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FAIR COMPENSATION FOR THE EXPROPRIATION OF REAL ESTATE FOR THE PURPOSES OF THE IMPLEMENTATION OF THE CENTRAL TRANSPORTATION HUB

Abstract

The article delves into the matter of fair compensation rendered for the expropriation of private property in the context of the Central Transportation Hub (CPK). It discusses the legal framework for expropriation in Poland by taking up a comparative approach towards the institution as defined in the Constitution, the Property Management Act, as well as in the Central Transportation Hub Special Act. It also delves into the historical background of expropriation. Consequently, by providing the definition of fair compensation, statutory regulations concerning it, as well as judgments that are of paramount importance, it ponders on the current situation regarding compensation for landowners whose property will be affected by the Central Transportation Hub investment. The ultimate objective of this article is to present an array of legal possibilities and doubts concerning the guidelines and circumstances that will serve as the basis for determining compensation for private owners. The article advances several courses of action and suggestions to improve the compensation process. Those, in turn, could potentially be a way of assuring that landowners acquire fair and just compensation for their rights to the expropriated properties.

KEYWORDS

expropriation, fair compensation, property rights, private property, appraisal report, Property Management Act, Central Transportation Hub Act

SŁOWA KLUCZOWE

wywłaszczenie, słuszne odszkodowanie, prawo własności, własność prywatna, raport rzeczoznawcy, ustawa o gospodarce nieruchomościami, ustawa o CPK

1. INTRODUCTORY ISSUES

It is common knowledge that in the interest of building public highways, airports, railroad tracks and other infrastructure projects private properties need to be acquired by the State. The whole process is regulated by the institution of expropriation, which is widely known as the deprivation of property or proprietary rights. Notably, it involves an act issued by a public authority to claim privately owned property against the will or plans of the owners for the principal benefit of the public. Ordinarily, this is not a method of supplying the standard needs of the government; however, it is directed at satisfying specific governmental objectives. It is undeniable that expropriation can be carried out only when the owner has such recognized subjective rights that give him the right to demand his consideration from all others, including the State Administration apparatus, and these rights also include the right to exclusive disposal of the property owned by them.

This paper is focused on the analysis of the institution of the expropriation with a considerable emphasis on the concept of fair compensation in the light of the realization and implementation of the Central Transportation Hub. Particular attention will be paid to the assessment of the Expropriation Law within the Polish legal context. What is important, is that this paper is taking an *a priori* approach as if the Central Transportation Hub was a widely accepted public benefit and public purpose as understood by Article 21 sec. 2 of the Constitution of the Republic of Poland. Consequently, its objective is not to delve into the matters concerning what constitutes public purpose and what does not but to, first and foremost, focus on the regulations foreseen for the mega investment, as well as on the potential issues the project may involve.

Notably, introducing the institution of expropriation seems to be of utmost importance in the light of the controversial governmental project of the Central Transportation Hub *(Centralny Port Komunikacyjny).* The Hub, together with vital connections to the components of the railway system and road network, is meant to be built by 2027.[1] Predestined to play a fundamental role as a major multi-modal aviation and railway interchange between Warsaw and Łódź connecting international air, road, as well as rail transports, the project is separated into stages. One of them entails the construction of a six-level structure; New Central Polish Airport – Solidarity Transport Hub is due to serve circa 40 million passengers annually.[2] The remaining ones involve, *inter alia*, junction investments in the immediate vicinity of the aforementioned airport that further national railroad systems. They will ultimately pave the way for intuitive and easy commutes and transfers between the capital city and the voivodeship cities within maximum 2.5 hours. They are also supposed to contribute to the increase in the number of the commercial speed trains and the number of their passengers.[3] As provided in the attachment to Resolution No. 173/2017 of the Council of Ministers of 7 November 2017: *"The concept provides for the creation of legal and infrastructural opportunities to locate a new city in the vicinity of Solidarity Airport, including, for example, business parks, a world-class exhibition and congress centre for the region of Central Europe, conference centres, office, and administrative buildings, or, for instance, a joint campus created by the federation of Polish universities"*.[4]

