

# **State ownership in public real estate registers - the basis for management**

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**Key words:** social property, real estate records, privatization

## **SUMMARY**

The concept of state ownership in property is still known in Slovenia today as the State is often treated as one of the owners. Besides the laws guiding the relationship towards property, its registration and protection in general, we also have a law regulating the specificity of relations between the state and property. Despite the well-set legislation in this field, which provides a quality protection of property and also its regulated management of public real estate registers, the reality of managing the state property is completely different. For the major part, the fault for this situation can be attributed to the relationship towards property in the previous periods.

Thus if we want to create an overview, we must also look at the past. In this article we will introduce the status of real estate and real estate records from the year 1950 onwards, the phenomenon of social property as a specific category of ownership, which still has an influence on the attitude towards property and also on the way it is registered. The central part of this paper is the relationship state to its property, the regulation of this area and the state of its public housing property records. This is the basis for the various possible forms of managing of properties.

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## 1. INTRODUCTION

The concept of ownership by any country defines the property owned by that country. While certain countries are trying to have the state that does not burden with the real estate property and rights of the state on land governed in a different way, such as e.g. the right to use, the right to occupy, etc., other countries base their sovereign power also on real estate ownership. The situation in Slovenia cannot be classified into any of the above categories. Because of historic inheritance it sometimes builds its power on ownership despite the fact that, at the same time, property is actually limiting it. .

## 2. LOOKING BACK

Property in the geographical area of Slovenia at the time of its independence was in principle subjected to the same laws as the rest of former Yugoslavia. Since 1963, when the new constitution was adopted, the powers in this field were transferred to the municipality level. For urban planning and registration of ownership on real estate, individual republics started creating their own legislation, which was one of the fundamental principles aligned with the federal law (Constitution of the SFRY, 1963).

After World War II, the state obtained property with the procedures of land confiscation, nationalisation and agrarian reform (Prinčič, 1994). State property was described as "national property" (Leskovic, 1960). This method of registration of property was in force until the adoption of the Constitutional Act 1953, which introduced the concept of social property.

Social ownership is a unique phenomenon treatment of real rights in the world. "Social ownership is what belongs to society as a whole, which is not the property of an individual, or the individual property of the community organizations" (Finžgar, 1972, p. 19). And the perception of this definition has led to the loss of a sense of what property actually is. Responsibility for property was lost.

It must be stressed that in the period after World War II and in the period of social property there is also private property. Its scope is tied to a single person and is limited in quantity (a maximum of 10 hectares of agricultural land).

All land subject to the laws of the republic was also subjected to provisions on specific land use, regardless of whether the land was privately owned or publicly owned. This was a one-way use of certain types of property. Single land that has been placed during that same regime under the same law, was called asset funds (Sajovic, 1987). So we had the following pools of assets:

- things in common use (water, public road, sea and river shore, seabed ore)
- building land,
- agricultural land
- Forests and forest land
- pasture and fallow,
- business building
- residential houses and
- offices and housing.

Ownership of land management regimes of individual funds was regulated by the following laws (Finžgar, 1979):

- Agricultural Land Act,
- The Forest Act,
- laws in the area of housing economy,
- laws on spatial planning,
- The Mining Act,
- Water Act.

Lands that were owned socially and belonged to an individual fund of assets were given to a holder who was also afforded the rights of use. This holder may have been a social entity (state, municipality, state-owned company) or an individual person.

Legal entities did not own land, but they managed it. To manage meant to use and to have something at one's disposal (Sajovic, 1987). In fact, they had the same rights as a rightful owner.

It was possible to enter these rights of property into the land register. For the purpose of recording, they used the specific term "right of use", which can be traced in the land register also today referring to real estate which has not been privatized.

Real estate belonging to a particular asset fund and holders with the rights of use were (and still are) the main factor for the implementation of privatization.

### **3. STATE PROPERTY TODAY**

Information on the ownership in Slovenia is public and is evident from the land register. Land registry is designed for entry and publication of data on the Rights of the real estate and legal facts related to real estate (Land Registry Act, 2003). Information on the characteristics of real estate are kept in the Land Cadastre and the Cadastre of buildings. These records also provide

property identifiers. Additional technical data and value of the property are included in the property register. To manage the property, we need to obtain data from four public real estate records. The link key is a unique identifier of real estate (Vugrin, 2011).

