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Expropriation of Property for Public Purposes: Common Interests of the Public and Protection of Owner's Rights

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The right to property is an economic right of the most extensive scope. It is protected not only by the Civil Law, but also the *Satversme* [Constitution] of the Republic of Latvia. Expropriation of property to ensure public needs is admissible, if the owner is compensated for the decrease of assets linked to the loss of property. Legal problems related to protection of the owner's rights in the expropriation of immovable property have been repeatedly dealt with in the judicature of the Constitutional Court of the Republic of Latvia. The legislator, in turn, has amended legal regulation to improve protection of the owner's rights. This article assesses the way in which in Latvia, upon expropriating immovable property for public needs, balance between public interests and the owner's rights is ensured. The article advances a thesis that the primary type of fair compensation is money and not other kind of compensation.

Keywords: *Satversme*, the Civil Law, Expropriation of Immovable Property for Public Purposes, right to property, immovable property, public purposes, fair compensation.

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Introduction

The right to property is the most important economic right held by a person. Property and other objects of the property right constitute the material world, without which human existence is inconceivable. In a state governed by the rule of law, the economic system of which is mainly based upon the principles of free market, the property right is recognised and protected. Although it is not the obligation of the State to grant financial resources to a person for acquisition of property, it must create appropriate conditions, in which natural and legal persons may acquire in their ownership things, preserve and use them to maintain their welfare. Property enables a private person to act autonomously and independently in relationships with other persons and the state.

Immovable property has always had a special meaning and value. Depending upon the type of immovable property, it can serve as a home, means of production or a long-term investment. Immovable property is owned not only by private persons, but also by the state and local governments. Immovable property owned by the state or local governments is often used to perform functions that are important for society as a whole. However, the specific feature of immovable property is that it cannot be multiplied unrestrictedly. New buildings can be constructed; however, a new land plot may be unavailable. When the state or a local government intends to construct an object of public importance, it may turn out that there is no publicly owned immovable property in that location. In such situations, the state, as well as local governments, often turn to expropriation of immovable property. Major infrastructure projects, for example, the railway line “Rail Baltica”, which will connect the Baltic States with the rail network of other Member States of the European Union, cannot be implemented without expropriation of private immovable property at all.

Expropriation of immovable property for public needs is a significant interference into a person’s economic rights. The Constitutional Court has resolved a number of legal disputes regarding applications by owners of immovable property that was expropriated for public needs, which gained attention. Its jurisprudence reflects the most important legal problems linked to expropriation of immovable property for public purposes. This article provides an assessment, based upon findings of legal science and practice, on the way in which in Latvia, upon expropriating immovable property for public needs, balance between the common interests of society (public interests) and the owner’s rights is ensured. A person’s right to a fair compensation will be focused upon in particular, because compensation is the measure that must make up for the decrease of assets linked to loss of property.

1. Evolution of Regulation on Expropriation of Immovable Property for Public Needs

Soon after independence of the Republic of Latvia was restored, the Civil Law of 28 January 1937 was reinstated.¹ The part on property law of the Civil Law entered into force on 1 September 1992.² With the Civil Law, the concept of private property

¹ Civillikums [Civil Law]. *Valdības Vēstnesis*, 41, 20.02.1937.

² Likums “Par atjaunotā Latvijas Republikas 1937. gada Civillikuma ievada, mantojuma tiesību un lietu tiesību daļas spēkā stāšanās laiku un piemērošanas kārtību” [Law “On the Date of Entering into Force and Procedure of Applying Introduction, Parts on Inheritance Law and Property Law of the Restored 1937 Civil Law of the Republic of Latvia”]. *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs*, 29/31, 30.07.1992.

was again introduced and enforced in Latvia. It was clear that expropriation of private property for public purposes might occur only in a procedure that complies with the principles of a state governed by the rule of law. The purpose of the complex, multi-level procedure of expropriation is to ensure inviolability of property and to deter interested parties (the state, local governments) from the temptation to use the means of expropriation too often.³

After Latvia had regained its independence, the first mentioning of expropriation of property was found in the constitutional law “The Rights and Obligations of a Citizen and a Person”, which was adopted by the Supreme Council of the Republic of Latvia on 10 December 1991. Section 21(3) of this Law provided: “Property may be expropriated only in procedure established by law and by a court’s ruling. If property is expropriated for the purpose of implementing public projects, the owner shall have the right to appropriate compensation”. It must be noted that this law, as to its disposition and nature, was a regulatory legal act adopted in circumstances of transforming the legal system, and its norms, notwithstanding the word “constitutional” in its title, were not of constitutional level.⁴

On 15 September 1992, the Supreme Council of the Republic of Latvia reinstated the law of 1923 “On Expropriation of Immovable Property for the Needs of the State or Society”.⁵ Some provisions of this Law were given more contemporary wording making them compatible with the legal and actual circumstances of the last decade of the 20th century. Section 1 of the law “On Expropriation of Immovable Property for the Needs of the State or Society” allowed expropriation of immovable property for the needs of the state or society in exceptional cases only for compensation and only on the basis of a specific law. Expropriation by a specific law was more suitable to situation in Latvia and as a solution was more favourable to the owners compared to expropriation by a court’s ruling envisaged in the constitutional law “The Rights and Obligations of a Citizen and a Person”.

Adoption of Chapter VIII “Fundamental Human Rights” of the *Satversme* of the Republic of Latvia by the *Saeima* on 23 October 1998 was essential in ensuring protection of the right to property.⁶ With the coming into force of the Chapter on fundamental rights of the *Satversme*, the constitutional law “The Rights and Obligations of a Citizen and a Person” expired. By Article 105 of the *Satversme* the right to property was established as a human right legally protected by the constitution. Article 105 is one of the most frequently applied Articles of Chapter VIII of the *Satversme*.

In accordance with the fourth sentence of Article 105 of the *Satversme*, expropriation of property for public purposes is allowed only in exceptional cases on the basis of a specific law and in return for fair compensation. This norm of the *Satversme* defines four criteria that must be met, if property is expropriated, i.e.,

³ Grūtups A., Kalniņš E. Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums. Otrais, papildinātais izdevums [Commentaries to the Civil Law. Part Three. Property Law. Property. Second Revised Edition]. Rīga: Tiesu namu aģentūra, 2002, 166. lpp.

⁴ See: Balodis R., Lazdiņš J. *Satversmes vēsturiskā attīstība. Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi* [Historical Development of the *Satversme*. Commentaries to the *Satversme* of the Republic of Latvia]. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: *Latvijas Vēstnesis*, 2014, 77., 78. lpp.

