

THE SCOPE OF FAIR COMPENSATION WHEN EXPROPRIATING PROPERTY FOR THE CONSTRUCTION OF THE CENTRAL TRANSPORT HUB

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ABSTRACT

The article undertakes an analysis of the provisions of the Act on the Central Transport Hub (CPK) concerning compensation for the expropriation of real property for the construction of the CPK. The detailed considerations focus on assessing the legal solutions adopted in the Act, which form the basis for determining the amount of compensation, with particular emphasis on the mechanisms introducing the possibility of its increase. The reference point for these considerations is the principle of fair compensation, as expressed in Article 21(2) of the Constitution of the Republic of Poland, which constitutes a necessary condition for the permissibility of expropriation under Polish law. This is analysed alongside the general model of compensation adopted in expropriation law and concretised in the Act on Land Management. Based on these assumptions, it is reasonable to conclude that the compensation provisions of the Act on CPK align with the general framework of expropriation law, thereby reproducing its unclear solutions for determining the amount of compensation. At the same time, they modify the benefit principle in a way that departs from general rules, introducing a mechanism which, in its substance, does not violate the constitutional principle of fair compensation, although it does not eliminate the doubts concerning the legal nature of the resulting increases in compensation.

Keywords: expropriation, fair compensation, special purpose law, Act on CPK, benefit principle, scope of compensation

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1. INTRODUCTION

Real property ownership is the cornerstone of modern legal orders based on the Roman law tradition. However, the ownership of real property is not an absolute right. This means that the subject to whom this legal title to real property is vested may be deprived of it, but only in exceptional circumstances and through a strictly defined legal procedure. In the Polish legal system, deprivation of the ownership right requires a statutory basis. This requirement is the primary formal condition for the compulsory seizure of property, as the law must specify not only the procedure for acquiring this right but also the entities entitled to carry out the seizure and the purposes justifying such a profound interference with ownership rights.

Various legal institutions can be used to forcibly seize the ownership of real property. In legal theory, nationalisation and expropriation¹ are indicated. In Poland, the classic method of forced seizure of real property is expropriation, i.e., seizure of the right based on an individual administrative act.² The normative system basis for such deprivation of ownership is the Act on Real Property Management.³ The legal solutions adopted in this Act most fully define the standards of property protection resulting from the Constitution of the Republic of Poland⁴ and acts of international law. However, these regulations also have limitations, as they shape the guarantees of property protection extensively in both formal and material dimensions. They regulate the expropriation procedure in detail and define the purposes justifying expropriation. While such solutions strengthen ownership rights, they also pose an obstacle to achieving political objectives, against which, according to many, ownership should give way.

The tensions arising in this area have led to the widespread introduction of special legislation, often referred to in legal journalism as 'special legislation. Of course, the special nature of such legislation is not due to extraordinary situations, except perhaps for the COVID-19 pandemic period, the crisis on Poland's eastern border, and the war in Ukraine, but it is most often dictated by the need to simplify and accelerate the forced acquisition of property. Economic considerations, particularly the necessity of utilizing various EU funds. As a consequence, various types of 'special purpose laws' appear, on the grounds of which constitutional guarantees of property protection become an illusion.

One such special act is the Act on the Central Transport Hub.⁵ The solutions adopted in this legal act provide full grounds for recognising it as one of the special

¹ More extensively, T. Woś, *Wywłaszczenie nieruchomości i ich zwrot*, Warszawa, 2007, pp. 21 et seq., M. Habdas, *Publiczna własność nieruchomości*, Warszawa, 2012, pp. 132–135.

² See E. Drozd, Z. Truszkiewicz, *Gospodarka gruntami i wywłaszczenie nieruchomości. Komentarz*, Poznań, 1994, pp. 128–129; also, A. Wróbel, 'Ustawowe przesłanki zwrotu wywłaszczonej nieruchomości w orzecznictwie sądowym', in: *Obrót nieruchomościami w praktyce notarialnej*, Kraków, 1997, pp. 284–285; G. Bieniek, A. Hopfer, Z. Marmaj, E. Mzyk, R. Żróbek, *Komentarz do ustawy o gospodarce nieruchomościami. Tom II*, Warszawa–Zielona Góra, pp. 101–103.

³ Act of 21 August 1997 on Real Property Management (Journal of Laws of 2024, item 1145), hereinafter 'the Land Management Act'.

