

EXPROPRIATION AND AIRPORT DEVELOPMENT

Antonín KAZDA^{1,*}; Alena NOVÁK SEDLÁČKOVÁ¹, Matija BRAČIĆ²

¹ Air Transport Department, Faculty of Operation and Economics of Transport and Communications, University of Žilina, Žilina, Slovakia.

² Department of Air Transport, Faculty of Transport and Traffic Sciences, University of Zagreb, Zagreb, Croatia.

* corresponding author: kazda@fpedas.uniza.sk.

Abstract

The article deals with issues, which may arise during the preparation of line infrastructure projects in the public interest such as airports, railways or highways. We focused mainly on the issue of expropriation of land in the public interest and related problems in Slovakia and Croatia but also in other states. Few case studies complement the theoretical part of the study. The paper is focused on comparison of selected national legislation especially Slovak and Croatian in this field and individual State's approaches and tries to find the necessary changes in legislation whose could be usefully for the future. Slovakia and Croatia were chosen for comparison because not only they have a similar population and number of public airports, but they also have a common history and had common legal framework where, after the Austro-Hungarian settlement in 1867, Croatia itself belonged to Zalatavsko within Austria-Hungary together with Slovakia.

Keywords:

Public infrastructure;
Airport development;
Spatial plans;
Compulsory purchase;
Eminent domain.

1 Introduction

Public projects development usually brings contradictions and discrepancies between private and public interests. Major problems are usually connected with building line infrastructures, which are generally defined as motorways, railways and airports [1]. For the construction of line infrastructure it is always necessary to acquire large plots of land in a given area. Not only is the price of land decisive, but the time of their acquisition is also important, which affects the efficiency of the entire project. It is usually in the interest of the state as an investor to minimize time and costs, but also to avoid 'political problems'. The interest of the landowner, on the other hand, is to avoid problems with the state and perhaps even sell the land, but for a 'good price'. Expropriation is in essence the confiscation of property. Depending on the political establishment, it may also be politically conditioned. In some cases, it means the transfer or seizure of the assets of foreign companies for a pittance payment [2].

However, if we compare spatial and land-take requirements for airports, motorways and railways there are significant differences. In case of motorways and railways there are usually routing alternatives at a specific location or, sometimes, there are possible technical measures for conflict avoidance like taking advantage of tunnelling or routing of motorway or railway in a notch.

This is not possible in case of airports. Runway shifting or rotation at a particular location is usually very limited. Moreover, in case of airports it is not only the land needed for the runway system, terminal area and airport access development but also large areas which are defined as the airport airspace which must be maintained obstacle-free. The airport airspace is an integral part of an aerodrome to ensure its operation, i.e. approach and landing, take-offs and circling of aircraft in compliance with all rules and to guarantee a high level of safety. However, land under the airport airspace is, as practice, not owned by an airport, but the rights of its owners are limited to some extent.

Obstacle limitation parameters in the vicinity of an aerodrome are defined in relation to individual types of aerodromes (for commercial transport, general aviation or heliports) and are also specified in relation to type of runway usage, i.e. only for take-offs or for approach and landing. They

also differ with type of approach as precision or non-precision approach; or approach obstacle surfaces for visual - non-instrument runway [1].

The significance of any object must be considered for each runway individually, according to the intended usage of runway and the height restrictions specified by the obstacle surfaces. Specifications of Annex 14 Aerodromes, Volume I, Aerodrome Design and Operations (Annex 14/I) are used in many states as standards and recommended practices (SARPs) and a technical basis for an aeronautical study. The purpose of Annex 14/I obstacle restrictions and removal is 'to define the airspace around aerodromes to be maintained free from obstacles so as to permit the intended aeroplane operations at the aerodromes to be conducted safely and to prevent the aerodromes from becoming unusable by the growth of obstacles around the aerodromes' [3]. In those areas the height of objects could be limited, and also land use could be defined. These limitations are specified in municipal or regional land-use plans. Nevertheless, local building authorities, who should guarantee the airport area protection, are many times unfamiliar with specific airport requirements that may lead to problems between landowners and infrastructure developers.