For the purposes of the project's implementation, a comprehensive *lex specialis* was adopted – the Act on Central Transportation Hub of 10 May 2018. It holds a fundamental significance in supporting the investment process, as well as managing the preparation and implementation thereof. Up to this day, it has undergone 4 distinct amendments.[5] One of them seems to have substantial importance. The Act on Improving the Investment Process of the Central Transportation Hub of 22 July 2022 contains a modified legal framework for the development, adoption and implementation of the CTH.[6] The introduced provisions include the conclusion that the area surrounding the Hub is a functional area and an area of strategic intervention within the meaning of Articles 5 points 6a and 6b of the Act of 6 December 2006 on the Principles of Development Policy.[7] The area is

[1] Attachment to Resolution No. 173/2017 of the Council of Ministers of 7 November 2017: Investment Preparation and Implementation Concept: Solidarity Airport – Central Transport Hub for the Republic of Poland, 17 Nov 2017: https://www.gov.pl/static/mi_arch/2-UchwalaCPK.html (accessed 29 December 2022).

[2] *Ibidem*.

[3] *Ibidem*.

[4] *Ibidem*.

[5] The word 'novelization' has been purposefully left out as a false friend. The word 'amendments' is to be understood within the meaning of Polish *nowelizacje*.

[6] Act on streamlining the investment process of the Central Transportation Hub of 22 July 2022 (Journal of Laws of 2022, item 1846).

[7] Act on the principles of development policy of 6 December 2006 (Journal of Laws of 2021, item 1057 as amended).

hence distinguished by having potential functional ties, as well as special social, economic and urban conditions. Those pave the way for combining diverse public investments and regulatory legal solutions.

While the entire master plan fundamentally integrates national transportation lines with Central Transportation Hub by air, road and rail, the issue of land expropriation has brought about a range of questions by the inhabitants and local communities of the premises destined for the construction. Doubts concern, *inter alia*, the exact locations of the Hub's premises, the procedure of expropriation, compensation estimation methods, the retrieval of expropriated property, as well as important social costs of the plan such as resettlements. Notably, the last-mentioned problem was brought to the Polish Ombudsman's attention.[8] It hence seems paramount to revise the general rules of the Expropriation Law and the special provisions provided by the special statute on the Central Transportation Hub. In light of the myriad of expropriation regulations, it is crucial to take on a comparative approach and delve into the procedures determining compensations for the public acquisition of the properties in the terrains meant for new infrastructure.

2. EXPROPRIATION LAW

2.1 HISTORICAL BACKGROUND

By the contemporary token, expropriation is considered a form of deprivation or limitation of property rights or limited real rights in the wake of an individual administrative act. It is imperative to distinguish expropriation from nationalization (as well as confiscation, requisition, or sequestration, but for slightly different reasons). Expropriation is a legal construction allowing, by way of an individual administrative act, for the acquisition or limitation of the rights to real estate for fair compensation. The discussed term differs from nationalization, which is a result of a normative act and does not provide for any financial recompense at all, while expropriation renders that fair compensation is paid to the private owner of the claimed property.[9] In modern understanding, nationalization is intended to serve premises different from the ones justifying expropriation.

[8] Letter from the Ombudsman to the Government Plenipotentiary for the Central Transportation Hub: https://bip.brpo.gov.pl/sites/default/files/WG_dot._CPK_3.03.2021.pdf (accessed 29 December 2022).

[9] R. Szarejko, *Wywłaszczenia nieruchomości w Polsce w latach 1944-1998*, Archnet 2014, p. 5.

Nonetheless, the discussed term formerly applied to any compulsory deprivation of property, particularly by a public body; however, it now pertains primarily to government acquisitions where compensation is guaranteed. After the end of World War II, the institution of expropriation was heavily abused in Poland. The authorities of People's Poland carried out massive expropriation processes without sufficient public or financial justifications, though seemingly accounted for by 'national economic plans', as well as used the expropriated real estate for purposes other than the ones originally intended.[10] Acquisition of private property was regulated by multiple imprecise decrees that related to different situations, conditions and types of real estate. Frequently, those processes would be purposefully regulated in a manner that would enable public authorities making swift and exceedingly quick takeovers of possessions.