⁴ Journal of Laws of 1997, No. 78, item 483.

⁵ Act of 10 May 2018 on the Central Airport Hub (Journal of Laws of 2024, item 545, as amended) hereinafter: 'the Act on CPK'.

laws, of which there are several dozen in the Polish legal order. The qualification of this regulation as special legislation allows one to assume *a priori* that the legal solutions adopted therein deviate from classic expropriation mechanisms, thereby simplifying the procedure of taking over ownership. Even without analysing the content of this Act, it can be assumed that taking over the ownership of real property for the construction of CPK does not take place on the basis of an expropriation decision within the meaning of the Act. Such an assumption is justified by the fact that the essence of all solutions functioning in special purpose acts is the abandonment of this form of expropriation in favour of extending the effects of investment decisions to include expropriation.

In particular special laws, investment decisions vary in nature, but they are always related to the investment process in a broad sense rather than directly to expropriation. Thus, in such decisions, the acquisition of real property ownership is a secondary consequence of the finality, and sometimes even merely the issuance, of these decisions. Under this framework, there is no expropriation decision, meaning that the takeover of property occurs *ex lege*. Undoubtedly, this constitutes a specific mode of expropriation. Without delving further into the subject at this point, it should be noted that acquiring ownership by virtue of law, despite its origin in a decision, does not constitute expropriation within the meaning of the Land Management Act and therefore does not meet the standards intended to safeguard constitutional guarantees of property protection. This situation is not remedied by references in special laws to the partial application of expropriation provisions from the Land Management Act, as such cross-references are either selectively applied or significantly modified by the provisions of special laws.

Undoubtedly, special legislation in the field of taking over ownership of real property should be assessed negatively. However, it is a contemporary reality in Polish law and should therefore be examined to counteract increasingly far-reaching simplifications, particularly as these have been, to some extent, accepted in the jurisprudence of the Constitutional Tribunal.⁶ The acquisition of property for the construction of the CPK can be analysed on various levels. One such aspect is the scope of compensation for the property acquired. This issue is of particular importance, as the Act on the CPK introduces its own regulations on compensation, modifying the solutions provided in the Land Management Act. Against this background, the question arises as to whether the adopted legal solutions align with the constitutional standard set out in Article 21(2) of the Constitution of the Republic of Poland, which stipulates that expropriation is only permissible in return for fair compensation. The primary objective of this analysis is to assess the extent to which the provisions governing compensation for the acquisition of property for the construction of the CPK meet the standard of just compensation, which is a constitutional requirement for expropriation. This analysis is conducted using the dogmatic-legal method.

⁶ See judgment of the Constitutional Tribunal of 16 October 2012, K 4/10, OTK – A 2012/9, item 106.

2. THE SCOPE OF FAIR COMPENSATION IN EXPROPRIATION LAW

The issue of fair compensation for the expropriation of real property is multifaceted. This complexity arises from the fact that the concept of expropriation under the Polish Constitution may be understood in various ways.⁷ A broader analysis of this issue has been presented in numerous theoretical studies.⁸ The present analysis focuses solely on one aspect of this problem – the scope of compensation. This scope refers to the amount and type of property damage that should be repaired as a result of the state's forced acquisition of property. As a starting point, it should be assumed that the scope of fair compensation in cases of expropriation should correspond to the way this term is understood in civil law. Such an assumption is justified, as legal doctrine has established that this type of compensation is civil in nature. Consequently, there is no reason why compensation for expropriated real property should be determined based on rules different from those inherent in the civil law understanding of compensation. In any case, compensation structured in this manner appears to meet the criterion of fair compensation in the constitutional sense.

It should also be emphasised that the requirement for full compensation for expropriated property does not necessarily mean that it must always be total, in the sense of fully covering the damage suffered. What constitutes fair compensation depends on the type of expropriation. This rule must be applied in light of the constitutional, and therefore broad, understanding of expropriation. However, this does not alter the general assumption that in cases where real property is expropriated by decision or *ex lege*, compensation should be full and equal to the value of the expropriated property.

