

PUBLIC INTEREST IN THE CONTEXT OF EXPROPRIATION IN THE CZECH REPUBLIC AND POLAND¹

VEREJNÝ ZÁUJEM V KONTEXTE VYVLASTNENIA V ČESKEJ REPUBLIKE A POĽSKU

Kateřina Frumarová²

<https://doi.org/10.33542/SIC2026-2-06>

ABSTRACT

The article addresses public interest as a key constitutional condition for expropriation in the Czech and Polish legal systems. Its aim is to analyse the normative framework, interpretative approaches, and practical application of this concept, particularly in relation to the decision-making of administrative authorities and courts. The text is based on legal analysis and comparative methods, drawing on legislation, case law, and legal doctrine of both countries, complemented by relevant case law of the European Court of Human Rights. The article highlights the indeterminate nature of public interest and the interpretative difficulties associated with it, including its relationship to similar concepts. Special attention is paid to the question of which authority is competent to determine public interest and how its existence should be demonstrated. The comparative approach makes it possible to systematically identify similarities and differences between the Czech and Polish legal frameworks and their application in practice, thereby contributing to a deeper understanding of the functioning of public interest in the context of expropriation. This comparison also reveals the strengths and weaknesses of both approaches and offers inspiration for potential improvements in legislation and decision-making practice.

ABSTRAKT

Článek se zabývá veřejným zájmem jako klíčovou ústavní podmínkou vyvlastnění v českém a polském právním řádu. Cílem je analyzovat jeho normativní zakotvení, interpretační přístupy a praktickou aplikaci, zejména ve vztahu k rozhodovací činnosti správních orgánů a soudů. Text vychází z právně-analytické a komparativní metody a opírá se o právní úpravu, judikaturu i právní doktrínu obou zemí, doplněnou o relevantní judikaturu Evropského soudu pro lidská práva. Článek poukazuje na neurčitost pojmu veřejného zájmu a s tím spojené interpretační obtíže, včetně jeho vztahu k obdobným pojmům. Zvláštní pozornost je věnována otázce, který orgán je oprávněn veřejný zájem určovat a jakým způsobem má být jeho existence prokazována. Komparativní přístup umožňuje systematicky identifikovat shody a rozdíly mezi českou a polskou právní úpravou i aplikační praxí, a tím přispívá k hlubšímu pochopení fungování institutu veřejného zájmu v kontextu vyvlastnění. Toto srovnání zároveň odhaluje silné a slabé stránky obou přístupů a nabízí podněty pro případné zlepšení právní úpravy i rozhodovací praxe.

I. INTRODUCTION

Expropriation is one of the most intense interventions by public authorities into an individual's right to property. In a democratic state governed by the rule of law, its admissibility is therefore subject to strict constitutional and legal conditions, among which the existence of

¹ This article is a partial output of the UP VGS1-2025-04 Project, "New Construction Law."

² Faculty of Law, Palacký University in Olomouc

public interest plays a key role. This requirement is enshrined both in the national constitutional systems of European states and in international documents on the protection of fundamental rights, and its significance lies in legitimising interference with one of the most important fundamental rights of the individual. Although a public interest is generally understood in democratic states governed by the rule of law as a fundamental prerequisite for expropriation, its specific definition, interpretation and application in practice raise long-standing theoretical and practical problems.

The primary aim of this article is to examine and comparatively assess the legal construction, interpretation and practical application of public interest as a constitutional condition for expropriation in the Czech and Polish legal systems. The article seeks to determine how the requirement of public interest or public purpose is defined at the constitutional and statutory levels, how its content is subsequently specified through legal interpretation and judicial decision-making, and how responsibility for its identification and assessment is distributed among the legislature, administrative authorities and courts.

A further aim is to assess whether and to what extent the different normative and institutional approaches adopted in the Czech Republic and Poland affect the protection of property rights and the legal position of persons subject to expropriation. Particular attention is therefore paid to the mechanisms through which the public interest is established, demonstrated or presumed in expropriation proceedings and to the scope of judicial review of its existence. The comparative analysis is intended not merely to identify formal similarities and differences, but to explain their substantive significance for the balance between the public objectives pursued through expropriation and the protection of individual property rights. On this basis, the article also aims to identify the principal strengths and potential weaknesses of the Czech and Polish approaches and to formulate conclusions concerning the further development of legal regulation and decision-making practice in this area.

The analysis is guided by the following research questions: RQ1: How is public interest as a constitutional condition for expropriation normatively constructed in the Czech and Polish legal systems, and what role do constitutional and statutory provisions play in determining its content? RQ2: How is the content of public interest or public purpose specified and applied in the decision-making practice of administrative authorities and courts, and what criteria are used to determine whether an expropriation pursues a legitimate public interest? RQ3: How is the responsibility for defining, establishing and reviewing the existence of public interest distributed among the legislature, administrative authorities and courts in the Czech and Polish legal systems? RQ4: What are the principal similarities and differences between the Czech and Polish approaches, and what are their implications for the protection of property rights, legal certainty and the judicial review of expropriation?

Methodologically, the article is based primarily on a legal-dogmatic analysis combined with a comparative method. The research proceeds from the assumption that the concept of public interest in the context of expropriation cannot be examined solely through the wording of statutory provisions. Its actual legal meaning and practical significance emerge from the interaction of constitutional principles, statutory regulation, administrative decision-making, judicial review and legal doctrine. The analysis therefore combines several mutually complementary methods in order to address the research questions comprehensively.

First, the legal-dogmatic method is used to identify and analyse the relevant legal framework governing expropriation and the requirement of public interest in the Czech and Polish legal systems. Particular attention is paid to the constitutional provisions establishing the conditions for expropriation, the statutory regulation of expropriation and the relevant provisions defining public interest or public purposes for which expropriation may be undertaken. The analysis focuses not only on the wording of individual provisions, but also on their systematic and purposive meaning and on their position within the respective legal orders.

This approach makes it possible to determine how the requirement of public interest is normatively constructed and how it relates to the other legal conditions governing the admissibility of expropriation.

Second, an interpretative analysis is employed to examine the legal meaning and scope of the concept of public interest as a vague legal concept. The analysis focuses in particular on the relationship between public interest and related concepts used in the relevant legislation and legal discourse, such as general interest, public purpose, public benefit or general welfare. Rather than attempting to establish an abstract and universally applicable definition of public interest, the article examines how its content is constructed and specified through legislation, legal doctrine and judicial decision-making.

Third, the article applies a case-law analysis to examine how the relevant legal requirements are interpreted and applied in practice. The analysis covers, in particular, the decisions of the Czech Constitutional Court, the Czech Supreme Administrative Court and the Czech Supreme Court, as well as the relevant case law of the Polish constitutional and administrative courts. The selected case law is used not merely illustratively, but as a source for identifying the development of legal interpretation, the competing approaches to the determination and proof of public interest, and the respective roles of the legislature, administrative authorities and courts. Particular attention is consequently paid to cases concerning the question whether public interest may be determined by the legislature in advance, whether it must be established in an individual expropriation proceeding, and to what extent its existence is subsequently subject to judicial review. The analysis thus also takes into account the temporal development of the relevant case law where changes in judicial interpretation are material to understanding the present legal position.

Fourth, a comparative method is applied to identify similarities and differences between the Czech and Polish approaches. The comparison is not limited to a juxtaposition of statutory provisions. It is conducted functionally, focusing on how both legal systems address the same fundamental problem: how to reconcile the constitutional protection of property with the possibility of expropriation in pursuit of a public interest or public purpose. The comparison therefore examines, in particular, (i) the normative construction of public interest or public purpose, (ii) the role of the legislature in defining or presuming its existence, (iii) the role of administrative authorities in individual expropriation proceedings, (iv) the scope of judicial review, and (v) the mechanisms used to balance public and private interests. This approach makes it possible to distinguish differences in terminology from differences that have genuine legal and practical consequences.

The analysis is further supplemented by the examination of relevant legal doctrine in both countries. Scholarly literature is used to identify the principal theoretical approaches to the concept of public interest, to map doctrinal disagreements concerning its interpretation and to provide the analytical context for the assessment of legislation and case law. Particular attention is paid to doctrinal views concerning the nature of public interest as a vague legal concept, its relationship to private interests and related legal concepts, and the constitutional limits on its determination in the context of expropriation.

II. PUBLIC INTEREST – A CONSTITUTIONAL CONDITION FOR EXPROPRIATION

Expropriation represents the most serious interference with the right to property. Although the necessity of guarantees and the need to protect the right to property are reflected in both international law standards³ and national legal systems (typically at the constitutional level), it should be noted that the right to property cannot currently be understood as

³ See Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, or Article 17 of the Charter of Fundamental Rights of the European Union.

"unrestricted legal dominion over property".⁴ It is necessary to respect the needs of society as a whole, or public interests, as well as the exercise of the rights and freedoms of other entities that may conflict with the property rights of a specific owner. Historically, expropriation has been understood in various ways, particularly in relation to the legal grounds for expropriation and the subject of expropriation.⁵ Typically, however, this involved the expropriation of rights to real estate on the basis of an act of law. Even today, expropriation is generally understood as a forced transfer or forced restriction of ownership rights on the basis of an administrative decision.⁶

Polish legal doctrine defines expropriation in a similar manner. Parchomiuk states,⁷ that it involves a compulsory transfer of ownership, based on an individual legal act, for the public good and in return for compensation.⁸ Similarly, case law states⁹ that it involves the restriction or complete deprivation of the right of ownership of a specific property for public purposes in favour of a specific entity (the state treasury or a specific local authority), carried out by an individual act, specifically an administrative decision. At the same time, however, there are also concepts of a 'broader' understanding of expropriation (both in Polish case law and legal scholarship), which interpret expropriation as any deprivation of ownership for public purposes, regardless of its form (not only on the basis of an administrative decision), and fair compensation.¹⁰

Given the seriousness and legal consequences of expropriation, national legal systems and European documents set out the conditions and limits under which this institution can be implemented. At least some of these conditions are typically enshrined directly at the constitutional level. This applies both to the present, if we look at the current regulations of European countries, and historically, if we look at the regulations that preceded them.¹¹ This fact is also confirmed by the current Czech legal system, where the Charter of Fundamental Rights and Freedoms (hereinafter referred to as the "Charter"), as part of the constitutional order of the Czech Republic, stipulates that expropriation is only possible: in the public interest, on the basis of law and with compensation. One of the three constitutional conditions for expropriation is thus the clearly and explicitly formulated requirement of the existence of public interest. The legal regulation in the form of the Expropriation Act¹² adds to this condition that expropriation is permissible only for the purpose of expropriation specified by a special law and only if the public interest in achieving this purpose outweighs the preservation of the existing rights of the expropriated party (Section 3), and the public interest in expropriation must be proven in expropriation proceedings (Section 4). Similarly, Article 21 of the Polish

⁴ GRYGAR., T., FRUMAROVÁ, K., HORÁK, O., MASARIK, M. *Vývlastnění a vyvlastňovací řízení*. Praha: Wolters Kluwer, 2020, p. XVII. ISBN 978-80-7598-968-0.

