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Acquiring Real Estate for the Construction of Public Roads in 1991–2006**

1. Introduction

The construction of the network of public roads is necessary to accelerate the development of our country (Poland). During the carried out so far procedures, referring to the acquiring real estate by agreements and expropriations, numerous legal and geodetic problems occurred and significantly contributed to the prolongation (even by several years) the procedures of getting land for road construction. The most important obstacles are:

- The owner does not agree to sell the real estate (e.g. the proposed price is questioned, the lack of understanding among the owners or other circumstances).
- The owner requires a replacement in the form of a piece of land with strictly defined parameters, which cannot be fulfilled.
- The legal situation of the real estate is not clear, for instance:
 - the heirs do not have the document of acquiring the legacy or some of them live abroad,
 - the lack of data referring to the owner's or heir's address,
 - the prescriptive easement procedure is carried out referring to the real estate,
 - carrying out the procedure of checking the compliance between the land register and the actual situation of real estate, establishing the legal situation,
 - it is necessary to carry out actions referring to releasing from a mortgage,
 - the real estate is not written into the land register,

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- the legal situation stated in the land register does not reflect the real legal situation,
 - the acquiring requires a geodetic division (division procedure can be suspended if the commune are starting their local plan),
- 4) The note about the real estate in the land register does not comply with the compulsory markings in land inventory (the necessity of making the lists of ground changes, synchronization lists, land inventory operate analysis etc.).
 - 5) The lack of definite borders of real estate, border argument (it is necessary to renew the borders or make demarcation).

Table 1. The ways of acquiring the land for public roads

Period	1/01/1991– 1/01/1995	2/01/1995– 23/05/2003	24/05/2003– 15/12/2006	16/12/2006– 9/09/2008	since 10/09/2008
Motorways	<i>Civil Law Agreements</i> Expropriation – the <i>Law of 29/04/1985 on Land Management and Expropriation from Real Estate</i>	<i>Civil Law Agreements</i> Expropriation – the <i>Law of 27/10/1994 on Paid Motorways</i>	<i>Civil Law Agreements</i> Expropriation – the <i>Law of 10/04/2003 on Special Rules of Preparation and Implementation in the Area of National Roads</i>	Acquiring <i>ipso jure</i> with the day when the decision of the localization of roads becomes ultimate – the <i>Law of 10/01.2003 on Special Rules of Preparation and Implementation of Investment in the Area of Public Roads</i> (after amendments made on 18/10/2006)	Acquiring <i>ipso jure</i> with the day when the decision of the permit for the implementation of the road investment becomes ultimate – the <i>Law of 10/04/2003 on Special Rules of Preparation and Implementation in the Area of Public Roads</i> (after amendments made on 25/07/2008)
Other National Roads		<i>Civil Law Agreements</i>			
Other Public Roads		Expropriation – the <i>Law of 29.04.1985 on Land Management and Expropriation from Real Estate</i> , since 1/01/1998 the <i>Law of 21/08/1998 on Real Estate Management</i>	<i>Civil Law Agreements</i> Expropriation – the <i>Law of 21/08/1998 on Real Estate Management</i>		

The mentioned above problems cause serious difficulties in the process of acquiring real estate and prolong the procedures. These circumstances do not help in making road investments. They cause delays, often as long as many years, compared to the original schedule. Thus the law-makers decided to introduce particular regulations referring to investments in the area of planning and constructing roads.

The beginning of these regulations was the *Law on Paid Motorways*, put in power on 2nd January 1995. Nevertheless, after some years, it turned out that more decisive legislations were necessary to implement the investments.

In 2002 a governmental outline of the new law was made, the purpose of which was further acceleration of planning and implementation in the area of the construction of national roads. Based on this project, slightly modified during legisla-

tive procedures, a new law was passed on 10th April 2003: the *Law on Special Rules of Preparation and Implementation of Investments for National Roads* [4] (called “special law” – “*specustawa*” in Polish). In principle this law was designed as short-term, and was to expire on 31st December 2007. The law-makers were aware that simplified procedures in planning and building roads, introducing serious restrictions, should have a temporary character. In 2003–2006 these special regulations referred only to national roads. The regulations facilitated expropriations of real estate to build motorways, among others A4 and A2 and by-pass roads in many cities.

