

Nordic Journal of Surveying and Real Estate Research, Special Series, Vol. 3 (2008)

Received on 26 June 2007

and in revised form on 12 September 2007

Accepted 12 September 2007

Coercive purchase of a missing part of a plot

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Abstract: *This article presents an overview of coercive purchase of a missing part of a plot, which is a procedure carried out in accordance with the Real Estate Formation Act (554/1995). The procedure aims to enable the implementation of a detailed level land use plan for building purposes in situations where the real property division and ownership do not correspond to the plan. According to planning and building legislation, a requirement for a building permit to be issued is the unity of ownership, which means that the area of plot or building site defined in the land use plan must be in the possession of the same title holder or holders.*

The article aims, firstly, to present the regulation concerning the coercive purchase of a missing part of a plot as well as issues concerning the valuation of the plot in the procedure. Secondly, the aim is to discuss the experience of using this tool based on an empirical study. The empirical study was conducted as questionnaire survey, which was sent to municipal and state authorities carrying out the said procedure.

Key words: *coercive purchase, plot, building site, land use plan, local detailed plan, plan implementation, Finland.*

Introduction

The Finnish Constitution states that the property of everyone is protected. It also states that provisions on the expropriation of property, for public needs and against full compensation, are laid down by an Act (Finnish Constitution (1999/731), Section 15). The first paragraph contains the primary rule of the constitutional protection of ownership, where expropriation is an exception from this rule. In all instances of expropriation the requirements of public need and full compensation must be met and the expropriation must be based on parliamentary legislation. Here expropriation refers to the transfer of ownership or other property rights from the owner to another party without the owner's consent. (Act on Expropriation of Immovable Property and Special Rights (1977/603), hereinafter Expropriation Act, Section 3)

The general statute concerning expropriation is the Expropriation Act. It applies to the expropriation of property and special rights as well as limiting the owner's right of use and administration of such property or special right¹ (Expropriation Act, Section 3). The Expropriation Act applies to compensation assessment and procedure for land use restrictions laid out in other Acts, where applicable. (Vihervuori 2001 p. 299-300) The constitutional requirements of public need and full compensation are laid down in the Act. The expropriation is, with some exceptions, based on an expropriation permit issued by the Council of State (Expropriation Act, Section 5). According to the Act, expropriation is allowed for a public need (*general expropriation basis*).

There is also special legislation, which defines bases for expropriation in certain specified situations (*special expropriation basis*). For example, the Land Use and Building Act (132/1999) (hereinafter LBA) allows expropriation in some cases based on a valid land use plan. Therefore, in these situations, an expropriation permit is not required. Also the Real Estate Formation Act (554/1995) (hereinafter RFA) includes provisions for expropriation, one of which is the subject of this paper. As a main rule, these procedures are carried out in accordance with the special legislation, and the general Expropriation Act applies only when a reference to it is made in the provisions of the special legislation.

Expropriation usually refers to the transfer of ownership of land to the local authority or other public authority without the owner's consent. However, in Finnish expropriation tradition parties other than the public authority also have the right to compulsory purchase. Such procedures are e.g. the coercive purchase of a share in a common area (RFA Section 61) and coercive purchase of a missing part of a plot by a private owner (RFA

¹ 'Special right' refers to limited property rights (excluding real security rights), such as lease and other rights of use and rights of severance (e.g. felling right or right to take gravel). See e.g. Kartio 2001, p. 10-11.

Section 62). These procedures allow a private party to expropriate. In case of coercive purchase of a missing part of a plot the most evident benefit of the procedure is directed to the landowner who is allowed to purchase the missing plot part or parts. However, it must be done in order to promote a public need in the form of the implementation of a land use plan. (see e.g. Lukin 2002 p. 151)

In this article the focus is in the procedure of coercive purchase of a missing part of a plot, regulated by the RFA Sections 62-64. It is used when the area of a plot formed in the local detailed plan area or a plot according to a plot division is owned by more than one owner, i.e. the plot according to the plan consists of two or more real property units, which have different owners.

