Scottish Government
Riaghaltas na h-Alba

A Review of Evidence on Land Acquisition Powers and Land Ownership Restrictions in European Countries

AGRICULTURE, ENVIRONMENT AND MARINE

social research

A Review of Evidence on Land Acquisition Powers and Land Ownership Restrictions in European Countries

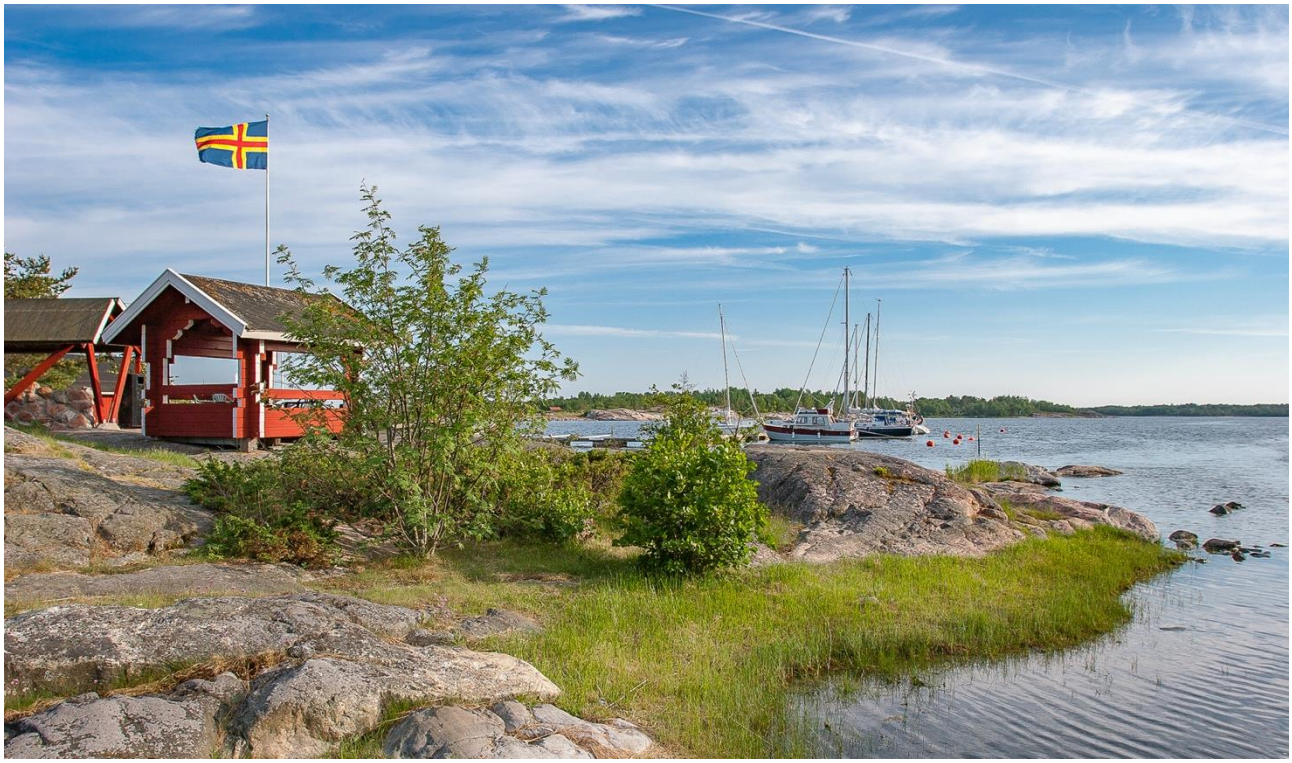

Photo Reference: Sunset at midsummer in the Aland Islands between Finland and Sweden

Dr Kirsteen Shields,
University of Edinburgh,
December 2022

Acknowledgements

This work was undertaken by Dr Kirsteen Shields, University of Edinburgh.

Any interpretation or views represented in the report do not necessarily represent the views of the Scottish Ministers.

We would like to thank the research advisory group who guided this project and to the relevant experts consulted during the course of this research who voluntarily gave of their time.

Table of Contents

Glossary

A1P1 caselaw refers to decisions of the European Court of Human Rights in which the court considers the meaning of Article 1 Protocol 1 of the European Convention on Human Rights (‘the right to property’).

A1P1 deprivations is where a person’s right to property is adversely affected by the actions of the state to either change, or not change, laws that affect the rules around ownership of property.

Compulsory purchase is the acquisition of rights over land, or to buy that land outright, without the current owner's consent and in return for compensation. It is usually used for significant public infrastructure projects such as building roads.

ECHR is the European Convention on Human Rights. It was drafted in 1950 by the Council of Europe and entered into force on 3 September 1953.

ECtHR is the European Court of Human Rights. The European Court of Human Rights (ECtHR), based in Strasbourg, France, is an international court of the Council of Europe which interprets the European Convention on Human Rights. The court hears applications alleging that a contracting state has breached one or more of the human rights set out in the European Convention on Human Rights or its Additional Protocols (schedules) to which a member state is a party.

European Court of Human Rights violations refers to when the European Court of Human Rights finds that the rights of an individual or groups of individuals protected under the European Convention of Human Rights have been violated (breached) by a state party or public body.

European Convention on Human Rights jurisprudence refers to case law of the European Court of Human Rights.

Expropriation refers to the action by the state or an authority of taking property from its owner for public use or benefit.

HUDOC database refers to the official online repository for the European Court of Human rights. All the European Court of Human Rights judgments and a large selection of decisions, information on communicated cases, advisory opinions, press releases and legal summaries are published there.

Jurisprudence is the body of laws, either made by a parliament or decided by judges, that make up a legal system.

Land acquisition is a process by which the state or an authority can acquire private land through compulsory purchase.

Land concentration refers to very large areas of land in a particular area being owned by a single owner.

Land ownership restrictions refers to regulations that limit the rights to own land.

Public interest tests are a process whereby an assessment is made as to impacts on the public interest of a decision or action. It refers to the wider public good rather than to any particular interest of members of the public.

Ratification is the action of signing or giving formal consent to an agreement, making it officially valid.

SAFER Société d'Aménagement Foncier et d'Etablissement Rural (translated as rural Land Development and Establishment Company) is a system of agricultural land administration introduced by the French Government in the Agricultural Orientation Law 1960 which limits the ability of famers to sell productive land on the open market. A Safer (Société d'aménagement foncier et d'établissement rural) is a public limited company, non-profit (without distribution of profits), with missions of general interest, under the supervision of the Ministries of Agriculture and Finance. The SAFERs cover metropolitan France and 3 overseas departments. Stemming from the agricultural orientation laws of 1960 and 1962, the SAFERs now have more than fifty years of experience in the field. Their actions are dealt with by the courts (regional courts, courts of appeal and Court of Cassation). The Land Development and Rural Settlement Societies (Safer) allow any viable project leader – whether agricultural, artisanal, service, residential or environmental – to settle in rural areas. Projects must be consistent with local policies and respond to the general interest.

List of acronyms

A1P1	Article 1 Protocol 1 of the European Convention on Human Rights ('the right to property')
CCA	La compensation Agricole collective (translated as Collective agricultural compensation)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
OIO	Overseas Investment Office
SAFER	Société d'aménagement foncier et d'établissement rural (translated as Rural Land Development and Establishment Company)

Highlights

Why was the research requested?

In some areas of Scotland, small numbers of owners own a significant percentage of the land, creating a pattern of land ownership where land is concentrated in the hands of relatively few people. The Scottish Government plans to introduce further land reform legislation this Parliamentary session (2021-26). This report was commissioned by the Scottish Government to inform the thinking around the land reform proposals.

What does the research do?

The research aims to aid understanding on how other countries have made changes to their laws around land ownership and the extent to which that complies with the requirements of the right to property included in the European Convention on Human Rights. It looks at regulations around land transactions, focusing on land ownership restrictions and land acquisition powers. The geographical focus is primarily on European countries given the common factor of the European Convention on Human Rights, but also includes recently introduced models in New Zealand and South Africa which introduce restrictions on land ownership. The research methodology is comprised of a scoping literature review, scoping meetings with relevant experts, legal database searches, case law review and case study analysis. The review is intended as illustrative and not exhaustive.

What was learnt?

Most countries have some limits on how land can be owned and the use to which land can be put. In relation to land restrictions, three European case studies are examined, analysing the compatibility of the land transaction processes with European Convention on Human Rights law.

A factor in two of the three European examples is that the laws which restrict ownership were introduced before (and sometimes considerably before) the country ratified the European Convention on Human Rights. While laws are subject to ongoing review and revision, the principal intent of the law was introduced at a time when the European Convention on Human Rights was not a factor in the development of the law.

In Switzerland, some of the land ownership restrictions were introduced before ratification of the European Convention on Human Rights and others after ratification and subject to continual revision.

In Finland, the Åland Islands have a special status which was granted in 1921. Restrictions on the ownership of law as a result of that special status were introduced in 1975 and further revised in 1991. In Finland, the current law was introduced after the ratification of the European Convention on Human Rights, however (the basis of the law /first measures were introduced in 1921). The Finnish example may not expressly refer to a public interest test but a view must

have been taken that it was in the public interest to seek to preserve the cultural integrity of the islands by preventing significant holiday home development.

In France, a body established by the French Government known as SAFER operates an external assessment of public interest by reviewing agricultural land sales and intervening to ensure the sale meets the objectives of French agricultural law. These restrictions were introduced before ratification of European Convention on Human Rights and have been expanded since. This is more about maintaining the supply of farm land for farming than for land.

The research did not find any cases brought against France, Finland and Switzerland to the European Court of Human Rights in respect of their laws. However, a dispute will only reach the European Court of Human Rights if it is not resolved in the courts of that country, so it is possible they may have been challenged in domestic courts and resolved therein. Review of the case law of the courts of these countries is outwith the scope of this study.

New Zealand stands out internationally as it has developed restrictions on foreign ownership of land through three tests: investor test; national benefit test; and national interest assessment. The approach to these tests is of interest despite New Zealand not being signatory to the European Convention on Human Rights and therefore outside the jurisdiction of the European Court of Human Rights.

While the Scottish Government does not propose changes to the compulsory purchase powers, a review of the ways that other countries implement these powers can still inform the debate. Case studies from Belgium, Bulgaria, the Czech Republic, Germany and the Netherlands demonstrate development, infrastructure, social justice and climate change can be the public interest justification for land acquisitions.

Where cases in respect of laws restricting ownership or acquisition of land have appeared before the court, the public interest justification has not been central to the decision made by the European Court of Human Rights.

The European Court of Human Rights has been clear that, where a country's parliament passes a law to approve a particular policy that the government considers is in the public interest, the court will only find the law non-compliant if the restrictions imposed by that law are not proportionate to the policy aim.

Beyond a wide definition of public interest, the European Court of Human Rights instead of 'Court is interested in whether the proposed intervention is necessary for that public interest to be achieved.

What happens now?

The learnings from this review will help to inform the proposals in the proposed Land Reform Bill. The Bute House Agreement commits to introduction of the Bill to the Scottish Parliament by the end of 2023.

Executive Summary

As examined in a report by the Scottish Land Commission in 2019,[1] Scotland has a highly concentrated pattern of land ownership. This means that a small number of people, companies, or organisations own a high percentage of the land. According to Wightman (2013), 1,252 owners hold 67% of privately owned rural[2] land. Hindle et al. (2014) reached a similar conclusion that 1,125 owners hold 4.1 million hectares (amounting to 70% of Scotland's rural land).[3]

The Scottish Government is planning further land reform legislation this Parliamentary session (2021-26). This report was commissioned to support the policy development for new land reform proposals.

The review identifies regulations around land transactions, focusing on (i) land ownership restrictions and (ii) land acquisition powers, and examines the public interest processes attached to those transactions. The geographical focus is primarily on European countries, but also includes a recently introduced model in New Zealand and mentions South Africa. The focus on European countries enables a secondary analysis on the compatibility of the land transaction processes with European Convention on Human Rights law.

Most countries place some limitations on certain types of land transactions, but most have not established a specific 'public interest test' mechanism attached to those limitations.

Land ownership restrictions fall into several categories including: agricultural land, land of special interest, land surface area restrictions, type of owner, and nationality of owner.

'Public interest' is a key justification for interventions in land transactions (e.g. land ownership restrictions or land acquisitions). Determining whether there is a need for an intervention is generally considered to be within the discretion of the government. If the public interest test is not met then there is no justification for the intervention and it will fail to comply.

The European Court of Human Rights has reiterated that the definition of 'public interest' is necessarily extensive and that the Court will respect the legislature's judgment as to what is 'in the public interest' unless that judgment is manifestly without reasonable foundation (James and Others v UK 1986). Beyond a wide definition of public interest, the Court is interested in whether the proposed intervention is necessary for that public interest to be achieved. The Court

[1] As reported in Glenn, S., MacKessack-Leitch, J., Pollard, K., Glass, J., and McMorran, R., (2019), Investigation into the Issues Associated with Large scale and Concentrated Landownership in Scotland, Scottish Land Commission.

[2] Wightman (2013) based on researcher's own estimates.

[3] Cited in above, note that estimates are approximate due to datasets.

undertakes greater scrutiny of whether the measures are proportionate to the intended aims.

The research presents case studies on (i) land ownership restrictions and (ii) land acquisition powers. In relation to (i) land ownership restrictions, public interest tests feature to varying degrees:

The French Government introduced a new system of agricultural land administration (Le Société d'Aménagement Foncier et d'Etablissement Rural (SAFER)) under the Agricultural Orientation Law 1960. SAFER bodies operate an external assessment of public interest by reviewing agricultural land sales and intervening to ensure the sale meets the objectives of French agricultural land law. These processes were introduced and completed before ratification of European Convention on Human Rights.

In Switzerland, cantons (local administrative councils) have power to introduce land ownership restrictions on a ongoing basis in pursuit of the public interest.

In Finland, protection given to the communities of the Åland Islands were introduced prior to ratification of the ECHR and subsequently further developed. The restrictions apply to all transfers of land and do not require an administrative decision to be made in respect of each transfer. While land transfers are limited, there is no 'public interest test'.

New Zealand stands out internationally as it has developed restrictions on foreign ownership of land through three 'tests': investor test; national benefit test; and national interest assessment. As New Zealand is not (and could not be) a signatory to the European Convention on Human Rights there is no possibility of review by the European Court of Human Rights.

Several other countries, including South Africa, have proposed stronger restrictions on land ownership but not all proposals have been passed into law. It may not say so in terms and there may be no formal requirement to consider this public interest test aspect but no legislature will pass laws without considering whether they are of public benefit.

In relation to (ii) land acquisition powers, case studies from Belgium, Bulgaria, the Czech Republic, Germany, and the Netherlands demonstrate that development, infrastructure, social justice and climate change can be the public interest justification for acquisition of land by the state for public projects.There have been no examples of a country seeking to use social justice or climate change specifically as the justification for interference with private property transactions.

1. Introduction

Summary

The review sets out key examples where states have intervened in land ownership.

It also assesses whether these measures have been challenged before the European Court of Human Rights.

This review has been commissioned to aid understanding of public interest tests and other controls on land.

The Scottish Parliament has passed several pieces of land reform legislation since its creation in 1999. Further legislation is intended in order to advance the Scottish Government's land reform agenda and a new Land Reform Bill is expected to progress this Parliamentary session.

Scale and concentration of land ownership has been identified as a key driver of forthcoming legislation. As such, there is a need to establish a robust evidence base for potential interventions, including strengthening restrictions on ownership, to address the concentrated pattern of land ownership in Scotland.

As part of the forthcoming Land Reform Bill, the Scottish Government has made a specific commitment to develop a public interest test to be applied to large-scale landholdings transfers. This commitment is in response to recommendations from the Scottish Land Commission (SLC),[4] and independent advice from the Just Transition Commission (JTC),[5] both published in 2019.

The SLC recommended introducing "a statutory power to apply a public interest test in significant land transfers", which would test whether there was any risk that intervening state action would be contrary to the public interest.

The JTC similarly advised that a "statutory public interest test should be developed for any changes in land ownership over a certain threshold". It is important that we understand the implications of developing potential restrictions, as well as recognise the benefits of them.

This review seeks to expand understanding of land restriction and acquisition powers in other jurisdictions. The review aims to answer the following research questions:

[4] The Scottish Land Commission's recommendations can be found here: https://www.landcommission.gov.scot/downloads/5dd7d77021f04_Report-to-Ministers-Scale-and-Concentration-Land-Ownership-FINAL-20190320.pdf

[5] The Just Transition Commission final advice can be found here: http://www.gov.scot/publications/transition-commission-national-mission-fairer-greener-scotland/

1. What regulatory standards or approval processes, including public interest tests, exist in other jurisdictions to restrict the mass concentration of land ownership?

2. Where such evidence is available, how effective have the use of public interest tests been in these jurisdictions in reducing the concentration of land ownership?

3. Where public interest tests have been introduced, what was the justification for interfering with property rights under Article 1 Protocol 1 of the ECHR?

4. Have there been any legal challenges brought against the decision to introduce public interest tests in these contexts? (What was the outcome and legal basis for these challenges?)

5. How might the Scottish Government adopt these approval processes to aid in its commitment to increasing equitability in land ownership?

The research provides a review of literature on state powers to place restrictions on land ownership and to acquire land. The review focuses primarily on European states, but also covers New Zealand given its significance and relevance. The European states are subject to the jurisdiction of the European Court of Human Rights (ECtHR), as Scotland is. Legislation in the Scottish Parliament must comply with the European Convention on Human Rights (ECHR) under the terms of the current devolution settlement. This is unaffected by the exit from the European Union.

It should be noted that Scotland, as part of the UK, has exited membership of the European Union (EU). However, the Scottish Government has committed to continued alignment with EU law and the current administration intends to rejoin the EU should independence be granted. To be compatible with EU rules, it is generally stressed that any measures must be proportionate and cannot be discriminatory towards other EU citizens.

This review is also limited to land reforms since World War II as this aligns with the oversight of the European Court of Human Rights (ECtHR).

