

LAND ARRANGEMENTS IN THE CZECH REPUBLIC (BASIC ISSUES)

Introductory Remark

Land Arrangements, or more precisely land consolidation, land division and land rounding, have a deep tradition in the conditions of the Czech Republic and inside its territory. Unfortunately, consecutively to the change of the political situation after the year 1948, there were serious errors in the way of regulating social relations concerning land arrangements. The most important failure is to be considered the fact that by the Government Statutory Order No. 47/1995 Sb., on Measures in the Field of Economic – Technical Land Arrangements, becoming legally effective, the exchanging of land based on the “owner principle“ was abandoned. This principle was replaced by the principle of “exchanging usufruct rights“ with the concern in assuring the interests of the agricultural mass production at the expense of others’ interests. As a result of this, during the following years practically in the entire territory of the Czech Republic some ownership claims have not been obvious and there have even been some cases of duplicated or multiplicated ownership claims to the same land. Recurrent return to the principle of land exchange based on ownership rights came by passing of the Act No. 229/1991 Sb., concerning the Land Ownership Relations and Other Agricultural Property, as subsequently amended, in connection with the Act No. 284/1991 Sb., on Land Arrangements and Land Offices, as subsequently amended. It enabled to start the period of solving these ownership problems and at the same time fulfilling other requirements on the character, creation and protection of the countryside landscape.

Current Legal Regulation

Basic Concepts

According to a valid legislation the purpose of the Land Arrangements is to **arrange the estates with emphasis on a spatial and functional structure, also**

to unite or divide the estates in the public interest. The main reasons for these arrangements are to guarantee the owners the accessibility of the estate and provide reasonable use of it. They also adjust the boundaries in such a way as to ensure the rational usage of the estate. Everything mentioned above is taken into account with setting up the right of property and also easements. At the same time the conditions for environmental improvement, protection and fertilization of land resources, water management and increasing ecological landscape stability are provided.

The objects of the Land Arrangement are all estates in the district of these arrangements regardless their present way of usage, existing property rights and the right of usage to them.

A territory of the Land Arrangement is a territory that will be affected by these arrangements, which consists of one or more than one Land Register's districts. When it is needed for updating a Land Register, the land extend included into the Land Arrangements might be broader. It can include the estates that need to update their geodetic information. When it is convenient to the goal of Land Arrangements, the neighboring estates from the cadastral territory could be taken into the territory where the Land Arrangements take place.

If the cadastral territory is under a different Land Office, and this Land Office has also begun the Land Arrangements procedure, the estates will be taken into the Land Arrangements after a deal is made with the other Land Office whose jurisdiction are the estates therein.

The Administrative Code does not apply to determining a territory of the Land Arrangements.

The Land Arrangements are being implemented ordinarily in the **form of complex Land Arrangements** which are entitled to solve all relations – property rights, landscape-forming, ecological and all other relations that need to be taken into consideration. The form of simple Land Arrangements can also be used, especially when only specific needs for property usage (for example, quick reintegration of estates, the accession to the estates) or ecological needs of the landscape (for example, anti-erosive or flood-protection remedies) need to be solved. The simple form of Land Arrangements could also be used when the arrangements concern only part of the cadastral territory.

The specification or reconstruction of appointed estates which were assigned under the terms of presidential decree of the Republic No. 12/1945 Sb. and No. 28/1945 Sb. and by the Act No. 142/1947 Sb. and No. 46/1948 Sb., which is during the period of the second land reform, could be done by the simple Land Arrangements.

Making Decision in the Land Arrangements

The Land Arrangements are decided by the **Land Offices**. Their system is based at the level of the Ministry of Agriculture and consists of the Central Land Office and Land Offices that are established as administrative agencies with territorial jurisdiction set according to the supplement of the Act on Land Arrangements. Decisions on Land Arrangements are issued in the **special administrative procedure** for which the Administrative Code is used subsidiarily. This procedure is always regarded as the procedure started ex officio by the action of the Land Office. Land Arrangement procedure must always be started by the Land Office when the owners of acreage majority in the cadastre area declare consent for it. Starting of the Land Arrangement procedure is notified by the Land Office using public notice.

