

Expropriation in Europe, January 2013

LAND EXPROPRIATION IN EUROPE

Legal Memorandum

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Executive Summary

The purpose of this memorandum is to provide an overview of international and European standards governing the expropriation of land, as well as state practice in Poland, Germany, Lithuania, Croatia, and Georgia.

Expropriation refers to the acquisition of privately owned land by a public entity. A variety of instruments, including human rights conventions and investment treaties, govern expropriations. Together, international and European laws generally permit expropriations that are (1) provided for by law; (2) for a public purpose; and (3) accompanied by adequate compensation. International human rights law and investment law also establishes that deprivation of property cannot be discriminatory. European legal instruments provide more detail and clarity on the necessary conditions and procedures for property expropriation.

First, expropriation must be provided for by clear and specific state laws. Such laws must contain adequate safeguards to ensure that expropriations do not occur arbitrarily or for invalid reasons. In order to satisfy international standards of due process, the legal framework must provide landowners with notice of the expropriation and an opportunity to challenge the expropriation before a neutral decision-maker. Additionally, state laws must forbid discrimination between people on the basis of race, color, sex, nationality, ethnicity, religion, class or any other status. In practice, most states enshrine the right to property and general conditions for expropriation in the constitution. States then enact comprehensive legislation that defines expropriation procedures, designates relevant authorities, elaborates on the meaning of public purpose, and specifies the manner of compensation.

Second, expropriation is only permitted in order to achieve a public interest. Though states interpret “public interest” differently, it generally signifies that the property, once put to the intended use, will benefit the community or country generally rather than a particular individual or group. For instance, national security, economic growth, and social justice usually qualify as public interests. The expropriation must also be proportional to the public interest that it is intended to achieve. In practice, state laws often

provide an exhaustive or non-exhaustive list of projects that satisfy the public interest requirement.

Third, expropriation must be accompanied by adequate, effective and prompt compensation. Adequate compensation generally includes the fair market value of the expropriated property, but certain circumstances may justify the payment of less than market value. Effective compensation may take the form of money, real estate, or other property rights. In practice, states often appoint an independent expert to assess property value, require that public authorities attempt to negotiate a voluntary sale price by the owner before resorting to expropriation, and permit property owners to challenge the initial compensation figure.

The expropriation systems of Poland, Germany, Lithuania, Croatia and Georgia reveal several effective practices. These practices include designating an independent agency to oversee expropriation proceedings, identifying public interest projects to justify expropriation, or providing for an appeal process. Requiring a public hearing on proposed expropriations, negotiations for a voluntary transfer of property, certain judicial review standards, independent expert assessment's of property values, and property owner approval for certain compensation agreements are other ways these states govern land expropriation.

However, state practice also reveals some weaknesses. For instance, people may have difficulty taking advantage of their rights due to lack of knowledge, short deadlines, and litigation costs. In states without a strong system of property records, public authorities may be tempted to circumvent expropriation procedures by denying residents' property rights and instead deeming them illegal occupants. This is particularly pertinent to Roma populations, who are sometimes targeted with mass evictions on the grounds of illegal residency. Furthermore, in recent years, many states have authorized the transfer public lands to individual and corporate hands in a reverse form of expropriation, transforming open spaces like parks into commercial enterprises and other privately-run businesses. Because public space is already owned by the state, citizens opposed to these changes have had little legal standing to challenge the privatization deals.

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INTERNATIONAL AND EUROPEAN LEGAL STANDARDS FOR PUBLIC
ACQUISITION OF LAND

Statement of Purpose

The purpose of this memorandum is to provide an overview of international and European standards governing the expropriation of land. This memorandum examines state practice in Poland, Germany, Lithuania, Croatia, and Georgia, five states that underwent significant shifts in property rights regimes since the fall of communism and former systems of collectivized property ownership.

Introduction

Expropriation refers to the acquisition of privately owned property by a public entity. Even when the public entity does not actually seize the property or affect the legal title to the property, expropriation may still occur when a state interferes with the titleholder's use of the property and/or enjoyment of its benefits.¹

A variety of international legal instruments govern the expropriation of private property. International human rights law establishes the principles of due process, non-discrimination, and compensation for the deprivation of rights, including property rights. International investment law applies only to foreign-owned property, but sets the standards that states may only expropriate property for public purposes and upon the payment of just compensation. Drawing on these international legal principles, European conventions guarantee the right to hold private property, and permit state interference with property rights only when necessary for the public interest and when accompanied by adequate, effective, and prompt compensation.

Together, international and European law require that the expropriation of private property by public authorities be (1) provided for by law; (2) in the public interest; and (3) accompanied by adequate, effective and prompt compensation.

First, expropriation must be provided for by law. This means that state laws must clearly and specifically set forth the conditions and

¹ *"Indirect Expropriation" and the "Right to Regulate" in International Investment Law*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, 1 (Sept. 2004), available at <http://www.oecd.org/investment/investmentpolicy/33776546.pdf>.

procedures for expropriation. The law must contain procedural safeguards to protect individuals from wrongful deprivation of their property, including timely notice to property owners of expropriation proceedings and decisions, notice of the justifications for those decisions, and the opportunity for property owners to challenge expropriation decisions before an independent arbiter. The law must also forbid discrimination on the grounds of race, color, ethnicity, nationality, gender, religion, or other characteristics.

In practice, states fulfill this requirement by including basic protections from expropriation in the constitution², and providing specific conditions and procedures in legislation. Most of the examined states require that public authorities seek a negotiated transfer of the property before resorting to expropriation. Lithuania and Georgia designate independent bodies to examine expropriation requests. Germany, Lithuania and Croatia specifically establish appeals processes for expropriation decisions, while Poland and Georgia permit appeals under general administrative procedures. Second, expropriation must serve a public interest such as state security, economic development, or social justice. The expropriation must also be proportional to this public interest, fairly balancing the collective interests of the community and the individual right to property. States have broad discretion to determine the public interest, and the European Court of Human Rights defers to this judgment unless it is “manifestly without reasonable foundation.”³

In practice, states fulfill this requirement by defining the contours of “public interest” by law. Croatia, for instance, permits expropriation for the “interests and security of the Republic, nature, human environment and health.” In contrast, Lithuanian law specifies an exhaustive list of public interests that may justify expropriation, including transportation infrastructure, pipelines, waste management, and cemeteries.

Third, expropriation must be accompanied by adequate, effective and prompt compensation. States have discretion to interpret these terms, though European law holds that in general, compensation should be reasonably related to the value of the expropriated property. Certain

² Theo R. G. Van Banning, *THE HUMAN RIGHT TO PROPERTY* 139-141 (2001).

³ *James & Others v. United Kingdom*, 98 Eur. Ct. H.R. para. 46 (1986), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57507>.

circumstances, such as comprehensive land reform, may justify the reduction of compensation payments.

In practice, states generally require compensation of the expropriated property's fair market value, with some adjustments for other losses related to the expropriation. For instance, Croatia mandates compensation "equal to market value" of the lost property and does not provide for flexibility. In contrast, Germany provides great flexibility by requiring that compensation be determined based on a fair balance of public interest and private property rights. States permit compensation in the form of money, real estate, or other property such as investment securities. A common state practice is to permit compensation in real estate only upon the agreement of the private parties affected. Most states also strictly designate the timing of compensation payments to precede or correspond with the transfer of property rights.

Sources of Law on Property Expropriation

Both international and European laws establish standards for the expropriation of private property. International human rights law and investment law establish the requirements of non-discrimination and compensation to the prior owner. European legal instruments provide more detail and clarity on the necessary conditions and procedures for property expropriation.

International Law

Two areas of international law provide guidance on the legality of property expropriation. International human rights law establishes that the deprivation of private property must be non-discriminatory and accompanied by adequate compensation. International investment law requires that expropriation of foreign-owned property occur only for public purposes, without discrimination, and with "prompt, adequate, and effective" compensation.

