



**KTH Architecture and
the Built Environment**

Real Property Processes

**An explorative study
of property institutions in Belarus**

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Doctoral Thesis in Real Estate Planning

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Dedicated to my beloved mother

For believing in me without fail

The journey of a thousand miles begins with one step.

Lao Zi

Abstract

This work aims at advancing the scientific understanding of the real property processes stimulating the Belarusian property market specifically in order to promote its development. For a property market to operate efficiently, real properties ought to be able to be smoothly created and securely transferred with the aid of real property processes. These processes, after being implemented, generate transaction costs for a society, while the ways by which they are arranged can increase or decrease such costs.

This research applies institutions as a theoretical ground with the transaction costs theory as a core concept for the examination of the selected property processes, resulting in a body of new knowledge on the relations between institutions, property processes and transaction costs.

This study specifically investigates property formation and purchase processes in Slovenia, Sweden and Belarus through an ontological modelling supported by their descriptions. It additionally explores the content of property rights along with the existing real property legislation of the selected countries, as such are recognised as components influencing real property processes. Consequently, general descriptions of the land tenure systems of these three countries and a classification of fundamental property rights are presented.

The examined property processes are compared in order to identify differences and thereby generally enrich the theoretical knowledge in the land administration domain. This comparison is based on the transaction costs generated by the specific real property processes and relatively estimated by this research with a focus on the stakeholders involved, their functions and interactions.

This study places its main emphasis on property formation and property purchase processes in Belarus, while corresponding property processes of selected European countries are taken as benchmarks for new approaches. This research results in proposing simplified property processes for Belarus that may sensibly be established with the long-term aim of facilitating the functioning of the national property market and thereby economising as to transaction costs. In conclusion, the property market of Belarus would benefit from a simplification of the real property processes by utilising international practices while, however, not disregarding national peculiarities.

Keywords: Land administration, institutions, transaction costs, land tenure, classification of property rights, ontological modelling of the real property processes, property formation, property transaction.

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1. Introduction

1.1 Background

Land is not only a space, in which human beings can live, but also a means of production and thus one of the main resources for human existence. It is the most valuable resource as acknowledged by FAO (2003). Furthermore, land is also recognised as a source of wealth directly connected with good governance and effective public administration (UN-ECE 2005a).

Generally speaking, the word “land” implies double meanings. On one hand, land is immovable and everlasting (Simpson 1976), while on the other hand, it is an abstract concept together with those of real property and property rights. The concept of real property has specifically emerged as the result of the complex and lengthy process of the interaction between human beings, political, legal and economic institutions, as well as the physical environment. Dividing land into property units is not simply a geometric operation but also includes the processes of defining and allocating property rights (Smith & Zaibert 2001).

The relations of people to land are constantly changing. In particular, while during the middle ages land was equal to wealth and individuals were tightly connected to it, the industrial revolution developed a land market and transformed land into a tradable asset (Ting and Williamson 1999).

The recent collapse of the Soviet Union and subsequent move from state ownership to private ownership of land exemplify these on-going changes worldwide. On the whole, global drivers such as technology, globalisation, economic reform, urbanisation and sustainable development change the relations of human beings to land. In other words, they allow for the formation of various national land administration models and policies (Williamson and Ting 2001).

For a long time, countries faced a large problem of scarcity of resources and scarcity of land was one of the most vital of these. Land scarcity in turn triggers competition among different parties. Not surprisingly, countries pay great attention to formal arrangements of property rights since societies allocate scarce resources through assigning the rights to use those resources (Alchian 1967). The international community is constantly seeking to identify ways of putting land to its most efficient use and, thereby, to increase countries' economic performances in general. On the local level, established property rights provide their holders with a possibility to enter into the market for trading their assets.

On the whole, a well-functioning property market with clearly defined property rights is seen as the engine of economic progress. Obviously, property right allocations vary worldwide and examples of different property arrangements can be found, for example, in Simpson (1976), Bruce & Migot-Adholla (1993), Payne (1997), Deininger (2003), UN-ECE (2003). Moreover, examinations of social and economic outcomes of land titling are of increasing interest (Payne, Durand-Lasserve & Rakodi 2008).

The emerging common European property market demands, among other things, simpler and interoperable (i.e., e-service) mechanisms for property transactions, as the latter are often identified as complicated and most likely costly due to intricate regulations and a variety of stakeholders. Thus, property transactions form an integral part of the property market and therefore their amelioration facilitates property markets' development.