However, the development of an airport does not only affect the ownership of a land in a negative way. The relationship between landowners near an airport and the development of the airport is often not unambiguous and is dynamic over time. For example, while the price of land for building houses may fall, the price of land usable for industrial parks may rise. Similarly, this may apply to land in the vicinity of motorways and railways.

Procedures for spatial planning, land protection as well as the land acquisition for the construction of line infrastructure are evolving from a technical and legal point of view. Because of this, the procedures and practices differ from country to country. In this paper we present examples from several countries and compare the procedures in Slovakia and Croatia as they not only have a similar population and number of public airports but also have a common history and had common legal framework where, after the Austro-Hungarian settlement in 1867, Croatia itself belonged to Zalitzavsko within Austria-Hungary together with Slovakia.

2 Methodology

In our research historical, monographic and typological methods were used [4]. Within the historical method specific case studies on expropriation linked to transport infrastructure and legal framework of Slovakia and Croatia were researched. The Slovak Republic and Croatia were selected as there are many similarities as size of the country, number of citizens or number of international airports for commercial operations.

The monographic method was used to understand the researched problem in its entirety and concentrated on particular case. The case was chosen deliberately, and the research was carried in depth.

The typological method aims to specify type as a concept and on the basis of the information obtained the scientist seeks to identify the types to help categorize the acquired knowledge [5].

3 Land expropriation and airport development planning

The locality for airport development should facilitate long-term development and provide flexibility for future airport expansion at the lowest costs in terms of money and social impact [1]. Until now, it is practically worldwide common practice to plan airport development of Master Plans in which long-term development is defined for 20-30 years. This so-called long-term or outlook plan may be right and appropriate in some countries, but in others, especially where the planning process is 'complicated' by public participation in the discussion and approval of a project, it is not sufficient. It can be a significant hurdle if surrounding communities or various pressure groups are involved in a public hearing. An example is the Munich Airport, where it took twenty three years to obtain the final building permit and the airport was then completed and obtained an operating permit within seven years [6]. Aéroport de Paris Nord administration with his bold and visionary plans for airport further development ensured its expansion by buying large plots of land from private owners, but also used relocations and expropriations at a time, when it was legally and politically possible for the Paris - Charles de Gaulle Airport development. (Charles de Gaulle Airport extends over 32.38 km² of land. This vast area was acquired by limited number of potential relocations and expropriations and the possibility to further expand the airport in the future [22]. The planning of CDG and its construction began in 1966.) The UK Government Department for Transport has adopted a different approach in the past. They declared to delay building of any new runways until beyond 2050 [7]. Left-wing

governments may be more prone to use different ways of expropriating land to push for projects with a defined public interest. On the other hand, a balance should always be found between the length of project preparation, the speed of construction of transport infrastructure and the expropriation of private property, the determination of the right price for expropriation, but also the political consequences. At present, issues of airport privatization and demonstration of public interest in the development of private airports are also important. In particular airport ground access may be defined as a project in the public interest [8], while the construction of a private terminal or cargo center might be more difficult to justify.

The expropriation of private property is also a strong signal for foreign investors, who may opt for another country with a more predictable regime and which will be more respectful of private property. Litigations involving the expropriation of private property are often long-lasting and can last for many generations. With respect to this, land expropriation in democratic states is mostly used in exceptional cases and as a last resort, sometimes more likely as a 'threat' to those who were reluctant to sell their property than as a real tool [9].

