

Selected issues in compensation entitlement for real estate expropriated for road investments

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Abstract: One of the important issues in the process of real estate expropriation is defining the group of entities entitled to compensation. This arises from the undetermined legal status of properties, limited rights in rem, claims by banks and bailiffs, and the lack of inheritance proceedings determining the current circle of owners. Another difficulty is the lack of precise legal norms and inconsistent jurisprudence. The aim of the study is to identify the problems related to determining the group of entities entitled to compensation for real estate expropriated by law based on the decision granting permission for the implementation of a road investment. The research thesis is that the legal norms regulating compensation need to be supplemented to streamline and standardise the processes of determining compensation for real estate expropriated for road investments.

Keywords: compensation, expropriation, road investments

1. Introduction

One of the most significant problems in the process of real estate expropriation for road investments exercised by virtue of law is determining the group of entities entitled to compensation. This results from the undetermined legal status of properties, the lack of inheritance proceedings, limited property rights, claims by banks and bailiffs, or agreements on the assignment of receivables. Proceedings concerning real estate with unclear legal status, such as properties acquired by virtue of law based on regulations of the Act [1], for which the lack of relevant decisions makes it impossible to document ownership and, consequently, to identify entities entitled to compensation, are interpreted inconsistently in court decisions. Attention to this topic is warranted due to the scale of expropriation by virtue of law based on the decision granting permission for the implementation of a road investment. These processes have dominated the methods of acquiring land for road investments, replacing acquisition under civil law contracts. Compensation is discussed in the literature mainly in terms of its amount and components, the estimated value of real estate, and protracted

compensation proceedings. However, there are no studies identifying problems regarding the right to compensation.

The aim of this research is to identify the problems related to determining the group of entities entitled to compensation for real estate expropriated by virtue of law based on the decision granting permission for the implementation of a road investment. An additional research objective is to identify the primary method of property acquisition used in the road investment process. The research thesis is that the legal norms regulating compensation need to be supplemented to streamline and standardise the processes of determining compensation for real estate expropriated for road investments.

2. Literature review

The constitutions of many countries contain provisions protecting private property rights while granting governments the right to acquire real estate for just compensation [2–4]. By identifying gaps in the existing process of forced acquisition, using the example of Scotland, the publication [5] highlighted the need to maintain the basic principles of social justice. The paper [6] attempts to determine the hierarchy of importance for the factors adversely affecting the process of determining compensation for expropriated real estate in Poland.

Delays in the payment of compensation are assessed negatively [7]. In Poland, the right to compensation for deprivation of ownership rights does not expire, allowing a party to expropriation proceedings to demand it at any time [8]. However, there is a need to update the appraisal report due to the loss of its timeliness [9].

The process of pursuing claims for compensation is usually prolonged because former owners and perpetual usufructuaries often question the proposed amount of compensation and object to appraisal reports regarding the estimated value of land and its components [10]. An important problem is the undetermined legal status of expropriated real estate, necessitating the suspension of compensation proceedings to examine who has been deprived of the rights and what rights have been taken away [11]. In such cases, before determining compensation, it is necessary to regularise the legal status of the property, which is a complex issue and often requires geodetic surveys [12–15]. It may also be necessary to define the boundaries of the property to establish the extent of the rights involved [16].

The issue of components affecting the amount of compensation is also widely discussed. In Poland, the compensation does not include costs and fees related to the purchase of a new property, brokerage costs, or moving expenses. This is especially true for those owners who are forced to leave their place of residence [17]. There also arises the issue of the mortgage creditor's ability to obtain their right to compensation in the event of expropriation of the property for public purposes [18].

The authors of the publication [19] argue that compensation for expropriation should include the costs of acquiring another property, moving expenses, and temporary flat rental. The compensation should also take into account changes in income (lost benefits) and additional costs related to real estate acquisition [20].

