

FIG Recommendations for Good Practices in Compulsory Purchase and Compensation Draft

Prof. Kauko Viitanen, Ms. Heidi Falkenbach and Ms. Katri Nuuja
Finland

TS 3F – Compulsory Purchase and Compensation I
FIG Commission 9, WG 9.1, Sydney 13 April 2010

Background

In 2006 FIG Working Group 9.1, Compulsory Purchase and
Compensations in Land Acquisition and Takings, was
established to support the knowledge in land acquisition,
compulsory purchase and compensation.

One of its aims was to give FIG recommendations for good
practice in compulsory purchase and compensations in
land acquisition and takings.

The WG is a joint WG with Com 9, 8 and 7 and works in
close co-operation with UN-FAO.

Background

The kick-off meeting of the WG 9.1 was held in the FIG Conference in Munich Germany May 2006 and the real work was started with a seminar on compulsory purchase and compensation in Helsinki, Finland in September 2007.

In the seminar there were about 120 participants from 35 countries with more than 40 presentations and round table discussions. Most of the papers have been published in four publications (Kalbro 2007, Viitanen & Kakulu 2008a, Viitanen & Kakulu 2008b, FAO 2008), some are still coming.

In addition the theme has been discussed and papers presented in the FIG Working Weeks and Regional Conferences in San José Costa Rica November 2007 Stockholm Sweden June 2008, Eilat Israel May 2009, Hanoi Vietnam October 2009, and in FIG Commission 9 seminar in Beijing China October 2008.

Background

For creating the good practices recommendations, the research team first collected and generated a draft version of the good practises, based on the discussions in the WG meetings, seminars and a literature review.

The suggested good practices were included in a questionnaire, which was send to professionals in compulsory purchase and compensation around the globe.

The first draft of modified recommendations was presented and discussed in FIG conference in Hanoi (see FIG website), and now here in Sydney 2010.

The final recommendations will be presented in 2010.

The good practices recommendation

The recommendation consists of three sections:

- 1) key concepts will be introduced and explained in a short glossary.
- 2) actual recommendations
- 3) a discussion providing insights and examples to the recommendations.

The actual recommendation is grouped in five sections according to the basic phases of the compulsory purchase procedure:

- 1) General principles
- 2) Compulsory purchase basis
- 3) Proceeding of demarcation and registration of rights
- 4) Proceeding for determining compensations
- 5) Restitution



1. General principles

1. Compulsory purchase is not the preferred tool for the acquisition of land
 - 1.1 Compulsory purchase is not preferred option if other routes to land acquisition can be pursued, such as voluntary means, land exchange or compulsory purchase of partial rights
 - 1.2 There are circumstances where due to scale of project or complexity of ownership structure compulsory purchase can, however, be the only feasible option



Discussion

The recommendation outlines the principle for selecting the method for land acquisition. As compulsory purchase constitutes an infringement to the affected party's rights, other, more lenient methods should be used whenever possible.

These methods include attempt to acquire the land through voluntary means, i. e. by agreement on sale with the owner of the property. This should be seen as the primary means.

Discussion

Other alternate methods include land exchange, where the land owner is issued land of equal value in exchange for the land needed for the project. It is also possible, that the compulsory purchase only concerns partial rights, such as usufruct, and the land owner retains the ownership to the property. Another possibility is to form an easement or servitude for the purpose of the project.

Discussion

An example of this approach is the building of a power line, where usufruct to the area needed for the project is issued to the company realizing the project and the affected party retains ownership of the property. The landowner may use the property e. g. for agriculture or even forestry. However, there are projects in which this approach is not possible, due to the fact that the project in question requires an exclusive right of possession to the property.

Discussion

The scope in which the alternative acquisition methods should be considered vary depending on the situation and the project. Recommendation 1.2 states, that in some cases compulsory purchase may be the only feasible option for land acquisition. This may occur in cases, where the scope of the project is large and/or the ownership of the area concerned is complex (e. g. there is a high number of absentee owners). Thus finding an alternative method to acquire all needed land may be in practice impossible.

Discussion

In consideration of the method, a balance between the fairness and effectiveness of the process should be made. Attempting to obtain agreements with all landowners may be unreasonably time-consuming and result in a failure of the project.

Nevertheless, also in the abovementioned situations, alternative means of land acquisition are the preferred option and should be considered in every case, as described in recommendation 1.1., and recommendation 1.2 should be considered as an exception to the main rule.

5. Restitution

1. If the purpose of compulsory purchase is cancelled or expired, the obligation for restitution shall be determined in the law

- be determined in terms of time period according to national characteristics

1.1 The law shall determine the time period within which the obligation is in force, according to the national characteristics

1.2 It shall be defined in the law whether the original landowner shall have the right of first refusal if the compulsorily purchased land is sold for other uses than public use

Recommendation 1 concerns situations where the purpose of the compulsory purchase is cancelled or expired and lays out that the obligation for restitution (return of compensation which has been paid) should be determined in the legislation. Legislation should define the time period, when this obligation is in force. It should also be defined in the law, whether the original land owner has the right of first refusal, if the land is sold to other uses than public use.

How to continue?

Wednesday, 14 April
08:30–10:00
Commission Room 1, SCEC, Exhibition Hall

Roundtable on Good Practice in Compulsory Purchase and Compensation
Commission: 9
Chair: Prof. **Kauko Viitanen**, Chair of FIG Commission 9,
• This roundtable is organised by Commission 9 WG 9.1 and open for all interested participants

Thank you!