As for compensations, those were not necessarily an implied element of the legal transition of ownership. Frequently, they would only be rendered when specifically requested. Afterward, not only did they have to be granted by a public authority but also usually handed over in local securities.[11] In other instances, special commissions were destined to determine the amount of compensation. The period between seizing property and settling with a former private owner could take months (if not years). What is more, the compensations foreseen in legal acts were not always paid. Widely ambiguous and general purposes for which expropriation could be carried out and the applied general principle of non-equivalence of compensation for expropriated real estate were omnipresent.[12]

2.2 EXPROPRIATION IN THE CONSTITUTION

For what concerns the modern legal construction of expropriation, the term was introduced to the Constitution of 31 December 1989, i.e. on the date of entry into force of the Act of 29 December 1989, amending the Constitution of the Polish People's Republic. Accordingly, Article 7 of the 1952 Constitution was given the following wording: "The Republic of Poland protects property and the right of inheritance and guarantees complete protection of personal property. Expropriation is permitted only for public purposes and for fair compensation". This provision was upheld until 2April 1997, when the Constitution of the Republic of Poland entered into force. Hence, the modern Expropriation Law in the Polish legal system derives from Article 21 of the Constitution of the Republic of Poland, which reads as follows: *"1. The Republic of Poland protects property*

[10] Decree of 26 April 1949, on the acquisition and transfer of real estate necessary for the implementation of national economic plans (Journal of Laws 1949.55.438).

[11] Decree on ownership and use of land in the area of the capital city of Warsaw dated 26 October 1945. (Journal of Laws of 1945, No. 50, item 279).

[12] R. Szarejko, *Wywłaszczenia*..., p. 6.

and the right of inheritance. 2. Expropriation is permissible only if it is carried out for public purposes and for fair compensation". However, the Constitution of the Republic of Poland does not define the concept of expropriation in this or any other provision. Solely, the purposes for which the expropriations may be made are defined, coupled with fair compensation. It is not specified whether these concepts constitute the elements that make up the constructional legal core of expropriation or only its premises that should occur with lawful expropriation.

The Constitution of the Republic of Poland in Article 64 then follows into using conversely the terms 'ownership', 'right to the ownership', 'property rights' and 'other property rights'. Both jurisprudence and literature have raised the problem of the content of these individual constitutional concepts and the relationship between them. Prevailing is the opinion that in the light of Article 21, the Constitution uses the concept of property in a general and broad sense, in which a set of subjective rights is the object of protection, and not only the right of ownership within the meaning of the Civil Code.[13] Furthermore, in the judgment of 21 March 2000, the Constitutional Tribunal proclaimed for the exact understanding of the term 'property' mentioned in Articles 20, 21 sec. 1, 64, and 165 sec. 1 and thus opted for the prevalent opinion of the doctrine that *"constitutional understanding of property surpasses the approach given by the Civil Law"*.[14] Further judgments of the Constitutional Tribunal give grounds for assuming that its views concerning the scope of the discussed term in the light of Article 21 are developing.[15]

2.3 EXPROPRIATION IN THE PROPERTY MANAGEMENT ACT

On the statutory level, the practical application of the institution of expropriation is included in the Property Management Act of 21 August 1997, in Chapter 4, section III *(Ustawa o gospodarce nieruchomościami)*.[16] Notably, it plays a vital role in defining the subjects and objects undergoing the process, as well as paves the way for general terms of expropriating real estate (as understood by Article 46 § 1 Civil Code). Consequently, as T. Woś remarks, this act did not invalidate all statutory provisions in force in Poland on the date of its entry into force, providing for the possibility of expropriation of property in given, specific cases.[17] Thus, the act has a crucial meaning since it is a *lex generalis* for other specific

[13] F. Zoll, *Prawo własności w Europejskiej Konwencji Praw Człowieka z perspektywy polskiej*, PS 1998, No. 5, p. 29.

[14] Judgment of the Constitutional Tribunal of 21 March 2000, K 14/99, OTK 2000, No. 2, item 61.

[15] M. Szalewska, *Wywłaszczenie nieruchomości*: Dom Organizatora, pp. 124-125.

[16] Property Management Act of 21 August 1997 (i.e. Journal of Laws of 2021, item 1899 as amended).

[17] T. Woś, *Wywłaszczenie nieruchomości i ich zwrot*, LexisNexis 2011, chapter I, p. 4.

regulations. Woś states that due to the general scope of application (all real estate throughout the territory of the Republic of Poland), the wide range of grounds for expropriation, and the relationships that detailed regulations most often provide for in this Act, it should be regarded as the primary source of law as far as the expropriation of real estate is concerned.[18]

The constructional nature of expropriation defined in Articles 112-127 of the Property Management Act consists of the compulsory removal of the ownership right (perpetual usufruct right or limitation of it) and limiting or abolishing other property rights in the wake of an administrative decision.