International Human Rights Law

The Universal Declaration of Human Rights sets forth the principle that “[n]o one should be arbitrarily deprived of his property.”⁴ While the core international human rights treaties do not explicitly guarantee the right to maintain private property, several other provisions implicate this principle.

The International Covenant on Economic, Social and Cultural Rights (“ICESCR”) guarantees all individuals the right to adequate housing. This includes the “right to live somewhere in security, peace and dignity.”⁵ Accordingly, General Comment 7 of the Committee on Economic, Social and Cultural Rights maintains that “forced evictions are *prima facie* incompatible” with the ICESCR.⁶ The state is obligated to “refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions.”⁷ When human rights are violated, the International Covenant on Civil and Political Rights (“ICCPR”) requires states to provide an “effective remedy” to the victim. This includes “adequate compensation for any property.”⁸ Together, these provisions suggest that the expropriation of private homes requires compensation.

The general prohibition of discrimination under international human rights law applies to property expropriation measures. Both the ICCPR and ICESCR forbid discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁹ Other human rights conventions echo this principle. The Convention on the Elimination of all forms of Racial Discrimination (“ICERD”) guarantees equality in the “right to own property” and “the right

⁴ Universal Declaration of Human Rights, art. 17(2), G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁵ Committee on Economic Social and Cultural Rights, General Comment 4, *The right to adequate housing (Art. 11(1))*, para. 7 (Dec. 13, 1991).

⁶ Committee on Economic Social and Cultural Rights, General Comment 7, *The right to adequate housing (Art. 11(1)): forced evictions*, para. 1 (May 20, 1997).

⁷ Committee on Economic Social and Cultural Rights, General Comment 7, *The right to adequate housing (Art. 11(1)): forced evictions*, para. 3 (May 20, 1997).

⁸ Committee on Economic Social and Cultural Rights, General Comment 7, *The right to adequate housing (Art. 11(1)): forced evictions*, para. 3 (May 20, 1997).

⁹ International Covenant on Civil and Political Rights, art. 26, Dec. 16, 1966, 999 UNTS 171; 6 ILM 368 (1976), available at <http://www2.ohchr.org/English/law/ccpr>; International Covenant on Economic, Social, and Cultural Rights, art. 2(2), Dec. 16, 1966, 993 UNTS 3; 6 ILM 368 (1976), available at <http://www2.ohchr.org/english/law/cescr>.

to inherit,” without distinction as to race, color, nationality or ethnicity.¹⁰ Likewise, the Convention on the Elimination of all forms of Discrimination Against Women (“CEDAW”) entitles women to “equal treatment in land and agrarian reform as well as in land resettlement schemes,”¹¹ and “[t]he same rights [as their husbands] in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.”¹²

International Investment Law

International investment law derives largely from bilateral investment treaties (“BITs”) between states, which have proliferated enormously since the 1970s. Virtually all BITs require that the expropriation of foreign property serve a public purpose, refrain from discrimination, and be accompanied by “prompt, adequate, and effective” compensation.¹³ Many BITs mandate “full” compensation, usually equal to the property’s market value.¹⁴ However, some states have argued that full compensation is unnecessary in cases of non-discriminatory expropriation as part of a national program of land reform.¹⁵

European Law

Three European Union (“EU”) legal instruments address the deprivation of private property. The Treaty on the Functioning of the European Union (“TFEU”), along with court decisions, delineates EU jurisdiction to regulate expropriation. The Charter of Fundamental Rights of the European Union (“Charter”) and the Convention for the Protection of

¹⁰ International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, Dec. 21, 1965, 660 U.N.T.S. 195 (1969), *available at* <http://www2.ohchr.org/english/law/cerd.htm>.

¹¹ Convention on the Elimination of All Forms of Discrimination Against Women, art. 14(2)(g), Sep. 3, 1981, 1249 U.N.T.S. 13, (1981) *available at* <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article11>.

¹² Convention on the Elimination of All Forms of Discrimination Against Women, art. 16(1), Sep. 3, 1981, 1249 U.N.T.S. 13, (1981) *available at* <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article11>.

¹³ Restatement (Third) of Foreign Relations Law § 712 (1987); Rudolf Dolzer and Christoph Schreuer, PRINCIPLES OF INTERNATIONAL INVESTMENT LAW 89-91 (Oxford, 2nd Ed., 2008). Because this memorandum addresses formal acquisitions of land, several complex questions that precede a finding of expropriation are not discussed here. For example, this memorandum does not address the developing, and often uncertain, international jurisprudence on the types of interests protected from expropriation (e.g., what constitutes an “investment”) and on the degree of interference with an investment required to find that a taking occurred (i.e., the issue of “regulatory takings”).

¹⁴ Rudolf Dolzer and Christoph Schreuer, PRINCIPLES OF INTERNATIONAL INVESTMENT LAW 90 (Oxford, 2nd Ed., 2008).

¹⁵ Restatement (Third) of Foreign Relations Law § 712 (1987), reporter’s note 3.

Human Rights and Fundamental Freedoms (“ECHR”) establish conditions for legal expropriation.

The TFEU addresses EU jurisdiction over property law in member states. Because it provides that, “[t]he Treaties shall in no way prejudice the rules in Member States governing the system of property ownership,”¹⁶ some have argued that the EU has no authority to regulate property expropriation.¹⁷ However, the European Court of Justice has found that the EU may impose some standards on expropriation, such as the requirement of non-discrimination.¹⁸ Likewise, the Court of Justice of the European Free Trade Association has held that expropriation must comply with “the requirements of suitability and necessity under the principle of proportionality.”¹⁹ In essence, states may determine “whether and when expropriation occurs,” but the EU may regulate “the conditions under which such expropriation takes place.”²⁰

The Charter protects property from expropriation, “except in the public interest and in cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.”²¹

The ECHR echoes the language of the Charter, providing that “[e]very natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possession except in the public interest and subject to conditions provided for by law and by the general principles of international law.”²² The European Court of Human Rights favors a liberal interpretation of this provision, explaining that states, “should enjoy a wide margin of appreciation” in their exercise of expropriation power.²³ Although the ECHR does not mention

¹⁶ Consolidated Version of the Treaty on the Functioning of the European Union, art. 345, Sept. 5, 2008, 2008 O.J. (C115) 47 (2008).

¹⁷ Angelos Dimopoulos, *Common Commercial Policy After Lisbon: Establishing Parallelism between Internal and External Economic Relations*, 4 CROATIAN Y.B. EUR. L. & POL’Y 101, 115 (2008).

¹⁸ Case 182/83, *Fearon v. Irish Land Commission*, E.C.R. 3677, par. 7 (1984), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61983CJ0182:EN:PDF>.

¹⁹ *EFTA Surveillance Authority v. Norway*, Case E-2/06, EFTA Court Report 2007, par. 81 (2007), available at http://www.eftacourt.int/images/uploads/E-2-06_Judgment.pdf.

²⁰ Angelos Dimopoulos, *Common Commercial Policy After Lisbon: Establishing Parallelism between Internal and External Economic Relations*, 4 CROATIAN Y.B. EUR. L. & POL’Y 101, 116 (2008).

²¹ Charter of Fundamental Rights of the European Union, art. 17(1) (Dec. 7, 2000).

²² Convention for the Protection of Human Rights and Fundamental Freedoms, art. 1 (Nov. 9, 1950).

