

**Land Valuation Disputes and other such as Border Disputes
which a Cadastral Land Surveyor can make Legal Decisions
during the Cadastral Land Surveying Process in Finland
+ Land Court Process**

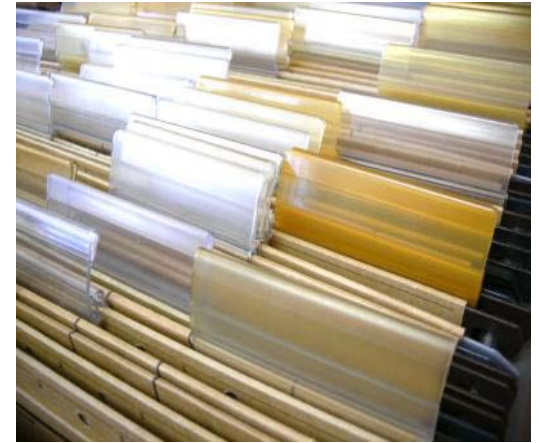
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National Land Survey of Finland (NLS)**

**High-Level FIG/World Bank Conference
Athens September 20th, 2016**



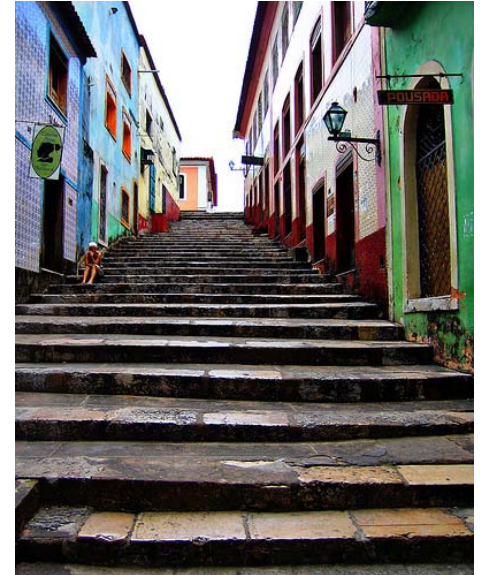
CONTENTS

- Cadastral Surveyor is obliged to solve disputes regarding land ownership and border disputes if they occur during the Cadastral Land Surveying Process
- Procedure – Permission and Cad.Expr.Land Survey
- Compensations in case of expropriation
- Other issues which can be solved in connection with a Cadastral Expropriation Land Survey
- Purchase Price Register – some lag, not quite up-to-date
- If possible the Market Value Method is used
- Property Taxation in Finland



PRINCIPLES OF EXPROPRIATION

1. Protection of ownership (or freehold)
2. Public Interest
3. Just and Fair Compensation
4. Compensation versus Value
5. The Losses to be Compensated
6. What does it mean?

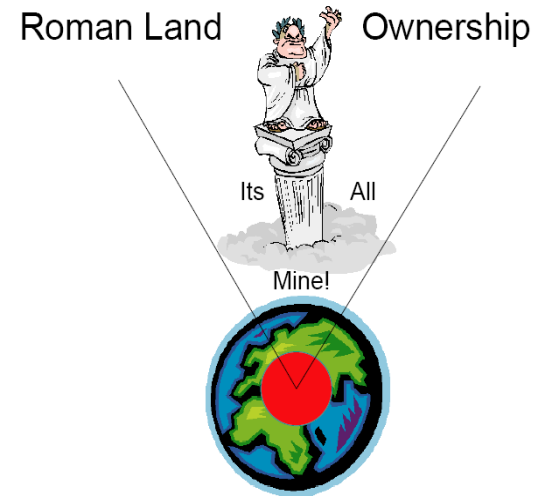


PROTECTION OF OWNERSHIP

The rights of ***ownership***

Are usually guaranteed by sections of the ***Constitution of Finland***

The **ownership of land** is also protected by the same principles.



Prerequisites for Expropriation of Property:

- 1) “public interest”
- 2) “just and fair compensation”

EXPROPRIATION PROCESS

1. Expropriation Permit

- Council of Ministers etc.
- Prior to Expropriation Land Survey
- Administrative Courts
- The Supreme Administrative Court



2. Expropriation Procedure (NLS)

- Expropriation Land Survey
- Also ownership (freehold) disputes and border disputes can be solved in connection with land surveyor's decision.
- In certain minor cases NLS (Cadastral Land Surveyor) can also grant an expropriation permit.