What is more, the aforementioned interference in private owner's rights can only be made for the sake of public bodies, such as the State Treasury or local government entities as understood in the Act on Municipal Government, Act on Country Government and Act on Voivodeship Government *(Ustawa o samorządzie gminnym, Ustawa o samorządzie powiatowym i Ustawa o samorządzie województwa)* as foreseen by Article 113 sec. 1 of the discussed Act.

Furthermore, the Act provides that a property can be seized if it is indispensable to the application of public objectives (such as land allocation for a myriad of infrastructure projects, construction and maintenance of transmission lines, allocating land for publicly available local roads, parks, etc.). When expropriated, the property cannot be used for purposes other than the current ones justifying its acquisition by the State. It can be returned to the previous owner or their heirs if it becomes nonfunctional.

Accordingly, Article 21 sec. 2 of the Constitution of the Republic of Poland and Article 128 sec. 1 of the Property Management Act, the expropriation of real estate is grounds for compensation, which should correspond to the value of the expropriated property. Compensation is therefore a necessary equivalent for taking away or limiting the ownership of real estate from the owner, as well as taking away or limiting other property rights other than ownership. Thus, without compensation, no expropriation can be admissible within the meaning of this Act.

Finally, expropriation is an *ultima ratio*, admissible only when a specific property cannot be acquired by the State Treasury or a specific local government unit under a civil law contract (Article 112 sec. 3 of the Property Management Act).

2.4 EXPROPRIATION IN THE CENTRAL TRANSPORTATION HUB (SPECIAL) ACT

There are a couple of legal actors to take into account when pondering on the issue of expropriation within the understanding of the Central Transportation Hub Act. First of all, Chapter 1 of the Act provides for the appointment and dismissal of a plenipotentiary by the Prime Minister. The plenipotentiary is responsible for

[18] *Ibidem.*

preparing the project's scheme, planning its implementation, as well as coordinating, together with the minister responsible for regional development, the socioeconomic development of the Hub's surrounding area. He is also empowered, as indicated in Article 5 of the discussed Act, to grant consent for the management of assets by the Special Purpose Vehicle (SPV) designed to provide substantive assistance to him. The SPV is established by the State Treasury to ensure the preparation and implementation of the Program, as well as coordination and control of the implementation thereof. Should expropriations be completed, they will be made for the account of the SPV. The public administrative bodies and their subordinate units are bound to cooperate and assist the plenipotentiary as well.

A vital role is played by the voivodeship governor *(wojewoda)*. As foreseen in Article 40, he issues a decision determining the location of the investment. The decision is issued upon SPV's motion for a decision after requesting an opinion from 18 different public authorities (the voivodeship board, the county boards, various ministers and directors). The decision includes which lines separating the area are indicated, their characteristics, special requirements for connecting the Hub with public transportation lines (public roads, railway lines and its networks, including areas or connection points with them), conditions arising from the needs of environmental protection, fire protection, and the protection of monuments and cultural treasures, conditions arising from the needs of defense and security of the State (including the protection of the State border and border traffic control, as well as the IT networks and systems necessary to meet these needs), and the remaining provisions indicated in the aforementioned Article. What is of utmost importance for the purpose of this paper, is the fact that the governor's decision provides for a comprehensive list of properties and/or their parts that will be subject to expropriation (Article 40 sec. 2 p. 9).

As indicated in Article 46: "*1. On the day of delivery of the notification on the issuance of the decision on determining the location of the CTH investment, the proceedings to determine the compensation for the expropriation of real estate are initiated. 2. The notification includes information about 1) The Property's owner or its perpetual usufructuary right to receive a replacement real estate as compensation or to determine the compensation by way of negotiations, coupled with the obligation to notify the SPV about the choice of the method that will determine the compensation within 14 days since the date of notification's delivery (...)*" (Article 46). The discussed legal framework, as foreseen by the Act, differs from the one included in the Property Management Act. The special regulation does not allow for a regular expropriation procedure within the meaning of Article 114; public authority enters directly into the expropriation itself and does not permit negotiations for the acquisitions of property rights between the private owner and district head *(starosta)*, performing a task within the scope of government administration. Even though the negotiations are not foreseen, the effect of both of those distinct ways of expropriations are similar – both of them allow for offering replacement real estate.

