

# PLANNING REGULATION, PROPERTY PROTECTION, AND REGULATORY TAKINGS IN THE GREEK PLANNING LAW

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## I. THE TAKINGS ISSUE IN THE GREEK PLANNING CONTEXT: GENERAL OVERVIEW

Greek planning law is not familiar with the takings issue, the reduction of development rights due to planning or zoning decisions and the granting of compensation to the owner. Multiple factors have contributed to the lack of development in this area of the law: the lack of specific constitutional rules directly pertaining to the takings issue in the field of urban planning and zoning, increased court protection of natural and cultural environment, and the long-term absence of a responsive land-use policy. It is not surprising that while planning restrictions on the use of private land have become more common and intense in recent decades, few statutory regimes for takings assessment and compensation have been established up to now. Under this legal regime, few individuals have brought takings lawsuits before the courts and even fewer still have been able to meet the constitutional threshold for compensation.

Yet, despite the lack of attention devoted to this legal issue, empirical evidence suggests that the takings issue is a widespread problem in Greek planning practice. In 2005, the Greek Ombudsman published a special report that presented instances of injurious land-uses, *de facto* expropriations, physical invasions, and long-term delays in the payment of compensation for land condemned for public open space, all of which fall broadly under the takings debate.<sup>1</sup> According to this report, recent takings complaints in Greek planning stem from a wide range of public decisions.

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1. THE GREEK OMBUDSMAN, EXPROPRIATION, DEPRIVATION, AND RESTRICTIONS ON THE USE OF PROPERTY: PROBLEMS OF ADMINISTRATIVE ACTION (2005), available at <http://www.synigoros.gr/reports/apalotriosi.pdf>.

These decisions include provisioning sites for public open spaces such as roads and squares. Others involve the provisioning of sites for public service buildings or uses, such as schools and hospitals. Yet others involve the conservation of natural areas, the protection of archaeological sites and monuments, or the construction of public works.

In any case, the takings issue arises in Greece in two principle situations. The first is when the government, through its own agents or other authorized body, physically invades private land. The classic example, reflected in the early jurisprudence of the Court of Cassation,<sup>2</sup> is when flood control projects or drainage projects flood private lands that are located outside of condemned flowage easements.<sup>3</sup> A contemporary illustration is a public works project that requires the physical occupation of land lying outside an expropriation perimeter. In general, most instances of permanent, physical occupations are considered *de facto* expropriations whenever landowners have not consented to these occupations, and *de facto* expropriations are compensable under constitutional law.<sup>4</sup> Similarly, temporary physical invasions, which fall under article 18, paragraph 3 of the Constitution, are regarded as “requisitions,” which give landowners direct rights to compensation under constitutional provisions.

However, physical invasions are not critical to the takings issue controversy in Greece; the controversy revolves mainly around land-use restrictions. Land-use restrictions often have similar effects to expropriation. For example, measures that eliminate the economic uses or value of properties are generally termed “*de facto*” or “indirect” expropriations. Nevertheless, land-use restrictions are regulatory measures. They do not *de jure* constitute acts of taking; no compensation is awarded because title remains with the landowner. Therefore, the task is

2. The Greek judicial system comprises of administrative, civil, and criminal courts. The Greek Supreme Court is the Court of Cassation (*Areios Pagos*), which decides all final appeals in civil or criminal cases. The Supreme Administrative Court is the Council of State (*Symboulion Epikrateias*), which was originally created in 1835 and was modeled after the French *Conseil d'Etat*. Its present form was established in 1928. The Council of State's powers are basically determined by the Constitution. The Council of State has the power to, among other things, annul administrative acts that violate the law or exceed power, annul final decisions of the lower administrative courts, and hear substantive administrative disputes. In addition, the Council of State examines in advance the legality of all Presidential Decrees with a regulatory character and issues its conclusions in non-binding advisory opinions. See EPAMINONDAS SPILIOTOPOULOS, GREEK ADMINISTRATIVE LAW 303–431 (Bruylant 2004), for more information on the organization and the powers of Greek administrative courts.

3. Areios Pagos [AP] [Supreme Court] 79/1897; AP 183/1898; AP 25/1901. See also PRODROMOS DAGTOGLOU, CONSTITUTIONAL LAW: CIVIL RIGHTS-TOME B 1067 n.175 (2005).

4. Symboulion Epikrateias [SE] [Supreme Administrative Court] 1968/1974 (Greece); SE 4070/1976. See also KOSTAS HOROMIDIS, COMPULSORY EXPROPRIATION 102–03 (1997).

to identify the line between normal regulations, which require landowners to bear the economic consequences, and regulatory takings, which may place obligations on public authorities to compensate landowners. This task is difficult, however, because Greek courts rarely identify which effects of planning regulations on private property constitute *de facto* expropriation and require compensation under constitutional provisions. On the other hand, Greek planning laws rarely grant compensation rights for reductions in property values due to planning or development-control decisions.

Two factors may be contributing to the scarcity of successful takings claims in Greece. First, property owners may face several hurdles in getting their claims heard and decided by competent administrative authorities and the courts. Second, courts have formulated a body of case law that is generally tolerant of government actions that serve legitimate public objectives; the courts have not always secured a fair balance between the general demands and interests of the community and the protection of individual property rights.

One possible source for a different legal approach to takings stems from the case law of the European Court of Human Rights. In fact, the European Convention of Human Rights (ECHR),<sup>5</sup> as interpreted by the Strasbourg Court, seems to guarantee property owners greater protection from regulatory takings and calls for a general “review” of relevant Greek jurisprudence. This “correcting power” of the ECHR<sup>6</sup> derives from the fact that the Greek Constitution recognizes the supremacy of the ECHR over any contrary provision of domestic law.<sup>7</sup> It obliges both the administration and the courts not only to avoid any formalistic interpretation of the domestic statutes concerned with property rights, but

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5. Article 1 of Protocol No. 1 reads as follows:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, art. 1, Mar. 20, 1952, Europ. T.S. No. 9, *available at* <http://conventions.coe.int/treaty/en/Treaties/Html/009.htm>.