The aim of this article is twofold. First, it aims to present the regulation concerning the coercive purchase of a missing part of a plot, and second, to discuss the experience of using this tool based on the empirical study. The empirical study was conducted as a questionnaire survey. The respondents were asked questions concerning the frequency of use as well as the applicability of this instrument. The survey was posted to the 13 survey offices of the National Land Survey as well as to the cadastral surveyors in the municipalities.

1.1 Definitions

Local plans. Land use in municipalities is organized and steered by local master plans and local detailed plans. The local master plan indicates the general principles of land use in the municipality. The local detailed plan indicates how land areas within a municipality are used and developed. (LBA section 4.1.) At the local level, two execution plans are used: plot division and street plan. In the process of land development the municipality plays a dominant role. Finnish municipalities have a so-called planning monopoly, which means that they have extensive rights to decide about the content and areas covered by the local plans.

Plot division. In the local detailed plan, an area within a building block is divided into plots if necessary to arrange for land use (*plot division*). The plot division may be binding or indicative. When the central location of the area, the building density of the block or the explicitness of the land administration system so require, the plot division shall be made binding. Therefore normally in the city areas, a binding plot division is required. The division is indicated on the map of the local detailed plan. If it is not prescribed as binding, it is indicative. (LBA section 78.1)

Building site in a local detailed plan. The term refers to an area to be developed as defined in the local detailed plan, when there is no binding plot division. (The Real Estate Formation Act 554/1995 Section 62)

Plot. The term 'plot' is used in the legislation with two different meanings, that should be clarified. Firstly, Finnish legislation defines 'plot' in relation to units of plot division in the local detailed plans (so-called *plan plot*). (LBA section 78). Second, 'plot' refers to a real estate formed in

accordance with a binding plot division and entered into the Real Estate Register as a plot (so-called *register plot*). (RFA section 2.1:3)

In this article, the concept of ‘plot’ is extended to cover both plan plots as well as building sites in a local detailed plan, since the regulation for the coercive purchase applies, as a general rule, equally to both. When it is necessary to distinguish these two concepts, it is made by referring to a binding plot division in case of plan plots.

2 Coercive purchase of a missing part of a plot

The right of coercive purchase of a missing part of a plot is a land policy tool, which in certain cases, enables the implementation of the local detailed plan and further land development processes.

The local detailed plan aims to direct the development and building of the plan area. Issuing building permits is based on the plan and the plot division, if such division has been drafted for the area. In areas with binding plot division, a building permit can be issued only if the plot is registered in the real estate register in accordance with the plot division (i.e. formed as a plot). A prerequisite for the registration is that the whole plot is in the ownership of one owner or by several owners in fractional co-ownership (unity of ownership). In the local detailed plan areas where no binding plot division is required, the prerequisite of unity of ownership or possession has to be fulfilled before a building permit can be issued.

When a plot division is drafted into a local detailed plan area intended for building, the proposed division should take into account the existing boundaries of the real property units (LBA Section 78.4). However, in some cases, following the real property division would lead to an inefficient result and plots consisting of two or more real property units are drafted. In these cases, the plot can be built only if the ownership of the all the parts is in the same hands, as described above.

Coercive purchase of a missing part of a plot is a procedure, which aims to ensure that plots can be developed in cases where the ownership cannot be unified by voluntary means, e.g. a sale or voluntary land exchange, or in cases where the absent owner of the part to be conveyed cannot be contacted or the ownership is unclear. (Lukin 2002 p. 151)

The coercive purchase of a missing part of a plot has long traditions in the Finnish legal system, the oldest regulations dating back to fourteenth century (HE 227/1994). Before 2000, the legislation concerning coercive purchase was divided into two different Acts. Coercive purchase of a plot with a binding plot division was conducted according to the Building Act (1956/370)², whereas plots without a binding plot division were dealt with until 1995 under the Act on Property Formation in Planned Areas (Kaavoitusalueiden jakolaki 1960/101) and thereafter according to the Real

² The law was enacted 16.8.1956, but sections concerning coercive purchase of a missing part of a plot were included in the law in the amendment 604, on 29.7.1977.