Admittedly, the regulation indicated in Article 46 of the Central Transportation Hub Act falls directly under Article 112 sec. 2 of the Property Management Act stating that expropriations can be performed by way of an administrative decision having direct effects in the sphere of civil law. The governor's decision on determining the location of the CTH investment is therefore an act of law *(zdarzenie prawne)* as understood by civil law.

Consequently, the right to ownership of properties indicated in the decision under Article 40, passes to SPV with compensation rendered. Interestingly enough, the aforementioned Article precludes the application of Article 113 sec. 1 and 2 of the Property Management Act stating that real estate may be expropriated only for the benefit of the State Treasury or for the benefit of a local government body. Furthermore, it prevents the application of section 2 of the discussed Article, ultimately paving the way for the possibility of expropriation of the State's limited real rights, as well as perpetual usufruct.

What is also worth mentioning, expropriation can pertain only to given parts of the property. If only a part of the property is the object of expropriation and the remaining part of the property is not suitable for use in a current manner or in accordance with the current purpose, at the request of the owner or perpetual usufructuary, the remaining part may be purchased, by way of a legal contract, for the benefit of the SPV. Interestingly, while part of the real estate is expropriated by an administrative decision, the remaining part of the property, unsuitable for substantive use for the existing purposes, may be acquired by the State only on the grounds of a civil law contract, which results directly from Article 113 sec. 3 of the Property Management Act.[19]

Finally, the transfer of the ownership right from the private owner to the SPV takes place on the day, on which the decision on determining the location of the CTH investment becomes final, which directly corresponds to Article 121 of the Property Management Act.

3. FAIR COMPENSATION

3.1 FAIR COMPENSATION AND CONSTITUTION

Compensation plays a vital role concerning expropriation and stands as a primary obligation of the State to the private owner whose real estate is seized. By the same token, Constitutional Tribunal stated in its judgment of 14 March 2000, the relevance of compensation: *"The effect of expropriation as an exceptional, but nevertheless legal institution, cannot be a situation in which a citizen remains*

[19] A. Zasadzka, *W kwestii przedmiotu i zakresu wywłaszczenia*, PPP 2010, No. 2, pp. 39-51.

without property and without compensation".[20] Consequently, the method of estimating the amount of compensation is of crucial importance.

The literature and jurisprudence indicated the dual nature of expropriation differentiated by its purpose under current legislation. Firstly, expropriation *ex lege*, mainly applied to regulations foreseen by *lex specialis*, such as the previously discussed Central Transportation Hub Act. Secondly, expropriation by way of an administrative decision as foreseen by the Property Management Act.

Admittedly, the Constitutional Tribunal ascertained in its aforementioned judgment that: "*Compulsory deprivation of property in any form constitutes expropriation in the constitutional sense and entails the necessity to pay the former owner fair compensation".*[21] The provisions of Article 21 sec. 2 of the Constitution of the Republic of Poland indicate 'fair compensation' alone, leaving out the criteria specifying the amount that compensation ought to be set to. In the aforementioned judgment, the Constitutional Tribunal specified that term: *"fair compensation is the one that mitigates these inconveniences as much as possible, as a result of the imbalance in the position of the public administration body and the owner of the property".*[22] Subsequently, the literature indicated three criteria making up the premise of fair compensation: its amount, the procedure for its calculation and payment to the owner of expropriated property, as well as the need to pay it within a reasonable period of time.[23]

Expropriation is admissible only when performed for the public benefit and when fair compensation is rendered. It should be equivalent to the value of expropriated goods. In other words, it entails that the compensation gives the owner or perpetual usufructuary the opportunity of restoring the state from before the acquisition of ownership rights to property.[24] The Constitutional Tribunal repeatedly emphasized: *"In the conditions of a democratic state ruled by law, the recognition of fair compensation in legal categories comes down to the principle of equivalence, i.e. in the case of expropriation – to give the expropriated owner the opportunity to restore the thing taken over by the state".*[25] According to its established line of adjudicating, 'fair compensation' is related to the value of the expropriated property. It is significant that the Constitution does not use the term 'complete compensation' *(pełne odszkodowanie)* but the term 'fair compensation'. The principle of fair compensation in the case of expropriation means that it should be equivalent to the value of the expropriated property, i.e. it should be

[20] D. Mróz-Krysta, Glosa to the judgment of the Constitutional Tribunal of 14 March 2000, P 5/99, LEX/el. 2015.

