

# Multipurpose Approach to Making Advanced Ukrainian Cadastral System

Oksana SUKHOVA, Ukraine

**Key words:** cadastre system, title register, land legislation, effective land planning

## SUMMARY

In the article written by Agneta Ericsson which was presented at FIG Working-Week 2008 there was determined a number of components ensuring a success of Swedish cadastral system: 1) special comprehensive role of the surveyor, 2) well-functioning cadastral database, which is accessible for the users, 3) unique legislation, etc. The purpose of current article is not just a grasp the reasons which are prevented this success could happen in Ukraine, but to find a way to reach similar success in Ukrainian land management and cadastre systems. Undoubtedly there are lots of drawbacks in Ukrainian cadastral and land management system, starting with a lack of law execution and practicable legislation, ineffective land redistribution, and too bureaucratic management system. But all these problems can be resolved, starting from analyzing the reasons and finishing up with discovering remedies.

У статті Агнети Ерікссон, яка була презентована на FIG -Конференції 2008 р. було відмічено низку особливостей, які роблять шведську кадастрову систему успішною. Серед них: 1) специфічна роль геодезиста, якому надані широкі повноваження; 2) добре функціонуюча кадастрова система, яка має відкритий доступ; 3) унікальне законодавство тощо. Ціллю даної статті є не лише аналіз причин, що заважають бути успішною українській системі управління земельними ресурсами, а й спроба знайти шляхи досягнення подібного успіху. Безсумнівно існує багато недоліків в українській системі управління земельними ресурсами, і в кадастровій системі зокрема, починаючи з невиконання земельного законодавства, його непрактичності, неефективного розподілу праці у сфері земельних відносин і бюрократичності процедур. Але всі вони можуть бути усунуті, якщо почати аналізувати причини їх виникнення, і знайти способи їх подолання.

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## **INTRODUCTION**

The society, state, economics, sectors of national economy all these have own cycle of development. First – an incentive, then development, flowering, recession and decadence at the end. We can prove it with thousands examples from the world history. State-giants like Byzantium, Persia, Egypt, Ottoman Empire being prosperous and powerful were getting depressed with the time or had disappeared on the world map at all. However we can console with a fact that the reversible cycle exists. Countries, towns, nations are able to regenerate and make progress again.

In my opinion, example of Sweden is the most exciting one in this regard. It's hard to imagine that some 210 years ago standard of living was so low that 30% of population had immigrated. The capital of Sweden has become ecologically dangerous city in which lots of infectious diseases have thrived. According to Agneta Ericsson (FIG, What Makes the Swedish System so Special and Successful?) the emigration was caused by ineffective land policy, when total freedom on the land gave difficulties in land management. Nowadays Sweden is one of the most economically stable countries in the world, in many respects due to effective management in land relations sphere. And Stockholm (its capital) is recognized as number one city in Europe with clean environment.

Today, the sphere of land relations in Ukraine has similar features that Sweden had in 1800 such as ineffective land use, poor land policy, land fragmentation which appeared not because of the total freedom. In the mentioned article by A. Ericsson she has listed enthusiastically distinguishing features of Swedish cadastral system which have made it so successful. It has encouraged me to analyse situation in Ukrainian land management and cadastral sphere and discover what prevents us to be successful.

## **1. BACKGROUND**

The passing of the Decree on Land Reform by Supreme Rada of Ukraine at 18.02.1990 was a formal start of land reform in Ukraine. The main purposes of the reform were rearrangement of land relations in planned economy to market relations; formation of private ownership and property rights institutions; formation of individual land owner type who could manage his/her own land parcel, be a master of it. The beginning of land reform has started with agricultural enterprises reorganization into collective farms (1991-2000). Still, during that period the ideological purpose of the reform hasn't been achieved. The individual private owner was not cultivated (maybe, except the Western part of Ukraine) since the peasants used to work in the collectives.

The changes were made with passing Decree of the President of Ukraine at 03.12.1999 on Immediate measures for speeding up reformation of agrarian sector of economy. From that

time the process of reorganization of collective agricultural enterprises into private companies with different forms of ownership had started. Here the lack of the system which is able to protect property rights was revealed. The need to improve existent cadastral system, leasehold, the need to form market infrastructure for agricultural sector of economy and resolve social issues has appeared.