European examples are developed as case studies to unpack the models and their legal basis. The case studies are accompanied by a review of interpretation of land restrictions and acquisitions by the ECtHR, to identify where these arrangements have been or could yet be subject to challenge by the Court. The review of cases is supported by a further review of evidence on the Court's approach to public interest.

2. Methodology

Summary

The research methodology comprised of a scoping literature review, legal database searches, case law review, case study analysis, and scoping meeting with relevant experts.

2.1. Literature review

A scoping review was undertaken in order to take a wide lens on existing research on land ownership restrictions and land acquisition powers globally. These two branches, land acquisition powers and land ownership restrictions, are considered to be of key significance to regulating concentration of land ownership.

Given this breadth, time constraints necessitated a restriction of the scope of this overview to research published between 2012-2022 and to a primary focus on European case-studies. One key international case study (New Zealand) is highlighted as a secondary focus. One key text[6] provides the basis for a deep dive on land acquisition case studies in the European context.

2.2. Initial scoping

Land ownership restrictions (whereby the state limits the rights to own land) and land acquisitions (whereby the state acquires private land) are key to land governance and can play a significant role in regulating the scope and concentration of land ownership.

In order to assess and summarise existing research in this field, a scoping literature review was undertaken around two themes:

- land ownership restrictions, and
- land acquisition powers.

The review was restricted to research published between 2012-2022 and to a primary focus on European case studies.

The review found that there is insufficient comparative research on land ownership restrictions internationally but there is significant comparative research published on land acquisition powers internationally. Consequently, in order to identify models of land ownership restrictions the literature review also included legal databases, legal websites and national government websites.

[6] Sluysmans, J. et al. (eds.), (2015). *Expropriation law in Europe.* Deventer: Wolters Kluwer.

This scoping literature review was accompanied by scoping discussions with key experts (see s. 2.6.).

2.3. In-depth descriptions and analysis of impacts

The results of the scoping exercise identified a gap in the literature – there is a lack of comparative studies on different models of land restrictions in Europe. This is in contrast to comparative studies on land acquisition powers in Europe. This study presents three case studies partly to fill this gap. The selection criteria for these case studies were that they were party to the ECHR and demonstrated different rationales for restrictions (i.e. land categorisation, special regionalisation, or foreign ownership).

Where available the case studies provide information on:

- the legal basis of the acquisition or restriction;
- the compensation terms to those whose lands are acquired by the state;
- any ECHR jurisprudence of significance in relation to the state's powers of acquisition or restriction.

2.4. Secondary review – legal analysis

When land ownership restrictions or land acquisition power models were identified, a secondary analysis was undertaken to identify whether the relevant regulatory powers had been subject to ECHR scrutiny. Annexes A and B relate to this analysis.

The review found that the case study restrictions on land ownership have not been challenged at the European Court of Human Rights level. However, it should be noted that restrictions on land ownership may have been challenged in national courts and if satisfactorily resolved therein, these challenges would not reach the ECtHR. A review of national courts jurisprudence on challenges to land acquisitions was out of scope of this study.

The review found that expropriations have been challenged at the EctHR as violations of the ECHR 'right to property' (A1P1). Where this has occurred, it has been predominantly in relation to compensation arrangements and not in relation to the aim or purpose of the expropriation.

2.5. European Court of Human Rights Literature and Case Review

Both the restriction and acquisition case studies were accompanied by a review of relevant ECHR jurisprudence to establish whether the interventions had been challenged before the European Court of Human Rights.

A review of ECHR jurisprudence was undertaken using the HUDOC database. The HUDOC database is the official database of the European Court of Human Rights. It contains over 65000 case judgements and provides access to decisions, communicated cases, advisory opinions and legal summaries, the European

Commission of Human Rights decisions and reports, and the Committee of Ministers resolutions.

In order to assess broadly a country's property rights jurisprudence before the European Court of Human Rights a country specific search was undertaken to review 'A1P1 caselaw', as in caselaw where Article 1 Protocol 1 of the European Convention on Human Rights (the right to peaceful possession of property) is engaged. These findings are presented in Appendix A . This appendix details the number of cases where a right to property (A1P1) violation was claimed and those instances where an A1P1 violation was found, for each member country of the European Convention on Human Rights.

2.6. Cross-checking with country experts

Scoping and advice was received from the following relevant experts (in chronological order):

- James MacKessack-Leitch (Policy and Practice Lead at Scottish Land Commission).
- Jim Murdoch (Professor of Public Law at University of Glasgow).
- Janneke Gerards (Professor of Fundamental Rights Law at Utrecht University).
- Frankie McCarthy (Professor of Private Law at University of Glasgow).
- Rachael Walsh (Assistant Professor in Property Law at Trinity College Dublin).
- Aileen McHarg (Professor of Public Law at Durham University).

The accuracy of the information in the case study sheets was confirmed with academic and/or government contacts in each country to triangulate the data and to complete any parts that could not be completed via desk-based review. Questions were asked by online meeting or sent via email, accompanied by the completed case study sheet.

3. Land ownership restrictions – Case studies

Summary

This chapter sets out examples of land ownership restrictions in France, Finland, Switzerland, and New Zealand.

Land ownership restrictions differ from land acquisition powers, in that the state has the ability to limit the rights to own land under certain conditions, whereas through acquisition powers, the state can take back land from owners.

The European examples highlighted have not been challenged by claimants before the European Court of Human Rights. Therefore, we do not have direct insights on how the Court would interpret such legislation should similar restriction be introduced in Scotland.

3.1 Introduction

Through land ownership restrictions the state has the ability to limit the rights to own land under certain conditions. The following case studies demonstrate different types of ownership restrictions, affecting agricultural land; protections of minorities; and regions of special interest.

Each case study sets out:

- the general context of the restrictions;
- the legal basis (legislation) that permits the restrictions;
- the aim/s* of the restrictions;
- the compensation arrangements where relevant (only in the French case-study as the other case-studies do not involve sale of property);
- any jurisprudence from the ECHR that exists relating to the restrictions and;
- the impact/s of the restrictions.

*A note on ‘aims’ or ‘objectives’ of legislation

According to the ECHR interventions with the right to property (A1P1) must be in accordance with the law.

For the purposes of the ECtHR, a legitimate aim is one that serves the public interest or the interests of others and, as the public interest is very broadly defined,

the aims of legislation once established by parties are rarely challenged by the Court.

The onus is on the state parties to establish the aim/s of measures before the ECtHR and they may do so for the first time during the hearing at the ECtHR. It is not necessary for the aim/s of legislation to be embedded in the relevant domestic legislation, indeed in the majority of cases, the aims are not found in the foundational legislation. There is no obligation to explicitly state the aims of measures in advance.

For the case studies below, in order to try to identify the aims of land interventions, the relevant foundational legislation was identified, translated into English, and then reviewed for reference to the aim/s of the legislation. Where this did not substantiate the aim/s, a deeper dive into relevant academic and grey literature (e.g. government reports, working papers, white papers and external organisation publications) was undertaken to identify *indications* of the aim/s of measures.

It is a prerequisite that domestic avenues are exhausted before a case reaches ECtHR. If successfully challenged in domestic courts it will not continue in existing form and reach ECtHR so we can assume that what reaches ECtHR has not been subject to successful domestic challenge.

3.2 France's SAFER: Agricultural land ownership restrictions

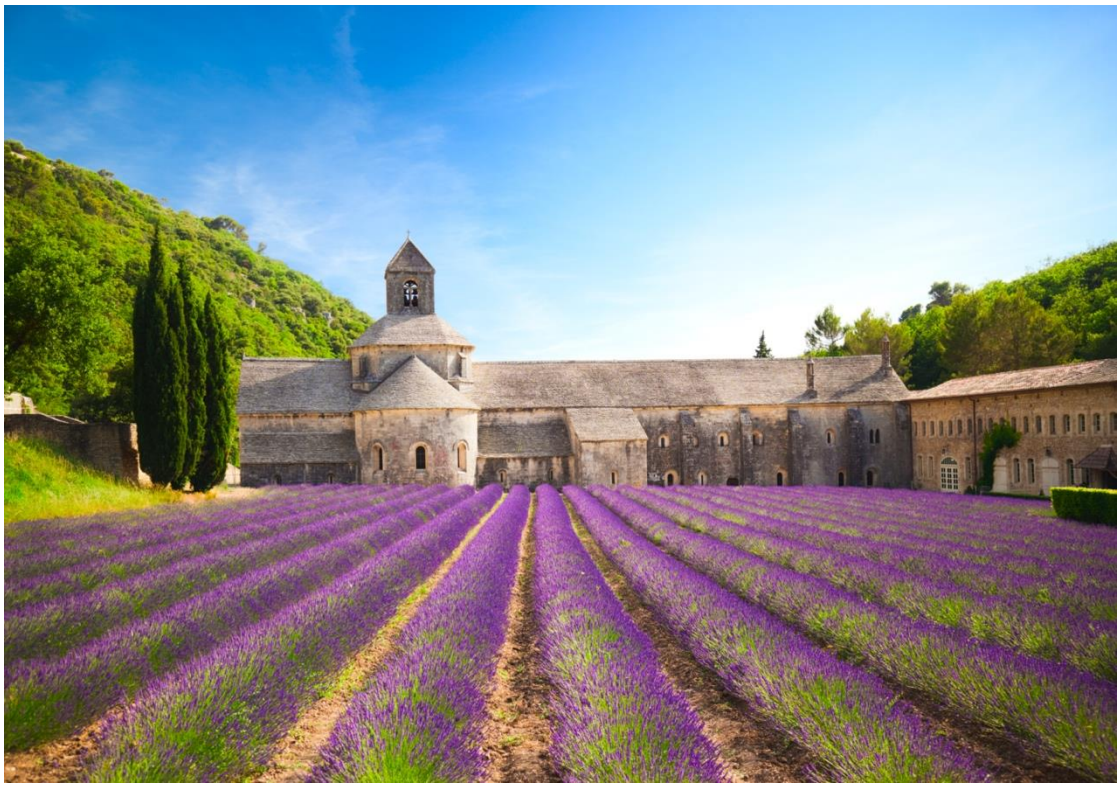

Photo reference: Senanque Abbey with blooming lavender field (Provence, France)

Context

Restrictions on agricultural land are the most common kind of restrictions on land ownership globally. Through the *Agricultural Orientation Law 1960,*[7] the French Government introduced a new system of agricultural land administration known as Société d'Aménagement Foncier et d'Etablissement Rural, or 'SAFER'.[8]

In the 1960 Act, the overall aims of the legislation are described as:

*'[*T]o establish parity between agriculture and other economic activities;

(1.) By increasing the contribution of agriculture to the development of the French economy and national social life, by balancing the overall agricultural trade balance of the national territory, taking into account the evolution of the needs, the natural vocations of the country, its place in the Community and in the European Community and the aid to be given to underdeveloped countries;

(2.) By making agriculture participate equitably in the benefit of this expansion by eliminating the causes of disparity existing between the income of persons exercising their activity in agriculture and that of persons employed in other sectors, in order to bring in particular the social situation of farmers and agricultural employees at the same level as that of other professional categories;

(3.) By putting agriculture, and more especially family farming, in a position to compensate for the natural and economic disadvantages to which it remains subject compared to other sectors of the economy.'[9]

These aims were considered to be partly in response to demands of young farmer movements who were struggling to access land, and partly in conjunction with France entering in the common market of the European Union.[10]

There is a SAFER agency in each 'département' or state in France. SAFER is publicly chartered by Parliament and French law, and has a public interest function but is a private sector company. SAFER buys and sells land in rural and peri urban areas. Since c. 2000 SAFER has expanded its remit to conduct studies, create maps, and make recommendations relating to land use planning measures which protect agricultural and natural lands as well as environmentally sensitive areas.

To achieve its missions, each SAFER monitors farm land sales and intervenes when needed to make the sale best suit the objectives of the law. They take action by buying the land and selling it back to the person they choose. Unlike a private

[7] Detail on the *Agricultural Orientation Law 1960* (in French *'Loi n° 60-808 du 5 août 1960 d'orientation agricole'*) is available here;

https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000508777/

[8] Translation provided by SAFER; 'French Land Use and Rural Settlement Corporation'

[9] As above, at Article 1.

[10] Butterwick, M., & Rolfe, E.N. (1965). Structural Reform in French Agriculture the Work of the SAFERs. *Journal of Agricultural Economics*, *16 (4), 548–554.*

seller who will choose the highest bidder, the SAFER can choose to sell to the best bidder.

If a farmer wants to sell land, he can contact the regional SAFER which will pay a fair price for the land. Advertising is undertaken by SAFER through the town halls and on the Vigifoncier website.11 Candidates for the purchase must make a written submission. A regional Technical Committee (composed of members of the Agriculture Chamber, the majority farmers union, banks and insurance companies, regional authorities, and representatives of the State) examine all the projects based on multiple criteria. These can include:

- the local situation;
- SAFER's missions;
- the skills of the candidate; and
- the viability of the project.

The Committee then make a recommendation to the Board of Directors which will make the final decision. The process is set out in more detail in the French example Appendix D.

The aim/s of the legislation

The regional SAFERs were created by the Agricultural Orientation Law of August 5, 1960. Their initial objectives were to reorganize farms (as explained above), in order to establish more productive agriculture, and to respond to demands of unionised young farmers. Since then, the SAFERs mandate has expanded to include protection of the environment, landscapes, natural resources such as water, and support of local authorities in their land projects.

Compensation

When SAFER intervenes in the purchase of land compensation to the seller may be required. Compensation is given as "La compensation Agricole collective (CCA)", which is defined as 'the collective agricultural compensation intended to maintain or restore the agricultural economic potential lost due to development projects or works that permanently consume land in agricultural activity, whether they are of public utility or not.'[12]

[11] Vigifoncier is an online information service offered by SAFER, and can be found here: www.vigifoncier.fr/

[12] See further the work of CETIAC Compensation et Études d'Impacts Agricoles – Conseil here https://compensation-agricole.fr/compensation-agricole/

ECHR Jurisprudence

This review is focused on whether land ownership restrictions are deemed to fall within the public interest, a requisite for interference with Article 1 Protocol 1, ECHR.[13]

France was one of the founding members of the Council of Europe in 1949, signed the European Convention of Human Rights in 1950, and ratified it in 1974, so the ECHR was not directly applicable in French law when the SAFER was established.[14] There was overlap between membership of ECHR and the establishment of the SAFER administration therefore, however the French legislature did not have to comply with the ECHR at the point the measure was initially brought in. In any case the pre-existence of SAFER would not have prevented subsequent challenges before the ECtHR over SAFER on-going activity should they have been deemed admissible i.e. within the remit of the ECtHR.

A review of the HUDOC database found five hundred and seventy cases (after duplicates removed) concerning France and Article 1 Protocol 1. Of these cases five concerned the SAFER rules.

The following cases concern situations connected with SAFER farms but did not challenge the SAFER model, the public interest rationale, or the legitimacy of the state's powers to place restrictions on land ownership.

- Affaire Hentrich v. France App 13616/88 1994: concerned just satisfaction for non-pecuniary damage caused by excessive length of civil proceedings.
- Fernandez et Autres v. France App 28440/05: Concerned the inaction of the Stat to end to an illegal occupation of the claimants' agricultural estate.
- Affaire R.P. v. France App 10271/02 2010: Concerned the failure of the French authorities to end illegal occupation of the claimant's properties.
- L.H. v. France App 13616/88. Concerned the seizing of property as a result of a tax discrepancy. The court found that the interference was in the public interest but not proportionate.

[13] For a discussion of the compatibility of SAFER with European Union law see Teodoru. G. (2022). Restrictions on the sale of agricultural land. Controversies National Law – Union Law (sic). *Perspectives of Law and Public Administration*, *11*(1), 142–156. Drawing on the Ospelt (Austria) case (Case C-452/01 Ospelt, paragraph 52.) she concludes that; 'The right of pre-emption in favor of farmers is considered a proportionate restriction on the free movement of capital and less restrictive than a ban on sales to non-farmers.'

[14] A full list of signatures and ratifications Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is found here. https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=005

See the full list of cases reviewed in Annex B.

In terms of domestic jurisprudence, it should be noted that SAFER has faced criticism from the French Court of Auditors regarding, among others, failure of proper notification to the buyers, lack of transparency and ethics in some deals and loss of its primary objectives.[15]

Impacts

The review found key studies on the impacts of SAFER. One suggests that the SAFERs have been successful in helping to limit the rise in land prices.[16] Other reports show that the SAFER policies have succeeded in reducing the consolidation of agricultural land[17] and maintaining relatively low land prices in comparison with other European countries.[18]

[15] An example of this is available here, "SAFER Property Pre-Emption Annuled", French-Property.com, 9th July 2019;

https://www.french-property.com/news/french_property/safer_pre_emption_annuled

[16] AEIAR. (2015). *Status of agricultural land market regulation in Europe: Policies and instruments*. Association Européenne des Institutions d'Aménagement Rural. Available here: aeiar_land-market-regulation_en.pdf (accesstoland.eu).

[17] Piet, L. et al. (2012). How do agricultural policies influence farm size inequality? The example of France. *European Review of Agricultural Economics, 39*(1), 5–28.