Full compensation includes both actual loss (*damnum emergens*) and lost profits (*lucrum cessans*). In this regard, two different approaches exist within European legal systems. According to one approach, expropriation always entails an obligation to provide full compensation,⁹ under the other, compensation is limited solely to the actual loss, covering only the real value of the right. The latter approach is based on the premise that the State's obligation to compensate can be limited, because the basis for the damage results from a lawful action of the State, and in such a case the expropriated person, despite losing their property, at the same time obtains a 'benefit' by having the opportunity to make use of the public purpose realised with the expropriated property.

The Constitution of the Republic of Poland, in Article 21(2),¹⁰ does not determine according to which model the issue of compensation for expropriation should be considered, therefore it seems reasonable to see this issue in a broader context,

⁷ More extensively, K. Zaradkiewicz, in: Safjan M., Bosek L. (eds), *Konstytucja RP. Tom I. Komentarz. Art. 1–86*, Warszawa, 2016, pp. 580–590.

⁸ See, for example, Z. Czarnik, *Słuszne odszkodowanie za wywłaszczenie nieruchomości*, Warszawa, 2019, pp. 15–63.

⁹ See more extensively T. Woś, *Wywłaszczenie...*, op. cit., pp. 168–174.

¹⁰ The absence of such determination has been met with criticism from legal doctrine, see J. Boć, *Wyrównywanie strat legalnych wynikłych z legalnych działań administracji*, Wrocław, 1971, pp. 10 and 86–87.

taking into account both legal solutions, and thus to consider the effects that the adopted solution generates on the scale of the entire legal system. The importance of the purpose of the expropriation should determine the choice of the principle for determining the amount of compensation. At the same time, it should be noted that the characteristics of the investment serving the public purpose may also play a role in this determination.¹¹

In current law, the concept of fair compensation must be constructed on the basis of constitutional and statutory provisions. This assumption is important, as the terminology of the laws and the Constitution in this respect do not coincide. This discrepancy leads to conflicts between the scope of fair compensation, as referred to in Article 21(2) of the Constitution of the Republic of Poland, and compensation corresponding to the value of the expropriated property, as provided for in the Act on Land Management and special laws. An analysis of both sets of provisions suggests that neither excludes the principle of full compensation. In particular, it does not follow from juxtaposing the content of Article 21(2) and Article 77(1) of the Constitution of the Republic of Poland and adopting *a priori* the principle that whenever we are dealing with damage caused by unlawful action of a public authority, compensation is to be full, and in the case of lawful damage it should be limited only to *damnum emergens*. While such a distinction appears in legal scholarship¹² and jurisprudence,¹³ it does not seem to be supported by current law.

The constitutional provisions use the concept of damage in Article 77(1) and fair compensation in Article 21(2). However, based on this distinction, it cannot be definitively asserted that full compensation is granted only in cases of unlawful infringement of property ownership. Article 77(1) of the Constitution of the Republic of Poland provides for the right to compensation for damage caused by public authority as a result of an unlawful act. On the other hand, Article 21(2) of the Constitution of the Republic of Poland, which provides for fair compensation but does not necessarily require full compensation,¹⁴ confirms the permissibility of limiting the scope of compensation in cases of expropriation. However, deriving different scopes of compensation from this distinction appears inappropriate.

Full compensation includes loss, expenses, and lost profits.¹⁵ The loss (*damnum emergens*) of the so-called 'actual damage'¹⁶ consists of a decrease in assets or an

¹¹ Judgment of the Constitutional Court of 16 October 2012, K 4/10, OTK ZU 9A/2012, item 106.

¹² Thus, A. Agopszowicz, 'Odpowiedzialność odszkodowawcza gmin według przepisów KPA i ustawy o NSA', *Samorząd Terytorialny*, 1996, No. 11, p. 43.

¹³ E.g., judgment of the Constitutional Tribunal of 20 July 2004, SK 11/02, OTK ZU 7A/2004, item 66; also: judgment of the Constitutional Tribunal of 23 September 2003, K 20/02, OTK ZU 7A/2003, item 76.

¹⁴ Thus, in judgment of the Constitutional Court of 23 September 2003, K 20/02, OTK ZU 7A/2003, item 76.

¹⁵ See W. Czachórski, *Zobowiązania. Zarys wykładu*, Warszawa, 1994, pp. 78–79.

