from the comments.

Comments to the project of the local plan can be brought by anyone who questions the decisions accepted in the publicly displayed project of the plan (art. 18, passage 1 of the Law).

The local plan is accepted by the council of the municipality, after confirming its compliance with the decisions in the study, at the same time deciding on the way of dealing with the comments to the project of the plan and the way of implementation of the included into the plan investments in technical infrastructure, belonging to the tasks of the municipality (art. 20, passage 1 of the Law).

Changes in the local plan can be made in the same procedure as they had been accepted (art. 27). Everybody is allowed to look into the study or local plan and obtain its transcripts and drafts.

## 6. Decision on the Location of Public Investment

In case of the lack of the local plan of spatial management, public investment is located by the decision on the localization of public investment. The project of this decision can only be made by a person put into the list of the corporation self-government chamber of city-planners or architects.

The decisions are made on the application of the investors, referring to:

- public investment of national and voivodeship significance – by the head of the municipality, in the consultancy with the marshal of the voivodeship;
- public investment of county and municipality significance – by the head of the municipality;
- public investment on closed areas – by the voivode.

The application for the localization of public investment should include:
- the borders of the area covered by the application, presented on the copy of the basic map or, if there is no such a map, on a copy of cadastre map, accepted to the state geodetic and cartographic resource, covering the area the application refers to and the area where this development would affect the environment; the scale of the map should be 1:500 or 1:1,000, and in case of linear investment – also in 1:2,000 scale;
- detail characteristic of the investment;
- obligation for the application maker to fulfil the duties or conditions defined by separate regulations.

To start the procedure about the decision of making public investment, the resolution and decision ending the procedure, the parties shall be informed by the announcement and also in a way customary accepted in the locality. The investor, owners and users of perpetual usufruct of real estates, where public investments are to be made shall be informed in written.

The decision is issued after agreeing with numerous bodies indicated in art. 53 of the Law on Spatial Planning and Management. The decision on the localization of public investment defines among others: the kind of the investment and lines separating the area of the investment, shown in the map in a proper scale. Knowing the lines marking the borders of the investment will be necessary in the future for marking the borders of the area covered with expropriations and geodetic and cartographic studies for divisions and the expropriation of real estates.

The decision on the localization of public investments is binding for the body issuing the decision about the permit for building.

## 7. Expropriation of Real Estate without a Regulated Legal Status

In an expropriation procedure, which is a particular administrative procedure, it is compulsory to properly identify the owner, user of perpetual usufruct of a real estate and persons having other property rights to a given real estate. Due to the lack of land registration, set of documents or other evidence, it can happen that these persons cannot be identified in a reasonable term. Thus, in art. 113, passage 6 of the Law on Real Estate Management, a real estate without regulated legal state was defined, and in further regulations a simplified expropriation procedure was established for them.

In case of real estates the information on the intention of expropriation is given by the head of the county in the way customary accepted in a given locality and on websites of the county office (*starostwo*), as well as by the announcement in

press of a national range. The announcement can also contain information on the intention of starting a procedure of the division of this real estate. If in the term of 2 months from the day of the announcement the persons having property rights to the real estate do not turn up, a procedure of a possible division of the estate and expropriation procedure can start.

Starting the expropriation procedure takes place on the day defined in the announcement on starting the procedure, displayed in the county office. After accepting the expropriation procedure the head of the county does not make any court procedure, but issues the decision on compensation and acquiring the property rights to a real estate by the State Treasury or a unit of a local self-government, asking for expropriation procedure. Acquiring the property rights to a real estate takes place on the day when the decision became ultimate. The decision shall be announced. The compensation for the real estate shall be put into court deposit for the period of 10 years.

## References

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