[18] Sanglier, M. et al. (2017). *Policies and instruments of land market regulations: The SAFER, French land agencies.* Terre de Liens. Available here: https://www.accesstoland.eu/IMG/pdf/policy_instruments_safer_a2l_final_en.pdf

3.3 Finland's Åland Islands: Special region ownership restrictions[19]

Photo reference: Seascape of Finland's Åland Islands archipelago

Context

The Åland Islands consist of more than 6,700 islands off the southwest coast of Finland. The current population is estimated at 30,000 with over 40 per cent of the inhabitants living in the only town, Mariehamn, and the remainder of the population living on only 60 of the islands. [20]

The League of Nations granted the Åland Islands co-sovereign standing in 1921, pre ECHR, following a Finnish-Swedish dispute over ownership of the islands. 1921 established the special status of Åland, and did not include land restrictions. The ownership restrictions were legislated for in 1991. Consequently, Åland is a self-governing polity within Finland. The peace accord adopted by the League of Nations in 1921 contained guarantees for the protection of the Åland people as a

[19] Ralli, T. & K. Weckström. (2015). *Real Property Law and Procedure in the European Union,* National Report Finland. Available here: https://www.eui.eu/documents/departmentscentres/law/researchteaching/researchthemes/europeanprivatelaw/realpropertyproject/Finland.pdf

[20] Ministry for Foreign Affairs of Finland. *The special status of the Åland Islands.* Available here: https://um.fi/the-special-status-of-the-aland-islands#domicile.

minority and contained special, statutory protection for the Swedish language and culture on the islands.[21]

The most recent version of the Act came into force in 1991, and sets out the autonomous rights of the region and its population. The restriction on land ownership is based within Chapter 2 of the Act on the Autonomy of Åland (1144/1991).[22] The 1991 legislation restricts ownership of property to persons with the right of domicile and do not prevent people from settling in the Åland Islands provided they can acquire the right of domicile.[23]

The right of domicile can be acquired in the following ways:

- At birth if it is possessed by either parent;
- Immigrants who have lived in Åland for five years and have an adequate knowledge of Swedish may apply for the status, provided they are Finnish citizens;
- The Åland Government can, occasionally, grant exemptions from the requirement of right of domicile for those wishing to acquire real property or conduct a business in Åland.

Those who have lived outside Åland for more than five years lose their right of domicile.

The aim/s of the legislation

The 1991 legislation concerning the right to own or be in possession of real property were introduced to ensure that the land would remain in the hands of the local population, the protected Swedish speaking community.[24]

The Act on the Acquisition of Immovable Property in Åland (3/1975) was the previous basis for non-domiciles needing a permit to buy or rent property in the regions.

[21] See further Joenniemi, P. (2014). The Åland Islands: Neither Local nor Fully Sovereign. *Cooperation and Conflict.* 49.1, 80–97.
[22] A translation of this legislation can be found here: http://www.finlex.fi/fi/laki/kaannokset/1991/en19911144.pdf

[23] An account of the legal history is available here (in Finnish): https://www.lagtinget.ax/dokument/lagforslag-162013-2014-9915

[24] The right of domicile (*Åländsk hembygdsrätt*), also known as Ålandic regional citizenship, is part of the Ålandic Autonomy Act (Självstyrelselag (1991:71)) and is further regulated in law in the Landscape Act (2015:99) on Åland homestead law and the the Landscape Act on homestead law proceedings (2015:100). In Finnish the legislation is *Landskapslagen (2015:99) om åländsk hembygdsrätt* and *Landskapslagen (2015:100) om hembygdsrättsförfaranden*.

ECHR jurisprudence

Finland signed the ECHR in 1989 and ratified in 1990. It was therefore subject to the jurisdiction of the ECtHR when the ownership restrictions were enacted. The current restrictions are based on 1991 legislation.

A review of the HUDOC database found one hundred and four cases (after duplicates removed) concerning Finland and Article 1 Protocol 1. Of these cases three concerned the Åland islands. A fourth case concerning Åland was found in relation to Sweden. None of these cases engaged the Åland land ownership restrictions. See list of cases reviewed in Annex B.

At the national level there has been debate in the Finnish Parliament in relation to the impact of the citizenship restrictions on the integration of immigrants.[25]

Impacts

The review did not find studies specifically documenting the impact of the land ownership restrictions on land ownership concentration or on wider social, economic or environmental outcomes in English language publications, although some may exist in Finnish.[26] A 2007 report from Statistics Finland found that 'summer cottage density' in Åland grew by more than 2.5 summer cottages per each square kilometre of land between 1975 and 2006 (i.e. since the restrictions have been in place) suggesting the right to domicile restrictions have not restricted housing development but they may have impacted the demographics of owners i.e. increased second/multiple home owners.[27]

[25] See Hepburn, E. (2014). Forging autonomy in a unitary state: The Åland Islands in Finland. *Comparative European Politics 12*, 468–487; Öst, Heidi. (2016). The Concept of the Åland Islands' Regional Citizenship and Its Impact on the Inclusion of Migrants. *European Yearbook of Minority Issues 13* (1), 220–232; Simolin, S. (2018). The Aims of Åland and Finland Regarding a New Act on the Autonomy of Åland. *Journal of Autonomy and Security Studies* 2.1.

[26] See generally Karlsson, A. (2009). Sub-National Island Jurisdictions as Configurations of Jurisdictional Powers and Economic Capacity: Nordic Experiences from Åland, Faroes and Greenland, *Island Studies Journal 4*(2): 139-162. For further background see Dosch, Jörn, and Malvina Lakatos. (2020) South Tyrol and Åland: Collective Identity in the Interplay of Old and New Minorities. *Studies in ethnicity and nationalism 20*.2, 188–207.

[27] Statistics Finland. (2007). *From villa ownership to national leisure-time activity*. Available here: https://www.stat.fi/tup/suomi90/kesakuu_en.html

3.4 Switzerland: Foreign ownership restrictions[28]

/

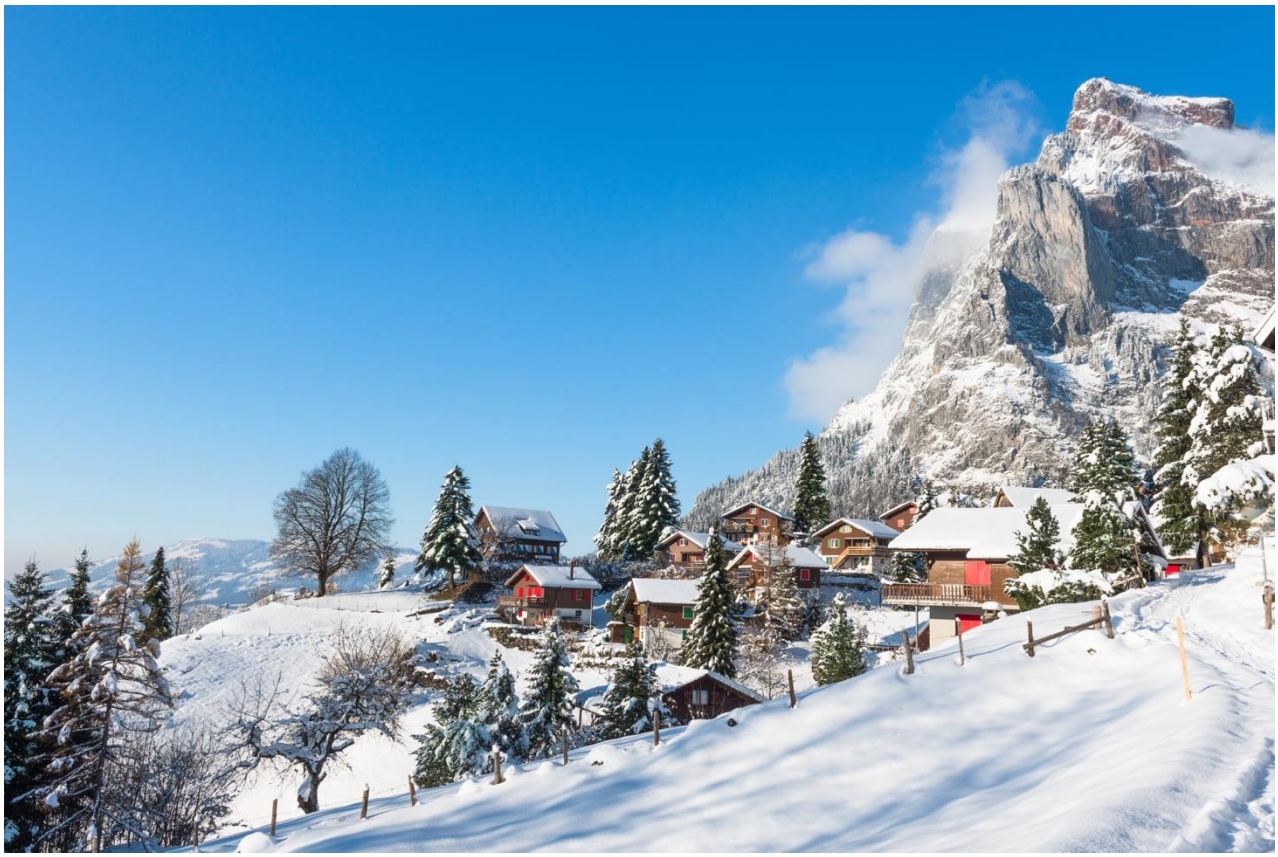

Photo reference: Village in the Alps in the snow in Switzerland

Context

Switzerland restricts home ownership to non-nationals through federal laws known as 'Lex Koller' which stems from legislation in 1961 and has been expanded since.[29] (Switzerland ratified the ECHR in 1974 see below section on ECHR jurisprudence.) Local authorities (cantons) have established additional restrictions.[30] The Federal Court has also issued decisions that have served to

[28] Engel Voelkers. (2021). *Legal guide to Lex Koller*. Available here: https://www.engelvoelkers.com/en-ch/switzerland/lex-koller/

[29] Including the Swiss state law 'On Acquisition of Real Estate by Foreign Individuals 1983', full name in German *'Bundesgesetz über den Erwerb von Grundstücken durch Personen im Ausland*' Legislation available here in German: https://www.fedlex.admin.ch/eli/cc/1984/1148_1148_1148/de See also accompanying 'Federal Ordinance on the Acquisition of Real Property by Non-Swiss Residents, SR 211.412.411' in German '*Verordnung über den Erwerb von Grundstücken durch Personen im Ausland (BewV) vom 1. Oktober 1984 (Stand am 1. März 2021)*' available here: https://www.fedlex.admin.ch/eli/cc/1984/1164_1164_1164/de

[30] See Swiss Federal Office of Justice Guidelines: https://www.eda.admin.ch/dam/countries/countries-content/united-states-of-america/en/lex-e.pdf

tighten the rules.[31] There are additional rules (Lex Weber) in respect of second homes, intended to serve the policy objective of "rural sprawl containment".[32]

According to the Lex Koller, foreign persons are prohibited from buying real estate for investment purposes or land for development. Under certain conditions, non-resident citizens may acquire properties for vacation purposes only (provided such real estate is in an area designated by the cantonal authorities as a holiday resort, and subject to any further restrictions imposed by the municipalities).[33] The plot must also be less than 1,000 square metres and the net living area less than 200 square metres in size. The acquisition of holiday apartments by non-Swiss nationals is subject to a quota which applies for the whole of Switzerland (only 1500 can be sold to non-nationals per year).[34]

The legislation defines persons abroad as being either:

- Individuals resident or domiciled abroad
- Individuals living (as temporary residents) in Switzerland, but who are neither nationals of EU/EFTA member states nor holders of a valid permanent residence permit (the C permit).[35]

Legal entities are considered persons abroad if they are either:

- Domiciled abroad (irrespective of whether they are controlled by persons abroad);
- Controlled by persons abroad (as in persons abroad hold (or control, whether directly or indirectly) more than one-third of the entity's equity

[31] See Hilber, C. and O. Schöni. (2016). Housing policies in Switzerland, the United Kingdom, and the United States, in Yoshino, Naoyuki and Helble, Matthias, (eds*.) The Housing Challenge in Emerging Asia: Options and Solutions*. Tokyo, Japan: Asian Development Bank Institute pp. 210-259

[32] BV 7a (Second Home Initiative – "Zweitwohnungsinitiative"; SR 101). Ordinance concerning Second Homes of 22 August 2012 ("Verordnung über Zweitwohnungen vom 22 August 2012" (SR 702).

[33] Thomson Reuters Practical Law. (2019).*The Swiss Lex Koller: more relevant than ever*. Available here: https://uk.practicallaw.thomsonreuters.com/8-551-2765?transitionType=Default&contextData=(sc.Default)

[34] Engel & Völkers. *Lex Koller: What you need to know*. https://www.engelvoelkers.com/en-ch/switzerland/lex-koller/

[35] See Swiss Federal Office of Justice. (2009, updated 2021). *Acquisition of real estate by persons abroad: Guidelines*, at s.5. Available here https://www.kraehenmann.immobilien/wp-content/uploads/2012/10/lex-e.pdf

capital or voting rights or provide significant amounts of debt capital to the entity.[36]

The aim/s of the legislation

The policy objectives of the Lex Koller restrictions are recorded as protecting Swiss land from excessive foreign ownership. The 1961 legislation referred to the prevention of "*foreign infiltration of native soil*", in German "Überfremdung des einheimischen Bodens". [37]

Further objectives apply for the cantons restrictions such as promoting the construction of residential property, the promotion of tourism / mountain regions, and the containment of rural sprawl. Policy objectives for restrictions placed by local authorities (cantons) are noted as *"business promotion, spatial planning and environmental protection".*[38]

ECHR jurisprudence

The initial Lex Koller restrictions were introduced in 1961, i.e. pre-ECHR commitments. Switzerland signed the ECHR in 1972 and ratified in 1974. It was therefore subject to the jurisdiction of the ECtHR. However, further Lex Koller legislation was passed through the Swiss Parliament later.

A review of the HUDOC database found eight cases (after duplicates removed) concerning Switzerland and Article 1 Protocol 1. Of these cases none engaged Switzerland's land ownerships restrictions, and most were deemed inadmissible. See the list of cases reviewed in Annex B.

At the national level, there is continuous debate about whether the restrictions on foreigners should be abolished or tightened. Most recently, the Swiss National Council proposed a temporary ban on foreign acquisition, aimed to prevent Swiss businesses which have been financially affected by the COVID-19 crisis from being pressured to sell their business premises to foreign buyers at unfavourable terms and low land prices. The Swiss Council of States subsequently rejected the proposal unanimously, "*mainly based on the arguments that, to date, the COVID-19 situation had not led to increased foreign demand for the acquisition of Swiss business premises and that the proposed temporary ban would have led to considerable legal uncertainty*".[39]

---

[36] As above.

[37] See Von Thomas Buomberger. (2018). *"Überfremdung": History of a Swiss term*. Blogpost. (In German); https://blog.tagesanzeiger.ch/historyreloaded/index.php/2616/ueberfremdung-geschichte-eines-schweizer-begriffs/

[38] Policy objectives for restrictions placed by local authorities (cantons) are found here https://www.purchase-of-real-estate-by-persons-abroad.ch/legal-nature

[39] Legal Comment from Pestalozzi Law. (2021) *New attempt to tighten rules on foreign real property investments fails in Parliament,* 26th March 2021. *Available here:*

Impact

The Lex Koller legislation seemingly has had a large effect on the housing market in Switzerland, as shown when the legislation was 'relaxed' in 2002 and 2005. According to one study, the relaxation of the law meant that foreigners were able to buy holiday homes in Switzerland, resulting in "substantial price inflation in this sub-market".[40] A 2022 study also found that "*the second home restriction has helped fight excessive construction and building in extensively occupied touristic towns in the mountains, significantly reducing investments in new constructions without leading to greater negative impacts on tourism in the short-run period.*"[41]

https://pestalozzilaw.com/en/news/legal-insights/new-attempt-tighten-rules-foreign-real-property-investments-fails-parliament/ See also; *"Federal government drops plan to tighten rules on foreign real property investments*", 29th June 2018.

[40] Borowiecki, K.J. (2012) Dynamics of a protected housing market: The case of Switzerland. *Urban Studies, 49*(14): 3195-3210.

[41] Stricker, Luzius. (2022). Restricting the Construction of Second Homes in Tourist Destinations: An Effective Intervention Towards Sustainability? *Schweizerische Zeitschrift für Volkswirtschaft und Statistik 158*.1, 1–16.

3.5 New Zealand – An international example[42]

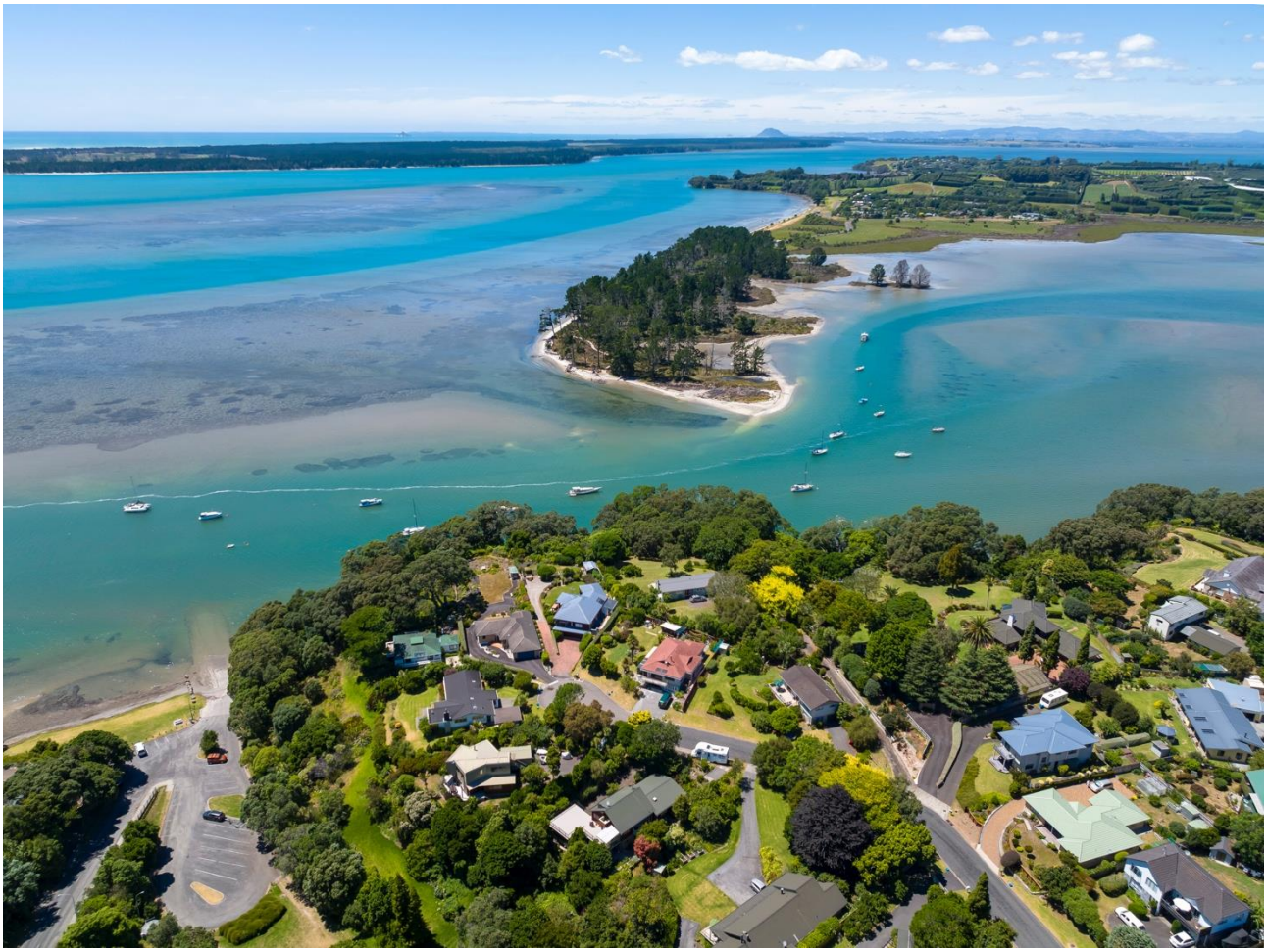

Photo reference: Aerial view of a suburb in New Zealand

Context

Under the Overseas Investment Act 2005, and the Overseas Investment Amendment Act 2021, New Zealand operates three tests on overseas investors on land transactions. New Zealand is not a signatory to the ECHR but is party to the Universal Declaration of Human Rights and to seven of the nine UN human rights treaties.[43]

---

[42] New Zealand Government website overview of Overseas investment tests. Available here:
https://www.linz.govt.nz/overseas-investment/discover/overseas-investment-tests

[43] As of July 2022 New Zealand is a party to: *International Covenant on Civil and Political Rights, 1966;*

International Covenant on Economic, Social and Cultural Rights, 1966;

International Convention on the Elimination of All Forms of Racial Discrimination, 1965;

Convention on the Elimination of All Forms of Discrimination Against Women, 1979;

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984;

The Investor Test is used to determine whether investors are suitable to own or control sensitive New Zealand assets. The investor test forms part of the assessment of most consent applications. It is beyond the scope of this current research to explore whether these types of restriction are compatible with the free movement of capital (one of the four core European Union freedoms).