¹⁶ It is rightly pointed out in legal literature that such a term is incorrect, as all damages are always actual, see M. Kaliński, *Szkoda w mieniu i jej naprawienie*, Warszawa, 2008, p. 271.

increase in liabilities.¹⁷ In cases of expropriation, the loss essentially consists of a reduction in assets, as the owner's property rights are lost. In real terms, the loss corresponds to the market value of this right, which should be established pursuant to Article 134(1) of the Act on Commercial Property or other relevant statutory provisions, where they introduce separate rules for establishing compensation.

Determining the scope of fair compensation for expropriated property also involves establishing its appropriate amount. The amount of compensation is an economic measure of the value of the expropriated right. This understanding of compensation was first articulated in case law in the 1990s, when the Constitutional Tribunal held that fair compensation must be equivalent compensation,¹⁸ i.e., it should enable the expropriated person to replace the property taken over by the state.

This was the position of the jurisprudence before the entry into force of the Constitution of the Republic of Poland, i.e., prior to the existence of its Article 21(2), which explicitly refers to fair compensation. This legal framework existed even before the entry into force of the so-called 'Little Constitution',¹⁹ but even then, Article 7 of the Constitution of 22 July 1952,²⁰ following the 1989 amendment to the Basic Law,²¹ provided for the permissibility of expropriation only for public purposes and with fair compensation. Thus, when the Tribunal in the 1990s defined the principle of equivalent compensation in expropriation law, the requirement of fair compensation was already embedded in the constitutional order. The adoption of such a principle for expropriation law at the time did not justify the formulation of a radically different concept of the scope of compensation a decade later. This amendment should come as a surprise, as no rational justification was presented for it, and it appears to have been linked to the increasing use of special regulations²² as alternatives to classic expropriation.

Under the applicable law, it can be reasonably argued that compensation for expropriated real property, if it corresponds to the market value of the expropriated right, meets the standard of fair compensation whenever the expropriation is carried out in relation to an individual entity, even if it is included in a group, as is the case, for example, with the owner of real property occupied for the construction of a road or the construction of a CPK. In these cases, despite the fact that the realisation of a public purpose affects multiple owners, the expropriation always concerns specific properties. Such a situation supports the view that this type of expropriation, even when conducted under a special procedure, retains its individual nature. Without

¹⁷ For more on this subject, see W. Czachórski, *Zobowiązania...*, op. cit., p. 76; M. Kaliński, *Szkoda...*, op. cit., pp. 270–273.

¹⁸ Cf. judgment of the Constitutional Court of 8 May 1990, K 1/90, OTK 1990, item 2, and judgment of the Constitutional Court of 19 June 1990, K 2/90, OTK 1990, item 3.

¹⁹ Act of 17 October 1992 on mutual relations between the legislative and executive authorities of the Republic of Poland and on local self-government, Journal of Laws No. 84, item 426.

²⁰ Journal of Laws of 1976, No. 7, item 36.

²¹ Act of 29 December 1989 on Amending the Constitution of the People's Republic of Poland (Journal of Laws No. 75, item 444).

²² This was based on the road special purpose act – the Act of 10 April 2003 on Special Principles for Preparation and Implementation of Investments in Public Roads (Journal of Laws of 2024, item 311).

delving into the detailed principles of determining the value of real property for the expropriation purposes,²³ it should be noted that the market value of the expropriated right is the fairest basis for determining compensation. While this interpretation of value is sometimes questioned in legal scholarship,²⁴ it seems that only market value of the property guarantees the restoration of the property for the expropriated party.

With this understanding of fair compensation, doubts may arise regarding the determination of the expropriated property value and, consequently, the amount of compensation. In practice, they are related to the frequent appearance of divergent opinions of appraisers or the occurrence of price fluctuations on the real property market. Such phenomena are unavoidable, especially as, pursuant to the provisions of Article 130(1) of the Polish Act on Public Land, the amount of compensation is determined taking into account the condition, use, and value of the expropriated property. It follows that the amount of compensation depends on a number of factual and legal factors related to the property. Undoubtedly, the provisions governing the assessment of real property should aim to resolve these challenges as effectively as possible.

