

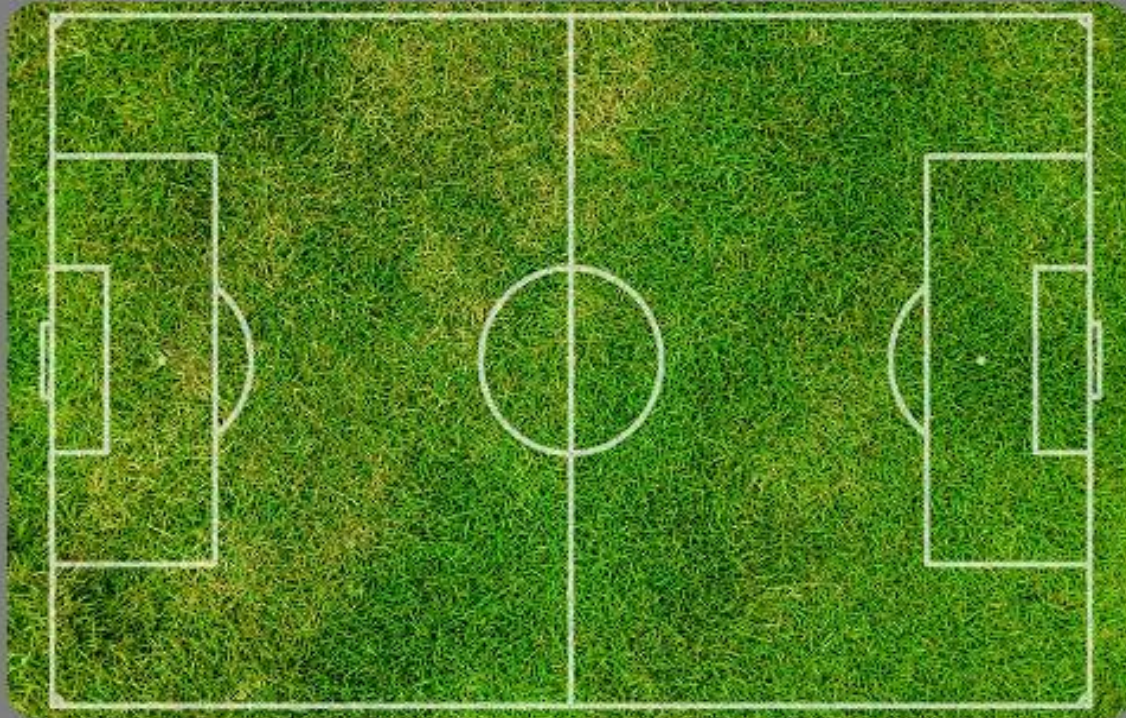


The Role of Administrative and Judicial Scrutiny in Reviewing the Justification of Expropriation