[21] Judgment of the Constitutional Court of 14 March 2000, P 5/99, OTK 2000, No. 2, item 60.

[22] *Ibidem*.

[23] *Ibidem*.

[24] M. Bursztynowicz, 7.4. *Wycinka drzew i krzewów (in:) Zarządzanie drogami publicznymi i realizacja inwestycji drogowych*, Warsaw 2021.

[25] Judgment of the CT of 19 June 1990, K 2/90, OTK 1990/1, item 3.

economically equivalent to the value of the expropriated property.[26] Moreover, in the judgment of 23 September 2003, the Constitutional Tribunal stated for the first time that: *"<compensation> must meet the <fairness> criterion, which does not necessarily mean that it must be <complete>. The Constitution is known to differentiate the scope of compensation effects – as a rule, as indicated by the existence of Article 21 sec. 2. This provision, moreover, concerns damage caused by an unlawful act. Nevertheless, the very idea of incomplete compensation is not unfamiliar to the Constitution. Therefore, it cannot be argued that the mere fact of lack of complete compensation is unconstitutional as such".*[27] Such interpretation is biding till this day.

3.2 STATUTORY REGULATIONS

Whereas statutory regulations provide different definitions, Article 130 sec. 1 of the Property Management Act introduces *"the value of the expropriated property"*, thereby paving the way for compensation determination. The discussed provision takes into account the conditions and purpose of expropriated real estate. It hence prevents the situation in which property acquired by the State was previously the source of income for the entire family of the owner (since it might have been, for instance, a farm or a shop). Subsequently, as T. Pistol remarks, the rules of Civil Law are applied when determining the value of the expropriated property. They enable an indication of real damage to the assets of the property when acquired by the State, as well as take into account the loss of benefits that the owner could obtain if they still had uninterrupted ownership of the property.[28]

What is more, Article 134 of the aforementioned Act introduced the concept of the 'market value' of the expropriated property, which is the basis for determining the amount of compensation and sets it at the market value of the property. Accordingly, this method of calculating recompense for the private owner is more attractive. However, difficulty arises when analyzing the details of the property valuation composed in the form of an appraisal report *(operat szacunkowy)*. An appraiser *(rzeczoznawca majątkowy)* plays a vital role in the entire process of settlement calculation, presenting an opinion specifying the value of the property, upon which the amount of compensation can be determined within the understanding of the aforementioned Act (Article 130 sec. 2). Seldom are there issues in determining the type, location, use, purpose or condition of the property undergo-

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[26] Judgment of the Supreme Administrative Court of 23 October 2014, I OSK 514/13, LEX No. 1591037.

[27] Judgment of the Constitutional Tribunal of 23 September 2003, K 20/02, OTK-A 2003, No. 7, item 76.

[28] T. Pistol, *Instytucja wywłaszczenia a prawo do własności jako prawo człowieka.* Oficyna Wydawnicza AFM: Państwo i Społeczeństwo 2010, No. 1, pp. 107-114.

ing valuation. The key aspect is to define the current prices in real estate trading. As seemingly uncomplicated as this indicator might seem, it holds utmost importance for the final valuation of the property and its correct determination.

Moreover, the Resolution of the Council of Ministers of 21 September 2004, on the Valuation of Real Estate and the Preparation of an Appraisal Report provides the appraiser with decision leeway in selecting the transaction prices to be traded on the market.[29] By the same token, the valuation can be quite easily overstated or underestimated. Therefore, the valuation of the property will always be quite subjective and, depending on the activity of the parties to the proceedings, it can and probably will be modified accordingly. The State will want to pay as little as possible, while the owner whose property is expropriated will want to receive as much as possible.

