



**Takings International**  
**A Comparative Perspective on Land Use Regulations and**  
**Compensation Rights**

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**Chapter 9**  
**PRE-PUBLICATION VERSION**

## CHAPTER 9

### FINLAND

**Despite an ostensibly broad constitutional protection for property rights and the language of statutes that to outside readers seems to grant relatively broad compensation rights, these are relatively limited in practice. There are almost no court decisions to interpret the law and help account for this ostensible paradox.**

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The aim of this Chapter is to present an overview on Finnish legislation<sup>1</sup> on land-use restrictions and requirements for compensation in cases of different types of restrictions. The Finnish legislation has developed largely in accordance with the German-Scandinavian legal tradition, although not without individual features. The first part of the chapter focuses on general issues concerning land-use restrictions, their relation to the constitutional protection of property ownership, the requirements for compensation, and the amount of compensation property owners are entitled to. The second part discusses different types of land use restrictions. The third part of the chapter focuses on compensation issues related to legislation concerning specific types of land-use restrictions based on planning decisions (including land-use planning, building protection, nature conservation, and public networks, such as roads and power lines).

Private property ownership is limited not only by the risk of expropriation but also by other types of land use restrictions laid down by legislation. These restrictions do not necessarily include a transfer of ownership; however, they do limit the landowners' rights to their properties and thereby limit the scope of ownership. When evaluating these limitations, the following questions arise:

- What are the requirements for land use restrictions?
- How does the restriction affect the status of the landowner?
- Is the restriction subject to compensation?
- If so, how is the compensation assessed?

#### H1 CONSTITUTIONAL AND STATUTORY BASICS

#### *H2 The Constitutional Protection of Property Ownership, Land-Use Restrictions, and the*

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1. The chapter uses the unofficial English translations of the names of the Finnish Acts.

## *Convention for the Protection of Human Rights and Fundamental Freedoms*

The Finnish Constitution states in section 15 that the “property of everyone is protected” and that “[p]rovisions on the expropriation of property, for public needs and against full compensation, are laid down by an Act.”<sup>2</sup> The first statement constitutes the primary rule of the constitutional protection of ownership, where expropriation is an exception to this rule.<sup>3</sup> 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.<sup>4</sup> Here, expropriation refers to the transfer of ownership or other property rights from the owner to another party without the owner’s consent.<sup>5</sup>

There are other procedures that do not include the transfer of ownership but in some other way limit landowners’ rights to property; these are designated as land-use restrictions. (*Editor’s note: despite the wording “land-use restrictions” the authors are focusing here on special encumbrances on property and less on “regular” regulation of land use and development.*) Some of these land-use restrictions are based on public planning for land uses such as for nature conservation, public roads, or other public networks purposes. Other land-use restrictions have their basis in private interests, such as establishing easements or building private roads. In this Chapter, the focus is on restrictions based on public planning decisions.

In general, land-use restrictions are compensated to the extent that they are considered to infringe on the constitutional protection of property. However, according to the principle of social obligation, some land-use restrictions that serve public needs are not compensated, such as the obligation to dedicate to the municipality the land required for roads. Landowners must tolerate these restrictions. The requirements for such restrictions are that they do not affect the “normal, reasonable and sensible use” of the property.<sup>6</sup> Additionally, the restrictions must be general and non-discriminatory. Restrictions fulfilling these criteria that apply equally to all relevant landowners are not considered to infringe on the protection of property ownership.<sup>7</sup>

The question of development rights for private development and their position in relation to the protection of property and compensation is not clearly laid down in the legislation and practice

Procedurally, when land-use legislation is being enacted or altered, the Parliament Constitutional Law Committee assesses the legislation’s possible effects on the protection of property.<sup>8</sup> If the Committee finds that the legislation imposes restrictions that are not in the scope of social obligation and infringe on the protection of property, the Committee advises the Parliament to take this infringement into consideration in the enactment process by including, for example, a compensation clause in the provisions concerning these restrictions. Such a clause is

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2. Suomen perustuslaki [SP] [Constitution] (731/1999) § 15 (Fin.).

3. *Id.*

4. *Id.*

5. Laki kiinteän omaisuuden ja erityisten oikeuksien lunastuksesta [Act on the Redemption of Immovable Property and Special Rights] (603/1977) § 3 [hereinafter Expropriation Act].

6. These criteria have been established in the statements of the Parliament Constitutional Law Committee. *See infra* note 9 **Error! Bookmark not defined.**

7. H. UNGERN, TÄYDEN KORVAUKSEN PERIAATE MAANKÄYTÖN RAJOITUSTEN KORVAAMISESSA I [PRINCIPLE OF FULL COMPENSATION IN LAND USE RESTRICTIONS I] 8–9 (1998) (author’s trans.).

8. According to section 73 of the Finnish Constitution, the task of the Parliament Constitutional Law Committee is to issue statements on the constitutionality of legislative proposals and other matters brought for its consideration. In addition, the Committee issues statements on the relation of legislative proposals and other matters to international human rights treaties.

one of the requirements for compensation to be issued.<sup>9</sup>

In addition, the European Council's Convention for the Protection of Human Rights and Fundamental Freedoms applies in Finland and was ratified in 1990.<sup>10</sup> Article 1 of the First Additional Protocol of the Convention includes a provision on protection of property ownership.<sup>11</sup> This provision gives member states a relatively wide margin of appreciation concerning restrictions to the protection of property ownership; in Finland, the domestic regulation of the protection of property ownership is considered to be more extensive than the Convention's.<sup>12</sup> However, there are judicial decisions concerning the protection of property ownership that have found Finland to have violated article 1 of the First Protocol of the Convention.<sup>13</sup>

## H2 Legislation on Expropriation

The general statute concerning expropriation is the Act on Expropriation of Immovable Property and Special Rights ("Expropriation Act"). The Expropriation Act applies not only to the taking of real property but also to situations where the owner's right to use or dispose of a property or the owner's special right is limited.<sup>14</sup> In other words, the scope of the Expropriation Act is not limited to expropriation of ownership or special rights; it extends to land-use restrictions. (*Editor's note: despite the wording "right to use... a property" the authors are focusing largely on types of encumbrances on property*).

The Act explains the constitutional requirements to establish a public need and to pay full compensation. In most cases, an expropriation permit from the Council of State is necessary to allow expropriation to proceed.<sup>15</sup>

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9. See the discussion below on requirements for compensation for land use restrictions.

10. MATTI PELLONPÄÄ, EUROOPAN IHMISOIKEUSSOPIMUS [THE EUROPEAN CONVENTION ON HUMAN RIGHTS] 7 (Talentum 2005).

11. Article 1 of the First Additional Protocol states:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, art. 1, Mar. 20, 1952, Europ. T.S. No. 9, available at <http://conventions.coe.int/treaty/en/Treaties/Html/009.htm>.