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- › Utrecht, 29 June 2017

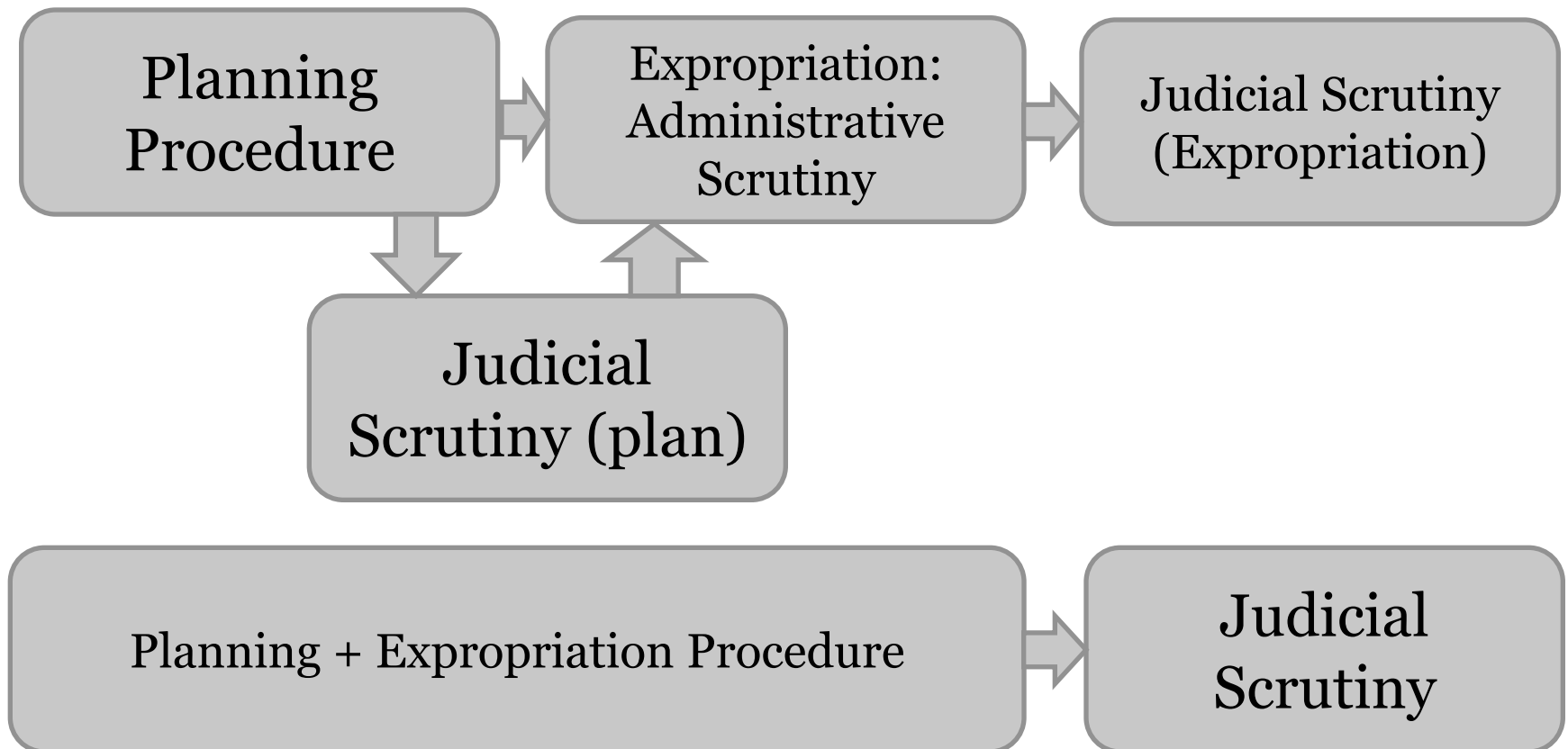


Scope of Administrative / Judicial Scrutiny





Administrative and Judicial Scrutiny





Review of the Expropriation's Justification

- The purpose of the expropriation
- Project = means to realise that purpose
- Expropriation = means to enable the implementation of the project



The Purpose of the Expropriation

Section 25(2) of the South African Constitution:

Property may be expropriated only in terms of **law of general application**

- a. for a **public purpose** or in the **public interest**; and
- b. subject to **compensation**, [...]



The Substance of Public Purpose?





Lazy legislatures...

The Minister may expropriate property for ***public purposes***.

- Art. 2(1) of the South African Expropriation Act

Property can be expropriated to implement a ***municipal land-use plan***.

- Art. 77(1) No. 1 of the Dutch Expropriation Act



... lead to a narrow review

- ZA: *Bartsch*, [2010] ZAFSHC 11
- NL: Royal Decree, *Staatscourant* 2010, 10742 (IKEA)



Recommendation

- Guideline 16.1 of the Voluntary Guidelines on the Responsible Governance of Tenure:

States should clearly define the concept of public purpose in law, in order to allow for judicial review.



The Project

- Deference to the authority's determination concerning:
 - Design
 - Size
 - Location
 - Balance between benefits and drawbacks

- The Alternative Project Argument?



The Project: Recommendation

- Mandatory statutory boundaries protecting vulnerable interests



The Expropriation

- Deference to the authority's determinations concerning:
 - expediency of the expropriation;
 - balance between between benefits and drawbacks.

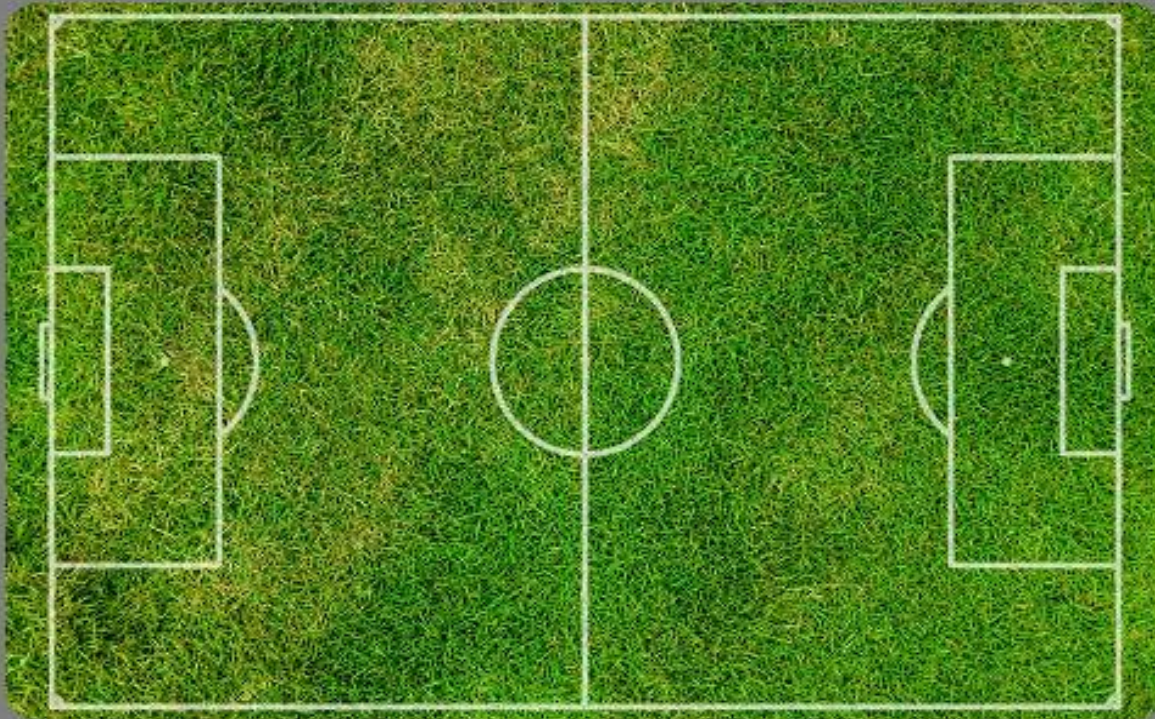


The Expropriation

- Strict scrutiny: expropriation = least invasive means?
 - more land than necessary?
 - attempt to purchase the land?
 - less invasive legal means?
 - self-realisation?



Concluding remarks





Thank you for your attention

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