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EUROPE WITH THE EMPHASIS ON SLOVAKIA**

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Abstract: Unlike the situation in the territory of the Independent states of former Soviet Union, the cadastre has the long tradition in the Central East European countries that were the part of the Austrian-Hungarian Empire before 1918. After 1918 the processes of expropriation of the land took places several times. The different political reasons drove the expropriation processes in the market economy, during the WW2 and during the socialist rule. The land records in these countries were well kept until the socialist rule. The Soviet domination of the Central Eastern Europe, the collectivization of the farms and the different concept of the property rights led to the different concept of the land registration, as a result of it many records are missing. The transition to the market economy brought the necessity to develop the land market. The sound records in the land register became the necessity for the restitution processes to former owners, such as the private persons, public urban land owners (urbar) and church, development of the private property, restructuring of the economy etc. Although the lot of effort was exerted to ameliorate the situation in the land register, yet many problems persist: incompleteness of the records, unfinished heritage processes, excessive co-ownership of the land etc. Unsolved problems burden the public and private developers with additional costs related to the land consolidation. In some cases the territory without clear title on property is staying derelict, or is environmentally damaged. The extensive areas of the panel housing neighborhoods build during the socialism are now owned by the people, but the land is the property of someone else. Such facts than make difficult the comprehensive refurbishment of the older neighborhoods in the cities. In the present paper we are trying to show the ways how these problems could be solved in future.

Keywords: Cadastral Act, Historical Development of the Cadastre, Land market

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1. Introduction

The territory of Slovakia has been populated since the earliest times. The first Slavs came here in the time of nations' move. At the beginning of 9th century - in 883 - the Great Moravian Empire arose - the first common state of the Czechs and Slovaks. After the fall of the Great Moravian Empire - at the beginning of 10th century - the territory of Slovakia was engulfed by old Hungarian tribes whereby Slovakia became a part of the Ugrian state for long millenniums.

After Turkish invasion into the central Europe the Hapsburgs become a monarchial line in Hungary and they ruled the country up to 1918.

A promising rise of the national movement occurred in 19th century when the Slovaks first time formed their own political programme. This rise was paralysed by Austro - Hungarian settlement in 1867 and the following period of Magyarisation which lasted the whole 50 years. Austro-Hungarian monarchy was a dualistic constitutional monarchy in Central Europe in the years 1867-1918. It was created in 1867 from Austrian empire as the result of Austro-Hungarian settlement in real union of two state units (the so-called dualism). Since the Austro - Hungarian settlement the state was called Austria – Hungary (fig. 1). On one section of the border formed stream Leitha – the right-hand tributary of the Danube was therefore sent two units demiofficial names:

- **Cisleithania** (Austria, officially The Kingdoms and States represented in the Imperial Council)
- **Transleithania** (Hungary - officially Countries of Lands of the Crown of Saint Stephen, i.e. the Kingdom of Hungary).

These units were connected by the hereditary ruler of Habsburg-Lorraine dynasty, with the common foreign affairs ministry, ministry of war, and ministry of imperial finance. Each of the two units had their parliament (the Imperial Council in Austria, the parliament of Hungary).



Figure 1 Location of Austro-Hungarian Monarchy

Joint offices bore a sign c. and k. (Imperial and royal), Cisleithanien offices c. and k. (Imperial king - according to Czech, not Hungarian Kingdom) and Transleithanien m. k. (Hungarian and royal).

Austria-Hungary was dissolved on 11 November 1918, the day when the First World War ended. Successor states were Austria, Hungary, Czechoslovakia, the rest of the territory of Austro-Hungarian monarchy was transferred to Poland, Romania, Italy and Kingdom of Serbs, Croats and Slovenes Yugoslavia (fig 2).



Figure 2 Successor states of Austro-Hungarian Monarchy

The First World War activated anti - Austrian-Hungarian aversion which resulted in the declaration of the Slovak and Czech nation's union into one entity in 1918. The Czechoslovak Republic originated. After the Second World War the decisive power in Czechoslovakia was taken by the communistic party and only by so-called velvet revolution in November 1989 the communistic dictatorship was overthrown. The common state of the Czechs and Slovaks disintegrated and on 1 January 1993 the independent Slovak Republic arose.

One of the conclusive social aspects of the economic development of each society is land ownership. So the development of social - political relationships, which had and still have their diversity and particularities, had a distinctive impact on land ownership. History in the countries of the former Austria-Hungary is very similar and in the countries of the former old Hungary almost identical, this similarity in the land ownership arrangement has been preserved virtually until now also in the states of the European Union.

The development of land ownership arrangement in Slovakia was influenced by affiliation to the Austria-Hungary monarchy and after 1945 to the countries of so-called Eastern block.

2. Historical development of the cadastre

Land registers - municipal tablets, urbans and town books – were created on the territory of Slovakia since 11th century. They served for monitoring of relationship to ownership, tenure, providing for taxes, yields and other rates.