12. PELLONPÄÄ, *supra* note 11, at 571–75.

13. For example, in *Jokela v. Finland*, 2002-IV Eur. Ct. H.R. 7, the European Court of Human Rights held that article 1 of the First Protocol was violated when the assessment of compensation for expropriation purposes and the appraisal of real property for inheritance taxation purposes led to considerably different appraised values of the real property in question. In such situations, Finland has also been found to have violated article 6 (the right to a fair trial) due to the unreasonable length of proceedings. One example is *Kukkola v. Finland*, Eur. Ct. H.R. (Nov. 15, 2005), <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (search "Complete Text" for "Kukkola"; then follow "Case of Kukkola v. Finland" hyperlink), where the applicant's property was subject to judicial proceedings during a period of about eight years and three months. The European Court of Human Rights concluded that there were delays in the expropriation and the compensation proceedings; it found no explanation to justify these delays. Therefore, the Court held that there had been a violation of article 6 § 1 of the Convention on account of the length of the proceedings.

14. Laki kiinteän omaisuuden ja erityisten oikeuksien lunastuksesta [Act on the Redemption of Immovable Property and Special Rights] (603/1977) § 3 [hereinafter Expropriation Act].

15. *Id.* § 5.

According to the Expropriation Act, expropriation is allowed for a public need. However, if the objectives of the expropriation can be reached with other means, or if the inconvenience caused to a private interest exceeds the public gain, the expropriation may not be executed.<sup>16</sup> In practice, however, these requirements have a rather low significance in Finland.<sup>17</sup>

The principal rule in expropriation procedures is the principle of judicial investigation. This means that a person is given legal protection *ex officio*, without the necessity that the landowner submit an explicit claim to the authority. However, it is possible to make an agreement on the compensation between the landowner and the expropriator.<sup>18</sup>

The Act discusses the requirements and procedure of expropriation, as well as compensation assessment.<sup>19</sup> The compensation system is based on full compensation: all economic losses suffered by the persons in direct expropriation cases must be assessed and compensated.<sup>20</sup> This principle applies both to persons whose property or special rights are taken, and to persons whose rights of use or administration of such property or special rights are limited.

Those who suffer only indirectly from expropriation may receive compensation for disturbance and damages on the basis of section 38. Compensation may be granted if the following requirements are met: (1) the disturbance or damage caused by the expropriation is significant; (2) the disturbance or damage would be compensated in an expropriation situation; (3) a compensation claim has been submitted; and (4) compensating the disturbance or damage is considered reasonable, taking into account the circumstances.<sup>21</sup> This provision aims to ensure reasonableness between the parties in the direct expropriation relation and those outside this relation who are in a comparable situation.<sup>22</sup>

Compensation consists of three parts: compensation for the object, severance, and damages compensation. “Object” compensation is the fair price (market value) of the property or property right that is being taken. The fair market price can be considered as compensation for the owner’s objective loss. “Severance” compensation is paid for the permanent nuisance caused by the expropriation of property not included in the transfer, which occurs in situations when only a part of the property is the direct object of the expropriation. “Damage” compensation is paid for specific damages due to the expropriation, such as moving costs or loss of business profits.<sup>23</sup>

As a general rule, the compensation is monetary. It is possible to substitute monetary compensation for some other form of compensation by means such as land readjustment, land

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16. *Id.* § 4.

17. *See, e.g.*, Tuomo Heinonen, *Vastikemaat ja maapankki maankäyttöhankeissa* [Land for Exchange and Land Banking in Land Development Projects] 21–22, 48 (Oct. 25, 2005) (dissertation for Doctor of Science in Technology, Helsinki University of Technology), *available at* <http://lib.tkk.fi/Diss/2005/isbn9512278383/isbn9512278383.pdf> (author’s trans.) (last visited Mar. 27, 2006).

18. Expropriation Act § 40.

19. For more information on Finnish expropriation procedures and compensations, see Kauko Viitanen, *Compulsory Purchase as an Administrative Procedure—Based on Finnish Legislation and Experiences* (Oct. 3–7, 2004) (paper presented at the proceedings of the 3rd International Federal of Surveyors (FIG) Regional Conference in Jakarta, Indonesia), *available at* [http://www.fig.net/pub/jakarta/papers/ts\\_21/ts\\_21\\_7\\_viitanen.pdf](http://www.fig.net/pub/jakarta/papers/ts_21/ts_21_7_viitanen.pdf). *See also* IINA KORHONEN, *EXPROPRIATION OF REAL PROPERTY: GENERAL LAWS ON EXPROPRIATION IN FINLAND, SWEDEN, NORWAY AND ENGLAND* 137 (Helsinki Univ. of Tech. 1997).

20. *Laki kiinteän omaisuuden ja erityisten oikeuksien lunastuksesta* [Act on the Redemption of Immovable Property and Special Rights] (603/1977) § 29(1) [hereinafter Expropriation Act].

21. KARI KUUSINIEMI & HANNU PELTOMAA, *LUNASTUSLAINSAÄDÄNTÖ JA KORVAUSJÄRJESTELMÄ* [EXPROPRIATION LEGISLATION AND COMPENSATION SYSTEM] 144–45 (Edita 2000).

22. *Id.* at 214–15.

23. Expropriation Act §§ 30–33, 35, 37.

exchanges, and land banking.<sup>24</sup>

The level of compensation is determined by an expropriation committee consisting of a cadastral surveyor from the National Land Survey Office<sup>25</sup> and two laymen. Appeals concerning the decisions made in the survey are submitted to a land court.<sup>26</sup> Land court decisions can be appealed to the Supreme Court of Justice; however one must have leave to appeal.<sup>27</sup>

Because it is the general statute on expropriation, the Expropriation Act also applies to expropriation and compensation assessment procedures for land use restrictions laid out in other Acts.<sup>28</sup> For some public interest projects, such as major power lines, there is a lack of special legislation concerning planning and building proceedings, in addition to expropriation and land use restrictions. In that case, the general Expropriation Act applies.<sup>29</sup>

## *H2 The Requirements for Compensation for Land Use Restrictions*

A compensation claim for a land use restriction must establish the statutory grounds. The general assumption is that the landowner must absorb the losses of any restrictions, unless there is an explicit legal basis (usually a statutory provision) for compensation.<sup>30</sup> This section aims to give a comprehensive overview of these provisions concerning some common plan types that impose restrictions on land-use and land owners' rights.

