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Acquisition and expropriation of real property for the public benefit in Slovenia

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ABSTRACT

Public acquisition and expropriation are the feasibilities of the state or local governments to acquire real property, where the increased benefit for the society is legally recognized. In spite of the commitment of market economies to the inviolability of private property, both approaches are well known in market economies and are topics of several international discussions. In particular this has been of importance in the former planned economies, where private ownership has become a fundamental issue. The rules concerning compulsory transfers of real property are different among the countries, but similar in concept. The dissimilarities can be found in the conditions on which transfers are carried out and in relation to compensation assigned to the property owner. This paper reviews the possible ways of real property acquisition with the stated purpose of establishing public benefit in Slovenia. The first step in the process of real property acquisition for the public benefit in Slovenia is real property purchase, where an agreement for compensation is to be achieved. Expropriation is used as the last resort where a real property is acquired without the consent of its owner and the compensation is usually based on the economic loss as the direct effect from the real property acquisition.

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Introduction

The development of the modern society requires government provision, at the state, regional or local levels, of public infrastructure and facilities that ensure safety and prosperity of life, economic progress and social welfare, compatible with sustainable development and environmental protection guidelines. An early step in the process is the acquisition of appropriate land or other kinds of real properties, which is the obligation of public institutions (FAO, 2008). For the purpose of public interest, the government cannot rely on real property markets alone to ensure that real property is acquired when and where it is needed for the greater good. It is possible that the owner of the relevant real property is not eager to participate in any kind of transaction. In such cases, when there are no alternative locations available, the legal system empowers the state or local community to exercise the expropriation procedure in order to support and achieve the desired public benefit. In this paper, the term of expropriation is to be understood also as compulsory acquisition, compulsory purchase or eminent domain. However, many countries worldwide assume that the state or local governments should attempt to purchase the required real property in good faith before the power of expropriation is used.

Land right issues and their influence on political and economic reality have made the recognition of the right to land as a human right very complicated. Currently, land rights as a human right are described as components of the right to an adequate standard of living, which entails the right to adequate housing, and the right to adequate food. Land rights are also linked to the right to property, including the right not to be arbitrarily deprived of one's property (Westman, 2008). Recognizing the utmost importance of land, the right to real property needs to be emphasized and treated as a human rights issue. However, the land right is not an absolute right. The land right and all other tenure rights are limited by the rights of others and by the measures taken by states that are necessary for public purposes. Such measures must be determined by law, solely for the purpose of promoting general welfare, including environmental protection and consistent with states' human rights obligations (FAO, 2012). For these reasons, the execution of an expropriation is strongly related to the human rights that are implemented on the constitutional level as the formal security of private property. On the European level, the European Convention on Human Rights introduces three principal provisions that concern private property: protection of private possessions, provision for a fair trial, and protection of a right with respect to a home. Consequently, the topic of expropriation, compulsory purchase, has been the subject of several international discussions and publications in the last decade (see Viitanen and Kakulu, 2008; FAO, 2008; Kalbro et al., 2008; Hopfer et al., 2010). Compulsory dispossession of real property should be well balanced between the public interests and the protection of private property of citizens on the other

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hand. The assurance of such balance must be formally enacted in the legal framework. Such procedures should be, according to [FAO \(2008\)](#), based on the fact that the forced conveyance of real property ought to be implemented only in the cases when the public benefit is evident, congruent with spatial planning acts, and no other solution is available.

The acquisition of title for the public benefit means an official conveyance of real property rights from an individual physical or juridical subject to the public institution in general. In the contemporary context it can also be implemented as the establishment of public easements, or even, in some special cases, as the encumbrances in favour of private companies ([Kalbro, 2007](#)). Generally, expropriation is a forced sale of real property in accordance with either an eminent-domain order or an order for a judicial sale arising from non-payment of duties ([Garner, 1999](#)). The circumstances for an expropriation, compulsory purchase, or restriction of individual ownership rights through easements in favour of public interest noticeably vary among the legal systems, but some common cases can be outlined ([Denyer-Green, 2005](#); [Ferlan et al., 2009](#)):

- An expropriation for the public benefit is carried out when the new usage of the real property will gain increased merit for the community in comparison to the existing private one. Such an expropriation should be executed in accordance with the planning regulations and with reasonable compensation to the owner. The repayment is usually based on the assumed market value of the real property and should also cover some collateral outlay. The expropriation is carried out in the context of important infrastructural projects, for example traffic networks, electricity generation and transmission, water supply, sewage disposal, telecommunication facilities, hospitals, [schools](#), etc.
- An expropriation caused by the insufficient maintenance of a real property, such as: ruination of buildings, destruction of historic, cultural or natural [monuments](#) and pollution of the environment.
- An expropriation for the prevention or reparation of damage caused by natural disasters and other common threats.
- A compulsory purchase (at auction) of a real property is caused by insolvent duties of its owner, such as bankruptcy, mortgage redemption, avoiding tax duties, court [decision](#) and operation of law.

