Analysis of land-law relations development in the Czech Republic after 1989 in the legal and economic context

Analýza vývoje pozemkověprávních vztahů v České republice po roce 1989 v právním a ekonomickém kontextu

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Abstract: Changes in the land law, which occurred after 1948, still influence the whle Czech countryside to this day. Typical features of Czech agriculture, i.e. the fragmentation of ownership of the agricultural land fund and the high share of leased agricultural land, which is a direct consequence of the socialistic large-scale production, continue even despite extensive legal changes after 1989. The changes in the Czech land law after 1989 brought about not only the legal guarantees for owners but also new problems, which are still necessary to solve. An important tool of the solution of the present Czech agriculture problems is represented by land adjustments. The membership of the Czech Republic in the European Union on one hand led to the simplification of land acquisition for some foreigners, however; on the other hand it has not influenced in principle the structure of landowners. Still in 2008, the questions of the atonement of property injustices are finished yet regarding the churches concerning agricultural and forest land. A new civil code, currently in process, which can influence some legal relations to the land, has not been put forward to the Parliament yet.

Key words: enactment, land, ownership, land adjustments, lease

Abstrakt: Změny v pozemkovém právu, ke kterým došlo po roce 1948, ovlivňují český venkov dodnes. Typické znaky českého zemědělství, tj. rozdrobení vlastnictví zemědělského půdního fondu a vysoký podíl pronajaté zemědělské půdy, který je bezprostředním důsledkem socialistické velkovýroby, zůstavají i navzdory velkým právním změnám po roce 1989. Změny v českém pozemkovém právu po roce 1989 přinesly nejen právní záruky pro vlastníky, ale také nové problémy, které je stále ještě nutné řešit. Významný nástroj při řešení současných problémů českého zemědělství představují pozemkové úpravy. Členství České republiky v Evropské unii sice vedlo ke zjednodušení nabývání půdy pro některé cizince, ale zatím zásadně neovlivnilo strukturu pozemkových vlastníků. Ani v roce 2008 ještě nejsou ukončeny otázky nápravy majetkových křivd ve vztahu k církvím, týkající se zemědělské a lesní půdy. Nový občanskoprávní kodex, který je vypracován a může ovlivnit některé právní vztahy k půdě, zatím nebyl předložen do parlamentu.

Klíčová slova: právní předpis, půda, vlastnictví, pozemkové úpravy, pronájem

In the area of legal relationships to land in the CR, there are many problems which were not legislatively sufficiently solved (for example the lack of a special legal form of agricultural tenancy, legal relationships among owners of buildings and land owners, or eventually the inaccessibility of some real properties) and also certain specialties which distinguish the CR from other European states (for example the proprietary land fragmentation which is not obvious in the landscape, and a high percentage of the land on lease).

After 1989, many fundamental changes occurred in the legislation, which concern practically all property relations. These changes touched especially land-Law relations and agriculture in the CR similarly as in other state of the Eastern Europe (Bandlerová 2007;

Supported by the Ministry of Education, Youth and Sports of the Czech Republic (Project No. MSM 6046070906).

Bartůšková 2007; Sadowski 2007). Czech special literature in the area of land law has to deal with the analytical interpretation of new legal regulations and their use in practice for the particular causes. At present there is not enough space for a synthetic research of the legal regulations action on social relations. Nevertheless, it is peculiar that the legal adjustment has highly conservative effects and only small deviations in the legal system can lead to far-reaching social consequences.

The present special literature in the area of land law (Pekárek, Průchová 2003; Dudová 2008) deals with a systematic mapping and more detailed interpretation of particular legal regulations partially before and mainly after 1989. Czech special literature in the area of civil law deals in this context especially with an interpretation of concrete legal problems according to particular provision of the Civil Code, for example with problems of building as an independent object to legal relations different from the land (Fiala, Kindl 2007). Synthesis of economic data by 2002 in the connection to legal adjustment is included in research results of the Research Institute of Agricultural Economics (Němec 2004); however, this work is focused rather on the analysis and prognosis of the land market development after the CR accession to the European Union.