The Benefit to New Zealand Test is applied to transactions involving "sensitive land" or fishing quota. It establishes a framework for determining whether the investment will be beneficial by assessing applications against 7 factors.

All land that has a property category on the District Valuation Roll as 'residential' or 'lifestyle' in New Zealand is 'residential land' and is therefore classed as sensitive.

Land may also be classed as sensitive depending on its size, type, and what it is next to. Land that is sensitive for any reason other than simply being residential land is known as 'otherwise sensitive' land, and different rules may apply to it. Land can have more than one sensitivity. For example, it can be both residential and otherwise sensitive land.

The National Interest Assessment is applied for some overseas investment consent applications. The Minister of Finance reviews these transactions to determine whether they are contrary to New Zealand's national interest. While this assessment is only mandatory for transactions that meet certain criteria, Ministers may use their discretion to call in any transaction.

As New Zealand is outside of Europe, the country is not subject to the ECHR. Therefore, there are no examples of challenge against these tests under the ECHR.

'Benefit to New Zealand' Test

Of these tests the Benefit to New Zealand Test adds a new layer of considerations on top of national interest concerns. During the Benefit to New Zealand test, an investment will be assessed against seven factors, as outlined in Section 17 of the Overseas Investment Amendment Act 2021.

There are seven factors outlined in section 17 of the Overseas Investment Amendment Act 2021 that an investment will be assessed against, but these are non-exhaustive (see Box 1).

The Overseas Investment Office (OIO), part of Toitū Te Whenua (Land Information New Zealand), regulates overseas investment in New Zealand's sensitive land, significant business assets, and fishing quota. The OIO assesses applications for

---

UN Convention on the Rights of the Child, 1989; UN Convention on the Rights of Persons with Disabilities, 2006. It is not a party to:

International Convention on Protection of the Rights of All Migrant Workers, 1990; International Convention for the Protection of Persons from Enforced Disappearance, 2010.

consent under the Overseas Investment Act 2005. It also monitors and enforces compliance with the Act.

Details of the test are set out on the Toitū Te Whenua Land Information New Zealand website as follows:

The factors are broad and are intended to enable a holistic assessment of whether there is a net benefit to New Zealand.

The seven factors that applied in the test are found in Box 1.

Box 1. Seven benefits of the Benefit to New Zealand Test

1. **Economic benefits**: Will the investment result in, or is it likely to result in, economic benefits for New Zealand? For example:

a. the creation or retention of jobs

b. the introduction of technology or business skills

c. increased productivity

d. increased export receipts

e. increased processing of primary products, or

f. a reduced risk of illiquid assets.

2. **Benefits to the natural environment:** Will the investment result in, or is it likely to result in, benefits to the natural environment? For example

a. protection of indigenous flora and fauna,

b. improved water quality, or

c. erosion control.

3. **Public access:** Will the investment result in, or is it likely to result in, continued or enhanced access by the public within or over the sensitive land, or the features giving rise to the sensitivity? For example,

a. access for the purposes of recreation, or

b. undertaking stewardship of, or exercising kaitiakitanga in relation to, historic heritage

4. **Protection of historic heritage**: Will the investment result in, or is it likely to result in, continued or enhanced protection of historic heritage in or on the relevant land? For example,

a. agreement to execute a heritage covenant, or comply with existing covenants

b. agreement to support entry to wāhi tūpuna, wāhi tapu, or wāhi tapu areas on the New Zealand Heritage List/Rārangi Kōrero

c. taking other actions under the Heritage New Zealand Pouhere Taonga Act 2014 to recognise or protect heritage values, or

d. agreement to land being set apart as a Māori reservation.

5. **Advancing a significant Government policy**: Will the investment, or is it likely to, give effect to or advance a significant government policy?

6. **Oversight or participation by New Zealanders**: Will the investment involve, or is it likely to involve, oversight of, or participation in, the overseas investment by New Zealanders?

7. **Consequential benefits**: Will the investment result in, or is it likely to result in, other consequential benefits to New Zealand? For example, benefits that are likely to arise from the investment that do not fit within one of the other factors.

Alongside these seven factors are additional tests that may apply:

Farm land

If the sensitive land buyers intend to purchase is, or includes, farm land exceeding five hectares, the Farm land benefit test will usually apply.

The Farm land benefit test requires that the Economic benefits and Oversight or participation by New Zealanders factors be given high relative importance. The buyer must also establish a substantial benefit to New Zealand in relation to one or more of those factors.

Fishing quota

If you are applying to acquire fishing quota the benefit to New Zealand test applies. All factors are applicable apart from: Public access and Protection of historic heritage. Section 57H of the Fisheries Act 1996 gives specific examples of benefits that may arise under each factor for fishing quota applications.

‘Disbenefit factors’ (water bottling or bulk water extraction)

If the investment involves water bottling or bulk water extraction for human consumption, an additional factor is whether the overseas investment will have, or is likely to have, a negative impact on water quality or sustainability.

This factor is relevant to all investments involving the extraction of water for bottling, or other extraction of water in bulk for human consumption.

Any negative impact on water quality or sustainability will be deducted from the overall benefit of the investment to New Zealand."[44]

Impact

This review found no evidence of an evaluation of the impacts of the three investment tests in New Zealand. This is likely because the new legislation only came into force in May 2021.

3.6 South Africa – anecdotal evidence

South Africa has not been included in the evidence review as the focus was primarily on Europe but it was deemed worthy of a passing mention.

A programme of land reform was mandated in South Africa's new constitution in 1994. The programme was to include restitution, land tenure, and land redistribution. The new government set a target of redistributing 30% of the total of white farmer owned farmland (77.580 million hectares) within the first five years in government (1999). This target has been consistently moved over the years, and now the aim is to reach 30% by 2030. Several new proposals such as 'Regulation of Agricultural Land Holdings Bill', [45] aimed at limiting foreign ownership of agricultural land, and the 'Expropriation Amendment Act Bill',[46] intended to enable expropriation without compensation, have stalled and failed to pass through Parliament. This progress has been criticised as too slow and some commentators have proposed that a new public body, a land agency, could 'break South Africa's land redistribution deadlock'.[47]

3.7 Discussion

The case studies demonstrate key regulatory standards for restricting land ownership in France, Finland, Switzerland and New Zealand. These examples were chosen to represent a diversity of models.

---

[44] New Zealand Government, Toitū Te Whenua Land Information New Zealand. *Benefit to New Zealand Test Guidance*. Available here: https://www.linz.govt.nz/overseas-investment/discover/overseas-investment-tests/benefit-new-zealand-test

[45] South African Government, Regulation of Agricultural Land Holdings Bill: Draft https://www.gov.za/documents/regulation-agricultural-land-holdings-bill-draft-17-mar-2017-0000

[46] Lexology 2021, "Expropriation without compensation - it is not the end of the road and is still on the table"; https://www.lexology.com/library/detail.aspx?g=82e5969a-11a0-4333-b50b-c0e6c22b48f1

[47] Kirsten, J. & Sihlobo, W. 2021. "How a land reform agency could break South Africa's land redistribution deadlock", The Conversation.

The rationales for these models vary and are not necessarily based on or related to managing scale and concentration of land ownership. However, all can be considered to fall within the public interest, specifically:

- preserving agriculture in France;
- protecting the Åland islands minority culture and language in Finland; and
- maintaining housing stock for residents in Switzerland and New Zealand.

The New Zealand model is unusual in that beyond a national interest test it has also recently established the benefit to New Zealand test. It is beyond the current scope of this research to say how this engages with free movement of capital and European Union compatibility.

The compensation arrangements for the French model are set out above. As the Finnish and Swiss models apply pre-emptively, as in to new owners of the land, they have not involved removing existing landowners or tenants from land. Therefore, they do not involve compensation. Instead these models serve to restrict land ownership on the basis of residence, ancestry, and nationality (Finland), citizenship (Switzerland), and national benefit (New Zealand).

The review of ECHR jurisprudence identifies where these models have been subject to actions at the European Court of Human Rights, and although none were deemed to contravene the European Convention on Human Rights. If these models had encountered successful legal challenges within national courts they would cease to continue in existing form.

4. Land acquisition powers – Case studies

Summary

This chapter sets out case studies of land acquisition powers from Belgium, Bulgaria, Czech Republic, Germany, and the Netherlands.

Acquisition powers are often used to pursue infrastructure projects, such a new roads or airports. There are acquisition powers in Scotland for similar purposes. Current activity across Europe demonstrates that land acquisition may also be used to pursue social and environmental rationales.

There have been challenges to acquisition powers brought to the European Court of Human Rights. Under the Court, the rationales of infrastructure, social justice, and the environment can all be deemed to fall within the public interest.

4.1 Introduction

This chapter sets out case studies of land acquisition powers from Belgium, Bulgaria, Czech Republic, Germany and the Netherlands. The case studies demonstrate the widespread practice of government land acquisitions through expropriation in Europe. The examples represent a diversity of state sizes and socio-political contexts. They also demonstrate certain shared approaches and accepted practice. Sluysmans et al[48] provides some of the evidence basis for these case studies.

Each case study sets out:

- the relevance of the example for to the Scottish context,
- the general context of the acquisition power,
- the legal basis that is used to justify the acquisition,
- the grounds for the acquisition (i.e. public interest grounds),
- the compensation method, and
- any ECHR jurisprudence of significance that exists.

[48] Sluysmans, J. et al. (eds.), (2015). *Expropriation law in Europe.* Wolters Kluwer.

4.2 Belgium[49]

Context

Belgium has a multi-layered federal system consisting of three territorial regions and three language-based communities. Land use and planning powers are shared across regions. The devolved nature of land use decisions may be of particular relevance to the Scottish Government considering the devolved nature of the Scottish Parliament.

According to DLA Piper:

> "Expropriation of real estate in Belgium is possible only for reasons of public interest. There are strict criteria that need to be fulfilled in the relevant procedures. There is a 'normal procedure' and an 'urgent procedure' before the civil courts, that is most commonly used, each procedure involves compensation for the owner."[50]

Legal basis

There are two instruments used for expropriation in Belgium. Article 16 of the Belgian Constitution (previously Article 11 of the Belgian Constitution 1831) states that:

> "No one shall be deprived of his property except for public necessity, in the cases and in the manner defined by law and on condition that the owner shall have been previously and equitably indemnified."

The New Expropriation Decree 2017 for the Flemish Regions is a new piece of legislation from the regional Flemish Parliament which also permits expropriation.

Grounds

The requirements for expropriation are:

- The objective of the expropriation shall be of common interest (and can only pursue private interests on a secondary level), as in the expropriation should serve the common interest.
- The necessity of the expropriation: the objective of common interest can only be met through the expropriation of that specific property, as in the common interest cannot be achieved by means other than acquiring that specific land.

[49] See Verbist, Stijn, (2015). Expropriation Law in Belgium, in Sluysmans, J. et al. (eds.), (2015). *Expropriation law in Europe.* Wolters Kluwer; See also DLA Piper, (2017). Bob Martens, The Flemish Expropriation Decree: Ready for take-off?; https://www.dlapiper.com/en/belgium/insights/publications/2017/12/the-flemish-expropriation-decree/

[50] DLA Piper source See: https://www.dlapiperrealworld.com/law/index.html?c=BE&t=sale-and-purchase&s=real-estate-sales-and-public-law&q=expropriation-compulsory-purchase

- Expropriation is only possible in exchange for prior and fair indemnification, as in there must be fair compensation attached to the taking of land.
- The expropriating authority shall indicate on what legal basis expropriation procedure is initiated, as in the expropriation will be grounded in law.

All four conditions must be met.

There is also an implicit fifth condition, in that the expropriation must be necessary.

Compensation

Compensation is provided under the following conditions:

- Just and 'previous' compensation (previous meaning that the expropriating administration cannot take possession of the property before having paid at least part of the compensation.)
- All damage and disadvantage suffered by the previous owner must be compensated. The previous owners' financial situation must be restored. The value of the expropriated good must be evaluated (at 'purchase value'). Then, a so-called reinvestment-compensation will be calculated on this value, to cover the cost of purchasing an equivalent property. In addition, the loss of all rights of use has to be compensated, as well as the loss of any personal and economic benefits.
- If the expropriation intends to change the land use neither the gains nor the losses generated by the change in land use should be taken into account in calculating compensation. For example, if a plot of agricultural land is changed to housing land, the previous owner will receive compensation based on the value of the agricultural land and not on the value of building land. In Belgium this principle is known as 'planological neutrality', as in neutrality as to the plans for the land.

ECHR jurisprudence

Belgium's acquisitions measures have not been challenged before the European Court of Human Rights.

4.3 Bulgaria[51]

Context

Bulgaria has a similar land mass area and population size to Scotland. According to the OECD (Organisation for Economic Cooperation and Development);

[51] Mateeva, Ekaterina, (2015). "Expropriation Law in Bulgaria" in Sluysmans, J. et al. (eds.) (2015). *Expropriation law in Europe.* Wolters Kluwer; ECHR Case Profile for Bulgaria https://www.echr.coe.int/Documents/CP_Bulgaria_ENG.pdf.

> **“**Despite improvements, structural challenges may be limiting further socio-economic transformation. Socio-economic convergence has been slower in Bulgaria than in its Central and Eastern European counterparts, and has not translated into sustainable and inclusive growth across the country, resulting in increased social disparities.”[52]

Expropriation of land is permitted in Bulgaria in accordance with the Bulgarian Constitution, subject to standard conditions. The State Ownership Act and Municipal Ownership Act provide for two types of compensation: monetary (cash) compensation and property compensation.

Legal basis

Article 17, section 5, of the Bulgarian Constitution 1991 states that:

> “Forcible expropriation of property in the name of State or municipal needs shall be effected only by virtue of a law, provided that these needs cannot be otherwise met, and after fair compensation has been ensured in advance.”

Grounds

Article 15, section 5, of the Bulgarian Constitution 1991 states that expropriation is allowed on the grounds of:

- Pursuance of statute law
- Necessary (state and /or ‘municipal’ needs cannot be met otherwise)
- After a prior and equivalent compensation (meaning previous and just)

Compensation

The State Ownership Act and Municipal Ownership Act provide for two types of compensation: monetary (cash) compensation and property compensation.

Monetary compensation is determined on the basis of existing use and condition and on market price.

Only the owner is entitled to compensation. Other persons, including users without formal title of ownership such as possessors or holders within the meaning of article 68 and article 69 of the Ownership Act do not have rights to indemnification.

ECHR Jurisprudence

Bulgaria also has the fifth highest incidence of A1P1 violations found at the ECtHR and has been brought before the ECtHR on 97 cases relating to the A1P1. In 58 of those cases the state was been found to be in violation of the ECHR.

[52] OECD. (2021). Decentralisation and Regionalisation in Bulgaria: Towards Balanced Regional Development. Available here: https://www.oecd-ilibrary.org/sites/b5ab8109-en/index.html?itemId=/content/publication/b5ab8109-en#section-d1e1194

Some of these cases have involved the state's expropriation powers but the challenge was on the basis of legal certainty rather than public interest. For example:

- *Kehaya and others v Bulgaria.* Application nos. 47797/99 and 68698/01 2006;
- The ECtHR ruled that deprivation of agricultural property was unlawful due to lack of legal certainty and inadequate compensation;
- *Decheva and others v Bulgaria.* App no 43071/06 2012;
- The ECtHR ruled that lack of legal certainty (conflicting internal judicial decisions) led to violations of Art 6 (1) and A1P1, and that public interest cannot override legal certainty.

Bulgaria recently revised its expropriation laws to allow for an expedited procedure through an amendment of the State Property Act and the Municipal Property Act in 2010. The amendment meant that infrastructure projects could obtain a preferential status as a 'site of national significance' without full consultation with land owners. However, in 2013, the Bulgarian Constitutional Court revoked this preferential process as unconstitutional.