The main problem of the expropriation procedure for the public benefit is the fact that the legitimate purchaser aiming to realize a certain public benefit usually urgently and rapidly needs to obtain the selected and exactly located real property. The indirect danger involved in such an expropriation provision comes out from the privileged or monopoly offer, which can cause high purchase price that together with the complicated administrative procedures often results in unnecessary high transaction costs ([Kalbro, 2007](#)). International studies and discussions about acquisitions of real properties for the public benefit, which were carried out by the United Nations (UN), Food and Agricultural Organization (FAO), World Bank and International Federation of Surveyors (FIG), indicate the need to standardize the expropriation procedures and to unify the principles of fair compensation to the rightful claimant. The transparency and efficiency of such methods, low transaction costs, short time period and fair compensation are especially emphasized ([FAO, 2008, 2012](#); [Viitanen and Kakulu, 2008](#)).

Methodology

In market economies the public acquisition of real property, including expropriation, is essential when dealing with certain aspects of market failure. This includes the need to facilitate the provision of public goods such as infrastructure and utility

networks. The formal realization of a transparent expropriation case requires that the basic principle of increased public benefit is justified and published by the public authority. An expropriation or limitation of ownership by easements is acceptable if the necessity of the relevant public interest is evident and justified. The gained public benefit should be transparent and comparable to the loss caused to the private ownership. In different countries, the development of the real property acquisition for the public benefit has been influenced by the tradition and legislation. For these reasons a particular importance of real property acquisition for the public benefit is to be stressed in the case of (former) transitional countries. In spite of the commitment to the inviolability of private property, these countries have had to develop compulsory purchase procedures (see [Grover et al., 2008](#); [Hopfer et al., 2010](#)).

Furthermore, the real property acquisition for the public benefit is dependent on the land administration system. Slovenia, as a study case of this discussion, has a similar land administration system and transaction procedures comparing to the other countries formed from the former Austro-Hungarian Empire (dual system of real property [registration – the Land Cadastre and the Land Registry](#)). In these countries, an expropriation procedure usually balances the interest between the public, the common good, and the interest of the particular owner of the land. Expropriation means the taking of a right (typically ownership of land) without the consent of the owner in the public interest, and against compensation (see [Navratil and Frank, 2008](#)).

In Slovenia, similar to other countries in transition, compulsory purchase of real property for the public benefit has been affected by transition to the market economy in the past two decades. The institutions of real property public acquisition and expropriation, being introduced due to public interest, have been developed according to the new Constitution, which permits and protects private ownership, as stipulated by the requirements of the European Convention of Human Rights. An overview of the existing legal framework is crucial to the understanding and international comparison of real property acquisition for the public benefit. For this reason, the Slovenian legal background in real property registration and expropriation is presented, where the procedures of real property acquisition for the public interest are dissected in more detail and graphically represented. Here, the Unified Modelling Language (UML) has been used, which was developed in the mid-nineties and was adopted by the Object Management Group (OMG) as standard in 1997, and has been already used to describe land related systems and procedures (see [Šumrada, 2006](#); [Ferlan et al., 2007](#); [Lisec et al., 2007](#)). The UML was originally designed for modelling software-intensive systems, but nowadays it is a formal general-purpose visual modelling language that is designed to be independent of any development methodology ([Eriksson et al., 2004](#)).

Real property ownership in Slovenia

In the traditional concept of the ownership system, a real property is understood as a land unit (a land parcel) and all permanently attached things (fixtures), such as [buildings and utilities](#). During the socialist period this basic principle was neglected in Slovenia partly by the overruling social ownership in urban zones and partly also in rural areas. However, the Slovenian particularity when comparing to the other Eastern European countries was that the prevailing small farms (with approximately 10 ha of arable land) were never fully nationalized. Most of them survived also under the socialist regime, despite the unfavourable regulatory regime and policy measures, such as the constitutional restriction on the maximum farm size ([Lisec et al., 2008](#)). As early as in 1980 the role of social ownership was lessened by the [Basic Property Law Relations Act \(1980\)](#). After the declaration of independence in 1991, the Basic

Property Law Relations Act was introduced into the new Slovenian legal system. Not earlier than in 2002, the *Law of Property Code (2002)* enacted the ownership rights and encumbrances on real properties, which represent the entire legal framework for the real property management (Tratnik, 2002). The principle of *superficies solo cedit* became the basic guidance of real property legislation, including the establishment and conveyance of property rights. This process resulted in the new definition and role of real property, which is a spatially defined unit of Earth's surface (land unit) with all permanent things (fixtures) attached to it (*Law of Property Code, 2002*). All other things are defined as movables. The only exceptions to the prevailing principle of *superficies solo cedit* are the right of superficies (building right on land plot) and divided co-ownership of the common parts (i.e. condominium). A right of superficies is the right to own a built structure above or beneath the land or other immovable of the third person.

