

Abstract

Judicial review of expropriation decisions

The thesis looks into the issue of judicial review of decisions passed by administrative authorities, namely the expropriation decision. The judicial review process for these decisions shows a highly unusual set-up as it falls under the jurisdiction of both administrative and civil courts. The purpose of the thesis is to highlight both the shortcomings of this concept of judicial review and the specific issues related to it. The thesis also aims to propose such a set-up of the judicial review process for expropriation decisions that eliminates these shortcomings as much as possible and which will be coherent with the current concept of review of decisions of administrative authorities as such.

In addition to the introduction and conclusion, the thesis consists of four parts. The first chapter deals with the very institute of expropriation decision as one of the decisions issued under expropriation proceedings. Attention is paid in particular to the form of the operative part of the decision. The decision contains two groups of operative parts, namely on expropriation and on compensation for expropriation. The decision coming under the first group can be challenged by filing an action against the decision of the administrative authority pursuant to Section 65 et seq. of the Code of Civil Procedure, while the other group of decisions can be challenged by filing an action under Part 5 of the Code of Civil Procedure.

The second chapter discusses both procedural regimes and takes a more detailed look at the specifics related to the review of the expropriation decision. In this part, the thesis also pays attention to the problematic wording of Section 28(3) of the Expropriation Act, the linguistic interpretation of which leads to the conclusion that courts, when determining compensation for an expropriation, take into account other circumstances than those that could be taken into account by the expropriation authority. The thesis therefore provides a reasoning that removes this illogical concept.

The third chapter seeks to answer the question as to whether or not courts award just compensation for expropriation. One of the drawbacks of the current concept of judicial review of expropriation decisions involves the fact that civil courts generally decide with a longer time lag in cases where both the operative parts on expropriation and compensation are challenged. The question therefore arises whether (and if so in what

cases) civil courts should compensate for this delay by fixing a higher compensation and whether they actually do so.

The fourth chapter deals with the issue of how to set up the judicial review of expropriation decisions. The thesis first defines the problems associated with the current set-up of the judicial review of these decisions. This is followed by sections that look for answers this question in various inspiration sources. For these reasons, the thesis first highlights the modern development of judicial review of these decisions, and then draws attention to the judicial review of other decisions that also combine both private and public law considerations. The paper will also briefly consider two foreign laws in this matter. The conclusion of the fourth chapter will outline how the judicial review of expropriation decisions could look like in the future in order to best eliminate the associated negatives while, at the same time, avoiding excessive interference with the current concept of judicial review of decisions of administrative authorities.

Keywords: judicial protection in expropriation, dual model of judicial review, fair compensation.