Probably the best-known case of a forced redemption of land is the project of the new Tokyo Narita Airport. In 1966, the Japanese government selected the Sanrizuka-Narita area east of the capital for future Tokyo International Airport development. Very rapid expansion of Tokyo after the World War II caused not only Haneda Airport capacity depletion but also overall lack of suitable flat land in the Kantō region. The only suitable option for construction of new airport was the prefecture of Chiba, characterized by rural settlements. Until then, expropriation had not been practically used at all in Japan. According to usual practice, the government was to offer homeowners in an area designated for eminent domain, relocation, and not forcible redemption of land at a price specified by law. However, in the case of Narita Airport, the redemption was not resolved by agreement of the parties some residents went as far as using terror by threatening to burn down new homes of anyone who would voluntarily move out [10]. On September 16, 1971 in an attempt to complete the expropriation of land from the owners who resisted, three police officers were killed and many others were injured in the ensuing riots supported by left wing student groups [11]. Although our goal is to focus on the issue of the right of government and state to expropriate private property, each case is unique and needs to be studied in broader context. In the case of Narita Airport, during the first phase of the conflict from February 22 to March 25, 1971, 25,000 of police special corps and more than 20,000 farmers, who joined forces with radical students and activists of a left wing party, fought against each other. Later these opposition groups created a radical Sanrizuka-Shibayama movement fighting the airport. Even after the airport was opened and put into operation, special security measures had to be taken. The whole airport was fenced with a high metal fence controlled from watchtowers. In order to prevent radicals and activists from entering the airport, until 2015 only passengers with valid documents were allowed to enter the airport terminal and had to check their tickets and baggage when entering the terminal. The last protest action of left-wing militants took place at the airport in 1985. The airport thus faced unrest and violence for almost 15 years.

4 Legal framework of land expropriation in the Slovak Republic

In line with the Constitution of the Slovak Republic, the present Civil Aviation Act - N° 143/1998 Coll. on Civil Aviation in the wording of later amendments [12], and the Building Act - N° 50/1976 Coll. in the wording of later amendments [13] contain provisions on expropriation (in some states it is called a Compulsory Purchase or Eminent Domain) of properties in public interest and an Article on the 'limitation of the proprietor's rights'. With respect to this Article the rights of the owners could be limited:

- in inevitable extent,
- in the public interest,
- according to law,
- for adequate compensation,

and all conditions must be met all together.

Unfortunately, in Slovak law airports and runways are not explicitly defined as a public interest transport infrastructure. According to the article 1 subsection 2 letter c) of the Act N° 136/2004 Coll. on Airport Companies [14] the only three runways at Slovakia are protected in particular two runways at Bratislava airport and the runway at Košice airport with other parts of movement areas and land. This state property is defined as priority infrastructure state property, which is a part of airport infrastructure

necessary to ensure the air accessibility of the Slovak Republic, to ensure the strategic economic interests of the Slovak Republic and to defend and to secure the state.

To be able to expropriate land for airport development, the public interest would have to be demonstrated. It could be demonstrated during a public hearing by an approved airport Master Plan or an approved municipal land use plan. In case of airports, the Master Plan is usually a part of an urban area development plan or a large area development plan; in those the airport development could be defined as a project in the public interest. However, the expropriation of property is possible only after it is not possible to reach an agreement with the owner. There is usually a problem to set the 'right price' for the property. This should correspond to the market price set by a forensic expert. This process is usually lengthy, also due to the fact that the expropriation procedure can be initiated only after no agreement was reached between the owner and the state. The owner will use, of course, all the tools to defend his rights and the process will go through all levels of court and may end up in the European Court of Human Rights. All this can take years.

In one cause in the Czech Republic, which expropriation legal framework is in practice the same as in Slovakia (because for many years we were part of one state-formation - Czechoslovakia and till these days many Acts from previous years are still in force), an agreement between a farmer was not reached even after fifteen years. She refused to sell her land for the construction of a highway and the construction of the motorway was blocked [15]. Recent changes in the Slovak legislation called 'Law on Exceptional provisions for motorways and roads constructions' - Act N° 669/2007 Coll. [16] does not change the expropriation principles but complements the Cadastral Act N° 162/1995 Coll. [17]. According to this change it is not necessary to prove property ownership during the land ordinance process but after finishing the motorway construction during the final building approval. This places the proprietor in a disadvantageous position as he or she is practically not able to refuse compensation for the land [16].