PUBLIC INTEREST

What does “public interest” mean in practice (*de facto*)?

- Usually land is needed for important construction or infrastructure projects, as for
 - Highways, railways
 - Airports
 - Transmission lines
 - Nature Reserves and
 - Other public purposes
- The projects serve public welfare and extensive group of people
- The benefits to the public must be larger than the disadvantages for private owners



PUBLIC INTEREST

Who decides when the “public interest” demands “taking of land by force” (expropriation)?



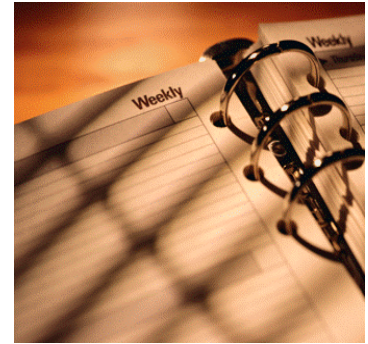
In principle the **legislators**, who can

- Prescribe laws for expropriation for certain purposes or
- Ordain common laws, which give the right to expropriate whenever certain needs appear (for example for main road construction or nature reserve)

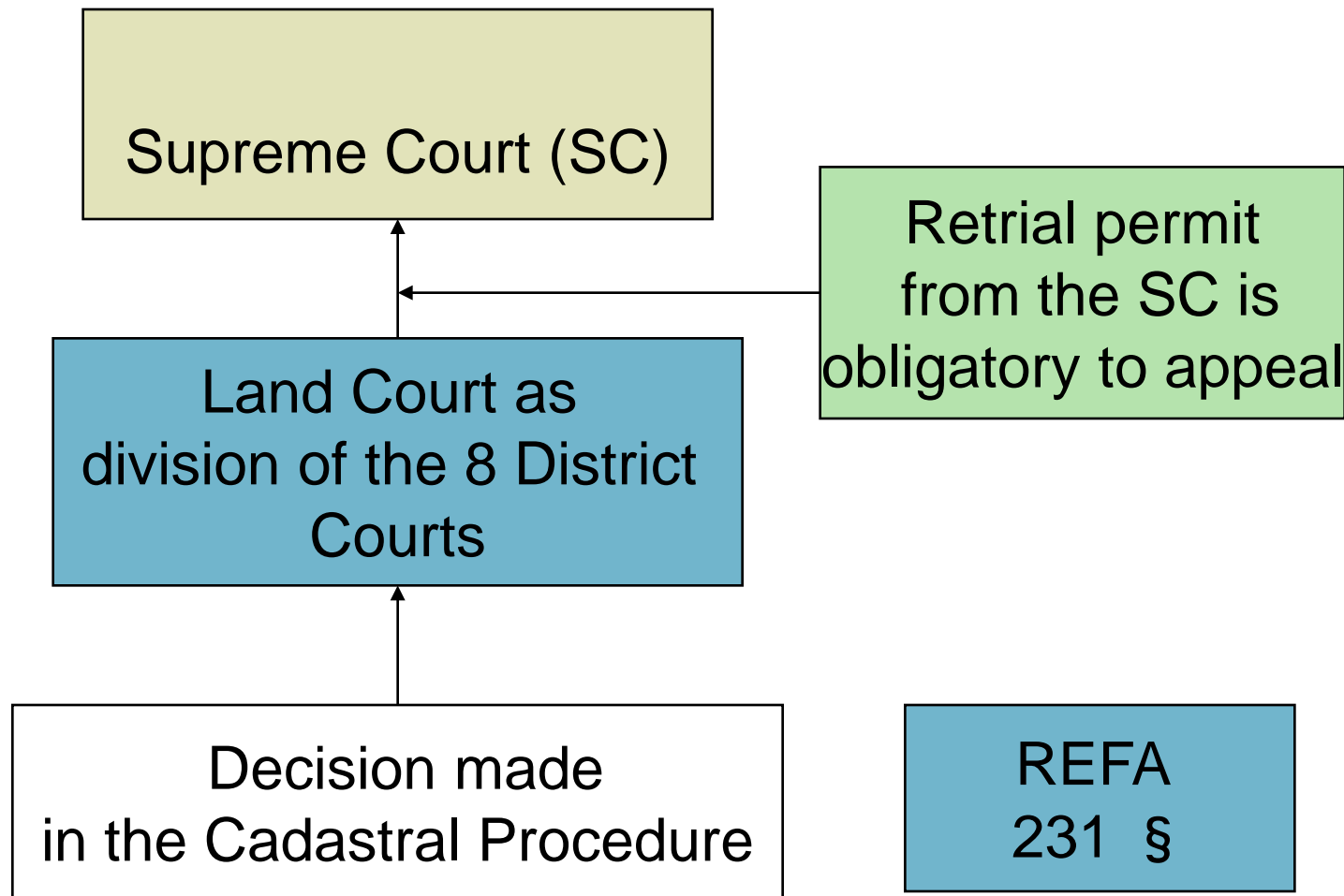
The **expropriation permit** is always needed. It could be given for example by the **Council of Ministers** or the permission could be based on official **confirmation of a plan**. This permit and many other common rules have been defined in **common expropriation legislation**.