As mentioned earlier, the right to compensation for land use restrictions is limited to some extent by the principle of social obligation. This principle is illustrated by the concept of a "compensation threshold", whereby compensation may be granted only if the amount of depreciation in property value exceeds a minimum threshold. This applies to several land use restrictions. The compensation threshold is based on a certain "tolerance" obligation, where the landowner must tolerate some restrictions without compensation. The compensation threshold also aims to exclude minor disturbances from compensation, and it limits the total amount of compensation for various restrictions.<sup>31</sup>

The compensation threshold is established in the various statutes by means of qualitative limits. Each statute defines the types of use restrictions that are compensable, for example, if the

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24. See Kiinteistönmuodostamislaki [Real Estate Formation Act] (554/1995) § 63, available at <http://www.finlex.fi/en/laki/kaannokset/1995/en19950554.pdf> [hereinafter Real Estate Formation Act] (Ministry of Agric. and Forestry unofficial trans.); Expropriation Act § 23; Maantielaki [Highways Act] (503/2005) § 63, available at <http://www.finlex.fi/en/laki/kaannokset/2005/en20050503.pdf> [hereinafter Highways Act] (Ministry of Transp. and Comm'n unofficial trans.)

<sup>25</sup> Editor's note: In Finland and many other countries, the term "Land Survey Office" refers to a service that combine land measurement and appraisal, and surveyors are the professionals.

26. A land court is a specialized section of a district court. Eight of the fifty nine district courts in Finland have a land court. For more information about the Finnish court system, see Oikeuslaitos-Finnish courts, <http://www.oikeus.fi/8854.htm>.

27. Laki kiinteän omaisuuden ja erityisten oikeuksien lunastuksesta [Act on the Redemption of Immovable Property and Special Rights] (603/1977) § 89 [hereinafter Expropriation Act]; Real Estate Formation Act § 238.

28. P. Vihervuori, *Lunastus [Expropriation]*, in YMPÄRISTÖOIKEUS [ENVIRONMENTAL LAW] 299-300 (Kari Kuusiniemi et al. eds., 2001) (author's trans.).

29. *Id.* at 302; *Tiet ja Kadut [Roads and Streets]*, in YMPÄRISTÖOIKEUS [ENVIRONMENTAL LAW], *supra* note 29, at 918 (author's trans.).

30. UNGERN, *supra* note 8, at 23.

31. *Id.* at 30-31.

owner cannot use the area “in a manner generating reasonable return,”<sup>32</sup> or if the plan causes the landowner “significant inconvenience.”<sup>33</sup> The compensation threshold varies depending on the legislation. Terms such as “reasonable” and “significant” require interpretation, and it is often difficult to determine whether the threshold has been exceeded.<sup>34</sup> However, as a main rule, the compensation threshold does not apply to procedures carried out on the basis of the Expropriation Act.

The right to claim compensation for land use restrictions may include additional requirements besides the principle of judicial investigation. In some situations, the landowner must take some action. For instance, some land use restrictions are compensable only after the landowner has applied for a building permit as an exemption from the restriction, and the exemption request has been rejected. When nuisance is assessed in accordance with the Act of Compensation for Environmental Damage, the landowner has a duty to show a probable causal link between the nuisance and the injury.<sup>35</sup> (*Editor's note: This Act provides, among others, cause of action for injuries stemming from land use rezoning that apply to neighboring plots – including rezoning for public infrastructure.*) In some cases, compensation may also be an alternative to expropriation of ownership.<sup>36</sup>

As a general rule, if a compensation right exists, it does not depend on a particular time frame during which the land use plan has not been implemented. Some exceptions do exist, such as those found in the Land Use and Building Act (LBA), but they are not frequently applied in practice.<sup>37</sup>

The party that is eligible for compensation is the owner of the property or property rights. When ownership changes, property rights are normally transferred along with the property to the new owner. As a general rule, the party liable to pay the compensation is the state, municipality, or other public body, depending on the legislation that is applicable to the situation.<sup>38</sup> These public bodies customarily do not negotiate payments of compensation claims because the responsibility to pay is directly based on statutory provisions. However, when an expropriation serves a public need but is carried out for purposes of a private entity (for example, a company building a power line), the private entity is liable for paying the compensation.

## *H2 The Amount of Compensation*

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32. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 101, *available at* <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

33. Luonnonsuojelulaki [Nature Conservation Act] (1096/1996) § 53, *available at* <http://www.finlex.fi/en/laki/kaannokset/1996/en19961096.pdf> [hereinafter Nature Conservation Act] (Ministry of Env't trans.)

34. HENRIK UNGERN, KÄYTÖNRAJOITUSTEN KORVAAMISESTA YLEISKAAVOITUKSESSA [COMPENSATION OF LAND USE RESTRICTIONS IN MASTER PLANS] 142–54 (Pellervon taloudellinen tutkimuslaitos 1997).

35. Ympäristövahinkolaki [Act on Compensation for Environmental Damage] (737/1994) § 3, *available at* <http://www.finlex.fi/en/laki/kaannokset/1994/en19940737.pdf> [hereinafter Act on Compensation for Environmental Damage] (Ministry of Env't unofficial trans.). *See also* ERKKI J. HOLLO & PEKKA VIHERVUORI, YMPÄRISTÖVAHINKOLAKI [Act on Compensation for Environmental Damage] 111–20 (Lakimiesliiton kustannus 1995).

36. *See discussion infra* Parts IV.D, V.B.

37. For example, according to section 60, paragraph 2 of the Land Use and Building Act, a building permit may not be granted for significant building if a local detailed plan has been in force for thirteen years and, for the most part, the plan has not been implemented or been brought up to date.

38. For example, section 43 of the Land Use and Building Act renders municipalities and other public bodies liable to pay compensation in cases of conditional building restrictions if the area in question is reserved for that public body's needs.

As laid out in the Constitution, the principle of full compensation applies not only to expropriation, but also to other procedures that infringe on the protection of property ownership.<sup>39</sup> However, as noted, compensation for land use restrictions is limited by the principle of social obligation. However, when the compensation threshold is exceeded, the compensation is assessed according to the principle of full compensation. In this way, the protection of ownership in these situations is realized.

It can also be argued that the idea of having a compensation threshold is not compatible with the principle of full compensation. In practice, the principle is implemented in different ways, depending on which land use restriction legislation is applied. For some restrictions with high compensation thresholds, compensation is issued relatively seldom.<sup>40</sup> An especially problematic situation may occur where several restrictions apply at once on a particular property, but where none of the individual restrictions exceeds the compensation threshold. In such situations, it may be argued that Finnish law does not protect property adequately and that the requirement of full compensation is not met.<sup>41</sup>

## H1 TYPES OF LAND USE RESTRICTIONS

Various planning and environmental statutes include regulations governing land use restrictions. Listed below are the most significant of these statutes accompanied by the types of restrictions that can be laid down. Some of these restrictions and their effects are discussed in more detail later in this Chapter to give an overview of common situations, where provisions on land use restrictions and compensation apply.