The basic right on land parcel is the ownership, which, in accordance with the Slovene legislation, means the right to possess, use, enjoy and fully dispose of it. The restrictions on usage, enjoyment and disposal can only be determined by law. The ownership can be partly restricted by public interests and also by other private concerns, which is common for the majority of European countries. The Slovene Constitution (*Constitution of the Republic of Slovenia, 1991*) specifies that the different real property rights and restrictions are defined by the legal system, so that their economic, social and ecological roles are supported. The ownership rights on real property can be obtained by:

- Legal transaction,
- Inheritance,
- Legal prescription by law where adverse possession and provision by public authority are the most important.

Acquisitions of property rights by transactions and by inheritance are the most common cases. The least frequent is the case where the ownership of land or parts of buildings is obtained by adverse possession (legal prescription by law). The provision of public authority is the case when the transfer of property rights is caused by a public acquisition based on the agreement or an expropriation. In any case, property rights and any encumbrances must be officially registered in the Land Registry in order to ensure legal protection. The Slovene Constitution also specifies that any real property ownership right could be revoked or limited due to the public interest, with the provision of compensation under conditions established by law. Expropriation is the most extreme form of carrying out the public interest. It can be executed only in accordance with the legislation with a fair compensation or by an appropriate exchange of comparable real properties. The circumstances for a public acquisition or expropriation are also strictly defined by law. The Slovene legal system (*Spatial Planning Act, 2007; Act regarding the sitting of spatial arrangements of national significance in physical space, 2010*) in general prescribes the acquisition of real property for the public benefit or limitation of an individual ownership only as:

- An acquisition of real property based on the agreement,
- An expropriation (compulsory purchase) and
- Temporary easements for the public benefit.

The procedures behind these acquisition possibilities fall into the domain of administrative law (*General Administrative Procedure Act, 2006*) and, in particular, the last two tend to be entangled, costly and mostly involving very long proceedings. They are carried out by the appropriate public authorities and later also by court authorities. The sensitive decision in all of these cases is the assessment of a fair compensation, which should be unbiased

and derived from the market value, preferably appraised by the proficient real property appraiser. The estimated value of a real property concerned should be acceptable to all the parties involved and sufficient to cover the transaction and procedural costs.

Procurement of real property for the public benefit in Slovenia

Acquisition of real property based on the agreement

When purchasing a real property on the free market the public interest does not need to be proven. The purchase price should be settled by the demand and supply principle in agreement with the seller, but it can also be biased owing to the special circumstances of such transaction. The buyer on the free market has the opportunity to negotiate the purchase price, not being prepared to pay more for the selected real property as would be the price for a property of similar characteristics and preference. When acquiring real properties for the public benefit the focus is often on selected land or other real property. Such circumstances put the owner in a much stronger position. The ownership of the selected real property should be conveyed in a reasonably short period and as a result the negotiations about the purchase price are complicated and sensitive. If the negotiations about the price or any other possible compensation, such as exchange of appropriate real properties, are not fruitful, the process of expropriation is exercised. According to the Slovene legislation an expropriation is possible in the following cases (*Spatial Planning Act, 2002, 2007*):

1. Construction or renewal of public utility structures and networks, and within land consolidation projects;
2. Construction, renovation or removal of real properties or land needed for the national defence system, national support reserves, safety of citizens or public property, and for protection against natural hazards;
3. Construction, renovation or removal of real properties or land needed for public services in the fields of education, science, health care, social protection, etc.;
4. Construction, renovation or removal of real properties or land needed for council flats or non-profit dwellings;
5. On the basis of other legislation prescribing the takeover or curtailment of private ownership:

- monitoring of environmental protection (*Environmental Protection Act, 2006*),
- protection or preservation of natural monuments or for setting up natural protected areas (*Nature Conservation Act, 2003*),
- protection or preservation of cultural monuments (*Cultural Heritage Protection Act, 2008*),
- acquisition, transition or concession of mining rights (*Mining Act, 1999*), etc.

In the process of real property acquisition for the public benefit based on the agreement or in the expropriation procedure the selling of a whole parcel can be enforced or, alternatively, the required real property is formed by subdivision. For each real property the following has to be acquired: land use certificate, Land Cadastre data, and Land Registry data. Along with spatial planning documents these documents testify the status of the real properties involved. In the case of the subdivision procedure for the public benefit, the absence of formally invited owners or tenants, or their disagreement about the establishment of new boundaries do not obstruct or hinder the formation of any new parcel in the cadastral procedure or Land Registry inscription. After the required subdivision of real properties is completed,

