

Changes in Polish public real estate management system after 1989

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Key words: land management, public real estate resources, changes after transformation

SUMMARY

In 1989 the politic and economic system in Poland has changed. The communism as a power collapsed and opened a new chapter in the history of Poland. Socialist economy (with central planning) was transferred into market economy. Those events caused also the real estate management system change.

A number of changes took place. First of all, new law was created. The most important was the Constitution of Poland that secures the ownership. There were also created legislations regulating public real estate management, such as Land Management Act (1997) and acts concerning legal entities that are responsible for state real estates management.

Those changes in legal basis caused a lot of modifications. One of the most important was the initiation of market principles in the real estate. The official prices were abolished and replaced by market ones. Different forms of possession, strictly determined by the rules of law, were also initiated. Inalienable rights were replaced by alienable ones. Most of administrative decisions were replaced by civil law agreements. Only few left, for example letting real estate into permanent management or conversion perpetual usufruct into full ownership in administrative procedure. Moreover, rights to real estates were equalized - everybody in Poland could have the same rights (not only public entity, but also private person). The changes also allowed foreigners to buy Polish real estates (after fulfilling proper conditions).

The aim of this paper is to show how public land management system in Poland has changed. The authors show, what are the legal basis of the issue and what are the tasks of the main public entities that manage public real estates. The paper also contains the examples of good practise in public land management.

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1. INTRODUCTION

Poland is a European country with relatively big amount of public real estates (Fig. 1). State Treasury manages about 36% of all lands. Local self-government units have in their resources about 4% of all lands. The changes in Polish legal system caused that the amount of private real estates is still increasing. On the 1st January 2011 it was over a half of all lands in Poland.

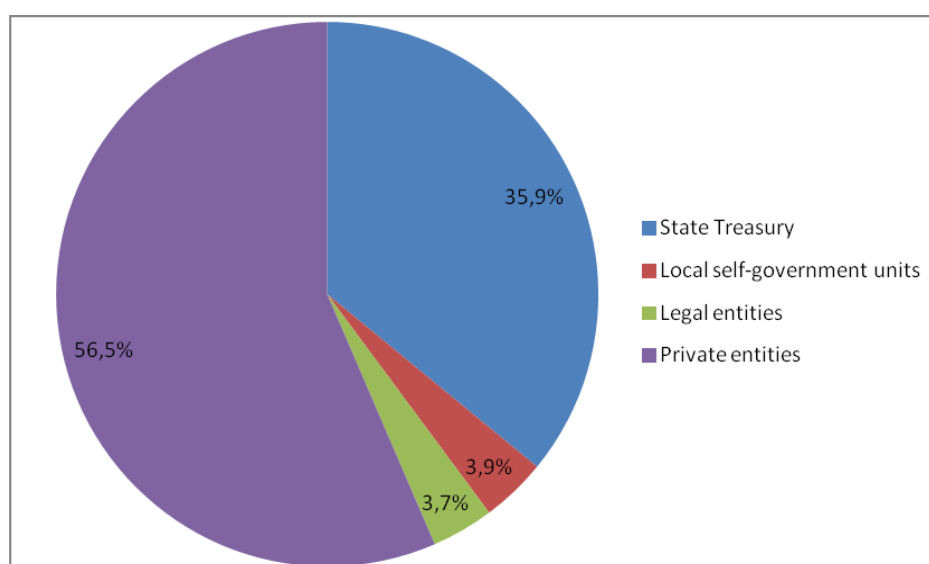


Fig. 1. Lands in Poland

Source: Authors' own study based on MINISTRY OF TREASURY (2011)

The collapse of the communism changed public real estate management system in Poland. There were a lot of changes. The most important was a transfer from socialist economy with central planning into market one.

The aim of this paper is to show some changes that were made after 1989 and some examples of good practice in public land management system in Poland.

2. CHANGES IN POLISH PUBLIC REAL ESTATE MANAGEMENT SYSTEM

The political transformation that took place in Poland after 1989 initiated the process of developing public real estate management principles (ŻRÓBEK 2007). One of the changes was the improvement of the CONSTITUTION OF THE REPUBLIC OF POLAND (1997). The right of ownership and inheritance started to be a subject of security. The Constitution also caused that compulsory purchase was limited to use in case of public purposes realization. Those public purposes are now determined by article 6 of REAL ESTATE MANAGEMENT ACT (1997).