The Land Office notifies about the commenced procedure in a written form the competent Cadastre Office, agency of land planning (zoning), surveyor's office, agency of the agricultural land resources protection, agency of the environmental protection, agency of water utilization (water law agency) and agency of state forest administration. If the Land Arrangements procedure is concerning interests protected by the state security regulations, public healthcare regulations and other interests protected by special legal regulations, the Land Office also notifies these other concerned public administration offices. These offices specify requirements to protect the interests according to special regulations up to 30 days from notification receipt.

There are many specific issues concerning the Land Arrangements procedure. One of the most important is the fact that the Land Arrangements procedure and decisions in this procedure are not affected by the legal terms for making decisions set by the Administrative Code. Also the special reason for stopping the Land Arrangements procedure is explicitly present in the regulation – it is effective in case that the reason for which the procedure was started does not take place any more and further in case that during Land Arrangements the obstacles unabling to continue the procedure appeared.

Key importance in the first phase of the Land Arrangements procedure is present by so called **introductory proceedings**. The Land Office invites the procedure parties and owners having any real property inside the presumed perimeter of Land Arrangements to these proceedings for introducing them with a purpose, form and expected perimeter of the Land Arrangements.

The group of the **Land Arrangements procedure** parties is regulated specifically in order to fulfill the purpose of Land Arrangements. They are primarily owners of real property affected by the solving in the Land Arrangements and both physical and legal persons whose property rights or other rights in rem to land

may be directly affected. These persons do not include the owners for whose land the only effect by the Land Arrangements is the renewal of geodetic information. Furthermore, they include a construction developer if the Land Arrangements are caused by the constructing activities. Finally, the parties are also the municipalities having the land involved into Land Arrangements in their territory. The parties can then be the municipalities with whose territory the land involved into Land Arrangements territory adjoins if they accede to the procedure as parties up to 30 days from the invitation by competent Land Office.

The owners of land solved in the Land Arrangements vote for the so called **committee of representatives** existing during the time of Land Arrangements. The committee represents their interests and closely cooperates with the Land Office and the processor of Land Arrangements project.

The important step in the Land Arrangements procedure is the creation of the **roster of land owners' claims** which is made by the Land Office. The roster of claims contains information about a price, acreage, distance and type of the land. Then it contains the information about the limitations resulting from lien, first option right, real burden and fixed period rental.

In the Land Arrangement procedure the effective legal regulation as of the day of creating the roster of claims is used for assessment. Now it is the Act No. 151/1997 Sb., on Property Assessment and on an Amendment to certain Acts (Act on Property Assessment), in the current statutory text and the executive public notice to the Act No. 540/2002 Sb., as subsequently amended. The Land Office determines whether the assessment will be done by the Office or will be delegated to the processor of Land Arrangements or court expert.

The next important step during the procedure is creating the **Land Arrangements project**. Its creating is ensured by the Land Office by the processor or the Office creates the entire project or its part itself.

The processor of project can be only the physical person having the administrative license to this activity according to Section 18 Act on Land Arrangements. In the name of legal person or the Land Office the project can be also created only by the physical person having the administrative license.

While processing the project, it is started from the information that the Land Office has at its disposal and further from the information that involved administrative agencies and administrators of subterranean and aerial conduits are obliged to provide free of charge to the Office.

The basis for the project of complex Land Arrangements is the surveying of objects that will remain the content of Land Register geodetic information even after the end of Land Arrangements. If it is rational for the examination by the Land

Office, this method is accordingly used with simple Land Arrangements. The output of geodetical activities that should form the basis for the Land Arrangements project must be verified by the physical person that was given the license according to Act No. 200/1994 Sb., on Surveying and Mapping and on Changes and Amendments of some Acts in connection with its coming into force, in the current statutory text. On the basis of surveying the real conditions in the terrain the territory of Land Arrangements and group of procedure parties are stated more precisely. Later changes of the territory and group of parties of Land Arrangements can be made if the Land Office finds the reasons for doing so.

In this phase the placing of borders is also investigated. It is carried out by the committee that consists of the employees of the Land Office, the Cadastre Office, the project processor, representatives of municipalities and according to current needs also the representatives of other agencies. The chairman of the committee and its members are designated by the director of the Land Office in accord with the Cadastre Office.