6. PH.VEGLERIS, *THE EUROPEAN CONVENTION OF HUMAN RIGHTS AND THE CONSTITUTION* 103 (1977).

7. According to article 28, paragraph 1 of the Greek Constitution, an international convention, such as the European Convention of Human Rights, becomes an integral part of domestic Greek law once the convention is ratified by statute and becomes operative according to its respective conditions. A ratified and operative international convention prevails over any contrary provision of ordinary law; however, it does not prevail over the Constitution.

also to harmonize the application of the domestic law with the theory and the jurisprudence produced within the framework of the Convention.<sup>8</sup>

The prospect of greater protection of property rights appears even brighter in view of the forthcoming revision of the Greek Constitution. This revision intends, among other things, to extend the constitutional requirements provided in article 17, paragraph 2 to expropriations implemented in town plans. If passed, this revision would reduce the delays for affected landowners to get compensation.<sup>9</sup>

The next section of the paper will address the question of takings with regard to the provisions of the Greek Constitution. It will attempt to formulate a typology of potential regulatory takings in Greece, based on the types of injurious planning decisions that have emerged in recent practice. Afterward, the paper will examine the statutory regimes for takings compensation as well as the compensation instruments. The last section of the paper will present critical remarks on the current state of Greek planning law, contemporary practices, and the prospect of the takings issue in Greece.

## II. THE CONSTITUTIONAL FRAMEWORK

The Constitution, which was adopted in 1975 and revised in 1986 and 2001, establishes the boundaries within which the legislature and the administration must operate when taking specific measures concerning regional planning, urban planning, and private property.

The most important articles of the Constitution that relate to the takings issue are articles 24 and 17.<sup>10</sup> Article 24 places urban and regional

8. See J. DROSOS, CONSTITUTIONAL RESTRICTIONS OF PROPERTY AND COMPENSATION 41–83 (Nomiki Bibliothiki 1997); K. Ioannou, *The Application of the European Convention on Human Rights in the Greek Legal Order*, EEEURD 223 (1996); K. HRYSOGONOS, THE INCORPORATION OF THE ECHR IN THE NATIONAL LEGAL ORDER (Ant. N. Sakkoulas 2001); J. KTISTAKIS, THE INFLUENCE OF THE ECHR ON THE INTERPRETATION AND APPLICATION OF GREEK LAW (Ant. N. Sakkoulas 2002).

9. According to article 17, paragraph 2 of the Constitution, a government body that issues a decision declaring an expropriation must include a specific provision that suggests a possible way to cover compensation expenditures. However, the actual formulation of this article does not explicitly cover expropriations that are declared for planning reasons. Based on this ambiguity, the Council of State has held that article 17, paragraph 2 does not apply to expropriations that are declared in accordance with planning legislation. SE 3117/2004. As a result, competent government bodies often declare expropriations for green or other public open spaces without having any possible way to pay for compensation expenditures. See discussion *infra* Part III.A.

10. Article 17(1) and (2) of the Greek Constitution provides:

1. Property is under the protection of the State; rights deriving there from, however, may not be exercised contrary to the public interest.

2. 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

planning under state control and provides for landowners to contribute to the securing of land for public facilities and amenities. The article also refers to the protection of the environment, both physical and cultural, as an obligation of the state and as an individual right. Article 17 places property under state protection and specifies that individuals cannot exercise property rights if it would be detrimental to the public interest. This article also allows the government to take private property under eminent domain for public benefit. In this situation, full compensation must be paid, which can take the form of either monetary compensation or in-kind compensation, such as the replacement of land or the transfer of development rights.

The joint interpretation of the provisions of articles 24 and 17 in the academic literature and judicial case law recognizes that the typical restrictions on land-use and building conditions imposed through planning regulations and zoning ordinances constitute ordinary expressions of the State's police power.<sup>11</sup> This power enables the government to limit property rights to promote broader public interests, such as the protection of safety, health, aesthetics, and welfare. In this sense, the negative effects produced by planning regulations on private property rights are

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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. . . .

1975 Syntagma [SYN] [Constitution] 17 (Greece).

Article 24(1), (2) and (3) of the Constitution provides respectively:

1. The protection of the natural and cultural environment constitutes a duty of the State and a right of every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainability. Matters pertaining to the protection of forests and forest expanses in general shall be regulated by law. The compilation of a forest registry constitutes an obligation of the State. Alteration of the use of forests and forest expanses is prohibited, except where agricultural development or other uses imposed for the public interest prevail for the benefit of the national economy.

2. The master plan of the country, and the arrangement, development, urbanisation and expansion of towns and residential areas in general, shall be under the regulatory authority and the control of the State, in the aim of serving the functionality and the development of settlements and of securing the best possible living conditions. The relevant technical choices and considerations are conducted according to the rules of science. The compilation of a national cadastre constitutes an obligation of the State.

3. For the purpose of designating an area as residential and of activating its urbanisation, properties included therein must participate, without compensation from the respective agencies, in the disposal of land necessary for the construction of roads, squares and public utility areas in general, and contribute toward the expenses for the execution of the basic public urban works, as specified by law.

1975 SYN 24.

11. DROSOS, *supra* note 8, at 164–65. According to Dagtoglou, ordinary planning restrictions actually constitute “determinations of ownership.” DAGTOGLOU, *supra* note 3, at 1069.

constitutional if they are legitimized by specific legal provisions and proven necessary and proportional to the pursued public interest.<sup>12</sup>

Although these restrictions are broad, they cannot lead to owners being deprived of the economic use and enjoyment of their private properties. Otherwise, the regulatory measures implemented under planning legislation may be considered as takings that carry obligations for the government to compensate owners in proportion to the extent, the intensity, and the duration of the interference with property rights<sup>13</sup>.

However, there is no explicit constitutional ground for takings liability in the field of urban planning and zoning. Indeed, besides the general expropriation clause provided in article 17, paragraph 2 of the Greek Constitution, the Constitution does not recognize compensation for reduction in property values due to planning, zoning, or development-control decisions. Accordingly, only land-use regulations that eliminate all economically beneficial uses of property can be recognized, under certain conditions, as *de facto* expropriations subject to the compensation provisions of article 17, paragraph 2 of the Constitution.

There is a broad consensus among academics that a *de facto* expropriation occurs if there is a permanent interference with the property that deprives the owner of all uses of the land or the sole economically beneficial use of the land.<sup>14</sup> Two criteria are used to distinguish a regulatory expropriation from a mere decrease in property rights that is a consequence of regulatory action. One is a quantitative test that looks at the severity of the regulatory measure's effect on the property. The other is the duration of the economic deprivation of the property.

Judicial practice indicates that the severity of the regulatory measures taken under planning legislation is the key criterion when it comes to deciding whether an indirect expropriation or an equivalent measure has taken place. In the earliest cases,<sup>15</sup> the Council of State and the Court of Cassation recognized that the total and permanent prohibition of construction on a parcel of land constitutes a deprivation of property, if, under real circumstances, no other use is possible or economically beneficial.