⁵ Likums “Par nekustamā īpašuma atsavināšanu valsts vai sabiedriskajām vajadzībām” [Law “On Expropriation of Immovable Property for the Needs of the State or Society”]. *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs*, 39/40/41, 15.10.1992.

⁶ Grozījumi Latvijas Republikas Satversmē [Amendments to the *Satversme* of the Republic of Latvia]. *Latvijas Vēstnesis*, 308/312(1369/1373), 23.10.1998.

property may be expropriated only 1) for public purposes, 2) in exceptional cases, 3) on the basis of a specific law, and 4) in return for fair compensation. The fourth sentence of Article 105 of the *Satversme* applies not only to immovable property, but also to expropriation of any other economic assets for public purposes, if these assets are to be recognised as being property in the meaning of the *Satversme*.

An important incentive to legislation was judgement by the Constitutional Court in case No. 2009-01-01 “On Compliance of Para 1 of Section 1 of Law On Expropriation of Immovable Property for the Needs of the Border Checkpoint Terehova with Article 1 of the *Satversme* of the Republic of Latvia”.⁷ The Constitutional Court recognised expropriation of immovable property located in the border area of Latvia as being unconstitutional, because the State had expropriated the whole immovable property of the owner, although it would have been enough to use only part of this property to provide for the public needs.

This Judgement by the Constitutional Court gave food for thought to legislator regarding deficiencies in the regulation on expropriation of immovable property. On 3 November 2010 the *Saeima* adopted Expropriation of Immovable Property for Public Purposes Law, which replaced the law “On Expropriation of Immovable property for the Needs of the State or Society”. As noted in Section 1 of Expropriation of Immovable Property for Public Purposes Law, the purpose of the Law is to establish a transparent, effective and fair procedure for expropriating immovable property for public purposes. The new law of 2010 provides that the state institution or local government, the competence of which includes ensuring that the particular public needs are met, before expropriation of property makes an offer to the owner to conclude an agreement on voluntary alienation of property. The old law “On Expropriation of Immovable property for the Needs of the State or Society” had no mechanism of voluntary alienation. In general, Expropriation of Immovable Property for Public Purposes Law, compared to the previous regulation, expands the scope of an owner’s legal possibilities in the process of expropriation. On 15 March 2011, on the basis of Expropriation of Immovable Property for Public Purposes Law, the Cabinet issued Regulation No. 204 “Procedure for Determining Fair Compensation for Immovable Property to be Expropriated for Public Purposes” (hereinafter also – the Cabinet Regulation No. 204).⁸

Thus, in Latvia since the very beginnings of the 1990s, when the State regained independence, legal regulation, pursuant to which immovable property could be expropriated for public purposes, was consistently developed. Amendments to regulatory legal acts predominantly have been linked to the need to improve the owner’s legal status in the process of expropriation. Article 105 of the *Satversme* is the highest within the hierarchy of these legal norms. The fourth sentence thereof allows expropriating property for public purposes only in exceptional cases on the basis of a specific law for fair compensation. Detailed procedure of expropriation

⁷ Satversmes tiesas spriedums lietā Nr. 2009-01-01 “Par likuma “Par nekustamo īpašumu atsavināšanu Terehovas robežkontroles punkta vajadzībām” 1. panta 1. punkta atbilstību Latvijas Republikas Satversmes 105. pantam” [Judgement of the Constitutional Court in case No. 2009-01-01 “On Compliance of para. 1 of Section 1 of Law On Confiscation of Immovable Property for the Needs of the Border Checkpoint Terehova with Article 105 of the *Satversme* of the Republic of Latvia”]. *Latvijas Vēstnesis*, 170(4156), 27.10.2009.

⁸ Ministru kabineta noteikumi Nr. 204 “Kārtība, kādā nosaka taisnīgu atlīdzību par sabiedrības vajadzībām atsavināmo nekustamo īpašumu” [Cabinet Regulation No. 204 “Procedure for Determining Fair Compensation for Immovable Property to be Expropriated for Public Purposes”]. *Latvijas Vēstnesis*, 48(4446), 25.03.2011.

is established in Expropriation of Immovable Property for Public Purposes Law. Each time, when concrete immovable property needs to be expropriated, the *Saeima* adopts a specific law. One of the most essential elements in expropriation of immovable property is fair compensation, which is regulated by Expropriation of Immovable Property for Public Purposes Law and the Cabinet Regulation, issued on the basis of this Law.

2. Public Purposes and Priority Thereof Over a Person's Right to Property

The need to ensure public purposes is the only reason referred to in the *Satversme* and Expropriation of Immovable Property for Public Purposes Law that justifies expropriation of immovable property. Public purpose is a broad concept, which initially was not fully defined in legal norms. The concept "needs of the state or society" was used in the law "On Expropriation of Immovable property for the Needs of the State or Society". Moreover, the Law did not provide a more detailed description of the State's needs, whereas the concept of society's needs referred to in Section 3 of this Law was linked to the needs of persons residing within the administrative territory of local governments and applied to the fields of culture, education, sports, health care, social protection, development of public transport, environment protection or construction of engineering objects. The Constitutional Court has repeatedly recognised that the legislator has broad discretion to decide, which are the general public needs, which must be ensured to attain special public purposes.⁹

Expropriation of Immovable Property for Public Purposes Law provides a more extensive, but not an exhaustive list of public purposes. Pursuant to Section 2 of this Law, immovable property is expropriated for the needs of national defence, environment protection, health care or social protection, for construction of culture, education and sports facilities that society needs, construction of engineering structures and communications or development of public transport, as well as to ensure other public needs, if this purpose cannot be reached by other means.

Thus, the unfortunate division into the needs of the state and society, typical of the previous regulation, has been eliminated in Expropriation of Immovable Property for Public Purposes Law (hereinafter also – the Expropriation Law). A local government is an element and a derivative of the state. Pursuant to Para 1 of

⁹ Satversmes tiesas sprieduma lietā Nr. 2005-12-0103 "Par Ministru kabineta 2005. gada 11. janvāra noteikumu Nr. 17 "Grozījumi likumā "Par nekustamā īpašuma piespiedu atsavināšanu valsts vai sabiedriskajām vajadzībām"" un 2005. gada 9. jūnija likuma "Grozījumi likumā "Par nekustamā īpašuma piespiedu atsavināšanu valsts vai sabiedriskajām vajadzībām"" atbilstību Latvijas Republikas Satversmes 1. un 105. pantam" 22.1. punkts [Judgement of the Constitutional Court in case No. 2005-12-0103 "On Compliance of the Cabinet Regulation of 11 January 2007 No. 17 "Amendments to the Law "On Expropriation of Immovable property for the Needs of the State or Society" and the Law of 9 June 2005 "Amendments to the Law "On Expropriation of Immovable property for the Needs of the State or Society" with Article 1 and Article 105 of the *Satversme* of the Republic of Latvia, para. 22.1]. *Latvijas Vēstnesis*, 203(3361), 20.12.2005; Satversmes tiesas sprieduma lietā Nr. 2009-01-01 "Par likuma "Par nekustamo īpašumu atsavināšanu Terehovas robežkontroles punkta vajadzībām" 1. panta 1. punkta atbilstību Latvijas Republikas Satversmes 105. pantam" 12.1. punkts [Judgement by the Constitutional Court in case No. 2009-01-01 "On Compliance of Para 1 of Section 1 of Law On Confiscation of Immovable Property for the Needs of the Border Checkpoint Terehova with Article 105 of the *Satversme* of the Republic of Latvia"; Para 12.1]. *Latvijas Vēstnesis*, 170(4156), 27.10.2009.

