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The Law on Liability for Reduced Property Values Caused by Planning Decisions in the Federal Republic of Germany

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THE LAW ON LIABILITY FOR REDUCED PROPERTY VALUES CAUSED BY PLANNING DECISIONS IN THE FEDERAL REPUBLIC OF GERMANY

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I. INTRODUCTION

The rights to compensation for reduced property values caused by planning decisions have been part of German federal law since 1960. The only important amendment came in 1976, when the time period for compensation rights, which previously had no time limit, was restricted. By contrast, the financial benefits of planning usually remain with the landowners.

There are two major questions in German law concerning injuries caused by planning decisions. First, what rights does a landowner have when private property, zoned by a binding land-use plan for a private-type land use, is subsequently designated for public purposes? Second, what rights does a landowner have when a planning authority revises a permitted private-type land-use category to a less valuable category? This Article first looks at these two main questions. It then proceeds to analyze the law regarding other types of planning decisions that may also have negative effects on property values, such as temporary moratoria.

II. CONSTITUTIONAL ASPECTS

The right to property ownership in Germany is guaranteed in article 14 of the Basic Law (*Grundgesetz*), which states:

> (1) Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.
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> (2) Property entails obligations. Its use shall also serve the public good.

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> (3) 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 respecting the amount of compensation, recourse may be had to the ordinary courts.[1]

Thus, expropriation is only possible when the corresponding compensation is regulated in the same law that enables the expropriation. Not every encroachment on property is classified as expropriation. The content and limits of property rights may be determined by law, and in that case, the Basic Law is silent about compensation rights. This Article discusses the extent of these rights as determined by specific laws.

The German law of liability for damages caused by planning decisions (*Planungsschadensrecht*) is concerned with compensating property owners for the effects of (lawful) interferences by public authorities with their property rights. In German legal doctrine, it is irrelevant whether liability for damages is caused by an "expropriation" decision within the meaning of article 14 of the Basic Law or by a regulation that restricts property rights. In the end, they are always a form of property restriction (unless the municipality accepts a transfer of title claim).

The law of liability for injuries caused by planning decisions is determined by sections 39 to 44 of the Federal Building Code (*Baugesetzbuch*). This form of liability is distinct from claims for damages under civil law for unlawful action, whether by a private person (such as damage due to negligence) or by a government agency.

When a municipality's decision triggers claims for compensation for its urban planning decisions, the municipality usually has not done anything unlawful. Rather, the damage is an unavoidable consequence of lawful actions that serve the public interest and lead to economic losses for a few landowners.

Some local politicians, however, do not communicate this situation well. When a municipality awards compensation for damages within the meaning of sections 39 to 44, people often misunderstand this to be equivalent to admitting that the municipality undertook an unlawful action. Thus, compensation claims are often refused on principle. This attitude does not serve the interests of municipal planning. If good

1. Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law] May 23, 1949, Bundesgesetzblatt, Teil I [BGBl. I] at 1, as amended, art. 14 (F.R.G.).

planning demands an action, then municipalities should risk liability for damages. The consequences of these (lawful) actions are regulated in sections 39 to 44 of the Federal Building Code.

III. THE RELATIONSHIP BETWEEN THE TYPE OF PLAN AND DEVELOPMENT RIGHTS

According to the German planning law system, opportunities for development are initiated primarily through preparatory land-use plans ("F-plans"). Each F-plan is prepared for the entire area of a municipality. Subsequent binding land-use plans ("B-plans") are developed out of F-plans.

The F-plan is only binding on the public administration. It does not convey any rights or claims to landowners. For this reason, the opportunities for development expressed in a preparatory land-use plan can be withdrawn without compensation.

A binding land-use plan is a different matter. Once a B-plan comes into force, the binding land-use plan is a rule of law. Owners may rely on these plans and can usually expect to receive building permission. Yet, as we shall see in greater detail below, the right to receive development permission holds only after the necessary local public infrastructure is secured. By contrast, according to section 39 of the Federal Building Code, as soon as a B-plan becomes legally binding, the municipality is liable for the expenses incurred in justifiable reliance on the plan.

A. Withdrawal of the Currently Permitted Land-Use

1. The Rights of Property Owners Whose Properties Have Been Designated for Public Purposes

Section 40 of the Federal Building Code lists fourteen public use categories that explicitly make property owners eligible for compensation.[2] Such public use categories include the designation of land for community use (such as for schools), public thoroughfares, garages and public parking, and government programs designed to protect,

2. Baugesetzbuch [BauGB] [Federal Building Code] June 23, 1960, Bundesgesetzblatt, Teil I [BGBl. I] at 2414, as amended, § 40 (F.R.G.), *available at* Gesetz im Internet, http://bundesrecht.juris.de/bundesrecht/bbaug/gesamt.pdf, *translated in* Federal Building Code, (Baugesetzbuch, BauGB), http://www.iuscomp.org/gla/statutes/BauGB.htm.

conserve, and develop soil, landscapes, and the natural environment ("PCD spaces").[3]

If a binding land-use plan explicitly contains one or more of the public use categories listed in section 40, the municipality will generally try to purchase the relevant property by negotiating with the property owner. If the negotiations prove unsuccessful, the municipality can initiate expropriation procedures.[4]

There are exceptions to this rule, such as the right of a property owner to claim a "transfer of title" in some situations.[5] A property owner has a "transfer of title" claim when a binding land-use plan designates land under a public use category, but the municipality does not actually intend to implement the new public use in the near future.

Normally, when a property is claimed for public purposes, the public agency will take the property from the owner, either by purchase or by expropriation (if there is disagreement). However, there are cases when many years pass between the designation of a B-plan (with the goal of a public purpose) and the actual realization of the public purpose use. These cases occur especially when realization would be expensive for the public budget and the authorities prefer to wait since no one can force the authorities to realize the plan.

A landowner can submit a "transfer of title" claim to the municipality when the landowner can show that the designation or implementation of the binding land-use plan makes it economically unreasonable to continue the existing use of the land. In other words, a transfer of title claim arises only when it is no longer economically acceptable for a landowner to keep a plot of land. Landowners are obliged to keep their properties in the interim if it is reasonable to expect them to do so, such as when a property has tenants who can continue to live there until the start of the public use. In the course of retaining the property, however, an owner may not carry out investments that increase the value of the property unless (1) the public agency agrees, and (2) the owner waives any rights to indemnification for these investments within the scope of his or her future claim for compensation for the expropriation. A landowner in this situation has a transfer of title claim against the administration and may demand that the relevant public authority transfer title and pay compensation.