²³ *Sporrong and Lönnroth v. Sweden*, 52 Eur. Ct. H.R. (ser. A), par. 69 (1982).

compensation, the Court has held that “the taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference which could not be considered justifiable under [the ECHR].”²⁴

Legal Standards for Property Expropriation

The foregoing instruments of international and European law compel public authorities to comply with several standards when expropriating private property. Expropriation must be (1) provided for by law; (2) for the public interest; and (3) accompanied by adequate compensation.²⁵

Provided for by Law

First, expropriation actions must issue from an appropriate authority and comply with “adequately accessible and sufficiently precise domestic legal provisions.”²⁶ State laws must contain fair and proper procedural safeguards against arbitrary or unjust deprivation of property.²⁷ These safeguards include timely notice of the expropriation decision and its justifications, and the opportunity to challenge the expropriation before an independent decision-maker.²⁸ The laws must also prevent expropriation measures that discriminate, directly or indirectly, against individuals or groups on the basis of their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁹

²⁴ *Lithgow v. United Kingdom*, 102 Eur. Ct. H.R. (ser. A), par. 121 (1986), available at <http://www.unhcr.org/refworld/publisher,ECHR,,GBR,3ae6b7230,0.html>.

²⁵ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 1, (1952), available at <http://conventions.coe.int/Treaty/en/Treaties/Html/009.htm>.

²⁶ *Lithgow v. United Kingdom*, 102 Eur. Ct. H.R. (ser. A), par. 110 (1986), available at <http://www.unhcr.org/refworld/publisher,ECHR,,GBR,3ae6b7230,0.html>.

²⁷ *Hentrich v. France*, 18 Eur. Ct. H.R., para. 40-42 (1994), available at <http://www.javier-leon-diaz.com/property/Hentrich%20v%20France.pdf>; *Spacek v. the Czech Republic*, 30 Eur. Ct. H.R., para. 54, 60 (1999), available at <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/cases/regionalcases/europeancourtsofhumanrights/nr/664>.

²⁸ Benedict Kingsbury, Nico Krisch, and Richard B. Stewart, *The Emergence of Global Administrative Law*, 68 LAW AND CONTEMPORARY PROBLEMS 15, 45-46 (Summer/Autumn 2005), available at <http://iilj.org/GAL/documents/TheEmergenceofGlobalAdministrativeLaw.pdf>.

²⁹ International Covenant on Civil and Political Rights, art. 26, Dec. 16, 1966, 999 UNTS 171; 6 ILM 368 (1976), available at <http://www2.ohchr.org/English/law/ccpr>; International Covenant on Economic, Social, and Cultural Rights, art. 2(2), Dec. 16, 1966, 993 UNTS 3; 6 ILM 368 (1976), available at <http://www2.ohchr.org/english/law/cescr>.

Public Interest

Second, property expropriation must serve “the public interest.”³⁰ States have wide latitude to determine the activities and projects that fall within the public interest because of their “direct knowledge of their society and its needs.”³¹ The European Court of Human Rights has held that expropriations “in pursuance of legitimate social, economic or other policies may be ‘in the public interest,’ even if the community at large has no direct use or enjoyment of the property taken.”³² For instance, the transfer of property between two private parties may improve social justice and thus “constitute a legitimate means for promoting the public interest.”³³ This rationale justified the transfer of property from certain estate owners to their longtime tenants under the United Kingdom’s Leasehold Reform Act.³⁴ European courts defer to state judgment on the legitimacy of expropriation actions unless such judgment is “manifestly without reasonable foundation.”³⁵

The expropriation must also be proportional to the public interest that it is intended to achieve.³⁶ State expropriations must strike a “fair balance...between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights.”³⁷ In effect, the individual property owners should not personally bear an

³⁰ Charter of Fundamental Rights of the European Union, art. 17(1) (Dec. 7, 2000); Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 1 of Protocol no. 1 (Nov. 9, 1950).

³¹ *James & Others v. United Kingdom*, 98 Eur. Ct. H.R. (ser. A), par. 46 (1986), available at <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/cases/regionalcases/europeancourtofhumanrights/nr/534>.

³² *James & Others v. United Kingdom*, 98 Eur. Ct. H.R. (ser. A), par. 45 (1986), available at <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/cases/regionalcases/europeancourtofhumanrights/nr/534>.

³³ *James & Others v. United Kingdom*, 98 Eur. Ct. H.R. (ser. A), par. 39-41 (1986), available at <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/cases/regionalcases/europeancourtofhumanrights/nr/534>.

³⁴ *James & Others v. United Kingdom*, 98 Eur. Ct. H.R. (ser. A), par. 45 (1986), available at <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/cases/regionalcases/europeancourtofhumanrights/nr/534>.

³⁵ *Lithgow v. UK*, 102 Eur. Ct. H.R. (ser. A), para. 122 (1986).

³⁶ *James & Others v. United Kingdom*, 98 Eur. Ct. H.R. (ser. A), par. 50 (1986), available at <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/cases/regionalcases/europeancourtofhumanrights/nr/534>.

³⁷ *James & Others v. United Kingdom*, 98 Eur. Ct. H.R. (ser. A), par. 50 (1986), available at <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/cases/regionalcases/europeancourtofhumanrights/nr/534>.

“individual and excessive burden” to achieve the public purpose.³⁸ A common measure of proportionality is whether the public purpose could be achieved through less restrictive means. If so, the expropriation is probably not proportional to the public purpose sought.

In *Sporrong and Lönnroth v. Sweden*, the European Court of Human Rights applied a test based off of the three principles in Article 1 of Protocol 1 of the European Convention of Human Rights in ruling that Sweden had imposed “an individual and excessive burden” on the claimants and thereby violated the protocol. Plaintiffs brought suit when the Swedish government granted the city council of Stockholm a zonal expropriation permit to allow the city to build a viaduct leading to a major relief road over one of the city’s main shopping streets. The permit, which covered 164 private properties, would also allow the city to construct one of the viaduct’s supports directly on the plaintiffs’ property, and subsequently convert the rest of the property into a parking lot.³⁹ Furthermore, two years before the government’s issuance of the permit, the Stockholm County Administrative Board imposed an official prohibition on construction on the disputed property, stating the city’s plans would affect that property’s use.⁴⁰

Although the Court held that no expropriation had occurred under the first Article 1 rule, which “enounces the principle of peaceful enjoyment of property,” compensation was still required. According to the Court, the state’s failure to mitigate the inconveniences imposed on the plaintiffs by the permit and prohibition on construction placed “an individual and excessive burden” on the plaintiffs in direct violation of Article 1.⁴¹

In some instances, governments use land expropriation provisions to

³⁸ *Sporrong and Lönnroth v. Sweden*, 52 Eur. Ct. H.R. (ser. A) par. 73 (1982), available at http://portal.uclm.es/descargas/idp_docs/jurisprudencia/sporrong%20-%20proteccion%20de%20la%20propiedad.%20titularidad%20y%20alcance.%20privacion%20legal%20de%20la%20propiedad.%20in.pdf.

³⁹ *Sporrong and Lönnroth v. Sweden*, 52 Eur. Ct. H.R. (ser. A) par. 11 (1982), available at http://portal.uclm.es/descargas/idp_docs/jurisprudencia/sporrong%20-%20proteccion%20de%20la%20propiedad.%20titularidad%20y%20alcance.%20privacion%20legal%20de%20la%20propiedad.%20in.pdf.

⁴⁰ *Sporrong and Lönnroth v. Sweden*, 52 Eur. Ct. H.R. (ser. A) par. 16 (1982), available at http://portal.uclm.es/descargas/idp_docs/jurisprudencia/sporrong%20-%20proteccion%20de%20la%20propiedad.%20titularidad%20y%20alcance.%20privacion%20legal%20de%20la%20propiedad.%20in.pdf.