4.4 Czech Republic (Czechia)[53]

Context

The Czech Republic provides a good example of how the state court can elaborate on what is covered by the public interest. Land acquisitions by the state are lawful and in accordance with the Constitution of the Czech Republic under standard conditions. Land acquisition rules were revised in 2013, following ECtHR jurisprudence to tighten up rules for compensation.

Legal basis

The Czech Constitutional Law No 1/1993 Sb., Article 11, states that:

> "Everyone has a right to own property, the right of ownership has the same content and protection for every owner."

However, Section 4 of the same Article states that:

[53] Pavlíček, Václav and Jirí Šouša, (2015). "Expropriation Law in the Czech Republic" in Sluysmans, J. et al. (eds.), (2015). *Expropriation law in Europe,* Wolters Kluwer; See also ECHR Case Profile for Czech Republic https://www.echr.coe.int/Documents/CP_Czech_Republic_ENG.pdf

> "the expropriation or limitation of the property right is possible in the public interest, on the basis of law and for compensation."

The Expropriation Act No186 /2006 Sb, created by both the Ministry of Regional Development and the Ministry of Justice, also regulates expropriating rights of land and real estates.

Grounds

The requirements for expropriation are:

- a legal purpose of the expropriation, which is stated in special acts;
- a public interest;
- conformity with the aims of landscape planning;
- subsidiarity – it can be used only in case the aim cannot be achieved in any other way;
- indispensable extent – it can be used only to the extent necessary to achieve the purpose of the expropriation; and
- a reasonable compensation.

All these terms must be fulfilled simultaneously.

Compensation

There is a general principle of 'adequate and just' compensation, at or above the market value of the existing land use. All mathematical formulas and methods for determining prices are set out in a 2013 regulation.[54]

Until 2013, the price of the land could change in connection with its future purpose. However, the Czech Supreme Court stated otherwise in Supreme Administrative Court 7 AS 174/2014 - 44 of 23 October 2014. The Court ruled that the court of appeal cannot change the decision about compensation to the detriment of the expropriated party or the third persons. Therefore, the value of the compensation does not take any future purposes or sentimental value into consideration.

ECHR jurisprudence

The key legal challenge against acquisitions under Article 11 was Pešková v the Czech Republic (App no 22186/03). In this challenge, the European Court of Human Rights found that the Czech Government had breached A1P1 when the compensation provided to the expropriated party did not reflect the market price of the real estate at the time the property was expropriated. Consequently rules of compensation were revised in newly formulated legislation, which came into force in 2013.

In this case, the Court adopted a wide interpretation of 'public interest', noting that the Court will respect the legislature's judgment as to what is in the public interest unless that judgment would be manifestly without reasonable foundation (i.e. the

[54] Ordinance no. 414/2013 Sb.

usual standard under A1P1). The court noted that the aim pursued by the Land Ownership Act is to attenuate the effects of the infringements of property rights that occurred under the communist regime.

4.5 Germany[55]

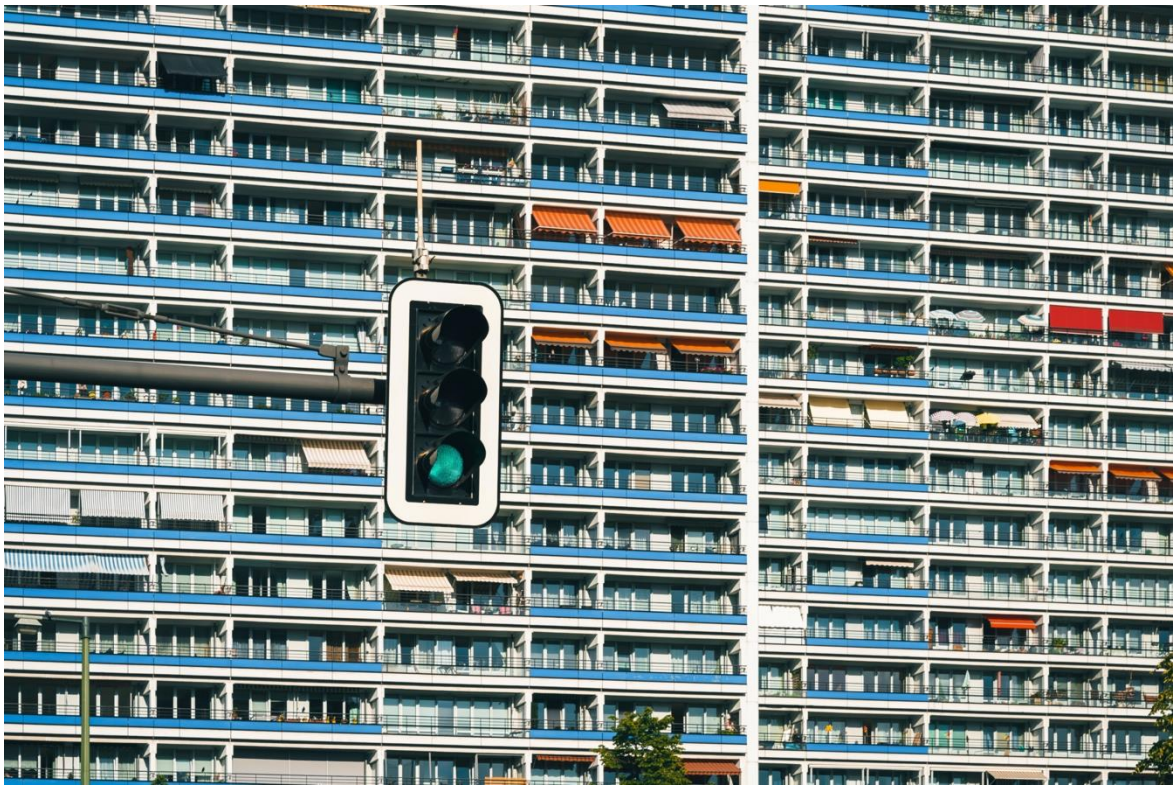

Photo reference: Façade of public housing complex in central Berlin, Germany

Context

Germany provides an example of expropriation for social justice and redistribution. Expropriation in Germany is possible, but only where specific legislation or an ordinance related to that legislation permits it. According to DLA Piper:

> "Expropriation is also only allowed when it is necessary in the public interest. The state must pay compensation to the relevant party."[56]

[55] De Witt, Siefried, Corinna Durinke and Maria Geismann, (2015). "Expropriation Law in Germany" in Sluysmans, J. et al. (eds.), (2015). *Expropriation law in Europe,* Wolters Kluwer. Wolters Kluwer; See also Palmstorfer, N. (2017). Austrian Constitutional Court: Vegan Landowner Must Tolerate Hunting on his Property. *ICL Journal*, *11*(1) and; The Guardian, 29 Sept 2021, "*Berlin's vote to take properties from big landlords could be a watershed moment".* Available here; https://www.theguardian.com/commentisfree/2021/sep/29/berlin-vote-landlords-referendum-corporate

[56] See; https://www.dlapiperrealworld.com/law/index.html?t=sale-and-purchase&s=real-estate-sales-and-public-law&q=expropriation-compulsory-purchase&c=DE

Germany's expropriation laws are being considered to aid the re-socialisation of housing in Berlin. The campaign "Expropriate Deutsche Wohnen & Co", proposed that companies holding 3,000 or more apartments should be expropriated in a bid to address the housing crisis. Their proposal was subject to a referendum and was backed by a majority of 56.4%. The process is on-going but it is reported that several committees in both the Federal Parliament (*Bundestag*) and the Senate of Berlin confirm that the expropriation request is legally valid and compatible with the constitution.

Legal basis

Article 14, German Constitution – Grundgesetz – Basic Law for the Federal Republic of Germany states that:

- "Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws." And,

- "Property entails obligations. Its use shall also serve the public good."

Grounds

The same Article 14 of the Constitution provides the grounds for expropriation. It states that:

> "Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts."

Compensation

Compensation to the owner for the loss of property or land is based on market value at the time of expropriation. This is usually established through price comparison. The value is dependent on the location, size, shape and infrastructure provision.

An Ordinance for the Establishment of Property Values sets out (optional) valuation procedures to assess comparative, capitalised and intrinsic values.[57]

ECHR jurisprudence

A key relevant piece of jurisprudence in Germany is *Hermann v Germany* App 9300/07 (ECtHR, 26 June 2012). In this challenge, the ECtHR found that an obligation to allow hunting on a piece of land was a violation of A1P1 as the owner objected to hunting on ethical grounds. The aims of the German hunting jurisdiction were to preserve a healthy and biodiverse fauna and regional culture. Germany

[57] See Section 95.1. of the German 'Baugesetzbuch' i.e. 'Building Code'.

argued the legislation was in the public interest (environment and disease), this was accepted by the Court but they argued the disturbance was disproportionate.

The Court held that the fair balance between the protection of property rights and the public interest requirements was disturbed and an unreasonable burden was placed on the property owner; *"Compelling small landowners to transfer hunting rights over their land so that others could make use of them in a way which was totally incompatible with their beliefs imposed a disproportionate burden which was not justified under the second paragraph of Article 1 of Protocol No. 1."* (At para 77.)

> The Court held that despite the fact the legislation, the *Federal Hunting Act*, "*requires private hunters to contribute to the achievement of objectives in the public interest*" […] "*did not alter the fact that hunting is primarily carried out in Germany by private individuals as a leisure activity."* (At para 84.)

Consequently, German law (the Federal Hunting Act, Bundesjagdgesetz, 2013) was updated to enable landowners who object to hunting on ethical grounds to have their interests considered as part of an assessment of all relevant public interests and personal interests.

4.6 The Netherlands[58]

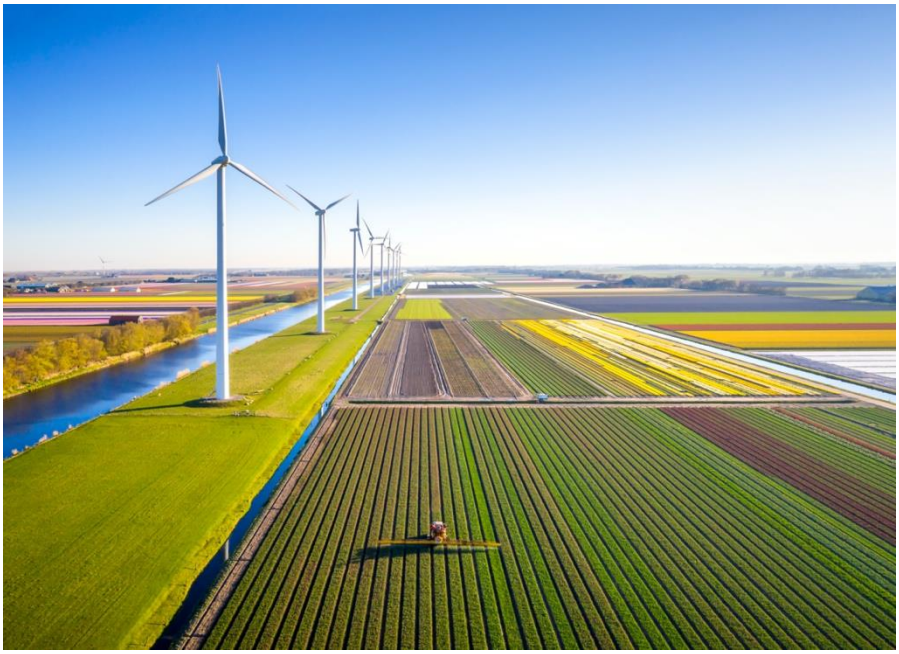

Photo reference: Aerial view of agricultural crops sprayer in a field of tulips during springtime in Holland.

[58] Sluysmans, J.A.M.A. and Regien de Graaff, (2015) "Expropriation Law in the Netherlands" in Sluysmans, J. et al. (eds.), (2015). *Expropriation law in Europe.* Deventer: Wolters Kluwer.

Context

The Netherlands provides another example of wide-ranging expropriation powers to serve a diverse range of aims under the public interest. Expropriation is permitted with clearly differentiated approaches depending on the nature of the expropriation purpose. For example, the legislation covers expropriation for:

- roads, bridges, verges, ditches and canals;
- drinking water companies or waste removal;
- the extraction of surface minerals;
- the execution of spatial plans,
- public housing, public order, and the enforcement of the Opium Act; and,
- land reorganisation.

The rationale for using expropriation powers in The Netherlands also goes beyond infrastructure projects. For example, Dutch politicians are considering using expropriation laws to acquire land from livestock farmers in order to meet climate targets. This consideration is a response to a ruling by the highest Dutch administration that the government broke EU law by not doing enough to reduce excess nitrogen in vulnerable natural areas.[59]

Legal basis

Article 14, Dutch Constitution, states that expropriation may in principle only take place in the public interest and if compensation has been ensured in advance. Compensation need not be ensured in advance in cases of emergency. Extensive jurisprudence is also provided by the Dutch Supreme Court.

Grounds

Under the Dutch Constitution, expropriation must be in the public interest, have urgency, and necessity. There are cases where expropriation requests have been rejected because the expropriation would serve a public interest, but did not satisfy the urgency and necessity tests.

Processes vary according to the nature of the expropriation purpose.

Compensation

Compensation is provided to land owners, and can extend to third parties who may be disadvantaged by the land acquisition. The Dutch Expropriation Act does not set out rules for the determination of the actual value of compensation provided to land owners. The Supreme Court has often reiterated that the judge in an expropriation

[59] The Guardian, 9 Sept 2021. "*Netherlands proposes radical plans to cut livestock numbers by almost a third."* https://www.theguardian.com/environment/2021/sep/09/netherlands-proposes-radical-plans-to-cut-livestock-numbers-by-almost-a-third

case is not just obliged to determine the compensation independently, but is also free in their choice of the valuation method that is more suitable to that particular case. The comparative method and the residual method (looks at the new use value and subtracts development costs) are the two most used valuation methods.[60]

ECHR jurisprudence

As of 2022, there has been no challenge before the ECHR concerning expropriations in the Netherlands.

4.7 Discussion

The case studies demonstrate a cross section of widespread practice of land and property acquisition powers across European countries. The examples represent a diversity of contexts each with relevance to Scotland:

- Belgium operates on multi-level governance, like Scotland;
- Bulgaria has a similar population size to Scotland;
- the Czech Republic has useful jurisprudence before the European Court of Human Rights;
- Germany and the Netherlands are actively pursuing acquisitions to address social and environmental challenges.

Justification of acquisition powers

Acquisition powers are often used to pursue infrastructure projects, for example to build new roads or airports. However, current activity across Europe suggests that acquisition may also be used to pursue social and environmental rationales. For the purposes of this report, it should be noted that Compulsory Purchase Orders are distinct from land acquisitions.

The German case study is particularly relevant to the Scottish context as it provides an example of expropriation aimed at tackling scale and concentration of ownership to address housing shortages. The Federal Parliament (*Bundestag*) and the Senate of Berlin are considering a proposal that companies holding 3000 or more apartments should be subject to land acquisitions to re-socialise housing in Berlin. The Parliament and Senate have upheld that the measure would be legally valid and compatible with the constitution, but further measures have not been undertaken yet.

[60] See further; Holtslag-Broekhof, S. (2018). Urban land readjustment: Necessary for effective urban renewal? Analysing the Dutch quest for new legislation. *Land Use Policy*, 77; Holtslag-Broekhof, S. et al., (2018). Exploring the valuation of compulsory purchase compensation. *Journal of European Real Estate Research, 11*(2).

The Dutch case study also provides an example of an innovative acquisition measure to meet environmental obligations. Dutch politicians are considering using expropriation laws to acquire land from livestock farmers in order to meet climate targets.

Both the German and the Dutch examples show that acquisition powers may be used to pursue social and environmental rationales if deemed within the public interest to do so.

Public interest

Under the European Court of Human Rights, the rationales of infrastructure, social justice, and the environment can all be deemed to be in the public interest. This is supported by jurisprudence from the Court including the case of Pešková v the Czech Republic App no 22186/03, where it was noted that the Court will respect the legislature's judgment as to what is in the public interest unless that judgment would be manifestly without reasonable foundation. In that particular instance the aim pursued by the Land Ownership Act to attenuate the effects of the infringements of property rights that occurred under the communist regime was deemed to be in the public interest. The Court undertakes more scrutiny in respect of the proportionality of measures to achieve the public interest, i.e. could the same objectives be achieved without rights interferences? Therefore, the issue is not so much the rationale for public interest but whether the proposed intervention is necessary for that public interest to be achieved.

Compensation

The case studies also demonstrate a range of compensation measures adopted. In the majority of cases compensation is at market value, however note that Belgium and the Netherlands have some particularities noted in the case studies above. The examples demonstrate that jurisprudence resulting from the acquisition powers has generally centred around the proportionality of compensation and /or the legal certainty of the process.

5. European Convention on Human Rights case review

Summary

This chapter sets out a rapid review of European Court of Human Rights jurisprudence that relates to land restrictions and acquisitions. It focuses on Article 1 Protocol 1 (A1P1) right to property case law. The review sought to establish where the above case-study examples of land restrictions had been challenged at the European Court of Human Rights.

Where land restrictions or land acquisitions have been challenged at the European Court of Human Rights, it has been in relation to the clarity of the procedure in the supporting legislation and on the proportionality and sometimes timeliness of compensation awards.

Appendix A sets out the number of ECHR right to property cases per country, and Appendix B lists relevant cases on public interest.

5.1 Case review

Photo reference: European Court of Human rights in Strasbourg, France

In order to assess where land restrictions or acquisitions have come under review by the European Court of Human Rights, a rapid review of the HUDOC database of European Convention on Human Rights jurisprudence was undertaken. The review focused on applications made to the European Court of Human Rights alleging a violation/s of the right to property (A1 P1).

The review found that the highest number of A1P1 violations occurred in Russia (234 cases) Romania (209), Turkey (156), Ukraine (121), and Bulgaria (58). This

could reflect weaknesses of their domestic enactment, but would need further research to establish this. The full list of countries and cases are set out in Appendix A. It should be noted that while the UK has been subject to 86 applications where claims of violations were made, the Court found the state to be in violation in only 39 cases of those instances.