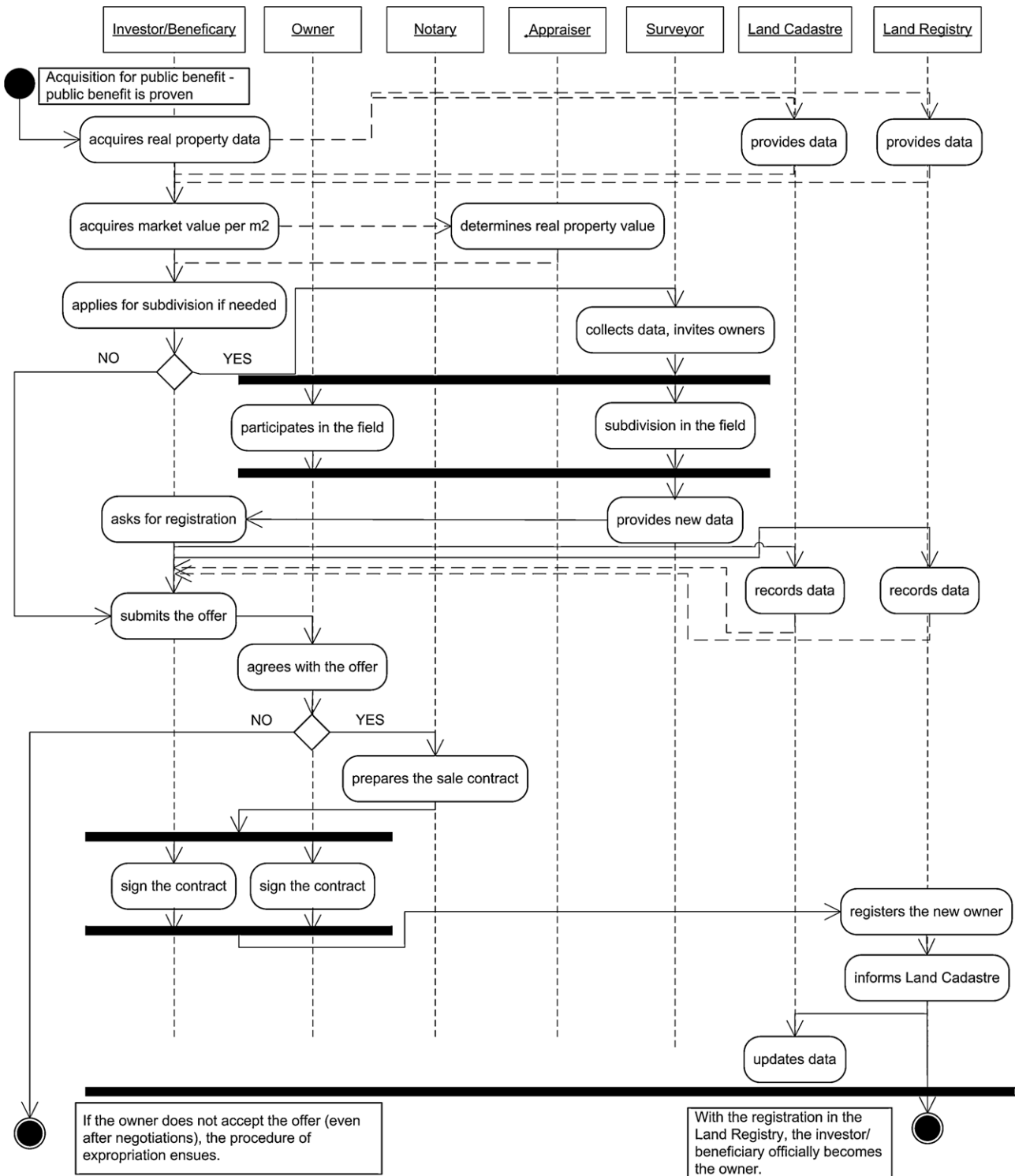


Fig. 1. UML diagram of real property acquisition process in Slovenia for the public benefit - the case of a sale contract.

the owners of the real properties concerned receive the purchase proposal or the exchange offer of substitute real properties. The investor/beneficiary must inform all property owners about the public interest, subdivision plan, their rights and compensation options. All property owners are also invited to attend presentations and discussions, where each owner is informed about the relevant details, such as the circumstances of the process, public benefit, sale contract, subdivision details, and the assessed value of the real properties involved. When the sale contract is processed,

certain obstacles may emerge, caused by the unsettled registration of titles in the Land Registry (Fig. 1). Such cases are, for example, complex inheritance procedures, which generally prolong the process of real property expropriation for the public benefit.

According to the Real Property Transaction Tax Act (2006), any real property purchase contract must be forwarded to the Tax Administration of the Republic of Slovenia. Real property transactions for public benefit are tax-exempt. In the case of agricultural land the authorized public authority must, according to the

Agricultural Land Act (2011), approve such legal transactions for the public benefit without the otherwise mandatory public offer and auction. If any public authority may put into effect its pre-emption rights, it should also attest the withdrawal of any pre-emption (see Lisec et al., 2007; Lisec and Drobne, 2009). All the documents mentioned must be legally verified by a notary. In the case of a settled sale of a real property for the public benefit the formation of the agreed sale price is the main issue. If the owner accepts the formal offer, the purchase contract can be signed and legally verified by a notary. The signed and verified sale contract must be registered in the Tax Administration system and in the Land Registry (Fig. 1).