Estate Formation Act. This had an effect on the execution of the procedures, since procedures according to Building Act followed the Expropriation Act. In 2000, the regulations concerning the coercive purchases were harmonized into RFA. (Lukin 2002 p.151)

The procedure is now regulated by the RFA. According to Section 62, in order to form a plot or a building site in accordance with the local detailed plan, owner of a part of the plot or building site may make a claim concerning the area of the plot or building site that belongs to others. Here, a building site in accordance with the local detailed plan refers to a detailed plan without a binding plot division.

2.1 Prerequisites for coercive purchase of a missing part of a plot

The general prerequisites for coercive purchase of a missing part of a plot are, that the area concerned is covered by a valid local detailed plan and the applicant owns a part of a plot or building site in that area.

Section 64 of the RFA lays down three additional requirements for the coercive purchase. If the plot can be formed through land exchange, this has priority over the coercive purchase procedure. In this case the land exchange procedure can be executed without the owner's consent, notwithstanding the general requirements laid down in Section 58.2 of the RFA³. The coercive purchase must also not cause harm to the clarity of the cadastral system, hinder the formation of other property units in accordance with the local detailed plan nor cause significant harm to any of the parties.

2.2 Right to claim for coercive purchase of a missing part of a plot

When more than one of the land owners wants to use their right for coercive purchase of a missing part of a plot, priority lies with the party whose share of the plot, including buildings and equipment attached to it, has the greatest value (see Image 1). If the applicants' shares on the plot are equal in value, the priority is given to the party, who first demanded the coercive purchase. (RFA Section 62) It should be noted, that in a case of unbuilt land, the designated use of the different plot parts does not affect the valuation, i.e. the plot parts are considered to have equal unit value.

³ Section 58.2 RFA (unofficial translation)

"A land exchange may be executed without the agreement of the owners if the area to be exchanged is insignificant and causes considerable hindrance to the use of the real estate bordering it, or is an area separated from the other pieces of land of the real estate by a brook, road or other such obstacle, or is otherwise a separate area which cannot be used in a functional manner by the owner but which can clearly be used more functionally in connection with the pieces of land of another real estate, as well as when the land exchange is necessary in order to remove a detrimental curve in boundaries (mandatory land exchange)"

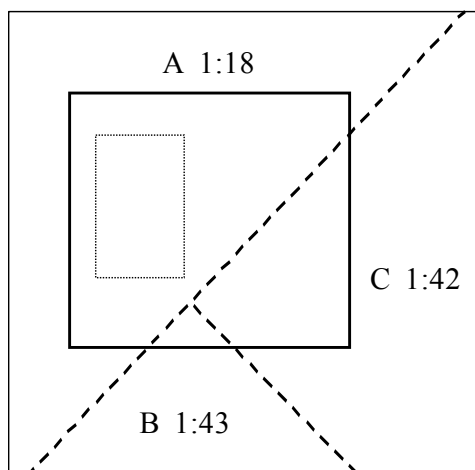


Figure 1. A plot in accordance with the local detailed plan (solid line) consists of three different real property units (dashed line), which have different owners. The detailed plan defines also the allowed location of the building (dotted line). However, in this case the plot parts are considered to have an equal unit value, as there are no buildings, i.e. the designated location of the building does not affect the value of the part owned by A. (see e.g. Virtanen 1988)

Defining the most valuable plot part is most difficult, when there are buildings on the plot. If the current use of the plot is in accordance with the local detailed plan, the assessment is made by calculating the value of the plot part and the buildings together. However, if the buildings on the plot are not compatible with the detailed plan, the assessment may be problematic. In these cases, in practice, the value is calculated for the existing use and for the use in accordance with the plan and the higher value is chosen (i.e. the value which is more beneficial for the land owner, see Image 2). (Lukin 2002 p. 152)

In areas with a binding plot division, also the municipality may be entitled or obliged to use the coercive purchase procedure. In the first case, if none of owners of a part of a plot has claimed the right to coercive purchase within one year after the local detailed plan came into force, the municipality has this right concerning all the parts of the plot in question. The land owners' right to coercive purchase of a missing part of a plot can, however, only be bypassed if none of the land owners has applied for the procedure before the municipality or within 60 days of when such owners were notified of the claim of the municipality, or the claim of such land owners would not lead to the plot being owned by only one owner. (RFA Section 62a)