5.2 Approach of the European Court of Human Rights to land regulations

Although they may also impact other ECHR rights, land regulations generally fall within the remit of the right to peaceful possession of property. When issuing interpretations and judgments on the right to property, the European Court of Human Rights gives member countries a high degree of autonomy (known as the margin of appreciation).

A1P1 states that member countries may infringe the right to property ("deprive a person of his possessions") if it is in the public interest to do so, and if it is subject to the conditions provided for by the law and by the general principles of international law.

This is further supported by the following statement in A1P1; "[the ECHR right to property] shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This means that governments measures to control (or 'interfere with') property can be challenged on the basis of whether the measure is in the public interest, whether it is supported by domestic legislation ("subject to the conditions provided for by the law"), and in accordance with the general principles of international law.

5.3 Approach of the European Court of Human Rights to public interest

ECHR precedent, such as of Pešková v the Czech Republic App no 22186/03, noted above in the case study on the Czech Republic, demonstrates that the Court gives member countries wide discretion to decide on the public interest.

The European Court of Human Rights has established and upheld an approach to public interest that prioritises the member country's judgment on public interest "unless that judgment is manifestly without reasonable foundation".

The following passages from James and Others v The United Kingdom (Application no. 8793/79) 1986 are frequently cited as setting out the European Court of Human Rights position on public interest:

> "91. The Court is of the opinion that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is 'in the public

> interest'. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures of deprivation of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities, accordingly, enjoy a certain margin of appreciation.
>
> Furthermore, the notion of 'public interest' 'is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is 'in the public interest' unless that judgment is manifestly without reasonable foundation (see James and Others, cited above, p. 32, § 46; The former King of Greece and Others, cited above, § 87; and Zvolský and Zvolská v. the Czech Republic, no. 46129/99, § 67 in fine, ECHR 2002-IX). The same applies necessarily, if not a fortiori, to such radical changes as those occurring at the time of German reunification, when the system changed to a market economy."[61]

In the same case the Court set out that "a taking of property effected in pursuance of legitimate social, economic or other policies may be 'in the public interest', even if the community at large has no direct use or enjoyment of the property taken." In that case the leasehold reform (right to buy) legislation was not therefore an infringement of Article 1 (P1-1), provided compensation was paid to the landowner.

Article 1 Protocol 1 ECHR ('the right to property') compensation is usually paid at market value and is usually paid by the state, although it is possible for the state to require other bodies to do so. However the European Court of Human Rights has stated that there may be circumstances where the public interest outweighs the need to protect the individual's rights and in those cases A1P1 *"may call for less than reimbursement of the full market value."* (Lithgow v. United Kingdom, (1986) at 51).

Where land acquisitions have been successfully challenged at the European Court of Human Rights, it has been in relation to insufficient compensation, i.e. the compensation was not deemed proportionate to the loss suffered, or the person concerned had to bear a special and exorbitant burden (Sporrong and Lönnroth v. Sweden 1882 at 69).

On compensation, the case also states that Article 1 (P1-1) does not guarantee a right to full compensation in all circumstances, adding that; "Legitimate objectives of 'public interest', such as pursued in measures of economic reform or measures

[61] Subsequently cited in *Jahn and Others v Germany* (Applications 46720/99, 72203/01 and 72552/01) 2005.

designed to achieve greater social justice, may call for less than reimbursement of the full market value."

Further comments on whether compensation is included in A1P1 and the concurring opinion of Judge Thor Vilhalmsson suggests that there is not a strong consensus on the right to compensation under A1P1.[62]

Where land restrictions or land acquisitions have been challenged at the European Court of Human Rights, it has been in relation to either:

- the clarity of the procedure in the supporting legislation; or
- the proportionality and sometimes timeliness of compensation awards (see for example Affaire Hentrich v. France App 13616/88 1994 in relation to SAFER case study).

Sluysmans et al research[63] suggests that there is particular sensitivity where private entities stand to benefit from expropriations through generous compensation schemes and the public acceptability of the expropriation is found to play a role in determining whether it is within the public interest. The question of balancing competing interests becomes, therefore, a question of balancing compensation. Ensuring that compensation meets market value appears to be an accepted norm.

The review also searched the HUDOC database for case law referring to 'public interest tests' as opposed to 'public interest'. Of the relatively few mentions found, discussion centred on whether the public interest test had been met rather than the legitimacy of public interest tests or the requirement for specific procedures around public interest tests.[64]

[62] See further McCarthy, F. (2007). Deprivation without compensation: the exceptional circumstance of Jahn v Germany. *European Human Rights Law Review*, *3*, 295–303.

[63] Sluysmans, J. et al. (eds.) (2015). *Expropriation law in Europe*. Wolters Kluwer.

[64] See for example Lindheim and *Others v Norway* (Applications 13221/08 and 2139/10) 2012 and *Magyar Helsinki Bizottság v Hungary* (Application 18030/11) 2016.

6. Conclusions

This review has sought to expand understanding of regulatory processes, including public interest tests, to restrict concentration of land ownership. The research found that land ownership restrictions and land acquisition powers are widespread across European countries. It finds that these powers are widely interpreted as legitimate interferences with property rights before the European Court of Human Rights. There is no European Court of Human rights case law to suggest that these are illegitimate interferences. The research did not review domestic case law however it is a prerequisite that domestic remedies are exhausted before reaching the European Court of Human Rights. Therefore if a regulatory model appears before the European Court of Human rights it is a given that it went through the domestic challenges and survived intact.

Scotland and the UK already have a wide range of acquisition powers. For the purposes of the present focus on reducing concentration of land ownership, in Scotland there may be more interest in land ownership restrictions than land acquisitions.

What regulatory standards or approval processes, including public interest tests, exist in other jurisdictions, to restrict the mass concentration of land ownership?

Land ownership restrictions come in a variety of forms; restrictions on agricultural land; restrictions on regions of special interest; restrictions by land area; restrictions by owner type; restrictions by owner nationality. These measures are be used to change concentration of ownership, where that is deemed to serve the public interest.

Land acquisitions or ‘expropriations’ – meaning action by the state or an authority of taking property from its owner for public use or benefit – has been the catalyst for development and infrastructure projects across Europe for centuries. Acquisitions have long been considered as potential solutions to widespread economic, social, and environmental problems such as housing crises (see above case study on Germany) and more recently the climate crisis (see above on the Netherlands), albeit not tackling concentration of ownership explicitly.

Where such evidence is available, how effective have the use of public interest tests been in these jurisdictions in reducing the concentration of land ownership?

The review identified a number of restrictions or tests which exist that allow for specific intervention by the state in the buying and selling of land. Evaluation of the effectiveness of these measures in existing literature is limited.

From the case-studies:

- Some evidence suggests that the establishment of the SAFERs in France has resulted in limiting the rise of land prices, and reducing consolidation of agricultural land and concentration of ownership.
- Evidence from Switzerland suggests that Lex Koller has effectively impacted affordability of homes in touristic towns enabling local working populations to settle in these towns, increasing diversity of ownership.
- There is limited evidence on the impact of the Åland Islands ownership restrictions but Statistics Finland suggests that summer cottage density has increased despite restrictions.
- It is too soon to know the impacts of the newly introduced New Zealand tests.

In respect of land acquisition powers, these have generally been used to implement development or infrastructure projects, without reference to reducing the concentration of land ownership. The German example above demonstrates the potential for acquisition powers to address concentration of ownership.

Where public interest tests have been introduced, what was the justification for interfering with property rights under Article 1 Protocol 1 of the ECHR?

Where public interest tests have been introduced, they are not in themselves an intervention or 'interference' with property rights. Public interest tests are a means of determining whether an intervention is in the public interest.

The European Convention on Human Rights review suggests that 'public interest tests' (i.e. the internal processes states have developed for determining the public interest) have rarely come under scrutiny at the European Court of Human Rights. From the review of the caselaw of the European Court of Human Rights, there is no clear or established requirement for a country to establish a 'test' or specific procedure to establish the public interest at the national level. There may have been actions at the domestic level which amended or removed public interest test procedures but this is beyond the scope of the review.

Where measures and regulations have been challenged, the Court has reiterated that the notion of 'public interest' is necessarily extensive and that the Court will respect the legislature's judgment as to what is 'in the public interest' unless that judgment is manifestly without reasonable foundation (James and Others v UK 1986 and subsequently upheld). Beyond a wide definition of public interest the Court is interested in whether, the interventions proposed are necessary to deliver the public interest objectives. The Court undertakes greater scrutiny of the question of whether the measures are proportionate to the intended aims.

Have there been any legal challenges brought against the decision to introduce public interest tests in these jurisdictions?

In relation to ‘legal challenges brought against the decision to introduce public interest tests’ the review of the European Court of Human Rights caselaw suggests that there have been no challenges of this nature before the European Court of Human Rights. Challenges must first be made in national courts and if resolved there will not reach the European Court of Human Rights.

How might the Scottish Government adopt these approval processes to aid in their commitment to increasing equitability in land ownership?

More research is required to understand the public interest tests processes in European states and their applicability to Scotland.

The New Zealand ‘Benefit to New Zealand’ test is an example of a public interest test that is comprehensive, accessible, easy to use, and has an appropriate supervisory body. It covers broad categories: economic benefits; benefits to the natural environment; public access; protection of historic heritage; advancing a significant government policy; oversight or participation by New Zealanders consequential benefits etc. The Overseas Investment Office (OIO) reviews and assesses the applications but it is as yet unclear how these benefits will be prioritised should conflict between competing interests occur. However, it should be noted that New Zealand is neither a signatory to the European Convention of Human Rights, nor subject to the EU’s free movement principles.

References

1. Ahlinder, E. (2018). Fair Compensation for Telecom Rights in Land in Sweden and the UK. *European Property Law Journal*, *7*(1). https://doi.org/10.1515/eplj-2018-0003
2. Auckland, C., & Goold, I. (2020). Re-Evaluating 'Best Interests' in the Wake of Raqeeb v Barts NHS Foundation Trust & Anors. *Modern Law Review*, *83*(6). https://doi.org/10.1111/1468-2230.12563
3. Azzena, L. I. M. (2020). Dialogue between Courts about the right to property. *Revista Brasileira de Estudos Politicos*, *120*. https://doi.org/10.9732/P.0034-7191.2020V120P319.
4. Варава, К. І. (2020). Problematic Issues of Protecting Property Rights from Illegal Actions of Public Authorities. *Bulletin of Kharkiv National University of Internal Affairs*, *90*(3). https://doi.org/10.32631/v.2020.3.03
5. Beloff, M., & Brown, P. (1999). Planning contravention notices and the right to silence: The impact of the Human Rights Act 1998. *Journal of Planning and Environment Law*, *DEC.*
6. Bennion, T. et al. (2017) *New Zealand land law / Elizabeth Toomey, general editor ; John Burrows QC, consulting editor ; Tom Bennion [and seven others].* 3rd edition. Wellington [New Zealand: Thomson Reuters.
7. Bindi, E. (2016). Proportionality test in the "age of balancing." *Revista de Derecho Politico*, *96*. https://doi.org/10.5944/rdp.96.2016.17066
8. Borowiecki, K.J. (2012) Dynamics of a protected housing market: The case of Switzerland. Urban Studies, 49(14): 3195-3210.
9. Butterwick, M., & Rolfe, E.n. (1965). Structural Reform in French Agriculture the Work of the SAFERs. *Journal of Agricultural Economics*, *16* (4), 548–554.
10. Coruhlu, Y. E., Uzun, B., & Yildiz, O. (2020). Zoning plan-based legal confiscation without expropriation in Turkey in light of ECHR decisions. *Land Use Policy*, *95*. https://doi.org/10.1016/j.landusepol.2020.104598
11. De Witt, Siefried, Corinna Durinke and Maria Geismann, (2015) "Expropriation Law in Germany" in Sluysmans, Verbist, S., & Waring, E. *Expropriation law in Europe / edited by Jacques Sluysmans, Stijn Verbist and Emma Waring.* Wolters Kluwer.
12. DLA Piper, 2017, Bob Martens, The Flemish Expropriation Decree: Ready for take-off? https://www.dlapiper.com/en/belgium/insights/publications/2017/12/the-flemish-expropriation-decree/
13. Dosch, Jörn, and Malvina Lakatos. "South Tyrol and Åland: Collective Identity in the Interplay of Old and New Minorities." *Studies in ethnicity and nationalism* 20.2 (2020): 188–207.
14. Duranthon, A. (2020). Thomas Perroud, Jacques Caillosse, Jacques Chevallier et Danièle Lochak (dir.), Paris : LGDJ, coll. « Les grandes décisions », 2020, 567 p. *Revue Française d'administration Publique*, *N°176*(4). https://doi.org/10.3917/rfap.176.0233
15. European Convention for the Protection of Human Rights and Fundamental Freedoms: Impact on Polish Law Development. (2021). *Access*

to Justice in Eastern Europe, *4*(1). https://doi.org/10.33327/ajee-18-4.1-a000045
16. ECHR Case Profile for Bulgaria https://www.echr.coe.int/Documents/CP_Bulgaria_ENG.pdf
17. Engel Voelkers, (2021). Legal guide to Lex Koller. https://www.engelvoelkers.com/en-ch/switzerland/lex-koller/
18. Gerards, J. (2020a). Abstract and Concrete Reasonableness Review by the European Court of Human Rights. *European Convention on Human Rights Law Review*, *1*(2). https://doi.org/10.1163/26663236-bja10005
19. Gerards, J. (2020b). The age of balancing revisited? In *European Data Protection Law Review* (Vol. 6, Issue 1). https://doi.org/10.21552/edpl/2020/1/5
20. Glass, J., Bryce, R., Combe, M., Hutchison, N.E., Price, M.F., Schulz, L. and Valero, D. (2018). *Research on interventions to manage land markets and limit the concentration of land ownership elsewhere in the world*. Scottish Land Commission, Commissioned Report.
21. Glen Searle (ed.). (2018). *Compulsory property acquisition for urban densification*. Routledge.
22. Glenn, S., MacKessack-Leitch, J., Pollard, K., Glass, J., and McMorran, R., (2019), Investigation into the Issues Associated with Large scale and Concentrated Landownership in Scotland, Scottish Land Commission.
23. Gordon, A. (2012). Public Interest in UK Courts. *ESRC End of Award Report*.
24. Greer, S., Gerards, J., & Slowe, R. (2018). The Case Law of the European Court of Human Rights. In *Human Rights in the Council of Europe and the European Union*. https://doi.org/10.1017/9781139179041.005
25. Gugushvili, A. (2016) 'Money Can't Buy Me Land': Foreign Land Ownership Regime and Public Opinion in a Transition Society." *Land use policy* 55: 142–153.
26. Hepburn, E. Forging autonomy in a unitary state: The Åland Islands in Finland. *Comp Eur Polit* 12, 468–487 (2014).
27. Hilber, C. and O. Schöni. (2016). Housing policies in Switzerland, the United Kingdom, and the United States, in Yoshino, Naoyuki and Helble, Matthias, (eds*.) The Housing Challenge in Emerging Asia: Options and Solutions*. Tokyo, Japan: Asian Development Bank Institute pp. 210-259.
28. Hindle, R., Thomson, S., Skerratt, S., McMorran, R. & Onea, P. 20 14. Economic Contribution of Estates in Scotland: An Economic Assessment for Scottish Land & Estates. Final report.
29. Holtslag-Broekhof, S. (2018). Urban land readjustment: Necessary for effective urban renewal? Analysing the Dutch quest for new legislation. *Land Use Policy*, *77*. https://doi.org/10.1016/j.landusepol.2017.07.062
30. Holtslag-Broekhof, S., Beunen, R., Marwijk, R. van, & Wiskerke, J. S. C. (2018). Exploring the valuation of compulsory purchase compensation. *Journal of European Real Estate Research*, *11*(2). https://doi.org/10.1108/JERER-04-2016-0018
31. Holtslag-Broekhof, S. M., van Marwijk, R., Beunen, R., & Wiskerke, J. S. C. (2016). Perceived (In)justice of Public Land Acquisition. *Journal of*

Agricultural and Environmental Ethics, *29*(2). https://doi.org/10.1007/s10806-015-9594-3
32. Iosifidis, P., & Katsirea, I. (2014). Public Service Broadcasting in Greece in the Era of Austerity. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.2459483
33. Jackson, P., & Wilde, D. C. (n.d.). *The Reform of Property Law*. http://www.routledge.com/books/series/Routledge_Revivalswww.routledge.comaninformabusiness
34. Jacobs, M. (2015) *Law of Compulsory Land Acquisition,* Thomson Reuters.
35. Jepsen, M.R. et al. (2015) Transitions in European Land-Management Regimes Between 1800 and 2010. *Land use policy* 49.SI. pp. 53–64.
36. Joenniemi, Pertti. "The Åland Islands: Neither Local nor Fully Sovereign." *Cooperation and conflict* 49.1 (2014): 80–97.
37. Jones, G., & Pike, J. (2002). Proportionality and planning - A difficult and nice point to be decided. *Journal of Planning and Environment Law*, Aug, 908–922.
38. Karlsson, A. (2009) 'Sub-National Island Jurisdictions as Configurations of Jurisdictional Powers and Economic Capacity: Nordic Experiences from Åland, Faroes and Greenland', *Island Studies Journal* 4(2): 139-162.
39. Kim, I., Lee, H., & Somin, I. (2017). *Eminent Domain* [Book]. Cambridge University Press. https://doi.org/10.1017/9781316822685
40. Kirkwood, P. (2020). Marina v Romania: Balance between privacy and the public interest in the publication of private information. *European Data Protection Law Review*, *6*(4). https://doi.org/10.21552/edpl/2020/4/20
41. Kirsten, J. & Sihlobo, W. 2021. "How a land reform agency could break South Africa's land redistribution deadlock", The Conversation.
42. Kovalenko, T. (2019). The Right to the Land (Pay) in the Land Rights System in Ukraine. *Social Law*, *1*. https://doi.org/10.37440/soclaw.2019.01.08
43. Kotaka, T. & Callies, D. L. (2002) *Taking Land: Compulsory Purchase and Regulation in Asian-Pacific Countries*. Honolulu: University of Hawaii Press.
44. Lawley, C. (2018) Ownership Restrictions and Farmland Values: Evidence from the 2003 Saskatchewan Farm Security Act Amendment. *American journal of agricultural economics* 100.1. pp. 311–337.
45. *Legislative proposals for addressing concentrated landownership - 601acfc4ea58a_Legislative proposals to address the impact of Scotland's concentration of land ownership - Discussion Paper Feb 2021*. (n.d.-b).
46. Loveland, I. (2001). The compatibility of the land use planning system with article 6 of the European convention on human rights. *Journal of Planning and Environment Law*, *MAY*.
47. Mateeva, Ekaterina, (2015) "Expropriation Law in Bulgaria" in Sluysmans, Verbist, S., & Waring, E. *Expropriation law in Europe / edited by Jacques Sluysmans, Stijn Verbist and Emma Waring.* Wolters Kluwer.