The expropriation procedure, including expropriation for road investments, varies across countries [21]. For example, in Germany [22], the process of land acquisition includes:

1. initial negotiations for voluntary disposal;
2. a petition for expropriation;
3. a formal expropriation procedure, during which the public purpose of the real estate and the fulfilment of other conditions for expropriation are assessed, and compensation is determined.

If the implementation of a public purpose requires the immediate acquisition of the property by the state, the authority initially grants the ownership right. In this regard, it is similar to making the decision on permission for the implementation of a road investment immediately enforceable, which authorises the immediate commencement of road lane construction works.

In France, the process of expropriation for public investment purposes consists of two stages [23]:

Stage I – Administrative stage, in which two documents are issued:

- a statement on the property being intended for a public purpose,
- an order to transfer ownership rights to the property to a public entity.

Stage II – Judicial stage, in which the expropriation judge:

- adjudicates on expropriation,
- determines the amount of compensation.

3. Materials and methods

The analysis covered legal regulations regarding compensation for expropriation, administrative court jurisprudence, and practical procedures to identify problems. The quantitative research focused on land acquired for road investments in Krakow in 2022:

- under the expropriation procedure pursuant to the Act [24], and;
- subject to civil law contracts.

The amount of compensation for expropriation and the purchase prices were also examined.

4. Results and discussion

4.1. Entities entitled to compensation for properties expropriated for road investments by virtue of law

The development, expansion, and modernisation of the public road network form the basis for the country's long-term economic and civilisational development. Before Poland's accession to the European Union in May 2004, the country had the least developed road infrastructure among all candidate countries at that time [25].

The Act [24] significantly accelerated the process of acquiring real estate for road investments by eliminating negotiations with owners and introducing legal procedures for real estate acquisition exercised by virtue of law, which is expropriation.

Pursuant to [24], real properties or parts thereof, covered by investment boundary lines, become the property of the State Treasury if they are national roads or of the relevant local government units if they are provincial, county, or communal roads.

Compensation is determined for the benefit of the current owners, perpetual usufructuaries, and persons who hold limited rights in rem to that real estate. Therefore, it is essential to determine the legal status of the real estate as of the final date of the decision to authorise the implementation of the road investment, and in particular the rights and entities entitled to them. The procedure for determining compensation for real estate expropriated by virtue of law based on the decision granting permission for the implementation of a road investment is presented in Fig. 1.

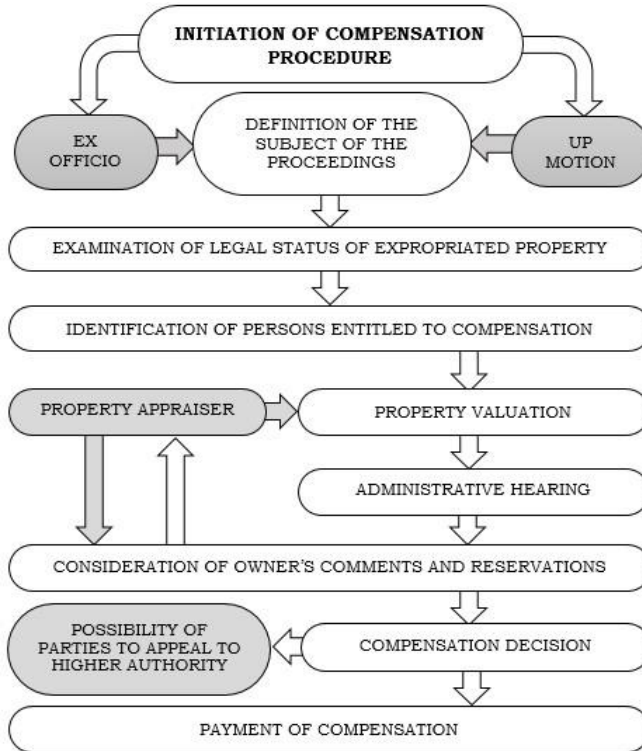


Fig. 1. The procedure for determining compensation for expropriated real estate. *Source:* own elaboration based on [21]

4.1.1. Rights of owners and perpetual usufructuaries

The documents certifying rights in rem to real estate include: an excerpt from the land and mortgage register, an extract from a notarial deed, a final court decision, a settlement in civil and administrative proceedings, and an administrative decision. A supplementary document may be an excerpt from the land register. The heirs of owners and perpetual usufructuaries are also entitled to compensation.