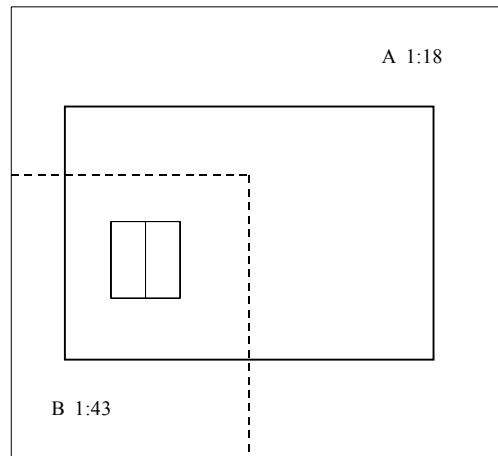


Figure2. An example of the valuation in a situation, where a building not compatible with the current local detailed plan is located on the plot. The plot (solid line) is planned for industrial building. Part A of the plot is valued as industrial building land and part B both as land for housing (existing use) and as industrial building land (planned use). The result, which is more beneficial to the land owner of part B, is then set as the value of the part. (Lukin 2002 p. 153)

In the second case, the municipality may be obliged to claim coercive purchase of a missing part of a plot within one year after the local detailed plan has come into force. The prerequisite for municipality's obligation is that the owner of a part of a plot cannot, due to the incompatibility of the binding subdivision plan and prevailing ownership relations, utilize the land in a reasonably profitable manner and that none of the other owners of the area of the plot in question have claimed their right to coercive purchase. The municipality is freed from the obligation if the binding plot division is changed to correspond to the prevailing ownership relations before the decision concerning the obligation to expropriate has become legally valid. (RFA Section 62b)

According to Lukin, (2002, p. 154) these provisions concerning the right and obligation of the municipality to coercive purchase have rarely been applied in practice.

2.3 Procedure

As a general rule, coercive purchase of a missing part of a plot is carried out in parallel with the procedure of formation of the real estate unit (plot) and registration. Therefore, in areas covered by a local detailed plan where the municipality maintains the real estate register, the survey is carried out by

the municipal cadastral surveyor.⁴ In other cases (e.g. when the procedure is carried out independently of the plot formation) the survey is carried out by a cadastral surveyor from the local survey office of the National Land Survey (state authority).

The cadastral surveyor carrying out the procedure makes the decisions concerning compensation etc. on *ex officio* principle⁵ and the compensation normally has to be paid in three months after ending the procedure (RFA Section 203). The procedure for the transfer of the right of possession of the acquired area can be decided by the cadastral surveyor if not agreed by the parties (RFA Section 186). The most suitable possession date is usually the date, when the compensation has been paid (Lukin 2002 p. 157).

In the coercive purchase of a missing part of a plot, the part conveyed is automatically freed from the mortgages and encumbrances fastened to the conveying property (RFA Section 65). If the compensation is significant and/or if the value of the land conveyed has been decreased to such an extent that the mortgagee's right of lien will not cover the outstanding loan, the compensation is deposited at the State Provincial Office, in order to protect the rights of the mortgagee. (RFA Section 205.2).

Also the validity and other arrangements of easements, leaseholds and special rights must be decided as well as the necessary compensations determined in the procedure. The mortgages and other encumbrances attached to the acquiring property are extended to cover also the transferred part. (RFA Section 65)

The procedure costs of coercive purchase are to be paid by the acquiring party, who is regarded as the only beneficiary of the procedure (RFA 202, Lukin 2002, 159). In cases, where the municipality is obliged to coercively purchase a missing part of a plot, also the claimant may be ordered to pay the procedure costs (Lukin 2002, 159).

⁴ Real Estate Register Act Section 5.1 (unofficial translation)

”The land survey offices of the National Land Survey of Finland are responsible for the keeping of the Real Estate Register in accordance with the orders issued by the central administration of the National Land Survey of Finland. However, in areas covered by a local detailed plan, excluding shore plan areas referred to in Chapter 10 of the Land Use and Building Act (132/1999), the Real Estate Register is kept by the cadastral surveyor of the municipality if the municipality decides to keep the Real Estate Register.”

