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50. Compensation for spatial flood measures in Austria, Germany, and the Netherlands: A social justice perspective

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ABSTRACT

In view of the anticipated climate change, many countries face increasing risks of flooding. In many countries, flood protection measures will need to be taken in the coming years to protect flood prone areas from the increased risk of flooding. Since the end of the 20th century, the traditional hard flood protection measures are increasingly complemented with land use and spatial instruments.

Spatial measures taken in the context of water management are in the public interest—and as such benefit many people—but it is almost inevitable that certain citizens will be adversely affected by these measures. Examples of this may include decreases in property values as a result of changes to zoning plans, as well as the obligation to tolerate certain acts related to the construction or maintenance of water defence structures. As such, spatial flood risk measures prompt concerns of distributive justice.

Some national law systems provide for compensation for loss as a result of lawful administrative acts like regulatory taking and the imposition to tolerate the use of one's property, if and to the extent that it is considered unreasonable for this loss to be the full responsibility of the affected party. In this paper, we compare the legal compensation system in three different countries: Austria, Germany and the Netherlands. On the basis of a comparative analysis, we discuss how these different compensation schemes affect justice, both in terms of substantive distributions but also in terms of procedural justice.