Real property valuation and compensation

In the case of real property acquisition for the public benefit based on the agreement or an expropriation the market value of a real property is meaningful. The value of a real property can also be defined in terms of its applicability or usefulness and such approach is typically biased. Besides its market value one can differentiate between several other values of a real property, such as social, political, physical and aesthetic values. In the case of real property acquisition for the public benefit in an area within a valid spatial plan (which is the proof of the public interest) the certified appraisers of the construction, forestry or rural branch formally estimate the market value of the real properties concerned. These certified appraisers are professionals licensed by the Slovenian Institute of Auditors. They act in the market in accordance with international valuation and professional standards. If an appeal is made to the administrative court, the court has the right to obtain additional valuation advice from the court expert – judicial appraiser of real property, who is appointed by the court in the field of real property valuation.

In the past the valuation of real properties in Slovenia was based on vague administrative procedures, but nowadays the following market approaches are typically used for an evaluation:

- The cost approach is based on the principle of substitution. The appraiser determines the approximate replacement cost of a new property functionally equivalent to the subject property.
- The income approach estimates the rental income from a real property and capitalizes the income into an estimate of the current value.
- The sales comparison approach approximates the competitive market conditions and derives the market value through the registered market price of similar real properties.

After the appraiser's completion of the valuation report the transactor prepares the sale contract that is addressed to the legal owner or successor of the real property concerned. The owner is entitled to a fair compensation or exchange for an equivalent substitute real property. Besides the agreed market value the compensation ought to cover any collateral outlays caused by the compulsory acquisition or expropriation, such as transport costs and loss of income. If the owner does not agree with the appraised value of the real property involved, he can freely verify the proposed valuation by employing an additional appraiser of one's own choice. The real property acquisition for the public benefit mostly refers to the cases when an owner of a real property is forced to sell the property while there is often no time left for marketing. In such cases the established price often does not come close to the market value of such property, this being a reflection of the extraordinary circumstances of the compelled sale, the shortage of time and the reduced demand. The technical data such as land use and location, are derived from the Land Cadastre or Buildings Cadastre. The comparison of the permitted or existing land use, which can be found in the planning documents, and the future land use of a real property

after the compulsory sale can also be used to adjust the sell price, but the real property itself is generally defined for the existing use.

The Act regarding the sitting of spatial arrangements of national significance in physical space (2010), which entered into force on 1 January 2012, provides for extensive changes regarding the compensation for compulsory acquired or expropriated land and for the restriction of rights on real property at erection of the major national infrastructure. The most important national infrastructures are roads and railways, which usually cover a large area with many real properties, along with many owners or co-owners. The fast acquisition of the real properties for projects of national significance is important and uniform rules and criteria for assessing the real property values must exist. In the last decade, the Surveying and Mapping Authority of the Republic of Slovenia has established the real property mass valuation system for all types of real properties for the whole Slovenia. The system includes the Real Property Market Register with free on-line access. The relevant Act (Act regarding the sitting of spatial arrangements of national significance in physical space, 2010), provided changes regarding compulsory acquisition, expropriation, as follows:

1. If the owner refuses to sell the real property (acquisition based on an agreement), the beneficiary of the expropriation may fulfil its obligation by depositing the compensation for the real property before the court. The deposit is 150% of the estimated compensation for the real property. With this the condition for taking the real property into possession is fulfilled and it is hoped that the procedure of construction of national infrastructure projects will become much more efficient.
2. Valuations of real properties shall be carried out on behalf of the investor. The Act directs the appraiser assessing the value of the real property to consider the real property information and the generalized market value shall be in accordance with the Real Property Mass-Appraisal Act (2006), which is registered in the public database, the valuation methodology and international valuation standards.

Substitute real property

The property suitable for exchange in kind can be proposed by the owner or found on the real property market. In the case of exchange for suitable agricultural or forest land for a farmer, for whom the agricultural production is the primary economic activity, the solution can be provided with the assistance of the Farmland and Forest Fund of the Republic of Slovenia. When searching for the appropriate real property, the owner's requests must be considered. In the case of a reached agreement for exchange in kind the existing owner's conditions should not be substantially diminished. If the owner finds a suitable property for exchange on his own, with an approximately similar value, such a real property is redeemed and the title is conveyed to the owner. In the case of a discrepancy in values of the exchanged real properties, the values are adjusted either by additional compensation to the owner or the difference is supplemented by the owner.

Expropriation of real property

If after the renewed valuation of real properties, or no later than six months after the owner receives the first purchase offer, no sale or supplement agreement is reached, the expropriation procedure starts. The expropriation is permitted if it is in accordance with the legislation, and if the greater good cannot be achieved by regular purchase or suitable exchange of the needed real properties. The expropriation cannot take place if the municipality or state authority disposes of any suitable real properties for the same purpose. The expropriated owner should be compensated by an appropriate reimbursement for the seized properties while any

direct or collateral damage must also be included. In accordance with the formally defined objectives, some owners' rights can be restricted for a certain period of time by an additional servitude or easement enacted with a procedure similar to the expropriation.

The expropriation procedure of real property is accomplished in two stages. In order to preclude any possible transactions, firstly all the real properties concerned are denoted in the Land Registry. In the next stage the expropriation provision is published, which is the base that enables the conveyance of titles and the registration of the rightful claimant in the Land Registry. No later than two weeks after the formalization of the expropriation provision the parties involved are invited by the public authority to confirm and sign the compensation or the exchange agreement. If in the two-month period the agreement about the compensation is not achieved, any of the parties involved may forward the case to the competent court that makes the decision in the lawsuit proceeding.