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3. *Id.*
4. This Article does not focus on expropriation per se.
5. A related American concept is "inverse condemnation."

This situation frequently arises in transport planning, which inherently deals with long-term matters. In this scenario, a binding land-use plan designates land for use as transportation routes; however, the municipality does not intend to implement the plan for at least ten years. On the one hand, affected landowners may not want to retain their properties because they cannot use them in an economically meaningful way. On the other hand, the municipality has no interest in acquiring the land at the present time.

Transfer of title claims also arise in situations when time is a major factor. Consider, for example, a tree nursery that requires trees to be raised for a minimum of six years. If the owner of the tree nursery anticipates that a binding land-use plan will call for the construction of a street in five years, the owner may be left with no meaningful use for the land. At the same time, however, the municipality has no interest in acquiring the land and holding on to it for the next five years. In these types of situations where it is unreasonable for the landowner to retain the land or continue using it as a nursery, the owner may demand that the municipality take over the title to the land.[6]

In some situations, German law may require a private landowner or developer to "counterbalance"[7] incursions of proposed private development into the landscape or environment by dedicating some of the private land to the relevant categories of PCD use. In such cases, a property owner has the right to make a transfer of title claim for land that is now designated as PCD use. However, if the property owner benefits from the designation of the land for environmental mitigation in the other plots of land owned by him, such added value is to be deducted from the compensation received when the title is transferred.[8]

A transfer of title claim partially corresponds to a "right to be expropriated." Through this instrument, municipalities cannot avoid paying compensation. Whenever municipalities fail to voluntary satisfy the owner's transfer of title claim, expropriation regulations apply, especially those governing compensation.

Take, for example, the case in which a municipality designates land for a major transportation artery directly adjoining private property. Assume that the municipality refuses to officially assign a section 40 public use

6. For a list of the requirements of unacceptability, see Bundesgerichtshof [BGH] [Federal Court of Justice] Dec. 13, 1984, 1985 Neue Juristische Wochenschrift [NJW] 1781 (1985) (F.R.G.).

7. Note that Americans may call allotments "mitigation."

8. BGH Oct. 9, 1997, 1998 Zeitschrift für deutsches und internationales Bau- und Vergaberecht [ZfBR] 42 (1998) (F.R.G.).

category to the affected property, and considerable traffic noise accompanies the heavily used roadway. Under German law, municipalities can deal with the effect of traffic noise in one of two ways: (1) reduce the noise to an acceptable level through planning arrangements, such as the installation of noise barriers, or (2) "directly expropriate" the land by approving a section 40 designation in a binding land-use plan. The latter would entitle the landowner to compensation.

Ultimately, German law makes it unlawful for a municipality to cause an unacceptable negative impact on private property by designating it for a public use category and thereby causing an "indirect expropriation." Otherwise, all municipalities would use this method, and landowners would have no legally regulated claim for compensation.[9]

When a binding land-use plan designates for public use a plot of land with existing buildings, the municipality may not issue a permit to construct additional buildings or expand existing plants unless the owner waives, in writing, any claim on behalf of himself and his heirs to compensation for the added value of the additional structures.[10] However, in reality, landowners rarely issue such waivers because they rarely wish to make investments in such properties. When re-designation to public use severely limits or effectively terminates the use of the existing structures, the owner may demand a transfer of title. In cases where the previous use of the property has been economically impaired, but the owner still has reasonable use of the property, the owner is entitled to appropriate financial compensation.

Section 41 of the Federal Building Code provides an avenue to financial compensation that is independent from the transfer of title claim. According to this provision, when a binding land-use plan encumbers privately-owned land by granting walk-through or driving rights to the public (equivalent to an easement), the landowner may seek compensation. Compensation should be granted only if the drop in the value of the property is significant or the expenditures incurred go beyond the level required for "proper management of the property." However, no compensation is to be paid for foliage that merely fulfills the requirements

9. *See* Bundesverwaltungsgericht [BVerwG] [Highest Administrative Court], 47 Entscheidungen des Bundesverwaltungsgerichts [BVerwGE] 144 (F.R.G.).

10. Baugesetzbuch [BauGB] [Federal Building Code] June 23, 1960, Bundesgesetzblatt, Teil I [BGBl. I] at 2414, as amended, § 32 (F.R.G.), *available at* Gesetz im Internet, http://bundesrecht.juris.de/bundesrecht/bbaug/gesamt.pdf, *translated in* Federal Building Code, (Baugesetzbuch, BauGB), http://www.iuscomp.org/gla/statutes/BauGB.htm.

set by building laws to horticulturally manage the undeveloped areas of a building property.

When a municipality rezones property from a private-type use to a public use category, the seven-year time limit for private-type use categories[11] does not apply to public use designations. Thus, even if land has been designated for (private-type) development for more than seven years and the landowner has not yet utilized the development rights, when a municipality revokes the original designation, it must compensate the landowner for the full difference in value between the former permitted use and the new public use.[12]

2. The Rights of Landowners When a Private-Type Land Use Is "Downzoned"

We turn now to the law of compensation pertaining to regulations that limit the private-type use categories that property owners may undertake on their private land. First, we consider the situation in which an area has already been developed and the municipality wishes to change the permitted use by amending a binding land-use plan or approving a new one. This type of situation can occur, for example, when a binding land-use plan converts land from a previously mixed residential and commercial use to a purely residential use, or when land that was first used for single-family residential estates is re-designated for industrial use.

Before 1976, whenever private property was downzoned, the affected property owner always had a valid claim for compensation without any time restrictions. In 1976, the right to claim compensation was limited by an amendment to the Federal Building Code, which introduced a seven-year "period of liability for plans." The amendment's provisions required a municipality to draft a binding land-use plan that contained an explicit guarantee to affected landowners: landowners had the right to develop their properties in accordance with the binding land-use plan's designation for the seven-year period following the date when the plan came into effect. The amendment further specified that if a municipality made any changes to the plan during this seven-year period, the municipality had to compensate the relevant owners for the full depreciation in property values caused by the change in the plan.

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11. *See infra* Part III.A.2.

12. Bundesgerichtshof [BGH] [Federal Court of Justice] May 6, 1999, 1999 Zeitschrift für deutsches und internationales Bau- und Vergaberecht [ZfBR] 273 (1999) (F.R.G.), *confirmed by* BGH July 11, 2002, 2002 ZfBR 799 (2002) (F.R.G.).