⁵ The 'ex officio' principle is the general rule in real estate formation procedures. It means, that the authority conducting the proceedings must ensure, that all necessary decisions in the procedure are made, i.e. the parties to the proceedings are given legal protection, even if they have made no claims in the proceedings (the opposite of this principle is the principle of party disposition, which is the main rule in civil cases).

This general rule is laid down in RFA 174, there is also a separate provision concerning the application of this principle to compensation assessment (RFA 201). See also Hyvönen 1998 p. 40-45.

As a main rule, appeals concerning the decisions made on the procedure are made to the Land Court⁶ within 30 days. Appeal against the decision of the Land Court is made to the Supreme Court of Justice (leave to appeal required). (RFA Sections 231, 234, 238)

The decisions made in the procedure become legally valid and are registered after the appeal period has ended. However, the registration can be done even during the appeal period in cases specified in the RFA. According to Section 192, this can be done if all parties accept the procedure. In addition, registration is possible if it is considered important with regard to the objective of the procedure and the appeal concerns only the level of compensation or other matters further specified in the provisions, and the imposed compensation has been paid. For the latter case, permission for the registration should be applied from the Land Court (RFA Section 194 a).

2.4 Compensation and valuation

In this procedure, as is general in expropriation proceedings, the compensation consists of three parts: compensation for the object being acquired, severance and injurious affection, and other losses (disturbance). Compensation is the fair price (market value) of the object (e.g. real property, usufruct) that is being taken and it can be considered as a compensation for the objective loss of the owner. Compensation for severance and injurious affection is paid for the permanent nuisance caused by the expropriation to property not included in the transfer, i.e. in situations when only a part of the property is the direct object of the expropriation. Disturbance compensation is paid for damages, e.g. moving costs or loss of business profits. (RFA Section 200) However, legal fees in the connection of the proceeding of coercive purchase of a missing part of a plot have to, as a main rule, be carried by participants themselves⁷.

Compensation for the object is assessed for the plot part in accordance with the regulations in the RFA. The compensation is full compensation based on the market value of the property determined with regard to the sales comparison method at the time when the possession is transferred. If value derived by the sales comparison method does not correspond to the full loss of the conveyor, the property is assessed based on the income value approach or the cost approach. (RFA Section 200, Hyvönen 2001, p. 324).

⁶ Land Court is a specialised section in a District Court. Eight of the 59 District Courts in Finland have a Land Court. For information about the Finnish Court system in English (Ministry of Justice) see <http://www.oikeus.fi/8854.htm>.

⁷ This is the general rule concerning legal fees (costs for the representation of the parties) in real estate formation proceedings carried out in accordance with the RFA. The exceptions, where the other party must carry the other's legal fees, are laid down in RFA 211 (e.g. when the application for the procedure has been made without due grounds). See also Hyvönen 1998 p. 442-443.

As a main rule, the compensation is monetary. Land exchange has to be carried out, if possible, before starting the coercive purchase procedure.

When valuing a part of a plot, the common principle used is that different parts of a plot, (except for a few exceptions), are assumed to have the same unit value. The basis of the principle is that the plot is ready for building (LBA 58.1), and thus has a value of developable land only when complete. Hatunen (1992, p. 76-77) describes two situations as exceptions to the main principle. In the first case a part of the plot is encumbered by a right, e.g. an easement or it is the dominant property unit. In these cases, the unit value of the encumbered area can be higher or lower than the unit value of the rest of the property (Lukin 2002, p. 155).

In the second case, a coercive purchase of a missing part of a plot is carried out on an area, where the existing buildings do not reflect the development in accordance with the plan, e.g. there is a detached house on a plot planned for blocks of flats. In these cases, two valuations have to be undertaken. The first valuation is based on the value of land in its present use (e.g. plot for detached house) including the value of constructions and vegetation, and the second valuation on the value of the plot as a part of a plot in the planned use (e.g. block of flats), excluding the value of improvements. The compensation is the higher of these two values, following the principle that the conveyor should be compensated for what is lost and not for what the acquiring party receives (Hatunen 1992 p. 77, referring to the Supreme Court case KKO 6.11.1985, t. 2971).⁸

2.5 Implications on taxation

Object, severance and injurious affection compensations are typically subject to capital gains taxation, whereas compensation for disturbance is tax-exempt. The capital gain is defined as the difference between selling price and acquisition cost. However, according to the Income Tax Act (1535/1992) section 49, capital gains of expropriation and such voluntary transaction where the purchaser has the right to expropriate the right transferred are calculated by assuming that the purchase price of the property is at least 80 per cent of the selling price. In legal praxis coercive purchase of a missing part of a plot in this case is equated with expropriations based on the Expropriation Act (Lukin 2002, p. 159). In practice this means, that the maximum capital gains tax the conveyor may have to pay is 5,6 per cent of the compensation received for the object, severance and injurious affection (in 2007).