Expropriation proposal

The expropriation process starts when an expropriation rightful claimant (beneficiary) forwards the application to the public authority concerned (Fig. 2). A physical or legal person owning a real property that is the matter of an expropriation has the liability role. The expropriation rightful claimant (municipal or state authority) can start the expropriation procedure one month after the unsuccessful attempt of purchase proposal has been terminated. The expropriation claim consists of:

- The extract from the spatial planning act concerned;
- The list of real properties indicated for the expropriation with data extracted from the Land Cadastre or/and Buildings Cadastre and Land Registry;
- The proposed purchase contract with the formal valuation report and all other required documents;
- The expropriation report with the time schedule and a detailed description of the proposed activities that triggered the expropriation process.

The expropriation report contains obligatory and optional parts. The obligatory documents:

- The explicit description of the expected public benefit;
- The official statement from the municipal or state authority concerned that there are no alternative real properties available;
- The official statement that the real properties determined for expropriation are in accordance with the planning documents concerned;
- The list of real properties selected for expropriation with data extracted from the Land Cadastre or/and Buildings Cadastre and Land Registry;
- If any land subdivision is needed, the plan of each subdivision is required.

As optional parts of the expropriation report additional descriptions and argumentations of the planned expropriation can be added that can further explain the purpose of the process. Also, different valuation reports and their comparison can be added as the optional documents. The expropriated legal or physical person can also submit the claim and reasoning that there is a loss of reasonable economic significance in the rest of the remaining or subdivided parts of real properties. In such cases, the proposal that such remaining parts are included into the expropriation process can be forwarded.

Execution of an expropriation procedure

At the start of the expropriation procedure the public authority issues a provision along with the explanatory description and

the formal documents from the rightful claimant. The provision must also outline any other rights or obligations pertaining to the real properties, such as **leaseholds and mortgages**. The provision does not only define the expropriation procedure, but also triggers the Land Registry to block any possible activities on the properties involved. Such a seal in the Land Registry prevents any owner to sell, subdivide, lease out or mortgage any real property included into the expropriation process. As long as the expropriation procedure is being executed the owner can only decide to sell the property to the rightful claimant. When the formal decree is issued by the court the rightful claimant gets the title on the expropriated real properties. The exceptions are the cases of urgent expropriation (for example in the face of natural disasters). In such cases the expropriation is instituted by a decision and there is no appeal against the conveyance of title to the rightful claimant possible. The seals in the Land Registry are removed and the expiration periods for the start of activities are prescribed, when the rightful claimant must start the operations for which the expropriation was propounded.

The former owner of the expropriated real property should receive fair compensation or a suitable replacement in kind. The compensation is based on the real property market value and it includes any collateral costs caused by the expropriation process, such as migration costs, reduced revenue or decreased value of the remaining parts of the former **property and** detriment from the abolished leasing contracts. No more than two weeks after the issue of the expropriation provision and its legal validity the administrative authority summons the owner and the rightful claimant to settle the transfer agreement, which must be verified by a notary. The transfer agreement must stipulate the compensation amount, the mode of its transfer, and the due time of the transfer process. In the case of disagreement among the parties involved, the expropriation provision becomes legally valid and the transfer of ownership is carried out in the Land Registry by official duty. Such disagreements, disputes or appeals are resolved by the administrative court.

If the former owner of the expropriated real property does not agree with the evaluated compensation, he can appeal to the administrative court, because in legal terms the expropriation process is an administrative procedure. According to the **Spatial Planning Act (2002, 2007)** at the first level such appeals are resolved by the administrative authorities concerned, and at the second, final level the decision is issued by the special board of the ministry competent for spatial planning. If the expropriation rightful claimant does not start the construction or other planned activities in the expected period (two years), the expropriated owner can claim the return of real property from the public authority concerned. If in such special cases the rightful claimant and the expropriated owner cannot find a solution about the return of the expropriated property or about the new increased or decreased value of such property, the administrative authority concerned requests a formal decision from the administrative court.

The **Act regarding the sitting of spatial arrangements of national significance in physical space (2010)** has brought some changes regarding major national infrastructure projects, which aimed to speed up land acquisition for special public purposes (only for national spatial plans, at the state level) with the following provisions:

- Expropriation is initiated in an administrative procedure with an order and not with a decision. Against this order there is no appeal possible. The administrative authority sends the order directly to the Land Registry.
- The public benefit of the real property is proven by the state plan.
- An argumentation for the acquisition of the real property is not necessary, but it is provided if the investor deposits before the court an amount of 150% of the estimated value of the real