EXPROPRIATION LAND SURVEY

- Expropriation takes place in an expropriation procedure enacted in law
- The decision is made by an independent expropriation committee (1 land surveyor + 2 lay members)
- An appeal against the decision is made to the land court
- An appeal against the decision of the land court is made to the Supreme Court, provided the Supreme Court grants leave to appeal



APPEAL - COURTS



EXPROPRIATION PROCEDURE



- Compensations are paid according to ownership data recorded in the LR (Title and mortgage register).
- If there is something vague regarding ownership, compensation can also be deposited on state bank account.
- Border disputes and certain ownership disputes can be solved by land surveyor during the process (REFA, section 184).
- Cadastral Surveyor is allowed to decide any compensation caused by the infrastructure project.
- Appeal against the decisions given by the expropriation committee is made to the Land Court.
- NLS appoints the Cadastral Land Surveyor on a case by case basis, not the parties.

JUST AND FAIR COMPENSATION

What is fair and just compensation?



-“Synonyms”

- **“Full”** compensation
- **“Going rate”** (see “values” later)

-Financial (property) position of the owner must remain unchanged

-Only real financial losses can be compensated

-If the project brings profits to the landowner they can be cut from the compensation

-Every landowner gets compensation defined with uniform regulations

COMPENSATION vs. VALUE

So what is fair, just and **full** compensation...?



Financial (property) position of the owner must remain unchanged...?

- First of all compensation, which enables the owner to get another **similar property instead** of the expropriated one, can be seen **as** fair, just and full
- Thus, the **Market Value** of the object represents also the full, just and fair compensation and
- **“Capital Comparison Method” (“Market Method”)** is the most usual way to determine the compensation

COMPENSATION vs. VALUE

If Market Value does not represent the full loss of the owner?

- **Income** from the property can be very high so the value defined by “**Investment Income Method**” is higher than the Market Value

Or

- For example the **construction costs** of the building could have been specially high (and the “**Cost Method**” gives a higher result than other methods)

... these types of values (and valuation methods) can also be taken into consideration when defining the compensation



COMPENSATION vs. VALUE



Summary ... fair value:

Value must be assessed without the influence of the purpose of expropriation

Value has to be based on the commonly assessed quality of the object at the time of valuation. It is defined as a market, income or cost value.

Property must be valued as a part of the property of the landowner, not that of the expropriator.

Choose the method, which produces the highest compensation (value) for the landowner, if reasonable and realistic

LOSSES MUST BE COMPENSATED



There are three basic types:

1) Compensation of the object

- If the whole or part of real property is taken (physically)
- Valuation as described above

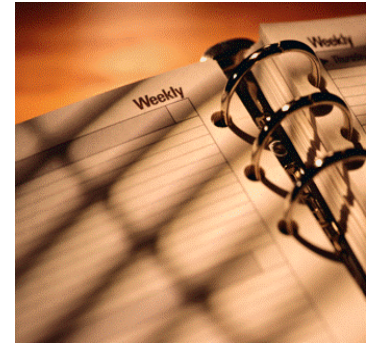
2) Compensation of disadvantages

- If there remains disadvantages, that is, the use of the property becomes difficult
- Valuation based on decreased income or on decreased market value

3) Compensation of damages

- For example, the construction work has caused certain damage
- Valuation usually based on costs

OTHER LOSSES TO BE COMPENSATED



Also, other losses could be compensated:

1) Losses of business income

- Valuation by reliable “proof” of income losses etc.