The purpose of this paper is to analyze the processes of acquiring real estate for the construction of public roads, starting from 1st January 1991 (Tab. 1).

2. Acquiring Land for the Implementation of Road Investments in the Period 1st January 1991 – 1st January 1995

The basic way of acquiring land by the State Treasury and communes for the implementation of road investments in 1991–1994 were *Civil Law* agreements. If the owner did not agree to sell the real estate it was possible to start an expropriation procedure, based on the *Law of 29th April 1985 on Land Management and Expropriation from Real Estate* [1]. This law allowed (article 46 passage 2 point 1) the possibility of the expropriation from real estate in favour of the State Treasury and communes, if it was necessary for public purposes, including the construction and maintenance of roads and devices of public communication.

The authorities of the commune were obliged to enclose to the request for expropriation, the results of the negotiations carried out with the owner of the real estate on the attempt to acquire the real estate by the agreement. In case of the *ipso jure* expropriation, negotiations could be carried out by the district organ of general governmental administration i.e. the organ proper in cases of expropriation from real estate. According to article 53 of the mentioned above law, the decision on expropriation contained (among others): the definition of the subject of expropriation and decision which property laws referring to the expropriated real estate remain in power, indicating the owner of the real estate, establishing the compensation, as well as indicating on whose request and for what purposes the expropriation took place. The compensation for expropriation equalled the value of the real estate. The payment of compensation was in one instalment, not later than 14 days from the day when the decision of expropriation from real estate became ultimate. The body deciding expropriation could, if the owner agreed, postpone the decision of compensation for the period of 3 months from the day of issuing the expropriation decision, and issue a separate decision on compensation. In such cases the compensation had to be established according to the prices valid on the day of issuing the compensation decision.

3. The Ways of Acquiring the Land for Road Construction in the Period 2nd January 1995 – 23rd May 2003

In this period, particular regulations referred only to motorways and express roads. The land for the construction of other public roads was acquired mainly in civil law agreements and by expropriation based on the following regulations:

- the *Law of 29th April 1985 on Land Management and Expropriation from Real Estate* [1] – until 31st December 1997,
- the *Law of 21st August 1997 on Real Estate Management* [3] – since 1st January 1998.

3.1. Special Regulations Referring to the Construction of Motorways

Due to the significance of the construction of motorways, on 27th October 1994, the *Law on Paid Motorways* [2] was introduced. This law referred only to getting real estate for motorways and express roads, introduced specific regulations referring to the localization of these roads, excluding the regulations in spatial planning. Decisions on the localization of motorways were issued by the head of the province – voivodeship (*województwo*), following the localization directives issued by the Minister and the Central Planning Office. The directives included the general course of the motorway and its environmental impact assessment, as well as the assessment of its impact on arable and forest land as well as cultural monuments.

To represent the interest of the State Treasury in the case of motorways, a state legal body was established – the Agency for the Construction and Exploitation of Motorways, existing till 31st March 2002. In 1st April 2002 a central organ of governmental administration was established – the General Director of National Roads and Motorways, which took the tasks of the Agency for the Construction and Exploitation of Motorways, among others the implementation of tasks connected with the preparation and coordination of the construction and exploitation of paid motorways, including the acquiring of real estate for motorways, in the behalf and for the State Treasury and their management within the possessed right to the real estate.

In terms of acquiring real estate for the State Treasury to build motorways, the general rule was accepted to acquire them in civil law agreements. In case of real estate being the property of communes, the law allowed passing the property law to the State Treasury *ipso jure*, on the day when the localization decision became ultimate. The decision confirming acquiring the commune real estate by the State Treasury was issued by the *województwo*. The commune was authorized to received a compensation established according to the rules of the expropriation from real estate, paid from the financial means of the Agency (since 1/04/2002 from the state budget).