Municipal tablets were predecessors of land registers. The property became hereditary property of the family line after property registration into land tablets. The property which was situated in towns was tax free. Tablets were registered at Municipal court and most probably they served as helping records for the municipal notary or municipal copy clerk for better registration for cases at issue. All legal acts of that time were also registered into municipal tablets - municipal assemblies as well as other important facts.

- a) registry in land registers (1855 - 1964)

- b) registry in geodesy centres (1964 - 1993)
- c) real estate cadastre - since 1993.

A stable cadastre started to be created in old Hungary only in 1850. It was a geometric depiction of all grounds in the cadastral municipality. Cadastral mapping (parcel survey) was done by the method of surveyor's desk or by direct measuring which was preceded by cadastral trigonometric triangulation (creation of the net of fixed points). The Act No. 90 on Creation of Land Registers started to be implemented in 1874. That time register consisted of two parts: the **land register** and **land cadastre**.

The land register served for property - legal purposes. Ownership rights to all real estates, except for so-called public property (roads, ditches, squares, orchards etc., - so-called non-booked property) were registered in it. Land register registered municipality real estate or cadastral areas and their owners. It testified about a land owner or co-owners and their shares. The base of register was a cadastral entity - one or more real estates which created economic and legal whole of one or more co-owners. Just a few rules were valid for entries to the land register, which were done by a district court:

- a) principle of public access - everybody had the right to have a look and to get a land certificate being charged a recompense;
- b) equitable principle - records were done only in case of proposal of an authorised person;
- c) principle of intabulation - tenure to a real estate arose in the moment of entry into the book (not by the signing of a contract). It executed this constitutional function up to 1 January 1951;
- d) preferential principle - real estate tenure was recorded in favour of that person who as first submitted the proposal for registering;
- e) principle of legality - it was strictly respected not to register anything illegal therefore records were done directly at a court which investigated if submitted documents are in accordance with law;
- f) principle of concordance of land register with land cadastre.

Records into land register were finished in 1964 and the agenda under the name "real estate registration" switched to centres of the Office of Geodesy. The land cadastre was a state land register which registered data on each land as well as data related to grounds and their use. The land cadastre was created in old Hungary on the basis of the imperial patent of 1849 and it was built as unified for the entire country. The land cadastre gave information on the size, shape, position and circumference of each registered land. Main attributes of the land cadastre were a type of land, its value and acreage. It served mainly for tax purposes. Austrian-Hungarian settlement as well as the lack of professionals delayed the ideas of the land cadastre creation.

Efforts of definition and a subsequent unified land cadastre for the whole Czechoslovak Republic culminated in enactment of the Act No. 177/1927 Coll. on Land Cadastre and its Administration (cadastral law) [9]. By the mention act, a cadastral measurement and mapping was ordered in the former Czechoslovak Republic. This act replaced almost all until that time valid cadastral legal norms, it directed geodetic and cadastral service into unified development and widened the purposes to which the cadastre served. In practice there was used main technical information - **Manual A and Manual B**:

- **Instruction A – Manual** how to perform cadastral geodetic work for renovation of the land cadastre by a new cadastral proceeding;
- **Instruction B – Manual** how to perform cadastral geodetic work for administration of the land cadastre.

3. Land reforms after the Second World War

In the period since 30 September 1938 to 4 May 1945 - in the time of lack of freedom - the president of the Czechoslovak Republic had the legislative power. All presidential decrees had the legal power of an act. They solved mainly the questions of status of the Germans and Hungarians on the territory of the Czechoslovak Republic as well as punishment of collaborators and traitors and with that related **property issues**. Validity of the decrees of the Czechoslovak Republic president Edvard Benes from 1940 - 1945 are still a sensitive problem. In our country there are still discussions mainly on so-called undefinable agricultural soil within this context. The thing mainly is "multi-level" land ownership within the context of legal norms from 1945, land reforms, international agreements, collectivisation and development after 1989.

In 1946, on the basis of these decrees, there occurred **the first phase of the land reform**, where it was decided on land confiscation and agricultural property of the "traitors of the Slovak nation", the Germans and people of the Hungarian nationality who until November 1938 had not had the Czechoslovak nationality or owned more than 50 ha of land. Confiscated land came under the administration of the Slovak Land Fund and was allocated to the private ownership of lacklands and small farmers, which created over 66% of confiscated land. The land reform had a distinct social accent and solved so-called overcrowding on the land [4].

In the second phase of the land reform the size of landlordry ownership was limited to 150 ha of land and 250 ha of all land.

After assumption of power by communists when there was the entire change of ownership situations, **the third phase of the land reform occurred**. Two categories of owners suffered: owners of agricultural companies over 50 ha and land owners regardless of its size who did not work on it but they rented it to the third parties. Land was not allocated to privately farming farmers any more but to state farms. Change of land ownership became a part of nationalizing processes [3].

As a result of confiscation regulations, land reforms or redistribution of land, the duplicate ownership emerges because due to incorrect or incomplete land register such land, owners of which were not identifiable, was divided.