2) Transferring (resettlement) costs of a building

- Valuation by costs

The “expectation” or “speculation” values are usually not to be compensated.

Personal injuries are not to be compensated in Expropriation Land Survey procedure

WHAT DOES IT MEAN?

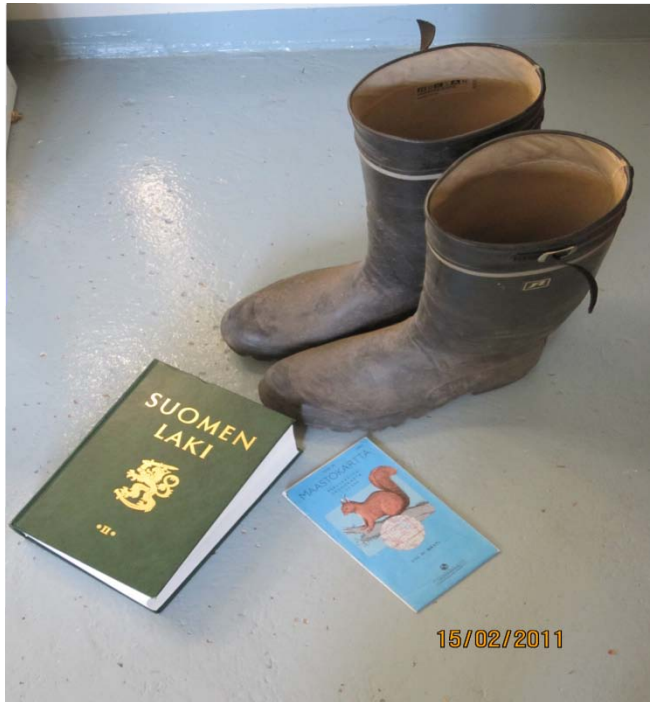
- ◆ State has a right to get land from landowner for e.g. nature conservation at market (average) price, which is full and just compensation!
- ◆ Landowner must transfer his land for nature conservation at market (average) price
- ◆ Landowner (or state) cannot alone decide the proper price