Section 1 of State Administration Structure Law, a local government is a derived public person established by law with its own autonomous competence, budget and property. Public needs in a local government must conform to public interests of national scale and the common national policy that is implemented in the concrete field. Section 3 of the Expropriation Law provides: “Expropriation of immovable property for public purposes shall be initiated and performed by the state institution or local government, whose competence comprises ensuring that the respective public purposes are met (hereinafter – the institution)”. Thus, public purposes that may exist within a local government and for which the local government may initiate expropriation of property follow from the competence of local governments, which is defined in the law “On Local Governments”.¹⁰ From the perspective of expediency and effectiveness of public administration, it is clear that state institutions and local governments are those institutions that should be able to identify and assess public needs in the field that they are responsible for.

The Expropriation Law provides a non-exhaustive list of public needs, because these needs may be very diverse. Thus, persons must be aware that their property may be expropriated for public purposes also to provide for such public needs that are not directly referred to in law. The Constitutional Court has recognised that the legislator’s broad discretion in defining public needs is not unlimited and that it must be verified, whether this discretion has not infringed upon persons’ right to enjoy their right to property without interference, as defined in Article 105 of the *Satversme*.¹¹ This finding allows concluding that neither a state institution of public administration nor a local government in initiating expropriation of immovable property, nor a legislator in adopting a specific law on expropriation of particular immovable property may define public needs arbitrarily.

The Constitutional Court has also noted that ensuring the rights of another private person will not be considered as being common public interests.¹² It has been recognised in German legal literature that expropriation of immovable property is possible also in the case, if implementation of public interests is organised in a form of private law.¹³ In Latvia’s circumstances it is possible that implementation of some long-term public needs is entrusted to a commercial company owned by the state or a local government, or in the framework of public-private partnership¹⁴ – to a private merchant. Thus, for example, Section 19(4) of the Energy Law provides that an owner’s immovable property necessary for the construction of an object of an energy supply merchant, as well as for the arrangement of demarcated territories may be expropriated.¹⁵ However, expropriation beneficial to a legal person governed by private law should not be allowed in those cases, when economic interests of

¹⁰ Likums “Par pašvaldībām” [Law “On Local Governments”]. *Latvijas Vēstnesis*, 61(192), 24.05.1994.

¹¹ Satversmes tiesas sprieduma lietā Nr. 2009-01-01 “Par likuma “Par nekustamo īpašumu atsavināšanu Terehovas robežkontroles punkta vajadzībām” 1. panta 1. punkta atbilstību Latvijas Republikas Satversmes 105. pantam” 12.2. punkts [Judgement by the Constitutional Court in case No. 2009-01-01 “On Compliance of Para 1 of Section 1 of Law On Confiscation of Immovable Property for the Needs of the Border Checkpoint Terehova with Article 105 of the Satversme of the Republic of Latvia”, para. 12.2.]. *Latvijas Vēstnesis*, 170(4156), 27.10.2009.

¹² *Ibid.*, para. 12.1.

¹³ *Pieroth, B., Schlink, B. Grundrechte. Staatsrecht II. 22. Auflage. Heidelberg: C.F. Müller Verlag, 2006, S. 236; Jarass, H. D., Pieroth, B. Grundgesetz für die Bundesrepublik Deutschland. 8. Auflage. München: Verlag C.H. Beck, 2006, S. 376.*

¹⁴ See: Publiskās un privātās partnerības likums [Law “On Public-Private Partnership”]. *Latvijas Vēstnesis*, 107(4093), 09.07.2009.

¹⁵ Enerģētikas likums [Energy Law]. *Latvijas Vēstnesis*, 273/275(1334/1336), 22.09.1998.

this entity prevail over public needs. It should also be taken into consideration that pursuant to Section 15 of the Expropriation Law, the right to expropriated immovable property is transferred to the state or local government. It cannot be transferred to a legal person governed by private law.

It must be noted that Chapter V of the Expropriation Law envisages such legal mechanism as returning of the expropriated property. Section 34(1) of the Expropriation Law provides: if within a year from the date when the State's or local government's right to expropriated property has been corroborated in the Land Register the institution recognises that the respective immovable property or a part thereof is not necessary, the former owner, by repaying the compensation received, may regain the expropriated immovable property. By introducing the possibility to return property, the legislator, in fact, has taken into account the possibility that a state institution or local government could commit a gross error in identifying public needs and planning implementation thereof. Of course, there could be also objective reasons why an intention to implement public needs fails, for example, lack of financing for an infrastructure project due to unexpected economic recession. However, the mechanism for returning property is favourable to the owner, who should not suffer because of errors made by the state or a local government and who is granted a possibility to regain the expropriated property.

It is noted in legal literature that in Europe in different periods of history the approach to ensuring the individual interests of an owner and the public needs has differed. In a certain period, the protection of a person's right to property has been recognised as a priority, in another – as convenient and effective implementation of public needs as possible has been preferred.¹⁶ Article 105 of the *Satversme* of the Republic of Latvia places an emphasis upon the owner's individual rights rather than the importance of property for society as a whole. The second sentence of Article 105 of the *Satversme* provides that property may not be used contrary to interests of society. This constitutional restriction upon the right to property means that the owner may not use property unlawfully, jeopardising public interests.¹⁷ Article 105 of the *Satversme* does not impose an obligation to promote public interests upon any person who is using his property. Constitutions of some countries and international human rights documents place greater emphasis upon the social function of property. For example, Section 14(2) of the German Basic Law (*Grundgesetz*) notes that property imposes obligations and that the use thereof should at the same time serve general good.¹⁸ It is noted in the second part of Article 1 of Protocol I to the European Convention for the Protection of Human Rights and Fundamental Freedoms that, *inter alia*, the State has the right to issue such laws as it deems necessary to control the use of property in accordance with general interests.¹⁹

¹⁶ Grigore-Bāra, E. Nekustamā īpašuma piespiedu atsavināšana valsts vai sabiedriskām vajadzībām pret atlīdzību [Expropriation of Immovable Property for the Needs of the State or Society for Compensation]. *Jurista Vārds*, 02.08.2016, Nr. 31(934), 27. lpp.