However, starting in the 1980s, these same courts have been reluctant to find compensable injuries on the property even when regulatory

12. SE 2601/2005.

13. SE 2601/2005; SE 3067/2001; SE 784/1999; SE 4575/1998. *See also* SE 1029/1985.

14. *See, e.g.*, DROSOS, *supra* note 8, at 171; DAGTOGLOU, *supra* note 3, at 1065–71; APOSTOLOS GERONTAS, CONSTITUTIONAL PROTECTION OF PROPERTY AND EXPROPRIATION 30 (Ant. N. Sakkoulas 2003).

15. SE 223/1929; SE 910/1935; AP 84/1923.

measures eliminated most of the substantial uses of property. In this regard, the Council of State has found that no deprivation of property occurs when the building rules that are established within a zone of urban development control either (1) extinguish most of a land's uses or the possibility of building on that particular property,<sup>16</sup> or (2) completely eliminate the possibility of the applicant to build a hotel in an archeologically preserved area even though the surrounding area is tourist-oriented.<sup>17</sup> Using a similar concept called "value loss," the Court of Cassation has held a diminution in land value is not sufficient to establish a "takings" claim when the affected property has not been rendered "valueless."<sup>18</sup> Rather, it seems that all uses or values of a parcel must be eliminated by a planning or zoning regulation before the takings claim is viable.<sup>19</sup>

To assess the impact of planning restrictions on property, the Greek courts have delineated a boundary between land that is included in official town plans and land that falls outside of these plans. The former is deemed to be legally designated for residential uses or other development purposes and thus to be fully compensable under constitutional provisions if completely deprived of its building rights.<sup>20</sup> The latter is considered to be legally designated for agricultural use and can tolerate more severe restrictions on land-use and building activities. These restrictions can even prevent all construction activities; the courts will not regard these restrictions as indirect expropriations or equivalent measures.<sup>21</sup> Obviously,

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16. SE 695-696/1986; SE 4953/1995; SE 2604/2005.

17. SE 982/2005.

18. AP 118/2000.

19. The European Court of Human Rights has developed a similar doctrine, which looks at the degree of interference with property rights to decide whether a deprivation of property has occurred within the meaning of Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. In *Papamichalopoulos v. Greece*, 16 Eur. H.R. Rep. 440, para. 45 (1993), where the applicants' land had been taken over by the Navy in order to set facilities on it, the Court found that, although there was never any formal expropriation,

the loss of all ability to dispose of the land in issue, taken together with the failure of the attempts made so far to remedy the situation complained of, entailed sufficiently serious consequences for the applicants de facto to have been expropriated in a manner compatible with their right to the peaceful enjoyment of their possessions.

In *Pialopoulos v. Greece*, 33 Eur. H.R. Rep. 977 (2001), the authorities had imposed a building freeze and announced plans for the expropriation of the applicants' properties. However, the Court held that, even though there was no reasonable balance struck between the demands of the general interest and the requirements of the protection of the individual's fundamental rights, the effect of these measures did not involve a deprivation of property or a control of the use of property.

20. SE 3146/1986. In this judgment, the Council of State held that the regulatory restrictions imposed on "within-the-plan" lands can completely prohibit construction on these plots only if the restrictions are associated with compensation measures that guarantee the applicants' property rights. *Id.*

21. SE 982/2005; SE 2604/2005.

this legal reasoning does not discuss the reasonable investment-backed expectations of the affected landowners<sup>22</sup> or the economically viable uses of the out-of-plan land.

Still, even in the cases where a potential regulatory takings is apparent, current jurisprudence has established that there is no violation of article 17 of the Constitution as long as planning legislation recognizes a prospect for compensation. Examples include cases involving nature conservation areas, archeological sites, and monuments.<sup>23</sup> Unlike an expropriation where the payment of full compensation is a constitutional prerequisite for the taking of property, regulatory takings can become effective and final before any compensation is paid. This approach not only reverses the constitutional clause of prior compensation against any substantial deprivation of property rights, but it also transfers to the owner the burden of achieving just compensation for the taking of property through arduous, costly, and time-consuming administrative and judicial procedures. There is a need for a more principled approach to the takings issue that is consistent with the overall purposes of property protection. The case law of the European Court of Human Rights could provide guidance in this direction; however, it may be difficult because Greek courts have often been reluctant to incorporate the legal reasoning of the Strasbourg Court in domestic jurisprudence.<sup>24</sup>

### III. TYPES OF REGULATORY TAKINGS

In the context of planning regulations, judicial interpretation of article 17, paragraph 2 of the Greek Constitution limits the article's impact to "total takings," regulatory measures that are not *de jure* considered acts of expropriation but nevertheless effectively neutralize the enjoyment of property or render the property valueless. However, besides these "total" or *de facto* expropriations, Greek planning practice includes other types of injurious land-use or development-control regulations that do not entail permanent, total deprivations of property but nevertheless significantly reduce the value of property or eliminate some of a property's critical

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22. Recently, the European Court of Human Rights pronounced that it was in favor of an adequate protection to people who bona fide possess or own real property. *Housing Ass'n of War Disabled and Victims of War of Attica v. Greece*, No. 35859/02, § 1, Eur. Ct. H.R. (2006), available at <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database>. See also *Papastavrou v. Greece*, 2003-IV Eur. Ct. H.R. 261.

23. See, respectively, article 22 of law 1650/1986 and article 19 of law 3028/2002. See *infra* Part IV for an in-depth analysis of the above statutes.

24. K. Hrysofonos, *The (Non)application of the ECHR by the Greek Courts*, in *THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, GUIDE 197-206* (P. Naskou-Perrakis & A. Sgouridou eds., Ant. N. Sakkoulas 2002).

uses. These partial or temporary takings constitute an increasing and complicated problem for current planning law and practice in Greece because they either reduce the value of property or create burdens on ownership that are not compensable under constitutional provisions. Indeed, unless a special statutory regime for compensation exists, owners will continue to find it quite difficult to claim that a partial or temporary regulatory takings has occurred and successfully sue for compensation. This kind of takings will be the focus of this section.

Partial or temporary regulatory takings in the Greek planning context can be better explained if examined in light of a major distinction in Greek planning legislation: within-the-plan areas and out-of-plan areas. Within-the-plan areas are covered by statutory town plans that grant development rights to the landowners. These plans determine street alignments, building lines, and land-use designations. They are accompanied by a statement of building provisions, which include minimum plot size and plot dimensions, maximum plots ratios, and floor-area ratios.<sup>25</sup> By contrast, out-of-plan areas are not covered and regulated by town plans. However, according to existing legislation, these areas are not devoid of development rights and are not necessarily wild, natural, or agricultural land. Since 1928, most of these out-of-plan areas have traditionally permitted limited but significant amounts of development so long as landowners possessed plots that are at least 4000 square meters in area and accessible by road.<sup>26</sup>

We are now going to examine the types of injurious planning decisions emerging in the within-the-plan areas and the out-of-plan areas.