The purchaser of the missing part of a plot has to pay the property transfer tax (4 %) as is normal in volunteer transactions. The tax is paid

⁸ It should be noted, that landowners are not compensated for the decrease in building right due to planning, e.g. if undeveloped land previously planned for blocks of flats is after an alteration of plan assigned for detached houses, the valuation is based on the latter plan (Hatunen 1992, p. 77 referring to Supreme Court case KKO 15.5.1985 t. 4102).

based on the sum of the object compensation and compensation for severance and injurious affection (Lukin 2002, p. 159).

3 Results of the questionnaire

The questionnaire was posted to representatives of both the authorities who carry out the procedure: the survey offices of the National Land Survey as well as to the cadastral surveyors in the municipalities maintaining their own real estate register.

In the first part of the questionnaire the respondents were asked to give information on the frequency of coercive purchase of a missing part of a plot procedures in the area where the authority has jurisdiction, as well as information concerning the applicant and the acquiring party. Further, the respondents were asked about the assessment of compensation, e.g. the valuation method used and whether any compensation had been determined through mutual agreement. The respondents were also asked to report about possible disputes in the procedure, e.g. court appeals concerning the expropriation survey. In the second part of the survey, the respondents were asked to evaluate the functionality of the procedure, indicate possible problems and give suggestions for further development of the legislation.

The survey was sent to 13 survey offices of the National Land Survey, as well as to the municipal cadastral surveyors. Altogether 32 answers were received, 23 from survey offices (representing 9 offices) and 10 from municipalities. The number of responses from survey offices is higher than the amount of offices, since there are several cadastral surveyors in each office, who carry out these proceedings.

For survey offices the answers can thus be considered representative. The results from the municipalities can mainly be interpreted on a case-by-case basis, since they represent about 12 % of the possible respondents, i.e. Finnish municipalities who maintain their own real estate register (10 out of 86). However, among the responding municipalities there are the two largest municipalities (the capital Helsinki and city of Espoo) both located in the metropolitan area. By population, they represent 15 % of the country.

3.1 Results of the questionnaire

Respondents' experiences of coercive purchase of a missing part of a plot

The first part of the questionnaire concerned the respondent's experiences of the procedure. A summary of the results is presented in table 1. The first question concerned the amount of coercive purchases of a missing part of a plot conducted since 1970. Most of the cases in the sample had been done after 1990 because only a few of the cadastral surveyors who were employed (especially in the 1970's) are still working and the answers were not based on statistical analyses in the offices, but respondents own experiences. The amount of cases varied across the country, the total being 332. Of these, 230 cases concerned a plot included in a binding plot division, whereas 102 cases concerned a building site.

Of the total volume of proceedings, the survey offices carried out 281 cases. It should be noted that the survey offices might be somewhat overrepresented in this data, because of the low number of answers from the municipalities. In general, the division of workload between the authorities cannot be judged on the basis of these numbers.