¹⁷ Balodis, K. *Satversmes 105. panta komentārs*. Latvijas Republikas *Satversmes komentāri*. VIII nodaļa. Cilvēka pamattiesības [Commentary to Article 105 of the *Satversme*. Commentaries to the *Satversme* of the Republic of Latvia. Chapter VIII. Fundamental Human Rights]. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: *Latvijas Vēstnesis*, 2011, 468. lpp.

¹⁸ Grundgesetz für die Bundesrepublik Deutschland. Available at <https://www.gesetze-im-internet.de/gg/> [last viewed 22.02.2017].

¹⁹ Cilvēka tiesību un pamatbrīvību aizsardzības konvencija [Convention for the Protection of Human Rights and Fundamental Freedoms]. *Latvijas Vēstnesis*, 143/144(858/859), 13.06.1997.

Although the *Satversme* sets a high standard of protecting owners, the possibility of expropriation, allowed in the fourth part of Article 105 of the *Satversme*, as such means that real and valid public needs, for the purpose of which immovable property must be expropriated, has priority over the owner's right. In the majority of cases the need to expropriate immovable property for public purposes is bad news to the owner. Situations, where an owner is interested in getting rid of a property that is cumbersome to him and to receive compensation for it, are also possible. The cases, where private persons have profitably acquired immovable property in a territory, estimating that the state or local government would implement projects of public importance there, and that compensation for expropriation would bring profit, are also possible. Irrespectively of an owner's attitude to expropriation of his immovable property for public purposes, such expropriation is to be considered as being the greatest possible interference with the right to property, i.e., the right to property is substantially deprived. It has been noted in German and also Latvian legal literature that expropriation for public purposes is an interference of public power into the right to property that demands "particular sacrifice" from an individual.²⁰

The provision included in the fourth sentence of Article 105 of the *Satversme* that expropriation can be carried out only in an exceptional case serves to protect an owner. This provision means that public purpose cannot be reached and cannot be duly implemented by any other means.²¹ Immovable property may not be expropriated, if the state or local government does not have a sufficiently concrete plan to be implemented within a specific period involving the use of the respective property for public purposes.

Likewise, there are no grounds for expropriating entire immovable property owned by a person, if public purposes require only a part thereof.²² However, often following expropriation of a part, the functionality of the remaining part of immovable property significantly decreases. In a situation like this, an owner

²⁰ Baur, F., Stürner, R. Sachenrecht. 17. Auflage. München: C.H. Beck'sche Verlagsbuchhandlung, 1999, S. 303; Grigore-Bāra, E. Nekustamā īpašuma piespiedu atsavināšana valsts vai sabiedriskām vajadzībām pret atlīdzību [Expropriation of Immovable Property for the Needs of the State of Society for Compensation]. *Jurista Vārds*, 02.08.2016, Nr. 31(934), 27. lpp. *Jurista Vārds*, 02.08.2016, Nr. 31(934), 28. lpp.

²¹ See: Satversmes tiesas sprieduma lietā Nr. 2009-01-01 "Par likuma "Par nekustamo īpašumu atsavināšanu Terehovas robežkontroles punkta vajadzībām" 1. panta 1. punkta atbilstību Latvijas Republikas Satversmes 105. pantam" 13. punkts [Judgement by the Constitutional Court in case No. 2009-01-01 "On Compliance of Para 1 of Section 1 of Law On Confiscation of Immovable Property for the Needs of the Border Checkpoint Terehova with Article 105 of the *Satversme* of the Republic of Latvia", para. 13]. *Latvijas Vēstnesis*, 170(4156), 27.10.2009; Satversmes tiesas sprieduma lietā Nr. 2016-08-01 "Par likuma "Par nekustamā īpašuma "Kaktiņi", Lēdmanes pagastā, Lielvārdes novadā, daļu atsavināšanu sabiedrības vajadzībām, valsts autoceļa E22 posma Rīga (Tinūži)–Koknese rekonstrukcijas projekta īstenošanai" atbilstību Latvijas Republikas Satversmes 105. pantam" 16. punkts [Judgement of the Constitutional Court in case No. 2016-08-01 "On Compatibility of the Law "On Expropriation of Part of Immovable Property "Kaktiņi" in Lēdmane Parish, Lielvārde County for Public Needs to Implement Reconstruction Project of State Road E22 in the Section Rīga (Tinūži) – Koknese with Article 105 of the *Satversme* of the Republic of Latvia", para. 16]. *Latvijas Vēstnesis*, 243(5815), 13.12.2016.

²² See: Satversmes tiesas sprieduma lietā Nr. 2009-01-01 "Par likuma "Par nekustamo īpašumu atsavināšanu Terehovas robežkontroles punkta vajadzībām" 1. panta 1. punkta atbilstību Latvijas Republikas Satversmes 105. pantam" 13.3. punkts [Judgement by the Constitutional Court in case No. 2009-01-01 "On Compliance of Para 1 of Section 1 of Law On Confiscation of Immovable Property for the Needs of the Border Checkpoint Terehova with Article 105 of the *Satversme* of the Republic of Latvia", para. 13.3]. *Latvijas Vēstnesis*, 170(4156), 27.10.2009.

might be interested in achieving that the entire immovable property is expropriated for public purposes. For example, in 2009, the Constitutional Court received a constitutional complaint of a person, whose part of immovable property needed for constructing access roads to the Southern Bridge over Daugava River in Riga had been expropriated on the basis of a specific law. The Constitutional Court terminated proceedings in this case, because the applicant had legal possibility to turn to a court of general jurisdiction in civil procedure and demand expropriation of the whole property, if the remaining part had become useless or of little value to the owner.²³ Section 6(1) of the Expropriation Law envisages a possibility to expropriate the whole immovable property, if only a part of immovable property is needed for public purposes and the remaining part thereof due to insufficient area, encumbrances, configuration or other circumstances cannot be used in accordance with the spatial plan of the local government. Section 6(2) of this Law, in turn, provides that disputes regarding the necessity to expropriate the whole immovable property are adjudicated by a court in procedure defined by the Civil Procedure Law.