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25. COMM'N OF THE EUROPEAN COMMUNITIES, THE EU COMPENDIUM OF SPATIAL PLANNING SYSTEMS AND POLICIES: GREECE 51 (2000).

26. The current legislative framework for the development rights in the "out-of-plan" areas derives from the 1985 Decree. According to this decree, land parcels with a minimum area of 4000 square meters and access to local or national roads can be developed for residential or non-residential buildings. This includes agricultural buildings, stock farms, poultry-farming buildings, agricultural warehouses, offices and shops, industrial plants and warehouses, tourist premises, and pumping stations. Possible departures from the general rule, depending on the location and on the date of the subdivision of the plot, can grant development rights to even smaller plots, including those that are only 750 square meters in area. In terms of residential buildings built on parcels of land that have an area of at least 4000 square meters, these buildings can have a maximum height of 7.5 meters (two floors) and a maximum floor-space of 200 square meters. The permitted floor-space for shops and offices is 600 square meters while the permitted floor-space for industrial buildings is 3600 square meters.

### A. *Regulatory Takings in the Within-the-Plan Areas*

For areas that are included within the boundaries of a plan, there is an important legal difference between land designated for public open space and land designated for public facilities and buildings.

#### 1. *Burdens on the Use of Property Due to Long-Term Delay in the Completion of the Expropriation Process for Public Open Spaces*

The approval or the amendment of a statutory town plan and its announcement in the Official Government Gazette constitute expropriating acts for the properties that are included in the statutory town plan or condemned for green or other public open spaces such as roads and town squares. The implementation of town plans, that is the acquisition of land for the creation of public open spaces, varies according to the legal regime under which the town plan has been approved. Statutory town plans enacted under the provisions of the Law Decree of July 17, 1923<sup>27</sup> are implemented through specific administrative acts (*Praxeis Analogismou-Apozimiosis*). These acts, which include property adjustments, are drawn up for one or more building blocks but not for the whole area.<sup>28</sup> Furthermore, the land that is needed for creating green and public open spaces is acquired through a complicated mixed system of expropriations and land contribution.<sup>29</sup> On the other hand, town plans that have been approved according to the provisions of Law 1337/1983<sup>30</sup> are being

27. This Law Decree constitutes the first uniform legislation established in Greece in view of the planning of cities, towns, and communes. At the time, the Decree's provisions were quite advanced, and a large number of the provisions are still in force. The Decree remained dominant for more than fifty years. However, Law 947/1979 on planned development areas (residential areas) was intended to replace the Decree. The new law introduced the obligation of the proprietors to contribute a part of their lands (between thirty percent to forty percent) and an additional monetary payment (ten percent to fifteen percent of their plot's value) for the creation of public open space and social benefit uses. Because of the steep contribution requirements, Law 947/1979 faced strong opposition from both the affected landowners and the political parties, and in the end, it was never implemented. See A. Grammaticaki-Alexiou, *Regional and Urban Planning and Zoning*, in *INTRODUCTION TO GREEK LAW* 135–42 (Konstantinos D. Kerameus & Phaedon J. Kozyrus eds., Kluwer Law and Taxation Publishers, 2d rev'd ed. 1993).

28. This system of gradual adjustments remained dominant for several decades in Greece. This system is still valid in the "urban core" of the existing cities, even though it proved to be insufficient and problematic. In reality, there have been many instances where significant parts of approved statutory town plans were not implemented. There have also been some instances where approved statutory town plans, as a whole, were not implemented.

29. This mixed system of expropriations and land contribution is known as "self-compensation" (*autoapozimiosi*).

30. Law 1337/1983 gave priority to the extension of existing town plans in areas that were on the urban fringe, had unauthorized development, and lacked basic urban infrastructure. The basic innovation of this law was that land and money contribution rates would be calculated on a

implemented through “Implementation Plans” (*Praxeis Efarmogis*),<sup>31</sup> which are implementation acts that are accompanied by tables of land and money contributions assigned to each property. The purpose of these tables is to ensure that the land needed for public open spaces and public-service uses is secured.

In actual practice for both cases, there are serious delays in the implementation of the plans and the payment of the necessary compensation to affected landowners. Indeed, for cases that involve the system of the Law Decree of 1923, the delays sometime exceed forty,<sup>32</sup> sixty,<sup>33</sup> seventy,<sup>34</sup> or even ninety years.<sup>35</sup> Delays also occur in cases involving the Implementation Plans that are provided by Law 1337/1983. According to empirical data presented by the Central Union of Municipalities and Communes of Greece in November 2005, the average time for the approval of these instruments is between six to eight years; only twenty-eight percent of the roughly 2,000 Implementation Plans that should have been elaborated in the last twenty years has actually been finalized.<sup>36</sup>

The reasons for these delays are twofold. First, local Greek authorities often lack the financial resources to fulfill their legal obligation to pay compensation. Second, local authorities are not bound by official deadlines for paying out compensation. As a result, the enjoyment of condemned property is effectively neutralized because owners cannot dispose their lands for uses that are not designated by the plans until they complete the expropriation process.

In these situations, the Council of State has held that, if the maintenance of the pre-expropriation status in these types of properties exceeds a reasonable time limit,<sup>37</sup> the competent planning authority is

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proportional basis with regard to the original area of the plot and not on a uniform percentage as established by Law 947/1979. This proportional method is considered to be more socially fair because the majority of the existing plots in Greece are small in size.

31. The Implementation Plan is drawn on a land registration map, which includes property adjustments. It does not contain an extended intervention in the plot boundaries because it takes into account the realities of land properties. This instrument, in actuality, constitutes the principle legal mode for the implementation of the town plans, even though the system of the Implementation Acts of 1923 (*Praxeis Analogismou-Apozimiosis*) has always remained in force and is still applied when implementing old town plans that were approved under the provisions of the Law Decree of 1923.

32. See, e.g., SE 1795/1997; SE 4444/1997; SE 4449/1997; SE 1638/1998; SE 2499/2003.

33. SE 2673/1999.

34. SE 1451/1998.

35. SE 385/1997.

36. See *Proceedings of Polis Conference*, CENTRAL UNION OF THE MUNICIPALITIES AND COMMUNES OF GREECE & TECHNICAL CHAMBER OF GREECE (Nov. 25–26, 2005), <http://www.kedke.gr/horos/html/polis.html>.

37. The courts have set this time limit at eight years.

obligated to modify the plan and lift the existing burden on the property.<sup>38</sup> Nevertheless, the Supreme Court has never endorsed the notion of a de facto expropriation that could offer to owners the right to claim compensation, under constitutional provisions, for the time their properties had been effectively neutralized.