Moreover, market principles in real estate were initiated on January 1990. They became an impulse of this market development (FORYS 2011). First of all, the official prices were abolished and replaced by market ones (which were based upon the real estate's value). This way Polish real estate market could develop. There were also created some jobs connected with real estate management, valuation and trading – real estate manager, valuer and broker.

Until 5 December 1990 there was a possibility to buy a real estate and become its owner only, when this real estate was situated in rural area and the buyer had an agreement from municipal national council (KOWALCZYK 2009). The sorts of the ownership in that time presents figure 2. After the date mentioned above, there were initiated different forms of possession: ownership, perpetual usufruct, usufruct, permanent management, leasing, letting etc. All of them are strictly determined by the rules of law. Perpetual usufructory is the right limited by time. It can be created from 40 to 99 years with the possibility of its extension. This law concerns only lands owned by the State Treasury and local self-government units. Buildings and other facilities erected on those lands belong to perpetual usufructuary (they are his property). This law is chargeable – it is charged initial fee and annual fees. Permanent management is also a chargeable right, but it is entitled to organisational units, that do not have juridical personality. Those units have to pay only annual fees. According to article 83 of REAL ESTATE MANAGEMENT ACT (1997) public roads, parks, squares, botanical gardens, zoological gardens and nature reserves are discharged. The right of permanent management, as opposed to perpetual usufruct, concerns all public real estates.

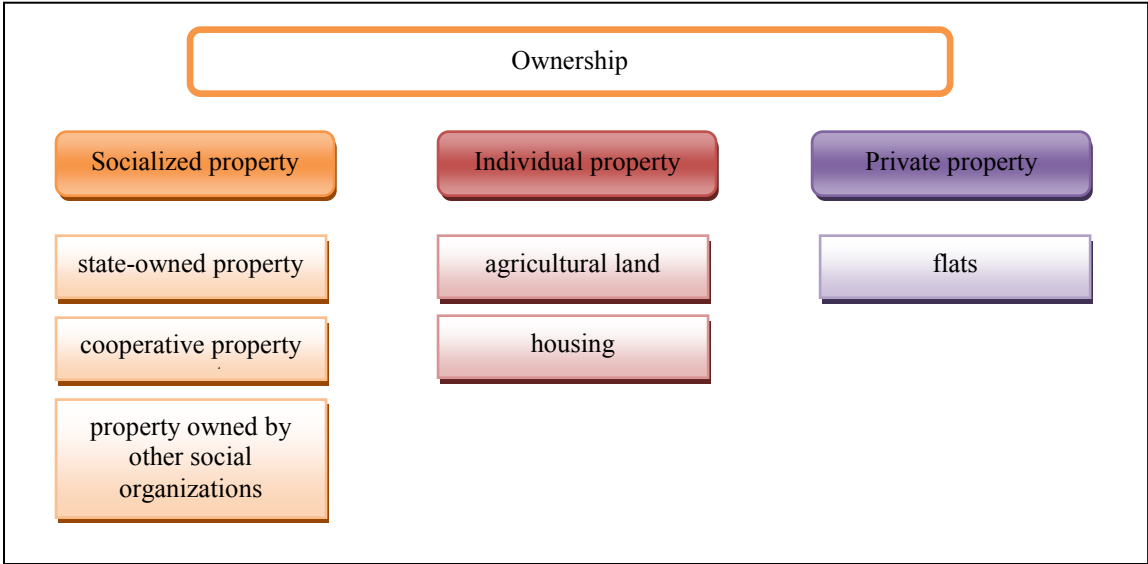


Fig. 2. The ownership in Poland before 1989
 Source: Authors' own study based on REGULSKI (2003)

The next change in Polish real estate management system was equalizing rights to real estates. This way private person as well as legal person can have the same rights to real estate. There is one exception. It concerns the organisational units, that do not have juridical personality. There were created other regulations and principles to those subjects, because they do not participate in a free market trading of real estates (KOWALCZYK 2009, ŻRÓBEK et al 2012).