⁵ KRČMÁŘ, J. *Práva věcná*. Praha: Všehrd, 1925, p. 59.

⁶ STAŠA, J. in HENDRYCH, D. et alii. *Správní právo. Obecná část*. Praha: C. H. Beck, 2019, pp. 229-230. ISBN 978-80-7400-624-1.

⁷ PARCHOMIUK, J. *Konstytucyjnoprawne pojęcie wywłaszczenia*. In *Roczniki Wydziału Nauk Prawnych i Ekonomicznych Kul*, 2005, 1(1), pp. 77. ISSN 1896-6365.

⁸ CZUBA, S. *Cywilnoprawna problematyka wywłaszczenia*. Warszawa 1980, pp. 19-20. See also WIERZBOWSKI, B. *Gospodarka nieruchomościami*, Warszawa 2008, pp. 183-185.

⁹ Judgment of the Constitutional Tribunal of Poland of 28 May 1991, ref. no. K. 1/91, OTK 1991, nr 1.

¹⁰ JAROSZ-ZUKOWSKA, S. *Konstytucyjna zasada ochrony własności*, Kraków, 2003, p. 233; KOSIKOWSKI, C. *Zasada ochrony własności*. In: *Konstytucyjne podstawy systemu prawa*, red. M. Wyrzykowski, Warszawa, 2001, p. 237; SZALEWSKA, M. *Wywłaszczenie nieruchomości*, Toruń, 2005, p. 52; SZEWCZYK, M. *Konstytucyjna zasada słusznego odszkodowania i jej realizacja w ustawodawstwie zwykłym*. In: *Prawo administracyjne w okresie transformacji ustrojowej*, Kraków, 1999, p. 432.

¹¹ Article XVII of the Declaration of the Rights of Man and of the Citizen of August 1789 described property as "an *inviolable and sacred right*. No one may be deprived of it except in cases where it is clearly required by a legally established public necessity and on condition that he is fairly and adequately compensated in advance". Similarly, Article 5 of the Austrian Constitution of December 1867 declared property to be "inviolable" and expropriation possible only on the basis of law.

¹² Act No. 184/2006 Coll., on the Expropriation or Restriction of Ownership Rights to Land or Buildings (Expropriation Act).

Constitution stipulates that expropriation is permissible only for public purposes and for fair compensation.¹³

Other European countries also reflect public interest as a constitutional condition for expropriation. The Constitution of the Slovak Republic stipulates that "expropriation or compulsory restriction of ownership rights is possible only to the extent necessary and in the public interest, on the basis of law and for adequate compensation" (Article 20).¹⁴ Similarly, the German Constitution (Das Grundgesetz of 1949) links expropriation to the existence of public good (Article 14: "Eine Enteignung ist nur zum Wohle der Allgemeinheit zulässig.").¹⁵

The constitutional recognition of public interest, public purpose or a closely related concept as a condition for expropriation is not limited to the Czech, Polish, Slovak and German legal orders. A comparative examination of European constitutional traditions reveals that the requirement underlying the permissibility of expropriation is expressed through a variety of concepts. Constitutions refer to "public interest" (e.g. Czechia, Slovakia, Estonia or Hungary¹⁶), "public purposes" (Poland and Latvia¹⁷), "public benefit" (Greece¹⁸), "public utility" (Luxembourg and Romania¹⁹), "needs of society" (Lithuania²⁰), "public good" (Germany), "public weal" (Denmark²¹), "general interest" (Italy²²), or "social necessity" (Ukraine²³). Despite these terminological differences, the provisions perform a broadly comparable constitutional function: they make the deprivation of private property conditional upon the pursuit of a legally relevant collective objective and thereby exclude expropriation based solely on the interests of the expropriating authority or another individual beneficiary.

Similarly, the condition of public interest for expropriation is formulated in European documents, in particular in Article 17 of the Charter of Fundamental Rights of the European Union and Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Although public interest is a fundamental and mandatory condition for expropriation across European legal systems, the interpretation of this concept and its application in

¹³ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997. For more details see PARCHOMIUK, J. *Konstytucyjnoprawne pojęcie wywłaszczenia*. In *Roczniki Wydziału Nauk Prawnych I Ekonomicznych Kul*, 2005, 1(1), pp. 75-108. ISSN 1896-6365.

¹⁴ Constitutional Act No. 460/1992 Coll., Constitution of the Slovak Republic.

¹⁵ Grundgesetz für die Bundesrepublik Deutschland vom 23. Mai 1949 (BGBl. S. 1).

¹⁶ Article XIII(2) of the Hungarian Constitution: Property may only be expropriated exceptionally, in the public interest and in the cases and ways provided for by an Act, subject to full, unconditional and immediate compensation. Article 32 of the Constitution of the Republic of Estonia: Property may be expropriated without the consent of the owner only in the public interest, in the cases and pursuant to a procedure provided by a law, and for fair and immediate compensation. Everyone whose property is expropriated without his or her consent has the right of recourse to the courts and to contest the expropriation, the compensation or the amount thereof.

¹⁷ Article 105 of the Constitution of the Republic of Latvia: Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.

¹⁸ Article 17(2) of the Constitution of Greece: No one shall be deprived of his property except for public benefit which must be duly proven, when and as specified by statute and always following full compensation corresponding to the value of the expropriated property at the time of the court hearing on the provisional determination of compensation. In cases in which a request for the final determination of compensation is made, the value at the time of the court hearing of the request shall be considered.

¹⁹ Article 44(3) of the Constitution of Romania: No one may be expropriated, except on grounds of public utility, established according to the law, against just compensation paid in advance. Article 16 of the Constitution of Luxembourg: One may only be deprived of his property for a reason of public utility and with consideration of a just indemnity, in the case and in the manner established by the law.

²⁰ Article 23 of the Constitution of the Republic of Lithuania: Property may be taken only for the needs of the society according to the procedure established by law and shall be justly compensated for.

²¹ Article 73(1) of Constitution of Denmark: No person shall be ordered to cede his property except where required by the public weal. It can be done only as provided by Statute and against full compensation.

²² Article 42 of the Constitution of the Italian Republic: In the cases provided for by the law and with provisions for compensation, private property may be expropriated for reasons of general interest.

²³ Article 41 of the Constitution of Ukraine: The expropriation of objects of the right of private property may be applied only as an exception for reasons of social necessity, on the grounds of and by the procedure established by law, and on the condition of advance and complete compensation of their value. The expropriation of such objects with subsequent complete compensation of their value is permitted only under conditions of martial law or a state of emergency.

expropriation proceedings is difficult,²⁴ with both legislation and judicial practice are undergoing continuous and interesting developments and changes in this regard, and even the opinions and conclusions of legal doctrine on solving problems relating to public interest in the context of expropriation are not uniform and unambiguous. The public interest, its establishment and interpretation in the area of (not only) expropriation has thus been a legal challenge for decades,²⁵ both for legislators and for the authorities applying it in practice (in particular public authorities and courts).

III. "PUBLIC INTEREST" – CAN WE REACH A CONSENSUS ON ITS DEFINITION?

The very nature of the term "public interest" is highly complex, as it is a vague legal concept,²⁶ a typical and frequently occurring phenomenon (not only) in the field of administrative law. Hácha already considered vague legal concepts to be *"a necessary means of expression in legislative technique, which does not want to take the casuistry of abstract norms to extremes,"*²⁷ and this statement can still be unequivocally agreed with today. There are rational reasons for using vague legal concepts in legislation. On the other hand, it leads to inconsistency in the interpretation of a given term and causes problems in distinguishing it from or, conversely, identifying it with similar terms (such as general interest, general welfare, etc.).²⁸ The term public interest is primarily interpreted by public authorities applying the law (i.e. administrative authorities and courts) as well as by legal doctrine. At the same time, however, the legislative power has also taken up its definition, albeit somewhat problematically (see below).

There are many definitions and interpretations of the term "public interest"; here are just a few examples. According to the Supreme Administrative Court of the First Czechoslovak Republic, *"public interest is given if work is undertaken for the purpose of meeting the needs of a broader entity, whether state, territorial, social, etc."*²⁹ If we look at administrative doctrine, Vopálka, for example, defined public interest as *"the general interest of the community, based on the common will to resolve certain issues."*³⁰ According to Borkowski, public interest is *"the potential realisation of certain objective collective needs which are considered optimal and necessary in a given organised society at a given time and under certain conditions and which cannot be satisfied (achieved) at the level of individual freedom (liberty) due to an imbalance between the interests of the individual (or group) and the interests of the community."*³¹ Another representative of Polish doctrine, Wyrzykowski, points out that the public interest is *"the interest of all people living in a politically organised community, where the realisation of certain legitimate public interests is ensured, organised in a specific form with respect for individual freedom as an inalienable part of public welfare. The realisation and protection of such general interests should be unconditionally required in order to ensure the existence of a common,*

²⁴ MODLINSKI, E. *Pojęcie interesu publicznego w prawie administracyjnym*, Varšava 1932, p. 16.

²⁵ For a critical analysis of the interpretation and application of this concept, see UERPMANN-WITZACK, R., TICHÝ, L., TROUP, T. *Veřejný zájem jako klíčový pojem či prázdná floskule*. In *Správní právo*, 2020, no. 3, pp. 176-188. ISSN 2788-2241.

²⁶ Vague legal terms *"are terms used in legal norms without their scope and/or content being precisely defined by law (i.e., neither in the norm in which they appear nor in any other legal norm), nor are they defined by their linguistic meaning alone"*. SKULOVÁ, S. *Správní uvážení – základní charakteristika a souvislosti pojmu*. Brno: MU, 2003, p. 20. ISBN 80-210-3237-5.

²⁷ HÁCHA, E. *Slovník veřejného práva československého: I až O*. Svazek II. 2. díl. Brno: Polygrafia, 1932, p. 843.

²⁸ Mates also points to the potential disruption of legal certainty and the unambiguity of the wording of legal norms. MATES, P. *K problematice neurčitých právních pojmů ve správním právu*. In *Právní rozhledy*, 2007, no. 9, pp. 326-329. ISSN 1210-6410.

²⁹ Ruling of the Czechoslovak Supreme Administrative Court Boh. A. 14.224.

³⁰ VOPÁLKA, V. *Ve veřejném zájmu*. In VANDUCHOVÁ, M., HOŘÁK, J. (eds.). *Na křižovatkách práva. Pocta Janu Musilovi k 70. narozeninám*. Praha: C. H. Beck, 2011, p. 385. ISBN 978-80-7400-388-2.