In addition to the heirs, persons who acquired the inheritance by contract may be a party to the determination of compensation [26].

The entitled entity may also be a person who acquired the right of ownership as a result of acquisitive prescription (Articles 172-177 of Act [27]). A pending lawsuit for acquisitive prescription of real estate may form the basis for suspending the compensation proceedings. The problem arises when the court decision states acquisitive prescription after the date of issuing the decision granting permission for the implementation of a road investment.

According to the Act [24], the amount of compensation is determined according to the condition of the property on the day of issuing the decision granting permission for the implementation of a road investment by the authority of first instance and according to its value on the day the amount of compensation is determined. Therefore, a doubt arises whether the right to compensation is vested in the person who acquired the property as a result of an acquisitive prescription order issued after the date of issuing the decision granting permission for the implementation of a road investment.

4.1.2. Assignment of receivables and the right to compensation

One of the problems with entitlement to compensation arises when the owner of expropriated property transfers a claim for compensation to a third party under the assignment of receivables according to Articles 509 and 510 [28]. The Compensation Regulations [24] and [29] do not address this issue.

Initially, the prevailing view was that the purchaser of receivables could pursue a claim for compensation in administrative proceedings by referring to the receivables transfer agreement [30]. In this judgement, the Supreme Administrative Court decided that the purchaser of receivables had a legal interest within the meaning of Art. 28 [27] to be a party to the administrative proceedings for the determination of compensation, also as an applicant.

However, recently, as a result of the Resolution of the Supreme Administrative Court of 30 June 2022 [31], there has been a change in the interpretation regarding the right to compensation in the event of the assignment of receivables. In this resolution, the Supreme Administrative Court addressed the legal issue to answer whether the entitlement to compensation could be transferred by contract to another person.

The Supreme Administrative Court stated that the receivables transfer agreement itself, contained in Art. 509 [28], whose subject is a claim for compensation for the deprivation of ownership of real estate as a result of an event or act in the sphere of public law, does not form the basis for the buyer of this claim to be entitled to the status of a party to proceedings for the determination of compensation. However, this issue is not regulated in the Act.

4.1.3. Mortgage creditor

The mortgage creditor is also entitled to compensation. If a mortgage is established on the expropriated real estate or on the right of perpetual usufruct of this property, the amount of compensation for the expiry of the mortgage is determined by the amount of the principal claim secured by the mortgage, together with the interest secured by this mortgage.

The existence of the mortgage is assumed as of the final date of the decision granting permission for the implementation of a road investment. According to Art. 67 of the Act [32], an entry in the land and mortgage register is necessary to create a mortgage. This entry has retroactive effect from the moment of submitting the application for entry, and in the case of the initiation of proceedings *ex officio*, from the moment of initiation of these proceedings. The compensation body is obliged to examine the content of the land and mortgage register of the real estate acquired for a road investment, with particular emphasis on the dates of mortgage entries [33].

4.1.4. Entities with limited rights in rem

In the compensation proceedings, it should be examined whether there are limited rights in rem on the real estate taken over by virtue of law or on the right of perpetual usufruct. At the same time, the encumbrance of real estate with limited rights in rem is taken into account if they affect the change in this value [34]. Compensation cannot take into account limited rights in rem established after the issuance of the decision granting permission for the implementation of a road investment [35]. In practice, compensation is most often due to entities entitled to easements and usufruct.

One of the practical problems is determining the value of the land easement encumbering the property subject to valuation, should this right be free of charge. According to some experts, if a limited right in rem has been established free of charge, the costs of obtaining this right are zero, so their value is also zero.

