

Land Administration as Infrastructure for Land Privatisation Procedures in Central Eastern European Countries

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Key words : land administration, privatisation procedures, compensation, restitution, Central Eastern European Countries.

SUMMARY

At the beginning of 90s there were dramatic political and economic changes in the socialist Central Eastern European Countries and in the Soviet States.

There have been very strong needs to implement wide range of privatisation procedures concerning land, real estate properties and compensation restitution processes as well. It was essential to establish, re-establish, or modernising land administration sector as infrastructure, creating legal and institutional framework to support and implement privatisation, compensation, restitution procedures in CEECs.

Many of the countries have practically achieved the tasks within ten years fulfilled the requirements to join the European Union. This period concerning the result of land and property privatisation and creation land administration infrastructure was a success and in the same time example of good practice in this field.

To prove above the paper also wants to describe some of the successful examples in CEECs during 90s. Different countries have used various instruments for the implementation of privatisation procedures depended on different political, economic, historical background and the conditions of land administration, ownership structure but in all countries the operational land administration was a prerequisite.

RESUME

Au début des années 1990 dans les pays socialistes de l'Europe Centrale-Orientale et les états de l'Union Soviétique il y avait de changements dramatiques politiques et économiques.

On avait très fort besoin d'accomplir une vaste gamme de procédés de privatisation concernant les propriétés foncières et immobilières, ainsi que de compensation et de restitution. Il était essentiel d'établir, ré-établir ou moderniser le cadre institutionnel et juridique de l'administration foncière comme inrastructure, de soutenir et d'accomplir la compensation et les procédés de restitution dans les pays d'Europe Centrale-Orientale.

La présentation décrit aussi quelques exemples réussies dans les pays d'Europe Centrale-Orientale pendant les années 90. Les differents pays ont employé des différents insrtuments pour l'exécution de la privatisation en rapport avec les différents contextes politiques, historiques et économiques, et les conditions de l'administration foncière et la structure de propriété, mais dans tous les pays l'administration foncière opérative était une condition première.

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1. INTRODUCTION

At the beginning of 90s there was dramatic political and economic changes in the socialist Central Eastern European countries and in the Soviet States. The one party political system and command economy have been replaced by the multiparty democracy and the market economy. Of course these countries are still in transition but there have been significant progress during the passed ten years especially in candidate countries joining to the European Union.

Back to the 20th Century the socialist era, the one party political system and command economy begun in Russia after the World War I in 1917 and gradually in other states forming the Soviet Federation and in Central European Countries after the World War II as a result of the influence and political pressure by the Soviet Union.

In the socialist countries the majority of lands, industrial, commercial and residential properties were nationalised the state and co-operatives became the major owners of properties and very small part of land and real properties remained in private hands.

During the socialist period there was no fully operational land administration, Cadastre, land registry in the majority of Central Eastern European Countries due to the lack of active land and property market and the society and command economy didn't required many data of lands and properties. On the other hand because of security reasons there was a lot of restrictions on disseminating of mapping data.

At the beginning of 90s there were very strong needs in the Central Eastern European countries and former Soviet States to establish, re-establish or modernising the land administration sector, especially Cadastre and land registry organisations to fulfil the demands by the developing market economy and the implementation of privatisation procedures can't be successful without well operational land administration sector, legal and institutional framework.

In the developed countries it's obvious that the land administration infrastructure is one of the key elements to operate the land and property market in the same time the market economy.

Following the changes in Central Eastern Europe, countries have recognised the importance of land administration sector to implement privatisation procedures and land reforms and the European Union through PHARE projects, UN organisations like Working Party on Land Administration, World Bank and other aid organisations have also supported the development and modernisation of land administration to accelerate the progress of developing the market economy.

2. HISTORICAL BACGROUND

The task and the way how to implement projects for developing the land administration infrastructure in the Central Eastern European Countries, and Soviet States in the former

communist block was varying, depending on different historical, political, economic background, various ownership structure, the condition of legal, institutional framework and land administration infrastructure in the XX th. century and also at the beginning of 90s.

