

THE BEGINNING OF THE EVIDENCE OF THE REAL PROPERTY IN THE CZECH COUNTRIES

Outset of Real Estate Records on our Territory

The word *cadastre* is of Latin origin and means about the same as a list (*caput* = a head, *capitastrum* = a list according to heads, later on according to any unit). In general, such word used to refer to a well-organized consistent description of special features, persons, things or rights, especially a description of lands and incomes from crafts and trades, compiled for tax purposes. The attempts to introduce a single tax policy date back to the year 1022, when the Czech monarch Oldřich implemented taxes collected on tracts of land.

Nobility started to ensure its private property rights by making entries in the land registry called “Zemské desky” early in the fourteenth century. Originally, however, such books kept with the land court served for records of court disputes. The first written evidence of such entries is a form filled in by a land scribe in 1278. The Czech example was followed by Moravian and Silesian authorities establishing land registries with the court of Brno and Olomouc in 1348 and with the court of Opava early in the fifteenth century.

Before 1650, entries of serfs’ tenures and duties were made, upon request of the lords of the manor, in registries called Urbars. The lands awarded in the Urbars to serfs and freemen were called urbar, rustic or, later on, also contribuent lands. Contrary to the lands awarded to lords and called manors, dominical or court estates, until 1706 exempt from tax.

In 1650, the Assembly of the Kingdom of Bohemia passed a resolution making taxes assessed on a more factual and fairer basis, with taxes levied only on farmhouses and lands owned by serfs. The final version of the document resulting from this resolution (dated 1653-1656) gave rise to the first revenue cadastre for Bohemia, referred to as the first rustic cadastre (the first Assessment Roll), in force in 1656-1684. The first rustic cadastre was revised and supplemented in 1674-1683

and is referred to as the second rustic cadastre of 1684 (the second Assessment Roll), in force until 1748. What can be regarded as the first Moravian cadastre are the so-called tract registries (the first tract visitation in 1656-1658, the second one in 1669-1697).

1 May 1749 was the effective date of the so-called first Theresian rustic cadastre (the third Assessment Roll dated 1748), replacing the previous Assessment Roll and the Moravian tract registries. After the new general visitation of rustic lands, the second Theresian rustic cadastre came into force in 1757 (the fourth Assessment Roll dated 1757). In 1749, statements of tax on dominical homesteads were introduced, in order to settle the land tax on manors depending on their number and area (exaequatorium). The survey to this aim was finished in 1756 and the resulting document is known under the name Exaequatorium dominicale dated 1757. It constituted a basis for the Theresian dominical cadastre. The Theresian rustic cadastre together with the Theresian dominical cadastre made up a large comprehensive cadastre covering all lands and homesteads both rustic and dominical. As a whole, it was called the Theresian cadastre or the Theresian cadastre rectification.

On 20 April 1785, Joseph II promulgated an edict reforming the land tax and survey system to the effect that all dominical and rustic fertile lands inside a municipality should be surveyed, and provided with a layout and calculation of their area and gross proceeds according to their fertility. The edict introduced two significant novelties – replacement of the existing assessment unit with another smaller and more frequent tax unit – a plot of land, each measured to determine the exact area and subsequently the proceeds thereof. The resulting document is referred to as Josephian cadastre. This was the first cadastre based on direct measurement of the actual state in the field. The Josephian cadastre was not welcomed by nobility, which enforced abrogation of the new cadastre after a year of its validity (1789-1790) and re-introduction of the Theresian cadastre.

After abrogation of the Josephian cadastre, the Theresian cadastre was in force only for a short time. The Josephian cadastre revealed all discrepancies in the areas entered in the Theresian cadastre. This led to introduction of a cadastre taking over the correct figures of the Josephian cadastre and keeping the nobility's benefits of the Exaequatorium. The new cadastre, called as Theresian-Josephian cadastre, was established in 1792, constituting a basis for the land registry and tax regulations until 1860, when the stable cadastre came into force.

With the Emperor's edict No. 946 Sb., dated 1 June 1811, the General Civil Code was promulgated, setting a.o. the principles directly affecting further function of the cadastre. It introduced the rule that what lies above or below surface belongs to the owner of the corresponding plot of land (i.e. the Roman law principle *superficies solo cedit*) and that ownership transfer of immovable things requires entry in the

land registry - a registration called “vklad” – “intabulation”. The General Civil Code was in force until 1951, when it was abrogated by Act No. 141/1950 Sb. and the above-mentioned principles were abandoned.