- The Land Use and Building Act (LBA) (1999/132): regional, master or local detailed plan, plan regulation, building, or other restriction
- Nature Conservation Act (1096/1996): nature reserve, habitat, or species protection
- Act on the Protection of Buildings (60/1985): building protection order
- Highways Act (503/2005): engineering plan to build a public road
- Railways Act (110/2007): engineering plan to build a railway
- Water Act (264/1961): building in a body of water
- Forests Act (1093/1996): limitations on the use of the forest due to forest protection
- Soil Excavation Act (555/1981): denial of soil excavation permits
- Real Estate Formation Act (554/1995): easements and land readjustment proceedings
- Private Road Act (358/1962): rights of way
- Mining Act (503/1965): claim

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39. Suomen perustuslaki [SP] [Constitution] (731/1999) § 15 (Fin.).

40. UNGERN, *supra* note 8, at 8-9. For example, consider compensation for denying a soil excavation permit under section 8 of the Soil Excavation Act, where the threshold is set to “a manner generating reasonable return.” Often, all other uses besides soil excavation are considered to meet this threshold, so compensation is given rarely.

41. JAANA JUNNILA, OIKEUSTURVA MAANKÄYTÖN RAJOITUKSISSA [LEGAL SECURITY IN LAND USE RESTRICTIONS] 203 (Pellervon taloudellinen tutkimuslaitos 1998) (author’s trans.).

- Antiquities Act (295/1963): buffer zone for a solid relic

## *H2 Direct Injuries*

Even though section 15 of the Constitution only refers to full compensation in cases of expropriation and has been narrowly interpreted, the requirement of protection of property ownership laid down in the first paragraph of section 15 also requires compensation issues to be addressed in land-use restriction cases. In cases of “near-expropriation,” the requirement for full compensation has been extended to other land use restrictions. One example is the expropriation of *usufruct* for a public road or a power line. Here, even though ownership has not been transferred, the owner in effect is not able to use the land in any way.<sup>42</sup>

The rights to compensation for restriction of development rights without expropriation are not clearly laid down by legislation or in practice. This matter is discussed in more detail in the chapter concerning land use planning.

Temporary land-use restrictions are not covered by the compensation provisions in the LBA. A temporary building restriction can be laid down for the time period during which a local master plan or a detailed plan are being drawn or altered.<sup>43</sup>

## *H2 Indirect Injuries*

Compensation for injurious affection (severance compensation) constitutes a part of total compensation. This form of compensation is issued in accordance with section 35 of the Expropriation Act.

In addition, injuries to a property that are caused by the designation of an adjacent property for a public utility or service are compensated. The injury is based on the decline in the value of the property due to nuisance, such as noise, dust, and the loss of scenic value. However, the compensation threshold laid out in section 38 of the Expropriation Act may apply. In assessing the compensable nuisance, provisions of the Act on Compensation for Environmental Damage apply.<sup>44</sup> This Act states that in order to be eligible for compensation, the toleration of the nuisance must be deemed unreasonable:

“Compensation shall be paid for environmental damage by virtue of this Act only if toleration of the

42. See the Finnish Parliament’s Constitutional Law Committee Report PeVL 21/1996 (on file with author), for information on the reform of “nature conservation” legislation.

43. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 38(2), *available at* <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

44. Ympäristövahinkolaki [Act on Compensation for Environmental Damage] (737/1994) § 1, *available at* <http://www.finlex.fi/en/laki/kaannokset/1994/en19940737.pdf> [hereinafter Act on Compensation for Environmental Damage] (Ministry of Env’t trans.). The scope of application is as follows:

Compensation shall be paid for a loss defined in this Act as environmental damage, caused by activities carried out in a certain area and resulting from:

- 1) pollution of the water, air or soil;
- 2) noise, vibration, radiation, light, heat or smell; or
- 3) other similar nuisance.

The keeper of a road, railway, port, airport or other comparable traffic area shall also be considered to be carrying out activities referred to above in paragraph 1.

This Act does not apply to contractual liability for compensation.

*Id.* It should be noted that as a main rule, the assessment of environmental damage as defined by the Act is not carried out through the National Land Survey Office, but rather in court proceedings. There are exceptions to this rule, such as road surveys.

nuisance is deemed unreasonable, consideration being given, among other things, to local circumstances, the situation resulting in the occurrence of the nuisance, and the regularity of the nuisance elsewhere in similar circumstances.”<sup>45</sup>

Compensation for a partial reduction in value caused by the rezoning of an adjacent plot is possible only when the Act of Compensation for Environmental Damage applies. A more detailed description of these types of cases is included below in the discussion of public roads and power lines.

## *H2 Planning Practice*

In practice, planning authorities usually try to avoid situations where compensation issues would arise. In land use planning, this aim is often realized; however in other instances, such as nature conservation, compensation issues are addressed more often. Alternative procedures, such as the transfer of development rights or land readjustment, may be used as an alternative for monetary compensation.

# H1 THE LEGISLATIVE REQUIREMENTS FOR LAND USE RESTRICTIONS AND COMPENSATION

## *H2 Land Use Planning Legislation*

The current statute regulating land use, spatial planning, and construction in Finland is the Land Use and Building Act (LBA), which came into force in the year 2000.<sup>46</sup> The planning system is comprised of four levels of planning: national objectives of land use planning, regional plans, local master plans and local detailed plans.

Land use planning objectives are seen, in part, as a national concern. Examples of national objectives include the protection of cultural and natural heritage that have national importance, ensuring functional regional and community structures, the location of communication networks, and management of energy. These objectives are approved by the Council of State.<sup>47</sup>

At the level of the regional plan, the national objectives of land use planning are adapted to regional objectives while land use and community structure are designated at a general level. The plan is drawn by the Regional Council; it is approved by the highest decision-making authority of the Council and ratified by the Ministry of the Environment. The regional plan acts as a set of guidelines for lower level planning, which includes master plans and local detailed plans.<sup>48</sup>

The purpose of the local master plan is to guide the community structure and land use planning in a municipality in a more detailed way than the regional plan. A local master plan can also be drawn jointly by several municipalities. The plan consists of a map designating areas for different purposes, along with a set of written regulations. The plan is approved by the Local Council. The plan acts as a guideline for the local detailed plan.<sup>49</sup>

The purpose of the local detailed plan is to determine land uses and development. The aim is to designate areas necessary for different purposes and to steer building and other land uses. The local authority has a legal obligation to keep the plan up to date. The plan consists of a map

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45. *Id.* § 4(1).

46. *See generally* Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999), available at <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

47. Ari Ekroos, *Ympäristönkäytön suunnittelu [Planning the Use of the Environment]*, in *YMPÄRISTÖOIKEUS [ENVIRONMENTAL LAW]*, *supra* note 29, at 351–60 (author’s trans.).

48. Land Use and Building Act § 25(4); *see also* Ekroos, *supra* note 48, at 363–67.

49. Land Use and Building Act § 35(1); *see also* Ekroos, *supra* note 48, at 393–96.

designating the areas for different purposes, and written regulations. As a general rule, the plan is to be approved by the Local Council.<sup>50</sup>

Overall, municipalities in Finland have vast powers concerning land use planning in their area.<sup>51</sup> It is often said that municipalities have a “planning monopoly.”