This approach is faulty, as evidenced by the views of the judiciary [36]. Failure to specify the value of the land easement with reference to the criterion of the original conditions for establishing this right (land easement established free of charge) and, consequently, determining the zero value of the limited right in rem is incorrect.

Another problem that emerges in practice is the entitlement to compensation for the loss of road easement in the event that the new investment provides access to a public road. It should be considered what effect the deprivation of this right had on the further functioning of the expropriated entity. The person entitled under this type of easement will not lose the possibility of using the easement real estate, which becomes a public, and therefore, a generally accessible road. The views of adjudicating authorities are not uniform in this regard.

4.2. Undetermined legal status in the process of determining compensation

Land acquisition exercised by virtue of law, a form of expropriation, grants public law entities the ownership right even for real estate with an undetermined legal status, i.e., when it is not clear who is deprived of that right [11].

Real estate with an undetermined legal status refers to property for which it is impossible to identify those who have property rights due to the lack of a land and mortgage register, any collection of documents, or other relevant records. This also applies if the owner or perpetual usufructuary of the property has died and inheritance proceedings have not been conducted or completed [29]. Correctly determining compensation is possible only when there are documents that allow the assessment of the actual legal status of the real estate and the identification of the entities entitled to rights in rem on the date of expropriation. In practice, these procedures encounter numerous geodetic and legal problems [37].

One of the primary problems hindering and delaying the determination of compensation is the undetermined legal status of the property. The applicable rules for determining compensation [38] do not cover this category of real estate, resulting in inconsistent practices and a divergent line of judicial decisions.

Table 1. Practical problems encountered in the compensation process resulting from the undetermined legal status of real estate. *Source:* own elaboration

Undetermined legal status of the property within the boundaries of the planned investment: types of non-compliance
Inconsistency of data in the subject matter between the land and mortgage register, the decision granting permission for the implementation of a road investment, and the register of land and buildings
Autonomous possession of real estate (which may result in its acquisitive prescription)
Claims of third parties for enfranchisement by virtue of law
Difficulties in identifying parties to the proceedings
No inheritance proceedings conducted after the property owner's death
Property occupied for a public road on January 1, 1999, and subject to the provisions of Art. 73 (Act, 1998)
No possibility to enter the ownership right of the State Treasury acquired in the past by virtue of law based on legal acts of a nationalising nature into the land and mortgage registers
No land and mortgage register
Proceedings concerning the invalidation of documents constituting the basis for the entry of ownership rights

4.2.1. The ownership of land occupied for roads in the context of statutory changes in legal status

Difficulties in determining the legal status of real estate may arise when the ownership right to the property is already vested in a public entity, but it is not possible to document this fact. This may be due to the failure to disclose former expropriation decisions [39]. One significant problem in this regard is determining whether the property covered by delimitation lines resulting from the decision granting permission for the implementation of a road investment is subject to Art. 73 of the Act [1].

Pursuant to the cited provision, real estate remaining in the possession of the State Treasury or local government units as of 31 December 1998, not constituting their property but occupied for public roads, becomes, by virtue of law, the property of the State Treasury or relevant local government units for compensation as of 1 January 1999. There are no clear regulations specifying the course of proceedings, making it impossible to expedite the regulation of the legal status of roads [40].

Decisions confirming the acquisition of land ownership by public law entities as of 1 January 1999, pursuant to Art. 73 [1], are of a declaratory nature. They specify the object of acquisition by indicating its denotation and make it possible to prove the ownership right to real estate held by public law entities and, simultaneously, the loss of ownership right by the current owner as of 1 January 1999. When there is a presumption that the property is subject to Art. 73 [1], and there is no respective decision from the provincial governor, there is a problem regarding the correct determination of its legal status in the compensation proceedings. Therefore, it is crucial to resolve the issue of ownership of the property taken over for a road investment by considering statutory changes in its legal status. There is an inconsistent line of administrative court jurisprudence, and doubts arise as to whether the compensation proceedings should be suspended until the entitled persons are identified or whether the amount of compensation should be paid to the court deposit.