It can be concluded that public purposes, based on which immovable property may be expropriated, may be diverse and the list of these purposes included in the Expropriation Law is not exhaustive. If public purposes cannot be satisfied by other means, then expropriation of immovable property is admissible and the owner must resign to it. In such a case, the public purposes prevail over a person's right to property. To protect an owner, who is deprived of his property, expropriation must be carried out not only with a fair compensation, but also according to due procedure.

3. Forms of Expropriation of Immovable Property for Public Purposes

Expropriation of Immovable Property for Public Purposes Law establishes a detailed procedure of expropriation. In broader sense, there is a single expropriation procedure that includes a number of measures. An expropriation by a specific law is the ultimate measure within it. Initially, an owner is offered to conclude an agreement on voluntary alienation of immovable property.

3.1. Voluntary Alienation of Immovable Property

As provided for in Section 8 of Expropriation Law, after the Cabinet or local government has adopted a conceptual decision on implementing a project necessary for public needs, the institution starts identifying immovable properties that are required to implement the respective project and defines compensation for immovable properties to be expropriated. Pursuant to Section 11(1) of this Law, the institution sends to the owner notification with a request to inform within 30 days about the possibility to conclude an agreement on voluntary alienation of immovable property, indicating in this notification compensation set by the

²³ Satversmes tiesas lēmums par tiesvedības izbeigšanu lietā Nr. 2009-06-01 "Par likuma "Par nekustamā īpašuma atsavināšanu sabiedriskajām vajadzībām – Dienvidu tilta pār Daugavu 3. kārtas būvniecībai" atbilstību Latvijas Republikas Satversmes 105. pantam" [Decision by the Constitutional Court in terminating legal proceedings in case No. 2009-06-01 "On Compliance of the Law "On Forfeit of Property for Public Needs, for the Third Stage of Construction of the Southern Bridge" with Article 105 of the *Satversme* (Constitution) of the Republic of Latvia"]. *Latvijas Vēstnesis*, 110(4096), 14.07.2009.

institution and the offered form of compensation. Pursuant to Section 11(3) of this Law, the term for concluding an agreement set by the institution may not be shorter than two months, counting it from the day when draft agreement has been issued to the owner of immovable property. In the contract on voluntary alienation of immovable property, the institution and the owner agree on the type of compensation and the procedure and terms for vacating the immovable property, as well as other matters, to ensure that the state or local government effectively acquires immovable property in its possession (Section 12(1) of the Expropriation Law).

Thus, the institution, which organises expropriation of immovable property for public purposes, has the obligation to offer to the owner, first of all, the possibility to conclude voluntarily an agreement on alienation. Voluntary alienation does provide a guarantee to an owner a possibility to keep the property; however, in the stage of voluntary alienation the owner may have a better opportunity to achieve mutually acceptable terms of alienation.²⁴ The possibility of voluntary alienation is advantageous to the state or local government and saves their resources. If the owner agrees to alienation, then the state or local government can acquire the immovable property needed for public purposes swiftly and effectively, without adoption of a specific law. The owner may contest the law, on the basis of which immovable property has been expropriated, in the Constitutional Court. However, if the owner has voluntarily agreed to alienation of immovable property, then he has waived the opportunity to turn to the Constitutional Court. The owner, who has agreed to voluntary alienation of immovable property, may contest only the terms of the agreement in a court of general jurisdiction.

An owner's hope that the terms of alienation set in the agreement would be more advantageous than the result in the case of expropriation may not come true. Voluntary alienation of immovable property is more advantageous to the state or local government than to the owner. However, possibility of voluntary alienation helps to reach one of the purposes of Expropriation of Immovable Property for Public Purposes Law, i.e., ensure an affective procedure, in which immovable property is to be acquired for public purposes.

At the same time, it must be noted that voluntary alienation of immovable property has been called voluntary because acquisition of property is done on the basis of an agreement. However, an agreement on voluntary alienation of immovable property is not a typical agreement concluded within the framework of contractual freedom, because equality of parties in concluding it is merely formal. Moreover, pursuant to the Expropriation Law and Cabinet Regulation No. 204, the amount of compensation is defined by the institution, but the owner is only heard. Thus, a coercive element can be discerned in the procedure of voluntary alienation.

It can be concluded that voluntary alienation as a preliminary stage of expropriation falls within the scope of the fourth sentence of Article 105 of

²⁴ Satversmes tiesas sprieduma lietā Nr. 2016-08-01 "Par likuma "Par nekustamā īpašuma "Kaktiņi", Lēdmanes pagastā, Lielvārdes novadā, daļu atsavināšanu sabiedrības vajadzībām, valsts autoceļa E22 posma Rīga (Tīnūži)–Koknese rekonstrukcijas projekta īstenošanai" atbilstību Latvijas Republikas Satversmes 105. pantam" 14.1. punkts [Judgement of the Constitutional Court in case No. 2016-08-01 "On Compatibility of the Law "On Expropriation of Part of Immovable Property "Kaktiņi" in Lēdmane Parish, Lielvārde County for Public Needs to Implement Reconstruction Project of State Road E22 in the Section Rīga (Tīnūži) – Koknese" with Article 105 of the *Satversme* of the Republic of Latvia", para. 14.1]. *Latvijas Vēstnesis*, 243(5815), 13.12.2016.

the *Satversme*. Voluntary alienation may occur only with the aim of ensuring public purposes, in exceptional cases and for fair compensation. Of course, the requirement that immovable property can be expropriated only on the basis of a specific law, does not apply to cases of voluntary alienation. However, similarly to adoption of a specific law, the procedure of voluntary alienation also requires that the owner must be heard, so that terms of agreement that are preferable to the institution would not be unilaterally imposed upon the owner.

3.2. Expropriation of Immovable Property on the Basis of a Specific Law

Immovable property is expropriated by a specific law, if the initiated procedure for voluntary alienation yields no results. If the owner does not give an answer regarding the possibility of voluntary alienation or a contract on voluntary alienation is not concluded within the set term, then, pursuant to Section 13 of the Expropriation Law, the state institution prepares a draft law on expropriation of the particular immovable property, but the local government – a request to the Cabinet to submit to the *Saeima* a draft law on expropriation of the respective immovable property.

It has been underscored in legal literature that depriving an owner of his right to property against his will, on the basis of an act of state power, is a form of losing the right to property that is extraordinary in nature.²⁵ The Constitutional Court has explained that expropriation of property for public purposes in accordance with the fourth sentence of Article 105 of the *Satversme* is admissible only on the basis of a specific law. A specific law is necessary to protect a person against possible arbitrariness on the part of state institutions; moreover, in adopting this law, the legislator must pay special attention to all circumstances of the case and must establish, whether, indeed, expropriation of property complies with all criteria for expropriation referred to in Article 105 of the *Satversme*.²⁶ Prior to adopting the law, the legislator must hear the person, whose property is considered for expropriation.²⁷ The right to be heard means that the person should be given

²⁵ *Rozenfelds, J.* Lietu tiesības. 4. labotais, papildinātais izdevums [Property Law. The 4th Revised, Expanded Edition]. Rīga: Zvaigzne ABC, 2011, 122. lpp.