2.1 The Political and Economic Situation Before the World War II in the Former European Communist Countries

- There was political democracy and market economy in Czechoslovakia, Poland, Hungary, Baltic States
- Semi feudal countries
Romania, Bulgaria, Albania, Balkan States
- Communist dictatorship
majority of former Soviet States

2.2 The Ownership Situation before the World War II.

- Private ownership was dominant in
Czechoslovakia, Poland, Hungary, Baltic States, Rumania, Bulgaria, Yugoslavia
- 100 % of state and co-operative ownership
majority of Soviet States

2.3 The Legal, Institutional Framework, Land Administration Infrastructure Before the World War II and During the Communist Era

- Traditional legal registry and Cadastre, functioning system during the communist era in Hungary, partly in Czechoslovakia, Poland and Yugoslav States
- There was some legal registry and Cadastre but not operational during the communist era
Rumania, Baltic countries, Bulgaria
- There was no any legal registry or Cadastre
majority of Soviet States

2.4 Privatisation, Compensation, Restitution, Procedures

As we recognised, in Central Eastern European Countries and the former Soviet States there was a very wide range of variety concerning political and economic background, ownership structure and different conditions of land administration infrastructure which is the most important tool for implementing of land reforms and privatisation processes.

In respect of above, at the beginning of 90s., when countries have started privatisation procedures, they faced different problems to be solved.

In any country, one of the preconditions of implementing land and property privatisation procedures, are the existing legal and institutional framework, functioning land administration sector, especially land registry and cadastre. It's essential of registering and mapping the result of privatisation procedures. The land registry sector is a key component of a market economy whereby the safe and secure transfer of title- resulted by the privatisation- can be freely conveyed in Central Eastern European countries as in many developed countries. Governments, states must play a very important role to establish, reengineering or modernising land administration infrastructure. The way of implementation of land reforms and privatisation procedures, to fulfil requirements by the society, have been very different in Central Eastern European Countries and former Soviet States, depended on their historical inheritance and current situation of the land administration sector.

In some countries- former Soviet States- they had to start from the beginning to establish legal, institutional framework for land administration and land registry organisation.

In some countries, like Poland, Czech Republic, Slovak Republic, Lovenia, etc. they had to re-establish land administration sector to make them fully operational and modernising institutions and technical conditions.

In some countries, like Hungary, there was fully operational land registry, cadastre without any gap during the socialist period on paper base, the main task was to computerise and improve all of the technical conditions within the land administration sector and fit the legal framework to the new requirements.

The different political, economic historical background, conditions of land administration, ownership structure have resulted different privatisation instruments.

There are number of instruments which can be used to transfer land and properties from the public to private sector including restitution, compensation, privatisation. In all cases they require the establishment of explicit legislation and the appointment of an executive body especially empowered to carry out land redistribution. It is also important to establish State Privatisation Agency responsible for the privatisation of state owned industrial, agricultural and other properties. Restitution and compensation normally involve to set up local committees who make decisions regarding cases. The legislation must consider under what conditions land can be restituted, how compensation can be assessed. It is also necessary to consider appeal mechanisms and responsibilities and procedures such as how the claims should be submitted, which organisation is responsible preparing implementation of procedures, who is the financier of implementation. It is also necessary to decide about the registration of new ownership in the land registry and update cadastral records, maps.

3. PRIVATISATION INSTRUMENTS

3.1 Compensation

This instrument is used where claimants are to be compensated for past injustice or where land or other properties claimed in restitution cannot be returned for some reason.

Complete Compensation

The procedure of compensation for past injustice involves a ruling concerning the claim followed by the issue of compensation coupons or vouchers. This may involve auctions, whereby compensation vouchers are connected to land or vouchers can be used for privatising residential properties and purchasing stocks from the state. Compensation for agricultural land is usually carried out over larger area and may involve many, sometimes hundreds of claimants. A typical example is the Compensation Procedure in Hungary.

Simple Compensation

Compensation can be a direct allocation of land owing to non-availability of land parcel claimed by restitution. In this case state land fund must be established by the government. The main difficulty here is associated with the value of estimation of the original land, the level of compensation offered and potential disagreement concerning the suitability of the compensation land (location, quality, shape) This type of compensation is generally used and connected with restitution procedures.

3.2 Restitution

This instrument is used to return land to the original owner whose ownership right was removed according to law established by former one party communist governments. There are several problems, difficulties appear. Boundaries of land parcels registered in old registers, mapped in cadastre are different comparing with the current situation on the site. Land unit could be within a larger land parcel and may have no public access and sometimes is not possible to identify land unit in the large land parcel. The original land has been used for any other purpose (industrial, residential) The restitution procedures may result highly fragmented of land. If it's not possible to restitute land, compensation procedure can be an alternative.

