



Commons in Transition

**INSTITUTIONAL ARRANGEMENTS:  
A GATE TOWARDS  
SUSTAINABLE LAND USE**

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**Abstract.** Various common problems can be seen if observing the ongoing land management processes in CEE countries. The problems appear mainly because of conflicting legislation, performance of binding procedures, political unwillingness, lack of capacity of the local municipalities and public administrations, insufficiency of information and people participation, lack of skills of the professionals and public administrations. Source of all the problems is properly unarranged institutional performance involved within land management process. The aim of this contribution is to discuss on importance for systematisation of both appropriate institutions (“rules of the game”) and organizations (organization of the work, execution of the functions, cooperation) and procedures in the field of real property formation that are performed by them. The paper is intended to activate and urge politicians, governmental authorities, non-governmental organizations, academic stuff and private firms by providing with the theory of the institutional economics and greater understanding of the necessity for closer and more systematic intergovernmental coordination and cooperation at all levels of public administration in CEE countries. Thus effective land management and land administration systems can support real property markets and sustainable land use. Institutional arrangement has crucial importance to achieve a balance between the regulatory structures (public sector) and the market forces (private sector) that will allow controlled growth and will be perceived as of general economic and social well being to the populace.

**Key words:** institutional economics, institutional arrangement, land management and land administration, land use efficiency, cooperation and coordination, regulatory framework, public participation and discussion.

### 1.Introduction

“During the last fifty years, the countries of central and eastern Europe (CEE) have experienced two profound changes in the dominant political ideology – a transition to a socialist command style economy during the early 1950’s, followed by a transition back to a market economy in the years following 1989. The socialist years had a significant impact on the socio-economic and legal framework” – write Dale P. and Baldwin R. (1998).

Economics of real property rights has been explored by many researchers such as Alchian A. A. (1965), Cheung S. N. S. (1968), Barzel Y. (1989) and others. To organize various strands of the new institutional economics it is useful to begin with Davis L. E. and North’s D. C. (1971) distinction between the “institutional environment” and “institutional arrangements”. The situation found in the mid-90s is re-analysed from the perspective of theories of institutions, focusing on the legal and administrative framework, rule of law, and civil society by North D. C. (1990, 1994) and De Soto H. (2000).

In the beginning of 90-s, by “socialistic inheritance” – cast of mind, traditions, management structures, skills etc, various CEE countries started the land reforms to reorganize the legal, economic and social relations of the land. In practice, the land reform in each country was supported by appropriate land policy through laws and regulations to fulfil specific goals and objectives.

It is observed around that previous ownership rights were restituted and the State property privatised during land reforms in CEE countries. Although a lot of work has been done up till now – roughly the land was distributed through decision-making, field surveying, registrations, enforcement of rights, plenty of mistakes can be identified. Often the land has been distributed without economic substantiation and correctly legal solutions. In some countries the process of physical planning has been behind the results of the land reform, and the land–use planning did not include planned land reorganization and land consolidation measures during land reform.

## 2.Theoretical foundation

*Institutional economics* is referred to the view of economics which stresses the importance of institutions in determining how economies really work [1]. For example, the rules of land ownership are important in economic development in developing countries, and the lack of clearly defined and enforced property rights is proving a handicap in the transformation from planned to market economies in eastern Europe. This should not exclude the analysis the economic influences on institutional rules itself, but once chosen, institutional forms show great persistence, and trying to model economies without taking account of them may lead to serious mistakes.

**The link between institutions and wealth.** The economics of institutions employs the term *property rights* in a general sense (which does not correspond to its role in legal theory) to define the rights of an actor to use valuable assets [2]. The property rights of an actor are embodied both in *formal rules* and in *social norms and customs*, and their economic relevance depends on how well the property rights are recognized and enforced by other members of society. It is important to note that the ability (power) of an actor to use valuable resources derives both from *external* and *internal control*. External control depends on the property rights of an actor or, in other words, on how his/her institutional environment – constitutions, statutes, regulations, norms, enforcement, and sanctions – constrains and directs both the actor in question and outsiders. Internal control is established by the actors themselves through various investments aimed at gaining control over scarce resources, involving monitoring, fencing, hiring private guards, checking reputations, and other measures [3].

*Transaction cost economics* is an approach to the economic explanation of institutions [1]. This considers the relative merits of conducting transactions within organizations and between different actors (organizations) using markets. It takes account of bounded rationality, information problems, the costs of negotiating contracts, and opportunism.

The term *transaction costs* refers to an actor’s opportunity cost of establishing and maintaining internal control of resources. Transaction costs, the costs of measurement and enforcement, are incurred to protect values both in voluntary exchange and against involuntary exchange, such as theft [3]. There can be explored “trade-off between enforcement benefits and consent costs” according to the attractive contribution written by Arrunada B. [4], but this is another matter for additional investigations.

**Institutions vs. organizations.** *Institutions* are the rules of the game in a society or, more formally, are the humanly devised *constraints* that shape human interaction. Institutions are born to reduce uncertainty by providing a structure to everyday life. According to North’s study a crucial distinction is made between institutions and organizations. Like institutions, organizations provide a structure to human interaction.