⁴¹ “Indirect Expropriation” and the “Right to Regulate” in *International Investment Law*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, 18 (Sept. 2004), available at <http://www.oecd.org/investment/investmentpolicy/33776546.pdf>.

obtain lands used by transient populations. A number of states have seized land that they deemed necessary in the public interest to evict the Roma people from settlement areas. In Poland, the government denied Roma security of tenure and the right to enjoy private property and systematically refused Roma registration as residents in local administrative units, without which they are unable to access social welfare, housing, and other important public services.⁴² Bulgaria was found in violation of the Revised European Social Charter when the law prevented Roma from legally gaining tenure to their land, and the European Committee on Social Rights noted that because Bulgaria law provided a right to adequate housing the government was obligated to “strike a balance between the general interest and the fundamental rights of the individuals, in this particular case the right to housing and its corollary of not making the individuals homeless.”⁴³ In Italy in 2008, the Nomad Emergency Decree expanded the list of “natural disasters” and other calamities, as defined by a 1992 law enabling the government to use “extraordinary power and means” during states of emergency, to encompass “nomads.”⁴⁴ The result was the forcible removal of thousands of Romani from their settlements.⁴⁵

Like Roma, Irish “Travellers” comprise a minority group whose traditionally nomadic lifestyles have subjected them to tenuous property rights and a general lack of legal protection in the United Kingdom. A Traveller population in Essex received substantial media attention in September 2011 when authorities decided to close down Dale Farm, the United Kingdom’s largest transient population camp, evicting 400 persons, including 100 children, in the process.⁴⁶ The evictions occurred despite attempts by the United Nations Committee on the Elimination of Racial Discrimination, Members of Parliament, bishops, and film stars to halt the

⁴² European Roma Rights Centre, *ERRC Actions on Roma Rights In Poland* (March 8, 2003), <http://www.errc.org/article/errc-actions-on-roma-rights-in-poland/329>.

⁴³ Council of Europe Committee of Ministers, *Resolution on Complaint No. 31/2005 by the European Roma Rights Centre Against Bulgaria*, CM/ResChS(2007)2 (Sept. 5, 2007), available at <https://wcd.coe.int/ViewDoc.jsp?id=1180705&Site=CM>.

⁴⁴ Kate Hepworth, *Abject Citizens: Italian ‘Nomad Emergencies’ and the Deportability of Romanian Roma*, 16 *CITIZENSHIP STUDIES* 431, 438 (2012).

⁴⁵ *Italy: ‘Zero Tolerance for Roma’*, AMNESTY INTERNATIONAL, 31 (2011), available at <http://www.amnesty.org/en/library/asset/EUR30/020/2011/en/454b23c8-07e1-4a50-86a2-5913857e0222/eur300202011en.pdf>.

⁴⁶ *Travellers Facing Eviction from Dale Farm Gypsy Camp Have Their Own Homes in Ireland*, TELEGRAPH, Sept. 10, 2011, available at <http://www.telegraph.co.uk/news/uknews/8752704/Travellers-facing-eviction-from-Dale-Farm-gypsy-camp-have-their-own-homes-in-Ireland.html>.

removals.⁴⁷ The settlement, which was built illegally on a green belt over a decade ago and had survived earlier attempts by the local borough council to shut it down, was equipped with amenities including access to electricity.

Although Travellers and Romani migrants in the U.K. are now responsible for finding their own dwelling sites, local councils are still obligated to provide them with some options.⁴⁸ In the same year the U.K. passed the Criminal Justice and Public Order Act, the government approved a planning policy that called on local authorities to encourage transient residents to lawfully purchase land themselves and/or seek to legitimize their property claims. The policy, Circular 1/94, required local authorities to set “clear and realistic” guidelines for establishing authorized settlement sites in the event that suitable locations could not be found for transient caravans.⁴⁹ However, according to the National Council for Civil Liberties, few local authorities have complied with the policy’s requests, instead requiring Romani and Traveller residents to meet “unrealistic and unclear” criteria before legitimizing sites through the planning system established.⁵⁰

Compensation

Fourth, the former owners of expropriated property are entitled to “adequate, effective and prompt” compensation. State authorities interpret these criteria, and international courts generally defer to state interpretations, “unless that judgment [is] manifestly without reasonable foundation.”⁵¹

States determine the appropriate measure of “adequate” compensation. Generally, this is interpreted to mean the fair market value of the expropriated property, and may also include other losses incurred as a result of the expropriation, such as transition costs, legal fees, and lost

⁴⁷ *Dale Farm: UN Calls for Essex Eviction to be Suspended*, BBC NEWS, Sept. 2, 2011, available at <http://www.bbc.co.uk/news/uk-england-essex-14763905>; *Vanessa Redgrave and Bishops Fight Dale Farm Eviction*, BBC NEWS, Aug. 30, 2011, available at <http://www.bbc.co.uk/news/uk-england-essex-14720689>.

⁴⁸ *Dale Farm: Who are the UK's Travellers?*, BBC NEWS, Sept. 23, 2011, available at <http://www.bbc.co.uk/news/uk-15020118>.

⁴⁹ Liberty (National Council for Civil Liberties), *Planning Permission for Caravan Sites*, (last accessed Nov. 30, 2012), available at <http://www.yourrights.org.uk/yourrights/rights-of-gypsies-and-travellers/planning-permission-for-caravan-sites/index.shtml>.

⁵⁰ Liberty (National Council for Civil Liberties), *Planning Permission for Caravan Sites*, (last accessed Nov. 30, 2012), available at <http://www.yourrights.org.uk/yourrights/rights-of-gypsies-and-travellers/planning-permission-for-caravan-sites/index.shtml>.

⁵¹ *Lithgow and Others v. United Kingdom*, 102 Eur. Ct. H.R. (ser. A), para. 122 (1986), available at <http://www.unhcr.org/refworld/publisher,ECHR,,GBR,3ae6b7230,0.html>.

profits. Adequate compensation does not include highly speculative losses or the subjective/sentimental value of the property to the owner.

In some cases, states need not compensate the actual value of the property. The European Court of Human Rights held in *Lithgow and Others v. United Kingdom* that “economic reform or measures designed to achieve greater social justice may call for less than reimbursement of the full market value.”⁵² In *Lithgow*, the applicants claimed the compensation they received from the government after the Aircraft and Shipbuilding Industries Act 1977 nationalized some of their interests was “grossly inadequate,” “discriminatory,” and violated multiple articles of the European Convention on Human Rights.⁵³ The Court ruled in favor of the United Kingdom, giving broad discretion to the state to determine compensation, reasoning that domestic authorities best know and understand their resources and societal interests, thus they are “better placed than an international judge to appreciate what measures are appropriate [in situations of nationalization].”⁵⁴ Furthermore, the Court has recognized that in exceptional circumstances, such as German reunification and the Greek transition from a monarchy to a republic, a total lack of compensation may be justifiable.⁵⁵

Other than requiring that compensation be effective, international law does not specify the manner of compensation. Generally, effective compensation may take the form of money, real estate, or other property such as investment securities. In some cases, state circumstances render a particular form of compensation ineffective. For instance, high inflation may make cash virtually worthless and make tangible property the more reliable form of compensation.

State law also determines the meaning of “prompt” compensation. Most states require the payment of compensation before or concurrently

⁵² *Lithgow and Others v. United Kingdom*, 102 Eur. Ct. H.R. (ser. A), para. 122 (1986), available at <http://www.unhcr.org/refworld/publisher,ECHR,,GBR,3ae6b7230,0.html>.

⁵³ *Lithgow and Others v. United Kingdom*, 102 Eur. Ct. H.R. (ser. A), para. 9 (1986), available at <http://www.unhcr.org/refworld/publisher,ECHR,,GBR,3ae6b7230,0.html>.

⁵⁴ *Lithgow and Others v. United Kingdom*, 102 Eur. Ct. H.R. (ser. A), para. 122 (1986), available at <http://www.unhcr.org/refworld/publisher,ECHR,,GBR,3ae6b7230,0.html>.

⁵⁵ Ulrike Deutsch, *Expropriation without Compensation – the European Court of Human Rights Sanctions German Legislation Expropriating the Heirs of “New Farmers”*, 6 GERMAN LAW JOURNAL 1367, 1375-79 (2005), available at http://www.germanlawjournal.com/pdfs/Vol06No10/PDF_Vol_06_No_10_1367-1380_Developments_Deutsch.pdf.

with the actual expropriation. In urgent cases, however, some states permit immediate expropriation and a later time frame for compensation.