Other special literature deals with the analysis and the rationalization of the supposed changes in the civil law (Eliáš, Zuklínová 2001).

Land market has started to develop extremely in the Czech Republic since 2002. The annual sale and purchase of estates represented 0.2% of the total land resources between 1993–2001. The sale and the purchase have represented 2.9% of the total land resources after 2002 and especially after the EU accession (Němec, Kučera 2007).

As long as the land market in Slovakia is not completely developed and land market prices introduced, the officially assigned land prices are practically in use (Bradáčová 2007).

The agricultural land market in Slovakia has noted an increased dynamics recently. Such situation was a result of big foreign investors entering the market, particularly car factories, which had bought agricultural land for construction purposes. It resulted in the raised prices of plots (Buday 2007).

In Germany, no restitution of land or other property to the former owners expropriated during the so-called land reform in the period 1945–1949 took place. This land has been pre-privatized by long-term lease contracts and it is sold at approximately half the market prices through the land acquisition programme. In contrast, land assets were usually not restituted. Instead, they were privatized by a voucher system or transformed into the capital shares in the reformed co-operative farms (Hagedorn 2007).

Restitution was in the CR covered by the Land Law (No. 229/1991 Coll.), which was passed at the end of 1991. This law is at the centre of our studies because it is equally important for both the former cooperatives and state sector. It is a special legal act concerned with agriculture alone and, therefore, mainly influenced by the actors in this field of policy (Schlüter 2007).

AIM AND METHODOLOGY

The aim of the paper is not to analyse in detail the problems of the particular legal regulations but to deal with the main directions of the Czech land law development after 1989 in the economic and social context. So, the paper concentrates on legal mechanisms influencing the position of landowners.

As the main resources, there were used the law background papers, above all texts of laws and other documents cited in the paper (valid or already cancelled), a background research in the specialised literature, and statistic data.

To fulfil the research aim, at first a content analysis of the relevant legal regulations was used according to the set time periods. The content analysis is followed by the methods of comparison in the evaluation of legal regulations operation in various time stages. The consideration of the possible legal adjustment of land-law relations results from the achieved pieces of knowledge.

RESULTS AND DISCUSSION

The progression in the Czech law in the first years after 1989 was characterized first of all by strengthening of the protection of an individual and his/her determination towards the state which should become a real and not only a proclaimed formal guarantee of the basic human and civil rights.

In the land law area, above all, it meant the removal of various forms of ownership and the introduction of a uniform institutional protection for all owners. It was connected also with the necessity to remove the system of the rights of use, which in the period of the"real socialism" led to a purposeful separation of property rights from their legal content. The re-insertion of the traditional contract types, which would enable the legal use of foreign land, and the renewal of order in the accounting of proprietary relations

to land, which was administrated negligently and inconsistently for decades, and therefore it showed deep differences between the registered and the real legal state, were other essential tasks. And finally, a much discussed and to this day not completely solved levelling of property injustices, which happened in the period after 1948.

The land ownership by the year 1989 was mostly legally separated from the use of land. Rights of use arose for various legal reasons and entitled their bearers to the free use of land, which was owned by other person. The rights of use of agricultural cooperatives to land of their members belonged also among them as well as e.g. the hereditary right of personal use of pieces of land, which the state established for citizens to the state land. It should enable them to build small family houses with a garden. By the help of the rights of use, the owners of agricultural land were legally deprived of the possibility to keep and use it and to use the outputs from the object of their ownership. The possibility to treat legally an object of their ownership was in fact very small. The Civil Code from 1964 did not recognise a tenemental contract. The tenemental contracts were possible; however, they were not frequent. In that situation, many owners gave over the land to the state; however, many others still remained the owners of the land, which then legally descended to their heirs. After February 1948, the land in the Czechoslovakia was not nationalized; nevertheless, the system of the rights of use and the process of collectivization, i.e. of organising farmers in cooperatives enabled the state to take over the control over agricultural production in spite of the maintenance of private land ownership. The suppression of private land ownership institute was monitored in the period between 1948 and 1989 also with the changes in real estates registrations. The principle of registration of owners in a land register was gradually left. At first, the records making was stopped (in fact illegally). Later, besides the land registers, a new register according to the use relations, the so- called Uniform Land Registration, was administered. With the effect of the law No. 141/1950 Coll., the record in the land registers stopped being necessary for acquiring an ownership. On April1, 1964, the land register order had been finally cancelled by the law No. 22/1964 Coll. The new registration according to the law No. 22/1964 Coll. should have connected the geodetic data with the registration of the ownership relation and use relations. However, plots of agricultural and forest land in the ownership of citizens, in the use of socialistic organizations, were not recorded in the cadastral maps according to their plot numbers. Data from this registration of real estates also did not have any legal effects and often were obsolete or mistaken.