Indeed when we examine the costs that arise as a consequence of the institutional framework we see they are a result not only of that framework, but also of the organizations that have developed in consequence of that framework [5].

The term *organization* refers to a set of actors (groups of individuals) who cooperate or act jointly by some common purpose to achieve objectives. Organizations include political bodies (political party, the parliament, a municipal council, a regulatory agency), economic bodies (firm, family farm, cooperatives), social bodies (an association, NGO, church), and educational bodies (school, university, a training centre).

**New institutional economics.** The new institutional economics (NIE) is an interdisciplinary enterprise combining economics, law, organization theory political science, sociology and anthropology to understand the institutions of social, political and commercial life. Its goal is to explain what institutions are, how they arise, what purposes they serve, how they change and how – if at all – they should be reformed [6].

*Institutional environment* refers to the background constraints, as stated above, or “rules of the game” that guide individuals’ behaviour, and it forms the framework in which human action takes place.

*Institutional arrangements*, by contrast, are specific guidelines what Williamson O. E. (originated the term “new institutional economics”, 1975) calls “governance structures” [7] that designed by partners to mediate particular economic relationships. Business firms, long-term contracts, public bureaucracies, non-profit organizations and other contractual agreements are examples of institutional arrangements. The study of governance is more prosaic than the study of the institutional environment [6]. Mundane questions of whether to make or buy particular maps to be used as background information for making territorial planning or whether to organize the land planning offices at each local municipality or more centralized are ones that arise at the governance level.

The fundamental theoretical problem underlying the question of *cooperation* is the manner by which individuals attain knowledge of each other’s preferences and likely behaviour. Moreover, the problem is one of common knowledge, since each individual is required not only to have information about others preferences, but also to know that the others have knowledge about its own preferences and strategies [8]. As institutions are both formal and informal rules of the game in a society that must be enforceable, it is necessary to have a mechanism how these rules can be enforced. Here appears need to make people cooperate. Cooperation besides to organisation of the mundane work and execution of the bounded functions of an organization has meaningful place when we are talking about institutional arrangements leading to the efficiency issues.

### **3. Effective land management and land administration**

The key issue in land management is the *harmonization* of the relationship between both the individuals and the land. Therefore two dimensions – rights on land and utilization of the land can be seen from which arise economic and social aspects. Also two subjects can be identified when dealing with land management and land administration matters – public (governmental) sector and private sector. Different from above in chapter “theoretical foundation” mentioned, three sets of actors play meaningful roles operating the land management procedures – politicians (decision makers), professionals and society (participatories). It is generally accepted that the

State must have a dominant role in setting up and operating land management and land administration systems, because the public sector is responsible for wealth of the society on the whole, however, the influence and extent of involvement of the private sector differs between the countries. Normally, the administration and control of various processes lies on the shoulders of the public sector, other responsibilities can be delegated to the private sector. Thus the State can operate a legal process of land management using governmental authorities with little input from the private sector. In many countries, however, private licensed (delegated) professionals can perform various duties.

Land management involves the implementation of fundamental policy decisions about the nature and extent of investments in the land. From an institutional perspective, land management includes the formulation of land policy, the legal framework, resource management, administration arrangements, and land information management. It entails both government and private *initiatives* [9].

For the assessing the effectiveness of the land management and land administration systems, the responsible authorities must address a number of major issues, such as: intergovernmental coordination, centralization/decentralization, the roles of the public and private sectors, mechanisms to ensure that user needs are met, management of the particular organizations, relevant information and human resources, education, training and research, and international cooperation. By coordinating the main relative activities, responsible authorities can avoid the duplication of effort and develop an integrated policy. Through that, they can have a clear picture of all land management issues and they can jointly focus towards considering “best practice”, resolving the problems and applying good land administration which would promote an active land market and efficient land use.

Generally, the land use can be considered as efficient if society (people) receive possible maximum yield from real property. Land–use planning and efficiency measures take place because of limited land resources and the need for increasing the efficiency of the economic land use. Land is considered for continuous redistribution among various subjects, and so as ownership on the one hand and as object of the specific purpose of use on the other.

*Land-use planning* is responsible for both the formation of new real properties and the readjustment of the existing ones involving changes in their purposes and spatial structure. Economically, land-use planning is justified in terms of land consolidation, definition of “best use”, territorial (reorganization) readjustments or imposition of restrictions. Therefore land-use planning is enforced to increase the utility and the market value of the land as real property.

*The efficiency of land use* is determined on the basis of economics and may vary with different types of ownership and specific purposes of land use. However, different aspects of land management involve: economic, legal, ecological, social efficiencies [10].

#### **4.Unarranged institutions: main reasons and consequences observing CEE countries**

The land administration functions established in the transition economies have concentrated on the re-establishment of the necessary legal framework, the establishment of a services network and the registration of title to land property, as well as the support for the property privatisation, restitution and compensation for previous

ownership or similar programmes which differs among CEE countries. In some cases it is recognized that the institutional arrangements may not be optimal for efficient land management and land administration systems, and in other areas it is clear that the institutions face significant problems in introducing modern technologies that is also very changing besides to rapid movement of transition process.