European State Practice

Poland, Germany, Lithuania, Croatia and Georgia have all, due to historical circumstances, experienced widespread deprivation of private property. Under communism, formerly private land was collectivized. Additionally, the 1992-95 war in Croatia caused mass displacement and abandonment of residences. These states have simultaneously restored private property to individuals as a general policy and pursued certain expropriations to achieve specific state goals.

European law plays a strong role in each of these states. Germany is a founding EU member, Lithuania and Poland are recent members, Croatia will become a member in 2013, and Georgia cooperates with the EU in a variety of economic and legal matters. Consequently, each state generally complies with European law in the area of expropriation. These states (1) enshrine the conditions for expropriation, including procedural safeguards, in domestic legislation; (2) require that expropriation serve the public interest; and (3) provide just compensation to the former owners of expropriated property.

Poland

Under current Polish law, public authorities may only expropriate property if negotiations for a voluntary transfer fail, and acquisition is necessary to achieve a public purpose. Polish law provides financial incentives for both public authorities and property owners to cooperate fully with expropriation procedures.

Legal Framework and Procedures

The 1997 Polish Constitution protects property rights and sets forth the legal basis and conditions for expropriation.⁵⁶ Specific procedures come from the Land Administration Act of 1997 and the Real Estate Management Act of 1997. The legislature has also adopted legislation pertaining specifically to property expropriation for road construction.⁵⁷

⁵⁶ POLAND CONST. art. 21 (1997), available at http://www.servat.unibe.ch/icl/pl00000_.html.

⁵⁷ Anita Kwartnik-Pruc and Anna Trembecka, *Analysis of Simplified Mode of Property Acquisition for the Purpose of Road Construction in Poland*, INTERNATIONAL FEDERATION OF SURVEYORS, 2 (May, 2012),

First, public officials must attempt to negotiate the sale of the land with the property owner. If negotiations fail to produce an agreement, public officials must file an application with an administrative authority, which designates an additional period (usually two months) for the parties to negotiate a voluntary agreement to transfer the property. If negotiations fail again, the administrative authority decides whether to expropriate the land and determines just compensation.⁵⁸

When the decision takes effect, ownership is transferred to the State Treasury or a local government unit.⁵⁹ Payment of just compensation is due within fourteen days of the decision's effective date. If the expropriation of one portion of a property undermines productive use of the remaining portion, the owner may obtain expropriation of (and compensation for) the remaining portion as well.⁶⁰

Individuals may appeal the expropriation decision to Polish courts under the general rules of administrative procedure, as well as to the Constitutional Tribunal.⁶¹

Public Interest

Under the Polish constitution, fundamental rights such as property ownership⁶² may only be limited “for the protection of [Poland’s] security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons.”⁶³ The Real Estate Management Act provides a non-exhaustive list of public purposes that justify interference in property rights, including transportation infrastructure, environmental protection facilities, and the protection of cultural heritage.⁶⁴

available at

http://www.fig.net/pub/fig2012/papers/ts03g/TS03G_kwartnikpruc_trembecka_et_al_5698.pdf.

⁵⁸ Marek Walacik, Sabina Zrobek, *Chosen Principles of Land Acquisition for Public Purposes and Just Compensation Determination in Poland*, POLISH REAL ESTATE SCIENTIFIC SOCIETY (2010).

⁵⁹ Miroslaw Belej and Marek Walacik, *Land Acquisition for Public Purpose in Poland on Example of Public Roads Construction* (2008), available at

http://www.fig.net/pub/fig2008/papers/ts04b/ts04b_03_belej_walacik_2849.pdf.

⁶⁰ Marek Walacik, Sabina Zrobek, *Chosen Principles of Land Acquisition for Public Purposes and Just Compensation Determination in Poland*, POLISH REAL ESTATE SCIENTIFIC SOCIETY (2010).

⁶¹ POLAND CONST. art. 78-79 (1997), available at http://www.servat.unibe.ch/icl/pl00000_.html.

⁶² POLAND CONST. art. 64(1) (1997), available at http://www.servat.unibe.ch/icl/pl00000_.html.

⁶³ POLAND CONST. art 31(3) (1997), available at http://www.servat.unibe.ch/icl/pl00000_.html.

⁶⁴ Marek Walacik, Sabina Zrobek, *Chosen Principles of Land Acquisition for Public Purposes and Just Compensation Determination in Poland*, POLISH REAL ESTATE SCIENTIFIC SOCIETY (2010).

Expropriation is justified only when no other measure can achieve the specific public purpose.⁶⁵

Compensation

Polish law requires compensation for expropriated property⁶⁶ in cash or, with the agreement of the landowner, in the provision of a replacement plot of land.⁶⁷ Compensation is based on the market price of the property as determined by an expert evaluation. If market price cannot be determined, compensation is based on the owner's projected costs to purchase and develop a plot of land with similar characteristics.⁶⁸ The owner is also entitled to recover the lost profits from timber and crops.⁶⁹

Polish law provides incentives for both parties to fulfill their legal obligations. If the owner transfers the property to public authorities within 30 days of receiving notice of the expropriation decision, the compensation figure increases by 5 percent.⁷⁰ Conversely, if public officials do not pay compensation as required by law, the former owner is entitled to interest payments.⁷¹

In Practice

The development of a robust legal framework may have outpaced Poland's ability to execute it. There have been cases of both property owners and public authorities having financial difficulty in complying with legal requirements. In one unresolved case, a Polish couple purchased property from the state in the 1970s that was classified as farming land. In 1987, regional authorities declared the property a historic monument because it had been a Jewish cemetery and was one of few vestiges of Jewish civilization in the region. This designation prevents the couple from developing the property in any way, but local authorities say that they lack

⁶⁵ *Land Administration Act*, sec.112 (Poland 1997) ("Expropriation can be carried out where public-interest aims cannot be achieved without restriction of those rights and where it is impossible to acquire those rights by way of a civil law contract.").

⁶⁶ POLAND CONST. art. 21(2) (1997), available at http://www.servat.unibe.ch/icl/pl00000_.html.

⁶⁷ *Land Administration Act*, sec. 131 (Poland 1997).

⁶⁸ Marek Walacik, Sabina Zrobek, *Chosen Principles of Land Acquisition for Public Purposes and Just Compensation Determination in Poland*, POLISH REAL ESTATE SCIENTIFIC SOCIETY (2010).

⁶⁹ Marek Walacik, Sabina Zrobek, *Chosen Principles of Land Acquisition for Public Purposes and Just Compensation Determination in Poland*, POLISH REAL ESTATE SCIENTIFIC SOCIETY (2010).

⁷⁰ Marek Walacik, Sabina Zrobek, *Chosen Principles of Land Acquisition for Public Purposes and Just Compensation Determination in Poland*, POLISH REAL ESTATE SCIENTIFIC SOCIETY (2010).

⁷¹ Marek Walacik, Sabina Zrobek, *Chosen Principles of Land Acquisition for Public Purposes and Just Compensation Determination in Poland*, POLISH REAL ESTATE SCIENTIFIC SOCIETY (2010).

the funds to provide monetary compensation and have not found acceptable replacement land.⁷²

Germany

Under German law, individual property rights are a fundamental part of personal liberty, enabling the individual to lead a self-governing life.⁷³ The constitution and Federal Building Code regulate the expropriation of property, and notably permit a great deal of flexibility in the calculation of compensation.