*2. Burdens on the Use of Property Due to Long-Term Delay in the Declaration of Expropriation for Land Designated for Public Service Buildings or Uses*

Unlike the situation with public open spaces, the approval of a statutory town plan does not constitute *ipso jure* an expropriation of the properties that have been designated by the plan for public uses or as public service buildings (schools, municipal buildings, hospitals, etc.). Instead, a special decision that actually declares the expropriation needs to be issued after the approval of the plan. This special decision depicts both the properties under expropriation and the respective landowners, and defines the liable authority for the payment of compensation (national, local, or special). Until the decision is issued and the entire expropriation process is completed, the owners of the affected plots are entitled to use, sell, donate, or mortgage their properties in conformity with the use designated by the plan. As a result, even though a planning act may leave intact an owner's right to use and dispose of property, in practice, a planning act significantly reduces the possibility that the right will be exercised, thereby reducing the property's market value as well.

The law does not specify a time-limit for the initiation of the expropriation process. Thus, competent public authorities remain free to expropriate whenever they find it expedient to do so. Under these conditions, it is not surprising that there are major delays in the initiation of the expropriation process, which leave the affected properties in complete legal uncertainty. The delays can be as long as thirteen years,<sup>39</sup> twenty-seven years,<sup>40</sup> twenty-eight years,<sup>41</sup> or even thirty years.<sup>42</sup> The owners' right to property thus becomes highly precarious.

38. SE 2177/1994. The facts of this case involved an applicant's plot that was condemned as green space for more than twenty years. In that period of time, the land was never expropriated, and the property owner was never compensated in another legal way. *See also* SE 642/1998 (holding that the condemnation of a plot as a square and a pedestrian street for more than nine years, without payment of compensation, obligated the planning authority to lift the imposed burden through the amendment of the related relevant town plan).

39. SE 2144/1999. The applicant's plot was designated by the town plan as an area for the construction of a high school.

40. SE 749/1997. The applicant's plot was designated as an area for the construction of a public building.

The problem stems mainly from the fact that the law does not require designations of plots for public-service uses or buildings to indicate which public agency is liable for the payment of compensation.<sup>43</sup> The result is that affected properties might remain under the public-service designation for a long time without any declaration of expropriation and no payment of compensation. Not only does this situation encourage excessive regulation by planning authorities, but it further creates confusion regarding which public agency is responsible for the payment of compensation.<sup>44</sup>

As in the case of public open spaces presented above, the case law of the Council of State has established the rule that the designation of private properties for public-service uses or buildings, without the completion of the expropriation, cannot exceed a reasonable time limit.<sup>45</sup> After this reasonable time limit has been exceeded, the competent planning authority is obliged, after the submission of a petition by the owner, to amend the plan and lift the burden imposed on the property. If the planning authority refuses to amend the plan, the planning authority will be subjected to a judicial process for annulment of the refusal.

Although the majority of petitions for annulment of refusals are upheld by the courts, the respective properties cannot be practically used or built for undesignated land uses before the amendment of the official town plan has taken place.<sup>46</sup> The problem is aggravated because, in many cases, the competent planning authorities refuse to comply with the courts' judgments to amend the plans. Instead, the competent planning authorities invoke public-interest reasons to preserve land designated for public-service uses or buildings.

Another aspect of bad administrative practice in Greece is that the planning authorities often obey court decisions only nominally when they

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41. SE 2421/1999. The applicant's plot was designated as an area for the construction of a school.

42. SE 643/1998. The applicant's plot was designated as an area for the construction of a public school.

43. Following the revision of article 17, paragraph 2 of the Constitution in 2001, the new expropriation law, Law 2882/2001, article 3, paragraph 7 provides that the expropriating decision must certify the expenditure for the realization of the project and accordingly the competent expropriation body. However, according to a recent decision by the Council of State, this requirement does not apply to expropriations that have been declared for the implementation of town plans. SE 3117/2004.

44. See THE GREEK OMBUDSMAN, *supra* note 1, at 20 (presenting examples of conflict between public authorities as to the liability for the payment of compensation in the cases of lands designated by a town plan for social benefit uses).

45. The Council of State has set the time limit for eight years, which is the same time limit for public open spaces.

46. A planning authority may grant a building permit only if the use of the proposed construction is consistent with the land use provided in the statutory town plan.

re-designate the same injured plots for public services by amending the town plans. However, following the relevant case law of the Council of State<sup>47</sup> and a circular<sup>48</sup> of the competent ministry in 1998, this practice has been significantly reduced thanks to the establishment of two prerequisites: (1) the competent body must have adequate capability to immediately compensate the landowners, and (2) there must be important planning reasons<sup>49</sup> that justify the re-designation of the injured plot.

Finally, it has to be pointed out that in all of the above-mentioned cases of long-lasting burdens on the use of ownership, no statutory compensation is provided by existing planning legislation for the period during which the injured landowners were unable to enjoy their properties.

### 3. *Temporary Freeze of Development Rights*

Greek planning and building law allows the competent authority to temporarily freeze development rights or suspend the issuance of building permits. This is intended to ensure that town plans are implemented without any obstructions and that important cultural and traditional elements of a settlement or built-up areas are preserved.

The origin of the temporary building freeze goes back to the Law Decree of July 17, 1923. Indeed, article 8, paragraph 2 provides that, once the decision to prepare or to amend a statutory town plan has been taken, the municipality or the competent authority may opt to add a development freeze in order to safeguard the planning process for the affected area. A development freeze can be imposed for up to one year and can be extended for another two years. Likewise, a temporary freeze can be imposed during the elaboration process of a General Urban Plan (GUP).<sup>50</sup> In this situation, a development freeze lasts either a maximum six months or until the GUP is approved; however, the development freeze can be extended for another six months afterwards.<sup>51</sup> Finally, according to article 4, paragraph 6 of the Building Law,<sup>52</sup> a building freeze can be imposed by the Minister of the Environment and Planning for a time limit of two to

47. SE 351/1998.

48. Ministry of the Environment, Planning and Public Works (YPECHODE), Circular 29454/21.07.2003.

49. Empirical data reveal that, in many cases, there is an absence of adequate investigation and substantiation before injurious planning decisions are made. *See* THE GREEK OMBUDSMAN, *supra* note 1, at 20.

50. The General Urban Plan is a plan of general guidance that gives the basic guidelines of a settlement's future development and defines land uses, average floor-area ratios, general standards for green spaces, and basic infrastructure needs.

51. Article 4 of Law 1337/1983.

52. Law 1577/1985, amended and supplemented by Law 1772/1988 and Law 2831/2000.

three years in order to protect cultural heritage during the preparation stage of a building regulation or a town planning study.