Moreover another question emerged how to settle restitution claim of land owners (squirearchy) whose land was confiscated and which according to records in the land register falls under detention. Therefore due to stated records, their ownership rights probably did not expire, but their rights of disposition were just withdrawn.

The Second World War and the beginning of collectivisation after 1948 prevented the creation of a unified land cadastre in the intentions of the above quoted Act No. 177/1927 Coll. on Land Cadastre and its Administration (cadastral law). The incongruity extent of legal and real status in consequence of extensive property changes and abandoning of so-called intabulation principle (record to the land register) was deepened. Since the beginning of fifties the importance of land register decreased due to the change of land and tax legal system.

Almost perfect system of land registers was grossly violated at the beginning of 1951 by the new Civil Code (Act No 141/1950 Coll.) entering into force, which interfered with the constitutiveness of land registers. The commitment to register certain legal relations into land registers still persisted but these records did not have any material-legal effects; they only declared a certain legal relation. The ownership right to a real estate did not arise by a record into land register, but just after the moment of district people's committee consent. The duty to make a record into a land register was cancelled.

By the beginning of socialism the emphasis was put on registering of user regulations and registering of ownership rights was pushed back. User regulations to use of collectivized forms of agricultural and forest land were preferred; ownership was separated from use and sense of an owner about his/her ownership was attenuated [1].

Registering of land was created on the basis of unified land registering elaborates since 1956 on the basis of local inquiry on actual use without registering of ownership relations. For establishment of this register present operats were used, mainly the land cadastre operat, the land register operat and reality. The task of the unified land registering was:

- to create a new register with use of land cadastre operats for the state needs;
- continuously maintain it in compliance with reality;
- to submit necessary data from unified land registering to agricultural representatives and to other state organs;
- to provide professional administration of registering in people's committees in technical respect.

The Civil Code and the Act No 22/1964 Coll. on real estate entries were adopted in 1964; they formed new legal circumstances in the regime of real estate and its registering. According to the Act on real estate registering only technical information had mandatory statute. Records of legal relations to real estate had only declaratory effect. Contract registration at the state notary's office had the constitutive effect whereby a contract came into effect by a positive decision of the state notary's office on its registration. This was the moment when it came to acquiring of the ownership or another right depending on the type of a contract. Registering from 1964 started to create also the register of legal relations in a form of certificate of title with exception of ownership relations to land in rural zone which were registered neither in mapping operats nor in the register of real estate. Records into land register were discontinued. Land certificates have been issued until now i.e. until the time of certificates of deed creation in the real estate cadastre.

The unified real estate entries and legal relations to real estate were implemented by the Act No 22/1964 Coll., which solved created provisional arrangements by renewal of the operat after the new mapping. The law implemented the registration of legal relations in residential areas and exceptionally also in rural zones which didn't have to be registered from 1951 to 1964. In this way created real estate register did not substitute the constitutive character of the land register. Its another negative aspect was that it did not either adjust the procedure at establishing of the ownership right to the real estate register in the case of not documented legal relations, i.e. when this legal relation cannot be documented by the deed which this legal relation establishes or certifies.

The period from 1948 up to 1986 is characterized by following specifications:

- collectivization of agricultural and forest land after 1949 which was accompanied by separation of land ownership and land use. In the majority of cases there was no change in land ownership related to collectivization. Ownership of original real estate from the period before collectivization was basically preserved;
- transfer and transition of ownership rights to rural zone land which was permanently taken under constructions (water reservoirs, roads, railways, regulated water flows etc.) by expropriation or buyout was performed just partially;
- patrimonial transition of the ownership right to original real estate which was collectivized and to which enforcement of ownership rights was prevented, it was possible only by a simplified way of registering without a complex geometric parcel definition in a rural zone; such a simplified registering of real estate and ownership rights to it is nowadays useless for real estate cadastre; this group of inheritors must be now solved elaborately;
- no a state body or other institution was authorized, in the period between 1949 and 1989, to administrate the information system of land ownership rights in a rural zone; at present it is necessary to start from the land register information system with conserved status from 1949 and step by step to upgrade it with all changes within the past period [2].

4. Cadastre development after 1989

The ownership structure in Slovakia as a result of real economic, social-political and historical processes was determined by several land reforms. The principal step on the way to elimination of ownership disintegration and differences between legal and real status was equalization of all ownership types [2]. The legal basis of new conception of real estate registering and legal relations to it were established by two acts: the Act No 265/1992 Coll. on the entries of ownership and other rights to the real estate the Act No 266/1992 Coll. on the real estate cadastre in the Slovak Republic. The mentioned acts virtually established "the real estate cadastre" as the entry tool for the performing of state acting at the defence of legal relations and utilization and protection of real estate as well as the state information system about real estate [2].