5 Legal framework of land expropriation in the Croatia

The law on Expropriation and Determination of Compensation, Act N° 74/2014 Coll. in the wording of later amendments [18] legally defines the procedures and conditions for the expropriation of land in the Republic of Croatia. Before the expropriation begins, it should determine that the construction is under spatial plans and try to resolve the issue of ownership by mutual agreement.

In the expropriation process, it is necessary to prove whether the construction is in the interest of the Republic of Croatia. The development of runway or similar airport facilities is defined as public interest infrastructure in Croatian legislation Act N° 19/1998 Coll. in the wording of later amendments [19]. The average market value of land in the vicinity of the confiscated property defines the expropriation compensation or the 'right price'. In general, the procedure performs in several administrative steps. However, recent changes in the law offer the possibility that if the airport belongs to a category of the strategic investment project, Act N° 29/2018 Coll. in the wording of later amendments [20], then the expropriation can conduct in a single-step procedure. In the case of several step procedures, it is possible to appeal against any decision, but that is not the case in the single-step procedure. The proprietor, after the completion of the expropriation process, can initiate a lawsuit if he/she is not satisfied with the compensation price or the building was not made in accordance with the original purpose. Two different case studies of the development and expansion of the Zagreb and Split airport are further described to demonstrate diametrically opposite principles.

The new passenger terminal of Zagreb Airport was planned on land owned by the Croatian Army, but also on part-owned by private investors. Due to the extremely short deadline, under the concession agreement, the Government of the Republic of Croatia had to provide land for the construction of a new passenger terminal through the institute of expropriation. During the process, the landowners and the airport, appealed several times to different estimates by an authorized expert. Although the construction of the passenger terminal finished during the expropriation process, it could not obtain a permanent usage permit due to existing regulation, which stipulates that individual cadastral plots must be consolidated, Act N° 153/2013 Coll. in the wording of later amendments [21]. In the meantime, the law on the construction has been changed to allow the airport to obtain a temporary use permit for five years. The proprietor subsequently has filed an appeal to the Ministry of Justice, and the expropriation procedure has not been completed, yet. The terminal has been in use since 2017.

In the case of Split Airport, the issue of expropriation can be observed from two aspects; land price and negative experience from the past. Split airport is located in the Dalmatian region, and in

which, due to the exponential increase of tourism and construction of tourist facilities, the price of land compared to other regions of Croatia is much higher. If the airport developer use expropriation institute in the land acquisition process, he must compensate the landowners at a market price. Another aspect of land expropriation in this region is related to negative experiences from the past. During construction in the mid-1960s, the airport confiscated a large number of private owners land under the former expropriation law of the Socialist Federal Republic of Yugoslavia. It should be emphasized that the law was very restrictive in terms of financial compensation for expropriated land. The financial compensation did not include market value but social and economic significance. According to the law, many private owners were expropriated and not adequately financially settled based on the fact that the airport is a public infrastructure project of national interest. After the expropriation process finished, many former landowners initiated private lawsuits that lasted for several decades. The fact is that the Republic of Croatia still pays certain financial compensations as a result of these lawsuits. Based on the above facts, the airport management has made a strategic decision that it will not make land acquisition through the expropriation institute. However, it will purchase land by mutual agreement with private owners.

The specific aspect of land acquisition in the Republic of Croatia is associated with the law on the treatment of illegally constructed buildings. According to this law, all illicitly constructed buildings can become legal through the process of legalization (if certain conditions are met). This law particularly negatively reflected on the airports because, in some cases, the airport had to purchase by mutual agreement or through the expropriation process not only land but also the objects that were built illegally before the adoption of this law.