Besides that, the state, also in the way of various illegal steps, took over the property rights to land of many citizens and legal entities (Drobník, Fábry 1983; Pekárek, Průchová 2003).

In 1989, according to the data of the land balance of the Czech Republic, the area of the agriculturally used land amounted to 4 296 thousand hectares (of it, 3 232 thous. ha of arable land) and the area of the non-agriculturally used land amounted to 3 591 thousand ha (of it, forest land 2 629 thous. ha). The share of agricultural land in the total acreage permanently decreased during the 20th century (Statistic Yearbook of the Czech Republic 2001, Czech Statistical Office).

At the end of 1989, agricultural land was at first used by the state-owned enterprises and agricultural cooperatives. Agricultural cooperatives (1 024 of them) farmed 2/3 of agricultural land and the state enterprises (174) 1/3 of agricultural land. The share of private farmers was negligible. The average area of agricultural land amounted to 2 563 ha in agricultural cooperatives and 6 259 ha in state farms. Property borders of land were not visible in the landscape owing to the large-scale farming. For the most part, they were also not recorded in the register of real estates.

NEW DIRECTION IN DEVELOPMENT OF LAND-LAW RELATIONS AFTER 1989

With the constitutional law No. 100/1990 Coll., the attitude to property rights changed. The differentiation among subjects should not further determine the content and legal protection of property rights. The Declaration of Basic Rights and Freedoms adopted under No. 23/1991 Coll. as a constitutional law of the Federal Assembly of the Czechoslovak Federative Republic was, after the division of the federation, adopted again as a part of the constitutional order of the CR published under No. 2/1993 Coll. The Declaration protects all owners and does not differentiate between private ownership, state ownership or other estates. According to the Article 11 of the Declaration, "The property right of all owners has the same content and legal protection". On the base of the constitutional protection, all owners (the state, too) can fill in a constitutional complaint.

The law No. 40/1964 Coll., the Civil Code was changed principally by the law No. 509/1991 Coll. The law does not differentiate among various subjects of

property rights. The system of rights of use was gradually left and transformed above all into the contracts of lease and property rights. However, the Code does not contain an amendment of the tenemental contract. A contract of lease entitles a tenant not only to use a rented thing but also it can entitle h/her to use the outputs. The law amends a special one-year notice period in the lease of agricultural land.

A special amendment of lease of agricultural land does not exist, even if there were efforts for adoption of a special law, which would regulate it.

The Parliament passed many laws to moderate the consequences of the illegal state interventions into the property right of citizens after 1948 (restitutions). The law No. 221/1991 Coll. played the main role in the legal relation to land and other agricultural property. In connection with the law No. 221/1991 Coll., also the law on land adjustments and land offices was adopted, and further also the Land Fund of the CR was established (the law No. 569/1991 Coll.) as a special legal entity. The role of the Land Fund of the CR is not only to administrate agricultural and in the state ownership but it also leases it, sells or transfers it for free to other persons in the cases set by the law. In cases of the built-on plots, which could not be delivered according to the law No. 221/1991 Coll. to restituents, the Land Fund of the CR provides the so- called compensatory restitutions. A decision-making on delivery of land to restituents was a power of land offices. It is dealt with many cases when an administration body decides on the property right, of course, with the possibility of court review.

