

Land Acquisition and Compulsory Means - Cooperation Creates Satisfaction

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SUMMARY

When land acquisition is necessary for public need in Finland, the state can acquire land either by voluntary purchase, compulsory purchase or by land consolidation.

The National Land Survey of Finland (NLS) has systematically improved the quality of its services and processes. Land consolidation processes are developed on the basis of good cooperation, which creates satisfaction in a process for an acquirer, landowners and a project leader. In recent years the NLS has used above-mentioned processes particularly in implementation of Nature Reserve and Road and Railway Safety using Land Consolidation Process with a very good success.

In order to achieve proper results in land acquisition it is necessary to have legislation in a good condition, which requires that land acquisition for public purpose and valuation is written in law. A proper process requires that all parties have been taken into account, there are different ways to execute an acquisition process, possession of land is provided for an expropriator, there is legal protection for a landowner and a compensation process is fair. Valuers also need to have required knowledge and skills to carry through the process, which increases reliability of whole valuation profession.

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1. LAND ACQUISITION IN FINLAND

When land acquisition is necessary for public need in Finland (such as for accomplishing a project for highways, main roads, airports, military areas, nature reserve areas etc.) it is possible to choose different ways to get forward. The different ways are:

- Voluntary purchase,
- Compulsory purchase or
- Land consolidation (adjusting).

Voluntary purchase means transaction or exchange of land.

Compulsory purchase means expropriation of land area with right of ownership or right of use.

Land consolidation means new types of land reallocation and is intended to replace the old system of partitioning. Nowadays in Finland several land consolidation projects, which involve re-allotment of parcels, have been executed. These projects are in connection with implementation of nature conservation programmes and improvement of road and railway safety. (Uimonen 2002)

These different ways can be used parallel for the implementation of the same project.

1.1 Background of Land Acquisition

During the 20th century land consolidation was developed towards a more comprehensive procedure, which had close connections with rural development. The latest step in the development of land consolidation took place in 1997 when Finnish cadastral legislation was completely renewed. The new act on cadastral surveys enables procedures, which are related to land rearrangements. It is now possible to carry out the land consolidation process in order to promote the use of land, not only for agriculture and forestry but also for all kinds of purposes.

1.1.1 Expropriation Act

Expropriation Act was renewed in 1970s but it didn't provide requirements of a modern land rearrangement. This old acquisition process followed a specified form and gave only limited possibilities to take views of landowners into account. In Finland the expropriation is carried out as an administrative land survey by a surveyor and two trustees elected by the municipal

council (survey committee). The committee has a negotiating role during the expropriation process and this kind of practise has proved to be reliable.

1.1.2 Land Consolidation

Land consolidation and the re-allotment of parcels are carried out by a surveyor and two trustees. Even though these three executors have the power to make legally binding decisions in connection with a project the aim is to achieve voluntary agreements rather than to impose compulsory decisions. (Uimonen 2002)

Usually land consolidation for agricultural purposes may also include the improvement of road and water management system as well as the conditions nature in a project area. (Sonnenberg 2002). In Finland has been developed a new implementation process to acquire land for Nature Reserve, Road and Railway Safety projects.

The land consolidation process opens up a possibility of a forum for an expropriator and a landowner to seek the voluntary agreement. In most cases the land consolidation offers better possibilities for the landowner to get land instead of money as compensation.

1.2 Process Description

1.2.1 Description of Implementation Process

The general goals of a developed implementation process are:

- Reduction of overlapping work;
- Reduction of costs of implementation;
- Reduction of duration of the implementation process; and
- Reliable cadastre (registers).

In the developed process it is essential on the one hand close cooperation between government officials and on the other hand an impartial and fair treatment for landowners and other interested parties.

During the process it is possible to look for a result, which satisfies an acquirer and at the same time produces as little as possible disadvantages for the landowner.

When the project leader (NLS land surveyor) starts the process, he first inspects the possibilities for voluntary agreement and then the possibilities for land consolidation (land exchange or reallocation of parcels of land). If these options are not possible the expropriation procedure will begin.