To solve these assigned social economical tasks hundreds of experts in land management, cadastre, economy, law from Europe, America, Australia were invited to Ukraine. They have developed quantity of capable models for creating cadastral and land management systems in Ukraine. In the context of realization of international projects (which were financed by USAID, WBRR, EBRD, TACIS, governments of Canada, America, Sweden) draft laws on title registration, on cadastre, on land market, on mortgage, on farming were developed. Also pilot projects of suggested systems were implemented (O. Sukhova, Financing of Cadastral-Registration System in Ukraine, KNUCA, 2007). Paradox is that numerous models or their combinations on the development of cadastral or land information system suggested by international experts didn't work in Ukraine. G. Larsson warned exactly against it in his paper (Larsson G. Land Registration). What works for one country can't be the case in another without taking into consideration peculiarities of the region. Let's consider main specific features in land management and cadastre sphere of Ukraine which doesn't allow to put it at the same rate as Swedish successful model.

## **2. LAND LEGISLATION**

The mentioned article written by A. Ericsson indicates that new land legislation makes cadastral procedure much easier and faster delegating responsibilities to lead the whole process to the direct executor – surveyor. Moreover “due to the flexibility of the legislation, the same laws can be applied in” different land management activities. The facilitation of legislation is an approach of Western legal thinking. The law regulates only main aspects which can't be settled by treaty commitments. The state interferes into the process only if the conflict of private interests takes place.

2.1. Now let's compare this with Ukrainian land legislation approach. During land reform the number of laws and by-laws were adopted. They include: the Land Code (2001), laws on Forms of ownership to land (1992), on Land Lease as of 1998, on Land payment (1992), on State property privatization (1992), etc. All of them urged to elaborate legal norms which regulate parties' activities. It's hard to be proud of them. These laws are not working. They do not protect private interests and don't punish infringers. Many of them (on Land payment, on Land Lease, on State property privatization) were already amended. One could justify this with realities of life by saying that in Holland, for example, the law on student scholarship was amended 58 times during 15 years. Even honorable professor of American law Berman H. admits that present major problem is inadequacy of the technique and theory of the law. (Harold J. Berman, Law and Revolution: The formation of the Western Legal Tradition). Ukrainian impracticable legislation is closely approximated to the mentioned problem.

2.2. In this regard, the main concern is caused by secondary laws. When Supreme Rada of Ukraine adopts crucial regulation, such as Law on title registration (which we expected during 10 years) it is not the time for joy. It is because during next months departmental organizations elaborates procedural regulations for implementation of the particular article of that law and the whole idea could be ruined. For example, the Law on title registration declares that unified State Title Register should be kept by one organization – State Committee on Land Resources (clause #5). Article 2 of the Law prescribes that State title register is considered as unified state system which contains data on real estate titles, their encumbrances, subjects of property rights, technical characteristics of immovable property objects (buildings, constructions), cadastral plan, data on transactions with immovable property objects. Two months later another competitive state institution - the ministry of Justice adopts its own Instruction (approved by the order # 86/5 as of 18.08.2004) on maintenance of the State register of civil transactions, according to which the Ministry of Justice established a named register and became responsible for its maintenance. All previous registers such as Unified register of prohibitions on real estate transactions, mortgage register, inheritance register are still kept and run by the Ministry of Justice without exchanging information with the State Committee on Land Resources (SCULR).

2.3. Departmental regulations have lots of contradictions, which make complications for the officials and prevent from law understanding by ordinary people. A graphic evidence of this is order of the SCULR # 174, 2003, which was passed before the Law on Title registration was adopted. According to the law on Title registration the information for the Unified Title Register should be collected and maintained by registration authorities – local divisions of State Cadastral Centre (SCC). The Register itself is kept by the SCULR. SCC is an administrator of the Unified Title Register, has own 3-hierarchy structure and is subordinated to SCULR. Thus, there are two state 3-hierarchy institutions: SCULR and SCC. Cadastral information have been collected during years of independence by local authorities for land resources and kept by them. In order to maintain the Unified Title Register registration authorities should have necessary information. Trying to avoid abolishing of one of the bureaucratic structures SCULR has invented interrelation mechanism between them based on execution of cadastral and registration procedure. Hence instead of simplifying cadastral and registration procedure (as it was prescribed by law) people need to apply to at least three different organizations: local land resources department, local cadastral centre, local notary (when registration of real estate transaction is needed).