However, once the seven-year period passed and property owners still had not yet implemented their development rights, a municipality, under certain conditions, may alter the binding land-use plan without being liable for compensating the property owners. The two conditions are that the change in the binding land-use plan downgrades the permitted use of the property to a less lucrative private-use category, and this less lucrative private-use category accords with the existing type of development (that is, there is no need to phase out the existing use). When these conditions are not met, municipalities must fully compensate property owners.

As noted above, when the property is designated for a public rather than a private use, a municipality must fully compensate the affected property owner. The amount of compensation equals the value that the property would have attained with the private, permitted use regardless of how long this use had been permissible. Similarly, when the second condition is not met and the property is downzoned below its existing use, the municipality must fully compensate the property owner even after the seven-year period has passed.

Property owners may also demand compensation in extreme cases when the opportunity to use the land as specified by the modified land-use plan is significantly limited or nonexistent. In less serious cases, the affected property owner can demand compensation equal to the difference between the value that the property would have attained if the plan's designation had corresponded to the property's existing use, and the value of the property under the new land-use designation. Note, however, that the law protects the existing use even after any redesignation, and landowners are not obliged to terminate the previously permitted use, except in cases when the previously permitted use becomes seriously dangerous for the new and legal surrounding users.

For example, suppose a property that had originally been used for industrial purposes is downzoned to "allotment plots."[13] Suppose that the seven-year period of liability has expired and that the value of the property dropped from an original figure of 80 € to 50 €. Even though seven years have passed, the municipality must pay the owner the 30 € difference in value as compensation for the injury sustained by the planning decision because the *existing* use is of higher value.

Special (but similar) principles apply to built-up areas. This situation occurs where, for several years, landowners in an area consistently request

13. Allotments are tiny plots on the outskirts of many European cities. They are available to city residents who wish to rent or buy them for gardening.

building permits that would grant less than either the maximum permitted development rights or the most lucrative land-use. In such a case, which the Code calls a "built-up" area, special rules apply as specified by section 34.

For example, consider an area in a city that has been zoned for mixed residential and commercial use. However, the property owners are interested in developing only residential buildings. In this situation, the municipality may, after a period of seven years following this development, change the land-use designation to residential only, without having to pay compensation. Henceforth, only residential development will be permitted.[14] Note, however, that if the municipality wants to avoid paying compensation, it cannot designate a use category below the predominant existing level–in this example, residential use. Thus, according to section 34, where built-up areas are concerned, municipalities have the flexibility to modify land-use classifications at any time without having to pay damages, so long as the change does not deviate significantly from the existing built-up land use.

We turn our attention now to undeveloped areas. Here, the period of liability of a land-use plan becomes highly relevant. The law distinguishes between areas within plans where building permits may be issued immediately, and those areas where some prior conditions, as set out in section 30, have not yet been met (such as infrastructure availability). In the latter case, the municipality may refuse a building permit even though it accords with the plan's designation.

We will first look at situations where the conditions of section 30 are met. In such cases, property owners have seven years to develop their properties. Those who do not develop during this period must take the risk that the municipality may one day revise the permitted land-use without being liable for a compensation claim.

For example, consider a land-use plan that designates a particular area for industrial use. The landowners do not make use of the development rights for seven years following the enactment of the land-use plan, and use the site for allotment plots. Given this situation, once the land-use plan's period of liability expires, the municipality is free to cancel the industrial use category and designate the area as a permanent allotment site, without having to pay compensation to the property owners.

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14. *See* BGH ZfBR 87 (107) (F.R.G.). The Federal Court of Justice discussed the approval of residential buildings that advanced on a commercial area and concluded that no rights exist for the tradesmen in section 42 of the Federal Building Code. *Id*. *See also* BGH 1988 ZfBR 145 (1988).

Here is another example. An owner has several adjoining plots of land designated by a land-use plan for residential development. The property owner chooses to build a single house and use the other plots as an enlarged garden. After seven years, the municipality may change the land-use category of these undeveloped plots from "residential" to "private green spaces," thus prohibiting construction in the future. Even though this municipal action prohibits the owner from using these plots for development, thereby reducing the plots' economic value, the property owner has no claim for compensation. However, while the municipality may not be liable for compensation, it has to be careful that the downzoning decision is not challenged on substantive grounds. The downzoning of the vacant plots should reflect solid town-planning principles and fit well within the broader planning of the city. For example, if there is significant demand for residential plots within the municipality, yet new areas are designated for residential use, the municipality may have to justify why it has reclassified formerly residential plots into designated private gardens. This type of decision might be ruled by the courts to constitute a "balancing error" and may thus lead to invalidation of the plan.

Because municipalities may only limit previously permitted uses when they are justified by good town-planning principles, municipalities in practice do not hasten to downzone land even after the seven-year period has elapsed. Town planning should be predominantly concerned with long-term matters; relatively short-term redesignation is generally avoided.[15] The mere expiration of a seven-year deadline is not, by itself, a sufficient basis for making town-planning decisions that change land uses.[16]

According to a recent ruling by the German Federal Court,[17] the rule about compensation rights is different when an undeveloped enclave of land that is eligible for private development is redesignated for a *public* land use. For example, in a developed residential neighborhood, there is a vacant plot of land that is also designated for residential use. After the seven-year period elapses, the municipality re-designates that plot as a children's playground or a nursery school. In that situation, the Court has ruled that the municipality nevertheless must pay compensation equal to

15. *See, e.g.*, BGH 1990 ZfBR 298 (1990) (F.R.G.).

16. Oberverwaltungsgericht [OVG] [Administrative Appeals Tribunal] Apr. 5, 2000, 2001 ZfBR 54 (2001) (F.R.G.).

17. *See* Bundesgerichtshof [BGH] [Federal Court of Justice] May 6, 1999, 141 Entscheidungen des Bundesgerichtshofes in Zivilsachen [BGHZ] 319 (F.R.G.).

the full value of the property as residential land, not its value as green space. Property owners in this situation cannot be forced to make special sacrifices for the community. This is a reasonable outcome because the municipality cannot convincingly argue that the area has lost its character as residential development land simply because the municipality acquired a single property for public purposes.

Section 42 of the Federal Building Code, which regulates the period of plan liability, lists a set of exceptions to the compensation rule stated above. When development has been hindered during the seven-year period by circumstances beyond the control of the private owner or developer, that period should be extended. For instance, if a development freeze is imposed on a property during the seven-year period, the length of the development freeze must be added to the seven-year period. Furthermore, when a municipality's wrongful negligence results in a failure to grant building permission before the seven-year period has expired, the property owner should be granted the permit or be compensated if the owner applied for building permission sufficiently before the expiration of the seven-year period. Thus, the legislature has attempted to regulate and codify in section 42 all possible scenarios that may arise. Additionally, if an F-plan (a preparatory land-use plan) is revoked or changed and the landowner has relied on it, the landowner cannot use this as a cause for a compensation claim.