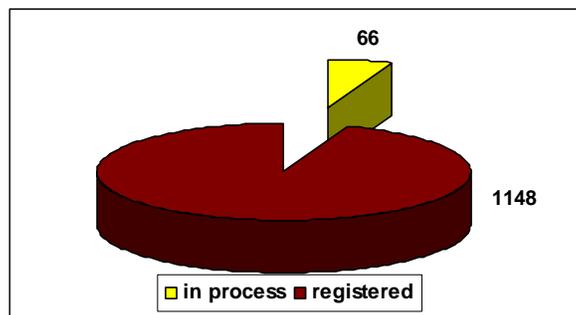
The mess in cadastral areas which appeared during the previous period, but mainly after 1945 when the changes of the ownership and inheritance procedure was not entered into the cadastre, when only the name and surname without other identification data caused the situation that many people do not know even now that they are owners of land or forest.

5. Prognosis of land ownership and cadaster arrangement in the Slovak Republic

The intention to make the land ownership more transparent in the Slovak Republic was implemented in the Concept of land ownership arrangement in the Slovak Republic approved by the decree of the Slovak Republic government from the year 1993. This commitment was implemented and it is applied in the cited act of the National Council of the Slovak Republic (National Council of SR) No 330/1991 Coll. on land consolidation, land ownership, land offices, the Land Fund and Land Associations as amended, in the Act of National Council of SR No 180/1955 Coll. on some provisions about arrangement of ownership to land subsequently amended, and in other conception documents related to individual territories of the Slovak Republic.

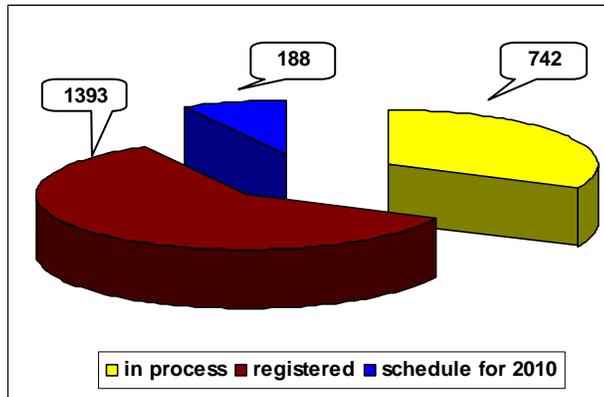
To the end of the year 2010 the state of renovation of some land registering and legal relationships to it which is provided by the Ministry of Agriculture and Rural Development of SR in 1214 cadastral areas, is as follows:

Up to 30 Sep 2010 through the specialised state administration in the sector of land arrangement and agricultural land protection 1166 registers of renewed land registering were finished and 1148 out of them were entered to the real estate cadastre (98%). During the year 2011 48 remaining cadastral areas should be finished (graph 1).



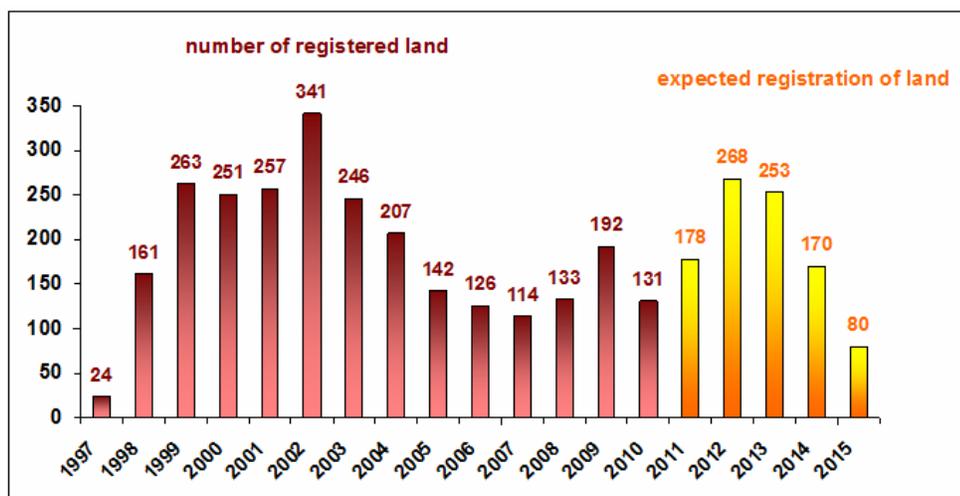
Graph 1 Registers of renewed land registering done by the Ministry of Agriculture and Rural Development, SR, 1214 cadastral areas

The state body of the state administration for geodesy, cartography and cadastre in the Slovak Republic is the Geodesy, Cartography and Cadastre Office of the Slovak Republic (GCCO SR) which administers and supervises the sector of cadastres; it supervises the standard of processing and performing of tasks related to the real estate cadastre. Via specialised state administration in the sector of cadastre (i.e. cadastre offices and cadastre administration) GCCO SR provides also administrative procedures concerning the renovation of some land records and legal relationships to them in 2323 cadastral areas. Up to 30 Sep 2010 it finished 1426 records of renewed land evidence and 1393 out of them are incorporated in real estate cadastres (i.e. 98%) graph 2.



Graph 2 Registers of renewed land registering done by the Geodesy, Cartography and Cadastre Office, SR, 2323 cadastral areas

Annually state bodies in the sector of real estate - cadastre administrations take and enter approximately 140 registers of renewed land registration. Annually it will be necessary to enter 216 registers of renewed records into the real estate cadastre on average at planned completion of land ownership until the year 2015 (graph 3).