## *H2 Content Requirements of Land Use Plans*

All planning authorities must observe the "content requirements" for planning. These requirements pertain to the quality of the plan, the assurance that the general aims of the LBA are met, and the plan's reasonableness and fairness towards private interests and the landowner. In addition, the planning process and decisions must adhere to the constitutional right to equality. Usually, where a regulation applies equally to all relevant property owners, there will not be a right to compensation.<sup>52</sup> (*Editor's note: In Finland there seems to be an especially strong linkage between the "due process" aspects of plan-making (to use an American term) and the right to compensation in specific cases.*)

The content requirements for regional plans and local master plans establish that these plans may not cause unreasonable inconvenience to the landowner.<sup>53</sup> Whether a landowner is unreasonably inconvenienced is determined on a case-by-case basis, with regard to the plan's regulations, and the area designations and written regulations of the master plan as a whole.<sup>54</sup>

In comparison, the content requirements for local detailed plans state that the plan must not infringe substantially on the quality of anyone's living environment beyond what is justified by the plan's purpose.<sup>55</sup> The plan also may not impose restrictions on or cause harm to landowners or other titleholders that could be avoided without disregarding the objectives or requirements of the plan.<sup>56</sup> This provision emphasizes the objectives of the plan in relation to the status of the owner and illustrates the “social function” of the local detailed plan: even unreasonable restrictions may in some cases be imposed on the landowner if genuinely necessary for the public good.<sup>57</sup>

## *H2 Legal Effects of Land Use Plans<sup>58</sup>*

The legal effects of a local detailed plan include restrictions on the use of the area designated in the plan. According to section 58 of the LBA, buildings may not be built in violation of the local detailed plan (building restriction), and the detailed plan shall be taken into account with regard to other measures altering the environment.<sup>59</sup> Functions that interfere with the designated

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50. Land Use and Building Act § 50; *see also* Ekroos, *supra* note48, at 423–27.

51. For example, landowners generally cannot make demands for a plan to be drawn.

52. The constitutional right to equality is expressed as follows: “Everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.” Suomen perustuslaki [SP] [Constitution] (731/1999) § 6 (Fin.).

53. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) §§ 28(4), 39(4), *available at* <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

54. ARI EKROOS & VESA MAJAMAA, MAANKÄYTTÖ- JA RAKENNUSLAKI [LAND USE AND BUILDING ACT] 196–97 (Edita 2005).

55. Land Use and Building Act § 54(3).

56. *Id.*

57. Ekroos, *supra* note48, at 435–36.

58. The legal effects of the plans are discussed in this Chapter only to the extent that they concern landowners. Legal effects on other authorities are outside the scope of this Chapter.

59. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 58, *available at*

use for other areas in the local detailed plan may not be located in the plan area.<sup>60</sup> Moreover, functions may not be located in the local detailed plan area if they entail harmful environmental impacts or if they conflict with regulations issued in the local detailed plan.<sup>61</sup>

According to section 43 of the LBA, a building permit may not be granted if it would interfere with the implementation of the local master plan.<sup>62</sup> This is called a conditional building restriction. A request for a permit must, however, be granted if its denial on the basis of the local master plan would cause substantial harm to the applicant and the local authority or other relevant public entity does not expropriate the area nor provide reasonable compensation for the harm caused.<sup>63</sup> This is an application of the so-called “money or permit” principle: if the building restriction causes the landowner significant harm, either the building permit must be granted or, alternatively, the local authority or another public entity may either provide compensation or expropriate the area.<sup>64</sup> Note that this rule also applies to a conditional building restriction laid down in a regional plan.<sup>65</sup>

Local master plans can also impose a "restriction of action" stipulating that actions that change the landscape may not be conducted without a special permit.<sup>66</sup>

In theory, the scope of land ownership includes a so-called “basic development right” in rural areas. This means that landowners have a built-in right to use their properties for development. This right is seen as a part of the constitutional protection of property and the “normal, reasonable, and sensible use” of a property suitable for development. This right should be taken into account in planning decisions and compensation assessments.<sup>67</sup> Until the 1960s or 70s this right was regarded as much stronger. It has been gradually weakened. Today, where local plans apply, development rights are determined solely according to the provisions of the LBA. Therefore, in areas covered by valid plans, the landowner may not have the traditional development right, but these may hold in some non-urban areas.<sup>68</sup>

## H2 Compensation

The general requirement for compensation for land use restrictions, according to the LBA, is that the property could be used in a manner that *generates a reasonable return*. Minor inconveniences to the property caused by the plan are not compensated. Section 101 of the LBA states the general rule: When the plan<sup>69</sup> designates land for a purpose other than private

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<http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

60. *Id.*

61. *Id.*

62. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 43, *available at* <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

63. *Id.*

64. Ekroos, *supra* note48, at 224–25.

65. Land Use and Building Act § 33(2).

66. *Id.*

67. VEIKKO O. HYVÖNEN, KAAVOITUS- JA RAKENTAMISOIKEUS [PLANNING AND BUILDING LEGISLATION] 60-61 (Hyvönen & Co. 1988).

68. Ekroos, *supra* note48, at 439-440. *See also* discussion on the legal effects of land use plans above.

69. This could be a local detailed plan, or a building or action restriction in the local master plan. These restrictions are detailed as follows in section 43(2) of the Land Use and Building Act:

It may be stipulated in the local master plan that building which hinders the implementation of the local master plan is not allowed in the plan area or part thereof (*building restriction*). . . . It may also be stipulated in the local master plan that action altering the landscape may not be taken without the permit referred to in

development and the landowner therefore cannot use the area in a manner generating reasonable return, the local authority, or the State if the area is intended or designated in the plan for State needs, must expropriate the property or pay compensation for the disturbance.<sup>70</sup> (*Editor's note: income from forestry and agricultural activities are generally regarded as passing the "reasonable return" test.*)

This provision does not apply to areas designated for joint use in coastal zones, to areas where the responsibility for plan implementation has been assigned to the landowner or titleholder, or to public roads and streets (section 94).<sup>71</sup>

The expropriation and compensation duty may also apply to an area designated for agriculture and forestry, but only if special restrictions on use of the area have been imposed in the plan.<sup>72</sup> Designating an area for agriculture and forestry does not in itself constitute a duty to expropriate or pay compensation, unless special restrictions apply (e.g., a building prohibition).<sup>73</sup> (*Editor's note: This apparent contradiction may be explained by the "basic development rights" that may hold in some rural areas of Finland.*)

The expropriation and compensation duty must meet several conditions. It takes effect only after the landowner's application for an exemption to the restriction has been formally denied.<sup>74</sup> This means that the landowner is entitled to compensation when the restriction's effects are realized, not merely when the restriction comes into force.<sup>75</sup> The duty to compensate may also be avoided if the planning authority amends the plan so as to ensure that the land may now be developed in a manner that generates reasonable return.<sup>76</sup>