<u>1. Responses to the questionnaire</u>					
	survey offices	municipalities			
number of authorities	13	86			
number of responses	9	10			
representation (%)	69	12			
<u>2. Volume of coercive purchase procedures by decade and authority</u>					
Plots	survey offices	municipalities	total		
1970-1979*	0	1	1		
1980-1989	44	4	48		
1990-1999	95	1	96		
2000-	48	37	85		
total	187	43	<u>230</u>		
Building sites					
1970-1979*	0	0	0		
1980-1989	6	1	7		
1990-1999	44	5	49		
2000-	46	0	46		
total	96	6	<u>102</u>		
TOTAL			<u>332</u>		
*the number of cases before 1990 might be biased, because they are based on the respondents own estimation rather than statistics					
<u>3. The applicant and the acquiring party in the proceedings</u>					
	applicant	%	acquiring party	%	
Owner of the largest part	287	86	293	88	
Owner of the smallest part	9	3	8	2	
The municipality	36	11	31	9	
Total	332	100	332	100	
<u>4. The valuation method used</u>					
	number of cases	%			
sales comparison method	239	88			
composite value method (existing use)	22	8			
composite value method (planned use)	2	1			
income method	1	0			
land consolidation	3	1			
agreement on compensation	3	1			
total**	270	100			
**note, that all respondents did not answer this question and therefore the total number of cases here differs from the total above					

Table 1. A summary of the results of the questionnaire.

In 90 % of the cases, the applicant of the procedure was the owner of the largest part of the plot. In almost all the cases, the owner of the largest part was also the acquiring party. In eight cases the owner of the smaller part was the acquiring party. In about 10 % of the cases the municipality was the applicant in the process, and in a bit less than 10 %, it was the acquiring party.

Typically, the parties of the procedure did not reach an agreement on the compensation. Some respondents commented, that if such an agreement could be reached, the procedure would be unnecessary. Two respondents reported, that in some cases the parties have accepted the compensation suggested by the surveyor, i.e. they have agreed on the amount of compensation but the procedure is completed as a coercive purchase.

In almost 90 % of the cases, the valuation method used has been the sales comparison method. In these cases the compensation is based on the highest and best use allowed by the detailed plan. In a bit less than 10 % of the cases the compensation was based on a composite value method (land + improvements), where the value of the property is based on the situation before the detailed plan. In a few cases, the compensation was based on composite value method, where the value of the property is based on the situation after the detailed plan has become legally valid. In one case the compensation was based on the income method. In three cases, land exchange had been used.

When asked about the occurrence and nature of disputes during the procedure, the respondents reported varied amounts of such cases. In some areas there have in practice been no notable disputes during the process, whereas in some areas half or even more of the procedures have involved some dispute. The main reason for the disputes has been the amount of compensation, in some cases the conveyer has opposed the whole procedure.

The respondents were also asked to estimate the amount of appeals concerning the procedure. As in the case of disputes, the volume of appeals varied across the country.

Because it is difficult to make a generalization from the results received from the municipalities, as they do not represent the whole country, below we present separately the results from the municipalities of Helsinki and Espoo⁹. These municipalities belong to the metropolitan area, where the development pressure is higher than in the rest of the country.

Evaluation of the tool

In the second part of the survey, the respondents were asked to evaluate the functionality of the procedure, to indicate possible problems and give suggestions for further development of the legislation.

⁹ See sections 4.2 and 4.3.

All respondents evaluated the tool to be “good”, especially important it was considered, when the ownership of the conveyed area was not certain, e.g. because it is part of an estate of a deceased person. Respondents also commented that the existence of such tool is important, not only when it is used, but also because it encourages landowners to make the transaction voluntarily.

For possible problems, comments mainly concerned either coercive purchase, when no binding plot division exists and legal incompetence due to possible conflict of interest. For areas without a binding plot division, the respondents answered, that defining the area of coercive purchase was problematic, as the plot division itself is indicative and not binding. In these cases, the cadastral surveyors had doubts about the necessity of coercive purchase and their authority to define the area to be conveyed differently than that set in the indicative plot division. The issue of municipal cadastral surveyors’ legal incompetence due to possible conflict of interest in cases where municipality acted as a conveying or acquiring party in the process was also discussed. The respondents were hoping for a clearer regulation concerning the issue. Also Lukin (2002, 158) takes up the issue recommending that municipal cadastral surveyors should hand over the procedure to state cadastral surveyors whenever the municipality is a party to the coercive purchase. He argues that even if the municipal cadastral surveyor would himself not be responsible for the strategic land acquisition of the municipality, the close working relation between him and the persons responsible of the strategic land acquisition might to appear to the public as an increased possibility of conflict of interest.

3.2 Case of Helsinki

Helsinki is the capital city of Finland and the largest city by population (about 560,000 inhabitants).