According to judicial interpretation, the above mentioned provisions and measures are not considered, in principle, to interfere with the use of property. This has had the effect of depriving the owners of their property rights.<sup>53</sup> In this sense, the provisions and measures are said to conform with article 17 of the Greek Constitution and article 1 of the First Protocol of the European Convention of Human Rights.<sup>54</sup> As long as a development freeze does not exceed a reasonable time limit, it is regarded as a temporary, permissible restriction on property that serves public interest purposes and is deemed consistent with article 17, paragraph 1 of the Constitution.<sup>55</sup>

Moreover, the Council of State has relied on different and independent legal provisions to conclude that a freeze on development rights can be imposed on the same property for successive time periods.<sup>56</sup> In that case, a development freeze can be extended to the maximum time-limit that is jointly provided by the relevant statutes.<sup>57</sup> Although this approach seems consistent with the jurisprudence developed after the 1980s by the Council of State for the protection of the built environment and the preservation of historic sites and buildings, it remains questionable from a constitutional perspective. The problem in these cases stems from the fact that long-term building freezes may, according to the available case law, exceed even the eight-year time limit.<sup>58</sup> This seems to be disproportionate. Indeed, successive freezes may be regarded as violating the fair balance between the demands of environmental protection and the requirement to protect property, especially if one takes into account that the affected plots are included within statutory town plans and are, thus, designated for building purposes.<sup>59</sup>

In 1982, the European Court of Human Rights reached the same conclusion in its famous *Sporrong and Lönnroth v. Sweden* judgment.<sup>60</sup> The Court found that, due to the length of the construction bans imposed on the applicants, there was an upset of the fair balance between the

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53. SE 1822/2002.

54. SE 2544/2005.

55. *Id.*

56. See SE 1822/2002 (noting that temporary freezes of development rights, based on different legal provisions and coming from different authorities, were imposed from 1990 to 1996, and from 1998 to 2000).

57. SE 2202/2004.

58. SE 2203/2004.

59. See the notes of A. Papakonstantinou in SE 2202/2004, available at <http://www.nomos.physis.org.gr>.

60. *Sporrong and Lönnroth v. Sweden*, 5 Eur. H.R. Rep. 35 (1982).

protection of the right of property and the requirements of the general interest; therefore, there was a violation of article 1 of Protocol 1 of the European Convention of Human Rights. The Court further stated that the excessive burden imposed on the applicants could have been deemed legitimate only if the applicants had had the possibility of claiming compensation or seeking a reduction in the time limits.

### *B. Regulatory Takings in the Out-of-Plan Areas*

In the case of areas not covered by a plan, the important distinction is between property located in Zones of Urban Development Control (ZUDC) and Zones of Nature Conservation. Only landowners in the Zones of Nature Conservation have a statutory right to compensation.

#### *1. Restrictions on the Use of Property Located in Zones of Urban Development Control*

Development in out-of-plan areas is mainly regulated through the establishment of ZUDCs. Introduced in 1983 by article 29 of Law 1337/1983, these zones aim to control land development in the urban fringe and to prevent the peripheral areas around towns and cities from further transforming into urban sprawl. They can be used to protect high-quality agricultural land, environmentally vulnerable areas such as nature and landscape protection zones, and areas that will be developed for productive activities such as manufacturing, mining, and tourism. A ZUDC is approved by a Presidential Decree and contains broad land use designations and building conditions for the out-of-plan areas. At the same time, however, a ZUDC can impose restrictions on the subdivision of private land.

Although less than five to ten percent of the countryside is covered by such zones, there is a growing debate on whether the restrictions and limitations imposed by a ZUDC are consistent with the constitutional provisions for property protection. Development in a ZUDC must conform with the special rules and limitations of the zone. In many cases, these special rules and limitations are more restrictive than the rules that grant a limited amount of development in the general out-of-plan areas, which usually place conditions on development rights only for minimal lot size and access to a road.<sup>61</sup>

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61. See SE 278/2005. In this case, the applicant demanded the annulment of the Presidential Decree 17/27.2.1998, which established a ZUDC in the out-of-plan areas of the Laureotiki Peninsula in the Attica region (greater Athens area). The applicant alleged that, under article 17 of the

In 1983, the whole region of the out-of-plan area of Attica was declared a ZUDC<sup>62</sup> and the minimum lot size was raised to 2 hectares, which was five times the traditional minimum.<sup>63</sup> The Council of State held that this subdivision limit is not unconstitutional.<sup>64</sup> Instead, it is a legal restriction of ownership justified by a broader public interest, such as the prevention of urban sprawl and the protection of the environment. Furthermore, the Court held that this subdivision limit does not neutralize the economically beneficial use of property because the limit refers to peri-urban areas, where building activity is not a substantial component of the right of ownership.

In 2003 on Tinos Island, a ZUDC prohibited construction on parcels of land that had a slope greater than thirty-five degrees.<sup>65</sup> The affected owners submitted an application for annulment of the ZUDC to the Council of State. The owners claimed that, under article 17 of the Constitution and article 1 of the First Protocol of the European Convention of Human Rights, they had been deprived of their property as a result of the building prohibition established by the ZUDC. However, the Court rejected this argument. It stated that the prohibition on construction, in this case, did not lead to a substantial deprivation of property because the out-of-plan land was legally destined for agricultural uses and not for development.<sup>66</sup>

Judicial practice in the above cases indicates that the degree of interference with property constitutes the decisive criterion for deciding

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Constitution, she had been deprived of her property as a result of the land uses and the building restrictions established by the ZUDC. According to the applicant, her property had been included in an area of the ZUDC where the only permissible uses were for marine sport and swimming facilities. Thus, the building capability of her property was substantially reduced. The applicant further cited to the general statutes of the out-of-plan areas, under which her property had no limitation in the use of land. The Court denied the existence of a de facto expropriation, admitting that the property had not "disappeared" or become "inactivated" due to the measures under dispute. *See also* SE 277/2005 (rejecting a petition for the annulment of the same ZUDC from a landowner whose property, with the newly imposed regulations, could build only 200 square meters instead of 400 square meters under the previous building conditions).

62. Presidential Decree 22.6/7.7.1983.

63. The general statutes for out-of-plan areas impose a subdivision limit of 0.4 hectares. For example, a plot with an area of two hectares (20,000 square meters) can be subdivided into five separate plots, each with an area of 4000 square meters. According to the general building provisions of the out-of-plans areas, each of these plots can build 200 square meters for residential use, which means a total of 1000 square meters for the five plots. Under the building terms of the ZUDC plan and the subdivision limit that has been imposed, the original plot of 20,000 square meters cannot be subdivided into more plots. Additionally, the maximum floor-space cannot exceed 400 square meters. It is obvious that, in several cases, the ZUDC plan of Attica in 1983 brought about significant reductions in property values.