At the same time, also the transformation of agricultural cooperatives happened as well as big changes in the area of food industry (including transformation and privatization). These changes and the adaptation of agriculture to new market conditions caused a general decrease of agricultural production approximately by one third. However, the problems in agriculture did not influence the structure of land owners regarding the fact that land stays mostly in the ownership of individuals who had not farmed the land for many years and after the change of the political and legal environment, they started only to lease the land to economic operators.

Various formal procedures for the acquisition of property by various subjects were maintained up to the end of 1992. From January1,1993 the Real Estate Register of the CR was introduced (laws No. 344/1992 Coll. and No. 265/1992 Coll.), as a set of data on real estates, and the principle of tabulation was re-introduced again, however, only for the acquisition of real estate on the base of a contract. However, the Real Estate Register had to take over the data from the former register of real estates and it still battles with the obscurities in legal relations including duplicate records of owners. Real estate registers are not entitled to decide on a property right and they are forced to refer the owners to a civil process. The role of real estate registers can be made easier mainly by the modern digital methods.

The land market stagnated by 2002. During 2002–2005, first of all the sale of the state agricultural land increased; 500 thousand ha, i.e. 11.7% of agricultural land were sold. In spite of that, agricultural land ownership remained fragmented. At the end of 2005, the number of the registered proprietary cards was approximately 5 millions and the number of plots exceeded 16 millions (the Perspective Report Land 2006). An important share in the land market was occupied by the privatization of state land, which momentarily increased the supply in the land market, which could be one of the causes of the temporary decrease of land prices.

The purchase of agricultural land was enabled not only to Czech agricultural entrepreneurs but also to agricultural entrepreneurs – citizens of other EU member states. The Land Fund of the CR influenced the market land price especially by the fact that it sold the land partially for official prices.

The possibility to acquire real estate for foreigners stays limited also in 2008. The basic adjustment is contained in the laws No. 218/1995 Coll., the Foreign Exchange Act, and the No. 95/1999 Coll., on the conditions of agricultural land transfer from the state ownership to other persons.

Presently, the Law No. 139/2002 Coll., on land adjustments and land offices can be considered in both the legal and the actual point of view as one of the most important tools of land law. This law replaced the former law No. 284/1991 Coll. adopted in connections with restitutions according to the law No. 221/1991 Coll. The law enables in the public interest to re-order, consolidate, make accessible pieces of lands, to set right their borders, to create the conditions for reasonable farming. At the same time, a new settlement of ownership relations happens. The law follows the traditions of the consolidating laws used already at the time of the Austrian-Hungarian Monarchy. However, at the same time the land adjustments solve also other problems, as the protection of land and environment, problems of water management, and the increase of ecological stability in the landscape. It is also a significant benefit for the peace in land ownership. There are many problems connected with it, for example the clarification, demarcation and solution up of some proprietary problems (for example an unfinished land reform). The results of

land adjustments serve to the renewal of data in the Real Estate Register of the CR and at the same time they present documentation for territorial plans.

About 500 million CZK is spent for land adjustments annually. They are also subsidized from the EU funds (in 2007–2013 in the frame of the Rural Development Program, the Council Regulation 1698/2005).

Property settlement with churches

After February 1948, most of the property was withdrew from churches and legal entities connected with churches and illegally transferred into the state ownership. Only a small part of such real estates was given back to the particular churches and church congregations and also to the Archbishopric in Olomouc by the law No. 298/1990 Coll. The pieces of land and other property named in the law supplement were transferred with the force of legislation to the law-determined persons. A part of public took mistakenly this law for the property settlement with churches, even in relation to the fact that also a certain property was delivered, which in fact had never belonged to the church legal entities. However, the reality was that an extent of property taken illegally off from churches was many times bigger and churches did not want to leave their former property in the state ownership. Besides this, the mentioned law did not concern either agricultural or forest land (except some monastery gardens).

Seeing that the restitution of agricultural and forest land to churches was neither solved by the law No. 229/1991 Coll., which contains only the so- called blocking § 29, it is obvious that the question of property settlement with churches has to be finally solved up. However, a governmental law draft, put forward finally as a parliamentary press No. 482 in 2008 in the Parliament, was not sufficiently justified which caused the unnecessary hold-outs in the legislative process. Although churches and state institutions have worked for almost twenty years on the documentation of the property taken off the churches and so it is possible assume that the lists of this property are, except some disputed points, relatively clear, the explanatory report did not contain practically any data from which the MPs could get an idea of the extent of property whose physical delivery to churches can be supposed, and the validity of payments which should be provided to churches.

