

## § 3 Land acquisition for public purposes

### I. The predominant practice: land acquisition by purchase

- where a specific plot of land is needed for public purposes, esp. for infrastructure projects or under urban planning law, the authorities are legally obliged but usually also interested to acquire the needed land from its owners on a voluntary basis, i.e. by private contract
- they will usually buy the needed land but may also offer appropriate replacement land for a plot of land exchange if this is more expedient

### II. The last resort: expropriation for the public good

#### 1) Constitutional background and terminology

Art. 14 Basic Law:

- (1) Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.  
(2) Property entails obligations. Its use shall also serve the public good.  
(3) Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts.

- German law distinguishes between *expropriation* [Enteignung] (art. 14(3) BL) and *definition of content and limits of property* [Inhalts- und Schrankenbestimmung] (art. 14(1) phrase 2 BL)
- since property entails social obligations and its use shall not only serve the owner but also the public good, legal restrictions of land use (of mining, building, agriculture etc.) do not constitute an expropriation but a definition of limits
- the concept of expropriation in art. 14(3) BL is broader, but expropriation for land acquisition always means the *complete deprivation of ownership* of a plot of land

#### 2) Legal requirements

- art. 14(3) BL allows expropriation *only in exceptional cases*
  - for the *public good* (also in favour of private enterprises if this is in a specific public interest)
  - directly by statutory law (rare) or *based on statutory law*
  - the law must regulate itself the nature and extent of the *compensation*
  - and the authority must determine the compensation by *fair balancing* of the public good with the private interests affected
- a number of federal and Land laws in various fields of admin. law authorise expropriation for different public purposes as last resort; they usually require more specifically that
  - the public good demands the expropriation and the purpose of the expropriation cannot be achieved by other reasonable means
  - the developer of the project for which expropriation is carried out has made serious but unsuccessful efforts to acquire suitable land by a private contract on reasonable terms
  - the developer can credibly demonstrate that the land will be used for the intended purpose within a reasonable period of time

#### 3) The expropriation procedure

- a formalised procedure regulated in the respective federal and Land laws
- initiated by application of the beneficiary of the requested expropriation
- the *expropriation authority* is not the authority concerned with the project for which expropriation is needed but *a separate authority*
  - usually the higher authority in the field (regional Land authority or Ministry)
  - this ensures *impartiality* of the body deciding on the expropriation & compensation and prevents local nepotism

- includes oral hearing and attempt to work towards an agreement between the parties
- ends with the *expropriation decision* of the expropriation authority
  - an administrative decision that *includes the decision about the compensation*
  - for historical reasons, this admin. decision cannot be challenged before the admin. court but before the ordinary court

### III. The compensation in case of expropriation for the public good

- compensation is granted
  - for the loss of rights resulting from the expropriation
  - for other financial disadvantages resulting from the expropriation
  - but any financial advantages resulting from the expropriation will be taken into account too
- the compensation for the loss of rights follows the *market value* of the expropriated plot of land *at the time of the expropriation decision*
- rights in rem connected with the plot of land generally expire with the expropriation, but their holders are compensated too
- the *owner can request* compensation in the form of suitable *replacement land* if he is dependent on that to secure his occupation and replacement land is available or can be procured

## § 4 Land reform in Germany [Bodenreform]

- definition: the *forced redistribution of the ownership* (or sometimes use) *of land*, decided and implemented by the state, for socio-political, economic or ideological reasons,
  - usually aiming to achieve a more even distribution of the land by redistributing it from large landowners to small farmers & landless farm workers
- different ways: from market-based land reform (where supported smallholders buy land at the market price) through state-financed land reform (where the state buys and redistributes it) to state-forced land reform (where the state confiscates it without compensation and redistributes it)

### I. Calls for land reform in German history

- in German history, as in most countries, there have been calls for land reform
  - some protagonists, esp. Silvio Gesell, referred to the land reform theory of Henry George, who envisaged a single tax on land
  - Michael Flürscheim, a socially committed entrepreneur, proposed that all land should be nationalized in return for compensation and then leased for private use
  - more radical protagonists, such as Karl Marx, called for nationalisation without compensation
  - more moderately, Adolf Damaschke proposed to siphon off by the way of taxes any income from the increase in land value, to return it to the general public
- however, although the concept of land reform, esp. the ideas of Adolf Damaschke, were anchored in art. 155 of the Constitution of 1919 (Weimar Constitution) and a Land Reform Act of 1920, not much redistribution of land happened until 1945

### II. No real land reform in West Germany after 1945

- there were originally American plans to transform Germany into a pure agricultural state, reorganised by land reform, but they met fierce resistance and were soon abandoned
- in some Länder, land reform laws were reluctantly adopted but hardly ever implemented

- in the Federal Republic of Germany, founded in West Germany in 1949, the concept of land reform was largely dropped, as it met resistance from the population due to the disastrous experiences in the Soviet occupation zone:

### III. The land reform in the Soviet occupation zone 1945 - 1949

- a communist comprehensive land reform that changed East German society fundamentally
- all large land owners with more than 100 hectares (1 million square meters) of land and all land owners considered Nazis or criminals were expropriated without compensation
  - most were also expelled from their home district, lost their personal property or were even temporarily interned in detention camps
- the expropriated land was initially transferred to a local land fund, which redistributed it to small tenants, landless or small farmers or resettlers from the lost Eastern parts of Germany
- all in all, ca. 35 % of agricultural land, including also state land, communal land and land of public institutions was redistributed
- the land reform created a multitude of too small, unviable farms and therefore became an *economic disaster*
  - many farms had less than 10 hectare land - not enough for successful agriculture in Northern Europe
- the farmers soon lost their independence with the massive *forced communist collectivisation*, which started already in 1952
  - but they remained formally the legal owners of the land they brought into the collective farm
- after its reunification in 1990, Germany decided *not to reverse the land reform but instead grant a limited monetary compensation* to the victims;
  - unlike the compensation for later expropriations in the socialist German Democratic Republic, this compensation was limited to a fraction of the current market value of the land
  - according to the Federal Constitutional Court and the European Court of Human Rights, this did not violate the fundamental right of property under art. 14 BL or art. 1 prot. no. 1 ECHR, since the Federal Republic of Germany cannot be made responsible for the decisions of the supreme Soviet Occupation Force before the establishment of the two German states in 1949