In Helsinki the procedure of coercive purchase of a missing part of a plot had been carried out in 15 cases between 2000 and 2007. Before that time, all of the procedures have been carried out by the survey office. Also after 2000 the survey office has been responsible for the procedure in some cases, since the city of Helsinki has been a party in the proceedings, either as the conveyor or the acquiring party.

Typically, within Helsinki municipality, this procedure has taken place once a year, with the exception in 2003, when there were three cases. According to the respondent from the city of Helsinki, this procedure is both functional and flexible. The main problem mentioned in the answer is the question of conflict of interest. The respondent feels, that in those cases where the city is involved in the process (e.g. as land owner, or joint owner, as the acquiring party), the regulation about taking the bias issue into account in the procedure should be made clearer.

3.3 Case of Espoo

Espoo city is the western neighbor of the capital city Helsinki and is a part of the Helsinki Metropolitan area. The population of Espoo is

232,000, making it the second largest city in Finland. The population is growing at a rate of circa 1 % per year.

As with Helsinki, Espoo also included in their answer the procedures that have been carried out by the municipality. According to the respondent, the municipality has made an agreement, that the survey office of National Land Survey is responsible for the procedure if the municipality is the conveyor or the acquiring party in the process, or if the procedure concerns a common area, of which the municipality owns over 50 %. Since 2000, the procedure has been carried out by the municipality of Espoo in 15 cases.

The respondent considers this procedure to be a good and functional tool. The problems mentioned in the reply concern the lack of comparable sales concerning certain types of land (e.g. blocks of flats, retail and office) as well as the fact that in some cases the parties and their representatives are not familiar with the regulations concerning the process, since it differs from the general expropriation process and regulation.

4 Discussion

The justification of a private party's right to expropriate can be questioned and the level of compensation debated. This discussion has, however, been left outside of this article. The coercive purchase of a missing part of a plot is an established practice in the Finnish plan implementation system. It is in conformity with the constitutional right of property ownership reviewed in the legislative stage and the practice further developed by the precedents of the Supreme Court of Finland. In Finland, the fairness of the procedure is seen to arise from the fair compensation defined as the loss suffered by the vendor.

The carrying out of the procedure is not very common. According to the surveyors of National Land Survey and municipal cadastral surveyors, the significance of the procedure lies, however, not in its execution, but rather in the incentive it gives to the vendors to promote the plan implementation through voluntary transactions. The incentive for conveyors is twofold. First, when the conveyor knows, that there exists a threat of expropriation, the question of reaching voluntary an agreement depends only on agreement of transaction price. Secondly, the conveyors are exempted from capital gains taxation as in the case of an official proceeding but unlike in an official proceeding they do not have to carry their own legal costs and other fees.

For the acquiring party the coercive purchase has the benefit of encouraging conveyors to sell and also of limiting excessive asking prices. If the conveyor's asking price is set too high, the acquiring party has always to the possibility to claim the procedure and have the price set to market value by an independent party. On the rare cases, when the owner of the part of the plot is unknown or cannot be reached, the procedure can still be executed and the formed plot developed.

From the municipality's point of view, the procedure is a fairly fast way of enabling plan implementation in detailed plan areas. The parallel

procedure with formation of the plot as well as possibilities to register the new plot before the appeals concerning the compensation are resolved brings efficiency to the plan implementation process.

As with all tools, coercive purchase of a missing part of a plot has shortcomings. One key issue, on which the procedure can be criticized, is the treatment of incompetence due to the likelihood of bias in cases where municipal cadastral surveyors carry out procedures where the municipality is the acquiring or conveying party. This together with the issue of justification and determination of borderlines for the area of the procedure in cases where the plot division is indicative, were also the main concerns mentioned by the surveyors answering the survey. The issue of municipal surveyor's legal competence in cases where municipality is a party in the procedure should be provided in more detail and the consistent interpretation of it is essential for the credibility and acceptance of the procedure. According to the respondents of the study, problematic situations may also arise in areas without a binding plot division. Defining the area of coercive purchase may be difficult, as the plot division itself is indicative and not binding. In these cases, the land surveyors had questions about the necessity of coercive purchase and the responsibility of their authority to define the area to be conveyed differently than that set in the indicative plot division.

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