Graph 3 Entering of registers of renewed land registering in the real estate cadastre, 3537 cadastral areas

At present uniquely determined ownership rights are influencing the entrance of new investments, building of industrial parks, eventually strategically important constructions (e.g. motorways). Real estate market influences significantly user requirements on ownership information and other rights to real estate and their providing by the services of the real estate cadastre. One of the main tasks of GCCO SR is to react dynamically to increasing requirements for building of a modern cadastre in Slovakia so that the standard of delivered services and protection of rights to real estate registered in the cadastre is comparable to cadastre services in the states of the European Union where requirements are oriented mainly to information available on web portal services in real time over the whole territory and with the use of a direct electronic connection as well as the access to information from the cadastre among the countries of the EU mutually⁴ [4]

Service quality requirements together with the society electronization development have increasing trend also in Slovakia. Bodies of public administration, financial institutions, geodetic companies, real estate agencies, notaries, advocates, towns and villages require data and information from the cadastre singly or in compact files for fulfilment of their tasks or for building of their own information systems. The stated requirements increase the demand for protection of registered data on ownership and other rights to real estate and so also for system building which guarantees this protection.

The tasks related to the proceeding of renovation of some land registering and legal relationship to it consist of the control of entry proposals of renewed land registering, elimination of mistakes in cadastral information and following entering of registers of renewed registering into the real estate cadastre from 3537 cadastral areas, i.e. from the whole territory of Slovakia. Besides the above mentioned tasks in the following period the next activity in the sector of the cadastre will focus mainly on following areas:

- **compliance with periods stipulated by law**, mainly in decisions about proposals of rights' entering into the cadastre, in entering of public documents and other documents by booking and in cadastral proceeding about error corrections in the cadastral operat;
- **information delivering** provided mainly by cadastre administrations and to that related elimination of cadastre administration burdening by a personal contact with a client;
- **geodetic activities at land adjustments** – results which are taken into the cadastre is inevitable to expand by mapping also behind the borders of the district of land adjustments, i.e. in the whole cadastral area (with the exception of developed area of a village);
- **systemic and technological security**, the aim of which is the implementation of a versatile cadastre into practice with emphasis on permanently sustainable quality and safety of data and updating of the central database and the cadastral portal by change records in the real time 24 hours and less;.
- **legislative activity**, namely in the necessity to focus the attention first of all to enhancement and refining of legal adjustment of the real estate cadastre with the aim to simplify the procedure in the cadastral proceeding. Important role in the legislative is related to the acceptance of the European Union legislative and in the need to adjust or process new technical rules;
- **organizational structure**, which tasks will be related to decrease of the number of those cadastre administrations or workplaces where in the long term the

⁴ Koncepcia rozvoja katastra nehnuteľností do roku 2010, Úrad geodézie, kartografie a katastra SR (Concept of the real estate cadastre development up to 2010, the Geodesy, Cartography and Cadastre Office, SR)

number of registrations is lower with the aim to move the employees to those workplaces which are not able to keep statutory terms due to lack of employees. The important change in the cadastre development happened by the adoption of the cadastre law amendment under the number 103/2010 Coll. with the effect from 1st May 2010, which embedded:

- issuing of title deeds with marked seal about the change of the right to the real estate to the owner or other eligible person. The title deed with the seal was for citizens a certain guarantee that no other dispose of the real estate can be done and that their registration will be dealt with in the order as it was delivered to the cadastre administration. Requirements of financial institutions contributed to the introduction of re-issuing of title deeds with the seal. These institutions bound payment of money from the loan (mortgage) to submission of the title deed with the seal. This document is also accepted by other state bodies and institutions so a citizen does not have to wait until the whole cadastral proceeding is lawfully finished;
- it omits the record-keeping of engineering structures and small constructions in the cadastre;
- land register and railway land title register is not any more marked as archives. If the right to the real estate is not recorded on the title deed, it is registered in land register or railway land title register;
- attachments of electronic proposal submission for entry of the right to the real estate cadastre have to be signed by the certified digital signature;
- other eligible person does not have any more the possibility to submit an electronic statement about intended proposal for entry into the real estate cadastre. The statement about intended proposal for entry is eligible to submit only one participant of the proceeding;
- at withdrawal of proposal by participants at appeal was simplified - discontinuance of proceedings, only marking in the file;
- the amendment allows to enter the owner of building not only according the data about the builder in the building permission but also according the other documents (e.g. contract for work etc.);
- the provisions of law on venue in the proceeding about an entry proposal which is possible to submit in any cadastre administration (as each cadastre administration is obliged to accept the proposal) were stated more precisely. The cadastre administration is obliged to send such a proposal to the cadastre administration in which the district of the real estate is located, but this prolongs the proceeding of entry proposal.