48. Melstrom, R. T. (2021) “The Effect of Land Use Restrictions Protecting Endangered Species on Agricultural Land Values.” *American journal of agricultural economics* 103.1: 162–184.
49. Moratinos, G. L., & Castillo Parrilla, J. A. (2020). Algorithmic valoration before human rights and the European Convention on Human Rights and the General Data Protection Regulation: The SyRI case. *Revista Chilena de Derecho y Tecnologia*, *9*(1). https://doi.org/10.5354/0719-2584.2020.56843
50. Mullen, T., Murdoch, J., Miller, A., & Craig, S. (2005). Human rights in the Scottish courts. *Journal of Law and Society*, *32*(1). https
51. Munhoz, L. (2014) *The Environmental Limitations to Property Rights in Brazil and the United States of America* (LLM thesis, Pace University School of Law), available at http://digitalcommons.pace.edu/lawdissertations/15/.
52. Nanhthavong, V., Oberlack, C., Hett, C., Messerli, P., & Epprecht, M. (2021). Pathways to human well-being in the context of land acquisitions in Lao PDR. *Global Environmental Change*, *68*. https://doi.org/10.1016/j.gloenvcha.2021.102252
53. Notess, L., Veit, P., Monterroso, I., Andiko, Sulle, E., Larson, A. M., Gindroz, A. S., Quaedvlieg, J., & Williams, A. (2021). Community land formalization and company land acquisition procedures: A review of 33 procedures in 15 countries. *Land Use Policy*, *110*.
54. OECD 2021, *Decentralisation and Regionalisation in Bulgaria: Towards Balanced Regional Development* https://www.oecd-ilibrary.org/sites/b5ab8109-en/index.html?itemId=/content/publication/b5ab8109-en#section-d1e1194
55. Orebech, P. T. (2009). From diplomatic - To human rights protection: The possessions under the 1950 European human rights convention, first additional protocol article 1. *Journal of World Trade*, *43*(1).
56. Öst, Heidi. “The Concept of the Åland Islands’ Regional Citizenship and Its Impact on the Inclusion of Migrants.” *European yearbook of minority issues* 13.1 (2016): 220–232.
57. Palmstorfer, N. (2017). Austrian Constitutional Court: Vegan Landowner Must Tolerate Hunting on his Property. *ICL Journal*, *11*(1). https://doi.org/10.1515/icl-2017-0004
58. Parker, G., & Amati, M. (2009). Institutional setting, politics and planning: Private property, public interest and land reform in Japan. *International Planning Studies*, *14*(2), 141–160. https://doi.org/10.1080/13563470903021191
59. Paul, B. (n.d.). *Statutory Land Exchanges that Reflect “Appropriate” Value and “Well Serve” the Public Interest*.
60. Pestalozzi Law. (2021) *New attempt to tighten rules on foreign real property investments fails in Parliament,* 26th March 2021*.*
61. Pestalozzi Law. (2018) *“Federal government drops plan to tighten rules on foreign real property investments*”, 29th June 2018.
62. Piet, L., Latruffe, L., Le Mouël, C., & Desjeux, Y. (2012). How do agricultural policies influence farm size inequality? The example of France. *European Review of Agricultural Economics*, *39*(1), 5–28.
63. Ralli, T. & Weckström, K. (2015) *Real Property Law and Procedure in the European Union,* National Report Finland.

https://www.eui.eu/documents/departmentscentres/law/researchteaching/researchthemes/europeanprivatelaw/realpropertyproject/Finland.pdf
64. Ramesh, J. (2015). *Legislating for justice : the making of the 2013 Land Acquisition Law* (M. A. Khan, Ed.; First edition.) [Book]. Oxford University Press.
65. Reynolds, S. (2010). *Before Eminent Domain* [Book]. The University of North Carolina Press. https://doi.org/10.5149/9780807895863_reynolds
66. Saccucci, A. (2021). Accesso ai rimedi costituzionali, previo esaurimento e gestione "sussidiaria" delle violazioni strutturali della CEDU derivanti da difetti legislativi. *DIRITTI UMANI E DIRITTO INTERNAZIONALE*, *2*. https://doi.org/10.3280/dudi2012-002002
67. SAFER Report 2018. "50 Actions des Safers dans nos regions." https://www.safer.fr/app/uploads/2018/10/50-actions.pdf
68. Sanglier, M. et al. (2017). *Policies and instruments of land market regulations: The SAFER, French land agencies.* Terre de Liens.
69. Sayın, Y. et al. (2017) Land Law and Limits on the Right to Property: Historical, Comparative and International Analysis. *European Property Law Journal*, vol. 6, no. 1, 2017, pp. 4-52.
70. Searle, G. (2021) *Compulsory property acquisition for urban densification,* Routledge.
71. Shields, K. (2015). Tackling the Misuse of Rights Rhetoric in Land Reform Debate. *Greens Scottish Human Rights Journal*, *1*(68), 1–4. Open access at http://www.andywightman.com/docs/SHRJ_68_Feb2015.pdf
72. Simolin, S. (2018) "The Aims of Åland and Finland Regarding a New Act on the Autonomy of Åland." *Journal of Autonomy and Security Studies* 2.1.
73. Slidders, C. (2020) Janneke Gerards : General Principles of the European Convention on Human Rights. In *European Yearbook on Human Rights 2019*. https://doi.org/10.1017/9781780689562.032
74. Sluysmans, J. et al. (eds.), (2015). *Expropriation law in Europe.* Deventer: Wolters Kluwer.
75. Sluysmans, J.A.M.A. and Regien de Graaff, (2015) Expropriation Law in the Netherlands, in Sluysmans, J. et al. (eds.), (2015). *Expropriation law in Europe.* Deventer: Wolters Kluwer.
76. Smits, J. M. (Jan M., & Edward Elgar Publishing. (n.d.). *Elgar encyclopedia of comparative law*.
77. Stricker, Luzius. (2022). Restricting the Construction of Second Homes in Tourist Destinations: An Effective Intervention Towards Sustainability? *Schweizerische Zeitschrift für Volkswirtschaft und Statistik 158*.1, 1–16.
78. Sztranyiczki, S. (2019). A Few Considerations with Regard to the Case-Law of the ECHR in Connection to the Enforcement of Final Judgements in the Matter of Land Resources. *Acta Universitatis Sapientiae Legal Studies*, *8*(1). https://doi.org/10.47745/ausleg.2019.8.1.07
79. Tang, D., Liu, H., Song, E., & Chang, S. (2020). Urban expansion simulation from the perspective of land acquisition-based on bargaining model and ant colony optimization. *Computers, Environment and Urban Systems*, *82*. https://doi.org/10.1016/j.compenvurbsys.2020.101504

80. Teodoru. G. (2022). Restrictions on the sale of agricultural land. Controversies National Law – Union Law (sic). *Perspectives of Law and Public Administration*, *11*(1), 142–156.
81. The Guardian, 29 Sept 2021, "*Berlin's vote to take properties from big landlords could be a watershed moment".* https://www.theguardian.com/commentisfree/2021/sep/29/berlin-vote-landlords-referendum-corporate
82. The Guardian, 9 Sept 2021. "*Netherlands proposes radical plans to cut livestock numbers by almost a third."* https://www.theguardian.com/environment/2021/sep/09/netherlands-proposes-radical-plans-to-cut-livestock-numbers-by-almost-a-third
83. *The public interest test in FOISA Briefing*. (n.d.).
84. Trykhlib, K. (2020). The Principle of Proportionality in the Jurisprudence of the European Court of the Human Rights. *EU 2020 – Lessons from the Past and Solutions for the Future*, *4*. https://doi.org/10.25234/eclic/11899
85. van Aaken, A. (2017). Direct expropriation: Multi-layered legal protection in Europe. In *Eminent Domain: A Comparative Perspective*. https://doi.org/10.1017/9781316822685.004
86. van der Schyff, G. (2013). Interpreting the protection guaranteed by two-stage rights in the European Convention on Human Rights. In *Shaping rights in the ECHR*.
87. van Erp, S. (2006). Comparative Property Law. In *The Oxford Handbook of Comparative Law*. Oxford University Press.
88. Verbist, Stijn, (2015) "Expropriation Law in Belgium" in Sluysmans, J. et al. (eds.), (2015). *Expropriation law in Europe.* Deventer: Wolters Kluwer.
89. Viesturs, J. et al. (2017) Arguments Used for Restricting International Real Property Transactions: Case Study of Latvia. *Baltic journal of real estate economics and construction management* 5.1: 62–75.
90. von Thomas Buomberger. (2018). *"Überfremdung": History of a Swiss term*. Blogpost (in German); https://blog.tagesanzeiger.ch/historyreloaded/index.php/2616/ueberfremdung-geschichte-eines-schweizer-begriffs/
91. Wightman, A. 2013. The Poor had no Lawyers: Who owns Scotland and how they got it. Birlinn, Edinburgh. 448 pp.
92. Xhafaj, J. (2017). *The impact of public interest in the information privacy: Analyze of the ECHR Decisions*. https://doi.org/10.33107/ubt-ic.2017.216
93. Xu, T. (2019). A law-and-community approach to compensation for takings of property under the European Convention on Human Rights. In *Legal Studies* (Vol. 39, Issue 3). https://doi.org/10.1017/lst.2018.26

Appendix A: Article 1 Protocol 1 of the European Convention on Human Rights Complaints by Country

(Accurate as of Aug 2022)

Table 1: Number of Cases where A1P1 complaint made and Number of Cases where A1P1 violation found

Country	Number of Cases where A1P1 complaint made	Number of Cases where A1P1 violation found
Albania	15	10
Armenia	20	16
Austria	23	7
Azerbaijan	21	13
Belgium	8	2
Bosnia and Herzegovina	21	16
Bulgaria	97	58
Croatia	55	29
Cyprus	11	2
Czech Republic	28	4
Denmark	1	1
Estonia	1	1
Finland	7	0
France	64	7

Country	Cases where A1P1 complaint made	Cases where A1P1 violation found
Georgia	12	2
Germany	16	3
Greece	142	22
Hungary	33	14
Iceland	1	0
Ireland	3	1
Italy	504	55
Latvia	10	5
Lithuania	38	21
Luxembourg	3	0
Malta	35	24
Republic of Moldova	94	29
Montenegro	6	4
Netherlands	8	1
North Macedonia	17	10
Norway	1	1
Poland	80	34

Country	Cases where A1P1 complaint made	Cases where A1P1 violation found
Portugal	48	22
Romania	435	209
Russia	480	234
San Marino	2	0
Serbia	34	23
Slovakia	29	11
Slovenia	16	9
Spain	10	3
Sweden	15	3
Turkey	684	156
Ukraine	323	121
UK	86	39

Appendix B: European Convention on Human Rights Cases Reviewed

Land Restrictions (part 3) Case Study European Convention on Human Rights Cases Reviewed:

France:

- Affaire Hentrich c. France App 13616/88 - 1994.
- Affaire Aycaguer c. France 8806/12 - 2017.
- Affaire R.P. v. France App 10271/02 - 2010.
- Affaire Pascaud c. France 19535/08 - 2012.
- L.H. v. France App 13616/88.
- H. v. France App 13616/88.
- Fernandez et Autres v. France App 28440/05.

Finland:

- Åland (Finland):
- Ekholm v. Finland 68050/01.
- Sundqvist v Finland 75602/01.
- Bäckström v. Finland 27894/95.
- Case of Darby v Sweden 11581/85.

- **Switzerland:**
- J.R. v Switzerland 12929/87.
- M. E. and B. v. Switzerland 16712/90.
- Heinz v The contracting states party to the European Patent Convention… 21090/92.
- Hug-Vonwald v. Switzerland 18051/91 19115/91.
- Ocelot S.A. v Switzerland 20873/92. Available only in French.
- D.B. & Ma.B v Switzerland 58252/15. Available only in French.
- Athletics South Africa v. Switzerland 17670/21.
- Valcke v. Switzerland 57476/19. Available only in French.

Appendix C: Article 1 Protocol 1 of the European Convention on Human Rights Relevant Cases

A1P1 caselaw refers to decisions of the European Court of Human Rights in which the court considers the meaning of Article 1 Protocol 1 of the European Convention on Human Rights (‘the right to property’).

ECHR Land cases:

1. *Sporrong and Lönnroth v. Sweden.* ECHR, 1982. Application no. 7151/75; 7152/75.
2. *"Relatıng to Certaın Aspects of the Laws on the Use of Languages in Educatıon in Belgıum" V. Belgıum (Merıts).* ECHR 2004. Applications nos. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64.
3. *Öneryıldız V. Turkey.* ECHR 2004. Applications nos. 48939/99.
4. *Affaıre I.R.S. Et Autres C. Turquıe.* ECHR 2004. Applications nos. 26338/95.
5. *Affaire Göksel Tütün Ticaret Ve Sanayi A.Ş. C. Turquıe.* ECHR 2004. Applications nos.32600/03.
6. *Bronıowskı v. Poland.* ECHR. 2005a. Case of. Applications nos: 31443/96.
7. *Jahn and Others v. Germany.* ECHR. 2005b. Applications nos.46720/99, 72203/01 and 72552/01.
8. *Hakan Arı v. Turkey.* ECHR 2011. Applications no:13331/07.
9. *Ziya Çevik v. Turkey.* ECHR 2011. Ziya Çevik V. Turkey. Applications no: 19145/08.
10. *Chassagnouao v France*[GC] ECHR 1999-III, paras 75 et seq.
11. *Schneiderv Luxembourg* Applications no 2113/04 (ECtHR, 10 July 2007), paras 45 et seq.
12. *Herrmann v Germany* [GC] Applications no 9300/07 (ECtHR, 26 June 2012), paras 80 et seq.
13. Ivanova and Cherkezov v Bulgaria, App no 46577/15 (ECtHR 21 April 2016)
14. Malfatto and Mieille v France, App no 40886/06 (ECtHR 6 October 2016)
15. Kristiana Ltd v Lithuania, App no 36184/13 (ECtHR 6 February 2018)
16. Yesil and Others and Danyanikli v Turkey, App nos 26608/07 and 328/08 (ECtHR 4 September 2018 (dec))
17. Hüseyin Kaplan v Turkey, App no 24508/09 (ECtHR 1 October 2013)
18. Bittó and Others v Slovakia, App no 30255/09 (ECtHR 28 January 2014)
19. Volchkova and Mironov v Russia, App nos 45668/05 and 2292/06 (ECtHR 28 March 2017)
20. Zelenchuk and Tsytsyura v Ukraine, App nos 846/16 en 1075/16 (ECtHR 22 May 2018)
21. Kaynar and Others v Turkey, App no 21104/06 (ECtHR 7 May 2019)
22. Semenov v Russia, App no 17254/15 (ECtHR 16 March 2021)
23. East/West Alliance Limited v Ukraine, App no 19336/04 (ECtHR 23 January 2014)

EHCR Public Interest Cases:

1. *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 at §§8-12.
2. Lord Reid in *Brutus v Cozens* [1973] AC 854 at p861C-H.
3. *Pairc Crofters Limited v The Scottish Ministers* 2013 SLT 308 (First Division)
4. *Regina (Lancashire County Council) v Secretary of State for the Environment, Food and Rural Affairs* [2020] 2 WLR 1
5. *R (on the application of Munjaz) v Mersey Care NHS Trust* [2016] 2 AC 148
6. *R (on the application of X) v Tower Hamlets LBC* [2013] 3 All ER 157
7. *Regina (Purdy) v Director of Public Prosecutions* [2010] AC 345
8. *R (on the application of Veolia ES Landfill Ltd) v Revenue and Customs Commissioners* [2016] EWHC 1880 (Admin)
9. *Jones v Commonwealth of Australia* (1963) 109 CLR 475 (High Court of Australia)
10. *Nagy v Hungary* (app. no. 53080/13) Grand Chamber 13 December 2016 at §113
11. *Prest v Secretary of State for Wales* [1983] RVR 11
12. *James and others v United Kingdom* (1986) 8 EHRR 123
13. *A v Secretary of State for the Home Department* [2005] 2AC 68 at §§113-114 & 131 per Lord Hope of Craighead and §176 per Lord Rodger of Earlsferry
14. *Axa General Insurance Ltd v Lord Advocate* 2012 SC (UKSC) 122 at §§32-33 per Lord Hope of Craighead and at §131 per Lord Reed.
15. *Lithgow and others v United Kingdom* (1986) 8 EHRR 329
16. *Lekic v Slovenia* (2018) 67 EHRR 10
17. *Gauci v Malta* (2011) 52 EHRR 25
18. *Pinchova and Pinc v The Czech Republic* (app. no. 36548/97; 5 February 2003) at §51
19. *Zvolský and Zvolská v. the Czech Republic* (dec.), no. 46129/99, 11 December 2001
20. *Vassallo v Malta* (app. no. 57862/09) 11 October 2011 at §§40-49
21. *Paolini v San Marino* 13 July 2004, ECHR 2004-VII
22. *R (on the application of Sainsbury's Supermarkets Ltd) v Wolverhampton City Council* [2011] 1 AC 437 at §81
23. *Mellacher v Austria* (1990) 12 EHRR 391
24. *Lindheim and others v Norway* (app. no. 13221/08; 22 October 2012)
25. *Salvesen v Riddell* 2013 SC (UKSC) 236
26. *Hutten-Czapska v Poland* (2007) 45 EHRR 4.
27. *R (on the application of Lumsdon) v Legal Services Board* [2016] AC 697 per Lord Reed and Lord Toulson at §34.
28. *Mellat v Her Majesty's Treasury (No.2)* [2014] AC 700 per Lord Sumption at §20
29. *Lithgow and others v United Kingdom* (1986) 8 EHRR 329 at §121
30. *Jahn v Germany* (2006) 42 EHRR 49
31. *Hakansson v Sweden* (1990) 13 EHRR 1
32. *Hentrich v France* (1994) 18 EHRR 440

33. J.A. Pye (Oxford) Ltd and v the United Kingdom, App no 44302/02 (ECtHR (GC) 30 August 2007)
34. Some cases on restitution of property and ‘specially protected tenancy’ cases (perhaps not directly relevant, but the cases mentioned may be interesting because of the Court’s line of reasoning):
35. Vikentijevik v FYR Macedonia, App no 50179/07 (ECtHR 6 February)
36. Berger-Krall and Others v Slovenia, App no 14717/04 (ECtHR 12 June 2014)
37. Perhaps interesting in light of the ‘public interest’ test (the measure was considered to serve a legitimate public interest, but it was not held to be of great weight in the eventual balancing exercise):
38. Bradshaw and Others v Malta, App no 37121/15 (ECtHR 23 October 2018)

Appendix D: Case Studies

Belgium

Status:

- Expropriation of real estate is possible only for reasons of public interest. There are strict criteria that need to be fulfilled in the relevant procedures. There is a 'normal procedure' and an 'urgent procedure' before the civil courts, that is most commonly used), each procedure involves compensation for the owner.