The Land Office submits the list of land parcels that are affected by the Land Arrangements to the Cadastre Office in order to mark the Land Arrangements in the Land Register.

Cooperation with the land owners takes place as one of significant instruments to provide reasonability and success of concrete Land Arrangements. The processor of the project is obliged to discuss the new land organization with involved land owners during the creating of Land Arrangement project and the owners are obliged to express their opinion on the project. If the owner does not express his opinion on the new land organization in the term set by the Land Office, it is assumed that he agrees with it.

For the examination of the Land Arrangement project the Land Office summons all owners if at least one third of owners or the committee of owners (when it was appointed) requests that.

If the procedure party does not take part at the hearing on call of the Land Office and had the opportunity to apply his observations and advice there, he can express his opinion on the object of hearing in a written form up to 15 days from receiving the call to take part at the hearing. The Land Office does not take account of later raised observations and suggestions.

The Land Office proposes to owners the **new estates** in the way that they correspond to the original ones with their adequacy in term of price adequacy, acreage adequacy, distance adequacy and, if possible, to type of the land.

Comparison of the price, the acreage and the distance of proposed estates with original estates is done totally for all estates of the owner solved in the Land Arrangements.

Decreasing or increasing the price, the acreage and the distance of newly proposed estates compared to original estates over the set criteria of adequacy can be made only with consent of the owner.

The essential polyfunctional instruments with functions of improving the conditions for own agricultural production and further with landscape-creating, environment protection and ecological functions are so called **community facilities** (they are especially remedies serving for making estates accessible - field or forest ways, little bridges, grade crossings, anti-erosive remedies, water utilization remedies, remedies for improving the environmental protection and environmental creation).

The community facilities plan is reviewed by the committee or by owners, if the committee was not elected. Then it is approved by the municipal council at the public session.

The processed community facilities plan is then handed over to involved state administration agencies by the Land Office. These state administration agencies have 30 days to express their opinion on the plan. Their agreeing opinion replaces the action (decision, consent, dispensation) according to special regulation.

From the Property Law point of view the Land Arrangements Act stipulates a certain sequence for segregating the estates necessary for community facilities. According to this sequence, first estates to be used are the land owned by the state, then land owned by the municipality. If it is not possible, other owners participate on segregating needed acreage of land resources proportionally according to total acreage of their exchanged land. In this case the claims of owners entering into the Land Arrangement are proportionally decreased.

While segregating the estates of state for community facilities the blocking is effective in relation to estates dedicated to mining minerals, estates in current intown area of municipality, estates in the area of municipality that can be built up and estates intended for compensation settlement in restitution process.

The community facilities implemented according to the authorized project are owned by the municipality at which territory they are based in if something other does not imply from the Land Arrangements carriage of a motion decision. If the owner of community facilities is supposed to be other subject than the municipality, the ownership of that facility can be gained without charge only in the case that this facility is supposed to serve the public interest.

Hearing on the processed Land Arrangements project is notified by the **Land Office** at the official notice board where it is possible to look at the processed project for 30 days. The project has to be displayed also inside the village. The Land Office notifies all known procedure parties about the project display and at the same time it informs them that they have last possibility to apply their observations at the Land Office. Therefore, the principle of procedure concentration applies there. The Land Office does not take account of later raised observations and suggestions. If the observations and suggestions are administered and on their basis the modifications of the project are made, the Land Office is obliged to request new opinion expression from involved parties. After the expiration of term to look at the processed project the Land Office summons the final hearing at which it evaluates the outcome of the Land Arrangements and notifies the project which will be decided to parties.

Making decisions in the Land Arrangements can be denominated as **two-phasal** and shows many specifics compared to general administrative procedure.

In the first phase the **approval of the Land Arrangements** project takes place. The Land Office decides about it if owners of 75 percent acreage of the land solved in the Land Arrangements agree with it whereas the weight of the vote of share part-proprietor corresponds to his share to the total acreage of the land. The decision on the project's approval is notified by public notice and the Land Office delivers it to all known parties. From the essentials of the project only the documentary part and graphical part both relating to this particular party are enclosed to the decision delivered to procedure parties. It is possible to appeal against the decision on the Land Arrangements project's approval. In the case of appeal the Land Office that issued this decision notifies other procedure parties about the content of appeals addressed using the public notice along with notice about the possibility to express the opinion to the object of appeal up to 7 days from the day of delivery by public notice.