²⁶ See: Satversmes tiesas sprieduma lietā Nr. 2009-01-01 “Par likuma “Par nekustamo īpašumu atsavināšanu Terehovas robežkontroles punkta vajadzībām” 1. panta 1. punkta atbilstību Latvijas Republikas Satversmes 105. pantam” 13. punkts [Judgement by the Constitutional Court in case No. 2009-01-01 “On Compliance of Para 1 of Section 1 of Law On Confiscation of Immovable Property for the Needs of the Border Checkpoint Terehova with Article 105 of the Satversme of the Republic of Latvia”, para. 13]. *Latvijas Vēstnesis*, 170(4156), 27.10.2009; Satversmes tiesas sprieduma lietā Nr. 2016-08-01 “Par likuma “Par nekustamā īpašuma “Kaktiņi”, Lēdmanes pagastā, Lielvārdes novadā, daļu atsavināšanu sabiedrības vajadzībām, valsts autoceļa E22 posma Rīga (Tinūži)–Koknese rekonstrukcijas projekta īstenošanai” atbilstību Latvijas Republikas Satversmes 105. pantam” 22. punkts [Judgement of the Constitutional Court in case No. 2016-08-01 “On Compatibility of the Law “On Expropriation of Part of Immovable Property “Kaktiņi” in Lēdmane Parish, Lielvārde County for Public Needs to Implement Reconstruction Project of State Road E22 in the Section Rīga (Tinūži) – Koknese with Article 105 of the *Satversme* of the Republic of Latvia”, para. 22]. *Latvijas Vēstnesis*, 243(5815), 13.12.2016.

²⁷ Satversmes tiesas sprieduma lietā Nr. 2016-08-01 “Par likuma “Par nekustamā īpašuma “Kaktiņi”, Lēdmanes pagastā, Lielvārdes novadā, daļu atsavināšanu sabiedrības vajadzībām, valsts autoceļa E22 posma Rīga (Tinūži)–Koknese rekonstrukcijas projekta īstenošanai” atbilstību Latvijas Republikas Satversmes 105. pantam” 14.2. punkts [Judgement of the Constitutional Court in case No. 2016-08-01 “On Compatibility of the Law “On Expropriation of Part of Immovable Property “Kaktiņi” in Lēdmane Parish, Lielvārde County for Public Needs to Implement Reconstruction Project of State Road E22 in the Section Rīga (Tinūži) – Koknese with Article 105 of the *Satversme* of the Republic of Latvia”, para. 14.2]. *Latvijas Vēstnesis*, 243(5815), 13.12.2016.

the possibility to express his objections, but the legislator must examine these, taking them into consideration, insofar as possible, or rejecting these by providing sufficient grounds for that.²⁸

As noted before, the laws adopted by the *Saeima* on expropriating a concrete immovable property for public needs are formulated in a very laconic form. The respective immovable property is identified by noting the cadastre number and chapter of the Land Register, the law mentions concrete public purposes for the meeting of which expropriation is done, it also contains a general reference to the fact that the property must be expropriated in the procedure established by Expropriation of Immovable Property for Public Purposes Law. The law also contains a reference on corroboration into the Land Register, but the borders of the immovable property are outlined in the annex to the law. This legislative practice is correct, because expropriation of immovable properties for public purposes must be performed in a uniform procedure, established in the Expropriation Law.

Pursuant to Section 15 of the Expropriation Law, the right to an immovable property, which has been expropriated on the basis of a law on expropriating the particular immovable property, are transferred to the State or local government, however, this right can be corroborated in the Land Register only after the law on expropriation of the particular immovable property has entered into force and the institution has paid compensation to the owner. As regards compensation, it is not set by the *Saeima* in the specific law, but by the institution in accordance with the Expropriation Law and Cabinet Regulation No. 204.

4. Fair Compensation and Forms Thereof

Compensation for expropriation of immovable property for public purposes must be fair, as it is the only way to decrease negative consequences of the violation of the owner's right. In the context of such expropriation, the matter of admissible forms of compensation is also relevant.

4.1. The Concept and Amount of Fair Compensation

A fair compensation is adequate compensation to an owner for the loss of property. The principle of compensation as an element of expropriation follows from the idea of inviolability of private property.²⁹ The word "fair" is used in the fourth sentence of Article 105 of the *Satversme* to characterise compensation, and formally it applies to expropriation. However, the requirement of fair compensation, as concluded above, applies also to those cases, where the owner voluntarily agrees to alienation of immovable property for public purposes. Irrespective of the fact, whether an owner agrees to conclude an agreement of voluntary alienation or property is expropriated on the basis of a specific law, loss of immovable property means significant decrease of assets. Therefore, the owner has the right to fair

²⁸ Satversmes tiesas sprieduma lietā Nr. 2009-01-01 "Par likuma "Par nekustamo īpašumu atsavināšanu Terehovas robežkontroles punkta vajadzībām" 1. panta 1. punkta atbilstību Latvijas Republikas Satversmes 105. pantam" 11.3. punkts [Judgement by the Constitutional Court in case No. 2009-01-01 "On Compliance of Para 1 of Section 1 of Law On Confiscation of Immovable Property for the Needs of the Border Checkpoint Terehova with Article 105 of the Satversme of the Republic of Latvia", para. 11.3]. *Latvijas Vēstnesis*, 170(4156), 27.10.2009.

²⁹ *Grigore-Bāra, E.* Nekustamā īpašuma piespiedu atsavināšana valsts vai sabiedriskām vajadzībām pret atlīdzību [Expropriation of Immovable Property for the Needs of the State of Society for Compensation]. *Jurista Vārds*, 02.08.2016, Nr. 31(934), 28. lpp.

compensation, regardless of the form referred to in the Expropriation Law, in which his immovable property is expropriated for public purposes.