For this reason, it is important to accurately define the conditions relating to the state and use of real property, especially as these concepts are not unambiguous. While the condition of real property has a normative definition in Article 4(17) of the Real Property Management Act and denotes the development, legal, technical, and utilitarian condition, the degree of equipment with technical infrastructure facilities, as well as the surroundings of the real property, including the size and degree of urbanisation of the locality in which it is located, the intended use may also be understood as the future possibility of development in accordance with various legal regulations relating to land use. A precise indication of these conditions is not straightforward, and it is widely acknowledged that valuation inherently involves a degree of imprecision.²⁵ However, in such cases, the primary issue is not merely the lack of regulatory precision but, more significantly, the fact that the procedures for applying these regulations often preclude a fair resolution of the issues that arise. From this perspective, legislation must always be assessed, particularly when questions concerning its constitutionality arise. It is beyond dispute that fair compensation should correspond to the market value of the expropriated right, determined in accordance with legally indicated circumstances.

Against this background, questions arise in relation to the various types of bonuses provided for in the Acts, which may be paid under the conditions specified therein.

²³ These issues were regulated in detail until 9 September 2023 by the Ordinance of the Council of Ministers of 21 September 2004 on the valuation of real property and the preparation of an appraisal report (Journal of Laws of 2004, No. 207, item 2109, as amended). They are now regulated by the Ordinance of the Minister of Development and Technology of 8 September 2023 on the valuation of real property (Journal of Laws of 2023, item 1832).

²⁴ See M. Szewczyk, 'Konstytucyjna zasada pełnego odszkodowania i jej realizacja w ustawodawstwie zwykłym', in: Knosala E., Matan A., Łaszczyca G. (eds), *Prawo administracyjne w okresie transformacji*, Kraków, 1990, pp. 438–439.

²⁵ See the judgment of the Supreme Administrative Court of 17 November 2010, I OSK 95/10, LEX No. 953098.

The granting of such ‘bonuses’ in legislation is motivated by various considerations, primarily to foster a more favourable social attitude towards expropriation and to provide economic incentives for accepting the market value of expropriated property as established through the appraisal procedure. Although such regulations are not provided for in the Land Management Act, which establishes the model procedure for expropriation, they are commonly found in special purpose acts.²⁶ This raises questions about the scope of fair compensation within such a statutory framework. Additionally, Polish expropriation law, both in the Land Management Act and in special laws, incorporates the benefit principle.²⁷ It is only by considering these legal solutions that the concept of fair compensation for the expropriation of real property can be constructed.

3. FAIR COMPENSATION FOR TAKING OVER REAL PROPERTY FOR THE PURPOSE OF IMPLEMENTING THE CENTRAL TRANSPORT HUB (CPK)

Chapter Six of the Act on CPK contains provisions governing compensation for the expropriation of real property acquired for the construction of the airport and its accompanying infrastructure. Articles 58–71 of the Act form the core of the compensation-related provisions; however, this does not constitute a complete regulatory framework due to the content of Article 3(2) of the CPK Act, which stipulates that, in matters not regulated by the CPK Act concerning real property, the provisions of the Land Management Act shall apply accordingly. Thus, in cases where real property is transferred for the CPK project, the general provisions of the Land Management Act concerning the determination of compensation apply, provided that the Act on the CPK does not contain its own specific regulations on the matter. However, these provisions are subject to the condition of ‘appropriate application’, which in practice may involve modifying or even disregarding the

²⁶ For example, see Article 18(1e) and (1f) of the Act of 10 April 2003 on Special Principles for Preparation and Implementation of Investments in Public Roads (Journal of Laws of 2024, item 311); Article 18(1e): ‘In the event that the previous owner or perpetual usufructuary of the real property covered by the decision on authorisation for the implementation of a road investment appropriately releases the property or releases the property and vacates the premises and other spaces immediately, but no later than within 30 days from the date:

- of delivery of the notice of issuance of the decision referred to in Article 17,
- of delivery of the decision granting immediate enforceability to the decision on permission for the implementation of a road investment, or
- on which the decision on authorisation for the implementation of a road investment became final, the amount of compensation shall be increased by an amount equal to 5% of the value of the real property or the value of the right of perpetual usufruct.’

Article 18(1f): ‘If the decision on permission for the implementation of a road investment concerns real property developed with a residential building or a building with a separated residential unit, the amount of compensation referred to in paragraph 1, to which the previous owner or perpetual usufructuary residing in the building or unit is entitled, shall be increased by the amount of PLN 10,000 for that real property.’