New codification of civil law

A new codification of civil law has been under preparation for already more than 10 years. A paragraph version without transitional provisions was known already in the first quarter of 2007. In summer 2008, the whole text was published on websites of the Ministry of Justice, nevertheless, the draft could not be put forward to the Parliament even by the end of 2008. It deals with a very extensive and complex legal regulation (more than 2000 paragraphs) which takes over regulations for many various foreign codes and which should be based on the discontinuity principle towards the foregoing legal regulation. In the area of land law, above of all the following changes are proposed:

– a re-insertion of the principle "superficies solo cedit". (This requires transitional provisions, which will be important for a relatively long term. Namely a first option for an owner of building in the sale of the built- on land and vice versa a first option of an owner of the built-on land in the sale of the building).
– a re-insertion of the right of building, which is missing in the Czech system of law
– changes in the acquisition of real estates
– a re-insertion of the tenemental contract and the contract on agricultural tenancy
– an implementation of the legal institute of an abandonment of real estate

Currently, when the law has not been put forward yet in the Parliament, it is hard to estimate in which form this, in the Czech present circumstances unusual, "colossus" could leave the Parliament. It can be just supposed that the legislative process will be accompanied by a number of amendments and the removal of many unexpected and unpredictable problems will follow. The present separation of the building ownership from the land ownership, which came into being in the 50s as a political order, causes many problems and its removal is certainly desirable. On the other hand, the first option will limit real estate owners and even the present court practice does not cope with the current regulations on the first option always well.

Also a general requirement of the discontinuity of legal regulation invokes doubts. Soon, it will be 20 years from "the velvet revolution" followed by a huge amount of legal changes. So, a question appears, towards what the new code should be discontinued in fact. One of the roles of the law in a society is the society stabilization as well as the stabilization of the interpersonal relations so that there would not be any conflicts. The discontinuity is desirable only in the periods of substantial political changes when the hierarchy of ethical and other values changes in the society.

CONCLUSIONS

Natural aims of the legal regulations in land law are not only to establish clear legal relations and peace but also a purposeful use of land and the protection of the environment. Land ownership and land use have not only a legal but also technical, economic and social point of view.

From the history, it is generally known that ownership structures, especially in the matter of the land, can form a base of the social structure. However, the development in the present CR territory can very well illustrate that even if the land ownership is an important legal relation, it does not have to be necessarily a presumption for the acquisition of political and social power or wealth.

The impacts of political development after 1948 still show themselves in the Czech land law and the structure of landowners. Then way of legal regulations of land use still influences substantially Czech agriculture. Legal norms influence often social relations in a way, which lawmakers have not presupposed. After 1989, there were fast changes in the whole system of law, at first in the frame of the Czechoslovak Federation and later in the Czech Republic, however, the impact of legal regulations on economy cannot be straight-forward. The fragmentation of land market cannot be solved by force. First of all, it regards the question of market with agricultural land and this, of course, is connected with the efficiency of the agricultural sector. However, the gross agricultural production was lower by 15.5% in 2006 against 1993.

The large-scale farming changed in the last decades not only the landscape but also the people's relationships to the land. Owners of small plots have not worked in agriculture any longer for many years. They lease their land and use it as an investment. Generally 85.7% of the farmed agricultural land is leased (Situation and Perspective Report Land 2006).

The complications in farming on land are represented by the following circumstances:
– the continuing fragmentation of land ownership;
– the continuing legal and factual separation of ownership of a building and ownership of land;
– the inaccessibility of some plots and buildings.

Another important problem is the question of the legal frame for land protection. The experiences from the last years confirm that the current protection is not effective enough.