The right to own private property is in the Constitution of the Republic of Slovenia and has been identified as one of the human rights (Constitution of the Republic of Slovenia, 1991, Article 33). The state is treated the same as any other owner. The Land Registry shows its ownership in the same way as in case of any other owner. All other information in other public real estate records are identical for the state as the owner or any other person.

As long as we talk about recording and recording procedures, state ownership does not deviate from the general rules. When we start to address the management of real estate and represent the interests of the state as an owner, it becomes a different matter. In this area, there is specific legislation governing the management of real estate property as well as the real estate property records law (Law on the physical assets of state and local government, 2010).

All the legislation on this field written so far was predicted, the need for provisions on a certain custodian was anticipated for any property that is owned by the state. The recording custodian is not the proprietary data records - land register, but this information is kept in the Land and buildings Cadastre. Each custodian should, in addition to its being published in the public property records, also keep their own records of this property (Law on the real assets of the state, regions and municipalities, 2007).

Although it had been planned well at the normative level,, the practice has been completely different. When things were beginning to write down in the normative sense, there was a new law, which required the concentration of custody of state ownership within a public housing fund. It has even been envisaged that this fund could become the state property owner (Law on Public Real Estate Fund of the Republic of Slovenia, 2010).

A public real estate fund was established, but its performance in terms of real estate management has not been sufficient. New changes are already on the horizon.

After the independence, Slovenia has been introducing changes in the ownership concept itself. The concept of social ownership has been terminated and so it was necessary that the property that belonged to the society as a whole led to individual property.

Privatisation of companies therefore begun in 1992 (Law on Ownership Transformation of Companies Act, 1992) and continued in the area of agricultural and forest land (Law on the Farmland and Forest Fund of the Republic of Slovenia, 1993). For specific cases of real estate, the privatization was carried out under specific legislation.

The result of privatization was that certain real estate had become the property of various entities, legal entities as well as individuals, and a large part of the real estate became the property of the state.

A certain part of property could not be privatized under any of the laws adopted. Above all, this was the land that was, in the context of social property, defined as land that belonged to fund of building land. Therefore, in 1997, the Law on Privatization of Social Property was adopted. It envisages the transformation of the right to use to the right of property.

When we talk about privatization, we should also mention denationalization procedures. Those were carried out (and still are) as the return of formerly nationalized property (Denationalisation Act, 1991).

All processes of privatization and denationalization have not yet been completed. Some completed processes have not yet been recorded as changes in public real estate records. Therefore, in many cases, in these records we can still trace social property owners with the right to use, the state or individuals.

The state and local communities are in most cases those who after privatization have failed to resolve their questions of ownership in public real estate records. At this moment in Slovenia the state is thus the most irresponsible owner. Looking at the numbers, today in Slovenia 467,790 parcels and 46,329 parts of buildings that are state-owned. The total value of land is 4.7 billion €, the the share of buildings is € 8.3 billion. The total value of all property in the state-owned represents approx. 9% of the value of all real estate in Slovenia. The Farmland and Forest Fund of the Republic of Slovenia manages 127,412 parcels of agricultural land. Approximately 75% of parcels and parts of buildings have registered manager of state property in the land and buildings cadastre.

The state, on the one hand, aims to increase the responsibility for property and to convince citizens of the need to manage real estate and not just to own it. On the other hand, the state itself does very little to accomplish this.

In Slovenia in this year a higher property tax (of real estate totaling over € 1 million) was adopted, the profits of which are not used for production purposes nor are they leased. According to analysts, prior to the adoption of the law, the state would be the largest taxpayer, and therefore the law was in a slightly different form at the time of its adoption.

#### **4. CONCLUSION**

The proverb "The road to hell is paved with good intentions" could also be used for the efforts our state has invested the field of managing its own property.

Regulatory framework in this area has been designed professionally and with the best intentions, but it can never take into account the actual situation in this area and walked the previous path. When the wheels move into the right direction appear immediately a new good intentions and it all starts again.

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