Legal Framework and Procedure

The German constitution (“Basic Law”) provides that expropriation “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 respecting the amount of compensation, recourse is within the ordinary courts.”⁷⁴

First, public officials must attempt to negotiate with the owner for a voluntary transfer of the property. This requirement is only fulfilled if the officials present a reasonable offer to the owner.⁷⁵ If negotiations fail, officials may initiate a formal procedure wherein the parties are invited to a hearing and another attempt is made to reach a voluntary agreement.⁷⁶ If negotiations fail again, officials may seek an expropriation order from the expropriation authority. The authority may decide on both the question of expropriation and the compensation figure, or defer the compensation decision to a later date.⁷⁷ If the request is urgent for reasons of public welfare, the authority may issue an immediately effective transfer order at the hearing.⁷⁸

⁷² European Court of Human Rights (Press Release), *Polish Couple’s Property Rights Breached Following Protracted Refusal to Allow them to Build on Former Jewish Cemetery* (Mar. 29, 2011), available at [http://www.codex-online.com/codex/contents.nsf/WPrintArticles/4441547A07A3AD60C2257865002E8150/\\$file/Chamber+judgment+Potomska+and+Potomski+v.+Poland+29.03.2011.pdf](http://www.codex-online.com/codex/contents.nsf/WPrintArticles/4441547A07A3AD60C2257865002E8150/$file/Chamber+judgment+Potomska+and+Potomski+v.+Poland+29.03.2011.pdf).

⁷³ Donald P. Kommers, *THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY* 251, (1997).

⁷⁴ GERMANY CONST. art. 19(2) (1949), available at http://www.servat.unibe.ch/icl/gm00000_.html.

⁷⁵ Winrich Voss, *Appropriate Compensation in Terms of Compulsory Purchase in Germany*, POLISH REAL ESTATE SCIENTIFIC SOCIETY (2010).

⁷⁶ *Federal Building Code*, sec. 108 (Germany, 1997).

⁷⁷ *Federal Building Code*, sec. 111 (Germany, 1997).

⁷⁸ *Federal Building Code*, sec. 116(1) (Germany, 1997).

The Basic Law explicitly permits individuals to appeal the manner and amount of compensation to courts of ordinary jurisdiction.⁷⁹ The Constitutional Court has held that if a property owner does not receive any compensation, the owner must seek to have the decision invalidated as unconstitutional rather than request an appellate court to revise the decision.⁸⁰

Public Interest

The Basic Law permits expropriation only for the “public good.”⁸¹ The Constitutional Court has developed a four-part test to determine the proportionality of the expropriation to the end it serves. Under this test, the expropriation must (1) be authorized by law; (2) be an appropriate means of accomplishing the public purpose; (3) be necessary and the least intrusive means possible to accomplish the public goal; and (4) advance a public interest that outweighs the private property interest. The public purpose must be impossible to achieve by less restrictive measures.⁸²

Compensation

All expropriation measures must explicitly grant compensation or be deemed unconstitutional.⁸³ Compensation may take the form of money, alternative real estate, or the transfer of other rights. If the previous owner’s livelihood depended on the land, compensation must be provided in the form of alternative land.⁸⁴ An expropriation measure that does not explicitly grant compensation is unconstitutional.

Independent experts calculate compensation⁸⁵ according to an “equitable balance between the public interest and the interests of those affected.”⁸⁶ In theory, compensation should enable the owner to buy new property of the same quality and characteristics. This involves the compensation of both the market value of the property at the time that the

⁷⁹ GERMANY CONST. art. 14(3) (1949), available at http://www.servat.unibe.ch/icl/gm00000_.html.

⁸⁰ Stephan W. Schill, INTERNATIONAL INVESTMENT LAW AND COMPARATIVE PUBLIC LAW 917 (2011).

⁸¹ GERMANY CONST. art. 14(3) (1949), available at http://www.servat.unibe.ch/icl/gm00000_.html.

⁸² Kevin E. McCarthy, *Eminent Domain*, OFFICE OF LEGISLATIVE RESEARCH OF THE CONNECTICUT GENERAL ASSEMBLY, (Nov. 22, 2005), available at <http://www.cga.ct.gov/2005/rpt/2005-r-0321.htm>.

⁸³ Athanasios Gromitsaris, *Expropriation, Takings Annual Report 2011 Germany*, IUS PUBLICUM, 4.2 (July 2011), available at http://www.ius-publicum.com/repository/uploads/21_03_2012_12_05_Gromitsaris_Expropriation.pdf.

⁸⁴ *Federal Building Code*, sec. 100(1) (Germany 1997).

⁸⁵ See *Federal Building Code*, sec. 192(1) (Germany 1997).

⁸⁶ GERMANY CONST. art. 14(3) (1949), available at http://www.servat.unibe.ch/icl/gm00000_.html.

decision is adopted,⁸⁷ as well as all additional expenses incurred by the owner in acquiring another comparable land and/or to establishing same business as before.⁸⁸ However, the Federal Building Code states that the compensation for these additional expenses should be assessed giving due weight to the respective interests of the public and of the parties concerned.⁸⁹

To protect the rights of the former property owner, a full advance payment must be made before the property is seized.⁹⁰ In cases of public urgency, however, the administrative authority may issue an immediate property transfer order.⁹¹

In Practice

The Constitutional Court permits expropriations that serve a private as well as a public interest. Public authorities may transfer expropriated property to a private entity, provided that the private entity serves a public interest. For instance, in one case, the Court permitted the expropriation of property that was transferred to a private school.

However, in another case, the Court forbade the expropriation of property from one business to a large motor company that would transform the area into a testing ground. Although authorities claimed that Daimler-Benz would stimulate the local economy and provide employment, the Court held that the expected public benefit did not justify the private deprivation.⁹²

Lithuania

Lithuania's 2007 Law on Land established detailed conditions and procedures for land expropriation. Notably, the law requires the initial expropriation decision, including the compensation figure, to be confirmed by a court before becoming effective. The law also contains an exhaustive list of public interest projects that may justify expropriation.

⁸⁷ *Federal Building Code* sec. 95(1) (Germany, 1997).

⁸⁸ Winrich Voss, *Appropriate Compensation in Terms of Compulsory Purchase in Germany*, in SOME ASPECTS OF COMPULSORY PURCHASE OF LAND FOR PUBLIC PURPOSE 55, 59 (Polish Real Estate Scientific Society, ed., 2010), available at http://www.tnn.org.pl/tnn/publik/18/TNN_monografia_2010.pdf.

⁸⁹ *Federal Building Code* sec. 96(1) (Germany, 1997).

⁹⁰ Winrich Voss, *Appropriate Compensation in Terms of Compulsory Purchase in Germany*, POLISH REAL ESTATE SCIENTIFIC SOCIETY (2010).

⁹¹ *Federal Building Code* sec. 116(1) (Germany, 1997).

⁹² AJ van der Walt, CONSTITUTIONAL PROPERTY CLAUSES: A COMPARATIVE ANALYSIS 148 (1999).

Legal Framework and Procedure

The Lithuanian Constitution provides that, “[p]roperty may be taken over only for the needs of society according to the procedure established by law and shall be justly compensated for.”⁹³ The procedures and conditions for land expropriation are set forth in the Law on Land (1994), and further elaborated upon by the Law on Compulsory Purchase of Land for the Purpose of Implementation of Specific Projects of National Importance (2011).

First, the public authority that seeks to expropriate property must submit a request to the National Land Service (“NLS”).⁹⁴ The NLS must assess the likelihood of a negotiated agreement to transfer the land, but need not pursue negotiations if they appear “inexpedient.”⁹⁵ If no agreement is attempted or reached, the NLS adopts an expropriation decision either rejecting the request or authorizing expropriation and specifying the amount of compensation.⁹⁶ The NLS expropriation decision is not self-executing and must be given effect by a court of general jurisdiction. After the NLS decision is issued, the party seeking expropriation must apply to a court within three months for an expropriation order.⁹⁷ This provides an opportunity for the landowner to contest the validity of the expropriation or the amount of compensation.

If the property ceases to be used for its intended public purpose within ten years of the expropriation decision, the county governor must offer it to the former owner for the property’s value at the time of expropriation.⁹⁸

Public interest

Under the Law on Land, a land plot may be expropriated only in exceptional cases when it is necessary to address a social need.⁹⁹ The Law on Land provides an exhaustive list of public interests that may justify

⁹³ LITHUANIA CONST. art. 23 (1992), available at <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

⁹⁴ *Law on Land* art. 45(1) (Lithuania 2007), available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=315927.