6 Discussion

The paper deals with the issue of the expropriation process and airport development. Due to the specific legislative framework, each country conducts the expropriation process in a different manner. Based on the monographic and typological method, an analysis of expropriation cases in Slovakia and the Republic of Croatia was made. The legislative framework is very similar in both countries, as well as the issue of defining 'the right price' in the expropriation process.

The main difference between these two legislative frameworks is the fact that in the Republic of Croatia, airports may be declared as a public interest infrastructure under the law on airports. In Slovakia this is not applicable in general for airports and their future development and planning. Only two of existed airports Bratislava and Košice are protected in similar way. In Croatia it is not necessary to prove the public interest in the land expropriation process. In Slovakia the public interest has to be declared definitely and repeatedly on all levels of the process. Furthermore, the Law on Expropriation in Croatia allows in the case of the strategic investment project to conduct in the single-step procedure, and that is not the case of Slovakia, where the process is conducted exclusively in several steps.

In both cases, the issue of a subsequent lawsuit by the former owner and obtaining a permanent use permit remains. The legislative framework in the Republic of Croatia, unlike in Slovakia, provides the possibility of obtaining a temporary use permit for five years. In this way, the state allows an airport to be built for example a runway and to complete the expropriation process with former landowners within five years. Referring to this, the government ensures that private proprietor does not block the construction of airport infrastructure. The negative aspect reflects in a limited duration of the permit, which does not guarantee that all litigations will be completed. The interest of an airport is to maintain a good relationship with the local community, and if legal disputes are present, it is difficult to accomplish.

7 Conclusion

Left wing politicians will try to promote different ways of property expropriation in projects where a public interest could be demonstrated. However, it is always necessary to find the right balance between the price of land purchase, possible expropriation of property at the 'right price' of land, the speed of project implementation and the political consequences. Referring to private property expropriation, airport privatization issue is also topical. For example, is it possible, to justify a public interest in case of an airport terminal private project? Seizure or expropriation of private property at a negligible price can also be a warning to private investors who prefer to invest in another, more predictable country. The law-suites related to the private property expropriation are long lasting, stretching over number of generations. The examples are cases between the Czech Republic and the

Czech aristocratic lines after the World War II expropriation due to collaboration with Nazis. Expropriation of land is undoubtedly a significant interference with the property rights and in most states; it is used only as a last resort in promoting the public interest in the construction of line infrastructure. However, the issue of restricting the owners' rights is much broader and more complicated. For example, in case of airports the owners are also limited by obstacle limitation surfaces or airport protection zones that determine the maximum heights and character of objects in the vicinity of airports. This can affect the use of land and price. However, the construction of an airport or other transport infrastructure doesn't just have to lower the price of nearby land, but it can also increase it by changing the character of land use and thus its price. In the light of the above, it is therefore necessary to examine each case individually and in a broader legal context of particular country.

Referring to results of our research the hypothesis of similarities in the Slovak and Croatia legal system could be confirmed. Also the application and interpretation of laws are similar, however the Croatian approach is more 'friendly' to civil aviation needs and its development in particular of airport planning and development. Another problem of Slovakia is the absence of long-term strategic planning in the civil aviation. If the state clearly defines its intentions to the citizens and explain benefits of transport infrastructure development, the advancement of specific projects might be easier.

One of our research contributions could be a draft of Act amendments and legal changes in the Slovak legal system as, in our opinion, declaration of an airport as a public interest infrastructure is not sufficient. The negative experience of the communist regime still calls citizens for attention in state's actions on property matters. The structure of the Slovak law in the area of expropriation and property rights is reasonable. What is needed is the system simplification. If the development of an airport is approved in the first step, it should be followed by subsequent steps without further legal obstacles. On the other hand, the 'positive Split airport approach' could be highly recommended for Slovakia as a good practice.

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