If the appellate agency affirms the decision of the Land Office, it will deliver it only to the appellant and notifies the decision of appeals to other parties using public notice.

If the appellate agency changes or reverses the decision of the Land Office, it will notify the decision of appeals using public notice and delivers it to all known procedure parties.

The Land Office that rendered an appealed decision can make decision of appeals itself if it allows an appeal in extenso and other procedure parties directly involved by the change agree. In that case the Land Office notifies the decision to all parties using public notice and delivers to those who are involved by the change.

The approved Land Arrangements project with all essentials is stored at the Land Office and at the competent municipal office where it is possible to look at it. The decision on the approval of the project that has the force of res judicata (so called “approved project”) is delivered by the Land Office to the Cadastre Office for marking to the Land Register.

In the second phase the Land Office decides on the basis of the decision on the Land Arrangements approval having the force of res judicata **on the exchange or transition of property rights, the specification of the refunding the difference between estates' prices and the term, creating or repealing the easement to involved estates.** The approved project is legally binding for making decisions in the second phase. These decisions are issued after the verification whether the action against the decision on Land Arrangements project approval at the competent court was not taken.

The approved Land Arrangements project is legally binding for processing of the renewed file of geodetic information and also it is the binding basis for decisions on the transition of property rights to land upon which the community facilities are situated. The decision is notified using public notice and at the same time it is delivered to the Cadastre Office and all owners and persons involved by creating or repealing the easement or by the change in lien, all of them known to the Land Office. Only the part of essentials regarding the particular person is enclosed to the decision delivered to these persons. This decision comes to legal force by the last day of 15 days term passing. This term begins to run on the day of decision's posting using public notice.

The appeal is not possible against the decision on the exchange or the transition of property rights or on repealing or establishing the easement. Although it is possible to defend against it per curiam.

In cases when the output of Land Arrangements serves also as updated Land Register data, the updated Land Register data become valid by second phase decision coming into legal force.

The Implementation of the Land Arrangements

The implementation of Land Arrangements is based on accredited proposition of Land Arrangements. Proposition in this case has already been discussed with the committee of representatives and has been made with continuous cooperation with the committee. The owners' needs and financial guarantees of the Land Arrangements' implementation have to be taken into consideration.

Land Office then secures that the new arrangement of estates is delimited and marked in the terrain according to the needs of the owners, as soon as the decision on the Land Arrangements' proposition approval is in legal force.

The delimiting of boundaries for the estates that have their breaking points marked in the Land Register as persistently stabilized in connection with the Land Arrangements is not possible to be repeatedly covered from the state resources.

The Use of the Delimited Estates

If the owners do not make other arrangements, the use of the delimited estates begins after the harvest of crops and when the stubble ploughing is completed, which is usually on 1st October of the common year, even if the implementing decision was not published yet.

The Costs of Land Arrangements

The Costs of Land Arrangement are paid by the state. The cover of the cost could be also made by the participants of the Land Arrangement, or even other individuals or legal person, if they are interested in the implementation of the Land Arrangements. The state could provide subsidies or grants under special regulations. If the implementation of Land Arrangements is invoked as a result of estate constructing activities, the costs of the Land Arrangement are paid by the participant of building permit procedure (estate promoter) in the extent depending on the area affected by the building construction.

Streszczenie

W opracowaniu przedstawiono podstawowe zagadnienia dotyczące scalania gruntów w Republice Czeskiej. instytucja ta uregulowana jest głównie w ustawie nr 284/1991 Sb. Stosowanie przepisów tej ustawy (oraz innych aktów związanych z omawianą materią) jest bardzo trudne, w szczególności z powodu złożoności praw do gruntu oraz nieuporządkowanych stosunków własnościowych. Autorka prezentuje tytułową problematykę z punktu widzenia prawa materialnego oraz procesowego.