²⁷ For more on this topic, see M. Gdesz, ‘Zasada korzyści w prawie wywłaszczeniowym’, *Zeszyty Naukowe Sądownictwa Administracyjnego*, 2022, No. 1, pp. 36–48.

standard rules for determining the scope of compensation as established by the model framework of the Land Management Act.²⁸

It should be emphasised that expropriation for the purpose of the CPK involves the transfer of ownership of real property by operation of law. This follows directly from Article 48(1) of the Act on CPK. Highlighting this aspect of the issue is important, as the Act on CPK comprehensively regulates the method of determining the amount of compensation, and therefore its scope. In this context, the key question arises as to whether this solution satisfies the requirement of fair compensation as set out in Article 21(2) of the Constitution of the Republic of Poland. If it is assumed that this principle is upheld, it may lead to an assessment of the constitutionality of the compensation provisions in the Act on CPK.

For the correctness of such an assessment, it is important to note that the Act on CPK only appropriately refers to the general provisions concerning the determination of compensation for expropriated property. While other special laws also sometimes refer to the provisions of the Land Management Act, they do not independently regulate the understanding of the scope of compensation, particularly the determination of the value of real property, which serves as the basis for determining the amount of compensation. The Act on CPK constitutes a peculiar exception in this respect by introducing separate regulations on this issue. The consequence of this approach is that, for the purposes of expropriation under the Act on CPK, the amount of compensation is determined through the prism of the value of the real property, with the provisions of the Land Management Act not applying to this valuation. This conclusion follows logically from the relationship between the special Act on CPK and the general Act, i.e., the Land Management Act.

Under the Act on CPK, the basis for determining compensation is the market value of the property, as stipulated in Article 61(1) of the Act. Furthermore, pursuant to Article 60(1), the amount of compensation is determined according to the condition of the expropriated property on the date of the decision on the location of the CPK and the date of the decision on compensation. This mechanism mirrors the general rule inherent in Polish expropriation law. Therefore, a question arises as to the rationale behind this measure, given that it essentially repeats a general legal solution. The only plausible justification is that the legislator intended to explicitly emphasise that the scope of fair compensation under the Act on CPK is a distinct matter, separate from the framework adopted in the Land Management Act.

From the point of view of legislative principles, such an approach should be assessed negatively. While it emphasises the normative distinctiveness of this legal solution, it simultaneously disrupts the coherence of the compensation system in expropriation law. This is problematic, as it raises the question of whether this regulation fulfils the requirement of equity set out in Article 21(2) of the Constitution of the Republic of Poland. Ultimately, it leads to doubts as to whether

²⁸ See S. Pawłowski, 'Wybrane aspekty procesu wywłaszczenia nieruchomości', in: Kijowski D.R., Suwaj P.J. (eds), *Wykładnia i stosowanie prawa administracyjnego. Tom IV. Kryzys prawa administracyjnego*, Warszawa, 2012, pp. 177–181, from the theoretical side, more generally, A. Korybski, 'Język prawny a wykładnia operatywna (wybrane zagadnienia)', in: Leszczyński L., Szot A. (eds), *Wykładnia operatywna prawa – perspektywa teoretyczna i dogmatyczna*, Toruń, 2017, pp. 44–45.

constitutionally defined equity can have different meanings depending on the public purpose pursued and the expropriation procedure adopted. A more appropriate solution would be to specify which provisions of the Land Management Act apply directly to the determination of compensation in expropriations for the purpose of the CPK and which are to be applied accordingly, as the same legal matter should not be repeated in different legal acts concerning the same legal institution. The core issue in expropriation cases is ensuring that the rules governing fair compensation, as required by Article 21(2) of the Constitution of the Republic of Poland, are correctly established. The type of public purpose justifying the expropriation is secondary in this regard, as compensation must always be fair, in accordance with constitutional standards.

The solution adopted in the Act on CPK is not justified either by the modification in that Act of the general principle of benefit inherent in expropriation law,²⁹ or by the introduction, in Articles 64 and 65 of the Act on CPK, of the possibility to increase the amount of compensation in relation to the originally established value of the expropriated property. If these issues were intended to be significant and regulated differently in the Act on CPK, appropriate provisions should have been dedicated to them, which, as special regulations, would constitute a derogation from the legal solutions existing in general expropriation law. At the same time, in the case of an increase in the amount of compensation by 5% of the value of the expropriated right in connection with the surrender of the real property by the entity to which the right had hitherto been vested, i.e., the case governed by Article 65 of the Act, similarly as in the case of an increase in compensation by PLN 10,000 for property developed with a residential building or premises, as provided for in Article 64 of the Act on CPK, such a measure would be unnecessary, as no such solutions exist in the Land Management Act. This means that the provisions indicated above would be applied as special solutions.