64. SE 1029/1985.

65. Presidential Decree 13/27.2.2003.

66. SE 2604/2005.

whether an indirect expropriation or an equivalent measure has taken place within a ZUDC. According to this jurisprudence, only a total or radical deprivation of property, such as the elimination of all uses, would lead to a taking. The end result is that partial declines in value, such as downzoning to a less lucrative use, or eliminating potential development rights recognized by the previous legal status, such as a prohibition on construction, are not regarded as takings under constitutional provisions and thus remain non-compensable.

## 2. *Restrictions on the Use of Property for Land Located within Zones of Nature Conservation*

Similar to the ZUDCs are the Zones of Nature Conservation, established under the provisions of article 21 of Law 1650/1986 in the out-of-plan areas. These zones comprise the “areas for the protection of the physical environment” determined in articles 18 and 19 of this same law. The zones are classified under five categories according to the importance of their preservation.<sup>67</sup> A Presidential Decree provides the zone’s designation and defines a set of limitations and restrictions on the use and exploitation of properties located inside the boundaries of the zone. Article 22 further introduces a right to compensation for the owners whose lands may be substantially affected by the regulatory measures established within the above areas. However, the necessary regulations to implement this statute have never been enacted; therefore, the compensation rights provided by this law remain inactive up to now.<sup>68</sup>

The restrictions and limitations imposed in the Zones of Nature Conservation often affect real property and trigger regulatory takings claims against the State. These claims primarily involve land-use and building restrictions that limit activities that were previously permitted or were seen as essential aspects of the ownership rights. This is especially true for the traditional development rights mentioned above.

67. These categories are natural habitats and formations, national parks, natural landscapes, isolated elements, and areas of eco-development.

68. With regard to this issue, the majority of the five-member panel of Section A of the Council of State pronounced in SE 1746/2005 that the obligation of the State to grant compensation to the affected landowners is not associated with the issuance of the Presidential Decree provided in article 22, paragraph 4 of Law 1650/1986. According to the majority, a different approach would contravene the constitutional principles of equality in public charges and of proportionality and article 1 of Protocol No. 1 of the ECHR. However, one member of the Court thought that the issuance of the above Presidential Decree is a necessary prerequisite for the activation of the State’s relevant obligation, since there are several procedural and substantive details that must be regulated through this act before compensation can be granted. The case was referred to the seven-member panel of the first section of the Court, which, by upholding the appeal, implicitly accepted the majority opinion. See SE 1611/2006, available at <http://www.nomosphysis.org.gr> (with notes by M. Haidarlis).

The regulation of the natural biotope of the loggerhead “Caretta-Caretta” in the island of Zakynthos is a representative example of the kind of regulatory measures imposed in the Zones of Nature Conservation that can lead property owners to pursue takings claims. The basis of the dispute was a Presidential Decree issued in 1990, which divided the out-of-plan land of several communes in Zakynthos into eight different areas with special land use regulations and building conditions. In area “I,” a subdivision limit of four hectares was imposed, while the maximum floor space was limited to sixty square meters only for residential use or research and monitoring stations in plots with areas of at least four hectares. One of the affected owners, possessing a ten hectare area, submitted an application for annulment in the Council of State. She claimed that her property had become valueless as a result of the building and land-use restrictions established by the decree, and she invoked article 17 of the Constitution. A majority of the Court held that the imposed regulatory measures did not constitute a substantial deprivation of property rights, given the fact that the area concerned was located in an out-of-plan zone, and therefore basically designated for agricultural uses.<sup>69</sup> According to the majority, the constitutionality of the above measures is not connected to the fact that Law 1650/1986 provides a statutory right to compensation. However, eight members of the Court said that the measures under dispute did cause a substantial limitation to the use of property and therefore could be considered as constitutional only because of article 22. Finally, one member of the Court believed that the disputed regulatory measures entailed a substantial deprivation of property without prior compensation, thus violating article 17 of the Constitution and article 1 of the First Protocol of the European Convention of Human Rights.

The issues raised in the above case are not rare in Greek takings litigation; the jurisprudence of the Council of State is full of similar proceedings.<sup>70</sup> These issues become more critical if one takes into account that 296 areas of conservation, falling under the EU Community Directives 79/409/CEC<sup>71</sup> and 92/43/EC,<sup>72</sup> are actually included in the national catalogue of the “Natura Community Network,”<sup>73</sup> covering respectively about seventeen percent of the Greek territory.

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69. SE 4950/1995.

70. *See, e.g.*, SE 695/1986; SE 1184/1996; SE 3135/2002; SE 3067/2001; SE 2601/2005.

71. Conservation of Wild Birds, Council Directive 79/409/EEC, 1997 O.J. (L. 103).

72. Natural Habitats, Council Directive 92/43/EEC, 1992 O.J. (L. 206).

73. Both Council Directives have been included in the national network “Natura 2000.” Hellenic Ministry for the Environment, Physical Planning & Public Works, <http://www.minenv.gr> (last visited Apr. 2, 2006).

With regard to this situation, there is an urgent need for the implementation of the anticipated provisions of article 22 of Law 1650/1986 concerning the compensation rights of injured landowners.

#### IV. JUDICIAL REMEDIES AND STATUTORY REGIMES FOR COMPENSATION

As stated in the previous section, current planning and zoning regulations in Greece cause widespread interferences with the use of property, which often has the effect of depriving the owner of critical rights of ownership. However, according to the constitutional takings jurisprudence, only a total and permanent taking can rise to a de facto expropriation that entails compensation under constitutional provisions. Accordingly, neither partial nor temporary regulatory takings are subjected to the protection of article 17 of the Constitution.

Moreover, empirical evidence suggests that, even when a taking is present, the judicial remedy is unsatisfactory. One reason for this inadequacy is that takings litigation takes too long. Indeed, recent judicial practice shows that in some cases, takings litigation may take longer than a decade before the courts reach a final and irrevocable judgment.<sup>74</sup> As to jurisdiction, the property owner cannot challenge the legality of the injurious action and claim compensation in a single court. Separate appeals must be filed. The application for annulment of the planning regulation should be brought before the Council of State, while compensation claims should be brought before the administrative court of first instance. Finally, some procedural requirements must be satisfied before a court will hear the merits of a takings claim, especially in the cases where special statutes provide avenues for administrative compensation.<sup>75</sup> Under these constraints, it is therefore not surprising that

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74. *See* SE 3000/2005. The Supreme Administrative Court, judging under the proceedings in cassation, rejected the final appeal lodged by the plaintiff against the final judgment of the Administrative Court of Appeal. Reading this judgment, one can see that the Council of State pronounced on the case eleven years after the compensation claim had been introduced in the relevant administrative court of first instance.