According to LBA section 94, when a local detailed plan is approved for the first time, the local authority gains ownership of the street areas.<sup>77</sup> This provision only applies to the land; losses pertaining to buildings or other improvements are compensated.<sup>78</sup> However, compensation for the roads must be paid if the surface area dedicated exceeds twenty percent of the total land (excluding areas reserved for agriculture and forestry and water areas in the plan) owned by the landowner in the local detailed plan area<sup>79</sup>, or if the street area taken exceeds the total volume of development rights in the remaining land.<sup>80</sup>

The local authority is also obliged to compensate the landowner for the street area if, taking into account the total impact of the transfer and the plan on the landowner, transferral without compensation would be exceptionally and manifestly unreasonable.<sup>81</sup> If the amount of land to be transferred is small or nothing at all, the municipality may charge a fee in addition to the land taken in the name of equality.<sup>82</sup>

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section 128 (*restriction on action*).

*Id.* § 43(2).

70. *Id.* § 101.

71. *Id.*

72. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 101, available at <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

73. EKROOS & MAJAMAA, *supra* note55, at 536–37.

74. Land Use and Building Act § 102.

75. EKROOS & MAJAMAA, *supra* note55, at 538.

76. Land Use and Building Act § 102.

77. *Id.* § 94.

78. EKROOS & MAJAMAA, *supra* note55, at 513, 545.

79. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 104, available at <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

80. *Id.*

81. *Id.*

82. *Id.* § 105(1).

The local authority is obliged to pay compensation when the implementation of a local detailed plan causes a landowner special disturbance or losses, provided that the losses are not insignificant. Likewise, the State is obliged to pay compensation for similar losses when the area is intended or designated for State needs.<sup>83</sup> Despite the general wording, this compensation provision it is not intended to apply to the restrictions that a plan might impose on landowners. This provision applies mainly to situations when (1) the traffic connection to a plot is cut off due to resurfacing a street to a required height, or (2) a park or recreational area is removed, and the accompanying difficulty in using or accessing the plot causes a decrease in property value.<sup>84</sup>

As already mentioned, the question of development rights for private development and their position in relation to the protection of property and compensation is not clearly laid down in the legislation and practice.

When building rights are completely removed, the compensation provisions in LBA section 101 and the threshold of reasonable return apply. However, content requirements<sup>85</sup> dictate that landowners should be treated reasonably; situations where the decline of development rights in the plan would be unreasonable and cause considerable damage should not occur.

As a general rule, compensation is not issued for a partial reduction of development rights in areas that are intended for private development.<sup>86</sup> The LBA does not include explicit provisions for this type of reduction. Therefore, in theory, it should be possible to partially reduce building rights in this situation without having to pay compensation if the content requirements of the plan are met (for example, landowners are treated fairly and equally<sup>87</sup>). There are very few claims of this kind submitted. For example, in Helsinki there has not been a case of this type for at least twenty years.

However, the law regarding partial reduction of development rights is not completely clear because there is very little case law. At the moment, there are two pending cases that might lead to a compensational situation. These cases concern the amendment of a local detailed plan that led to a significant reduction in building right compared to surrounding properties.<sup>88</sup> Although the LBA does not include a compensation clause for this type of situation, the landowner could try to use the constitutional provisions on protection of property and equality as a basis for a compensation claim. At the moment, however, there is no precedent for this type of case.

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83. *Id.* § 106.

84. EKROOS & MAJAMAA, *supra* note 55, at 548–49.

85. Land Use and Building Act §§ 28(4), 39(4), 54(3).

86. Ekroos, *supra* note 48, at 439–440.

87. *See, e.g.*, Korkein Hallinto-Oikeus [KHO] [Supreme Administrative Court] 2005:5 (Fin.), *available at* <http://www.kho.fi/en/paatokset/29794.htm>. This case was concerned with a detailed plan that designated areas both for private housing development and recreational use. The plaintiff claimed that he had been treated unequally in the plan drawing process because his property had been designated significantly less building rights and more recreational areas than the areas belonging to other landowners. According to the Court, the content requirements of the plan and the constitutional right of equal treatment must be taken into account by plan drawing process. However, the Court suggested that relevant aspects concerning land use in the specific plan area may be a basis to designate different areas for different uses. The Court held that the plaintiff had not been treated unequally because the area concerned was such that the differences could be justified on the abovementioned basis.

*See also* Korkein Oikeus [KKO] [Supreme Court] 2002:93 (Fin.). Here, the Supreme Court held that a building right for one plot that was relatively lower compared to the building rights of adjacent plots due to the building of a power line, was not subject to compensation in the expropriation proceedings. According to the Supreme Court, the matter concerning the amount of building right had already been decided when the detailed plan for the area was drawn. The Court held that the reduction of the building right was in fact a result of the plan decision and was therefore not compensable.

88. Interview with M. Nordqvist and K. Vanhanen, Real Estate Dep't, in Helsinki, Finland (June 12, 2006 and June 16, 2006).

## H1 SPECIFIC TYPES OF LAND USE RESTRICTIONS

### *H2 Protection of Buildings*

Protection of a cultural or historical building, building group, or built area can be accomplished through four different statutes. The primary means is through a protection regulation in a land use plan.<sup>89</sup> Protection can also be accomplished through a governmental decision by the Regional Environmental Authority made under the Act on the Protection of Buildings.<sup>90</sup> Protection of state owned and church buildings is carried out on the basis of other statutes.<sup>91</sup> Planning authorities are obliged to take into account the need to protect special cultural values in the built environment.<sup>92</sup> As a general rule, the protection regulations must treat landowners reasonably.<sup>93</sup>

The Act on the Protection of Buildings enables the preservation of cultural or historical buildings, building clusters or areas of national cultural heritage.<sup>94</sup> The protection order must include the necessary provisions to implement the preservation.<sup>95</sup> Owners of protected properties are entitled to compensation for any loss caused by the protection.

According to the Act on the Protection of Buildings, the State pays compensation for the protection or preserved buildings. The conditions for eligibility for compensation are that, due to the protection order, the owner cannot use the building in an ordinary manner *or* produce a reasonable return, and that the disturbance or damage incurred to the owner is not minor in significance.<sup>96</sup> If these conditions are met, the owner is entitled to full compensation. If the owner has to take special measures to maintain the cultural or historical value of the building, these costs are covered by State funds. These do not include the normal maintenance costs of the building.<sup>97</sup>

In a recent case the Supreme Court of Justice held, that a provision of the Act on Protection of Buildings did not fulfill the constitutional requirement of protection of property, when the Act did not provide for compensation for a temporary preservation order issued in accordance with § 9, and applied the Constitution directly.<sup>98</sup>

If a building protection regulation in a land use plan concerns a property or area covered by the Act on the Protection of Buildings, this constitutes an exception to the requirement of reasonableness towards the landowner. Compensation is issued in accordance with the provisions described above, with the exception that in this case they are paid by the local authority, with the possibility of subsidies from government funds.<sup>99</sup>

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89. Ari Ekroos, *Rakennussuojelu [Building Protection]*, in YMPÄRISTÖOIKEUS [ENVIRONMENTAL LAW], *supra* note 29, at 1071–72.