Referring to commune real estate, where the perpetual usufruct was established, article 28 of the *Law on Paid Motorways* allowed dissolving the agreement of the perpetual usufruct by the Agency acting in the behalf of the State Treasury. In case of the right to the perpetual usufruct in other way, e.g. by enfranchisement of state or commune legal entities, the Agency acquired the right to the perpetual usufruct by the agreement, which consequently involved the expiration of the old right due to the confusion. Article 28 was lifted on 1st April 2002, since this date, the investor was obliged to acquire the right to the perpetual usufruct on general rules.

The decision on the localization of motorways made basis for the decision on the expiration of the board established for the real estate designed for the road lines of a motorway, being the property of the State Treasury. The expiration of the board did not happen in a permanent board was established after 1st April 2002 for the Director General of National Roads and Motorways.

If the real estate designed for the road lines of a motorways, being a property of the State Treasury was leased or rented, the decision on the localization of the motorway made the basis for immediate termination of leasing or rent agreements. The termination was made by the head of the district office, as an organ of general governmental administration or the head of the district (*powiat*) – *starosta* carrying out the tasks of governmental administration (from 1/01/1999).

In the case of loading the real estate with the usufruct, this right was also dissolved based on the decision on the localization of the motorway, but if the usufruct was established by the decision the procedure applicable for the expiration of the board had to be applied, while if the usufruct was established by the agreement, the procedure applicable for the termination of the leasing or rent agreement had to be applied.

3.2. Expropriation Procedures for Motorways Construction

The regulations of the *Law of 27th October 1994 on Paid Motorways* [2] ordered expropriation procedures referring to real estate designed for the road lines of motorways on the request of the President of the Agency (later the Director General of the National Roads and Motorways). This law introduced a special procedure of expropriation from real estate compared to a general procedure. In the first stage the decision on expropriation from real estate was issued by the *wojewoda*, and not the head of the district office (since 1/01/1999 the *starosta*). Also the term for negotiations with the owner or the user of the perpetual usufruct was shortened to 2 months (according to general rules it was 3 months); after the fruitless expiration of this time expropriation procedures could start.

In further order, to speed up the investment, legal regulations were introduced, enabling to take the land still before the end of expropriation procedures, which due to the appeal procedure, could take many months. In such a case, after starting expropriation procedures, the *wojewoda*, on the request of the President of the Agency (later Director General of National Roads and Motorways), issued, in justified cases, in the form of the decision, a permit for immediate occupation of the real estate designed for the road lines of motorways. The decision could come into force at once.

The compensation for the expropriated real estate equalled its market value, defined by a property valuation expert, according to the situation on day of issuing the decision on the localization of the motorway. It was paid from the means of the state budget, represented by the President of the Agency (then the Director General of National Roads and Motorways).

3.3. Acquiring the Usufruct Law by the Agency of the Construction and Exploitation of Motorways and, since 1st April 2002, the Right to Permanent Management by the General Directorate of National Roads and Motorways

With acquiring by the State Treasury, the property of the real estate for the road lines of the motorway and, respectively, with the expiration of the perpetual usufruct, leasing, rent or management, the existing until 31st March 2002 Agency of the Construction and Exploitation of Motorways received *ipso jure*, the perpetual usufruct for this land could be established. The establishing of the perpetual usufruct was announced by the *wojewoda* as a decision.

Since 1st April 2002, after the formation of the General Directorate of National Roads and Motorways (instead of the Agency of the Construction and Exploitation of Motorways), this body obtained under their management the real estate planned for the construction of motorways, *ipso jure*, without payment (as well as real estate acquired for the exchange), from the day of their acquiring for the State Treasury – according to article 26 passage 2 of the *Law on Paid Motorways*. The permanent management was implemented by the *wojewoda's* decision.