The other change was replacing inalienable rights to real estates by alienable ones. This way private entities as well as legal entities could have alienable rights to real estates. In case of legal entities it was connected with their enfranchisement. The result of this was strengthening the right to their real estates by changing it into the ownership of buildings and the perpetual usufruct of lands.

After coming into market economy, Poland introduced compulsory tenders while selling public real estates or letting them into perpetual usufruct. The legal basis of this is REAL ESTATE MANAGEMENT ACT (1997). There are some exceptions of this rule – public real estate can be sold or let into perpetual usufruct without tender inter alia in the following cases:

- when real estate is selling for the benefit of person, that is entitled to priority right (in cases strictly determined by law);
- when real estate is selling by State Treasury for the benefit of local self-government unit or between those units;
- when selling is performed by exchange or donation;
- when real estate is selling for the benefit of its perpetual usufructuary;
- when the subject of selling is a share in common property and it is selling for the benefit of other co-owners (article 37 REAL ESTATE MANAGEMENT ACT [1997]).

When real estate is selling or letting into perpetual usufruct there are some rules strictly determined by law. In the first tender the opening bid price of real estate cannot be lower than its market value determined by independent real estate valuer. When the first tender will finish with the negative result, the second tender is organized. This time the opening bid price of real estate can be lower than its market value, but cannot be lower than 50% of its market value. The winner of the tender is obliged to pay for real estate the price that was determined during this tender. When the second tender also will finish with the negative result, the price of the real estate is determined by the negotiations with the buyer cannot be lower than 40% of its market value. In case of selling or letting real estate into perpetual usufruct without tender, the price of real estate cannot be lower than its market value (REAL ESTATE MANAGEMENT ACT [1997]).

The next change after communism collapsed was abolishing most of administrative decisions. They were replaced by civil law agreements. Only few left, for example letting real estate into permanent management or conversion perpetual usufruct into full ownership in administrative procedure. From this time selling or letting real estate into perpetual usufruct require form of authenticated deed and registration in the land and mortgage register.

Thanks to transformation in Poland foreigners can buy Polish real estates, but they have to receive an agreement of proper minister. Those conditions will become less restrictive after an appropriate time. According to the REAL ESTATE PURCHASE BY FOREIGNERS ACT (1920) foreigners will not need the agreement after:

- 12 years from Polish accession to European Union (that is since 2004) to buy agricultural and forestry real estate;
- 5 years from Polish accession to European Union to buy real estate assigned for housing or recreational purpose, but not as a permanent residence.

The other change was creating new territorial division of Poland – municipalities, districts and voivodeships (in 1998). They got a juridical personality. The state management reform in Poland also caused decentralization of governance. Big amount of changes were caused in Polish legislation as well – some of the legal acts were changed and some new were created.

As it was mentioned it concerned such legal acts as:

- Constitution of the Republic of Poland (1997);
- Civil Code (1964);
- Real Estate Management Act (1997);
- Forests Act (1991);
- State-owned Agricultural Real Estate Management Act (1991);
- Ownership of Condominium Units Act (1994);
- Planning and Development Act (2003);
- Forming Agricultural System Act (2003);
- Municipal Government Act (1990);
- District Government Act (1998);
- Voivodeship Government Act (1998);
- CERTAIN COMPONENTS OF STATE TREASURY'S PROPERTY MANAGEMENT AND MILITARY PROPERTY AGENCY ACT (1996);
- ACCOMMODATION OF THE POLISH ARMED FORCES ACT (1995).

3. ENTITIES RESPONSIBLE FOR PUBLIC REAL ESTATE MANAGEMENT IN POLAND AND THEIR COMPETENCE

In Polish legislation public real estates are meant as real estates that are managed by State Treasury and local self-government units: municipalities, districts and voivodeships. State Treasury and local self-government units manage their resources of real estate. According to article 4 of REAL ESTATE MANAGEMENT ACT (1997) the real estate resource is real estates that are a subject of ownership of State Treasury, municipality, district or voivodship and were not given into perpetual usufruct and also real estates that State Treasury, municipality, district or voivodeship are a perpetual usufructuaries.