90. *Id.*

91. *Id.* These statutes are not discussed in this Chapter.

92. Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 54, *available at* <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act].

93. *Id.*

94. *See generally* Rakennussuojelulaki [Act on the Protection of Buildings] (60/1985) (Fin.) [hereinafter Act on the Protection of Buildings].

95. *Id.* § 1; *see also id.* § 6.

96. *Id.* § 11(1).

97. *Id.* § 11(2).

<sup>98</sup> Korkein Oikeus [KKO] [Supreme Court] 2004:26 (Fin.).

<sup>99</sup> Maankäyttö- ja rakennuslaki [Land Use and Building Act] (132/1999) § 57(3), *available at*

## H2 Nature Conservation

The Nature Conservation Act regulates the protection of nature and landscape in Finland.<sup>100</sup> It also implements the obligations set by European Union legislation on habitat and species protection<sup>101</sup>. Nationwide conservation programs establish nationally significant areas as nature reserves. These programs are drafted by the Ministry of the Environment and approved by the Council of State.<sup>102</sup>

These programs can prevent landowners from taking actions in these areas, if those actions could hinder the achievement of the conservation goals laid out in the program.<sup>103</sup> The Natura 2000 network, a European ecological network of special areas of conservation, is one specific conservation program based on the Habitats directive.<sup>104</sup> Its goals of conservation are more demanding than those of the abovementioned programs. Habitat types listed in section 29 of the Act are protected without requiring a separate conservation decision.<sup>105</sup> Species at imminent risk of extinction can be placed under a strict protection order by decree, according to Section 47, which prohibits alteration of the site hosting such a species.<sup>106</sup>

A nature reserve can be a national park, or “other” nature reserve.<sup>107</sup> The first two can only be established on state-owned land, but “other” nature reserves can be established on private land according to section 24 of the Act.<sup>108</sup> Voluntary means of conservation have priority, but an area may also be established as a nature reserve without the owner’s consent.<sup>109</sup> \

Where the landowner does not agree to the designation, there may be a right to compensation for the inconvenience, but it is subject to protection rules, which prohibit actions that would cause a negative impact on nature.<sup>110</sup> The scope of application of the compensation provision is limited. According to the Nature Conservation Act, it does not apply to all protection measures possible, for example, the protection of a landscape area or a natural monument.

The conditions that a landowner must fulfil in order to be compensated for these protection measures (namely nature reserves, protected habitats, and alteration prohibitions) are laid out in section 53.<sup>111</sup> The landowner is entitled to full compensation from the State, if the disturbance

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<http://www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf> [hereinafter Land Use and Building Act] (unofficial trans.).

100. Luonnonsuojelulaki [Nature Conservation Act] (1096/1996), *available at* <http://www.finlex.fi/en/laki/kaannokset/1996/en19961096.pdf> [hereinafter Nature Conservation Act] (Ministry of Env’t unofficial trans.).

101. *See* Council Directive 92/43, On the Conservation of Natural Habitats and of Wild Fauna and Flora [Habitats Directive], 1992 O.J. (L 206) (EC), *available at* [http://europa.eu.int/eur-lex/en/consleg/pdf/1992/en\\_1992L0043\\_do\\_001.pdf](http://europa.eu.int/eur-lex/en/consleg/pdf/1992/en_1992L0043_do_001.pdf); Council Directive 79/409, On the Conservation of Wild Birds [Bird Directive], 1979 O.J. (L 103) (EC), *available at* [http://europa.eu.int/eur-lex/en/consleg/pdf/1979/en\\_1979L0409\\_do\\_001.pdf](http://europa.eu.int/eur-lex/en/consleg/pdf/1979/en_1979L0409_do_001.pdf).

102. *Id.* § 8.

103. *Id.* § 9.

104. *Id.* § 66.

105. *Id.* § 29.

106. *Id.* § 47.

107. Luonnonsuojelulaki [Nature Conservation Act] (1096/1996) § 10, *available at* <http://www.finlex.fi/en/laki/kaannokset/1996/en19961096.pdf> (Ministry of Env’t unofficial trans.).

108. *Id.* § 24.

109. *Id.* § 50.

110. *Id.* §§ 10, 24.

111. Luonnonsuojelulaki [Nature Conservation Act] (1096/1996) § 53, *available at* <http://www.finlex.fi/en/laki/kaannokset/1996/en19961096.pdf> (Ministry of Env’t unofficial trans.).

caused by the protection decision is of significance.<sup>112</sup> However, the State is not required to pay compensation until the owner has applied for an exemption from the prohibition and the application has been denied.<sup>113</sup> If no settlement is reached on compensation or an alternative form of protection, an application can be submitted to the district survey office for assessment of compensation.<sup>114</sup> The level of compensation is determined in accordance with the provisions of the Expropriation Act.<sup>115</sup>

## *H2 Power Lines*

Construction of a major power line entails limitations on land use both directly under the power lines and in its vicinity. This procedure (extending to the area of several local authorities) is carried out in accordance with the provisions of the Expropriation Act, as there is no special legislation concerning this type of project. Usually a usufruct right is expropriated and building or other restrictions are placed on the necessary buffer area (such as, for example, the maximum height of trees).<sup>116</sup>

The expropriation proceedings carried out by the National Land Survey Office are based on an expropriation permit granted by the Council of State. Full compensation is granted for the expropriation of the usufruct. Severance and damages are assessed according to the sections 29 to 37 of the Expropriation Act.

A power line expropriation illustrates the application of section 38 of the Expropriation Act, as it concerns landowners outside the scope of the expropriation, whose ownership or other rights are not the direct object of expropriation. According to this section, if, due to an expropriation or an expropriation enterprise, a worker, neighbor, or other person suffers significant injurious affection or damage that would have been compensated if the property had been the object of expropriation, the injurious affection or damage may be compensated upon request, if the compensation is considered reasonable, taking into account the circumstances.

The injurious affection caused by the power line may be caused by impairment of the view or due to suspected health risks attributed to major power lines.<sup>117</sup> According to a precedent case of the Finnish Supreme Court concerning compensation, the Court stated that although the health risks involved with power lines are not considered indisputable, the fear of such risks does have an effect on the property price and, therefore, compensation must be issued.<sup>118</sup>

## *H2 Public Roads*

The new Highways Act came into force on January 1, 2006. It sets out the rights and obligations of the agency responsible for road management<sup>119</sup> and addresses the legal status of landowners and other concerned parties.<sup>120</sup> According to the Highways Act, a road must be based

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112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. KARI KUUSINIEMI, YMPÄRISTÖN MUUTOSTEN KORVATTAVUUS PAKKOTOIMITILANTEISSA [COMPENSATION FOR CHANGES IN THE ENVIRONMENT IN COERCIVE MEASURE SITUATIONS] 67 (Lakimiesliiton kustannus 1997).