3. Compensation for Expenses Incurred While Relying on Government Policy ("Breach of Faith")

When a binding land-use plan is later amended or revoked, an owner who has suffered a direct financial loss by relying on the plan has the right to be indemnified. This right holds regardless of the amount of time that has passed since the plan's approval. For example, he may have commissioned an engineer to test the load-bearing capacity of the ground, or hired an architect to develop ideas for developing the property according to the permitted use. Section 39 of the Federal Building Code provides that, in such circumstances, the owner may demand appropriate financial compensation to the extent that the material investments made have decreased in value. Section 39 also grants the right to claim reimbursement of federal levies paid.

This right to reparation under section 39 does not cover declines in land values or the purchase price of the property; these fall under section 42. Purchasers of expensive building land should protect themselves by

entering into private contracts or by obtaining building permission as soon as possible.

A claim for compensation for reliance on government policy is available only when (1) owners or other persons entitled to exercise usage rights have made preparations for the realization of such uses as provided in the B-plan, and (2) these preparations are made in justifiable reliance on the continuing validity of a legally-binding B-plan. If an owner relies on a plan that later proves to be invalid, the owner cannot base a claim for injury on section 39 of the Federal Building Code. At most, an actionable claim may be found under section 839 of the Civil Code (*Bürgerliches Gesetzbuch*) (BGB) in conjunction with article 34 of the Basic Law (*Grundgesetz*) (GG), which defines misconduct of a public servant.[18]

The right to indemnification for "breach of faith" under section 39 of the Federal Building Code is the "common denominator" of general law on compensation for adverse impact by planning decisions. It is valid both in the area of title transfer claims under section 40, as well as in the area of claims based on the validity of a plan according to section 42. An important distinction of the compensation claim of section 42 (validity of a plan) is that the right to claim indemnification for the costs incurred does not require that the development become permissible after infrastructure is installed. Such claims may be asserted as soon as a B-plan becomes legally-binding. As previously noted, the realization of projects, even within the area of a legally-binding B-plan, only becomes permissible once the local public infrastructure is secured. As long as the local infrastructure is not available, the B-plan can be revoked without incurring compensation claims based on the revocation. However, claims for breach of faith, according to section 39, may be submitted and must be considered and satisfied even during the period of time when infrastructure is not yet available.

4. Revocation of a Valid Building Permit or Denial of a Variance or Exception

Revocation of a valid building permit can lead to a compensation claim. However, the validity of a building permission automatically expires after three years unless it is extended. By contrast, there is no right to compensation for denial of a request for a "dispensation" (exemption or deviation) from the provisions in a binding land-use plan.

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18. *See* BGH June 24, 1982, 84 BHGZ 292 (F.R.G.).

5. Liability for Damages Caused by the Unlawful Performance of Government Duty

The law on compensation for adverse impact caused by planning decisions only regulates the effects of a municipality's lawful planning. In addition, a municipality is also liable for damages when it has unlawfully injured the property or the health of its citizens. For example, if a municipality were to erroneously permit the demolition of a weekend home that had been constructed with building permission, based in the belief that the home was an illegal building, the action would constitute an unlawful injury eligible for compensation, in accordance with section 839 of the Civil Code and article 34 of the Basic Law.

Even if a municipality does not act negligently, an action for compensation may arise due to a "sacrifice in the public interest."[19] A German court has upheld such relief when construction of a new subway line under a shopping street rendered the shops unusable for a long period, resulting in significant sales losses.[20] Even though the municipality did not act negligently—the new subway line was deemed necessary, and the planning decision regarding the line was legal—the court held that the pecuniary damage to the businesses was unlawful. The court stated that the construction had the same effect as a deliberate temporary expropriation. The Federal Court of Justice therefore obligated the party causing the interference to pay compensation under the legal institution of "interference equivalent to expropriation." The Federal Court of Justice held that such claims are based on the legal institution of "sacrifice in the public interest," and owners should be compensated.

B. Temporary Suspension of the Permitted Land Use

1. Development Moratorium for a Period of Several Years

The preparation of a binding land-use plan does not happen overnight. On average, about three years elapse between a municipality's decision to prepare a B-plan and the notification in the official gazette that a B-plan has come into force. While this period can be shortened to just under a year in particularly speedy cases, some plan preparation procedures can

19. This concept derived from the General Law for the Prussian States (*Preußisches Allgemeines Landrecht*) and was afterwards based on common law.

20. 57 BGHZ 359 (365) (F.R.G.); BGH 1980 Neue Juristische Wochenschrift [NJW] 2703 (1980) (F.R.G.); BGH 1983 NJW 1663 (1983) (F.R.G.).

last five years or longer. The biggest risk during the plan preparation procedure is that development or other works that are inconsistent with the future plan are carried out. The municipality fears that landowners, upon learning about the municipality's intention to revise the plan, might hasten to carry out permitted development quickly before the new plan goes into effect. Meanwhile, the municipality cannot refuse a building permit on the basis of the new plan until the plan has come into force. The "development freeze" instrument is designed to deal with such situations. This instrument is set out in sections 14 and 15 of the Federal Building Code.

A municipality is authorized to enact a development "freeze" (formerly called a building prohibition) as soon as it decides to prepare, amend, supplement, or revoke a binding land-use plan. A municipality need not wait until notification of its decision to revise the B-plan; it may adopt the freeze order concurrently with the decision to prepare the new plan.[21] Municipalities are not authorized to stall approval of building permits unless a development freeze has been officially declared.[22] A municipality need not provide much detail in its decision to order the freeze, although its future intentions must already be discernible through the plan amendment procedures.[23] A mere desire by the authorities to prevent a particular project from proceeding is insufficient to justify a freeze.[24] If a municipality intends to institute a fundamental change, the municipality must update its decision to prepare a B-plan or adopt a new decision, and it must also pass an interim development freeze.[25]

The development freeze may prohibit all new development projects in the declared area, or only some specific types of development. The area

21. Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 1989 Zeitschrift für deutsches und internationales Bau- und Vergaberecht [ZfBR] 171 (1989) (F.R.G.).