- New Expropriation Decree passed by the Flemish Parliament on 15 February 2017, entered into force on 1 January 2018, for lack of implementing rules. On 27 October 2017 the Flemish Government eventually adopted the implementing decree governing a few practical arrangements of the Expropriation Decree.

Legal basis:

- Article 16, Belgian Constitution (previously Article 11 of the Belgian Constitution 1831;
    - *"No one shall be deprived of his property except for public necessity, in the cases and in the manner defined by law and on condition that the owner shall have been previously and equitably indemnified."*
- New Expropriation Decree 2017 for the Flemish Regions.

Grounds:

- The requirements for expropriation are:
    - The objective of the expropriation shall be of common interest (and can only pursue private interests on a secondary level)
    - The necessity of the expropriation: the objective of common interest can only be met through the expropriation of that specific property
    - Expropriation is only possible in exchange for prior and fair indemnification
    - The expropriating authority shall indicate on what legal basis the expropriation procedure is initiated
- All four conditions must be met.
    - Implicit fifth condition, the expropriation must be necessary.

- The new Expropriation Decree 2017 (for Flemish Regions only) contains new clauses with regard to the expropriation procedure:

    - The Decree expressly provides that public authorities can also expropriate rights in rem other than ownership (for ex. the right of way) relating to an immovable property
    - The right to submit a request for 'self-implementation' is expressly provided by the Decree. After all, if the objective of the expropriation

can be met by the owner himself and provided the owner is able and willing to meet this objective in the way the government had in mind, there is no need for expropriation. To that end, the owner needs to submit a “request for self-implementation” to the public authorities
    - Whereas in the past, municipalities and provinces used an implicit legal basis to proceed with expropriation, the Expropriation Decree now provides a general habilitation for municipalities and provinces, just like it does for the Flemish Government. To put it in other words, they can proceed with expropriation in those cases where they believe expropriation is required to elaborate infrastructure or policies with regard to municipal and provincial matters respectively
    - The Expropriation Decree provides an obligation to negotiate. The expropriating authority always needs to make a (demonstrable) attempt first in order to acquire the immovable property amicably. Expropriation is (nothing but) an ultimum remedium
    - The Expropriation Decree provides an enforceable acquisition of the non-expropriated part, under certain conditions
    - The Decree expressly provides a right of retrocession. Such a right can be exercised if the expropriated property is not used for the purpose it was initially expropriated for. In principle, it is up to the expropriating authority to notify the expropriated party of this right. However, if the project prompting the expropriation has not started within a five-year term, the right of retrocession will apply in any case
    - There will be a digital expropriation exchange platform on which the entire digital file can be consulted electronically, including all documents and all data on the procedure, and on which these documents can be exchanged.

Compensation:

- Just and previous compensation (previous meaning that the expropriating administration cannot take possession of the property before having paid (part of) the compensation.)
- All damage and disadvantage suffered by the previous owner must be compensated. Previous owners financial situation must be restored. The value of the expropriated good must be evaluated (at ‘purchase value’) and then a so-called reinvestment-compensation will be calculated on this value, to cover the cost of purchasing an equivalent property. In addition the loss of all rights of use has to be compensated, as well as the loss of any personal and economic benefits.
- If the expropriation intends to realise a spatial plan neither the gains nor the losses generated by the change in land use intended by the spatial plan should be taken into account. E.g. if a plot of agricultural land is changed to housing land, the previous owner will receive compensation based on the value of the agricultural land and not on the value of building land. - ‘Planological neutrality.’

Jurisprudence of Significance:

- Belgium has been involved in ECHR litigation concerning complaints re A1P1 but no cases have involved state acquisitions of land or the expropriation rules.

Notes:

New legislation from federal, regional Flemish Parliament.

Key refs:

DLA Piper, 2017, Bob Martens, The Flemish Expropriation Decree: Ready for take-off?; https://www.dlapiper.com/en/belgium/insights/publications/2017/12/the-flemish-expropriation-decree/

Bulgaria

Status:

- Expropriation is permitted in accordance with the constitution subject to standard conditions.

Legal basis:

- Article 17, section 5, Constitution 1991.
- Same basis as the first Bulgarian constitution in 1879.

Grounds:

- Art 15, s. 5, Constitution 1991:
  - Pursuance of statute law
  - Necessary (state and /or 'municipal' needs cannot be met otherwise)
  - After a prior and equivalent compensation (meaning previous and just).

Compensation:

- The State Ownership Act and Municipal Ownership Act provide for two types of compensation: monetary (cash) compensation and property compensation.
- Monetary compensation is determined on the basis of existing use and condition and on market price.
- Only the owner is entitled to compensation. Other persons, including users without formal title of ownership such as possessors or holders within the meaning of article 68 and article 69 of the Ownership Act do not have rights to indemnification.

Jurisprudence of Significance:

Bulgaria has been brought before the ECtHR on 97 cases relating to the A1P1. In 58 of those cases the state has been found to be in violation of the ECHR. Some examples include:

- *Kehaya and others v Bulgaria App nos 47797/99 and 68698/01- 2007.* This ECtHR ruled that deprivation of agricultural property was unlawful due to lack of legal certainty and inadequate compensation. In the absence of a developed market of agricultural land in the area, the price fixed by Bulgarian legislation for tax purposes was used.

- *Decheva and others v Bulgaria App no 43071/06 – 2012.* The ECtHR ruled that lack of legal certainty (conflicting internal judicial decisions) led to violations of Art 6 (1) and A1P1. Public interest cannot override legal certainty.

- *Osman v Bulgaria App No 43233/98 – 2006.* The ECtHR ruled that police violence when evicting without an eviction order amounted to A1P1 and Art 3 violations.

Notes:

- The Bulgarian Parliament approved an amendment of the State Property Act and the Municipal Property Act in 2010 so that strategic projects could obtain a preferential status of a 'site of national significance', which entitles it to a preferential expediated expropriation regime. In 2013 the Bulgarian Constitutional Court revoked the preferential regime as unconstitutional after a expropriated owner.

Key Refs: https://www.echr.coe.int/Documents/CP_Bulgaria_ENG.pdf

Czech Republic

Status:

- Land acquisitions by the state are lawful and in accordance with the Constitution under standard conditions.
- Land acquisition rules revised in 2013 following ECtHR jurisprudence to tighten up rules for compensation.

Legal Basis:

- Constitutional Law No 1/1993 Sb., Constitution of the Czech Republic, Article 11:
- '*Everyone has a right to own property, the right of ownership has the same content and protection for every owner.'*

- Expropriation Act No186 /2006 Sb. Newly regulates expropriating rights towards land and real estates, formulated by both the Ministry of Regional Development and the Ministry of Justice.

Grounds for acquisition /expropriations:

- Article 11, Section 4, CZ Constitution; '*the expropriation or limitation of the property right is possible in the public interest, on the basis of law and for compensation.'*

- The requirements for expropriation are:
  - a legal purpose of the expropriation, which is stated in special acts;
  - a public interest;
  - conformity with the aims of landscape planning;
  - subsidiarity – it can be used only in case the aim cannot be achieved in any other way;
  - indispensable extent – it can be used only to the extent necessary to achieve the purpose of the expropriation and
  - a reasonable compensation.

All these terns must be fulfilled simultaneously.

Compensation Procedure:

- General principle of adequate and just compensation at market value or above on existing land use.

- Valuation does not take future purposes or sentimental value into consideration.

- 2013 regulation (ordinance no. 414/2013 Sb.) sets out all mathematical formulas and methods for determining prices.

- Until 2013, the price of the land could change in connection with its future purpose but CZ Supreme Court stated otherwise in Supreme Administrative Court 7 AS 174/2014 - 44 of 23 October 2014. Ruled that the court of appeal cannot change the decision about compensation to the detriment of the expropriated party or the third persons.

Jurisprudence of Significance:

- Pešková v the Czech Republic (App non 22186/03). The ECtHR found that the Czech government had breached A1P1 when the compensation provided to the expropriated party did not reflect the market price of the real estate at the time the property was expropriated. Consequently rules of compensation revised in 2013 legislation.

- Malhous v CZ App no 33071/96, (ECt HR, 13 Dec 2000).

- Harrach v. CZ App no 77532 /01 (ECtHR 18 May 2004)

- Žáková v. CZ App no 2000/09 (ECtHR, 20 January 2014).

Notes:
The European Court of Human Rights gives public interest examples in the above cases.

Germany

Status:

- Expropriation is possible but only where specific legislation or an ordinance related to that legislation permits it. Expropriation is only allowed when it is necessary in the public interest. The state must pay compensation to the relevant party.

- In Berlin, some political parties are discussing the expropriation of housing space due to constantly rising rents.

Legal basis:

- Article 14, German constitution – Grundgesetz – Basic Law for the Federal Republic of Germany:
  - “Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.
  - Property entails obligations. Its use shall also serve the public good.
  - Grounds for acquisition /expropriations:
- Article 14, German constitution – Grundgesetz – Basic Law for the Federal Republic of Germany:
  - Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts.

Compensation:

- Ss. 95 .1 BauGB
  - Compensation for the loss is based on market value at the time of expropriation. This is usually established through price comparison.
  - The value is dependent on the location, size, shape and infrastructure provision.
- Ordinance for the Establishment of Property Values (Immobilienwertermittlungsverordnung, "ImmoWe”tV") sets out (optional) valuation procedures to assess comparative, capitalised and intrinsic values.

Jurisprudence of Significance:

- Hermann v Germany App no 9300/07 (ECtHR, 26 June 2012). The ECtHR found that an obligation to allow hunting on a piece of land was a violation of A1P1 as the owner objected to hunting on ethical grounds. The aims of the German hunting jurisdiction were to preserve a healthy and biodiverse fauna and regional culture. The Court held that the fair balance between the protection of property rights and the public interest requirements was disturbed and an unreasonable burden was placed on the property owner. Consequently, German law (the Federal Hunting Act, Bundesjagdgesetz, 2013) was updated to enable landowners who object to hunting on ethical grounds to have their interests considered as part of an assessment of all relevant public interests and personal interests.

Notes:
Distinctions are made on land types; agricultural and forestry; greenfield sites where the property market is expecting development in the near future; greenfield sites that are intended for construction but do not yet have any infrastructure; building land and land that already has infrastructure and can be used for building.

Key Refs:

- Palmstorfer, N. (2017). Austrian Constitutional Court: Vegan Landowner Must Tolerate Hunting on his Property. *ICL Journal*, *11*(1). https://doi.org/10.1515/icl-2017-0004

France

Status:

- Expropriation process considered necessary and just but lengthy. The threat of expropriation can foster friendly acquisitions.

Legal basis:

- Expropriation Code (Code de l'expropriation) 1977.
    - Expropriation must be in the public interest, justified, necessary and proportionate (the infringement of the rights of the person concerned is not disproportionate when set against the project's objective).
- Order of 6 November 2014 creates a specific procedure for the clearance of substandard housing

Compensation:

- At market value to the landowners and affected third parties.

Jurisprudence of Significance:

- Yvon v France App no 44962/98 (ECtHR , 24 April 2003). Violation of Article 6 (1) found as a result of the role of Government Commissioner in proceedings concerning the fixing of compensation for expropriation.

- Led to the standardisation of the role and powers of the government commissioner in assisting the expropriation judge fix the allocated compensation.

- Guillemin v. France App No 19632/92 (ECtHR, 21 February 1997). Violation of Article 6 (1) found as a result of the lengthy expropriation proceedings in France.

Notes: See also France SAFER Model

France SAFER

Status:

- In France, buying and selling farmland is done on a regulated market. Control over this particular market is operated by the SAFER (Société d'aménagement foncier et d'établissement rural– Organism for rural land design and rural settlement). Every French region has its own local SAFER. To achieve its missions, SAFER monitors farm land sales and intervenes when needed to make the sale best suit the objectives of the law. They take action by buying the land and selling it back to the person they choose. Unlike a private seller who will choose the highest bidder, SAFER will sell to the best bidder.

Legal Basis:

- The Safer were created by the Agricultural Orientation Law of August 5, 1960. Their initial objectives were to reorganize farms, as part of the establishment of more productive agriculture, and to settle young people.

- Since its origins, society has evolved, support for sustainable development in agriculture and in the territories is becoming widespread, urbanization is spreading, agricultural land is being used for other purposes and the mission of the Safers is expanding. is expanded.

- The Safer still develop agriculture, but they also protect the environment, landscapes, natural resources such as water and they support local authorities in their land projects.

Grounds:

- To promote the development of financially sustainable farms and to help farmers set up.

- For the purpose of general(public) interest;
  - To maintain the agricultural vocation of a property;
  - To avoid price escalation;
  - To promote local development;
  - To protect the environment.

Compensation:

- Collective agricultural compensation (CCA)
- Decree No. 2016-1168 of August 29, 2016 authorizing the Central Land Development and Rural Establishment Company to exercise the right of first refusal and to benefit from the amicable offer before voluntary adjudication.

Jurisprudence of significance:

- Affaire Hentrich c. France App 13616/88 - 1994.
- Affaire Aycaguer c. France 8806/12 - 2017.
- Affaire R.P. v. France App 10271/02 - 2010.
- Affaire Pascaud c. France 19535/08 - 2012.

Notes: On process, if a farmer wants to sell his land, he can contact the regional SAFER who will give a fair price to the land. Advertising is made by SAFER through the town halls and on a website. Candidates for the purchase have to fill a written submission. A regional Technical Committee (composed by members of the Agriculture Chamber, the majority farmers union, banks and insurance companies, regional authorities and representatives of the State) examine all the projects based on multiple criterias; the local situation, SAFER's missions, the skills of the candidate and the viability of the project. Then they give a recommendation to the Board of Directors who will make the decision. An image visualizing this process is available here (image source: Agriculture and Rural Convention 2020 website. https://www.arc2020.eu/public-land-agencies-is-the-french-safer-safe-for-romania/)

Key refs:

- ARC2020; https://www.arc2020.eu/public-land-agencies-is-the-french-safer-safe-for-romania/
- Website of Société d'aménagement foncier et d'établissement rural; https://www.safer.fr/ in French.
- SAFER Report 2018. "50 Actions des Safers dans nos regions." https://www.safer.fr/app/uploads/2018/10/50-actions.pdf

Netherlands

Status:
Expropriation permitted which clearly differentiated approaches dependent on the nature of the expropriation purpose.

Legal basis:

- Article 14, Constitution, states that expropriation may in principle only take place in the public interest and if compensation has been ensured in advance. Compensation need not be ensured in advance in cases of emergency.
- Extensive jurisprudence by the Dutch Supreme Court.

Grounds:

- Must be in the public interest, have urgency, and necessity.
- There are cases where expropriation requests have been rejected because the expropriation would serve only a public interest.

- Processes vary according to the nature of the expropriation purpose. E.g. expropriation for: roads, bridges, verges, ditches and canals; for drinking water companies or waste removal; for the extraction of surface minerals; for the execution of spatial plans, for public housing, for public order, and for the enforcement of the Opium Act; for land reorganisation.

Compensation:

- Compensation can extend to third parties who made be disadvantaged by the land acquisition.
- The Dutch Expropriation Act does not set out rules for the determination of the actual value. The Supreme Court has often reiterated that the judge in an expropriation case is not just obliged to determine the compensation independently, but is also free in his choice for the valuation method that is more suitable to that particular case. The comparative method and the residual method (looks at the new use value and subtracts development costs) are the two most used valuation methods.

Jurisprudence of Significance:

- No ECHR jurisprudence concerning expropriations.

Key references:

- Holtslag-Broekhof, S. (2018). Urban land readjustment: Necessary for effective urban renewal? Analysing the Dutch quest for new legislation. *Land Use Policy*, *77*. https://doi.org/10.1016/j.landusepol.2017.07.062
- Holtslag-Broekhof, S., Beunen, R., Marwijk, R. van, & Wiskerke, J. S. C. (2018). Exploring the valuation of compulsory purchase compensation. *Journal of European Real Estate Research*, *11*(2). https://doi.org/10.1108/JERER-04-2016-0018

social research

The views expressed in this report are those of the researcher and do not necessarily represent those of the Scottish Government or Scottish Ministers.

This document is also available from our website at www.gov.scot.
ISBN: 978-1-80525-308-2

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for
the Scottish Government
by APS Group Scotland
PPDAS1206762 (12/22)
Published by
the Scottish Government,
December 2022

GSR
GOVERNMENT SOCIAL RESEARCH
Social Science in Government

Social Research series
ISSN 2045-6964
ISBN 978-1-80525-308-2

Web Publication
www.gov.scot/socialresearch

PPDAS1206762 (12/22)