The organization of science and research base in the department of the Geodesy, Cartography and Cadastre Office of the Slovak Republic is the Research Institute of Geodesy and Cartography in Bratislava. The priority task in the field of geodetic and cartographic work is automated proceeding of the real estate cadastre. In the existing issues the Research Institute of Geodesy and Cartography, as the leading workplace of Eastern European countries, elaborated the building of automated information system of geodesy and cartography based on the database technology of data processing, the part of which was computerization of cadastre workplaces and of the whole department. Achieved results in this area allow the providing of tasks in the area of land registering which due to described incompleteness of the state information system about real estate require basically new establishment of registering in the rural zone and considerable scope of finalizing work in residential zone.

6. Land ownership after the fall of socialism and land modifications

After the fall of socialism the need was created to reduce property injustice from the period 1948 - 1989 against owners and at the same time it was necessary to adopt regulations to eliminate disintegration of ownership and differences between legal and real status.

To this purpose and for achieving of better care for agricultural and forest land by renovation of original ownership relations and reduction of some property injustice against the land property owners in years 1948 – 1989, the act on modification of land ownership relations and to other agricultural property - the Land Act - was adopted in 1991. The act was adopted under the number 229. The act establishes the range of eligible persons who have the right to gain real estate and the period for submitting of written proves of making a claim. The act is intended for restoring of original ownership relations.

In the interest of solving described discrepancy between present status in agricultural and forest rural zone (out of 1 825 million sites only 93 thousand parcels has inscribed ownership relation in the title deed) [2] and the status determined by the cadastral operat the Act No 330 on land modifications, arrangement of land ownership, land offices, land fund and land associations was adopted in 1991.

The act defines land modifications as its consolidation, division, and arrangement of plots on the basis of ownership and rights of use and to that related performance of terrain, communication, water management, recultivation and land improvement provisions.

Participants of land modifications are owners and **land users** who are subjects of land modifications, **owners** of other immovable agricultural property situated in the district as well as persons whose ownership or other right can be touched by modifications and the **Slovak Land Fund** which administers agricultural and forest immovable owned by the state, land owned by unknown owners and owners who did not make a claim. The concept of unknown owners itself is a compound of two groups of owners. A very big group is created by known owners with an unknown address (only those data which are entered in land register are known, neither addresses nor date of birth are stated, also soil after our Jewish co-citizens, etc.). The second is a small group of unknown owners (lost or damaged - burned, flooded - land-book entries) [6]. Administration of the Slovak Land Fund will terminate if an owner is registered in the cadastre as an undetected owner and prove the ownership by a public document or by other documents on the basis of which the cadastral administration will write them as owners and also in the case when the owner is known, but the place of his/her permanent stay or seat is not known, or if no name and surname is entered, the cadastre administration will enter these data after submission of relevant documents as mainly identity card, birth certificate etc.

Land modifications are aimed to rational arrangement of landscape space so that the country will be legally settled and maximum productive in accordance with requirements of environment protection and country ecology. So it is mainly land integration and redistribution and to it related land ownership rights. Land modifications are done approximately in 350 cadastral areas in Slovakia.

The scope of real estate disintegration reached such a status that the fraction which expresses co-owner share is for a layman not readable, its real value is unimaginable and for handling in the real estate market senseless. The Act No 180 on certain measures for the settlement of ownership rights to land in the extravillein of municipality area was adopted to ensure the remedy of this status and it states measures against disintegration of this land. The act enacts that on the basis of a legal act or decision of the court no smaller plot than 2000 m² can be created by the division of existing plots if it is an agricultural plot or plot smaller than 5000 m² if it is a forest plot. **The register of renewed land entries** started to be created by the mentioned act; its aim is an action on renewing of some plots' entries and legal relations to them. The procedure of renewed land entries register compilation is a special type of administrative

procedure using in a modified form the cadastra procedure and procedure on land modifications with a common modification of source materials' investigation for decision, administrative proceeding of the register and its approval. After approval of the register the administrative body will issue decision on its approval which is the deed for its entry to the cadastre. The register duty of renewed land entries is to collect all available data on land in the entire cadastral area and on legal relations to it to be usable after its entry into the real estate cadastre as cadastral data. The approved register of renewed land entries becomes a public deed and by data entry of land ownership into the real estate cadastre is achieved that a legal relation to land is registered in the entire cadastral area on its titles of deed. It is the background for the entry of legal relations (namely ownership rights) as well as other data (e.g. the type of land) of original real estate but also of other real estate into the real estate cadastre. By the arrangement of land ownership in compliance with the cited act, real conditions for land market establishment as well as regulation in land ownership were created; that enables the acceleration of a living condition improvement for rural population, optimal space and functional land arrangement in the frame of land modifications.

Slovak countryside initial conditions **in the time of entry into the European Union** have inconvenient structure of ownership relations for the development of rural landscape; it is characterized mainly by big ownership disintegration, high number of co-owners and small co-owner shares.

Other negatives in term of rural development were: economical land utilization, slow growth of interest in own use of land, land ownership and investments in agricultural equipments etc.