22. BGH July 12, 2001, 2001 ZfBR 555 (2001) (concerning misconduct in office).

23. *See* Bundesverwaltungsgericht [BVerwG] [Highest Administrative Court] Aug. 10, 1976, 1977 Neue Juristische Wochenschrift [NJW] 400 (1977) (F.R.G.). *See also* Oberverwaltungsgericht [OVG] [Administrative Appeals Tribunal] 1989 Zeitschrift für deutsches und internationales Bau- und Vergaberecht [ZfBR] 77 (1989) (F.R.G.); Verwaltungsgerichtshof [VGH] [Court of Appeals] 1989 ZfBR 172 (1989); Bundesgerichtshof BGH [Federal Court of Justice] Dec. 17, 1981, 1982 NJW 1281 (1982) (following the direction of Feb. 10, 1972, 58 Entscheidungen des Bundesgerichtshofes in Zivilsachen [BGHZ] 125 (128)); BVerwG [Highest Administrative Court] Feb. 3, 1984, 1984 NJW 1473 (1984); 70 Entscheidungen des Bundesverwaltungsgerichts [BVerwGE] 227; BVerwG [Highest Administrative Court] Feb. 19, 2004, 2004 ZfBR 464 (2004) (concerning the relationship between binding land-use plans and development freezes).

24. This is noted explicitly in Bundesverwaltungsgericht [BVerwG] [Highest Administrative Court] 1990 Zeitschrift für deutsches und internationales Bau- und Vergaberecht [ZfBR] 206 (1990) (F.R.G.).

25. *See* Oberverwaltungsgericht [OVG] [Administrative Appeals Tribunal] Oct. 15, 1999, 2000 Zeitschrift für deutsches und internationales Bau- und Vergaberecht [ZfBR] 141 (2000) (finding that a change of planning intentions leads to the invalidity of the development freeze).

designated for the freeze does not have to correspond to the boundaries of the plan, but it generally does. When a freeze is in force, even those types of works that are normally exempt from a permit or do not fall under the category of "construction" are prohibited. For example, the freeze may include clearing a wooded property or excavation.

The building permit authority has the power to permit development only in exceptional cases, where "there is no overriding conflicting public interest," particularly when the project corresponds to the current planning. However, once a building permission has been granted—even in the form of a (binding) preliminary notice—the building permission remains valid throughout the freeze. Only such a permission can satisfy the requirements of planning regulations.[26]

According to section 17(1), the freeze initially lasts for two years. It can be extended twice, for one additional year per extension. The second extension, however, is permitted only when required by "special circumstances." The extension decision must be made before the original freeze has expired.

A municipality is also authorized to re-declare the freeze if the planning procedures are not completed after four years, but it must offer important justifications for the duration of the procedures. If a special justification does not exist, the freeze is unlawful and must be lifted, even if the municipality's interest will be hurt.[27] Since landowners must accept development freezes for four years without compensation, the affected party is eligible to be compensated only for the period beyond this.[28] If the municipality continues a freeze beyond four years, it must compensate the affected parties for pecuniary losses suffered after the four year period has expired. The landowner may claim compensation for the loss of income from rent, lease, or ground income directly caused by the development freeze.[29]

The Administrative Appeals Tribunal in Berlin has held that, under special circumstances, a development freeze may be extended to more

26. BVerwG [Highest Administrative Court] 1984 Neue Juristische Wochenschrift [NJW] 1473 (1984) (F.R.G.).

27. BVerwG 1977 NJW 400 (1977).

28. Feb. 10, 1972, 58 Entscheidungen des Bundesgerichtshofes in Zivilsachen [BGHZ] 124. The municipality subtracts one year from the compensation-free period as it skips the work and time required to prepare a development freeze. *Id*.

29. Bundesgerichtshof [BGH] [Federal Court of Justice] 1981 Zeitschrift für deutsches und internationales Bau- und Vergaberecht [ZfBR] 44 (47) (1981) (F.R.G.). *See also* June 4, 1962, 37 BGHZ 269; Dec. 14, 1978, 73 BGHZ 161.

than three additional years.[30] Alternatively, a municipality can pass a freeze again after two or three years if the grounds still exist.

An undeclared "de facto building prohibition" is unlawful and can create compensable liability. De facto building prohibitions may occur, for example, because of invalid municipal decisions to halt development permission. De facto building prohibitions may also occur when building permit authorities (*Baugenehmigungsbehörde*) simply refuse to process building applications, or exercise bad faith in deterring owners from making building applications or disposing property.

The affected party may be compensated for a de facto development freeze provided that the material requirements in section 14 for the enactment of a development freeze exist. If the material conditions to impose a development freeze are not met, landowners cannot be expected to bear the brunt. The municipality should grant them compensation from the outset according to the stipulations of section 18. It should be noted, however, that because unofficial development freezes are unlawful, citizens do not have the choice of asserting their claims before the courts or accepting compensation from the municipalities. They are obliged to seek legal redress in the courts.[31] If they fail to go to the courts, they will have no right to compensation for any disadvantages incurred, which could have been avoided had they filed appeals.

The institution of the development freeze appropriately demonstrates the difference between those types of governmental interventions that must be accepted without compensation as a part of the societal responsibility inherent in property ownership, and other types of interventions that are permissible only with the payment of compensation. The first four years of a development freeze must be accepted by the owners without compensation because the freeze expresses the obligations of ownership to society. However, a municipality that requires more than four years for the planning process exceeds the acceptable bounds of the owner's obligations to society and may significantly impair the value of private property.

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30. Oberverwaltungsgericht [OVG] [Administrative Appeals Tribunal] BRS 42, Nr. 101. *See also* Verwaltungsgerichtshof [VGH] [Court of Appeals] 1994 BauR 344 (1994) (discussing the proof of special circumstances). This occurred in connection with the 1985 German Horticultural Show in Berlin, where the planning of recreational parks and twelve B-plans diverged significantly from usual planning modes.

31. Bundesverwaltungsgericht [BVerwG] [Highest Administrative Court] 58 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 300; Bundesgerichtshof [BGH] [Federal Court of Justice] 1984 DVBl. 391 (1984) (F.R.G.).

2. An "Unofficial" or Unlawful Freeze

In the author's opinion, compensation should be due regardless of whether the development freeze was legally extended for more than four years or held to be longer than necessary. If an owner affected by a lawful prohibition lasting more than four years is eligible for compensation, surely an owner affected by an *unlawful* prohibition should also be compensated from the time when the prohibition began.