Land adjustments help to solve many of the abovementioned problems and are very popular. However, they can also represent a certain danger for small owners because they require an agreement of only ¾ owners. This majority is counted according to the plots area. Towards the owner who disagrees, an intervention in the proprietary right is applied, with the intervention equal to the expropriation. Here, the constitutional rules for expropriation have to hold.

Legal regulations adopted after 1989 arose under the conditions when it was not possible to anticipate their effect in practice. Therefore, the new legal regulations were also often changed. Sometimes, the problems with their practical application have to be solved by the Constitutional Court.

Still we are waiting for passing of the important legal regulations (especially the codification of the Civil Code and the property settlement with churches) without which we cannot regard the process of the essential changes in the land law as finished. Also these legal regulations can influence the structure of landowners, their rights and also the agricultural production.

REFERENCES

Bandlerová A., Laziková J., Rumanowská L. (2005): Agriculture land tenure – the case of Slovakia. Faculty of European Studies and Regional Development, Slovak University of Agriculture in Nitra. Typescript.

Bartůšková J. (2007): Právní institut pozemkového vlastnictví v České republice ve vývoji od r. 1989 (Legal institute of land ownership in Czech Republic in development since 1989). In: Agrarian Perspectives XVI – European Trends in the Development of Agriculture and Rural Areas. Czech University of Life Sciences, Prague; ISBN 978-80-213-1675-1.

Bartůšková J. (2007): Selected issues from Czech legal regulation of land property In: Aktuální otázky právní regulace. ČZU, Praha; ISBN 978–80 213–1738.

Bradáčová K. (2007): Official agricultural land price in the Slovak Republic. Agricultural Economics – Czech, *53* (4): 184–188.

Buday S. (2007): Agricultural land market in Slovakia. Agric.Econ. – Czech, Agricultural Economics – Czech, *53* (4): 146–153.

Chamber of Deputies of the Parliament of CR, Parliamentary press No. 482. Available at www.psp.cz [Quoted October 08].

Drobník J., Fábry V. (1983): Vlastnictví a užívání půdy a pozemková správa (Ownership and Use of Land and Land Administration). Academia, Prague.

Dudová J. (2008): Pozemkové právo (Land law). Key Publishing, Ostrava; ISBN: 978-80-87071-26.

Eliáš K., Zuklínová M. (2001): Principy a východiska nového kodexu soukromého práva (Principles and standpoints on new complex of private law). (1st ed.) Linde, Prague.

Fiala J., Kindl M. (2007): Občanské právo hmotné (Civil tangible law). Vydavatelství a nakladatelství Aleš Čeněk, s.r.o., Plzeň.

Hagedorn K. (2007): Property Rights Reform on Agricultural Land in Central and Eastern Europe. In: Beckmann V., Hagedorn K.: Understanding Agricultural Transition. Shaker Verlag, Aachen; ISBN 978-3-8322-4795-9, ISSN 1617-4828.

Ministry of Justice. Available at http://portal.justice.cz/ms/ms.aspx?j=33&o=23&k=381

Němec J. (2004): Pozemkové právo a trh půdy v ČR (Land law and land market). Research Institute of Agricultural Economics, Prague.

Němec J., Kučera J. (2007): Land market development after the accession to EU. Agricultural Economics – Czech, *53* (4): 154–160.

Pekárek M., Průchová I. (2003): Pozemkové právo (Land law). Masaryk's University, Brno.

Perspective report – Land 2006. Ministry of Agriculture of CR.

Sadowski A. (2007): Land Use and Land Property in Agriculture. In: Agrarian Perspectives XVI – European Trends in the Development of Agriculture and Rural Areas. Czech University of Life Sciences, Prague; ISBN 978-80-213-1675-1.

Schlüter A. (2007): Institutional Change in Transition: Restitution, Transformation and Privatization in Czech Agriculture. In: Beckmann V., Hagedorn K.: Understanding Agricultural Transition. Shaker Verlag, Aachen; ISBN 978-3-8322-4795-9, ISSN 1617-4828.

Situation and perspective report – Land 2006, Ministry of Agriculture of CR.

Statistic Yearbook of the Czech Republic 2001. Czech Statistic Office, Prague.

Arrived on 10th April 2009

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