After the entrance into the European Union the situation of the countryside development gradually improved in respect to land modifications. Financial help possibilities from the European Community were utilised, since the beginning through pre-accession programme SAPARD (programme SAPARD was oriented to the support of measures in the field of agriculture and countryside development which the candidate country approved on the basis of needs) and subsequently via structural Sector operation programme agriculture and the rural development.

In 1995 the cadastral issues amended in both above cited acts (the Act 265/1992 Coll. and 266/1992 Coll.) were unified and their content concentrated in one act - **the Act 162/1995 Coll. on the real estate cadastre and the entries of ownership and other rights to the real estate (the cadastre act)**. The new cadastre act arose as a result of effort to adjust the legal modification of the cadastre to the new state-legal organization as well as to changes which happened in the related legal regulations.

The real estate cadastre is the geometrical determination, registration and description of real estates. The cadastre serves as the information system, tool for real estate and rights to them registering, tax and fee purposes, to protect cultural remains, agricultural and forest land fund, protected areas, natural creations and for real estate market acceleration. The data on rights to real estate enter into the cadastre as:

- ownership right
- lien
- pre-emption if it has the effect of tenure
- real burden
- the right resulting from state property administration and rights arising from municipal real estate administration
- rental right - only if the plot is the subject of rental; it is entered only if the rental lasts 5 years and more. The rental right is entered to an evidence letter not on title deed.

The entry system of the rights to real estate into the cadastre is based on three principles:

- a) **constitutive** - ownership rights, other rights to real estate **on the basis of the contract**, arise, are changed or created only after entry into the cadastre, the entry has a legal effect; legal effects of the entry occur only on the basis of legal decision on entry permission;
- b) **registering** – this rule is valid for the **record** of rights to real estate and it means that the rights which arose because of other legal titles as from a contract are entered into the cadastre whereby this record does not have a legal effect but it has only registering effect, so just declaratory effect;
- c) **pre-notation** - in the case of non-documented legal relations there is done a note in the cadastre in favour of that person who claims he/she is the legitimate in the legal relation but he/she is not able to prove his/her claim in the trustworthy way. The cadastre administration enters a note in favour of this person and asks him/her to apply his/her rights by the legal action at the court. On the basis of the court decision the note is deleted and by a record the right to real estate is registered.

The cadastre law distinguishes three types of registering into the real estate cadastre, namely **the entry (contribution), record and note**. Each of the records is inscribed to the title deed which contains the number of this title deed, name of the municipality and the name of the cadastral area.

Title deed consists of three parts:

Part A – assets - includes all real estates which are the subject of rights to real estate (property body) and data on them as acreage, type of the plot, code of the plot utilization way, belonging to built-up area of the municipality and other data containing closer explanation of part A,

Part B - owner or other authorized persons - includes first name, surname, maiden name or name of real estate owner or other authorized person, date of birth, personal identification number (IČO - company registration number), co-ownership share, titles of acquisition according to the public deed or other deeds, domicile of an owner and seat, other data containing more detailed explanation of the part B, flat and non - flat spaces, rental rights to plots, notes on facts related to real estate or to the rights to real estate,

Part C - encumbrance - which contains real burden (content of the real burden, identification of rightful person from the real burden including the record of the real burden in the title deed of the rightful person), liens (identification of lien creditor), rights of refusal if they have to have effects of tenure (identification of rightful person from the right of refusal), other rights if they were agreed as tenure and other data containing more detailed explanations of the part C; the amount of debt is not stated in the part C [11].

1. Out of stated records **inscription of entry** has the most distinct legal implications, as it causes origination, change or expiry of the ownership right and tenure to property of another - so it has legal effects. The participant of proceeding on entry permission is the participant of legal proceeding on basis of which the right to real estate should arise, change or expire.

Decision on the **permission of entry** the cadastre administration issues in the case of fulfilment of all conditions for the entry. Legal effects of the entry happen on the basis of valid decision of the cadastre administration on its permission. The decision on permission of entry comes into force by the day of decision issuing. There is not possible legal remedy against this decision.

2. The data on legal relations are inscribed into the cadastre by **a record on the basis of public deeds and other deeds**, which prove or testify rights to real estate according to relevant provisions. It is an act of the cadastre which has only registering effect. Public deeds are written

forms of state body decisions and notarial certificates and as other deeds are considered as public deeds which confirm rights to real estate. As a public deed e.g. a proclamation of ownership to real estate by usucaption or proclamation of usucaption equivalent to real burden is considered. The cadastre administration will review if the submitted public deed is without mistakes in writing or counting and without apparent incorrectness and if it contains requirements according to law.

3. **Note** is the cadastral act which serves for marking of reality or rate which is related to real property or a person. The note does not have the constitutive or registering importance, it also does not have the impact on arise, change or expiry of rights to real estate. The note presents facts which limit the competency of the owner to dispose of property or informs on real estate and necessity or right to real estate.