³¹ BORKOWSKI, A. *Interes publiczny a partnerstwo publiczno-prywatne*. In Blicharz J.(ed.), *Prawne aspekty prywatyzacji, Prace Naukowe Wydziału Prawa, Administracji i Ekonomii UW*, Wrocław 2012, pp. 443-459. Accessible at: https://bibliotekacyfrowa.pl/Content/40022/26_Andrzej_Borkowski.pdf.

peaceful life of a society composed of groups, components and individuals with diverse interests and needs."³²

When defining the concept of public interest, it is tempting to contrast it with private interest, but such a conception cannot be considered entirely accurate.³³ In practice, there may be situations where these interests are in harmony (or where the public interest subsumes the private interest),³⁴ as well as situations where they are in conflict,³⁵ particularly in relation to expropriation. Both of these scenarios may arise in the area of expropriation, and if there is a conflict between the public interest and private interests, it is necessary to proceed and make decisions primarily on the basis of the principle of proportionality (see below).³⁶

Another problem related to the definition of public interest is the fact that legislators do not work solely with this term but also use very similar expressions. The question is therefore what similar terms used in legislation (and often relating to the issue of expropriation) can be considered synonymous with public interest? Mlsna points out that "*from a historical perspective, the concept of public interest is not identical to state, economic, social or ethical interests*".³⁷ It is true that, especially before 1989, these interests were interpreted in the Czechoslovak Socialist Republic in accordance with the interests of the Communist Party and its ideology (and the same was true in Poland). Mlsna further adds that the public interest is a set of all interests that merge and converge in the concept of the "common good".³⁸ Grygar, however, argues that this identification of public and general interest (common good) cannot be fully agreed with, as, for example, the Czech distinguishes between the concepts of "public interest" and "general interest".³⁹ Article 11(3) of the Charter stipulates, among other things, that property "may not be abused in contravention of the general interests protected by law". In contrast, Article 11(4) of the Charter, which regulates the constitutional conditions for expropriation, refers not to the general interest but to the public interest. Koudelka adds that "*the general interest is a broader concept than the public interest, and its fulfilment is primarily the mission of the application of law*", while "*the public interest is a subset of the general interest*".⁴⁰ At the same time, he states that what distinguishes the general interest from the public interest is the presence of a public law element of the interest in question, which is represented by a public law corporation to which the public interest is linked.⁴¹

However, such a conclusion about the necessity of a public law element must be understood with great caution.⁴² With regard to expropriation, this opinion cannot be interpreted to mean that only public law corporations (i.e. the state or local government entities, such as municipalities) can be expropriators. Therefore, Koudelka's opinion cannot be endorsed. There

³² WYRZYKOWSKI, M. *Pojęcie interesu społecznego w prawie administracyjnym*. Warszawa 1986, p. 36.

³³ ELIÁŠ, Karel. *Veřejný zájem (Malá glosa k velkému tématu)*. Ad Notam, 1998, č. 5, p. 103. ISSN 1211-0558.

³⁴ For example, the interests of a businessperson engaged in public utility projects may align with the public interest (e.g., in the energy sector).

³⁵ As Tomoszek and Vomáčka state, in such a case, "*private interest gives way to measures taken in the public interest, provided that the conditions of legality, non-discrimination and proportionality of such measures are met*". TOMOSZEK, Maxim, VOMÁČKA, Vojtěch. *Article 11 [Protection of property]*. In: HUSSEINI, F., BARTOŇ, M., KOKEŠ, M., KOPA, M., CAMRDA, J., HEJČ, D., HLOUCH, L., MATOUŠ, M., MORAVEC, O., NECHVÁTALOVÁ, L., NOVÁK, J., PEKAŘOVÁ, L., RIGEL, F., TOMOSZEK, M., TOMOSZKOVÁ, V., VOMÁČKA, V., VÝBORNÝ, Š. *Listina základních práv a svobod: komentář*. Praha: C. H. Beck, 2020, p. 362. ISBN 978-80-7400-812-2.

³⁶ For details, see, for example, STAWECKI, M. *Konflikt interesu publicznego z prywatnym na tle instytucji wywłaszczenia nieruchomości*. In *Annales Étyka w życiu gospodarczym*, 2012, no. 15, pp. 221-229. DOI: 10-18778/1899-2226.15.19.

³⁷ ³⁷ MLSNA, P. In RYCHETSKÝ, P. et alii. *Ústava České republiky. Ústavní zákon o bezpečnosti ČR. Komentář*. Praha: Wolters Kluwer, 2015, p. 317. ISBN 978-80-7478-809-3.

³⁸ MLSNA, P. In RYCHETSKÝ, P. et alii. *Ústava České republiky. Ústavní zákon o bezpečnosti ČR. Komentář*. Praha: Wolters Kluwer, 2015, p. 317. ISBN 978-80-7478-809-3.

³⁹ GRYGAR, T., FRUMAROVÁ, K., HORÁK, O., MASARIK, M. *Vyvlastnění a vyvlastňovací řízení*. Praha: Wolters Kluwer, 2020, pp. 44-46. ISBN 978-80-7598-968-0.

⁴⁰ KOUDEKKA, Z. *Správní žaloba ve veřejném zájmu*. In *Trestní právo*, 2013, no. 7-8, p. 18. ISSN 1211-2860.

⁴¹ KOUDEKKA, Z. *Správní žaloba ve veřejném zájmu*. In *Trestní právo*, 2013, no. 7-8, p. 18. ISSN 1211-2860.

⁴² GRYGAR, T., FRUMAROVÁ, K., HORÁK, O., MASARIK, M. *Vyvlastnění a vyvlastňovací řízení*. Praha: Wolters Kluwer, 2020, pp. 44-46. ISBN 978-80-7598-968-0.

are a number of private law entities⁴³ that are bearers of the public interest in the implementation of certain activities, a typical example being entrepreneurs of so-called public utility works⁴⁴ (e.g. entrepreneurs under the Energy Act). This was very aptly summed up by the Czech Constitutional Court, according to which the criterion of personifying the public interest with a public law entity is not entirely wrong, as it is a regular feature of expropriation, but it is not a necessary feature.⁴⁵ The Constitutional Court further added that the idea of a single public interest in a democratic state governed by the rule of law is laughable, as the term "public interest" referred to in Article 11 of the Charter is *"merely a certain abstraction of a set of specific public interests that may, and often do, clash as universal and particular or local public interests (environmental protection vs. expansion of mining areas, state revenues vs. the negative consequences of mineral extraction), just as private and public interests may conflict with each other."*⁴⁶

A contrario, we can therefore conclude that the terms should be identical. Similar views are also held by case law. The Supreme Court of the Czech Republic states that the public interest in expropriation *"cannot be seen solely in the interest of the state or state institutions; it may also exist when it is necessary to enable the use of privately owned property."*⁴⁷ Therefore, it is in the public interest, for example, to establish necessary access to a private person's building, as it is undoubtedly in the interest of society to create conditions for property owners to exercise their rights and obligations. Similarly, Polish authors state that the entity entitled to expropriation may be the state or a public association, generally a public law entity, or even a private entity, provided that the purpose of the enterprise is of public benefit.⁴⁸ The ECHR shares this view: "Neither can it be read into the English expression 'in the public interest' that the transferred property should be put into use for the general public or that the community generally, or even a substantial proportion of it, should directly benefit from the taking."⁴⁹

In the context of the above considerations on what constitutes public interest and which concepts can be considered identical and which cannot, the ECHR's approach to this interpretative issue appears to be very rational and inspiring. If we look at Article 1 of Protocol 1 to the Convention, which regulates the protection of property, it uses both the concept of public interest and the concept of general interest. This is therefore a completely identical situation to the Czech regulation in the Charter. However, this terminological issue does not cause any problems in the ECHR's application practice. As Bobek and Hubková point out, the reason for this is that the ECHR does not insist on the semantic scope of the terms,⁵⁰ and in the ECHR's decision-making practice, both categories are often merged under one category of "legitimate aim" (or legitimate interest) if any aspect of the protection of property is to be restricted. The ECHR therefore makes no distinction between "public" and "general" interest and at the same time leaves ample room for the state's own discretion.⁵¹ As stated in the decision

⁴³ For more details, see: HANDRLICA, J. *Vývlastňovací tituly podnikatelů všeužitečných děl*. In *Právní rozhledy*. 2018, no. 2, pp. 44-50. ISSN 1210-6410, or HANDRLICA, J. *Expropriační tituly subjektů soukromého práva*. In *Právník*, 2016, no. 10, pp. 818-828. ISSN 0231-6625.

⁴⁴ HANDRLICA, J. *Vývlastňovací tituly podnikatelů všeužitečných děl*. In *Právní rozhledy*. 2018, no. 2, pp. 44-50. ISSN 1210-6410.

⁴⁵ Decision of the Constitutional Court of the Czech Republic, no. Pl. ÚS 27/16, dated December 18, 2018.

⁴⁶ Decision of the Constitutional Court of the Czech Republic, no. Pl. ÚS 27/16, dated December 18, 2018. Similarly see ZDYB, M. *Prawny interes jednostki w sferze materialnego prawa administracyjnego*. *Studium teoretyczno-prawne*. Lublin, 1991, pp. 219-223.

⁴⁷ Judgment of the Supreme Court of the Czech Republic of 16 May 2012, no. 28 Cdo 1857/2011.

⁴⁸ BLAZEWSKI M. *Prawo wywłaszczeniowe w świetle poglądów Tadeusza Bigi*, pp. 136-137. In KOCOWSKI, T., LISOWSKI, P., PAPLICKI, M. (eds) *Tadeusz Bigo o administracji i prawie administracyjnym – refleksje wrocławskiej szkoły administratywistycznej*. Wrocław, 2020. DOI: 10.34616/23.20.062.

⁴⁹ ECHR Judgment in the case of James and Others v. The United Kingdom, 21 February 1986, no. 8793/79.

⁵⁰ KMEC, J., KOSAŘ, D., KRATOCHVÍL, J., BOBEK, M. et alii. *Evropská úmluva o lidských právech. Komentář*. Praha: C. H. Beck, 2025, s. 1602-1609. ISBN 978-80-7699-033-3.