The benefit principle, however, must be assessed differently, as it is regulated in the Act on CPK and also provided for in Article 134(4) of the Land Management Act. The essence of this principle lies in the assumption that if the intended use of the property, in accordance with the purpose of the expropriation, leads to an increase in the property's value, then its value, for the purpose of determining the amount of compensation, is established according to the alternative use resulting from that purpose. This rule for determining the amount of compensation for expropriation introduces numerous uncertainties related to the valuation of the property and the determination of its market value.³⁰ Although these issues are of interest, they are not the subject of the present analysis and are therefore left outside its scope.³¹ Nevertheless, the benefit principle is a solution that functions within expropriation law. Therefore, its modification or removal from the Act on CPK would require

²⁹ For more on the principle of benefit, see M. Wolanin, M. Gdesz, 'Zasada korzyści w wycenie nieruchomości przeznaczonych na cele publiczne', *Nieruchomości*, 2022, No. 2, C.H. Beck, Legalis, pp. 1–4.

³⁰ See M. Gdesz, 'Zasada korzyści w prawie...', op. cit., pp. 45–47.

³¹ On the controversy and various aspects of the benefit principle, see M. Wolanin, M. Gdesz, 'Zasada korzyści w wycenie...', op. cit., p. 4.

a clear legislative intervention. Such action has been taken. From a systemic point of view, this is a correct step. Of course, the substantive scope of the adopted regulation may be subject to debate, but formally it is a proper choice.

The principle of equity has been regulated – or it may be said, modified – in Article 61(5) of the Act on CPK. The provision states that where the purpose of the expropriation leads to an increase in the value of the property, the value of the property is to be determined according to the permitted use arising from the purpose of the expropriation. Despite the strong similarity in the treatment of this institution in the Act on CPK and its original version in, Article 134(4) of the Land Management Act, the principle as formulated in the Act on CPK has its own distinct substantive scope. This should be borne in mind so as not to equate the two solutions—something that has occurred, particularly in legal journalism. Pursuant to Article 60(5) of the Act on CPK, if the expropriation of property for the CPK results in an increase in the property's value, then the value of the property for the purpose of determining compensation is increased by the difference between the value resulting from the permitted use possible in view of the purpose of the expropriation and the value based on the property's previous designated use.

The previous designation of the property is understood to mean the designation resulting from the local spatial development plan. Thus, under the Act on CPK, the benefit principle is formulated with a relatively high degree of precision, particularly in terms of identifying the conditions influencing the determination of the property's value. Two circumstances are relevant for this process: the property's previous designation, i.e., in accordance with the local development plan, and the permitted use of the property arising from the purpose of the expropriation. The consequence of this formulation of the benefit principle is a clear determination that the purpose of the expropriation, i.e., the designation of the property for the construction of the CPK, does not, in itself, the use of the property for the construction of CPK, does not of itself increase the value of the property.

The benefit principle formulated in this way does not eliminate all doubts associated with the increase in the value of expropriated property, but it introduces a clearer mechanism for adjusting value compared to the benefit principle regulated under the Land Management Act. Most importantly, it explicitly assumes that the purpose of expropriation, as a public purpose capable of being realised by a specific public entity, cannot in itself increase the value of the expropriated property. This solution is fundamentally different from that adopted in Article 134(4) of the Land Management Act, under which the increase in the value of the property in connection with expropriation is to be linked to an alternative use resulting from the purpose of the expropriation. In both legal doctrine and case law, determining the conceptual scope of 'alternative use of the property' proves to be highly problematic.³² Ultimately, this leads to a situation in which the concretisation of this concept is shifted to the level of sub-statutory provisions,³³ which should be assessed

³² See M. Gdesz, 'Zasada korzyści w prawie...', op. cit., pp. 40–42, and the case law cited therein.

³³ See Article § 36 of the Decree of the Council of Ministers of 21 September 2021 on the valuation of real property and preparation of an appraisal report (Journal of Laws of 2021,

negatively. Recognising these difficulties, the legislator undertook an attempt to change the rules on increasing compensation in expropriation law by abolishing the benefit principle and introducing, in its place, a system of percentage-based bonuses determined by the designated use of the property,³⁴ as a universal principle for expropriation law, including expropriations for the purposes of the CPK.

