

# Compensation valuation



## Expropriation

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# Learning outcomes for today

After this lecture, you

- Know the principles of protection of property
- Can describe the situations where compensation is determined
- Can determine the basic parts of compensation

# Content

- **Expropriation (compulsory acquisition, expropriation, eminent domain, redemption)**
  - Principles
  - Procedures
  - Case: Finland
- **Compensation valuation**
  - Principles
  - Situations
  - Case: Finland
- **Compulsory purchase special cases: coercive purchase of a part of a plot, reliction areas**

# UN: The Universal Declaration of Human Rights Article 17

1. Everyone has the right to own property alone as well as in association with others
2. No one shall be **arbitrarily** deprived of his property.

# EU: Fundamental Rights

“Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the **public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss**. The use of property may be regulated by law in so far as is necessary for the general interest.”

# The Finnish Constitution

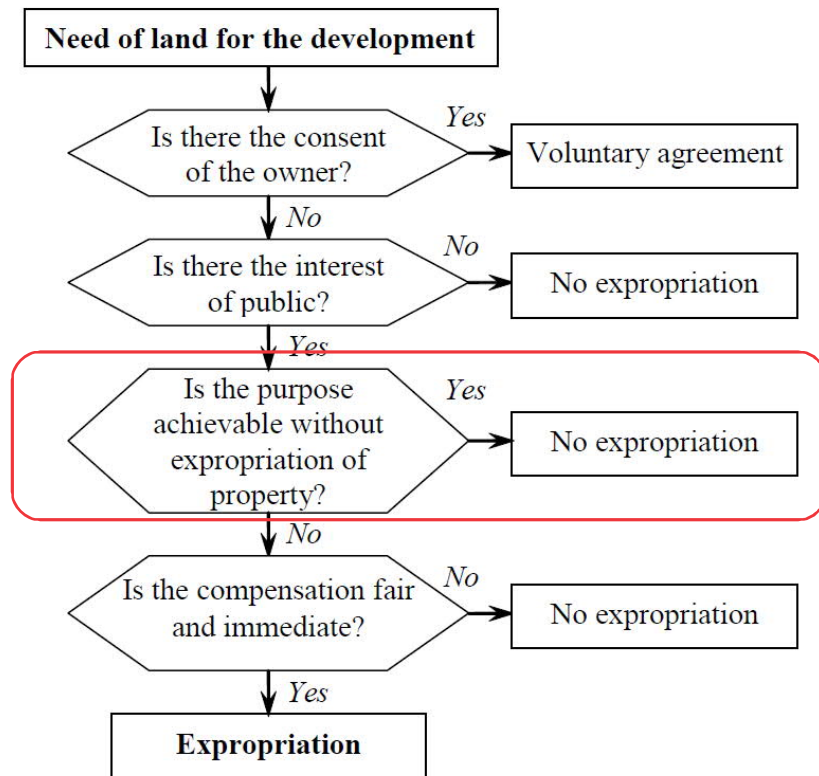
The property of everyone is protected.

Provisions on the expropriation of property, for public needs and against full compensation, are laid down by an Act.

# Expropriation

- In general, expropriation of privately owned property to the State, for purposes of **public interest**
  - Who expropriates? In Finland: The state or representative of the state; state enterprise; enterprise where the state is a spokesman; municipality, coalition of municipalities, private enterprise or a private person
  - Who is expropriated? In Finland: private persons; owner of a share, private enterprise, municipality, state enterprise or even the state
  - What is expropriated? In Finland: real estate, part of a real estate, use right, share of real estate, etc.