4. Acquiring the Land for the Construction of Public Roads in the Period 24th May 2003 15th December 2006

The regulations of the *Law on Paid Motorways* in the area of acquiring the land were in power until 23rd May 2003 i.e. until the *Law of 10th April 2003 on Special Rules of the Preparation and Implementation of Investment in the Area of National*

Roads [4] was put in power. In this period, particular regulations referred only to national roads, other public roads were acquired by Civil Law agreements and expropriations based on the Law of 21st August 1997 on Real Estate Management [3].

4.1. Acquiring the Land for National Roads

Referring to the acquiring real estate for national roads, in the period of 24th May 2003 – 15th December 2006, the *Law of 10th April 2003 on Special Rules of the Preparation and Implementation of Investment in the Area of National Roads*, was in power. The basic ways to get real estate for the construction of roads were *Civil Law* agreements, made in the behalf and for the State Treasury by the Director General of National Roads and Motorways.

The *wojewoda* issued the decision on the localization of roads, on the request of the Director General of National Roads and Motorways, within the period up to 3 months from the day of submitting the application. That decision confirmed the project of the division of the real estate according to the lines demarking the area (no separate decisions on the division of the real estate were issued).

If the designed for the road lines real estate was the property of the State Treasury and was given to perpetual usufruct, Director General of National Roads and Motorways, acting in the behalf of the State Treasury, could request the perpetual user to dissolve the agreement of perpetual usufruct, for the compensation according to the rules applied at the expropriation from real estate, and, in the case of refusal – demand the dissolution of the agreement in the court procedures (article 19 passage 4). The total issue of the dissolution of perpetual usufruct shows that acquiring the right to the perpetual usufruct of real estate planned for national roads could be made by:

- 1) the agreement of selling the perpetual usufruct for the State Treasury (due to the confusion the perpetual usufruct expired),
- 2) the agreement of the dissolution of the agreement of perpetual usufruct,
- 3) the court decision on the dissolution of the agreement of perpetual usufruct,
- 4) expropriation.

The regulations of the law (article 19, passage 4) made a particular legal basis for the dissolution of perpetual usufruct by the State Treasury in their real estate, different from the bases contained in the *Law on Real Estate Management* and *Civil Law*. The demand of the dissolution of the right to perpetual usufruct, in such a case, could be made regardless the origin of the perpetual usufruct. Moreover, perpetual usufruct could be expropriated. This means that the Director General could chose the way of acquiring the perpetual usufruct – in the case when the user did not want to make a respective agreement – by the claim to dissolve the

perpetual usufruct before the civil court or by expropriation in an administrative procedure carried out by the *wojewoda*.

The decision on establishing the localization of roads made basis for the Director General of National Roads and Motorways to dissolve the agreement of leasing, rent, usufruct or lending, with the immediate result and also issuing the decision of the expiration of the permanent management, except of the cases when the permanent management was established in favour of the General Directorate of National Roads and Motorways.

In a different way the law regulated the acquiring real estate belonging to the units of the territorial self-government (communes, districts and voivodeship self-governments) by the State Treasury. Such real estate, if planned for a road lines, became the property of the State Treasury, starting from the date when the *wojewoda's* decision on the localization of roads comes into power as ultimate (article 14, passage 1). In this decision, the *wojewoda* also established the compensation according to the rules applied at the expropriation from real estate, as defined in the *Law on Real Estate Management*.

In the case of real estate, designed for the road lines, which based on the *Law of 10th May 1990 – regulations predeceasing the Law on Territorial Self-Government and the Law on the Self-Governmental Staff* (so-called “Communalisation Law”) became the property of communes with 27th May 1990, but ultimate decisions confirming the property have not been made, General Director of National Roads and Motorways, acting in the behalf of the State Treasury, applied to the commune for the prolongation, within 60 days from the day of getting the call, decision confirming acquiring the property. If the commune documented their right to the real estate owned by State Treasury, after making the decision of the localization of national roads ultimate, the commune property was given back to the State Treasury, but a proper compensation was paid. If the deadline expired, the *wojewoda*, on the request of the Director General of National Roads and Motorways, made the decision on issuing the permit to occupy the real estate immediately. The decision could be implemented at once. Taking away from self-governments real estate planned for national roads by the State Treasury, *ipso jure*, with the moment of their final localization made a kind of expropriation of that real estate back to the State Treasury; however, with compensation, the State Treasury had to pay to the units of territorial self-government.