In light of the above findings, it must be concluded that the Act on CPK formulates the benefit principle in a more concrete manner than the Land Management Act. Of course, this does not mean that the solution adopted in the Act on CPK eliminates all controversies related to the increase in the value of property and, consequently, the expansion of the scope of compensation for expropriation. However, such doubts concern not only the determination of the increase in the value of the expropriated property itself, but also the legal nature of such an increase. In other words, the issue concerns the legal classification of this difference in the light of the constitutional principle of fair compensation. Under the current law, the question arises as to the admissibility of such an increase in view of the content of Article 21(2) of the Polish Constitution.

It appears that the concept of fair compensation, as a condition for expropriation, must now be understood broadly, that is, as allowing for both an increase and a reduction in the amount of compensation, even though, as a rule, such compensation should correspond to the market value of the expropriated right. However, in such a case, it is difficult to argue that the amount of compensation thus determined can be regarded as fair. This is because, whether increased or reduced, the compensation no longer reflects the market value of the lost right. Thus, it is difficult to claim that it is just – and thus fair – since its scope does not arise from the market value of the property, but rather results from a political decision by the legislature. Such a situation may give rise to constitutional concerns in light of the principle of equality, which should guarantee a uniform mechanism for determining compensation when pursuing public purposes.

4. CLOSING REMARKS

The considerations presented above lead to the conclusion that the mechanism for determining compensation for the acquisition of property for the implementation of the CPK, although set out in a separate statute, is not an original solution. Apart from the modification of the benefit principle as it functions in expropriation law, it remains based on the main assumptions laid down in the Land Management Act. On the one hand, this state of affairs should be viewed positively, as it appears to reflect the systemic assumptions of expropriation law, thereby ensuring uniformity

item 555), now the Decree of the Minister of Development and Technology of 8 September 2023 on the valuation of real property (Journal of Laws of 2023, item 1832).

³⁴ See the Act of 15 September 2022 on Amendments to the Act on Real Property Management and Certain Other Laws, for which the legislative process has not been completed, as the Sejm of the Republic of Poland has not voted on the proposed amendments to the Act following the Senate's position.

and consistency in the model for determining the amount of compensation. On the other hand, however, it replicates the shortcomings of those solutions that were carried over into the Land Management Act from expropriation provisions dating back to the 1980s,³⁵ that is, from an entirely different legal system. Such an approach results in ambiguity regarding the basis for determining the amount of compensation, especially from the perspective of the constitutional principle of equity, which is an inviolable condition for expropriation.

It follows from the essence of this principle, to which Article 21(2) of the Constitution of the Republic of Poland explicitly refers, that the forced acquisition of ownership must always be accompanied by fair compensation. Although the Constitution does not define this concept, ordinary legislation – namely the Land Management Act and special laws, including the Act on CPK – adopts the view that compensation should correspond to the market value of the expropriated right. This understanding of fairness in the context of expropriation is affirmed in both legal scholarship and case law. Approval of such a position does not, however, imply agreement as to the methods by which that value may be increased or decreased in specific situations, particularly in view of the pursuit of a given public purpose. In this regard, the Act on CPK does not introduce a breakthrough, although it does provide a clearer mechanism for determining increases in compensation than previously existed.

The intended purpose of the present analysis – namely, to assess the regulation concerning compensation for expropriation in the Act on CPK from the perspective of the constitutional principle of fairness – should take into account that the very purpose of the expropriation, i.e., the CPK, does not automatically lead to an increase in the scope of compensation. This follows from the modified benefit principle set out in the Act. It seems that such a solution falls within the meaning of fair compensation, since the amount of compensation determined in this way is higher than the market value of the expropriated right and therefore meets the constitutional standard. Another matter, however, is whether the increases in compensation for the acquisition of property provided for in the Act on CPK are components of the property's value or whether they are elements that do not shape that value but instead serve as instruments of the state's expropriation policy. These questions, however, are relevant in the context of many special-purpose acts, not just the Act on CPK.

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³⁵ See Z. Czarnik, *Śluszne odszkodowanie...*, op. cit., pp. 77–78.

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