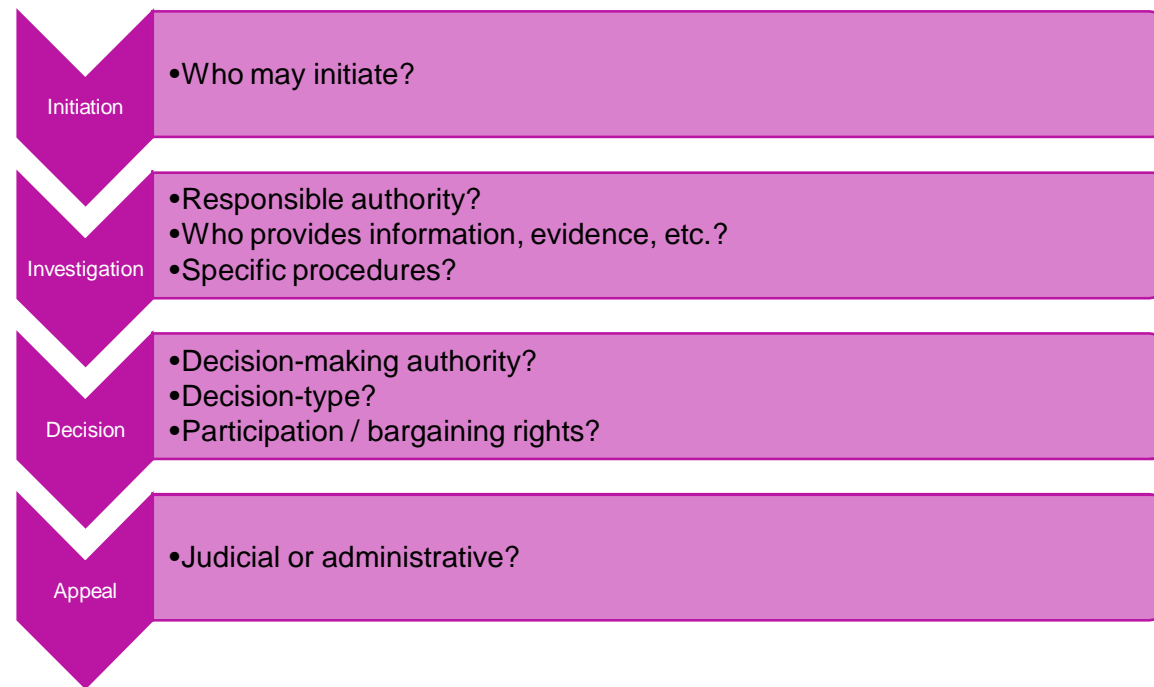
# Compulsory purchase process



The Finnish custom of using expropriation differs from international: expropriation is widely used in infrastructure and urban development!



# Institutional model of compulsory purchase



Three main decisions are normally needed:

1. Permission
2. Taking possession
3. Compensation

Taking possession and compensation can be decided by another organisation than the permission giving organisation. In such a case, the steps in the model are repeated.

# Public interest

- **In some countries, purposes of expropriation are regulated in legislation**
- **In Finland: no definition of public interest – need to interpretate the public interest in different cases, depending on prevailing society**
- **In many cases, public interest is clear: public infrastructure projects, schools, hospitals etc., but there is a fine line in many cases because of private interests and profit seeking**

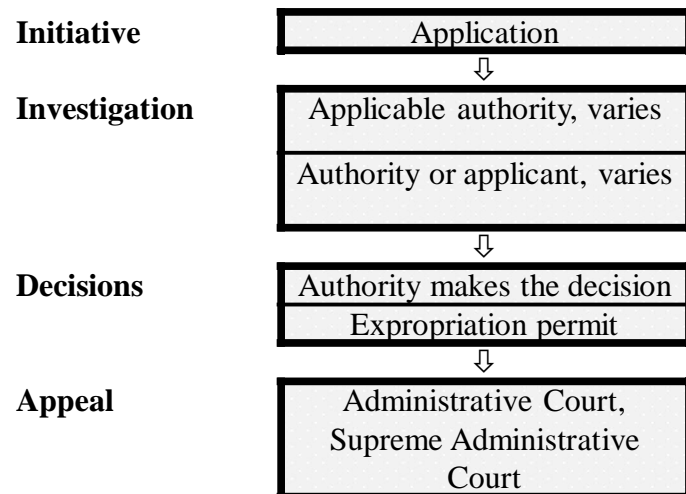
# Case Finland: Expropriation for public needs

# Permitting authorities

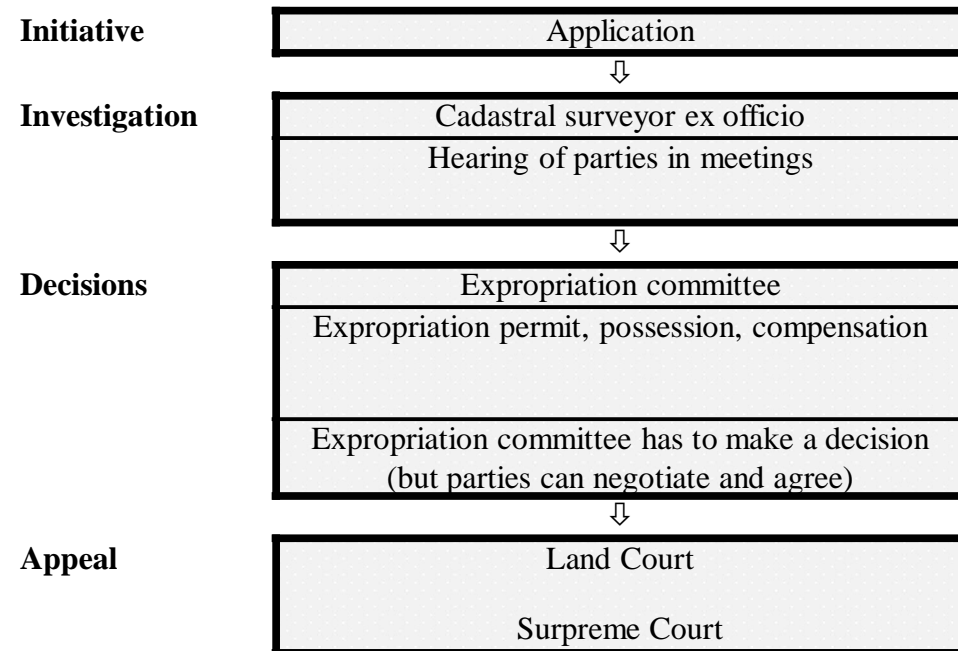
- **Expropriation starts by applying for permit to expropriate. It is an administrative process, of which appeal to Administrative Court can be done**
  - *Council of State (valtioneuvosto) is the general permitting authority*
  - *Ministry of Environment may permit expropriation for municipality for example for urban development*
  - *In some cases the permission is included in land use plan (eg. Common areas in detailed plan may be expropriated by municipality without separate permission; a plan for public road includes permission for expropriation)*
  - *In small constructions (eg. Small alteration of power lines) the permitting authority can be the National Land Survey.*
  - *If the permission for expropriation is given in legislation (eg. Reliction areas, coercive purchase of a part of a plot), it can be given in implementation*