2.4. Lots of regulations contain ambiguous formulations. Instead of direct obligations they can be treated as recommendations. And in that case it is hard to expect any responsibility for their execution. Another example could show land legislation in use. The law on moratorium (ban) of agricultural land sale remains in force until appropriate market conditions will be created. The interesting thing is that according to statistical data from State Committees of Ukraine on Statistic and Land Resources before moratorium was declared by Land Code (2001) the area of agricultural land was 42,1 mln. ha. In 2002, when the moratorium has entered into force, that figure reduced to 41,8 mln. ha, in 2005 – to 41,6 mln ha and in 2006 – to 41, 2 mln.ha.

It is simple thing but it needs more explanation. After state agricultural enterprises were reorganized into collective farms, the state encouraged members of those farms to leave them and start individual farming on the land. In order to implement this idea the whole area of the collective farms was divided into conventional land units (shares) among members. The evidence of conventional ownership right was land share certificate, which should be converted into state act (deed). Having state act on the right of ownership to land and demarcated parcel new farmer can become a legal owner of the particular land. The majority of “individual farmers” in Ukraine are poor and retired people. They have no technical and financial resources to organize a full cycle of agricultural production. Thus, the only way to use their own land parcel is to rent it to more well-off persons. In most cases all such “landlords” are employed by their “lessees”.

Since there are no civilized land market conditions in Ukraine there are prerequisites for invention of many shady schemes of agricultural land acquisition. The first way is buying up issued land shares “for free” (since agricultural land has no market price). Having no living conditions the peasant can sell it for the bag of potatoes and go to work in town if he is young or stay in the village (if he is retired). Another way of land acquisition is to change the land use. All land shares belong to the land category called “marketable agricultural production”, which is not for sale. Based on agreements with local authorities the interested person can convert land share from previous category into another one named “individual farm”. And from now on that person can build up this land. So, high quality arable lands can easy be turned to the cottages or storage facilities.

**Conclusion.** Undoubtedly, land legislation has to be improved. This is a subject for a thesis though but not for the article. Summing up mentioned above we should note that the best way for improvement is concentration of all regulations on land issues in one normative act, avoiding their dispersion among other legal documents from different fields of law. In parallel with improvement it is important to strengthen administrative mechanisms of execution of land laws.

### 3. LAND POLICY

Before land reform was started the government was more focused on land consolidation. The land was classified by categories and distributed between users. All business managers in particular sphere were responsible for effective land use in particular sphere. For instance, industrial land was managed by industrial institutions, forest land - by foresters, agricultural land (which takes 63% of the whole territory of Ukraine) by agricultural enterprises. There was no need to create number of controlled authorities to find violation of land legislation or incorrect land use. The main purpose of land reform which has been started 18 years ago was creation of private ownership to the land. From one point of view, it is positively reflected on industrial, construction and some other business spheres since the owners have been known and became more sure in the future having their own land plot. On the other hand, new land policy resulted to collapse of agricultural sphere. The possibilities to own land, land privatization have caused uncontrolled land acquisition. There was no matter who will manage the land and which methods will be used. The main purpose was to have as much as

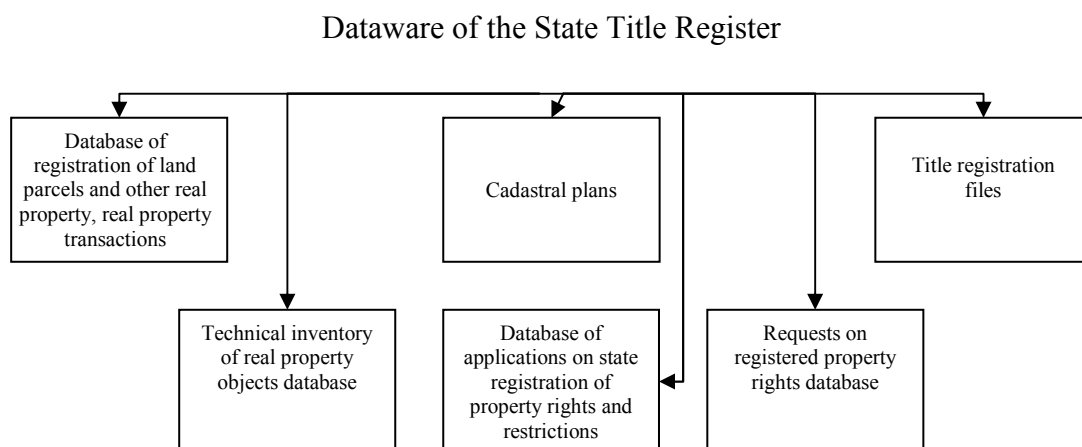
possible. As a result we got 50% of desolated land. Due to destructive management we've got more exhausted, erosion, fragmented land which should be renewed during long time. Agrarian specialists lost their profession since their knowledge was not demanded. Instead of 1 responsible institution now numbers of land inspections, commissions, local authorities, courts are involved in resolving land disputes.