DESCRIPTION

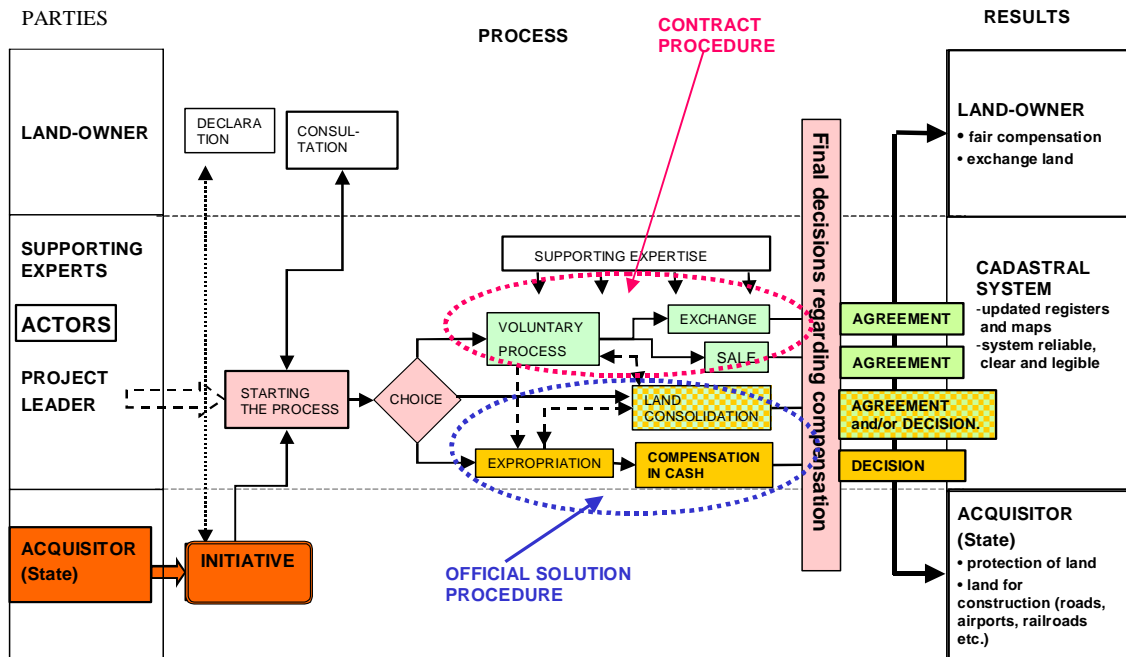


Figure 1 Description of land implementation process in Finland

The acquirer prepares a plan (at least a general plan) for a project. The plan will be presented to landowner and will be accepted by a state official. The plan consists:

- New areas, which will be needed for a project;
- A proposal how disadvantages for landowners are generally possible to avoid or compensate;
- A time-table; and
- A cost estimate.

The acquirer starts the process by asking the local land survey office to carry out the project of land consolidation. The land survey office nominates a land surveyor, who calls the trustees for the project. The surveyor prepares a project plan with the acquirer and experts.

The first step of the process is an opening meeting. The acquirer, landowners and other interested parties including supporting experts (e.g. forest surveyor) will be called into the meeting. If possible, the inspection of the objects is during or very soon after the opening meeting. In the beginning of the meeting and inspection the landowners can tell about their views of present circumstances, which enable the surveyor to assess situation before acquisition decisions. The landowners can tell what kind of solution they regard as the best solution for themselves. The main issue, however, is that the needs of the acquirer will be secured.

The committee evaluates the object, disadvantages and damages using the support of experts for each alternative choice of implementation.

The next step is to consult landowners and the acquirer about different implementation possibilities. The committee looks for the result of voluntary agreement with the help of consultation, which can be an agreement of sale, land exchange or land consolidation. Land consolidation includes reallocation of the rights on the land (e.g. right of passage) and an exchange or a reallocation of parcels of land.

If implementation of voluntary agreements is not possible, the survey committee will prepare the compulsory reallocation plan. The committee introduces the plan for interested parties and makes the decision about the land consolidation (rights and parcels). It is possible to complain against this decision to the land court.

If there have not been found any solutions to get to the acquisition process by a voluntary agreement or by compulsory reallocation plan during the land consolidation process there are good principles and actions to initiate the expropriation procedure. In such a case an acquirer will start a separate expropriation process.

When the land court has done its considerations about the case, the survey committee will make final decisions, which will include at the least decisions about real property formation, rights of passage and compensations. The land surveyor will also register the changes in cadastre. After completion the acquirer can take a new area in possession and carry on the project.

The general goal is that the duration of the process is possible to carry out in two years. The experience has shown, that about 95 % of cases are possible to solve in the land consolidation process and only about 5 % of the cases go to the expropriation process.

1.3 Experience about the New Process in Finland

1.3.1 General Experiences

Experiences of the NLS have been very promising in use of land consolidation process for land acquisition and implementation of projects. Amount of consolidation services have increased recently and customers of the NLS and landowners have been mostly satisfied with the process.

At the moment several projects involving the re-allotment of parcels are being executed. These projects are connected with the implementation of nature conservation programmes and the improvement of road and railway safety. The total number of implementation projects of Nature Reserves is at the moment about 100 projects. About 35 projects of these have been completed.