As the Constitutional Court has repeatedly found, the fourth sentence of Article 105 of the *Satversme* imposes upon the State an obligation to establish a fair balance (proportionality) between the interests of society and those of the particular owner by using fair compensation set in a clear and predictable procedure. It has been recognised in scientific literature that a State's interference into the right to property would be fair only if deprivation of the particular assets would not turn into a person's individual material contribution to satisfying public needs.³⁰ It can be concluded that compensation cannot take the form of partial satisfaction for loss, and its amount should be such as to ensure that the owner's economic status does not deteriorate as the result of expropriation. However, the Constitutional Court has noted that the owner should not gain unfounded benefit as the result of expropriation.³¹

The Expropriation Law provides a detailed regulation on setting, disbursing and contesting compensation. The owner himself is interested in the amount of compensation the most. Pursuant to Section 8 of the Expropriation Law, compensation is set immediately after the Cabinet or a local government has adopted a conceptual decision on implementing a project required to ensure public needs. Thus, the owner immediately develops certainty about the sum of money that he will receive as compensation. The Expropriation Law comprises a number of provisions that must ensure that compensation, as to its amount, would be fair. In accordance with Section 21 of this Law, such compensation to the former owner of immovable property should be set that would ensure such economic status that would be equal to his former economic status. Whereas pursuant to Section 22 of the Expropriation Law, compensation consists of the market value of the immovable property and compensation for losses that the owner of immovable property incurs in connection with alienation of the immovable property, and, in case if a part of immovable property is expropriated, for the use of expropriated immovable property. As noted above, an owner may turn to a court of general jurisdiction with regard to compensation established by the institution or the amount of compensation to be disbursed in procedure established by the Civil Procedure Law (see Section 27(2) of the Expropriation Law).

This leads to the conclusion that the Expropriation Law, the norms of which specify the requirements set in Article 105 of the *Satversme* regarding fair compensation, establishes a standard of fair compensation that complies with the owner's interests. It must be noted that this standard, which comprises also an owner's right to compensation for losses, even exceeds the requirements on

³⁰ Grigore-Bāra, E. Nekustamā īpašuma piespiedu atsavināšana valsts vai sabiedriskām vajadzībām pret atlīdzību [Expropriation of Immovable Property for the Needs of the State or Society for Compensation]. *Jurista Vārds*, 02.08.2016, Nr. 31(934), 28. lpp.

³¹ Satversmes tiesas sprieduma lietā Nr. 2005-12-0103 "Par Ministru kabineta 2005. gada 11. janvāra noteikumu Nr. 17 "Grozījumi likumā "Par nekustamā īpašuma piespiedu atsavināšanu valsts vai sabiedriskajām vajadzībām"" un 2005. gada 9. jūnija likuma "Grozījumi likumā "Par nekustamā īpašuma piespiedu atsavināšanu valsts vai sabiedriskajām vajadzībām"" atbilstību Latvijas Republikas Satversmes 1. un 105. pantam" 23.33. punkts [Judgement of the Constitutional Court in case No. 2005-12-0103 "On Compliance of the Cabinet Regulation of 11 January 2007 No. 17 "Amendments to the Law "On Expropriation of Immovable property for the Needs of the State or Society" and the Law of 9 June 2005 "Amendments to the Law "On Expropriation of Immovable property for the Needs of the State or Society" with Article 1 and Article 105 of the *Satversme* of the Republic of Latvia", para. 23.33]. *Latvijas Vēstnesis*, 203(3361), 20.12.2005.

compensation that the European Court of Human Rights has set in its judicature on Article 1 of Protocol I to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The European Court of Human Rights has noted that compensation should be reasonably connected to the market value of the property; however, Article 1 of Protocol I does not guarantee the right to full compensation in all circumstances.³² These differences are nothing unusual, because States Parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms may envisage in their legal systems a broader scope of a person's rights than the minimum defined by the Convention.

4.2. Forms of Fair Compensation

The issue of what kind of fair compensation an owner has a right to ask, in case when his immovable property is expropriated for public purposes, became relevant in Latvia in 2016, when the Constitutional Court reviewed compatibility of the law "On Expropriation of Part of Immovable Property "Kaktiņi" in Lēdmane Parish, Lielvārde County for Public Needs to Implement Reconstruction Project of State Road E22 in the Section Rīga (Tinūži) – Koknese with Article 105 of the *Satversme* of the Republic of Latvia"³³ with Article 105 of the *Satversme* of the Republic of Latvia. The person, who submitted a constitutional complaint to the Constitutional Court, had had a part of her immovable property expropriated on the basis of the said law. She had received monetary compensation and did not object to the amount of compensation. However, the applicant held that her right to demand an equal immovable property as a fair compensation for the part of immovable property that had been expropriated for public purposes followed from Article 105 of the *Satversme*.

Pursuant to Section 26(1) of the Expropriation Law, the institution disburses compensation as a non-cash settlement or, by agreeing with the owner of immovable property, uses another form of fair compensation, i.e., offers another immovable property of equal value, disburses part of the compensation in cash and compensates for a part thereof with another immovable property or uses another form of compensation that is advantageous to both parties, except for the cases, when a collateral has been corroborated with respect to immovable property. Thus, law primarily defines money as the form of compensation. However, the possibility to receive compensation in other form has not been excluded, including immovable property of equal value, if the parties agree so. Legal literature underscores that the owner of immovable property may have various reasons for not wishing to receive compensation in the form of money, but rather to receive another immovable property.³⁴

³² See Eiropas Cilvēktiesību tiesas Lielās palātas 2012. gada 25. oktobra sprieduma lietā "Vistiņš un Perepjolkins pret Latviju", pieteikums Nr. 71243/01, 110.–112. punktu [Judgement of 25 October 2012 by the Grand Chamber of the European Court of Human Rights in case *Vistiņš and Perepjolkins v. Latvia*, Application No. 71243/01, para. 110–112]. Available at <https://www.tiesas.lv/eiropas-cilvektiesibu-tiesas-ect-spriedumi-un-lemumi> [last viewed 23.03.2017].

³³ Likums "Par nekustamā īpašuma "Kaktiņi", Lēdmanes pagastā, Lielvārdes novadā, daļu atsavināšanu sabiedrības vajadzībām, valsts autoceļa E22 posma Rīga (Tinūži)–Koknese rekonstrukcijas projekta īstenošanai" [Law "On Expropriation of Part of Immovable Property "Kaktiņi" in Lēdmane Parish, Lielvārde County for Public Needs to Implement Reconstruction Project of State Road E22 in the Section Rīga (Tinūži) – Koknese"]. *Latvijas Vēstnesis*, 201(5519), 14.10.2015.

³⁴ *Granžē, A.* Īpašuma maiņa piespiedu atsavināšanas gadījumā "Rail Baltica" ietvaros [Change of Ownership in the Case of Expropriation in the Framework of "Rail Baltica"]. *Jurista Vārds*, 02.08.2016, Nr. 31(934), 16. lpp.