The foundations of today’s modern cadastre of real estates were laid by the supreme edict of the Austrian emperor Franz I dated 23.12.1817 on the land tax and land survey. It was based on an accurate list and geodetic survey of all lands, the so-called stable cadastre. The stable cadastre was already fully based on the scientific basis of a large-scale map work. The new map work applied the Cassini-Soldner’s non conformal projection and the system of rectangular coordinates starting in trigonometric points Gusterberg (for Bohemia) and Saint Stephan (for Moravia). The chosen basic scale (1:2880) was based on the existing requirement of one Lower-Austrian morgen (i.e. a square with each side 40 fathoms long) represented on the map with one square inch (1 fathom = 6 ft, 1 foot = 12 inches, 40 fathoms x 6 inches x 12 ft = 2880). The boundaries of all plots of land were properly surveyed and marked in presence of their holders on the spot. The thorough survey was made in most cases applying the plane table (graphical intersection). In Bohemia, the thorough survey was carried out in 1826-1843, in Moravia in 1824-1836. All surveyed plots of land were projected in the map and numbered as parcels, with their areas determined from the projected area. Most of the cadastral maps valid on the territory of the Czech Republic are still derived from the survey documentation of the stable cadastre. Such cadastral maps (usually with the scale 1:2880) are valid on about 70 % territory of the today’s country.

The stable cadastre was getting outdated faster than expected, because it was not kept updated systematically. That’s why it was decided on its one-shot revision, so-called re-ambulation of the stable cadastre. The work was done very hastily in 1869-1881 with adverse effect on the original work.

Outset of Modern Records of Real Estates on our Territory

The first extensive and comprehensive positive-law norm regulating the records of real estates on our territory is the so-called General Land-Book Law implemented by Act No. 95/1871 Reich Code dated 25 June 1871. It regulated all existing public books (such as land registry, feudal registry, land books and municipal registries and mining registries) kept on acquisition, limitation and abolition of rights of user to real estates recorded in such books and new land books or mining registries that may exist in the future.

The land books were divided into a main book and a collection of deeds or a book of deeds. The main book consisted of insets intended for entries of objects of the particular book and changes therein and for entries of rights of user to the

relevant object and changes therein. Each deed according to which the particular entries in the book were made was provided with a certified copy. All of this formed a collection of deeds, or, if the entries were made directly in the book, a book of deeds. There were two fundamental principles of approach to the land books:

1. acquisition of relevant rights, transfer, limitation or abolishment thereof can be made only by entry in the main book,
2. anybody can consult the land books in presence of a clerk of the land book office and obtain copies or extracts of them.

The book entries were divided into the following categories:

1. registrations (as unconditional acquisition or abolition of rights – intabulation or extabulation),
2. preliminary records (as conditional acquisition or abolition of rights - prenotation),
3. notes.

In the land books, the following could be registered or recorded:

- rights of user or easements,
- repurchase rights and pre-emptive rights,
- lease and tenements.

The above-mentioned Act was a comprehensive norm, which in more than 130 paragraphs thoroughly regulated details of particular entries, preliminary records and notes, requisites of relevant source deeds, procedural rules of administration of the land books, method of how particular applications should be attended to, including relevant deadlines, scope and method of informing the affected persons including the delivery method and complaint procedure.

The Act went through several small amendments directed either at its text or mainly responding to the changed regulation of the rights of user in the Civil Code. Nevertheless, it was one of our record-breaking legal texts as regards “lifetime“, with the interval between its adoption and abrogation being 93 years.

Owing to the fact that the Act covered the territory of Austria (or Cislaitania), it was received predominantly for Bohemia and Moravia after 1918. For special regulation of related rights and duties in Slovakia and Sub-Carpathian Ukraine, Act No. 90/1923 Sb. was intended, stipulating the requisites of relevant deeds, regulating deletion of receivables and fee exempts in deletion thereof and compilation of insets in Slovakia and Sub-Carpathian Ukraine.

A special role in keeping real estate records was played by edict of the President of the republic No. 124/1945 Sb., on some measures concerning land books, regulating changes in the book entries as follows:

1. in the book insets identifying as beneficiary the German Reich, Kingdom of Hungary, entities regulated by public law of Germany or Hungary, German Nazi Party, Hungarian fascist parties and other entities, organizations, enterprises, facilities, partnerships, funds and purpose-built property of such regimes or related thereto, and as their direct legal predecessors the Czechoslovak State, Bohemian or Moravian and Silesian Lands or their enterprises, institutes and funds that belonged to them or were administered by them, the land-book court deleted the entry of transfer of the right and renewed the entry to the benefit of the former beneficiary;
2. in the book inset identifying as beneficiary the former Protectorate Bohemia and Moravia or its enterprise, institute or fund that belonged to it or was administered by it, the land-book court entered instead of them as a beneficiary the Czechoslovak State or its enterprise, institute or fund that belonged to it or was administered by it.