117. *Id.* at 134–38, 165–69.

118. Korkein Oikeus [KKO] [Supreme Court] 1999:61 (Fin.).

119. Maantielaki [Highways Act] (503/2005) § 2, available at <http://www.finlex.fi/en/laki/kaannokset/2005/en20050503.pdf> (Ministry of Transp. and Comm'n unofficial trans.).

120. *Id.*

on a preliminary engineering plan, which serves as a guideline to the final engineering plan.<sup>121</sup> The final engineering plan determines the location of the road<sup>122</sup> and includes an evaluation of the impacts of the road and measures to eliminate or reduce its adverse impacts.<sup>123</sup> Property ownership must be taken into account as much as possible.<sup>124</sup> The plan demarcates the buffer zones and lateral clearance areas and indicates whether any land will be reserved for subsequent widening of the road.<sup>125</sup>

The legal effect of the preliminary engineering plan is a conditional building restriction, which aims to ensure that granting building permits will not impede the execution of the preliminary engineering plan.<sup>126</sup> A building permit may nevertheless be granted if (1) the requirements for granting one are otherwise met, (2) denial of the permit would result in substantial inconvenience to the applicant, and (3) the party responsible for road management will not expropriate the land or pay compensation for the inconvenience.<sup>127</sup> The legal effects of the final engineering plan include provisions on expropriation and restrictions on building in the areas covered by the plan.<sup>128</sup> The plan constitutes a legal basis for expropriation of the ownership and other property rights concerning the road area defined in the plan.

Chapter 4 of the Highways Act contains provisions on land use restrictions concerning areas outside the road area, which may be included in the final engineering plan. These include buffer zones and lateral clearance areas outside the buffer zones.<sup>129</sup> Limitations affect the available use of such areas for building, storage facilities, fences, planting vegetation, and other measures, which might pose a hazard to road safety.<sup>130</sup> The road authority may grant an exemption from these limitations, and they primarily only apply to measures taken after the restrictions were laid down.<sup>131</sup> Landowners may also be obliged to allow minor devices and structures, such as traffic signs, snow fences, and snow, to be placed on their property.<sup>132</sup>

The acquisition of the road area is carried out in a road survey by survey committee (a cadastral surveyor from the National Land Survey Office and two laymen).<sup>133</sup> The survey committee defines the object of the expropriation, the objective compensation for ownership, and other rights. That committee also assesses severance and damages in accordance with the provisions of the Highways Act and Expropriation Act. In road surveys, the parties involved are not limited to those whose properties are direct objects of the expropriation. Other landowners whose interests and rights are affected may also gain the status of an involved party in the survey, and may receive compensation for damage or injury (like dust or noise) caused by the road. Furthermore, such parties' rights to compensation are not limited by the compensation threshold of section 38 of the Expropriation Act.<sup>134</sup> Their compensation is assessed in accordance with the

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121. *Id.* § 20.

122. *Id.* § 22.

123. *Id.*

124. Maantielaki [Highways Act] (503/2005) § 22, *available at*

<http://www.finlex.fi/en/laki/kaannokset/2005/en20050503.pdf> (Ministry of Transp. and Commc'n unofficial trans.).

125. *Id.*

126. *Id.* § 20.

127. *Id.*

128. *Id.* § 26.

129. *Id.* § 22.

130. Maantielaki [Highways Act] (503/2005) § 48, *available at*

<http://www.finlex.fi/en/laki/kaannokset/2005/en20050503.pdf> (Ministry of Transp. and Commc'n unofficial trans.).

131. *Id.*

132. *Id.* § 50.

133. *Id.* § 53.

134. *Id.* § 55.

principle of judicial investigation.<sup>135</sup>

## H1 PLANNING PRACTICE, EVALUATION AND PROSPECTS

This Chapter described land use restrictions and principles in Finnish legislation and their relation to the constitutional protection of property ownership. It aimed to give an overview of both the legislation concerning different types of land use restrictions and the requirements for compensation concerning these restrictions.

In Finland, the economic rights of landowners are fairly well secured during expropriation and other similar proceedings, both where the landowners' rights are direct objects of expropriations and also where they are indirectly affected. Because the annual number of expropriation proceedings is large, a fairly uniform and generally accepted practice on compensation has developed.

In practice, however, many landowners often are not aware of their rights concerning compensation. This problem is only partially relieved by the "judicial investigation" rule. In addition, the inadequate level of information available to landowners about relevant legislation and plans makes it difficult for landowners to anticipate the future course of events. Landowners' position is made worse by the long duration typical of planning processes. When the procedure for compensation assessment has begun, the position of the landowner is more secure, mainly due to the principle of judicial investigation. The authorities also have an obligation to give advice and inform the landowners about the procedure.

The situation is more difficult to determine for land use restrictions based on a public planning decisions. Under the Finnish system and practice, restrictions that treat all landowners alike usually do not establish a right to compensation. Also, in situations where the restriction is considered minor because it does not exceed the threshold of compensation, no compensation may be granted. There is no established practice for cases where several public planning decisions concurrently lead to a takings situation, when none of the restrictions in themselves exceed the compensation threshold. In some cases, the right to compensation is established only once the landowner applies for an exemption from the restriction and it is denied. The local authority then has the option of changing the land use plan to avoid paying compensation. Moreover, the landowner may lose ownership of the property, because in such situations the authorities have the right to expropriate the whole property instead of paying compensation.

An exceptional feature in the Finnish land use planning system that places additional burden on landowner is the duty to transfer without compensation the ownership of street areas designated in the first local detailed plan to the local authority. This has been justified by the increased value of the landowner's property as a result of the plan, so that as compensation for this increase, the landowner must give up a part of the property for the benefit of the local authority. In the name of equality, some landowners who are not required to give up land for roads may be obliged to pay a fee to the local authority instead of the land transfer.

In the future, the increasing European Community regulation and harmonization may lead to greater uniformity in the practices in the whole area of European Union. Also the growing emphasis on the significance of fundamental rights and the direct application of the Constitution might bring changes to the present situation. A signal of a possible trend toward somewhat greater compensation rights may be the recent Supreme Court of Justice decision noted above, where the Court applied the Constitution ruling that there should be compensation rights even for

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135. *As also* discussed in the sections on indirect injuries and on planning practice.

a temporary building preservation order<sup>136</sup>.

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<sup>136</sup> Korkein Oikeus [KKO] [Supreme Court] 2004:26 (Fin.).