The main reason for increase of the new process is a better image of an acquirer. The new process has evidently activated landowners to make contracts.

1.3.2 Advantages

The main advantages in use of developed process are:

- Shorter duration of the project;
- Implementation of whole land acquisition project is possible during a single process;
- Consolidation plan is possible to get ready in the beginning of a project; and
- Process provides alternative proposals of implementation for landowners.

However, if the solution for acquisition is not found during the land consolidation process there are good principles and actions to initiate the expropriation procedure.

Cooperation atmosphere has become better using land consolidation process and this has supported voluntary agreements. (Sillanpää 2003)

2. PRECONDITIONS FOR ACHIEVING A GOOD RESULT

Following issues have to be in a good condition to achieve a proper result:

- Good legislation;
- Proper process; and
- Good valuation skills.

The cooperation between landowners, executor and actors (project leader and experts) is necessary in order to get to the desired result. Especially requirements for project leader must include terms for special adaptability to follow accepted processes and legislation.

2.1 Legislation

The legislation must include criteria of the agreement on the human rights of the Council of Europe. It means requirement of constitutional and legal protection of property.

2.1.1 The Protection of Property

According to the regulations of the protection of a property, it is possible to expropriate:

- For a public purpose (in the name of public interest);
- In accordance with the legal conditions; and
- By paying fair and full compensation.

2.1.2 Aspect of Legal Protection

An authority, which decides on expropriation and compensation, must be independent (impartial) and its members must be unchallengeable.

Important issues concerning this aspect are:

- The authority must be of a permanent;

- At the first stage the deciding authority can be an administrative authority (e.g. expropriation committee managed by cadastral officer) and the procedure can be administrative as well (expropriation procedure). The same criteria are applied to the procedure as to a trial (e.g. consultation with the interested parties and an appropriate handling).
- There has to be a possibility to appeal first-degree decisions to an independent court.

2.1.3 Principles of Procedure

The law should prescribe the procedure of the implementation of the expropriation. Important issues concerning this are:

- Organisation;
- Principles for full compensation and what is will be compensated;
- Parties of expropriation procedure; and
- Securing the status of a holder of a lien (pledgee).

The important principles for full compensations are:

- Fair (and just) compensation;
- Every landowner gets compensation with uniform regulations;
- Compensation is defined as a market, income or cost value; and
- Compensation includes a value of object, disadvantages and damages.

2.1.4 Other Important Aspects

The legislation should consist also the principles of:

- Separate ways for appealing against the decision (enforcement) of the project and the determined expropriation procedure;
- The expropriation procedure, which can be started even before the project decision has become legally binding;
- The law, which should consist (comprise) regulations on advance possession, procedure of advance indemnity and procedure of decision-making concerning a permit for advance possession; and
- The complaints, which do not stop the process unless the court decides to stop it.

2.2 Process

The process (method of procedure) must be done so that decisions in the procedure are dealt promptly without unnecessary delay. Transparency and open process is very important, which means that secret decisions are not allowed.

2.2.1 Organisation

An authorised official is a person who makes decisions for the compensation. A project leader has to be involved to the project comprehensively from the beginning to the end.

Possession and compensation processes must be separated. Complaints may not have any influence to the possession.

Decisions must be included in the process and decision maker must be familiar with the case. Complaints must be dealt in court.

In the case of expropriation the project leader must be the authorised official.

2.2.2 Process Defining

The body that is responsible of expropriation must be defined. The process must be developed at the base of cooperation. Cooperation and tasks must be defined in process.

2.3 Valuation

2.3.1 Full Compensation

Full compensation means that following things are guaranteed:

- Compensation of the object;
- Compensation of disadvantages;
- Compensation of damages; and
- Rights of mortgagee.

2.3.2 Compensation Procedure

After the plan is accepted and a possible expropriation permit has been given the process may start. The process contains the compensation procedure, which includes:

- Specification of the object;
- Valuating;
- Decisions and documents;
- Registration; and
- Appeal against the decisions.

2.3.3 Price Register and Guidelines

Open and reliable real property purchase price register must be available for all parties. Administrative organisation has to have a leading role for giving guidelines, which are in relation with valuation issues. Strict (calculating) rules should not be given for valuers.

2.3.4 Research

Government has to take charge of research of land price information, price factors and their effects on prices. It is necessary to organise valuating studies and uninterrupted research in a University for valuers and supporting experts.

Government has to have the leading role to make research and develop valuation issues related to expropriation.

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BIOGRAPHICAL NOTES

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