However, the provisions for compensation in section 18 regulate only liability stemming from a prohibition lawfully imposed for more than four years, not for unlawful development freezes. Liability for compensation for unlawfully authorized or extended prohibitions is not statutorily enacted, but instead, is derived from legal principles developed through the case law of the Federal Court of Justice. The Court has held that public authorities are liable for compensation for any intervention equivalent to expropriation. This principle states that where governmental intervention creates a major negative impact that is lawful but equivalent to expropriation, the property owner must receive the same compensation as in the case of an unlawful interference.[32]

According to the Federal Constitutional Court,[33] landowners who think they have suffered damages from unlawful interventions by public agencies are obliged to take legal action to seek a remedy. A person can only expect to receive compensation directly from the public agency in cases where the defense was or would have been futile. The Federal Constitutional Court clarified this principle in its famous "wet gravel extraction" decision (*Naßauskiesungsentscheidung*), holding that an "expropriation" is only present when the intervention specifically affects the property. A law that allows such an intervention must also provide for compensation.[34] However, if the intervention is not explicitly based in law or if its preconditions are not met, then the landowner has no choice but to directly fight the intervention in the courts. Failing to challenge the regulation, an owner may only receive compensation when going to court

32. See Bundesgerichtshof [BGH] [Federal Court of Justice] 73 Entscheidungen des Bundesgerichtshofes in Zivilsachen [BGHZ] 161, regarding unlawful development freezes. In another case in 1989, the Federal Court of Justice found that disruption of the extraction of natural resources to secure archaeological finds of planetary history was an interference that had an expropriating effect that created liability for compensation.

33. See Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 58 Entscheidungen des Bundesverwaltungsgerichts [BVerfGE] 300, regarding wet gravel extraction.

34. In order to comply with the package deal clause of article 14, subsection 3 of the Basic Law, an expropriation can only be permissible when it is based on a law that regulates compensation at the same time.

would have been an unreasonable expectation, for instance because a government authority had advised the owner against such action, or because the remedy from the court would likely take an unreasonably long time. The Federal Court of Justice believes that citizens do not need to know more than civil servants. The Court thereby takes the common law view of "sacrifice in the public interest" as originally formulated in the General Law for the Prussian States (the legislation that has historically served as the legal basis for compensation).

3. Conditions on the Grant of Building Permits (That Effectively Delay Granting Building Permits)

A binding land-use plan may include specific conditions that must be met before granting a building permit. Such conditions may require that the landowner wait until the condition is fulfilled. For example, permits for a residential development may be delayed until a noise barrier is constructed along a busy highway. Such conditions do not create sufficient grounds for compensation claims. They are part of the authority to regulate property rights without compensation.

Similarly, a request for a building permit may be denied or delayed because the required infrastructure is not yet available. Section 123 of the Federal Building Code states that "no legal claim exists" to oblige a municipality to provide local public infrastructure. The owner does not have the right to demand that the infrastructure be provided at a particular time.

However, a property owner can extend an offer to a municipality to provide the local public infrastructure at his own expense, and the municipality must accept any reasonable offer. Otherwise, if the municipality declines a reasonable offer, the municipality must provide the infrastructure, and the landowner has the right to receive building permission.

4. Automatic Expiration of a Temporary Land Use Designated in a B-plan

Since 2004, the law authorizes municipalities to include in B-plans land-use designations for specific uses that will automatically terminate within a set period of time. For example, a municipality may wish to designate an exhibition site for a limited time only. In this case, a subsequent use must also be designated in the same plan. The self-expiration of a temporary (or conditional) use does not constitute grounds

for a compensation claim. The seven-year rule does not apply in these cases—except when the temporary use is withdrawn within the given period or the subsequent use is changed by a new plan.

5. Postponement of Building Applications and Interim Prohibition for a Maximum Period of One Year

Although development freezes are effective in principle, in some situations, their application may come too late. For example, landowners may become aware of the intention to revise the B-plan before the municipality has the opportunity to declare an official freeze. Similarly, a freeze may also be ineffective in the interim between the development freeze decision and its publication in the official gazette (a precondition for legal force). In such situations, as a last resort, the municipality has the authority to instruct the state's building permit authority[35] to postpone consideration of requests for building permits for a maximum of one year. If exempted works are involved (which do not require permission), the municipality is authorized to impose interim prohibitions of the works. Both possibilities are regulated by section 15 of the Federal Building Code.[36]

In practice, a municipality's decision to prepare a new B-plan and pass a development freeze is often triggered by an owner submitting an undesirable application for a building permit. As soon as the municipality learns that such an application has been submitted, it often decides to amend the binding land-use plan and impose a development freeze at the same time. The municipality immediately requests that the building permit authority adopt an interim prohibition. Such a temporary prohibition or postponement is valid for a maximum period of twelve months, commencing from the time the applicant received the postponement notice.[37] The applicant may file an objection. A postponement order or a

35. The general authority regarding planning matters rests with the municipality. However, building permissions are issued by the building permit authority (*Baugenehmigungsbehörde*), which is usually part of the state's (*Länder*) administrative system rather than the municipality's. Section 36, paragraph 1, sentence 3 of the Federal Building Code ensures that municipalities are sufficiently informed ahead of time of applications for building permits within their territories before construction begins. Baugesetzbuch [BauGB] [Federal Building Code] June 23, 1960, Bundesgesetzblatt, Teil I [BGBl. I] at 2414, as amended, § 36, ¶ 1, sentence 3 (F.R.G.), *available at* Gesetz im Internet, http://bundesrecht.juris.de/bundesrecht/bbaug/gesamt.pdf, *translated in* Federal Building Code, (Baugesetzbuch, BauGB), http://www.iuscomp.org/gla/statutes/BauGB.htm. The states must allow the municipalities sufficient time before construction begins to consider what measures are necessary to safeguard the urban land-use planning. *Id.*

36. *Id.* § 15, ¶ 1, sentence 2.

37. Building permit authorities must notify applicants by postponement notices within three

development freeze is possible until the day when the permit is given to the applicator. It may also be imposed during the administrative dispute proceedings[38] or even after a decision has been made to issue the permit.

According to the Federal Court of Justice,[39] the objection has a delaying effect. It is therefore advisable to furnish each postponement with an order of immediate enforceability. A retroactive postponement is also possible when a building application is first unlawfully refused but later shown that it should have been allowed.

However, once the project receives permission, it is too late for the municipality to act. It is irrelevant whether the issued building permit is contested and therefore not definitive.[40] For a project that is exempted from a building permit, the maximum duration for a temporary freeze varies from state to state (*lander*). Very short periods are the general rule.[41] Logically, this period cannot be longer than the time a landowner would have had to wait for a decision about a permit request.