# Institutional framework in Finland

## Expropriation permit



## Implementation



# Who does the expropriation?

- **Cadastral surveyor working at the National Land Survey of Finland, together with two trustees**
  - Cadastral surveyor: Shall hold an applicable degree of Master of Science (diplomi-insinööri), or from university of applied sciences, or technician (KML amendmend 2016)
  - Trustee: a layman appointed by municipal council, knows real estates and local conditions

# Expropriation Act (603/1977)

- **Currently, prevailing legislation** (additionally eg. Highways act, Railroad act, real estate formation act)
- **Ongoing legislative work about the renewal of the act**
  - Especially renewal of the basis for compensation
  - Current legislation: full compensation based on market value with cutting the compensation value for urban development
  - Proposal for renewal: full compensation based on market value
  - What is the effect:
    - Currently, the initiative for expropriation shall not influence the amount of compensation in urban development (arvonleikkaussäännös)
    - Proposal: compensation shall be based on market value which takes speculative value into account

# Discussion

- **Describe your feelings and thoughts about expropriation**
- **How do you feel about cutting the compensation in urban development?**
  - Would there be some room for land speculation?



# Guidelines for compensation

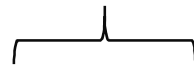
<https://ak.maanmittauslaitos.fi/2017/>

(MML Arviointi ja korvaukset 2017)

# Compensation for expropriation

- Consists of object compensation, compensation for severance and injurious affection, and compensation for disturbance (damage)
- Full compensation covers the objective value (object compensation), the decrease in value of resilient object (compensation for severance and injurious action), and other damages caused by the expropriation (compensation for disturbance) (Wiiala (1966))

*Compensation for expropriation*



**Full compensation = (O + S + D) + L, where**

*O = Compensation for lost property*

*S = Compensation for decrease in value of resilient object*

*D = Compensation for disturbance*

*L = Legal costs*

# Full compensation

- **Principle: the asset of the person receiving compensation should remain the same -> no one should be enriched by the expropriation**
- **Compensation is based on what is expropriated, not what the applicant for expropriation receives**
- **Guarantee for replacement: the compensation must be enough to either acquire similar asset, asset bringing similar profit, or the compensation shall be this profit**

# Market value

- **Only economic losses are compensated**
- **Compensation is based on market value**
  - 50 % probability that the compensation is too low
- **Is the full compensation really full compensation?**
  - The expropriated party can not choose the time of expropriation (how about expropriation during/after depression?)

Market value is not "absolute truth" but a well-educated opinion of the most probable price.

# Is market value enough?

- **Implementation of valuation methods comes with uncertainty**
  - Eg. Sales comparison: not enough sales, not actually comparable sales
- **Proposal: increase for compensation**
  - Examples: water act (11.5 §) compensation is 1,5 times in some cases; mining act (86.4 §) compensation is 1,5 times in some cases
  - Sweden: full compensation + 25 %

# Discussion

- **Do you think an increase to compensation is needed?**
  - Why, why not?
- **What would be the proper amount?**
  - Current proposal either 5-10 % or 20-25 %
- **What are the pros and cons of lower or higher increase?**
  - Do you think there would be impacts on urban development or infrastructure projects?
  - Would there be some social impacts?

# Determination of compensation, brief

- **Object value: land, buildings, fields, forest**
  - Simple cases: sales comparison
  - Forests: summative approach (land, seedling, sapling stand, cutting value of timber)
  - Large farms: land, buildings separately, farming land
- **Compensation for decrease in value of resilient object**
  - The change in the market value (noise, landscape, shape and size of fields etc.)
- **Compensation for disturbance**
  - Plants in the garden etc.

# Reliction areas

- In Finland, a private person may also be the expropriator!



# Coercive purchase of missing part of a plot

- When a plot division is binding, the planned plots need to be formed and registered according to the plan
- Priority is given to the owner of more valuable part
- If no one purchases, a municipality has the right

# Thank you for your attention!

Recommended readings:

Compulsory Purchase and Compensation, International Federation of Surveyors (FIG):

<https://www.fig.net/pub/figpub/pub54/figpub54.pdf>