**Conclusion.** Land reform gave some positive but much more destructive effects. People who wanted to be individual owners received that possibility (especially it concerns Western Ukrainian regions). But the level of living conditions for village people decreased enormously. They were pushed to new market economy conditions by administrative measures without a well-functioning background. But the new individual ideology failed for the majority of those who used to work in the collective farm and now they are on the brink of survival. Illegal land redistribution has put to the society exfoliation. In her article A. Ericsson has pointed out how effective were reforms started in 1749 and aimed for consolidation of fragmented land. Land reform in Ukraine is still go on. So, maybe we have the chance to see positive results.

#### 4. LAND REGISTER

In 1993 Resolution of the Cabinet of Ministers of Ukraine is prescribed a need of automated cadastral system creation. In 2003 the Decree of the President of Ukraine declared the creation of unified registration system of land parcels, real property objects and property rights within cadastral system. Hence, the strategy was aimed at creation multipurpose cadastral-registration system. Nowadays the law draft on Cadastre still under consideration of Supreme Rada. It's worth to mention that part of cadastral information is now collected for the State Title Register (According to the Law on Title registration). See scheme 1.

**Scheme 1.**



At the moment the responsibilities of collecting and maintenance cadastral information belongs to local authorities on land resources which are subordinated to SCULR. At the same time the responsibility to fill automated cadastral database with cadastral information belong to local registration authorities. Accordingly when land surveyor has completed his technical file he needs to submit data to at least two authorities into their databases: local rayon division on land resources and local division of SCC. Information in two databases often contradictive.

Information about real property objects is collected by Bureaus on Technical Inventory which are normatively subordinated to the Ministry of Justice. Some inventory information is delivered to the Ministry of Justice and administrator of its registers – Informjust. The information about real property objects is not exchanged with SCULR or SCC. Thus, there is lack of such information in the State Title Register.

**Conclusion.** Strategic planning of creating cadastral-registration system in Ukraine was aimed at running multipurpose system. Under existent conditions we should be concentrating at least at avoiding data dualism. Having so many state institutions involved there is a problem to have reliable cadastral information at the municipal level, where these data are crucial for resolving daily problems. We have to find out the way to arrange cooperation and interrelations between state authorities involved into cadastral and registration processes and which are responsible for filling in cadastral-registration database. It is worth to think also about abolishing some dual institutions which are execute duplicate functions in gathering cadastral and registration data. We should also pay attention to the need of municipal authorities involvement into cadastral process since cadastral system became too centralized and don't meet requirements of ordinary users.

Practice proves ineffectiveness of multipurpose cadastral system creation at prime stages. It is turned to cost effective and time consuming process which is of no use for the actual real estate owners, especially when users have no access to such information in the register. On one hand existent exaggerated bureaucratic State machinery has provided number of working places in land relations' sphere. On the other hand real estate users and owners, land surveyors have already exhausted of uncontrolled actions of state officials and expect for better services from the state system.

## 5. CORRUPTION

Next feature inheres in Ukrainian land management and cadastral system is corruption. It is well known that the level of corruption in the society depends much on moral and ethical values, and also on organizations that have responsibilities to supervise the activities of the officials who have the power to make decisions. During the years of independence the moral and ethic standards in land management and land cadastre sphere have been reduced. According to the new rules it is much profitable to be swindler. And now any movement is impossible without intermediate services from the official. If licensed land management company wants a new contract it should "lure" the official, because the last one has many who is interested in the same contract. After survey took place and technical file is completed the results of work should be submitted for approval to the officials of self-government

(municipal) authority, local land resources department, state expertise institution, local division of the Cadastral Centre. The acceptance of technical documents is open for discussion if one hasn't agreed and paid for approval procedures.