The municipality must ensure that the development freeze becomes effective within the period of the postponement or prohibition. Thus, the building request becomes impermissible for the entire planning period unless the requested project is consistent with the intended designations. The municipality must remember that the period of postponement of a building application, as well as the period of a de facto building prohibition before a lawful development freeze is passed, will be added to the four year deadline. After the expiration of the deadline, the municipality must compensate the "prohibited builder" for any resulting pecuniary losses.[42] Thus, the period of liability for compensation may begin at different times for different property owners within the area of a single development freeze.

C. Compensation for Indirect Injury

In Germany, there are no general compensation rights for indirect adverse effects on property values, such as those that affect adjacent plots

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months.

38. Oberverwaltungsgericht [OVG] [Administrative Appeals Tribunal] BRS 38, Nr. 111.

39. Bundesgerichtshof [BGH] [Federal Court of Justice] July 26, 2001, III ZR 206.00, 2001 BGHZ 557 (2001) (F.R.G.).

40. *See* OVG Mar. 9, 1999, 1 M 405/99 (1999).

41. In Baden-Württemberg, for example, the application for an interim prohibition is only possible within one month after receipt of the complete building documents by the municipality. Verwaltungsgerichtshof [VGH] Feb. 4, 2000, 8 S 2633/00.

42. *E.g.*, Bundesverwaltungsgericht [BVerwG] [Highest Administrative Court] 1971, 468; Bundesgerichtshof [BGH] 1982, 133.

of land. However, there are a few specific situations where the law does award such rights.

1. Reduction of the Value of the Remaining Part after Expropriation of Part of a Property (Severance)

This scenario is explicitly regulated in section 92(3) of the Federal Building Code.

> Where a plot or a physically or economically cohesive property is to be expropriated only in part, the owner may demand that expropriation be broadened to cover the rest of the plot or the rest of the property where this is no longer capable of being put to building or economic use.[43] There have been no disputes or court decisions about this rule in Germany.

2. Requisitioning an Adjacent Property for a Public Purpose

Expropriation of an adjacent property for a public purpose can be a cause for compensation only when the adjacent use causes demonstrable damage and not just irrational, "perceived" damage, such as in the case of cellular antennas.

The principle is that landowners should tolerate adjacent public and private uses without compensation so long as the planning decision is reasonable and within the law. Even if the landowner does not like the adjacent use, such as a prison or a hospital for mentally ill patients, the landowner is not eligible for compensation from the public authority.

The most common example of objective damage is the construction of public streets and railways that cause high traffic noise. This particular situation is regulated by sections 41, 42, and 43 of the Federal Emission Control Act (*Bundesimmissionsschutzgesetz*) (BImSchG). Where heavy traffic noise is expected, the law sets out three policy levels.

First, the agent responsible for road construction is obliged to contain the traffic noise as much as possible through the use of noise protection barriers, trough-style construction, or directing traffic through tunnels. This is known as active noise protection.

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43. Baugesetzbuch [BauGB] [Federal Building Code] June 23, 1960 Bundesgesetzblatt, Teil I [BGBl. I] at 2414, as amended, § 92, ¶ 3 (F.R.G.), *available at* Gesetz im Internet, http://bundesrecht.juris.de/bundesrecht/bbaug/gesamt.pdf, *translated in* Federal Building Code, (Baugesetzbuch, BauGB), http://www.iuscomp.org/gla/statutes/BauGB.htm.

If this is not possible, either because of technical reasons or high costs, the agency responsible for the road construction must reimburse property owners for the costs of installing double-glazed windows or similar means of noise abatement. This is known as passive voice protection. If passive noise protection proves insufficient and the property is no longer suitable for any significant use, the owner may submit a transfer of title claim against the agency responsible for the road construction.

Another situation where there are special compensation rights is the construction of airports. The law requires that airport plans designate zones of noise impact where landowners have compensation rights. A special law against noise from airplanes[44] forbids landowners from constructing houses in the defined zones of noise impact where airplanes take off and land at airports. Landowners of these relevant plots are compensated.

D. Injury Caused to a Neighboring Private Landowner by a New Private Use

In general, German law does not award compensation rights to an owner whose land has suffered a decline in value due to the redesignation of another property. For example, where a plot of land is redesignated from a private low-rise building to a high-rise building, adjacent plots may suffer a decline in value due to the expected noise and traffic.

The municipality's decisions about land uses are governed by the principle of consideration. Under German law, this principle applies not only to pubic agencies, but also to private developers, who must, within reason, exercise all possible consideration for the neighbors' interests. If a developer is indeed considerate, the injured neighbor must endure the new plan and building permit. However, if the neighbor believes that the developer has violated the principle of consideration, the neighbor may take legal action against the new land-use plan or development permit to stop them.

The injured party usually has enough time (one month) to take legal action before construction begins. However, the injured party must be notified only if an exemption from the B-plan is given. If a notice is not served (because the building is fully within the plan, for example), the law grants the injured party three months after the party learns about the new permit. The neighbor has the choice of either challenging the legality of

44. Gesetz zum Schutz gegen Fluglärm [Special Law Against Noise from Airplanes] Bundesgesetzblatt, Teil I [BGBl. I] Mar. 1971, § 282 (F.R.G.).

the permit (or the plan itself) under pubic law or taking the case to civil courts under civil law. Most landowners prefer the pubic-law track because the costs of legal action are lower and because the threshold of damages under public law is lower than under civil law. If the injured party fails to challenge the permit or the plan, that party has no more legal recourse and must bear the neighboring use.

In practice, negotiations between the developer and the injured landowner occur often. If the injured party has taken timely action, the injured party has the opportunity to "sell" to the developer the injured party's right to impose an injunction order in exchange for compensation for the injury. This is the most common outcome in situations where the injury is bearable and where the investor seeks a valid building permit.

IV. THE RISE IN PROPERTY VALUES AND ITS RELATIONSHIP WITH THE RIGHT TO COMPENSATION

German law differentiates between advantages and disadvantages from planning decisions that apply to one owner and advantages and disadvantages that are distributed among several different owners. When advantages and disadvantages arise for the same owner, there is a process of settling payments. Where planning decisions that pertain to a particular landowner entail both a rise and a decline in property values, the rise in value is deducted from the amount of compensation due. However, if planning decisions distribute advantages for some landowners and disadvantages for others, German law does not provide a general mechanism for balancing the two. The law grants only rights to claim compensation but no obligation to share the added-value with the public. The advantages are not balanced into the equation.