Via inscription of a note also cases of so-called not documented legal rights are solved. The cadastre administration will perform the inscription of a note in the case when somebody claims he/she is the illegible in the legal relation to real estate but he/she could not prove it trustfully and if he/she submits to the court the proposal for determination of the right to the real estate or he/she will ask the notary office to issue the certificate of the right creation to real estate by usucaption, after he/she was asked by the cadastre to do so. If the court determines or the notary certifies that the right exists, the cadastre administration will perform the record of the right and at the same time will cancel the note.

The principal cadastral office task is to provide for requirement of maximum security in legal relations to real estate and to reach the concordance of real status with the status listed in the real estate cadastre. In the sense of this intention the real estate cadastre is built on the following principles:

Principle of insertion (intabulation) means that ownership rights and other tenure to real estate arise and change or expiry by the entry to the cadastre; if another act does not determine in other way.

Principle of publicity (formal publicity) means that the cadastre administration on request of anybody will produce confirmed land certificate or confirmed copy from the file of geodetic information, file of descriptive information, land registers and railway register as well as the parcel identification (these certificates and copies possess the character of public deeds).

Principle of authenticity (material publicity) means that the data from the cadastre are trustworthy and binding if it is not disproved.

Principle of independence (disposition principle) means that the proceeding on permission of the entry the competent cadastre administration always performs on the proposal of the participant and not because of official duty.

Principle of legality means that the cadastre administration is obliged to investigate conditions for possibility and validity of cadastral records. This principle manifests at investigation of deed worthiness on basis of which the record should be done and also in the frame of proceeding of the entry permission.

Principle of speciality means providing certainty and lucidity of registered data - cadastre act and executive regulation determine the way how the cadastre administrative should proceed at record performance.

Principle of priority means that the order of records follows the time when the proposal for the entry into the real estate cadastre was delivered whereby each cadastre administration keeps the evidence of delivered entry proposals to which anybody can look in.

7. Developer's risks implicit from the current status of the real estate cadastre

In the context of above mentioned facts it is possible to state that the developer in the Slovak Republic faces pressure from several sides; that is why it is important for him/her to limit to minimum risks which can result e.g. in relation to building site acquiring.

Inevitable condition of application for territorial permission and building permission in compliance with the valid Slovak legislative is to justify the ownership or other right to the plot. Many developers rely on the copy from the cadastre i.e. title deed.

In the same way also bank institutions, which finance the developers, behave. Unlike the neighbouring countries e.g. Poland or to a certain extent Germany, the situation in the Slovak Republic does not guarantee that data stated in the cadastre correspond to facts. The cadastral office only keeps the register of real estate ownership relations as it results from submitted deeds. Its power and mainly its duty to investigate this legal flawlessness are very limited. If the developer or authorized legal office wants to investigate the history of ownership relations than it is in Slovakia distinctly unfavoured [7].

Fatal results which often lead to stopping of construction and finally also the whole project is thwarted and the developer suffers from lost or legal impeachment of his ownership or other rights to real estate.

This situation in Slovakia is influenced by quite a number of negative aspects, mainly in consequence - already over 50 years - of suppressing principle *SUPERFICIES SOLO CEDIT*, i.e. principle that a building is a part of the plot. Some cases emerge where developer's ownership right was impugned successfully e.g. because of a restitution claim application or because of the action of detinue where he/she can lose his/her good reputation. Assurance of ownership or other rights to the plot is crucial for the developer. The condition of a successful investment or developer's project is thorough due diligence which together with the insurance of the ownership right in the form of so-called title insurance (insurance of ownership right - insurance against financial loss which arose due to the attack of ownership right to the insured real estate and/or due to invalid or irredeemable creditor's lien) seems to be the only effective way how the assignee - buyer (but also an investor, bank or pledgee) effectively protects against possible risks.

Since the land is a key factor in the investment project, it significantly influences its final price [8]. The choice of land must be based on analysis of several key data, such as the exact size of the land, and its use – i.e. what type of land it is and whether the special regime is imposed on it. For instance the land may be located in historically protected area; it may have one or more owners. The title of property should be examined in detail, that is whether the owner bought the land or he obtained it as the heritage or gift, or the title was transferred from the other legal or natural person. Moreover it is necessary to find out whether the land is burdened by mortgage, easements and whether it is equipped with the infrastructure, or whether it is easy to connect it to the utilities [9].

It is surprising how many acquired titles registered in the cadastre of real estate suffer from relative or even complete invalidity. Not rare are the problems of incorrect definition of transferred real estates, signature of not illegible persons, incorrect or even missing power of attorney, absence of necessary permissions at state property solving, breaching of legal processing, breaching of legal processing at municipal real estate, hidden lien, right of refusal or other rights related to real burden and so on.

One of the possibilities how the developer or possibly other subject can minimize risks on the field of cadastre and ownership relations to real estate is specially the title insurance.

8. Conclusion

With reference to cadastre functioning in other countries of the European Union and regarding to the described common historical development they have many common features. These common features relate mainly to the countries of former Austria-Hungary monarchy, in which the cadastre was established unanimously, mainly for tax purposes. The cadastral development was also similar in the countries associated in the socialistic block. At present the possibilities for cadastre standardization are sought within the frame of the EU countries.

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