In the court's opinion [41], proceedings regarding a decision issued pursuant to Art. 73 [1] are a preliminary issue to the ongoing proceedings for compensation, justifying its suspension. However, this stance has been criticised, and jurisprudence presents the view that there is a basis for a decision to pay the agreed compensation to the court deposit [42]. However, this view is not uniformly established, and different solutions can be found.

4.3. Quantitative analysis of land acquired through expropriation and civil law contracts in Krakow

To illustrate the scale of compensation processes, quantitative research was conducted to specify the area of real estate expropriated for roads in 2022 in Krakow and the amount of compensation (Table 2). The data were related to the specified road categories.

During the court proceedings, there were cases of undetermined legal status caused by the regulation of Art. 73 [1], assignment of receivables, and issues related to transmission easement.

In the analysed period, approximately 16 hectares of land was acquired for the benefit of the city of Krakow for road investments as a result of expropriation exercised by virtue of law [25]. Most of the land, over 7 hectares, was expropriated for communal roads, while the least, about 1 hectare, was expropriated for national roads.

Table 2. Area of land acquired by virtue of law in 2022 based on decisions granting permission for the implementation of a road investment in Krakow and the awarded compensation. *Source:* own elaboration

Road category	Area of expropriated land [ha]	Compensation [PLN]	Value of 1 m ² of land [PLN]
communal	7.2211	51,058,984	707.10
county	3.3639	4,816,166	143.20
provincial	4.0544	17,625,061	1,333.90
national	0.9604	12,811,221	434.70
Total	15.5998	86,311,432	553.28

Table 3. Area of land acquired under civil law contracts for roads in 2022 in Krakow and the agreed price. *Source:* own elaboration

Road category	Area of expropriated land [ha]	Compensation [PLN]	Value of 1 m ² of land [PLN]
communal	0.0961	249,660	259.80
county	0.0005	2,610	522.0
provincial	0.0088	50,640	575.5
national	-	-	-
Total	0.1054	302,910	287.40

In 2022, under civil law contracts for road investments (Table 3), the city of Krakow acquired only about 0.10 hectares of land for approximately PLN 0.3 million.

The research demonstrated that in 2022, only a very small area of land was acquired under civil law contracts, specifically about 0.10 hectares for approximately PLN 0.3 million. These properties were acquired to regulate the legal status of land on which roads were built in the past. This method is of marginal importance for assessing the extent of land acquisition for roads.

5. Conclusions

The procedure for determining compensation is important due to the scale of expropriation exercised in practice pursuant to the act [25].

According to the research conducted in 2022, in Krakow, 16 hectares of land were acquired for over PLN 86 million for the implementation of road investments under the decision granting permission for the implementation of a road investment, while under civil law contracts, it was only about 0.10 hectares.

This confirms that the primary method of real estate acquisition for road investment is expropriation exercised by virtue of law based on the decision granting permission for the implementation of a road investment. This procedure eliminates the prolonged negotiations involved in purchasing real estate under civil law contracts. Therefore, expropriation exercised by virtue of law should guarantee compensation to the owners promptly and based on defined criteria and legal norms.

Emerging practical problems prompt a discussion on improving the process both in terms of the correctness and uniformity of administrative decisions, as well as defining the right to compensation.

This concerns the determination of the entities entitled to compensation for properties expropriated by law based on a decision authorising the implementation of road investments.

The following issues have been identified through research:

- whether the right to compensation belongs to the person who acquired the property as a result of a decree of adverse possession issued after the date of the road investment decision, or to the person who was the owner on the date of the decision,
- whether the purchaser of a claim can seek compensation in administrative proceedings,
- whether compensation is due for the loss of road easement when the new investment provides access to a public road.

It is also important to determine whether the person entitled to compensation in connection with the road investment decision is the property owner affected by Article 73 (Act, 1998) if no decision has been issued by the provincial governor confirming this fact.

It would be desirable to supplement the regulations specifying the compensation procedure in problematic areas. The presented research confirms the hypothesis formulated in the introduction.

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