⁵¹ KMEC, J., KOSAŘ, D., KRATOCHVÍL, J., BOBEK, M. et alii. *Evropská úmluva o lidských právech. Komentář*. Praha: C. H. Beck, 2025, s. 1602-1609. ISBN 978-80-7699-033-3.

in *Hutten-Czapska v. Poland*, "any interference with the exercise of a right or freedom recognised by the Convention must pursue a legitimate aim. The very principle of "fair balance" contained in Article 1 of Protocol No. 1 presupposes the existence of a general interest of society. [...] Thanks to their direct knowledge of the society in question and its needs, national authorities are generally better placed than judges of an international court to assess what is in the 'general' or 'public' interest. In the system of protection established by the Convention, it is therefore primarily for the domestic authorities to be the first to rule on the existence of a public interest issue that would justify the adoption of measures in the field of the exercise of property rights. In its decisions, the ECHR expressly states that the concepts of "public interest" or "general interest" are inherently quite broad. It therefore considers it natural that (national) legislators have broad discretion in introducing social and economic measures and has repeatedly stated that it respects the national legislature's understanding of the requirements of the "public" or "general" interest, unless its judgment is manifestly lacking in "rational basis".⁵²

We consider this approach to be suitable for practical application as well. Legislators use very similar-sounding terms in various laws – public interest, public benefit, general interest, general welfare, etc. – and it is not possible to identify the reasons for these linguistic differences from explanatory reports or historical and social context. This situation leads to both practice (especially the courts) and doctrine identifying these terms in some cases and not in others. This artificially creates ambiguities and problems, especially in relation to the addressees of legal norms (and there is a risk of undermining the principles of legal certainty and legitimate expectations). At the same time, it should be noted that even the examples mentioned above of the various formulations and expressions of the 'public interest' in European constitutions demonstrate that, despite the different linguistic formulations, the concept should still be one and the same in terms of its content and, in particular, the functions it is intended to fulfil in the context of expropriation.

The solution is therefore to view these "different" concepts from the perspective of "legitimacy", i.e. whether the interest pursued by the expropriation is legitimate from the point of view of the will of the state and the legislator, as expressed both in the specific legal norm and in the context of the entire legal regulation in question and its purpose. If expropriation is carried out, for example, for the purpose of constructing energy infrastructure or preserving endangered cultural monuments, this is undoubtedly a "legitimate interest" of society and the state, regardless of whether it is referred to in the law as a public or general interest, public purpose, public benefit, the common good and so on. This allows us to overcome the above-mentioned interpretative problems associated with the application of public interest (not only) in expropriation proceedings.

IV. FINDING AND PROVING PUBLIC INTEREST IN EXPROPRIATION PROCEEDINGS IN THE CZECH REPUBLIC

Another key and, at the same time, very complex issue in practice is who should interpret the vague legal concept of "public interest" in relation to expropriation, i.e. 1) which authority should interpret whether expropriation is in the public interest, and 2) whether it should do so in general, by type (for certain similar cases and specific addressees) or individually (in relation to a specific matter/activity and a specific person). As mentioned above, the Charter stipulates that expropriation is only possible in the public interest, while the Expropriation Act adds that expropriation is only permissible for the purpose of expropriation specified by a special law (the so-called expropriation title) and only if the public interest in achieving this purpose outweighs the preservation of the existing rights of the expropriated

⁵² ECHR Judgment in the case of *Zich and Others v. the Czech Republic*, 18 July 2006, no. 48548/99, similarly ECHR Judgment in the Case of *Pincová and Pinc v. the Czech Republic*, 5 November 2002, no. 36548/97.

party. Furthermore, the Expropriation Act stipulates that the public interest in expropriation must be proven in expropriation proceedings.

It can therefore be stated that the constitutionality and legality of expropriation in Czech law requires that there be a public interest in expropriation (for the purpose of preserving cultural monuments, ensuring transport services, protecting a spa source, etc.), and at the same time that this public interest, or rather its implementation, outweighs the preservation of the property rights of the person whose property is to be expropriated (because otherwise the public interest cannot be fulfilled). For example, the interest in building a motorway and fulfilling the public interest in ensuring transport services must outweigh the preservation of the property rights of the person whose land is necessary for the construction of the motorway and is therefore to be expropriated.

It is therefore first necessary to interpret what constitutes the public interest and whether this interest is fulfilled in a given situation (modelled in various degrees of generality or specificity) and then whether its fulfilment justifies interference with the property rights of the current owner (whether in the form of complete deprivation of property rights or restriction of some of its components). The legal requirement that the public interest in expropriation be proven in expropriation proceedings cannot be overlooked. In this regard, the question arises as to whether, in expropriation proceedings, the existence of public interest and its primacy over the property rights of the current owner must be proven, or only one of these conditions. In Czech legislation and application practice, there has been a dispute, in particular, as to the demonstration of the existence of public interest, and decision-making practice in this regard has evolved considerably and continues to evolve.

The key question in this context is which public authority should determine or interpret what purposes (i.e. activities, constructions or other measures) are in the public interest, and how this should be determined in general or in specific terms. Tension in this area exists mainly between the legislative and executive powers. The question is whether the public interest (e.g. in the implementation of a particular construction project or the performance of a particular activity) should be declared by the legislator within the framework of an (abstract) legal norm, or whether it should be determined by the competent administrative authority within the framework of specific expropriation proceedings. The role of arbitrator in this matter is primarily performed by the Constitutional Court of the Czech Republic, whose positions have evolved considerably over time, and there has been no consensus within the doctrine either.

In the past, Czech lawmakers have repeatedly attempted to stipulate directly in the law (i.e., an abstract normative act) that a specific structure, measure, or activity is in the public interest. The public interest in achieving the purpose of expropriation thus flowed directly from the law (*ex lege*), thereby precluding any interpretation of the term by administrative authorities. The Constitutional Court took a very critical view of this. It stated that the public interest in each specific case, i.e. also in specific expropriation proceedings, must always be determined during the proceedings by the competent administrative authority on the basis of weighing up various particular interests, after considering all contradictions, comments, etc.⁵³ The public interest must be determined in the process of deciding on a specific issue and cannot be determined *a priori* by law in a specific case. Determining the public interest is therefore typically a power of the executive, not the legislature.⁵⁴ The Constitutional Court therefore considered the declaration of public interest in a specific matter by law (i.e. directly by the legislator itself) to be unconstitutional.⁵⁵ In one of the most famous cases, the Constitutional

⁵³ Decision of the Constitutional Court of the Czech Republic, no. Pl. ÚS 24/04, dated June 28, 2005.

⁵⁴ Decision of the Constitutional Court of the Czech Republic, no. Pl. ÚS 24/04, dated June 28, 2005.

⁵⁵ Similarly, such procedures by the legislator are also considered unlawful by the Supreme Administrative Court, cf. e.g. judgment of the Supreme Administrative Court of the Czech Republic of 8 February 2011, no. 1 Ao 7/2010.

Court repealed Section 3a of the Inland Waterways Act for this reason,⁵⁶ stating that the contested provision precludes the administrative authority from determining the public interest in the development and modernisation of a specific waterway in administrative proceedings, as this is already determined by the law itself.^{57 58} This essentially deprived the executive power (the administrative authority) of the possibility to assess all the necessary facts and determine whether or not there is a public interest in a specific matter. According to the Constitutional Court, this constitutes an inadmissible interference by the legislative power in the exercise of executive power. The violation of the principle of separation of powers is unconstitutional (in view of this, the relevant provision was repealed). Moreover, such an approach by the legislature also violates another fundamental principle of a substantive rule of law, namely the requirement of (universal) generality of legal regulation.⁵⁹

At the same time, this approach by the legislature limits the scope of judicial review. The interpretation of vague legal concepts by administrative authorities is subject to full review by administrative courts. As stated by the Supreme Administrative Court of the Czech Republic, *"the interpretation of an indefinite legal term by an administrative authority is subject to review by an administrative court, and it is not sufficient for an administrative authority to classify an activity under an indefinite legal term without clarifying its meaning and merely stating that the activity in question corresponds to the term in question."*⁶⁰ In the context of judicial review of expropriation decisions, this would essentially mean that the courts would review expropriation decisions, but the question of the existence of public interest would be excluded from their review, as this is determined by law, to which the courts are bound under Article 95(1) of the Czech Constitution.⁶¹

Legislators have therefore begun to take a different approach quite often, declaring by law that the implementation of certain types (rather than individual) activities and structures is in the public interest, or that they are beneficial to the public. For example, the Road Act expressly stipulates that motorways, roads and local roads and related structures are in the public interest, and similarly, according to the Railways Act, the construction of national and regional railways, tramways, trolleybus lines and other structures is in the public interest.⁶² The Spa Act expressly declares that public interest for the purposes of expropriation means the interest in searching for and using resources for therapeutic purposes and the interest in protecting resources.⁶³ The Energy Act also stipulates that the transmission of electricity, the transport of gas, their production and distribution are carried out in the public interest.⁶⁴ Although specific laws refer to either public interest or public benefit, it can be assumed that

⁵⁶ This provision stated that "the development and modernisation of the waterway defined by the Elbe river from river km 129.1 (Pardubice) at the state border with the Federal Republic of Germany and the Vltava watercourse from river km 91.5 (Třebenice), including the Vraňany – Hořín navigation canal, to the confluence with the Labe watercourse, including the mouth of the Berounka watercourse to the port of Radotín, is in the public interest."

⁵⁷ Decision of the Constitutional Court of the Czech Republic, no. Pl. ÚS 24/04, dated June 28, 2005.

⁵⁸ The Constitutional Court ruled similarly in another decision – cf. judgment of 17 March 2009, no. Pl. ÚS 24/08 – in relation to Section 1 of the repealed Act No. 544/2005 Coll., on the construction of runway 06R - 24L, runway at Prague Ruzyně Airport, which stated that "runway 06R – 24L, runway at Prague Ruzyně Airport, corresponding in its location to the valid zoning plan of the capital city of Prague and the valid zoning plan of the town of Hostivice, as well as all structures that will ensure its operation in the area of technical infrastructure, are in the public interest."

⁵⁹ See, for example, Decision of the Constitutional Court of the Czech Republic no. Pl. ÚS 55/2000, dated April 18, 2001, or Decision of the Constitutional Court of the Czech Republic no. Pl. ÚS 12/02, dated February 19, 2003.

⁶⁰ Judgment of the Supreme Administrative Court of the Czech Republic of 21 July 2009, no. 8 Afs 85/2007, similarly judgment of the Supreme Administrative Court of the Czech Republic of 27 September 2007, no. 5 As 32/2007, and others.

⁶¹ See Decision of the Constitutional Court of the Czech Republic no. Pl. ÚS 40/02, dated June 11, 2003.

⁶² Act No. 13/1997 Coll., on Roads (§ 17); Act No. 266/1994 Coll., on Railways (§ 5).

⁶³ Section 35 of Act no. 164/2001 Coll., on Natural Medicinal Resources, Natural Mineral Water Sources, Natural Medicinal Spas, and Spa Locations (Spa Act).