Public real estates, described above, are managed by their executive bodies (Fig. 3). The basis unit of the territorial division is a municipality, that is managed by village mayors, mayors or presidents of cities. The main tasks of the municipality are described in MUNICIPAL GOVERNMENT ACT (1990). There are such activities as:

- managing its real estates;
- water, electricity and heat supplies;
- looking after spatial order;
- maintaining of cemeteries, market places and market halls;
- environmental protection;
- maintaining communal greenery and afforestation.

The middle-tier unit of the territorial division is a district. Its real estates are managed by district board, which chairman is the prefect. The main tasks of district are described in DISTRICT GOVERNMENT ACT (1998). There are such activities as:

- managing its real estates;
- spatial development;

- transport and public roads;
- environmental protection;
- agriculture and forestry.

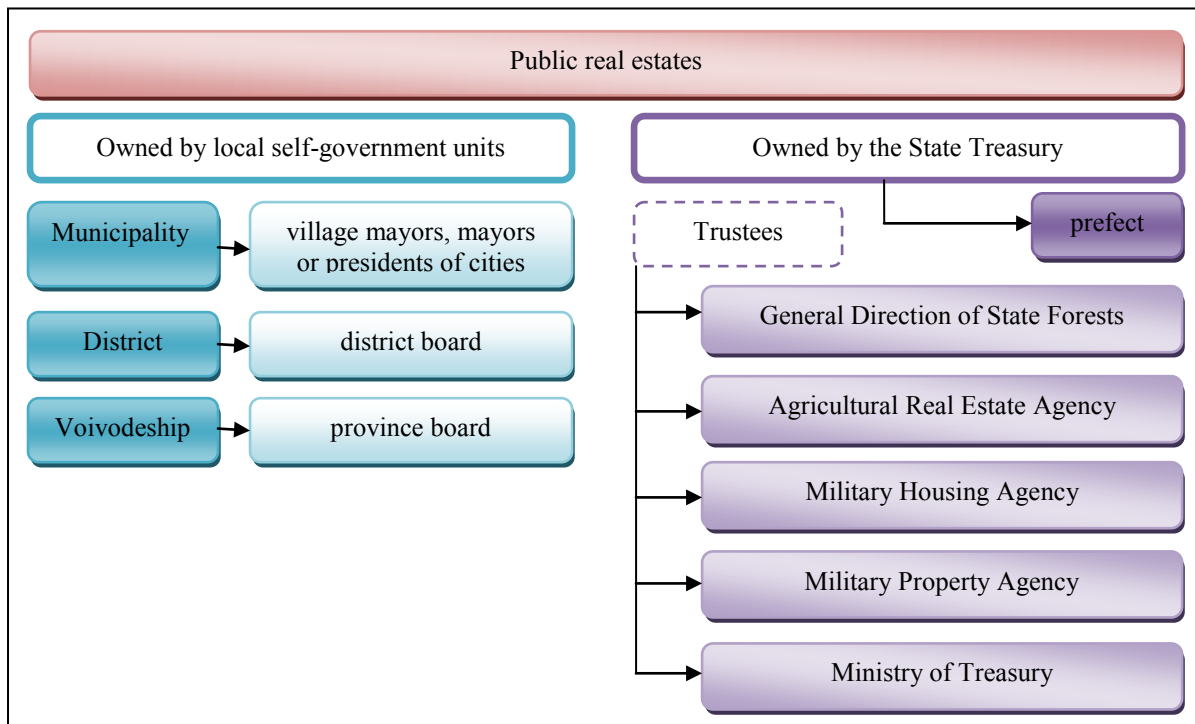


Fig. 3. Entities responsible for public real estate management

Source: Authors' own study

The highest unit of the territorial division is voivodeship. Its real estates are managed by province board. The main tasks of voivodeship are described in VOIVODESHIP GOVERNMENT ACT (1998). There are such activities as:

- public roads and transport;
- environmental protection;
- spatial development;
- water management;
- modernization of rural areas.