In most cases, top officials in land management sphere are closely related to the land management business being shareholders in the private companies specialized on land management and land valuation work. Competition of land management companies is also very dependent on connections with officials. As I. Khakamada precisely points out "We are not afraid of losing reputation, we have no transparent information. Even if mass media suddenly will publish it means nothing. The whole system of making decisions, making court decisions doesn't depend on public opinion".

**Conclusion.** One effective measure to fight corruption is reduction of the number of inspection authorities. Assignment of responsibility in conduction land management work for one person would allow reducing the number of approval procedures and organizations involved. It is worth using this remedy knowing that it is worked in Swedish land management sphere. Also it is good to have supervision institution which would control corruption and it should be independent from the official influence. It is impossible to avoid law toughening and law implementation control, thereby increasing risk of punishment. At the same time according to the criminal code of Canada one of the parliament corruption forms like bribery equals to the offence against constitution and to the act of high treason. The person who has got the bribe as well as the one who gave it are subject to criminal penalty. ([http://emsu.ru/lm/internet/corrupt/stu\\_rab/refer3.htm#%D0%9E%D0%BF%D1%8B%D1%82](http://emsu.ru/lm/internet/corrupt/stu_rab/refer3.htm#%D0%9E%D0%BF%D1%8B%D1%82)).

Except intensification of supervision there is a need to use stimulative methods, provide social arrangements to the specialists. Recently these methods were presented a good showing. The state have guaranteed accommodation, office car after the specialist have graduated the University. Later on these belongings has passed to the permanent use of the specialist. Presently some private companies also give payment by installments for a long period to their specialists, pay loans and issue insurance policies. All these encouragement living conditions are demanded by officials. Adjustment of official salaries could partly resolve the problem of corruptibility.

The attention should be paid also to informing citizens about their rights and obligations. It could help them to know how to behave with the official that provokes to the bribe. A good example of the remedies against corruption is Estonian Ethic code of Public service as of 1999, which prescribes the norms of behavior for state officials. This kind of legislation should be included into educational course at the universities and industries.

## 6. UKRAINE AS AGRARIAN COUNTRY

In summary I'd like to emphasize one really important issue that influence the development of land management and land cadastre systems in Ukraine. We search for new economical mechanisms for implementing effective land management and cadastral systems, relying on



successful international experience. But for all that we forget own patrimony and repeat the same mistakes. Western theory of market economy teaches people to consider land as a commodity and land use only with regard to land profitability. Such formulism brought one of the biggest Ukrainian economical sector – agricultural – into the decline. Fundamental resource of agrarian country – the fertile soils – ceased to be valued by own people. Misallocation and irrational land redistribution brought to degradation and desolation of land. In many respects owing to new land policy based on market economy rural population in Ukraine has reduced to 18% during 18 years (<http://geosite.com.ru>, <http://www.ua.spinform.ru>). Agricultural sector of economy has lost good agrarian specialists; professionals were obligated to change specialties. There are destroying processes with rural infrastructure, impoverishment of rural population which is surviving thanks to natural economy. It is interesting that Ukrainian example of market relations' development is confirmed by the opinion of outstanding last century reformer P. Stolypin. He said "Introduction of the market into agriculture will put out to peasants' destruction through money-lenders". Stolypin had actively developed cooperative system and state crediting in order to do prevent peasants' destruction.

Taking into consideration world urbanization and economical recession problems we need to return back to the understanding that Ukraine is agrarian country in which people are responsible for land and quality soil protection. We should return to high farming standards, rational organization of the territory, eliminate land fragmentation, keep balance of sown areas structure and provide arrangements for renewing soil quality. All these could raise economic indexes, slow down migration processes.

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## BIOGRAPHICAL NOTES

Mrs. Oksana Sukhova, born in 1977. Graduated as a specialist in Land Management in 1999 from Kharkiv State Agrarian University, Kharkiv, Ukraine; and as M.Sc. in Land Management from Royal Institute of Technology, Stockholm, Sweden in 2004. Since 2005 Quality Control Manager in BlomInfo-Ukraine Ltd.

## CONTACTS

QC Manager Oksana Sukhova  
BlomInfo-Ukraine Ltd  
Demiivska Str., 43  
03040, Kyiv  
UKRAINE  
Tel. + 38 044 258 72 66  
Fax + 38 044 258 7418  
E-mail: [o.sukhova@blominfo-ukraine.com.ua](mailto:o.sukhova@blominfo-ukraine.com.ua)  
Web-site: [www.blominfo-ukraine.com.ua](http://www.blominfo-ukraine.com.ua)