⁶⁴ Section 3 of Act no. 458/2000 Coll., on Business Conditions and the Exercise of State Administration in the Energy Sectors and on Amendments to Certain Acts (Energy Act).

both terms express the same thing, i.e. a legitimate interest in the implementation of the activities, constructions and other measures in question (see above).⁶⁵

The Constitutional Court of the Czech Republic has not long addressed the issue of whether the generic definition of what is and is not in the public interest constitutes a problematic aspect of the legal regulation and a violation of the principle of separation of powers. At least the professional literature has offered several possible views in this regard. One view was that the legislator thereby constructs a legal fiction, or an irrefutable legal presumption, which administrative authorities must follow regardless of the circumstances of the specific case. In other words, the legislator establishes a priority of a certain public interest, which the administrative authority deciding on expropriation is bound by.⁶⁶ The second possible interpretation was that this was merely a declaration by the legislator that had no legal consequences, i.e. despite this declaration, the administrative authority was obliged to assess in each individual case whether there was a public interest or not.⁶⁷ Finally, there were also opinions that this was a rebuttable presumption, whereby it is presumed that there is a public interest unless the contrary is proven.⁶⁸

The case law of administrative courts (including the Supreme Administrative Court of the Czech Republic) has not been entirely consistent in this regard. Some decisions emphasised the importance of declarations of public interest in special laws for proceedings preceding expropriation proceedings, such as proceedings concerning the location of a structure, but not for the expropriation proceedings themselves.⁶⁹ Other decisions (the majority opinion), on the contrary, stated that a generic declaration of public interest is binding on administrative authorities: "*Within the expropriation proceedings, public interest was therefore established, but it was not the subject of further evidence precisely because it is explicitly expressed by law.*"⁷⁰ Although the Expropriation Act stipulates that public interest must be proven in expropriation proceedings, this general rule does not apply if a specific public interest arises directly from a special law (e.g. the Energy Act), as such a provision takes precedence over the general provision in the Expropriation Act. Civil courts have ruled similarly; for example, the Czech Supreme Court stated: "*It follows from the provisions of the Energy Act that the establishment and operation of the transmission system is in the public interest. The public interest of the operator arises from the licence granted under the Energy Act. In expropriation proceedings, therefore, the question of public interest is not a matter of evidence; the expropriation authority only decides whether the public interest in achieving the purpose outweighs the preservation of the existing rights of the expropriated party.*"⁷¹ Handrlíka therefore stated that, even with regard to the above-mentioned case law, an explicit declaration

⁶⁵ FRUMAROVÁ, K. *Expropriační titul jako jedna ze zákonných podmínek vyvlastnění*. In Acta Iuridica Olomucensia, 2020, č. 1, pp. 8 až 21. ISSN 1801-0288.

⁶⁶ HANÁK, J., ŽIDEK, D., ČERNOCKÝ, R. *Zákon o vyvlastnění. Praktický komentář*. 1st ed. Prague: Wolters Kluwer ČR, 2020, p. 22. ISBN 978-80-7598-634-4. Or HANDRLICA, J. In EICHLEROVÁ, K., HANDRLICA, J., JASENSKÝ, M., KOŘÁN, J., KOŠTÁL, V., PLÁŠILOVÁ, D., ZÁKOUCKÝ, P. *Energetický zákon. Komentář*. Prague: Wolters Kluwer ČR, 2016, p. 33. ISBN 978-80-7552-412-6.

⁶⁷ FRUMAROVÁ, K. *Expropriační titul jako jedna ze zákonných podmínek vyvlastnění*. In Acta Iuridica Olomucensia, 2020, no. 1, pp. 8-21. ISSN 1801-0288. „The enshrinement of public benefit in law also provides a basis for demonstrating public interest in specific proceedings (especially expropriation proceedings), but in itself does not constitute a statement of public interest in specific cases. According to the Explanatory memorandum to Act No. 268/2015 Coll.

⁶⁸ EICHLEROVÁ, K. In EICHLEROVÁ, K., HANDRLICA, J., JASENSKÝ, M., KOŘÁN, J., KOŠTÁL, V., PLÁŠILOVÁ, D., ZÁKOUCKÝ, P. *Energetický zákon. Komentář*. Prague: Wolters Kluwer ČR, 2016, p. 67. ISBN 978-80-7552-412-6.

⁶⁹ Resolution of the Extended Chamber of the Supreme Administrative Court of the Czech Republic of 20 March 2007, no. 7 As 67/2005–43.

⁷⁰ Supreme Administrative Court of the Czech Republic in its judgment of 29 August 2017, no. 8 As 187/2016–51.

⁷¹ Judgment of the Supreme Court of the Czech Republic of 26 January 2017, no. 21 Cdo 799/2016.

of public interest in relation to species-defined works of general utility can be understood as an irrefutable legal presumption.⁷²

The situation was not clarified until 2022, when in its ruling ref. no. IV. ÚS 2763/21, the Constitutional Court stated that it is within the competence of the legislature to determine, in general terms, what is in the public interest and thus to define the legal framework for the decisions of expropriation authorities in specific cases,⁷³ in which, however, it is necessary to weigh the public interest declared *ex lege* against the individual interests of the expropriated party. Therefore, legislation that establishes an irrefutable presumption of public interest in the expropriation of land and buildings for the implementation of activities and measures defined in special laws (Energy Act, Spa Act, etc.) is not contrary to the constitutional provisions of Article 11 of the Charter.⁷⁴ For Czechia, this decision means that expropriation authorities and subsequently administrative courts do not prove the existence of public interest in proceedings in these cases, as it is irrefutably presumed by law.

It is possible to agree with these conclusions of the Constitutional Court, as the public interest plays a key role in the development of the state and society, and the right to property must be viewed not only as an individual right, but also in the context of the needs of society and with regard to the environment in which it is exercised and enforced, i.e. in the environment of spatial and construction planning, environmental protection, etc.⁷⁵ Even in countries where the constitution expressly requires the generality of the law as a guarantee of freedom, equality and democracy (typically Germany), it is not impossible for a law stipulating that a particular construction project is in the public interest to be adopted and constitutionally acceptable on the basis of an important national interest or general interest (welfare).⁷⁶

V. PUBLIC INTEREST AS A CONDITION FOR THE ADMISSIBILITY OF EXPROPRIATION IN THE POLISH LEGAL SYSTEM

As mentioned above, not only Czech but also Polish legislation sets out the basic conditions for the admissibility of expropriation at the constitutional level. Article 21(2) of the Constitution of the Republic of Poland stipulates that expropriation is only permissible if it is carried out for public purposes and for fair compensation. Public purpose,⁷⁷ together with fair compensation, determines the limits of admissibility and, at the same time, the legality of expropriation. The permissibility of expropriation exclusively for public purposes in light of the above provision constitutes a constitutional principle.⁷⁸ Another common feature of both legal regulations is the fact that the Constitution of the Republic of Poland does not define the concept of public purpose. As Szalewska points out, public purpose is a general clause that has not yet been specified and systematised in the form of a uniform definition.⁷⁹ *"It can be said*

⁷² HANDRLICA, J. *Vývlastňovací tituly podnikatelů všeužitečných děl*. In *Právní rozhledy*, 2018, no. 2, pp. 44-50. ISSN 1210-6410. See also HANDRLICA, J. *Soukromoprávní subjekty nadané expropriačním titulem a jejich oprávnění v předpisech veřejného práva*. In *Právní rozhledy*, 2014, no. 13-14, pp. 44-50. ISSN 1210-6410.

⁷³ Similarly, PETRŮV, H. *Ústavně právní aspekty posuzování existence veřejného zájmu*. In *Acta Universitatis Carolinae – Iuridica*, 2010, no. 2, pp. 97-107. Accessible at: <https://karolinum.cz/en/journal/auc-iuridica/year-56/issue-2/issue-year-2010/article-849>.

⁷⁴ Ruling of the Constitutional Court of the Czech Republic of 30 August 2022, no. IV. ÚS 2763/21.

⁷⁵ See KIRCHHOF, G. *Die Allgemeinheit des Gesetzes. Über einen notwendigen Garanten der Freiheit, der Gleichheit und der Demokratie*. Mohr Siebeck. Tübingen 2009, p. 7.

⁷⁶ M. SACHS in SACHS, M. et al. *Grundgesetz. Kommentar*. 9th ed. C. H. Beck. Munich 2021, pp. 676-678.

⁷⁷ BIENEK, G., HOPFER, A., MARMAJ Z., MZYK, E., ŽRÓBEL, R. *Komentarz do ustawy o gospodarce nieruchomościami*. Warszawa–Zielona Góra, 1998, p. 86.

⁷⁸ MUZYCZKA, K. *Ochrona interesu prywatnego w procesie wywłaszczenia nieruchomości*. Starogard Gdański, 2023, pp. 108-109. ISBN 978-83-965575-0-6.

⁷⁹ SZALEWSKA, M. *Wywłaszczenie nieruchomości*. Toruń 2005, p. 105.

that the content of this concept has been left to the ordinary legislator," adds Szewczyk.⁸⁰ What does this mean in Polish practice?

The conditions for expropriation in Poland are currently set out in the 1997 Real Estate Management Act.⁸¹ However, the legislator does not define public purpose in general terms in this Act, nor does it establish criteria or a method for recognising public purpose, but in Article 6 it introduces a closed catalogue of investments, facilities and activities that it considers to be of such purpose, while at the same time admitting and referring to public purposes specified in other acts. The public purpose must therefore be specified directly in the law (either in the Real Estate Administration Act or in another specific law). Simply put, anything that is not specified in any law is not a public purpose.⁸² As Zimmermann, who has studied the issue of expropriation in detail, states, expropriation cannot take place without a clearly defined public interest.⁸³

If we look at Article 6 of the Real Estate Administration Act, we find an exhaustive list of public purposes for which expropriation is possible. These purposes include the use of land for public roads, cycle paths and waterways, both for their construction and maintenance, and the same applies to railway lines, airports and ports. Public purposes also include the construction and maintenance of drainage systems, pipelines and facilities used to transport or distribute liquids, steam, gases and electricity, as well as the construction and maintenance of public facilities used to supply the population with water, to treat and drain waste water, and to recycle and dispose of waste. The construction and maintenance of buildings and facilities used for environmental protection or cultural monuments are also considered public purposes. Public purposes in the form of the construction and maintenance of premises for state administration authorities, courts and public prosecutors' offices, public universities, state or local cultural institutions, as well as healthcare facilities, nurseries, social care homes, care and educational facilities, and sports facilities are also included. Other public purposes under the law include the construction and maintenance of facilities necessary for national defence or public safety (e.g. prisons), the establishment and maintenance of cemeteries, memorial sites, but also public spaces such as squares, parks, promenades, and the extraction of mineral resources. The last point of Article 6 of the Real Estate Administration Act is very important, as it stipulates that public purposes also include other public purposes specified in separate (special) laws. Case law on Article 6 clearly states that this is a closed list of public objectives that cannot be expanded by interpretation and, furthermore, that it is necessary to interpret, in particular the provisions of special laws, in a restrictive manner in accordance with *the ratio legis*.⁸⁴

To summarise the above, the term "public purpose" is defined in two ways in the Real Estate Administration Act. Firstly, the Act contains a fairly extensive exhaustive list of these purposes,⁸⁵ classified by type. Secondly, this Act refers to the regulation of public purposes in other Acts,⁸⁶ i.e. it allows the legislator to expand the list provided here, but only in the form of an Act. This is undoubtedly a more successful regulation than the previous one, where the 1985 Act on Land Consolidation and Expropriation of Real Estate contained the term "other obvious public purposes". This created a certain degree of freedom in assessing whether a given objective was considered an obvious public purpose. This freedom has been removed in the

⁸⁰ SZEWCZYK, M., *Ingerencja publicznoprawna w prawa własności jednostki w demokratycznym państwie prawnym*. In: Filipek, J. (ed.) *Jednostka w demokratycznym państwie prawa*, Bielsko-Biała 2003, p. 655.