Generally, state-owned real estates are managed by the prefect, performing the tasks of the government administration. The higher body than prefect is voivode. The prefect has to have an agreement of the voivode for selected civil-legal activities related to the state real estates' transfer. Some part of the State Treasury property was divided into separate properties. The management of those real estates is executed in addition on the basis of separate rules of law.

STATE-OWNED AGRICULTURAL REAL ESTATE MANAGEMENT ACT (1991) describes the rules of state-owned agricultural real estate resource management. Those real estates manages, according to FORMING AGRICULTURAL SYSTEM ACT (2003) the Agricultural Real Estate Agency. It is an entity created after ownership transformations in agriculture. It is responsible

for exercising the right of ownership and other property rights, as well as rights to purchase and sell agricultural real estates (ŻRÓBEK 2007, ŻRÓBEK et al 2012).

The other part of state-owned property is managed by the General Direction of State Forests. According to FORESTS ACT (1991) this entity leads forests management, manages lands and other real estates and movable related to forestry. It also leads a record of the State Treasury real estates and determines its value.

From the State Treasury property there was also created military housing resource. According to ACCOMMODATION OF THE POLISH ARMED FORCES ACT (1995) it is managed by the Military Housing Agency. This entity is obliged to:

- sell housing units and other real estates and infrastructure;
- take over and purchase real estates;
- renovate buildings, housing units, dormitories and related infrastructure;
- lead economic activity;
- create a draft of three-year plan of using the resource and present it to Minister of Defence for approval.

There were also created another resource – the resource of Military Property Agency. The legal basis for this is CERTAIN COMPONENTS OF STATE TREASURY'S PROPERTY MANAGEMENT AND MILITARY PROPERTY AGENCY ACT (1996). According to this law the Military Property Agency is obliged to manage, keep, regulate the legal status and lead a record. It concerns the state-owned property that was let into permanent management of some organizational units as well as property that lost after liquidation of some state legal entities.

In cases determinate in article 60 of REAL ESTATE MANAGEMENT ACT (1997) Ministry of Treasury can manage the real estates belongs to the State Treasury. It concerns mainly real estates that are need for statutory use of public buildings.

4. GOOD PRACTISE IN POLISH PUBLIC REAL ESTATE MANAGEMENT

There are some examples of good practice that can be learnt from Polish public real estate management system. First of all, there is a decentralization of governance. There is a clear division of responsibility between different units of territorial division of the country – between the State Treasury and local self-government units (municipalities, districts and voivodeships). The tasks of each unit are strictly determinate by law. Generally they are responsible for managing real estates that are located in their administrative boundaries. The trustees of state-owned real estates also have strictly determined their task. There are several acts that describe in details their tasks. This way each entity managing public real estate knows what is in the scope of its competence and for what activities it is responsible for.

Moreover, the right of ownership is protected by CONSTITUTION OF THE REPUBLIC OF POLAND (1997), what have a direct impact on the real estate development, especially on housing (FORYŚ 2011). Also introducing market principles created a chance to develop Polish real estate market.

The example of good practise in Poland can be also a fact that all rights to public as well as private real estates are registered. This is connected with the protection of the ownership mentioned above. At present there lasts works to create integrated information system about all real estates (public and private).

5. CONCLUSIONS

Public real estate management system changed very much during last 20 years. Generally those changes caused some positives. First of all, there were introduced market principles, what was the cause of market development, for example by abolishing official prices and replacing them by market ones or by introducing alienable rights, etc.

A number of changes also took place in legislation. There were created some new legal acts and some existing were modified to improve management of public real estates. The most important was creation a new constitution in 1997.

The reform of country and changes in legislation allowed foreigners to buy Polish real estates. They have to get proper permissions, but this conditions will become less restrictive. This will cause that in the near future all of European Union members will be treated in the same way.

Despite a lot of changes of Polish public real estate management system it still requires some improvements, especially in legislation. Legal acts should be more transparent and the procedures should be simplified. So system still evaluates. In the future the public sector of real estates should be reduced, especially state-owned, because it has a big influence on the management principles.

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9/10

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