Furthermore, it imposed the duty to delete, upon demand of the owner or a party otherwise beneficial in terms of land books:

1. the notes of confiscation, entered upon demand of the former German authorities, especially the former secret state police;
2. notes of introduction of forced administration as well as entries of a ban on alienation, encumbrance and tenement, made in the period of lack of liberty further to the petition of the Ministry of Agriculture (former Ministry of Agriculture and Forestry) or the Land Office for Bohemia and Moravia;
3. notes of subjugation entered in the period of lack of liberty further to the petition of the Land Office for Bohemia and Moravia.

Real Estate Records in Czechoslovakia after 1945

A brand new comprehensive regulation of real estate records was set up by Act No. 22/1964 Sb., on real-estate records. For the needs of the national economy, in order to “keep records of real estates, as required for planning and management of the economy, especially agricultural production, for protection of socialistic society’s property and personal property of citizens, for proper administration of the national property and for protection of the agricultural-land portfolio and forest-

land portfolio“ defined the real estate records. The scope of such records included the following:

1. identification of all real-estate property as regards the land type, area and way of use, ownership relations, national property administration, right of permanent use of the national property, right of personal use of the lands, ownership rights limitation and other facts concerning the real estates necessary for the national economy;
2. a documentation of surveys, a documentation of entries and a collection of deeds.

The records should be made and kept in accordance with reality by the Central Office for Surveying and Mapping, mainly its district offices, which were in charge of keeping the records in accordance with reality, based on notified changes and local surveys, in co-ordinance with authorities, organizations and citizens to which it may have concerned. The above-mentioned authorities and organizations were obliged to present relevant decisions to the locally competent survey office at the latest within sixty days after such decisions came into legal force and other deeds within sixty days after the relevant legal relation was established. By operation of law, the data of the real estate records were binding for planning and management of agricultural production, for reporting and statistics of the agricultural-land portfolio and forest-land portfolio, for real-estate summaries run by socialistic organizations as well as a basis for contracts and other deeds related to the real estates.

At the same time, the Central Office for Surveying and Mapping was authorized, in mutual accord with involved ministries and central authorities, to enact regulations required for implementation of this law.

The regulation of the Central Office for Surveying and Mapping No. 23/1964 Sb., which implemented Act No. 22/1964 Sb., on real-estate records was enacted on the same date as the above-mentioned Act. It set out that real estate records should be kept for every municipality according to cadastral districts. A cadastral district is a technical unit consisting of a topographically closed complex of real estates, the records of which are kept together, with the perimeter of the cadastral district usually identical to the perimeter of the municipality (one municipality can, however, contain also two or more cadastral districts).

The real-estate records included the following types of documentation:

1. documentation of surveys (a land map, a working map and a registration map),

2. documentation of entries (a list of changes, a list of parcels, user's sheets, ownership sheets (title deeds), a list of users and owners, a registry of users and owners and a list of houses),
3. collection of deeds (resolutions and other deeds, records of changes, field sketches, geometric lay-outs, notebooks of measured directions, angles and lengths, calculations of geodetic data, calculations of areas of changed parcels, lists or reports, etc.),
4. documentation of summaries and reports (summaries of land types – cultures, areas of particular cultures, summaries of registration sheets, etc.).

Real Estate Records in the Czech Republic Early in the 3rd Millennium

Whereas the previous Austrian comprehensive legal regulation was in force for the already mentioned 93 years, Act No. 22/1964 Sb. lasted only 28 years, before being replaced with other two Acts, with the first one (to put it simply) regulating the procedure of entries and registration of ownership titles to real estates, while the other one focusing rather on the substantive-law regulation of the very cadastre of real estates as such. Another peculiarity is a little paradoxical situation about these Acts, with the first Act passed by the Federal Assembly of the Czechoslovak Federative Republic, announced in the Collection of Acts and becoming valid several days before the other Act (Act on the Czech National Council), while using for those several days the so far non-existing terms of the second Act (mainly the very term “real estate cadastre“).

Streszczenie

Słowo *cadastre* pochodzi z łaciny i oznacza mniej więcej to samo co listę/spis (*caput* = głowa, *capitulum* = rejestr pogłówny). Ogólnie rzecz biorąc, słowo to zwykle odnosiło się do dobrze zorganizowanego spójnego opisu szczególnych cech, osób, rzeczy lub praw, szczególnie opisu gruntów i dochodów z rzemiosła i handlu gromadzonych w celach podatkowych. Próby wprowadzenia jednolitej polityki podatkowej sięgają roku 1022, w którym monarcha czeski Oldřich wprowadził podatki pobierane od obszaru gruntów. Pierwszą rozległą i wyczerpującą pozytywną regulację prawną dotyczącą rejestrów nieruchomości na terytorium Czech stanowiło tzw. Ogólne Prawo o Księdze Gruntów wprowadzone ustawą nr 95/1871 Kodeks Reich z dnia 25 czerwca 1871 roku. Nowa kompleksowa regulacja związana z rejestrowaniem nieruchomości została wprowadzona ustawą nr 22/1964 Sb., o rejestrach nieruchomości.