75. The question in these cases is whether the owners of the affected parcels are obligated, before they seek recourse through the courts, to exhaust any avenues for administrative compensation, such as those provided respectively in articles 22 and 19 of Law 1650/1986 and Law 3028/2002. In this respect, see especially judgment number 1746/2005 of the Council of State, in which a majority held that the submission of a petition to the administration, according to article 22 of Law 1650/1986, is a necessary prerequisite for the admissibility of the claim of compensation lodged before the Court. However, two members of the Court stated that article 22 of Law 1650/1986 gives the affected landowner the possibility of directly introducing a claim of compensation before the Court. The case was referred to a seven-member panel of the first section of the Court, which, by accepting the appeal, implicitly pronounced itself in favor of the minority opinion. *See* SE 1611/2006, available at <http://www.nomosphysis.org.gr> (with notes by M. Haidarlis).

a rather low number of compensation claims is brought before the courts by affected landowners.

One way to respond to the delays and the ripeness requirements arising in the field of takings litigation is to encourage out-of-court settlements and other forms of dispute resolution. To that end, several legislative initiatives have been undertaken during recent years to establish statutory regimes for compensation. For example, article 19, paragraph 1 of the new Archaeological Law 3028/2002 provides for the payment of compensation to owners who are deprived or restricted in the use of property in order to protect monuments and archaeological sites or to conduct excavations. The compensation can be either full or partial and depends on the nature of the imposed restrictions and on the legal designation of the affected land. The compensation claims are lodged with special advisory committees, which evaluate the validity of the claims under a set of eligibility criteria. These criteria are likely use, the market value, the income from the property, and the kind of existing exploitation. However, neither the above-mentioned committee nor the law has any reduction-in-value threshold standards.

As stated in the previous section, a similar provision is included in article 22 of Law 1650/1986, regarding compensation for landowners within special conservation areas. According to this statute, the owners of the affected lands can claim compensation directly from the State if the restrictions imposed by the zoning regulation effectively neutralize their property rights. The form of the compensation can be either monetary or in-kind. Compensation can include, among other things, an exchange of affected land for public land, a concession of public land that is adjacent to the injured property, a transfer of development rights and subsidies or other financial aids to the affected farmland. The law further provides for the issuance of a Presidential Decree that defines the procedural and the substantive requirements for the granting of compensation. However, this Decree was never issued. Thus, the whole compensation process provided by Law 1650/1986 has never been implemented in practice.<sup>76</sup>

Besides these special statutes, Law 3044/2002 further provides for the transfer of the floor-area ratio that cannot be realized on a particular plot.<sup>77</sup> The transfer is allowed when land is reserved for public open space or

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76. The non-issuance of the decree does not constitute, in legal terms, an omission of a lawfully due action. Thus, no judicial ground exists for interested landowners to oblige the relevant government body to issue the decree.

77. The possibility of transferring the floor-area ratio was introduced in Greek planning legislation as early as 1979 with Law 880/1979. However, its implementation raised serious problems of constitutionality that led to successive amendments of the relevant statutes and finally to the 2001 revision of article 17 of the Constitution, which recognizes the transfer of development rights as an alternative means to monetary compensation. 1975 SYN art. 17.

when a plot's buildings are designated for historical preservation.<sup>78</sup> The transfer only pertains to the increment of the floor-area ratio that cannot be used. The owners of the above plots or land can sell their floor-area ratios to developers in designated "receiving" areas that are allowed to build at an increased density, reflecting the value of the transferred rights.

Unlike traditional expropriation processes, the transfer of the floor-area ratio is built on market-led mechanisms that enable land acquisition for public purposes on a cost free basis for the public. The transfer of floor-area ratios has already attracted considerable interest in Greece. It could operate broadly as an alternate compensation mechanism that enables plan implementation and preservation of the cultural heritage.

#### V. CONCLUSION: EVALUATING CURRENT LAWS AND PRACTICES

In summarizing the findings of this paper, one should try to evaluate the current planning laws and practices in Greece with regard to the takings issue. As previously noted, the takings issue has not been a priority for the Greek legislature. The body of existing planning law gives the government considerable latitude to regulate without causing a takings. At the same time, takings liability in the field of urban planning and zoning does not have an explicit constitutional ground. In addition, very few statutory regimes have been established that can offer grounds to affected landowners, who are injured by planning regulations or development-control measures, to file compensation claims. This is especially true in the cases where a partial or temporary claim is apparent. Under these constraints, it is therefore not surprising that the courts find that most planning restrictions do not constitute a takings unless they entirely eliminate the use of property.

Planning practice has proven to be problematic as well. Excessive regulation and the absence of financial and temporal programming are among the factors generating injurious decisions for property, especially in town planning. Indeed, as the 2005 special report of the Greek Ombudsman indicates, even in the cases where a statutory regime for compensation exists, the lack of the necessary resources seems to undermine the prospects of compensation awards.<sup>79</sup> One way to respond to this problem is to require prior analysis of the potential effect of

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78. Both cases concern exclusively affected properties that are included in the within-the-plan areas. However, no equivalent possibility is provided for the affected land in out-of-plan areas. Therefore, the transfer of the floor-area ratio cannot be used as a compensatory mechanism in the cases of ZUDCs and Zones of Nature Conservation, though, in the latter case, this possibility is in principle provided by Law 1650/1986.

79. THE GREEK OMBUDSMAN, *supra* note 1.

regulations on private property in the form of a “takings impact assessment.” This assessment could help planning authorities estimate the impact of their regulatory actions on property, so as to avoid excessive measures and to examine alternatives to monetary compensation, such as planning tools that could minimize the infringement on property rights.

Notwithstanding the fact that neither the legislature nor the public administration is currently in favor of a more responsive takings policy in the field of planning regulation, a certain public awareness seems to be on the rise. Indeed, both the recently published report of the Greek Ombudsman and the increasing number of takings claims brought before the national courts and the European Court of Human Rights prove that “takings” will become an issue in the Greek planning agenda. The public debate will probably grow in the coming years. As mentioned earlier, the government has recently announced its intention to include in the future revision of the Greek Constitution a special provision regarding takings arising in the field of the implementation of town plans.<sup>80</sup> In view of this evolution, an increase in the public’s interest toward the takings issue is expected, and perhaps this will lead to a better level of protection for private property rights.

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80. *See supra* Part III.A and note 9. The preparatory work for the constitutional revision has been completed, while the next Parliament, which is going to be formed after the next parliamentary elections, will carry out the country’s constitutional reforms.