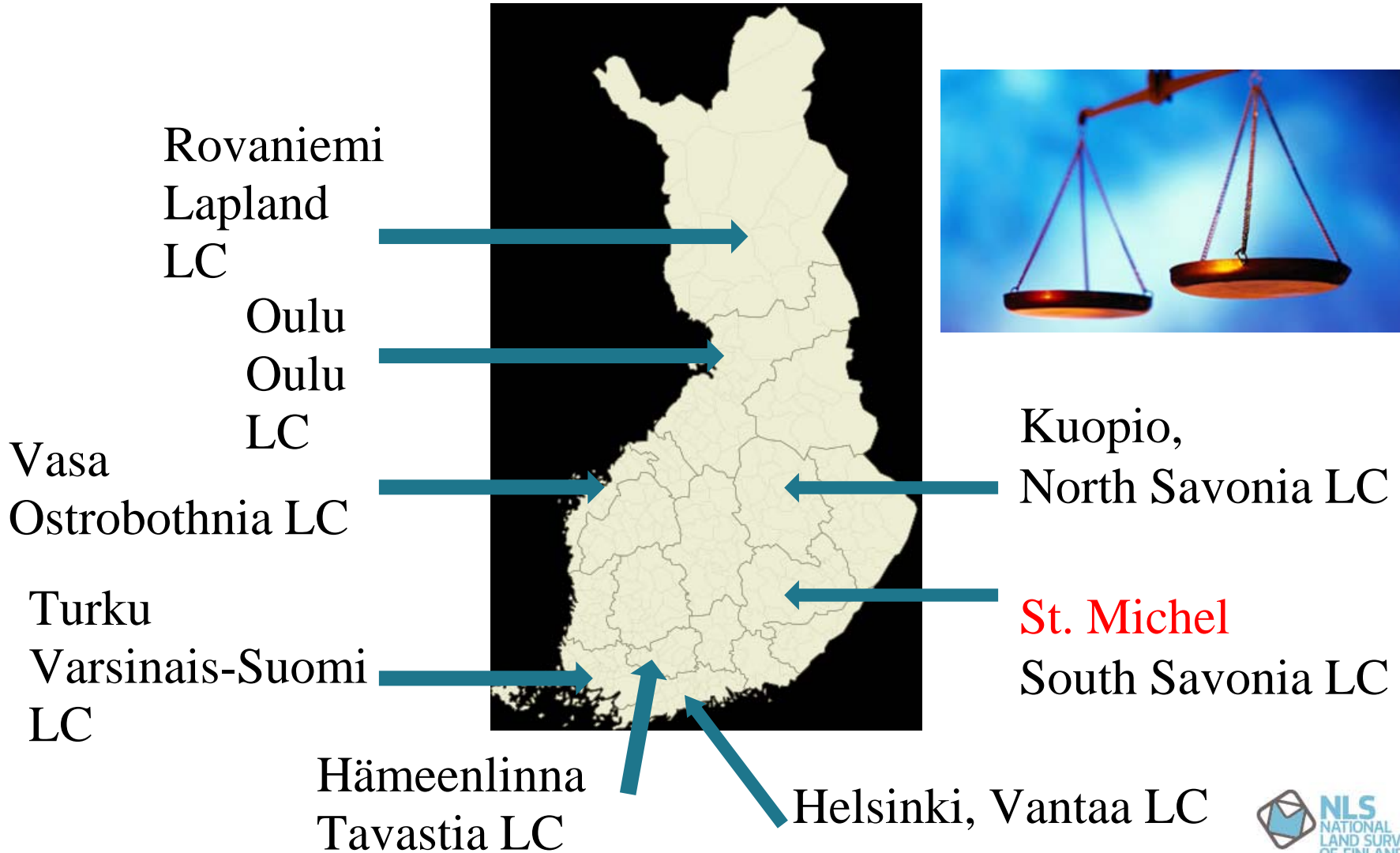
LAND COURT PROCESS

- Inquiry into most cases also in the terrain with the parties present





JURISDICTION of LAND COURTS



LAND COURT – COMPOSITION

- The Chairman of the Land Court = a legally trained member of the District Court
- The other members
 - The Land Court Surveyor (+ an additional Land Court Surveyor in some cases) and
 - + 2 lay members of the court
 - The Land Court may also include another legally trained member of the court
 - In some cases (see REFA 243.2 §) only the Chairman constitutes a quorum in the Land Court