⁸¹ Ustawa z dnia 21 sierpnia 1997 r. o gospodarce nieruchomościami.

⁸² MUZYCZKA, K. *Konflikt interesów przy realizacji celu publicznego w instytucji wywłaszczenia nieruchomości*. In: *Progress: Journal of Young Researches*, 2021, no. 9-10, pp. 23–24. ISSN 2543-8638. DOI 10.26881/prog.2021.9.03.

⁸³ ZIMMERMANN, M. *Wywłaszczenie. Studium z dziedziny prawa publicznego*. Lwów: 1939, pp. 90–101.

⁸⁴ Judgment of the Supreme Administrative Court in Warsaw of 19 June 2013, ref. no. II OSK 3101/12, lex no. 1559695.

⁸⁵ Judgment of the Supreme Court of Poland of 16 March 2005, ref. no. II CK 522/04, lex no. 2339801.

⁸⁶ E.g. Article 37 of the Act of 28 September 1991 on forests.

current legislation on the disposal of real estate.⁸⁷ In this context, Polish doctrine points out that the statutory catalogue of public purposes may be amended by setting new objectives or modifying existing public objectives, shaping them in a manner consistent with the interpretation of constitutional concepts and the principles derived therefrom.⁸⁸ The concept of a public objective is therefore dynamic in Polish law and may change depending on the needs of the state and society.⁸⁹

As in Czech legislation and practice, the fundamental principles of subsidiarity⁹⁰ and proportionality also apply in Poland. Regarding the principle of proportionality, the Polish Constitutional Court stated in its ruling of 17 October 1995 that this principle implies that "the adoption of a given regulation is only possible if it is necessary to protect the public interest with which it is associated, the regulation should be formulated in such a way as to ensure that the intended effects are achieved, and, in addition, the legislator is obliged to maintain proportionality between the effects of the regulation being introduced and the burden or inconvenience it causes to citizens. This principle requires choosing between measures that are as effective as possible and at the same time as least burdensome as possible for the entities to which they are to be applied, or painful to no greater extent than is necessary to achieve the intended objective."⁹¹ The Czech Constitutional Court has a very similar understanding of proportionality, stating that "state intervention must respect a reasonable (fair) balance between the requirements of the general interest of society and the requirement to protect the fundamental rights of the individual. This means that there must be a reasonable (justified) relationship of proportionality between the means used and the objectives pursued."⁹² The Supreme Administrative Court of the Czech Republic similarly states that the principle of proportionality can be understood "*as a general prohibition on excessive interference with rights and freedoms, which comprises three sub-principles: 1. the suitability and appropriateness of achieving the intended objective, which is the protection of another fundamental right or public good; 2. the principle of necessity, according to which only the least intrusive of several possible means may be used, and 3. the principle of proportionality in the narrower sense, which means that the infringement of a fundamental right must not be disproportionate to the intended objective.*"⁹³

The main reason for this situation is the fear of any interpretation of this concept in a situation where the state is prevented from achieving its objectives by an entity and its interests, especially property interests.⁹⁴ Despite the generic definition of public objectives, it is not possible to abandon the assessment of the circumstances of each individual case. "*Whether an investment will pursue public objectives cannot be decided in isolation from the circumstances of the case.*"⁹⁵ The value of the concept of public purpose is based on a teleological interpretation in the context of the investment in question, rather than on the abstract meaning

⁸⁷ MUZYCZKA, K. *Ochrona interesu prywatnego w procesie wywłaszczenia nieruchomości*. Starogard Gdański, 2023, pp. 122-124. ISBN 978-83-965575-0-6.

⁸⁸ WOŚ, T. *Wywłaszczenie i zwrot nieruchomości*. Warszawa, 1998, p. 22.

⁸⁹ WOLANIN, M. *Cel publiczny, jako normatywne kryterium oddziaływania na stosunki cywilnoprawne w gospodarowaniu nieruchomościami, cz. 1, Nieruchomości*. 2009, no. 9, p. 6.

⁹⁰ In both Czech and Polish law, expropriation means that rights to land or buildings necessary for the realisation of a public purpose cannot be acquired in any other way, in particular by contract. G. BIENIEK, S. RUDNICKI, *Nieruchomości. Problematyka prawna*. Warsaw, 2011, p. 998-999.

⁹¹ Judgment of the Constitutional Tribunal of Poland of 17 October 1995, ref. no. K10/95, OTKZU 1995, No. 2, item 10.

⁹² Judgment of the Constitutional Court of the Czech Republic of 16 October 2001, no. Pl. ÚS 5/01.

⁹³ Judgment of the Supreme Administrative Court of the Czech Republic of 8 August 2007, no. 4 As 71/2006-83. On the principle of proportionality in relation to expropriation, see, for example: HOETZEL, J. *Československé správní právo. Část všeobecná*. Praha: Melantrich, 1937, p. 308 ff., or HOETZEL, J. *Vyvlastnění*. In HÁCHA, E. (ed.) *Slovník veřejného práva československého*. Svazek V. Praha: Eurolex Bohemia, 2000, p. 496 ff., or HANÁK, J. *Vyvlastnění z environmentálních důvodů. Současný stav a perspektivy*. Brno: Masarykova Univerzita, 2015, p. 129 et seq.

⁹⁴ MUZYCZKA, K. *Ochrona interesu prywatnego w procesie wywłaszczenia nieruchomości*. Starogard Gdański, 2023, pp. 90-91.

⁹⁵ Judgment of the Supreme Administrative Court in Warsaw of 28 November 2007, ref. no. II OSK 1583/06, lex no. 416607.

of the concept.⁹⁶ After all, even the legislator is limited in determining what is in the public interest. Firstly, only that which serves the public and is generally accessible, representing the public good, i.e. the good of the whole society or regional community, can be considered a public purpose.⁹⁷ The second criterion defining the limits of the legal definition of public interest for the purposes of expropriation is the principle of proportionality arising from Article 2 of the Constitution of the Republic of Poland. On this issue, the Polish Constitutional Court stated that "legislative intervention must not conflict with the axiological assumptions on which constitutional provisions and principles are based."⁹⁸

The comparison of the Czech and Polish approaches shows that, despite some differences in the way public interest (or public purpose) is defined and applied, the two legal systems share a number of fundamental features. In both systems, the pursuit of a public interest constitutes a constitutionally relevant condition for expropriation, while neither the Czech nor the Polish Constitution provides an exhaustive definition of its content. The concept therefore retains the character of a vague legal concept whose meaning is further specified through legislation, legal doctrine and judicial practice. At the same time, both systems recognise the legislature as having an important role in determining, at least in general terms, the purposes capable of justifying expropriation, while the application of the relevant rules remains subject to judicial review. The principal difference lies in the degree and form of legislative determination: Polish law relies predominantly on an exhaustive statutory catalogue of public purposes, primarily contained in the Real Estate Management Act, whereas Czech law combines the general constitutional and statutory requirement of public interest with specific statutory definitions or presumptions contained predominantly in special legislation. The recent development of Czech constitutional case law has brought the Czech approach closer to the Polish model by accepting that the legislature may, for constitutionally defined types of activities or measures, establish a conclusive presumption of public interest. The comparison thus suggests that the differences between the two systems concern primarily the institutional and legislative technique used to determine public interest rather than its fundamental constitutional function as a safeguard against arbitrary interference with property rights.

VI. BRIEF INSIGHT: SPECIAL REGULATION OF ROAD INFRASTRUCTURE AND THE ACCELERATION OF EXPROPRIATION

A particularly important area in which the relationship between public interest and expropriation becomes apparent is the construction and development of transport infrastructure, especially motorways and other public roads. The Czech and Polish legal systems have both introduced special legislation intended to facilitate and accelerate the preparation and implementation of such projects. These special regimes reflect the recognition that the timely construction of major transport infrastructure constitutes an important public objective, while at the same time creating specific mechanisms for overcoming obstacles arising from the need to acquire privately owned land. Their significance for the concept of public interest lies in the fact that the legislature does not merely establish general conditions for expropriation but creates a specific institutional and procedural framework for projects which it considers to be of particular public importance.

In the Czech Republic, this function is performed in particular by Act No. 416/2009 Coll., on the acceleration of the construction of strategic infrastructure.⁹⁹ This Act has gradually evolved from a regulation primarily focused on accelerating transport infrastructure to a broader

⁹⁶ MUZYCZKA, K. *Ochrona interesu prywatnego w procesie wywłaszczenia nieruchomości*. Starogard Gdański, 2023, pp. 90-91.

⁹⁷ DYBOWSKI, T. *Ochrona własności w polskim prawie cywilnym*. Warszawa, 1969, p. 326.

⁹⁸ Judgment of the Constitutional Court of Poland of 12 April 2000, K. 8/98, OTK 2000, No. 3, item 87.

⁹⁹ For more details see VLACHOVÁ, B. *Zákon o vyvlastnění. Liniový zákon*. Praha: Ch. H. Beck, 2023, pp. 119-189. ISBN 978-80-7400-926-6.

framework covering selected transport, water, energy, electronic communications and other strategically significant infrastructure. Its current structure combines accelerated procedures for the preparation and permitting of selected projects with specific rules concerning expropriation and judicial review. The special regime is therefore not limited to shortening individual procedural periods; it also modifies the sequence and legal effects of certain decisions relevant to the acquisition of land necessary for infrastructure projects.¹⁰⁰ The Act contains several schedules which exhaustively define very specific infrastructure projects (not only transport-related) to which the Act applies directly (*ex lege*) to varying degrees. The Constitutional Court of the Czech Republic found neither the Act nor these schedules to be unconstitutional.¹⁰¹

Poland does not have a single comprehensive law like the Czech Republic, but instead uses a set of special laws for individual sectors (known as “specustawy”). The Polish Act of 10 April 2003 on special rules for the preparation and implementation of investments in the field of public roads (*Ustawa o szczególnych zasadach przygotowania i realizacji inwestycji w zakresie dróg publicznych*), commonly known as the *specustawa drogowa*,¹⁰² establishes a special regime for the preparation and implementation of public road investments. Its scope extends to the preparation of road investments, their location, the acquisition of real estate required for their implementation and the subsequent construction process. The Polish regime was introduced precisely against the background of the considerable delays associated with acquiring land and preparing road investments under the ordinary legal framework. The special legislation consequently represents a deliberate shift towards a more integrated and accelerated model of infrastructure development.¹⁰³

The Polish model is particularly relevant to the present analysis because the decision establishing the location of a road investment (*decyzja o zezwoleniu na realizację inwestycji drogowej*, ZRID) has significant consequences for the acquisition of land necessary for the project. The special regime combines elements which, under an ordinary model, would be distributed among several separate procedures: the determination of the location of the investment, the acquisition of the necessary property and the authorisation to proceed with its implementation.¹⁰⁴ The special nature of the Polish model thus lies in the integration of planning, acquisition and implementation effects within a single special administrative framework.

