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Nature-based solutions for flood mitigation on private land – human rights perspective

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Nature-based solutions (NBS) for flood mitigation lately are becoming more and more popular. However, comparing to traditional grey infrastructure, NBS require more land, often – privately owned. This is why the question of implementation of NBS on private land needs to be addressed more thoroughly. There are different ways how to implement the NBS on private land. Those ways can be divided into "sticks", "carrots" and "sermons". The last two refer to "soft" measures, like financial incentives, payments for ecosystem services, knowledge sharing, and partnership for NBS. Whereas, "sticks" refer to coercive measures, which imply "a command-and-control strategy" and any behaviours contradicting "sticks" can be considered unlawful. In other words, "sticks" are the measures that restrict land-use or even deprive the owners of their land. Expropriation, land-use restrictions, and pre-emption rights are the best-known examples of "sticks". The land-owners have little room for manoeuvre if the state decides to apply "sticks". However, the powers of the state are also limited. One of such limitations derive from international law, to be precise – from provisions related to human rights protection. Article 1 of the Protocol No. 1 to the European Convention on Human Rights grants protection for the property rights and prohibits the authorities to deprive owners of their possession unless the public interest justifies it. The state can also control the use of property only if this is required by general interest. The European Court of Human Rights in its case-law for several times addressed the issue of property restrictions and expropriation due to implementation of environmental laws and land-use planning laws. The Court elaborated on such issues as the notion of "public interest", proportionality and lawfulness of measures adopted by the state. Those considerations can also be relevant for the implementation of NBS on private land.