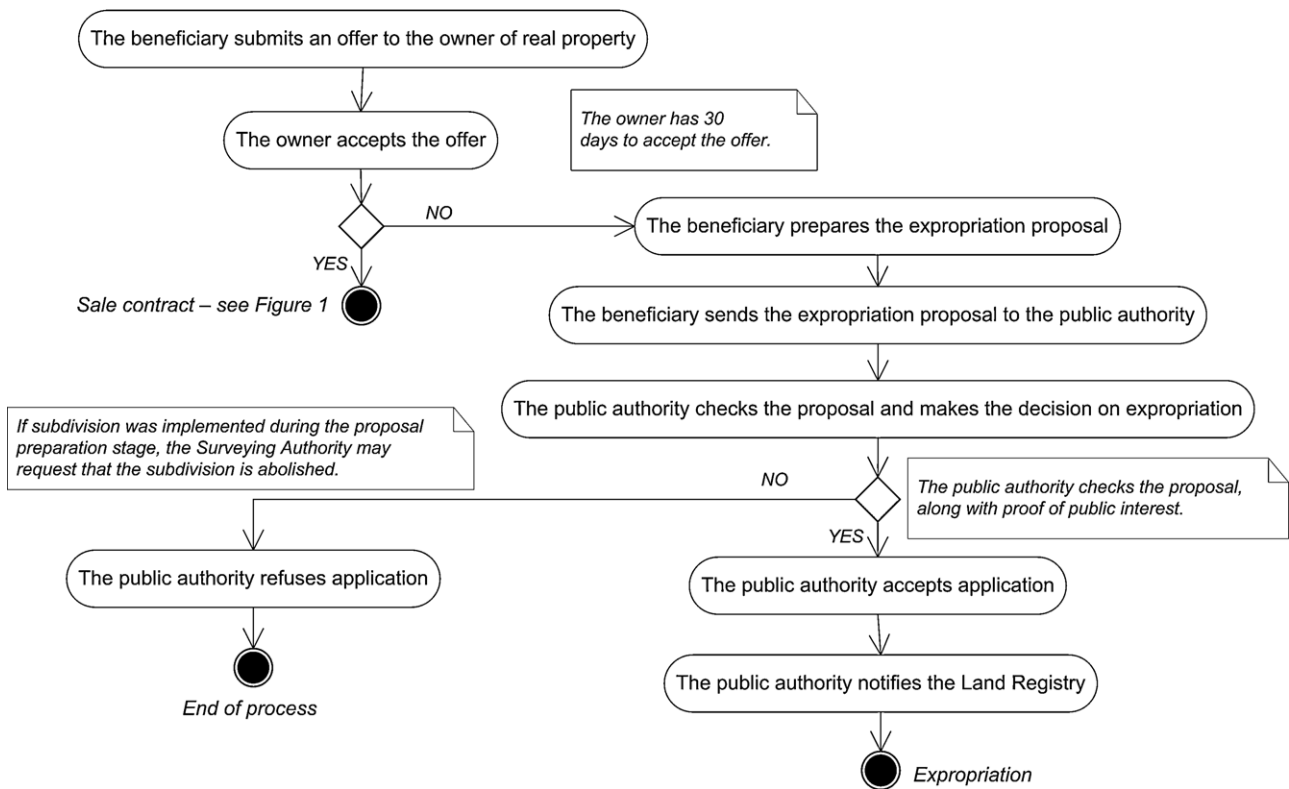


Fig. 2. UML activity diagram of real property acquisition and expropriation in Slovenia for the public benefit.

580 property. Half of the deposit is a security deposit for any damage
 581 caused by the emergency of the procedure.
 582 - As a “boost” from the Act, the owner should rather sell the real
 583 property than later cover the expenses of the expropriation
 584 procedure.

585 *Easements for the public benefit*

586 An easement, which is the right to use another’s property, or
 587 to exploit it for a specific limited purpose or for the public ben-
 588 efit, follows the same proceeding as those used in preparation of
 589 an expropriation. The owners of real properties are also entitled to
 590 compensation for the established easements if the needed spatial
 591 activities cause detriment to their land parcels. An easement that
 592 burdens the ownership right on a real property may be permanent
 593 or temporarily. However, it does not give the holder the right to
 594 possess, take from, improve, or sell the land. Personal easements
 595 are not covered in this discussion, because of their different ori-
 596 gin and purpose. Importantly, an easement must not expand and
 597 it must be carried out with the minimal handicap to the servient
 598 tenement. A special case is the right to install utilities or other pub-
 599 lic improvements, or to maintain such facilities and have secure
 600 access to them, or to provide access to construction sites within
 601 or across the privately owned real property. Such easements can
 602 be proposed and established only by the state or municipal public
 603 authority, or by the concessionary company that maintains pub-
 604 lic utilities or other public services. Any case of easement, along
 605 with its concessionaire, must be registered in the Land Registry in
 606 order to assure its publicity; however the downside of the current
 607 system is that it does not require the spatial representation of the
 608 easement (map, sketch). If easements are not registered in the Land
 609 Registry, which is at present a frequent case in Slovenia, there is no
 610 guarantee for provision of security for public or private interests.
 611 Easements for the public benefit are incidental and are related to

usage of the particular part of a real property, where an object or
 equipment is installed on or below the ground.