There are, however, several special instruments that may be applied in specific cases to achieve an adequate balance. The primary instrument is called land reallocation (land readjustment) where property boundaries are realigned based on the relative distribution of advantages and disadvantages. It is also possible, by means of a special legal instrument, to formally designate a particular area as one where the added property values will be taxed. Such areas are either urban redevelopment areas or sites for large new developments. Landowners within these formally designated areas must pay levies for the increased value of their properties due to public investments in infrastructure. A frequent issue arises regarding how to properly identify the relative increase in value.

V. PROCEDURES AND OTHER MATTERS

A. Burden of proof

Administrative proceedings adhere to the guiding principle that the facts of the matter should be ascertained by the court. Thus, the injured party need not present proof of the incidence or the extent of the injury caused by a planning decision. The injured party need only make a plausible argument. The court will conduct its own investigation and issue a report.

B. The Types of Land Tenure That Are Entitled to Compensation Rights and the Issue of Transferring Claims to Future Buyers

Under German law, compensation rights extend only to landowners and do not encompass users or operators of land. The respective rights are directly connected with ownership; users and operators are limited by the rules of their contracts with the landowner.

The party entitled to file a claim is generally the legal entity that was the owner of the relevant property at the time the injury occurred. The right to compensation for injury is not viewed as an "in rem" right; it is not automatically transferred to a buyer upon the sale of the property. The assumption probably is that the buyer has already paid a reduced price resulting from the lowered value of the property.

There is one exception, however. Claims for indemnification of expenses for noise protection measures pursuant to the Federal Emissions Control Act always rest with the party that has advanced those costs, even if the noise was caused while another owner governed the property. This claim is transferred to the buyer in the event that the property is sold.

C. Time Limits for Making Compensation Claims

The right to compensation for injuries under sections 39, 40, and 42 expire if the compensation claim is not registered within three years following the calendar year in which the pecuniary losses occurred. Potential claimants must therefore approach the municipality within three years following the calendar year in which the injury occurred, or risk losing their claims.

A claim for compensation based on the amendment or revocation of a B-plan must be submitted within three years from the time of incidence of the injury. If a claim is not asserted within this time frame, it is forfeited.

D. The Right to Information: Must the Authority Inform the Affected Property Owner Directly?

All landowners must keep themselves informed about planning processes by reading the newspaper. The owners must play a role in the public participation process. There is no direct information regarding the planning processes for private owners, even if plans change the use of plots from private to public use that lead to expropriation. Of course, any expropriation cannot occur without personally notifying the affected landowners, but this notification may come after the plan has come into force.

E. Judicial Authorities

Injuries caused by planning decisions must be registered with special judicial panels of the civil courts, specifically the chambers and divisions for building land matters, even though these are public law conflicts for which the administrative jurisdiction would be responsible.

The civil courts' responsibility in these matters is based on a provision in the German Constitution that requires legal recourse through the ordinary civil courts of justice in matters of expropriation.[45]

The history of this special assignation is interesting. Prior to the introduction of administrative jurisdiction in 1875, the German legal system already acknowledged that a citizen may sue the state in financial matters. Disputes regarding the amount of compensation due after expropriation were understood as "financial matters." Although the amount of compensation resulting from the expropriation could be challenged, the expropriation as an act of sovereignty could not. For this reason, disputes over the amount of compensation for expropriation traditionally belonged to the jurisdiction of the civil courts. Even today, civil courts are more "owner-friendly" than administrative courts.

Civil courts are divided into three categories: the district courts, the regional Supreme Court, and the Federal Court of Justice. Under federal law, there is no preliminary procedure for administering disputes regarding injuries caused by planning decisions. The affected party can address the district court by submitting an application for a court decision to the administration. The administration then presents the application to the court unless it changes its decision in favor of the applicant's interest.

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45. Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law] May 23, 1949, Bundesgesetzblatt, Teil I [BGBl. I] art. 14(3) (F.R.G.).

F. Which Administrative Level Must Pay the Compensation?

Individual compensation claims for injuries caused by planning decisions are always first addressed to the municipality. The municipalities are also responsible for both active and passive noise abatement. In rare cases the claims are made against a private beneficiary. For instance, a private provider may be acting for a public school for which a property has been expropriated.

When there is some uncertainty about which government body should be responsible for paying the compensation, the claimant is first referred to the municipality. If a municipality lacks funds to pay for the injury, the State, as guarantor for the municipality, must arrange the necessary financial transfer.

G. Nonfinancial Forms of Compensation

Claims for injuries caused by planning decisions are generally settled by means of a financial payment. However, compensation can take the form of granting building rights elsewhere in a municipality in exchange for "downzoning" (TDR-type) only if arranged through a voluntary agreement. This "transfer of development rights" is legal only if it is justified by town planning considerations—not primarily as a compensation option per se.

Compensation in land is permitted when it is explicitly provided for in the law on expropriation. Claims for transfer of title (inverse condemnation) may also be settled in this manner.

VI. PLANNING PRACTICE AND FINAL EVALUATION

Compensation claims for damages caused by permanent redesignation of permitted land use (other than redesignation to public services) are rare. The reason for this scarcity is because development rights are not usually withdrawn during times of growth. In addition, claims for compensation for a temporary freeze are rare because the law dictates that landowners cannot be compensated for freezes that last up to four years, which is usually enough time for most plans to be finalized.

Claims are more frequent where private land use is designated for public use. These cases are usually directly connected with offers by the public authority to buy the private land. Generally, the public authority attempts to purchase the property before the final planning action is done. Disagreements may sometimes arise regarding the amount of

compensation; disagreements usually do not arise over the validity of the public need.

In recent years, however, as a result of Europe's low birth rate and the migration from the eastern to the western parts of Germany, many cities are no longer growing. There is a surplus of land designated for residential use, particularly in the eastern regions. Extensive areas designated for development during the euphoric years after unification are no longer necessary. For this reason, land-use plans are being amended and development rights are being withdrawn *en masse*. Yet, by default these development rights are of no real value and are often only a burden. For this reason, there are hardly any compensation claims for injuries caused by these recent planning decisions.

It is no coincidence that the German law regarding compensation for injury caused by planning decisions has not been amended since the introduction of the seven-year period of liability for compensation in 1987. This is especially significant in view of the fact that other parts of building laws were revised in 1990, 1993, 1998, 2001, and 2004.

The reason there has been no need for revisions is that the regulations regarding compensation rights have been thought out so well, that their mere presence is effective. In making decisions, the planning bodies usually do their best to avoid claims for injuries. Much more common are disputes among private individuals—usually neighbors—regarding adherence to the principle of consideration for neighbors. However, such disputes are generally not related to the law on compensation for injuries caused by planning decisions.