4.2. Expropriation for the Construction of National Roads

In the period 24th May 2003 – 15th December 2006 the legal basis for the expropriation from real estate designed for national roads was the *Law of 10th April 2003 on Special Rules of the Preparation and Implementation of Investment in the Area of*

National Roads. Those procedures, on the request of the Director General of National Roads and Motorways, were carried out by the *wojewoda*. The procedures could start after void expiration of the time given for the agreement, designed by the *wojewoda* and sent in a written form to the owner or a person having a perpetual usufruct of that real estate. This time could not be shorter than 30 days from the day of getting by the owner or a person having a perpetual usufruct of the real estate a written offer of an agreement from the Director General of National Roads and Motorways.

After starting the expropriation procedures, the *wojewoda*, on the request of Director General of National Roads and Motorways, made, in justified cases, in the procedure of decision, a permit for immediate occupation of the real estate designed for the road lines. The decision was to be implemented at once, if it was necessary to prove the right to use the real estate for construction purposes, as understood in the regulations of the *Law of 7th July 1994 – Construction Law*.

The decision on the permission for immediate occupation of the real estate:

- gave the right to use the real estate for construction purposes;
- obliged to immediate surrendering the real estate, emptying the apartments and other buildings;
- gave right to the *de facto* possession of the real estate by the Director General of National Roads and Motorways.

In the case when the decision on allowing the immediate takeover of the real estate referred to built-up real estate, Director General of National Roads and Motorways was obliged, within the term of actual taking the real estate, indicate a replacement accommodation.

The value of the compensation for the expropriated real estate was established according to the situation on the day of issuing the decision on establishing the localization of roads and according to its market value on the day of issuing the decision of expropriation from real estate, defined by a property valuation expert.

4.3. Establishing a Permanent Management in Favour of the General Directorate of National Roads and Motorways

General Directorate of National Roads and Motorways received ipso jure, without payment, a permanent management over the acquired real estate owned by the State Treasury, with the day when the decision on the localization of roads referring to this real estate became ultimate. In cases when the real estate was affected by the perpetual usufruct, usufruct, or was leased, rented, lent or remained in the permanent management of other units, the obtaining of permanent

management took place with the day of dissolution or expiration of the perpetual usufruct, expiration of management, dissolution of usufruct or dissolution of the agreements of leasing, rent, lending, respectively.

Establishing of permanent management was announced by the *wojewoda* in the form of the decision, which made the basis for writing into the land register.

References

- [1] *Ustawa z 29 kwietnia 1985 r. o gospodarce gruntami i wywłaszczaniu nieruchomości*. Dz. U. z 1991 r. Nr 30, poz. 127 z późn. zm.
- [2] *Ustawa z 27 października 1994 r. o autostradach płatnych*. Dz. U. Nr 127, poz. 627 z późn. zm.
- [3] *Ustawa z 21 sierpnia 1997 r. o gospodarce nieruchomościami*. Dz. U. z 2004 r. Nr 261, poz. 2603 z późn. zm.
- [4] *Ustawa z 10 kwietnia 2003 r. o szczególnych zasadach przygotowania i realizacji inwestycji w zakresie dróg publicznych*. Dz. U. z 2008 r. Nr 193, poz. 1194 z późn. zm.
- [5] *Ustawa z dnia 18 października 2006 r. o zmianie ustawy o szczególnych zasadach przygotowywania i realizacji inwestycji w zakresie dróg krajowych oraz o zmianie niektórych innych ustaw*. Dz. U. Nr 220, poz. 1601.
- [6] *Ustawa z dnia 25 lipca 2008 r. o zmianie ustawy o szczególnych zasadach przygotowania i realizacji inwestycji w zakresie dróg publicznych oraz o zmianie niektórych innych ustaw*. Dz. U. Nr 154, poz. 958.