It should also be noted that specific infrastructure projects are defined in government policy documents, to which these accelerated approval processes under the relevant legislation then automatically apply. These government policy decisions (resolutions of the Council of Ministers) explicitly classify specific motorway or road investments as state-planned and priority investments. For example, on 13 December 2022, the Council of Ministers adopted Resolution No. 253/2022, establishing the Government Programme for the Construction of National Roads until 2030. This is not merely a general political declaration. The programme contains a specific list of investments to be carried out by 2033. It should be emphasised, however, that the Polish Resolution of the Council of Ministers does not in itself constitute expropriation or a ZRID. Its function is primarily programmatic, planning and financial. It determines which specific investments the state considers to be priorities, and which are to be carried out. Only subsequently, through the mechanism of the *specustawa drogowa*, is a specific

¹⁰⁰ For a critical view of the introduction of an interim ruling in the context of expropriation, see FRUMAROVÁ, K. (Ne)způsobilost vyvlastnění být předmětem mezitímního rozhodnutí. In *Správní právo*, 2019, no. 3, pp. 134-138. ISSN 2788-2241.

¹⁰¹ For further details, see the judgment of the Constitutional Court of the Czech Republic, no. Pl. ÚS 39/18, dated 22 March 2022.

¹⁰² Similarly, for the rail transport and energy sectors, there are the *Specustawa kolejowa* and the *Specustawa przesyłowa*.

¹⁰³ MUZYCZKA, K. *Ochrona interesu prywatnego w procesie wywłaszczania nieruchomości*. Starogard Gdański, 2023, pp. 57-58.

¹⁰⁴ TREMBECKA, A. *The Benefit Principle in Determining Compensation for Real Estate Expropriation*. In *Geomatics and Environmental Engineering*, 2023, no. 2, p. 90.

decision on the implementation of the investment – the ZRID – adopted. It is precisely this decision that has fundamental property-law implications for the properties affected by the construction. Several levels can therefore be distinguished: the Constitution – which stipulates the public purpose (cel publiczny) as a condition for expropriation. Furthermore, the Act (specustawa drogowa) specifies which types of transport infrastructure projects may be carried out under a special regime and under what conditions. Finally, the government identifies and classifies specific infrastructure investments (Uchwała Rady Ministrów) and subsequently the competent authority issues a ZRID, which has specific legal effects on the properties concerned.

The Polish specustawa drogowa creates a particularly integrated model in which the decision authorising the implementation of a road investment has direct consequences for the acquisition of the properties necessary for the project. The Czech legislation, by contrast, only supplements the general expropriation framework with accelerated procedures and specific legal mechanisms applicable to defined categories of infrastructure. In both cases, however, the special legislation reduces the extent to which the public interest in the individual project has to be reconstructed from the outset through an entirely separate expropriation assessment. The legislative determination of the importance of the relevant infrastructure consequently performs a significant legitimising function.

VII. CONCLUSIONS

The analysis conducted in this article shows that public interest, or public purpose in the Polish constitutional terminology, constitutes a fundamental constitutional condition for expropriation in both the Czech and Polish legal systems. At the same time, neither legal order provides an exhaustive or generally applicable definition of this concept. Public interest therefore retains, at least at the general level, the character of a vague legal concept. This characteristic is not necessarily a deficiency. On the contrary, the relative openness of the concept enables it to respond to changing social, economic and value conditions without requiring continuous legislative intervention. At the same time, however, the openness of the concept creates a fundamental question concerning who is competent to determine its content in the context of a particular interference with property rights. The analysis further demonstrates that the terminological differences between the concepts used in legislation should not be overestimated. Where the relevant concept serves as the legal justification for an interference with property rights and fulfils the same legitimising function, there is no compelling reason to attach different legal consequences to the terminology alone.

The answer to the first research question therefore lies primarily in the different normative techniques through which the two legal systems construct the public interest. In both countries, the Constitution establishes the requirement at the highest normative level, while ordinary legislation specifies the purposes for which expropriation may take place. The crucial difference concerns the extent to which the legislature itself determines that a particular type of activity, construction or measure is in the public interest. Both systems establish a presumption of public interest for various types of construction, activities and measures (although this development has been longer and more cautious in the Czech Republic). In Poland, the relevant determination is primarily contained in a general statutory framework, while in the Czech Republic it is found predominantly in individual special laws. Moreover, the Czech system does not provide for such a statutory presumption in all areas in which expropriation is legally possible(!). This results in different requirements concerning the establishment and proof of public interest depending on the applicable expropriation title. From the perspective of equal protection of property owners, this differentiation raises questions of justification and suggests that greater consistency in the legislative treatment of comparable expropriation situations may be desirable.

The answer to the second research question shows that the practical application of public interest depends substantially on whether its existence has already been determined by the legislature. Where the law establishes an irrefutable presumption of public interest for a defined category of activities or constructions, the expropriation authority does not establish its existence as a separate matter of evidence. Its task is instead to apply the statutory framework to the individual case and, where required, to balance the legislatively recognised public interest against the interests of the affected owner. Where no such statutory determination exists (some situations in the Czech republic), however, the competent administrative authority must itself interpret the relevant vague legal concept and establish whether the particular expropriation serves a legitimate public interest. The requirement of public interest therefore operates differently depending on the degree of its prior legislative specification. The analysis also confirms that public interest cannot be reduced to the interests of the State or of public-law entities. Both Czech and Polish approaches recognise that a public interest may exist even where the immediate beneficiary of the relevant activity is a private entity, provided that the activity itself serves a legitimate public purpose. Conversely, public interest cannot be understood as a single, homogeneous interest that necessarily prevails over all competing interests.

The answer to the third research question consequently reveals a multi-level distribution of responsibility. The legislature plays the primary role by determining the legal framework and, increasingly, by identifying categories of activities and structures regarded as serving public purposes. Administrative authorities retain responsibility for applying this framework to individual cases and, where no conclusive statutory determination exists, for establishing the existence of public interest. Courts subsequently review the legality of the administrative decision and, in appropriate cases, the interpretation and application of the relevant vague legal concept. The extent of judicial review therefore depends directly on whether the existence of public interest has been left to the administrative authority or has been conclusively determined by the legislature. Where public interest follows irrebuttably from legislation, the courts cannot review its existence as an individual factual or legal issue in the same way as they can where the concept is interpreted and applied by an administrative authority. This institutional division thus illustrates the close relationship between the determination of the public interest and the separation of powers.

From the perspective of property-right protection, legal certainty and judicial review, neither model is without difficulties. The Polish model provides a higher degree of predictability because the categories of public purposes are defined in advance. The Czech model may provide greater room for consideration of the circumstances of an individual case where no statutory presumption applies, but it also creates differences in the evidentiary requirements applicable to otherwise comparable expropriation situations. The Czech system therefore appears to contain a certain asymmetry which may be difficult to reconcile with the principle of equality of property owners. At the same time, the Polish approach raises the more general question whether a legislative determination of public purpose is capable of adequately capturing the circumstances of every individual project and whether every activity falling within a statutory category necessarily justifies the most serious interference with property rights.¹⁰⁵

The findings therefore do not support a conclusion that public interest should always be determined either exclusively by the legislature or exclusively in individual administrative proceedings. Rather, the comparison suggests that a combined model may provide the most appropriate balance. The legislature should be able to identify, in general terms, activities and categories of projects which ordinarily pursue important public objectives and thereby provide

¹⁰⁵ ZDVIHAL, Z. et alii. *Energetický zákon. Komentář*. Praha: C. H. Beck., 2019, p. 44.

legal certainty and a predictable framework for expropriation. At the same time, the legal system should preserve sufficient institutional space for the competent authority, and ultimately the courts, to assess the individual circumstances of the interference, particularly the relationship between the recognised public objective and the concrete impact on the affected property owner. The more far-reaching the statutory presumption of public interest, the greater importance should consequently be attached to the remaining requirements governing the proportionality and legitimacy of the individual expropriation.

Finally, the analysis raises a more fundamental question concerning the very nature of public interest as a vague legal concept. If the legislature progressively defines its content through general statutory categories, and in some cases establishes an irrebuttable presumption that particular activities or structures are in the public interest, it becomes questionable to what extent the concept continues to possess the characteristics traditionally associated with a vague legal concept(!). This does not necessarily mean that the concept loses its significance. Rather, its function changes: from a concept whose content is primarily constructed by the administration and courts in individual cases, it increasingly becomes a constitutional and legislative instrument for allocating decision-making responsibility between the branches of public power. The Czech and Polish experience demonstrates that the central issue is therefore not whether public interest can be defined once and for all, but how its content should be determined, at which level of public authority, and with what safeguards against arbitrary interference with property rights.

In this respect, the comparative analysis confirms that public interest in expropriation performs a dual function. It is both a substantive justification for depriving an individual of property and an institutional mechanism through which the legal order determines who is authorised to define and assess the legitimacy of such an interference. The Czech and Polish models have developed different techniques for fulfilling these functions, but recent developments in Czech constitutional case law have brought the two approaches significantly closer. The decisive challenge for both systems remains to ensure that the pursuit of important public objectives does not transform the statutory determination of public interest into an automatic justification for every individual interference with property rights. Public interest must therefore remain connected to the legitimacy of the objective pursued, the constitutional protection of property and the requirement of a fair balance between collective and individual interests.