Restitution is the main type of privatisation in the Czech and Slovak Republic.

3.3 Privatisation

This instrument is applied to transfer land and other property by sale from state ownership to private person or legal entity. This procedure in case of agricultural land is used in Poland and partly in former Soviet states, in case of other properties (residential, commercial, industrial) has been used in all Central Eastern European transition countries.

4. EXAMPLES OF PRIVATISATION PROCEDURES IN CEECs.

As I described earlier there were and there are several type of privatisation procedures in the Central Eastern European Countries and in the former Soviet states depending on historical background, former ownership structure, conditions of past and current legal and institutional framework and land administration sector and also on political decision, wish.

The extent of this paper doesn't allow me to describe all cases and I don't have sufficient information about privatisation procedures in the former Soviet states except Baltics but it is well known that in the former Soviet states including Russia the privatisation of agricultural

land is still in early stage . There are several legal restrictions, moratoriums on selling and buying land and it's not allowed to be used for collateral of mortgages. There is no advanced legal and country wide institutional framework, land administration sector which should implement especially land privatisation procedures and registration, mapping of new ownership as well.

Despite of difficulties at the beginning of 90s in the Central Eastern European Countries concerning the establishment of legal and institutional framework of land administration to support privatisation procedures, countries in the region have been successful and I think examples of good practice. If we think over the fact how long did it take in the Western European countries to modernise their land administration and fit the legal and institutional framework required by the society and the market economy and compare with the conditions and time frame in the Central Eastern European countries after 90s. I think the result is very good. Additionally in the Western European countries there was no mass privatisation of land and properties during the last few decades and their financial sources to modernise the land administration sector and introducing advanced information technologies have been much higher then in the Central Eastern European countries.

Many of the Central Eastern European countries have been candidates to join the EU and many of them could fulfil the conditions, including the success of privatisation procedures and creation of operational land administration sector.

Of course there are still a lot of tasks to do. It is necessary to increase the financial support, improving the quality of information technology and staff and also essential to create a market, client driven service facilities.

I selected some Central Eastern European countries approaching to the European Union where land and property privatisation has been completed or in advanced stage. The selected countries : Czech Republic, Slovak Republic, Hungary, Poland, Lithuania.

To point out the different privatisation instruments and methods in the selected countries I focus on the ways and results of agricultural land privatisation in the region.

There are two reasons. The privatisation of residential, industrial, commercial properties practically completed and registered in the land registry without any problems and the real estate market is working well. The agriculture and ownership of agricultural land is always a very sensitive social and political issue in the majority of countries including Central Eastern European Countries. The agricultural land market is not working properly in the region due to several restrictions by law to protect local land owners and there are also difficulties in mortgaging because of the low price of agricultural land.

4.1 Land Privatisation Processes in Poland

Poland was the single exception in the Central Eastern European Region where more then 80% of agric land was remained in private hands during the socialist era. Because of this they used privatisation as an instrument only there were no compensation or restitution processes. In order to implement the ownership transformation of agricultural lands a state agency was established in 1991 (APA).

The agency has been responsible to take over all the state owned farm lands as well lands and properties from the National Land Fund. The agency was implementing restructuring programmes which determine the use of assets.

There are among them:

Sale of farms, lands

Leasehold, tenancy

Low quality farmland passed to State Forest

In order to implement tasks efficiently APA has set up 15 regional branches. The agency prefers tender procedures for selling and leasing assets. Farm assets can be sold as a whole or in part depends on the restructuring programme. The payment in instalments with low interest rate is generally used.

There is an other way of privatisation is the leasehold which guarantees conditions to lessee for running farming activities. The lease contracts are valid for many years with fixed conditions for any economic activity.

Since the beginning of the agency's activity about 4,4 million hectares of land have been transferred to the APA till end of 1995. Between 1991-1995 0,24 million hectares of agricultural land was sold only which is 5,5 % of the total area only, but at the end of 1995 tenants leased 2,7 million hectares of land based on 119 000 contracts which is 62% of the whole area.

The rate of sold agricultural land is quite poor. The main reason is the lack of financial sources of farmers but also the low quality of available land. It seems the state still remain the owner of large area of agricultural land for years.