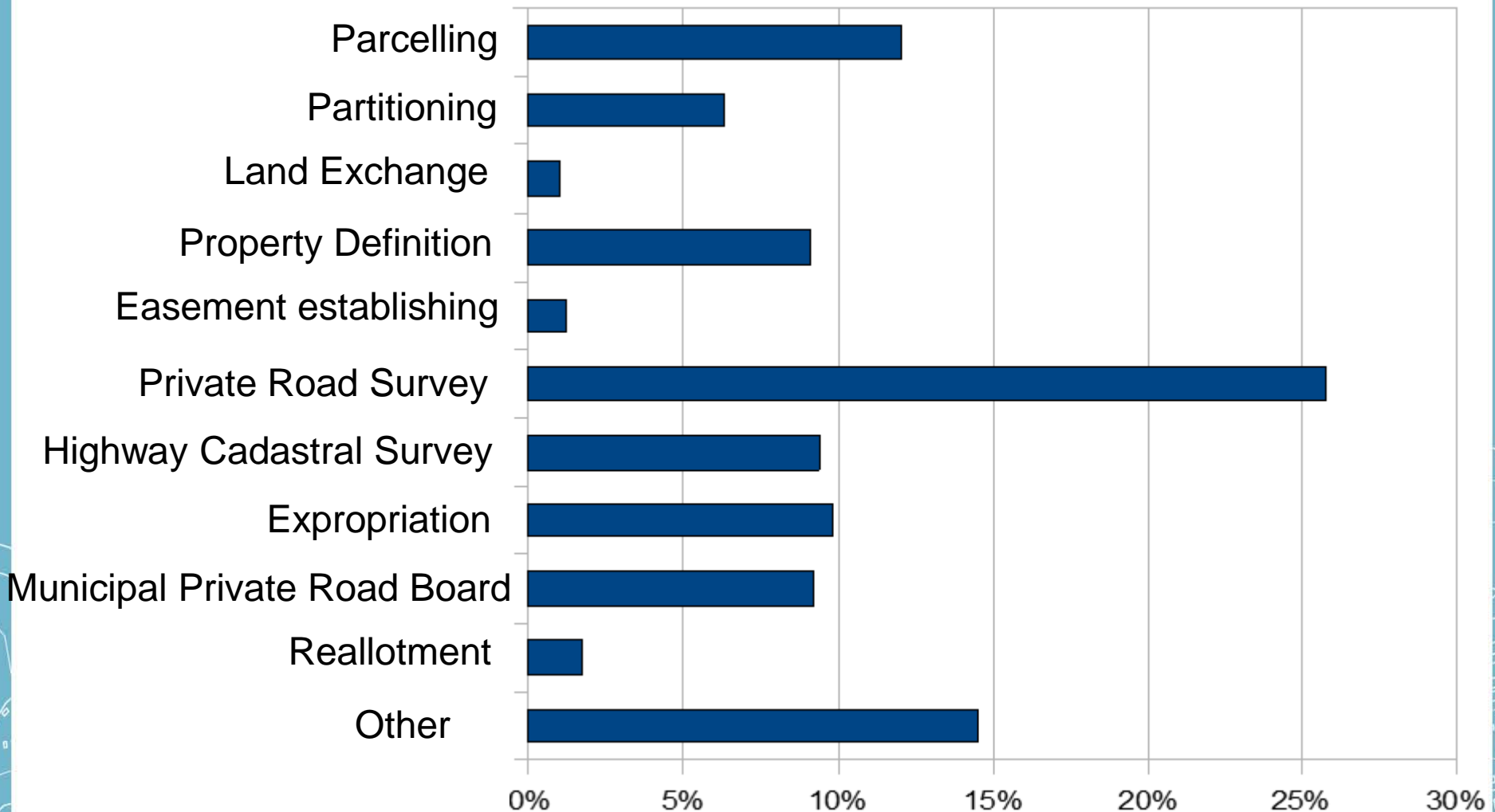


LAND COURT – CASES



- The land courts deal with disputes and appeals arising from land surveying operations e.g. decisions made in a Cadastral Procedure.
- Case types are
 - divisions, partitions, parcellings, easements (REFA)
 - procedures under the Expropriation Act and the Highways Act

What kind of cadastral issues appeals regard?



APPEALS AGAINST CADASTRAL LAND SURVEYS IN THE YEAR 2015

Cadastral Survey Operation	Amount	Appeals against	
Land Consolidation	17	14	82,35 %
Partitioning	270	32	11,85 %
Highway Cadastral Survey	235	27	11,49 %
Land Exchange	241	22	9,13 %
Private Road Survey	1 483	118	7,96 %
Property Definition incl border d.	1 082	54	4,99 %
Expropriation	989	48	4,85 %
Easement establishing	220	10	4,55 %
Cad.Survey/Common Area	203	4	1,97 %
Parcelling	14 144	53	0,37 %

Real life...



nastiness and varying circumstances...



but also joy and ...



beautiful landscapes



THE SUPREME COURT



- The decisions of a land court can be appealed against in the Supreme Court.
 - a retrial permit is needed from the SC
 - the appeal and application for retrial permit (leave to appeal) is to be made at the same time by the applicant
- The main task of the SC is to establish judicial precedents in leading cases, thus ensuring uniformity in the administration of justice by the lower courts.

THE SUPREME COURT

- The most important function is to rule on important points of law in cases
 - which are significant for the entire legal order + guiding thereby the administration of justice in future cases
 - these precedents are usually created in cases for which the applicable Acts of Parliament and Decrees do not provide a clear solution for a question of law or in which there is room for interpretation.



Precedent

Source <http://www.kko.fi/29537.htm>

FINALLY

- Property valuation is largely based on the Purchase Price Register
 - This Register is based on data produced by Public Purchase Witnesses (“notaries”) in Finland
 - Register is maintained by NLS
 - It includes information regarding all real estate transfers since the year 1980
- Property Taxation is also based on Purchase Price Register data collected and maintained by NLS
 - A new taxation system is to be developed according to Finnish Taxation Authorities. NLS has a central role.



Thank you!

www.nls.fi