⁹⁵ *Law on Land* art. 46(1) (Lithuania 2007), available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=315927.

⁹⁶ *Law on Land* art. 46(9) (Lithuania 2007), available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=315927.

⁹⁷ *Law on Land* art. 47(3) (Lithuania 2007), available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=315927.

⁹⁸ *Law on Land* art. 47(9) (Lithuania 2007), available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=315927.

⁹⁹ *Law on Land* art. 45 (Lithuania 2007), available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=315927.

expropriation, including national security and defense, transportation infrastructure, pipelines, transmission lines, “social infrastructure” such as educational, scientific, cultural, health, environmental, public order, and exercise facilities, waste management, cemeteries, economic projects recognized as important by the executive or legislature.¹⁰⁰

Compensation

Compensation is determined by agreement or in the expropriation decision, which must be confirmed by a court.¹⁰¹ The landowner is entitled to the fair market value of the land, the value of structures constructed or being constructed on the land, the value of agricultural output growing on the land, and other losses incurred by the prior owners and/or users of the land due to the expropriation.¹⁰² The landowner receives compensation in cash, or, upon the agreement of both parties, alternative land located in the same county as the expropriated parcel.¹⁰³ Compensation must be paid within three months of the expropriation.¹⁰⁴

In Practice

Because land agencies have focused on the ongoing process of property restitution, there has been no reported case of expropriation of private property in Lithuania since 1991.¹⁰⁵ The restitution process has itself made slow progress, mainly because the various complex rules and procedures in place to make the process “scrupulously fair to restitution claimants” have contributed to “indecision and gridlock.”¹⁰⁶ However, while instances of expropriation have become virtually non-existent, the Municipality of Vilnius has evicted and demolished the dwellings of Roma families in the Kirtimai settlement on numerous occasions, on the grounds

¹⁰⁰ *Law on Land* art. 45(1) (Lithuania 2007), available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=315927.

¹⁰¹ *Law on Land* art. 47(3) (Lithuania 2007), available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=315927.

¹⁰² *Law on Land* art. 47(1) (Lithuania 2007), available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=315927.

¹⁰³ *Law on Land* art. 47(1) (Lithuania 2007), available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=315927.

¹⁰⁴ U.S. Department of State, *2012 Investment Climate Statement – Lithuania* (June 2012), available at <http://www.state.gov/e/eb/rls/othr/ics/2012/191186.htm>.

¹⁰⁵ U.S. Department of State, *2012 Investment Climate Statement – Lithuania* (June 2012), available at <http://www.state.gov/e/eb/rls/othr/ics/2012/191186.htm>.

¹⁰⁶ U.N. Food and Agriculture Organization, *Land Reform in Eastern Europe – Western CIS, Transcaucuses, Balkans, and EU Accession Countries*, (2001), available at http://www.fao.org/docrep/007/AD878E/AD878E05.htm#P850_148019.

that the homes were illegally constructed and occupied.¹⁰⁷ Advocates for the Roma evictees have argued that they cannot obtain legal authorization to construct homes due to their lack of identification documents and permanent employment.¹⁰⁸

Croatia

The Croatian constitution and Expropriation Act govern the expropriation of property. The law contains strong due process provisions, including a mandatory public hearing on the expropriation and the provision of a written statement of property owners' rights during the required negotiation phase. Although the displacement of Serbs in Croatia during the 1990s wars resulted in various property disputes and tenuous land rights for many citizens, this section provides only a general overview of Croatia's legal approach to expropriation issues.

Legal Framework and Procedure

Article 50 of the Croatian constitution provides that, “[p]roperty may, in the interests of the Republic of Croatia, be restricted or expropriated by law upon payment of compensation equal to its market value...property rights may exceptionally be restricted by law for the purposes of protecting the interests and security of the Republic, nature, human environment and health.”¹⁰⁹

First, the expropriation beneficiary must obtain a formal declaration of the finding of a public interest. The State Office for the Rights of Property (“SORP”) branch then manages the expropriation process. The SORP must publicize the planned expropriation, provide notice to the current landowners, and hold a public hearing to discuss the issue with affected citizens. After conducting a preliminary assessment of the value of the land and its structures, the SORP also invites the property owners to negotiate a voluntary transfer of the property, and must provide them with a statement of owners' rights. If negotiations fail, then the office seeking expropriation

¹⁰⁷ Sinan Gokcen, *NGOs Call for End to Forced Evictions of Roma in Freezing Temperatures*, EUROPEAN ROMA RIGHTS CENTRE, (Feb. 7, 2012), available at <http://www.errc.org/article/ngos-call-for-end-to-forced-evictions-of-roma-in-freezing-temperatures/3965>.

¹⁰⁸ Thomas Hviid and Milda Seputyte, *Vilnius Roma Poised on the Brink of all-out Eviction*, THE BALTIC TIMES, (Jan. 19, 2005), available at <http://www.baltictimes.com/news/articles/11790/>.

¹⁰⁹ CROATIA CONST. art 50 (1990), available at http://www.servat.unibe.ch/icl/hr00000_.html.

must submit a formal request for expropriation to the SORP, which sets the compensation figure.¹¹⁰

The property owner may appeal the SORP's decision to the Ministry of Justice within 15 days. The property owner may also appeal the Ministry of Justice's decision to the county court, which holds an open hearing before issuing a final decision.¹¹¹

Public Interest

The constitution permits expropriation “for the purposes of protecting the interests and security of the Republic, nature, human environment and health.”¹¹² Croatian law authorizes expropriation when the proposed public purpose will create a greater benefit for society than the property currently does.¹¹³

Compensation

The constitution entitles the owner of expropriated property is entitled to compensation equal to the market value of the property.¹¹⁴ While this permits little flexibility in the interest of justice, it also provides predictability. Court-appointed experts determine the value of the property, and compensation may take the form of cash or, with the consent of the owner, alternative land.¹¹⁵ Compensation is due at the time of the actual expropriation.

In Practice

Because Croatian law mandated the compensation of the market value of the land expropriated, without adjustments for the interests of justice, Croatia did not provide for compensation when the expropriation diminished the value of adjoining land. The European Court of Human Rights ruled in

¹¹⁰ Ministry of Regional Development, Forestry and Water Management, *Croatia Social and Economic Recovery Project Operational Manual*, 8-10 (June 5, 2008), available at <http://www.mrrsvg.hr/UserDocsImages/Manual%20CSERP%20-%20vol%201.%20-%20June%2008.pdf>.

¹¹¹ Ministry of Regional Development, Forestry and Water Management, *Croatia Social and Economic Recovery Project Operational Manual*, 9 (June 5, 2008), available at <http://www.mrrsvg.hr/UserDocsImages/Manual%20CSERP%20-%20vol%201.%20-%20June%2008.pdf>.

¹¹² CROATIA CONST. art 50 (1990), available at http://www.servat.unibe.ch/icl/hr00000_.html.

¹¹³ SANJA ZAGRAJSKI, *Protection Of Ownership Rights In The Expropiation Procedures Before The European Court Of Human Rights*, COLLECTED PAPERS OF THE FACULTY OF LAW IN SPLIT, Vol. 45, No. 3, (2008), available at http://www.hrcak.srce.hr/index.php?show=clanak&id_clanak_jezik=48096.

¹¹⁴ CROATIA CONST. art 50 (1990), available at http://www.servat.unibe.ch/icl/hr00000_.html.

¹¹⁵ Ministry of Regional Development, Forestry and Water Management, *Croatia Social and Economic Recovery Project Operational Manual*, 8 (June 5, 2008), available at <http://www.mrrsvg.hr/UserDocsImages/Manual%20CSERP%20-%20vol%201.%20-%20June%2008.pdf>.