4.2 Land Privatisation Procedures in Czech Republic, Slovak Republic

The privatisation procedures of land started in 1989. At that time the two countries were still Czechoslovakia but after separation the privatisation procedures continued the same way. The main instrument of privatisation in each countries has been restitution but compensation and privatisation procedures have also been used..

The Land Act was passed in 1991. This law regulates the restitution of lands and compensation as well when land can't be restituted. Land Fund was also established and its task was defined. With effect of 1991 Land Consolidation Law was supporting the establishment of new ownership rights followed by privatisation processes. The legislation created decentralised Land Office institutions. They implemented restitution procedures. There were several methods to provide land to the former owners. Some of the claimants wanted land for farming, some of them to lease and some of them just for selling it. According to claims, several method was developed to solve the problems. The original boundaries generally have not been found on the site, lands were fragmented, land consolidation procedures were the main tool to reallocate lands to claimants.

Cadastral Offices were re-established at the beginning of 90s and they registered changes (including title registration), maintain data resulted by privatisation procedures.

The results of privatisation procedures in Czech Republic till 2002

Land Offices have registered 231 000 restitution claims about on 1,8 million hectares, including tens of thousand farm buildings, 25% of the total area of the country. At the end of 2001, 97 % of claims have been legally settled, which means, the original parcel numbers of the former owners were registered in the Cadastre without setting out of the boundaries on the site. The setting out of the boundaries on the site was done for claimants only, who wanted to use land for farming. Because the original boundaries have not been found on the site and the originally owned lands were highly fragmented, land consolidation as method was the main instrument of restitution procedures. They used simple and complex land consolidation.

Simple land consolidation

The first step was to clarify ownership and followed the physical land consolidation, creating public access to all land and optimising the use of land for farming. The simple method is used in smaller area and for agricultural purpose only. 152 000 claimants have requested simple land consolidation. 22 641 projects on 494 495 hectares have been completed, 3341 projects on 147 548 hectares have started recently.

Complex land consolidation

Not only ownership arrangements for agricultural purpose but also multifunctional arrangement of the landscape. 272 projects have been completed on 46 766 hectares, 480 projects on 233 417 hectares have started.

District Land Offices are responsible to co-ordinate and implement projects (76 districts, 1350 staff) with the assistance of private companies (1000 land surveyors, 1200 others), Approximately 3600 people have been working on land consolidation projects.

Central Land Management Office(Department in the Ministry of Agriculture) is the supervisory authority and professional support of land consolidation procedures.

In Slovak Republic the legal and institutional framework is similar. According to sources there have been land consolidation projects on 128 730 hectares, 280 000 parcels and more then 3 million people are effected.

Main problems:

- lack of financial sources for implementing land consolidation projects ;
- the restitution of lands legally completed but not on the field ;
- there are still regions with incomplete procedures because of uncleared ownership rights

Source: Jiri Trnka (Ministry of Agriculture of Czech Republic) “ Land Consolidation and Land Management in the Czech Republic”

4.3 Land Privatisation Procedures in Hungary

The privatisation of agricultural land in Hungary started in 1992, fundamentally based on former agricultural co-operatives owned land. Co-operatives owned 3,4 million hectares of land (35% of the total area) Two thirds of this land had to be allocated for compensation purpose the one third of land was given to members, employees of co-operatives.

Co-operatives used an other 1,8 million hectares of land owned by co-operative members.

Co-operatives had to give back this quantity of land physically to the owners. In this case it was not privatisation because these co-operative members legally owned the land during the socialist period but they couldn't use it personally.

Compensation as an instrument has been used for land privatisation in Hungary.

4.4 Compensation Procedures

There were three different compensation procedures of agricultural land:

- claimants compensation for past injustice ;
- reallocation of land for co-operative members who owned land at co-operatives;
- allocation land for co-operative members and staff

The majority of state owned farm land remained state property. The state lease land to professional farmers or legal entities. This is 18-20 % of the total agricultural land.