The comparative study into land markets in CEE countries was carried out during 1997-1998 and described by Dale P. and Baldwin R. (1998). It examined progress in six countries en route from a command driven economy to a market based economy that is compatible with the requirements of the membership of the EU. The investigation involved detailed case studies in the Czech Republic, Hungary, Latvia, Poland, Slovakia, Slovenia and sought those elements that are necessary for an effective and efficient land market [11]. The overall assessment of the land market indicators of these countries reflected data about the following sectors of land market: policy framework (legal basis), market assessment (actors, commodity, financial instruments), and three pillars - land registration and cadastre, market based land valuation, financial services. Observing the transitional curve from command economy driven by reforms to market economy driven by harmonization for the case study countries can be concluded that the way is just, roughly, near to half. Why the processes are developing so slow, what are the reasons for that? Who has to take the initiative and appropriate responsibilities?

The main reasons for the lack of expedient and deliberative cooperation and coordination among various stakeholders in land management are rather common in CEE countries. Those reasons relatively can be separated regarding its character, but they have interrelated influence:

- *Political issues* (insecure environment for investments, unwillingness of the politicians, different priorities and interests, "socialistic inheritance" – cast of mind, traditions).
- *Legal issues* (lack of the executive mechanism, contradictory legal and normative acts).
- *Organizational issues* (ineffective management structures and performance of the functions, duplication of the responsibilities, lack of knowledge, skills and awareness, meagre information).
- *Financial issues* (deficient of finances, inappropriate selection of the priorities, unavailable credit resources).
- *Technical issues* (shortage of technologies, incompatible methods, software and data sets).

Therefore the results of the land reforms according to the aims and the goals of its have overtaken the development of the physical planning systems a good few, therefore the interrelation between them is very weak. Access to the land - provision of the economic land use becomes more actual than the enforcement of the real property rights nowadays. The market forces initiate the territorial planning broadly, but it is clear long before that the market mechanism merely cannot generate the capital assets. The unsolved situations can be found regarding to land use. Observing the official data of the land registries can be identified very small percentage of lands in ownership of the public sector comparing with the lands belonging to the private sector in some CEE countries. Also such procedures of the land management as territorial planning, real property formation, land readjustment, establishment of the servitudes and designing different protection zones and others lack the effective regulatory framework. The lack of terminology resources in land management can be identified as well.

## 5. Conclusions

The above consequences lead to the real property which does not serve for generating of the capital, and thus – to the inefficient land use. Land and property ownership has long been identified as a prerequisite for economic development, but de Soto H. (2000) has given vivid flash to that theory in his fastidious and attractive book “*The Mystery of Capital*”. Broadly, he argues that with the problem identified, the solution - creating proper national legal system as in the West – is a matter of political will. Thus the central question arises – why capitalism triumphs in the West and fails everywhere else?

Formal property is more than just ownership. It has to be viewed as the indispensable process that provides people with the tools to focus their thinking on those aspects of their resources from which they can extract capital. Formal property is more than a system for titling, recording and mapping assets – it is an instrument of thought, representing assets in such a way that people’s minds can work on them to generate surplus value [12].

No doubts that theory of real property economics is right and western experience convincing. The people in eastern – post soviet countries are making territorial plans on permitted land use in future, but anyway the question arise – why should we invest in planning of unused (scarce) land if there is lack of provisions for efficient land use and the political-economic future is still unclear in a country?

The State is responsible for the legal and regulatory framework within which the land markets operate. The State also needs an efficient land management and land administration capability in order to meet other national policy objectives, including justice and home affairs, revenue generation through tax policies, environmental controls, rural development, cross border issues and municipal administration at every locality [11].

In conclusion, this paper wishes to emphasise on some key issues to be considered for future discussions:

- The land policy needs to be a response to the declared government aims. It should involve *active participation and discussion* with all stakeholders in the land sector including other government agencies, the regulating forces and the market forces. Cooperation among authorities must depend more on policies than on personalities.
- Adoption of *the new technologies* has to take place in spite of rapid development of land management process and financial difficulties.
- *The coordination and cooperation* should be organized at all levels – national wide, regional and local (municipal) level, following up of the developments in Europe.
- *Institutional issues*, such as the formal establishment of a land administration coordination board with representatives of the relevant ministries, agencies and users to examine the needs for information and to coordinate land information management activities and projects is recommended [9].
- *A legal framework* for the coordination, the definition of operational rules, the responsibilities and issues like copyright and pricing of data and services shared both between public-to-public and public-to-private sectors should be made.

- Important *land management projects* which need much coordination should always have realistic objectives and grow incrementally through political, administrative and market needs.
- *The glossary of terms* in the field of land management and administration is needed because its existence provides the people related to the field with *unitary understanding* about use of particular term in accordance with the appropriate context, traditions and received practice. Before developing such a terminology resources, it is usable to organise expertise, exchange of experiences (also internationally driven), investigation of existing glossaries and dictionaries (databases), legislative acts and other materials [13].

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