3.3 PROBLEMATIC NATURE OF FAIR COMPENSATION IN THE CONTEXT OF THE IMPLEMENTATION OF THE CENTRAL TRANSPORTATION HUB

From the aforementioned issue results a myriad of questions regarding clear wording of the compensation rules and valuation methods concerning real estate in the area designated for the implementation and realization of the Central Transportation Hub. It must be taken into account that while CTH is a completely new concept and its location has not been determined up to this day, even when taking into account investment and development plans. This appalling fact brings about quite a lot of uncertainty among the inhabitants of land destined for the new infrastructure. The Central Transportation Hub is a megaproject that cannot operate on the same standards and procedures as used in the previous, seemingly similar, investments. The Hub's implementation will affect hundreds of thousands of lives and, therefore, the regulation concerning its realization should stand as clear, non-contradictory and feasible as possible. What is more, regulations ensuring adequate compensation for those affected by the expropriation of their entire life's earnings encased in their privately owned possessions are of vital importance.

Nevertheless, the regulations foreseen in the Act on the CTH do raise considerable doubts. The SPV can reserve the land in the investment area if it is deemed necessary to ensure proper preparation of the investment. The reservation is made by the voivodeship governor in the reservation plan issued in the form of an ordinance *(zarządzenie)*, which constitutes an act of local law; therefore, universally binding law. This particular regulation can last no longer than 2 years (non-extendable) and has to take into account local consultations. Consequently, special rules of property management, spatial planning and development, as well as the

[29] Ordinance of the Council of Ministers of 21 September 2004, on the valuation of real estate and preparation of an appraisal report.

implementation of public purpose investment which may be established in the investment area reservation plan, include, *inter alia*: the right of pre-emption of real estate; the SPV's right to purchase and exchange real estate for the purposes set out in the Act; the right of the plenipotentiary to grant consent to the establishment of limited real rights or to the conclusion of contracts for the lease and rental of State Treasury properties and contracts that allow the implementation of investments on these properties, including investments of a non-construction nature; the investor's right to enter the property in order to carry out research or measurements necessary for the preparation and implementation of the investment (including archaeological, geological and natural research), etc. What should probably be of utmost concern is that the land covered by the reservation puts a ban on issuing building permits, which are a common way of converting land's purpose and consequently value; a ban on issuing decisions on land development and development conditions for all or selected changes in land development; a ban on issuing decisions on the division of real estate; a ban on issuing location decisions and decisions permitting construction works. The enumerated limitation constitutes a serious interference with the ownership rights of private property owners, as well as seriously limits the commune's planning authority *(władztwo planistyczne gminy)*. Likewise, they pose a risk of creating a narrative as if the public interest expressed in the Special Acts, such as the Act on CTH, took precedence over the interest of the commune and other local government bodies. It may, in turn, result in a violation of the position of the commune within the hierarchy of the legal system, and may, thereafter, cause negative social and economic consequences for the commune itself, as well as its local community.[30]

The State should hence introduce legal regulations that would minimize injuries to the owners of expropriated properties. Procedures that are currently in place enable pathological situations and do not take into account mortgages as well as construction costs on properties destined to be taken over by the State. Admittedly, in the case of building a house or other building on land, the difference between the construction costs and the compensation will be ample. The situation is of vital significance and calls for immediate action within the sphere of legal regulations. So far, those have not been introduced.

Nevertheless, the discussions taking place amid public consultations carried out in the counties where the implementation of the investment is foreseen, concern the market value of the properties that will be undergoing expropriation. This is to say, should the appraiser be setting the transaction prices according to their market value as of the day when the voivodeship governor's decision has become final, and therefore, the right to ownership of properties indicated in the decision has passed to the State? Or, conversely, should there be made a separate

[30] K. Chochowski, *Ograniczenia władztwa planistycznego gminy (in:) Podmiotowość samorządu terytorialnego a zakres jego zadań i kompetencji*, (ed.) K. Małysa-Sulińska, M. Stec, Warsaw 2020.

valuation, indicating the value of those properties when taking into account the vicinity of the infrastructure implemented? Taking into account the value of the entire CTH investment, which is set at around PLN 35 billion in official remarks of the plenipotentiary, and its extensive plans, the value of the properties in its surroundings will rise exponentially.

Conceivably, changing the rules for determining compensation would be beneficial to all the parties concerned. One of the possible solutions to the problem involves introducing the principle of pre-emption of real estate trading in the area covered by the initial location of the investment. Furthermore, an alternative arises from the possibility of introducing fixed prices of properties in the area covered by the initial location, similar to real estate valuations carried out before the appraisal reports were introduced into Polish legislation. As many ascertain, the appraisal reports are the core of present chaos and uncertainty in the compensation proceedings and should be swapped for a more beneficial method of real estate valuation.