KEY WORDS

public interest, property rights, expropriation, expropriation proceedings

KLÚČOVÉ SLOVÁ

verejný záujem, vlastnícke právo, vyvlastnenie, vyvlastňovacie konanie

BIBLIOGRAPHY

1. BIENEK, G., HOPFER, A., MARMAJ, Z., MZYK, E., ŻRÓBEL, R. *Komentarz do ustawy o gospodarce nieruchomościami*. Warszawa – Zielona Góra, 1998.
2. BIENIEK, G., RUDNICKI, S. *Nieruchomości. Problematyka prawna*. Warsaw, 2011.
3. BLAZEWSKI, M. *Prawo wywłaszczeniowe w świetle poglądów Tadeusza Bigi*. In: KOCOWSKI, T., LISOWSKI, P., PAPLICKI, M. (eds.). *Tadeusz Bigo o administracji i prawie administracyjnym – refleksje wrocławskiej szkoły administratywistycznej*. Wrocław, 2020, pp. 136 – 137. DOI 10.34616/23.20.062.
4. BORKOWSKI, A. *Interes publiczny a partnerstwo publiczno-prywatne*. In: BLICHARZ, J. (ed.). *Prawne aspekty prywatyzacji, Prace Naukowe Wydziału Prawa, Administracji i*

- Ekonomii UW*. Wrocław, 2012, pp. 443 – 459. [online] [cit. 9. september 2026]. Dostupné online: https://bibliotekacyfrowa.pl/Content/40022/26_Andrzej_Borkowski.pdf.
5. CZUBA, S. *Cywilnoprawna problematyka wywłaszczenia*. Warszawa, 1980.
 6. DYBOWSKI, T. *Ochrona własności w polskim prawie cywilnym*. Warszawa, 1969.
 7. EICHLEROVÁ, K., HANDRLICA, J., JASENSKÝ, M., KOŘÁN, J., KOŠŤÁL, V., PLÁŠILOVÁ, D., ZÁKOUCKÝ, P. *Energetický zákon. Komentář*. Prague : Wolters Kluwer ČR, 2016. ISBN 978-80-7552-412-6.
 8. ELIÁŠ, K. *Veřejný zájem (Malá glosa k velkému tématu)*. In: *Ad Notam*, 1998, č. 5, s. 103. ISSN 1211-0558.
 9. FRUMAROVÁ, K. *(Ne)způsobilost vyvlastnění být předmětem mezitímního rozhodnutí*. In: *Správní právo*, 2019, č. 3, s. 134 – 138. ISSN 2788-2241.
 10. FRUMAROVÁ, K. *Expropriační titul jako jedna ze zákonných podmínek vyvlastnění*. In: *Acta Iuridica Olomucensia*, 2020, č. 1, s. 8 – 21. ISSN 1801-0288.
 11. GRYGAR, T., FRUMAROVÁ, K., HORÁK, O., MASARIK, M. *Vyvlastnění a vyvlastňovací řízení*. Praha : Wolters Kluwer, 2020. ISBN 978-80-7598-968-0.
 12. HÁCHA, E. *Slovník veřejného práva československého: I až O. Svazek II. 2. díl*. Brno : Polygrafia, 1932.
 13. HANÁK, J. *Vyvlastnění z environmentálních důvodů. Současný stav a perspektivy*. Brno : Masarykova univerzita, 2015.
 14. HANÁK, J., ŽIDEK, D., ČERNOCKÝ, R. *Zákon o vyvlastnění. Praktický komentář*. Prague : Wolters Kluwer ČR, 2020. ISBN 978-80-7598-634-4.
 15. HANDRLICA, J. *Expropriační tituly subjektů soukromého práva*. In: *Právník*, 2016, č. 10, s. 818 – 828. ISSN 0231-6625.
 16. HANDRLICA, J. *Soukromoprávní subjekty nadané expropriačním titulem a jejich oprávnění v předpisech veřejného práva*. In: *Právní rozhledy*, 2014, č. 13-14, s. 44 – 50. ISSN 1210-6410.
 17. HANDRLICA, J. *Vyvlastňovací tituly podnikatelů všeužitečných děl*. In: *Právní rozhledy*, 2018, č. 2, s. 44 – 50. ISSN 1210-6410.
 18. HENDRYCH, D. et alii. *Správní právo. Obecná část*. Praha : C. H. Beck, 2019. ISBN 978-80-7400-624-1.
 19. HOETZEL, J. *Československé správní právo. Část všeobecná*. Praha : Melantrich, 1937.
 20. HOETZEL, J. *Vyvlastnění*. In: HÁCHA, E. (ed.). *Slovník veřejného práva československého. Svazek V*. Praha : Eurolex Bohemia, 2000.
 21. HUSSEINI, F., BARTOŇ, M., KOKEŠ, M. et alii. *Listina základních práv a svobod: komentář*. Praha : C. H. Beck, 2020. ISBN 978-80-7400-812-2.
 22. JAROSZ-ZUKOWSKA, S. *Konstytucyjna zasada ochrony własności*. Kraków, 2003.
 23. KIRCHHOF, G. *Die Allgemeinheit des Gesetzes. Über einen notwendigen Garanten der Freiheit, der Gleichheit und der Demokratie*. Tübingen : Mohr Siebeck, 2009.
 24. KMEC, J., KOSAŘ, D., KRATOCHVÍL, J., BOBEK, M. et alii. *Evropská úmluva o lidských právech. Komentář*. Praha : C. H. Beck, 2025. ISBN 978-80-7699-033-3.
 25. KOSIKOWSKI, C. *Zasada ochrony własności*. In: WYRZYKOWSKI, M. (ed.). *Konstytucyjne podstawy systemu prawa*. Warszawa, 2001.
 26. KOUDELKA, Z. *Správní žaloba ve veřejném zájmu*. In: *Trestní právo*, 2013, č. 7-8, s. 18 – 21. ISSN 1211-2860.
 27. KRČMÁŘ, J. *Práva věcná*. Praha : Všehrd, 1925.
 28. MATES, P. *K problematice neurčitých právních pojmů ve správním právu*. In: *Právní rozhledy*, 2007, č. 9, s. 326 – 329. ISSN 1210-6410.
 29. MODLINSKI, E. *Pojęcie interesu publicznego w prawie administracyjnym*. Warszawa, 1932.

30. MUZYCZKA, K. *Konflikt interesów przy realizacji celu publicznego w instytucji wywłaszczenia nieruchomości*. In: Progress: Journal of Young Researches, 2021, no. 9-10, pp. 23 – 24. ISSN 2543-8638. DOI 10.26881/prog.2021.9.03.
31. MUZYCZKA, K. *Ochrona interesu prywatnego w procesie wywłaszczania nieruchomości*. Starogard Gdański, 2023. ISBN 978-83-965575-0-6.
32. PARCHOMIUK, J. *Konstytucyjnoprawne pojęcie wywłaszczenia*. In: Roczniki Wydziału Nauk Prawnych i Ekonomicznych KUL, 2005, 1(1), pp. 75 – 108. ISSN 1896-6365.
33. PETRŮV, H. *Ústavně právní aspekty posuzování existence veřejného zájmu*. In: Acta Universitatis Carolinae – Iuridica, 2010, č. 2, s. 97 – 107. [online] [cit. 9. september 2026]. Dostupné online: <https://karolinum.cz/en/journal/auc-iuridica/year-56/issue-2/issue-year-2010/article-849>.
34. RYCHETSKÝ, P. et alii. *Ústava České republiky. Ústavní zákon o bezpečnosti ČR. Komentář*. Praha : Wolters Kluwer, 2015. ISBN 978-80-7478-809-3.
35. SACHS, M. et al. *Grundgesetz. Kommentar*. 9. vydanie. Munich : C. H. Beck, 2021.
36. SKULOVÁ, S. *Správní uvážení – základní charakteristika a souvislosti pojmu*. Brno : MU, 2003. ISBN 80-210-3237-5.
37. STAWECKI, M. *Konflikt interesu publicznego z prywatnym na tle instytucji wywłaszczenia nieruchomości*. In: Annales. Etyka w życiu gospodarczym, 2012, no. 15, pp. 221 – 229. DOI 10.18778/1899-2226.15.19.
38. SZALEWSKA, M. *Wywłaszczenie nieruchomości*. Toruń, 2005.
39. SZEWCZYK, M. *Ingerencja publicznoprawna w prawa własności jednostki w demokratycznym państwie prawnym*. In: FILIPEK, J. (ed.). *Jednostka w demokratycznym państwie prawa*. Bielsko-Biała, 2003, pp. 657 – 661.
40. SZEWCZYK, M. *Konstytucyjna zasada słusznego odszkodowania i jej realizacja w ustawodawstwie zwykłym*. In: *Prawo administracyjne w okresie transformacji ustrojowej*. Kraków, 1999.
41. TREMBECKA, A. *The Benefit Principle in Determining Compensation for Real Estate Expropriation*. In: Geomatics and Environmental Engineering, 2023, no. 2, pp. 89 – 104. [online] [cit. 9. september 2026]. Dostupné online: <https://doi.org/10.7494/geom.2023.17.2.89>. DOI 10.7494/geom.2023.17.2.89.
42. UERPMANN-WITZACK, R., TICHÝ, L., TROUP, T. *Veřejný zájem jako klíčový pojem či prázdná floskule*. In: *Správní právo*, 2020, č. 3, s. 176 – 188. ISSN 2788-2241.
43. VLACHOVÁ, B. *Zákon o vyvlastnění. Liniový zákon*. Praha : C. H. Beck, 2023. ISBN 978-80-7400-926-6.
44. VOPÁLKA, V. *Ve veřejném zájmu*. In: VANDUCHOVÁ, M., HOŘÁK, J. (eds.). *Na křižovatkách práva. Pocta Janu Musilovi k 70. narozeninám*. Praha : C. H. Beck, 2011, pp. 385 – 396. ISBN 978-80-7400-388-2.
45. WIERZBOWSKI, B. *Gospodarka nieruchomościami*. Warszawa, 2008.
46. WOLANIN, M. *Cel publiczny, jako normatywne kryterium oddziaływania na stosunki cywilnoprawne w gospodarowaniu nieruchomościami, cz. 1*. In: *Nieruchomości*, 2009, no. 9.
47. WOŚ, T. *Wywłaszczenie i zwrot nieruchomości*. Warszawa, 1998.
48. WYRZYKOWSKI, M. *Pojęcie interesu społecznego w prawie administracyjnym*. Warszawa, 1986.
49. ZDVIHAL, Z. et alii. *Energetický zákon. Komentář*. Praha : C. H. Beck, 2019.
50. ZDYB, M. *Prawny interes jednostki w sferze materialnego prawa administracyjnego. Studium teoretyczno-prawne*. Lublin, 1991, pp. 219 – 223.
51. ZIMMERMANN, M. *Wywłaszczenie. Studium z dziedziny prawa publicznego*. Lwów, 1939.

AUTHOR CONTACT DETAILS

Doc. JUDr. Kateřina Frumarová, Ph.D.

ORCID: 0000-0001-5886-1645

Associate Professor

Faculty of Law, Palacký University in Olomouc

Department of Administrative Law and Financial Law

Třída 17. listopadu, Olomouc 77900

Phone number: +420 604674184

E-mail: katerina.frumarova@upol.cz