The public authority must decide to introduce an easement
 for the public benefit with the formal provision following simi-
 lar legal conditions and procedures as are those required for an
 expropriation. If an agreement on the easement contract with the
 real property owner cannot be attained, such easement can be
 enforced through the administrative court decree. The provision
 for an easement or for a temporal usage for public benefit must
 contain (similar as for the compulsory purchase):

- The relevant data about the real property from Land Registry and
 from Land Cadastre and/or Buildings Cadastres;
- The extract from the planning document if an easement is based
 on the planning decision;
- The explicit description of the public benefit concerned;
- The specification of time period and duration of the imposed
 easement;
- The proposal for an easement contract with the specification of
 compensation for damage, decreased value of the real property
 or any additional loss.

632 **Discussion**

633 In Slovenia, real property acquisition for the public benefit can
 634 take up to several years, which is the main problem of the current
 635 system. Expropriation is the most severe form of property acqui-
 636 sition where a real property is acquired without the consent of its
 637 owner. Prior to the start of the expropriation procedure, authori-
 638 ties typically try to acquire the real property (or other rights)
 639 through a contract and intensive negotiations with the owner. Only
 640 if such negotiations fail to secure a voluntary transfer of ownership,
 641 the expropriation procedure takes place. The possibility of expro-
 642 priation influences the owner’s decision to negotiate a contract

since there is less opportunity for appropriate compensation once the expropriation procedure is introduced. On the other side, the authorities (beneficiaries) are also in favour of achieving an agreement on the real property acquisition, due to the high transaction costs of an expropriation, which is also a time consuming procedure. By being aware of the weaknesses of expropriation, while, indeed, public infrastructure projects are usually associated with time limits, real property owners often see an opportunity to play games with the authorities. The authorities may receive claims for large public compensations that are beyond legislative principles or lawful compensation levels. Such claims are usually refused but they nevertheless prolong the procedure of real property acquisition. Nevertheless, in practice the agreements for real property acquisition are usually achieved by overpricing, with real property exchange or by offering other kind of compensation (services). The public authorities are nowadays aware of the danger of the ascending compensation spiral over time as a result of overpricing and they are trying to end this trend by offering a fixed price for the real property with possibilities for some additional compensation (for individual damage, loss of income, etc.).

The new legislation (Act regarding the sitting of spatial arrangements of national significance in physical space, 2010) might solve the problem for infrastructure projects of national significance. As already said, if the real property owner refuses to sell the real property, the body entitled to expropriation may satisfy its obligation by depositing the compensation of the real property before the court. With this action the condition for taking the real property into possession is fulfilled and it is hoped that national infrastructure schemes will be much more efficient.

A challenging issue in the Slovenian system of real property acquisition for public benefit is also the complexity and time demanding transaction procedures. As illustrated in this paper, there are various actors involved who can, due to the opposing interests, delay the formal procedure. At certain stages appeals are possible, which are as a rule resolved at the higher court level. This additional feasibility can entangle and prolong the acquisition process.

Conclusions

In Slovenia any physical or legal person has a constitutional right to freely own real properties as a full freehold. Therefore, the real property acquisition for the public benefit based on the agreement and expropriation of real property are both noticeably intrusive processes that hinder private ownership. In the EU member states the basic condition for persuading and forcing an owner to give up his title or to limit his full ownership is for the uncontested purpose of public benefit. In Slovenia somehow, the legal principle of public benefit is formally not strictly defined and for these reasons the frequent appeals can slow down the procedure. In the Slovene legal practice the evaluation of such legal measures is vaguely determined and its enforcement often prejudices the owners. In practice, such cost–benefit evaluations are derived by the principle of proportionality, while they should rather be based on the estimated value of public benefit, financial costs, degree of public and private annoyance, and collateral damage of the owners concerned. More often spatial conditions and other relations should be applied in order to settle such cases by an appropriate exchange of substitute real properties, which is, however, often not considered as a feasible solution.

If we compare the discussed conveyance procedures for the transfer of title (an acquisition based on an agreement or an expropriation) and the granting of easements for the public benefit, we can conclude that an agreement is a less coercive form of intrusion with respect to real property ownership. Real easements

are less restrictive and a non-permanent means to attain public benefits. Therefore they can be a more acceptable alternative to a property owner than an expropriation. Anyhow, all the procedures described tend to be of long duration. In the paper we deliberately omitted a more exhaustive consideration of the costs involved in such procedures with respect to the various actors involved (individuals and institutions). Due to the legal entanglement, political sensibility and general length of the expropriation and compulsory purchase procedures in Slovenia, and complicated real easements formation for public benefit, the direct and mediate costs of these processes are worthy of a separate, thorough examination.

In the modern society the expropriation has become first of all a solid approach of spatial policy. On the other hand, if we consider the legal implication of expropriations, they can act as a strong instrument supporting the protection of the environment. We should also be aware that besides their market value real properties manifest other values also. Nowadays, in the context of an encumbered environment the public interest could be effectively fulfilled through efficient acquisition of land and with exchange of suitable comparable real properties instead of monetary compensation.

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