2007 that this practice “failed to strike a fair balance between the general interest of the community and the requirement of protecting the applicants’ individual property rights.”¹¹⁶

Georgia

Expropriation of property in Georgia requires the endorsement of the executive branch of government as well as judicial consent. Notably, Georgian law forbids the compensation of any less than the market value of the expropriated property, providing limited flexibility for major land reforms. In practice, some public authorities have circumvented expropriation laws by denying that residents have ownership of their property.

Legal Framework and Procedure

Georgia’s 1995 constitution provides that “[d]eprivation of property for the purpose of the pressing social need shall be permissible in the circumstances as expressly determined by law, under a court decision or in case of the urgent necessity determined by the Organic Law and only with appropriate compensation.”¹¹⁷ The Law on the Rule for Expropriation of Ownership for Urgent Public Necessity sets forth procedures for expropriation. Public authorities may not expropriate any property that was privatized and sold by the state prior to 2007.¹¹⁸

First, a Presidential Decree must verify the existence of a public necessity and designate an entity to carry out the expropriation (the “expropriator”). The expropriator must then seek a court order authorizing the expropriation, and notify the property owner of the hearing date. If the court authorizes expropriation, then the expropriator must seek to negotiate an agreement with the landowner on compensation. To inform these negotiations, the expropriator must obtain an independent expert’s valuation

¹¹⁶ *Bistrović v. Croatia*, Eur. Ct. H.R. para. 44 (2007), available at <http://sljeme.usud.hr/usud/prakESen.nsf/Praksa/07B935A2957B1E2DC125738B005145F4?OpenDocument>.

¹¹⁷ GEORGIA CONST. art 21(3) (1995), available at http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf.

¹¹⁸ U.S. Department of State, *2012 Investment Climate Statement – Georgia*, (June 2012), available at <http://www.state.gov/e/eb/rls/othr/ics/2012/191153.htm>.

of the property.¹¹⁹ If negotiations fail to secure an agreement, either party may request the court to issue a decision on compensation.¹²⁰

The laws regulating expropriation do not specify the appeal processes, but general Georgia law permits property owners to appeal court decisions on both the permissibility of the expropriation and the amount of compensation.¹²¹

Public Interest

Georgian law permits expropriation for a “pressing social need.”¹²² A non-exhaustive list of public interest activities includes linear infrastructure (electricity lines, roads and railways) and activities related to the construction of water supplies, national defense and the mining of minerals.¹²³

Compensation

Georgia requires “appropriate compensation” for property expropriation.¹²⁴ Compensation may be given in cash or in alternative property, and must be worth no less than the market value of the expropriated property. The expropriator must engage an independent expert to determine the value of the property. In the case of agricultural land, the state must provide compensation for loss of anticipated income for the sale of already-planted crops in the current fiscal year. If the expropriation

¹¹⁹ Nick Gvinadze and Nick Keen, *Eminent Domain in Georgia: What Works, What Doesn't*, 11 INVESTOR.GE 2 (Nov. 2009), available at http://www.dlapiper.com/files/Publication/4d5b8297-4611-4feb-ba7b-00befd0e2df1/Presentation/PublicationAttachment/c748aac5-3aae-4a4c-8153-05685e36f4e8/DLAPiper_Georgia_EminentDomaininGeorgia.pdf.

¹²⁰ Nick Gvinadze and Nick Keen, *Eminent Domain in Georgia: What Works, What Doesn't*, 11 INVESTOR.GE 3 (Nov. 2009), available at http://www.dlapiper.com/files/Publication/4d5b8297-4611-4feb-ba7b-00befd0e2df1/Presentation/PublicationAttachment/c748aac5-3aae-4a4c-8153-05685e36f4e8/DLAPiper_Georgia_EminentDomaininGeorgia.pdf.

¹²¹ Nick Gvinadze and Nick Keen, *Eminent Domain in Georgia: What Works, What Doesn't*, 11 INVESTOR.GE 4-5 (Nov. 2009), available at http://www.dlapiper.com/files/Publication/4d5b8297-4611-4feb-ba7b-00befd0e2df1/Presentation/PublicationAttachment/c748aac5-3aae-4a4c-8153-05685e36f4e8/DLAPiper_Georgia_EminentDomaininGeorgia.pdf.

¹²² GEORGIA CONST. art. 21(3) (1995), available at http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf.

¹²³ Nick Gvinadze and Nick Keen, *Eminent Domain in Georgia: What Works, What Doesn't*, 11 INVESTOR.GE 2 (Nov. 2009), available at http://www.dlapiper.com/files/Publication/4d5b8297-4611-4feb-ba7b-00befd0e2df1/Presentation/PublicationAttachment/c748aac5-3aae-4a4c-8153-05685e36f4e8/DLAPiper_Georgia_EminentDomaininGeorgia.pdf.

¹²⁴ GEORGIA CONST. art 21(3) (1995), available at http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf.

renders adjoining property useless, compensation is also due to the owners of that property.¹²⁵

In Practice

While expropriation disputes are relatively rare, NGOs have reported several cases of authorities circumventing proper expropriation procedure.¹²⁶ In 2010-11, public authorities declared several areas on the Black Sea coast as tourism zones and launched infrastructure development projects, but have not provided due process or compensation to the owners of the property. In the town of Gonio, for instance, local authorities revoked the property rights registration of 271 residents. In Mestia, where families have occupied plots of land for centuries and even have purchased contracts from the eighteenth century, local authorities refused to formally register residents' property. Most residents were unable to appeal these decisions due to the filing fee and thirty-day deadline.¹²⁷

Conclusion

International human rights and investment law, as well as European conventions addressing human rights, permit the expropriation of real estate in limited circumstances. A legal expropriation must (1) be provided for by clear and specific laws that contain adequate procedural safeguards and prevent discrimination; (2) serve the public interest; and (3) be accompanied by adequate, effective, and prompt compensation.

The experiences of Poland, Germany, Lithuania, Croatia and Georgia reveal several common practices. First, constitutions include the right to private property and identify the conditions for expropriation, specifically that (1) expropriation must be necessary to serve a public purpose, and (2) the prior owner receive just compensation. A general land or property law establishes the procedure for expropriation, and often provides a list of projects that satisfy the public purpose requirement. The general principles

¹²⁵ Nick Gvinadze and Nick Keen, *Eminent Domain in Georgia: What Works, What Doesn't*, 11 INVESTOR.GE 2 (Nov., 2009), available at http://www.dlapiper.com/files/Publication/4d5b8297-4611-4feb-ba7b-00befd0e2df1/Presentation/PublicationAttachment/c748aac5-3aae-4a4c-8153-05685e36f4e8/DLAPiper_Georgia_EminentDomaininGeorgia.pdf.

¹²⁶ U.S. Department of State, *2012 Investment Climate Statement – Georgia*, (June, 2012), available at <http://www.state.gov/e/eb/rls/othr/ics/2012/191153.htm>.

¹²⁷ Inga Darbaidze, *Property Rights Violated in the new Tourism Zones of Georgia*, Human Rights House, (Aug. 30, 2011), available at <http://humanrightshouse.org/Articles/16885.html>.

of non-discrimination, due process, proportionality, and compensation should also be incorporated in such legislation.

The states have adopted several measures to ensure the fairness of expropriations, including the requirement of public hearings on expropriation proceedings and the designation of independent agencies to oversee the proceedings. However, the states differ significantly in their provision for compensation. State practice also reveals several challenges in implementing expropriation laws and procedures. First, many landowners and even public entities may lack the financial resources or legal acumen to take full advantage of the available procedures. Second, public authorities may attempt to circumvent expropriation procedures by denying the existence of private property rights in the parcel, such as in the case of evicted Romani settlements. Because these states do not have strong traditions of private property rights, it is difficult for the residents to challenge such statements by officials. The denial of property rights renders useless many of the expropriation procedures designed to ensure fairness.