The Constitutional Court recognised the law on expropriating a part of immovable property “Kaktiņi” as being compatible with Article 105 of the *Satversme*. It was concluded in the judgement that the fourth sentence of Article 105 of the *Satversme* did not guarantee the right to a person to receive a compensation in particular form of that person’s preference, moreover, that the institution was not obliged to offer to the owner as fair compensation another immovable property of equal value, nor to fulfil every request of the owner with respect to the form of compensation.³⁵ It is underscored in the judgement that an immovable property of equal value may be a form of fair compensation, and such solution may be offered by both parties, however, it requires mutual agreement.³⁶

In the case referred to above, the Constitutional Court had to examine, which of the possible forms of fair compensation was the most important and expedient, however, the context of judgement allowed concluding that it was money. The opinion a summoned person is quoted in the judgement, to the effect that monetary compensation as the general principle and the primary form of compensation exists in a number of European countries in cases of expropriation and that monetary compensation compared to compensation by immovable property of equal value infringes upon an individual’s freedom to a lesser extent.³⁷ The judgement also refers to possible restrictions upon the State’s actions with its immovable property, because the institution must comply with the law “On Prevention of Squandering of the Financial Resources and Property of a Public Person” and the law “On Alienating Property of a Public Person”.³⁸

Undeniably, in certain cases immovable property of equal value may be a form of fair compensation, which is equally advantageous both to the owner and the state or local government. However, in contemporary society the value of immovable property is measured by money and not by things of equal value. If an owner had the subjective right to request immovable property of equal value instead of the property expropriated for public purposes, this would remind of a situation in an archaic society, where people acquired material values through exchange, or conditions in collapsed economy, where money no longer performed its functions. Thus, a fair compensation must be disbursed in money, but compensation in kind is possible only if both parties have agreed so.

Conclusions

Expropriation of property, *inter alia*, immovable property, for public purposes is the greatest possible interference into a person’s right to property, because a person substantially is deprived of this right. In Latvia, since the beginning of the 1990s, when the state regained independence, legal regulation pursuant to which immovable property could be expropriated for public purposes, was consistently

³⁵ Satversmes tiesas sprieduma lietā Nr. 2016-08-01 “Par likuma “Par nekustamā īpašuma “Kaktiņi”, Lēdmanes pagastā, Lielvārdes novadā, daļu atsavināšanu sabiedrības vajadzībām, valsts autoceļa E22 posma Rīga (Tinūži)–Koknese rekonstrukcijas projekta īstenošanai” atbilstību Latvijas Republikas Satversmes 105. pantam” 16.5. punkts [Judgement of the Constitutional Court in case No. 2016-08-01 “On Compatibility of the Law “On Expropriation of Part of Immovable Property “Kaktiņi” in Lēdmane Parish, Lielvārde County for Public Needs to Implement Reconstruction Project of State Road E22 in the Section Rīga (Tinūži) – Koknese with Article 105 of the *Satversme* of the Republic of Latvia”, para. 16.5]. *Latvijas Vēstnesis*, 243(5815), 13.12.2016.

³⁶ See *Ibid.*, para. 16.4.

³⁷ See *Ibid.*, para. 16.4.

³⁸ See *Ibid.*, para. 16.5.

developed. Amendments to regulatory legal acts have been predominantly linked to the need to improve the owner's legal status in the procedure of expropriation. The fourth sentence in Article 105 of the *Satversme* of the Republic of Latvia allows expropriation of property for public purposes only in exceptional cases on the basis of a specific law for fair remuneration. Expropriation of Immovable Property for Public Purposes Law establishes a detailed procedure for expropriation.

Public purposes, for which immovable property may be expropriated, may be different. The list thereof in the Expropriation Law is exemplary and is not exhaustive. However, the state may not define public purposes arbitrarily, they must be real and implementable in practice within a foreseeable period of time. If public purposes cannot be met by other means, then expropriation of immovable property is admissible as an exception and the owner must resign himself to it. In this case, public purposes prevail over a person's right to property. To protect an owner, who is deprived of property, expropriation must occur not only for fair compensation, but also in due procedure.

Pursuant to Expropriation of Immovable Property for Public Purposes Law before commencing the procedure of expropriation, the state institution or local government must make an offer to the owner to conclude an agreement on voluntary alienation of immovable property. This agreement is not a typical agreement concluded in circumstances of contractual freedom, because a coercive element can be discerned also in the procedure of voluntary alienation, i.e., if the owner does not agree to conclude an agreement, expropriation of immovable property on the basis of a specific law is commenced. Therefore, also in case of voluntary alienation the owner is protected by the fourth sentence of Article 105 of the *Satversme*, except for the provision on expropriation on the basis of a specific law. Voluntary alienation must also be initiated only for public purposes, in an exceptional case and for fair compensation.

A specific law on expropriation of immovable property for public purposes is required to protect a person from possible arbitrary acts by state institutions; moreover, in adopting this law, the legislator must pay special attention to all the circumstances of the case and must establish whether, indeed, expropriation of property complies with all criteria for expropriation defined in Article 105 of the *Satversme*. Prior to adopting the law, the legislator is obliged to hear the person, whose property is considered for expropriation. The right to be heard means that the person should be given an opportunity to express his objections, but the legislator must examine these, taking them into consideration, insofar possible, or rejecting these by providing sufficient grounds for that.

Compensation for expropriation of immovable property for public purposes must be fair, as this is the only possibility to protect the owner, decreasing the negative consequences of violation of his rights. A fair compensation is an adequate compensation to the owner for the loss of property. It can be concluded that the provisions of Expropriation of Immovable Property for Public Purposes Law ensure fair compensation to owners by finding a reasonable balance between common public interests and the owner's right to compensation for loss of property. Compensation that ensures the owner with an economic status that is equal to his previous economic status must be set for the owner. The compensation consists of the market value of immovable property and reimbursement of damages incurred to the owner of immovable property. The owner may turn to a court of general

jurisdiction with respect to compensation that has been set and the amount thereof according to the procedure established by the Civil Procedure Law.

In accordance with Expropriation of Immovable Property for Public Purposes Law, the owner is disbursed monetary compensation. By concluding an agreement with the owner of immovable property, another form of fair compensation may be used, *inter alia*, immovable property of equal value. Article 105 of the *Satversme* does not guarantee an owner a right to request a compensation in the form of immovable property of equal value or in other form of compensation in kind. The primary and main form of fair compensation is money, because in the contemporary society the value of material things is measured in money. Both the owner and the institution that performs expropriation of immovable property may offer to transfer the compensation in other assets, in kind. However, a fair compensation in kind is admissible only if both parties agree on it.

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