Consequently, the introduction of each of the aforementioned mechanisms will only allow for the elimination of land speculation, while giving the opportunity to increase the amount of compensation paid. Notably, this is what would be the ultimate goal of the legal changes. What is worth emphasizing is that the social costs borne by the current expropriation and compensation regulations are too vast. Resistance of the people whose properties will potentially be expropriated is hence justified. What is more, seeing that the cost of the entire investment is put at approximately PLN 35 billion, as the government plenipotentiary has stated, the cost of purchasing the property itself is a rather insignificant item in the scale of the entire undertaking. The government constantly indicates its preparation for bearing higher costs. Subsequently, only when truly fair compensations are paid, the inhabitants will hand over their properties and be able to purchase land somewhere else. Interestingly enough, the Supreme Chamber of Control indicates that the costs of the investment may even rise to PLN 46 billion if the entire project is to fulfill its previously set objectives.[31]

4. CONCLUSIONS

The institution of expropriation in the context of the Central Transportation Hub investment is hence of a problematic and complex nature. Therefore, only a few aspects of it were addressed in this paper. Significantly, one has to note that it holds an important role by enabling the State, as a political organization,

[31] Information on the results of the audit: Construction of the Central Communal Port. KGP.430.006.202. reg. no. 129/2021/P/20/020/KGP.

or its local body, to achieve specific objectives in the public interest against the will of an individual and in violation of his rights. As the Property Management Act remarks, expropriation can be performed only towards properties destined in the local plans *(plany miejscowe)* for public purposes, as well as towards the ones pertained by a final decision about the localization of a public purpose. It is imperative that those could not be achieved other than by the joint fulfillment of the following premises: (1) deprivation or restriction of rights to real estate; (2) lack of possibility to acquire via legal and binding contract; (3) performance through an individual administrative act. Consequently, it results in the deprivation or limitation of property rights and limited real rights.

The Property Management Act concludes that expropriation is carried out with fair compensation and this applies to both ownership and perpetual usufruct, as well as other rights *in rem*. It should be assumed that it is not only about depriving but also about restricting the said rights to property. Hence, in principle, the compensation should correspond to the value of the rights that are taken away and should not include other elements, such as income from expropriated rights *in rem*. Consequently, if the object of these rights is real estate, then the value of the rights to the real estate is determined by the value of the real estate itself. Therefore, the compensation in such a case is determined by the value of the real estate, so that the amount of compensation compensates for the value of the real estate as the object of the rights *in rem* taken away.[32]

Finally, as reiterated previously, fair compensation is just compensation. At the same time, just compensation is equivalent to the value of ownership, perpetual usufruct or real rights *in rem* of expropriated property, because only such compensation does not violate the essence of compensation for seized property. It should be noted that restriction of the right to equivalent compensation through the introduction of deductions for reasons other than those already incumbent on the property is a violation of the constitutional principle of fair compensation. It is thus a violation of ownership itself. Furthermore, many point out that putting just compensation in legal terms boils down to the principle of equivalence. In the case of expropriation – it creates an opportunity for the expropriated owner to restore the thing taken over by the state.[33]

Subsequently, in a democratic state governed by the rule of law, expropriation of real estate without compensation is inadmissible. However, some of the observed legislative activities suggest that along with the growing regulatory function of the State of the public interest over the individual, one will face a growing threat to private property ownership. It can be especially seen based on the provisions of the Act of the Central Transportation Hub, which often impede the exercise of individual ownership rights over the property. Furthermore, one

[32] Bończak-Kucharczyk E., *Property Management Act. Commentary updated*: LEX/el. 2023, Art. 128.

[33] *Ibidem.*

can observe a clear trend in which expropriation ceases to be the *ultima ratio* procedure and becomes the inherent part of the implementation of special regulations regarding new infrastructure.

Future decisions regarding the precise localization of the Solidarity Airport, as well as of the CTH's infrastructure plans will undoubtedly pave the way for a groundswell of legal issues, especially in the context of expropriation and fair compensation rendered. Certainly, the problems aforementioned in the hereby paper will be cleared in the future when more precise regulations are introduced and implemented in practice. Till then, the society, as well as especially the inhabitants of concerned terrains, await future motions.

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