- People who were entitled for compensation didn't receive back their original lands or properties but they receive compensation vouchers depending on the value of their former land. 1 Golden Crown = 1000 Ft value of voucher. The average quality of arable land is 20 Golden Crown/hectare, The vouchers were stocks could be used for several purpose, one of them is for purchasing agricultural land through compensation auctions. During auctions 800 000 new owners have bought 2,1 million hectares of land.
- 1,8 million hectares of land was reallocated to 1,6 million co-operative members (owners)
- 1,2 million hectares of land was allocated to co-operative members and employees

4.5 The Implementation of Compensation Procedures

- Claimants compensation for past injustice
20 County Compensation Offices have been established. They were responsible for judging the applications of claimants and also carrying out compensation auctions. The legal documents of claims have been issued by 116 District Land Offices (Unified Land Registry) Fortunately the Hungarian Land Registry institution was fully operational during the socialist period and they could provide legal documents for claimants based on the archived land registry documents, data. Following the compensation auctions the

116 District Land Offices were also responsible to prepare subdivision survey plans, setting out and physically marking legal boundaries of new parcels on the field and finally the registration of new owners and updating cadastral maps. In case of lack of capacity, private surveyors have also been involved in survey works. The all survey works was completed in 1997 and the registration of new owners in 2000. The whole procedures was financed by the state.

- Reallocation of land for co-operative members (land owners)
Many co-operative members were owners of land but they couldn't use it during the socialist era. Reallocation of their land was the part of the compensation procedures. Local Land Allocation Committees have been established. They were responsible to allocate equivalent value of land for the entitled members. The survey work have been done by private surveyors and the 50% of the survey cost was financed by the state. 90 % of all cases have been registered in the Land Offices.
- Allocation of land for co-operative members and employees.
Co-operative members and employees were entitled for 20-30 Golden Crown value of land. The procedure was the same as 2.

At the end of 2000 the land privatisation procedures were completed, including setting out, marking of boundaries of new parcels on the site and registered in the Land Offices. As a result of land privatisation 80-85 % of agricultural land is in private hand and 15-20 % of land remained state property.

Thanks for the well operational land administration infrastructure the land privatisation has been successfully completed within ten years.

4.6 The Result of Land Privatisation Procedures

4,8 million hectares of land have been privatised which is more then 50 % of the whole country. During the procedures 2,1 million new parcels have been created and the compensation resulted 2,4 million new land owners.

4.7 Problems Resulted Land Privatisation

Besides the successful privatisation procedures some problems have been arisen resulted by privatisation.

- highly fragmented agricultural properties (but efficient land use)
- There are more then 2 million new land owners but many of them are not professional farmers. The current ownership structure doesn't fit to EU requirements.
- Restrictions of buying and owning agricultural land

Comprehensive Land consolidation law and projects are needed in the near future.

4.8 Land Reform in Lithuania

In Lithuania there was no operational land registry, cadastre and land administration sector during the communist era till 1990.

Creating legal and institutional framework for land related activities, establishing of land registry and cadastre institutions have been simultaneous task with the implementation of land reform and privatisation procedures.

The land reform in rural area is carried out by 10 County Management, 44 Agricultural Boards and 426 Boards of Agrarian Reform at local authority level.

Privatisation projects have been carried out by Land Surveying and Geodesy Division of District Agricultural Offices and National Land Survey under the Ministry of Agriculture.

The procedures included surveying, marking, mapping of new parcels and registration of ownership in the land registry.

Privatisation in urban area follows the more or less similar procedure.

There are three categories of land privatisation procedures

A, Agricultural and forest land

B, Garden parcels

C, Residential parcels

4.9 Privatisation of Agricultural Land

Agricultural land could be acquired by former owners according to documents and actual land use. 3800 000 hectares of agricultural and forest land can be privatised in "A" category.

560 000 claimants required land till now. 74 000 applications have been arranged on 629 000 hectares of land and also surveyed, registered.

The average progress of land privatisation 300 000 hectares, 44 000 claimants annually. They expect to complete this work by the end of 2006.

The country completed the category "B" in 1997 and the category "C" will be completed by the end of 2003.

Source: Romualdas Kasperavicius, Lithuania ,2002

5. CONCLUSIONS

Land privatisation procedures have been varying in Central Eastern European Countries depended on many circumstances, historical background. We experienced and fact that only countries could achieve land and property privatisation successfully where operational land administration was established. The approach can be different but there are common needs and elements which are advised to follow in every countries.

- Establishment of legal and institutional framework is necessary before land privatisation is started

- Establishment of land administration sector, especially land registry and cadastre is an essential precondition of land privatisation
- Single authority institutions are more effective co-ordinating land privatisation procedures.
- State must be the major and long term financier of the privatisation procedures and land related projects.

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