To promote long-term development of a sustainable real property market in a country, land policy is to be clearly formulated. The latter might be generally presented through a set of the main principles. These are as follows (UN-ECE 2010c):

- Integrated legal framework;
- Efficient land register and cadastre;
- Efficiency of services;
- Prerequisites for development of sound real estate markets,
- Good governance;
- Sustainable financing;
- Transparency and advanced financial products;
- Property valuation;
- Social housing;
- Training; and
- Capacity building.

These principles reflect a wide range of land policy issues and are sustained by key indicators. Specifically, these indicators deal with fundamental factors strongly affecting property transactions. These indicators assign primary importance to the ownership right as a real right and a given asset of property, along with an efficient legal system consisting of a clear set of laws, which in turn ensures access to financing with real property as collateral. An efficient, integrated system of land cadastre and land registry digitally maintained with a full national coverage is also identified as a facilitator of market development. Services, as well as the skills and characteristics of the corresponding professionals enabling the smooth operation of a property market, are also significant.

Moreover, e-government and customer-friendly procedures are acknowledged as a way to reduce administrative delays in interactions between citizen and authorities. Transparency is another essential feature clearly

recognised through a key indicator of well-documented laws affecting property rights and transactions. This is to be supplemented by reliable information on market dynamics (e.g., the number of transactions, issued building permits at any given period of time, the number of mortgages registered and cost of loans).

A growing international interest in making property transactions easier and, therefore, more efficient, is worth stressing. These issues are now actively addressed by the European scientific community (e.g., EULIS initiative,¹ UN-ECE 2003, Stuckenschmidt, Stubkjaer & Schlieder 2003, Zevenbergen and Frank & Stubkjaer 2007). However, this process is mainly hampered by the diversity of national legal frameworks and that of national institutional arrangements. Indeed, it is difficult to find two countries where a property transaction is fully identical. Even such historically close countries as Sweden and Finland have minor differences in the handling of both property formation and purchase processes (Mattsson 2006). The World Bank 'Doing Business' report (World Bank 2011) specifies that in some countries, these property transactions are simple and quick, while in others, they are rather burdensome and costly. Thus, making property transactions work "efficiently, simply, quickly, securely and at low costs" (as stated by the UN-FIG Bogor Declaration 1996) heads the list of urgent tasks in many countries. The absence of theoretical knowledge in this domain may arguably to some extent impede the development of European property markets in this direction.

1.1.1 Land administration

Land administration includes "the processes of recording and disseminating information about the ownership, value and use of land and its associated resources. Such processes include the determination ... of rights and other attributes of the land, the survey and description of these, their detailed documentation and the provision of relevant information in support of land markets" (UN-ECE 1996). Thus, land administration generally concerns land tenure, land value and land use (Figure 1). In addition, land administration ensures land development through planning regulations including building permits and implementation (Enemark 2011). Land administration serves as a tool for implementation of land policy.

Land administration provides access to land and security for creditors. It also focuses on processes such as land adjudication, land transfer and land mutation (i.e., subdivision and consolidation) (Williamson 2000a).

A good land administration contributes to economic development. Specifically, it stimulates trade in real properties and provides security for investments. It also serves as a basis for expanding the collection of property

¹ This can be more thoroughly explored at www.eulis.eu [accessed 12th April 2010].

taxes, both through transfer and real property taxes, thereby increasing annual state revenue. Moreover, good land administration significantly facilitates the administration of land and property tax collection (Dale & McLaughlin 1999). For a broader overview of global land administration systems, the reader can refer to the extensive study of UN-ECE (2000) on land registration and cadastral legislation.



Figure 1: Land Administration based on ownership, value and use (Dale and McLaughlin 1999:9).

Thus, land administration implies, on one hand, management of land information. This can be seen as a static component. On the other hand, it slightly touches the processes implementing changes that can be considered as its dynamic part. These processes result in new information on land.

Dynamism within land administration can be elucidated through three essential procedures for change, specifically through the processes of change of ownership (i.e., property transfer), property design (i.e., property formation) and permissible use (i.e., alteration of use) (Mattsson 1997) (Figure 2).

In other words, in order to develop a sound land administration, a country has to efficiently manage changes within the three main attributes of land, namely tenure, value and use. In particular, land tenure changes occur, for example, through transfer of land rights, property formation as well as through resolution of disputes in property rights and property boundaries. Land value is in turn affected by property formation through alterations of areas of land plots

as well as resolutions of disputes on land rights. Changes in land use are normally implemented through planning regulations and their enforcement, building permits and resolutions of disputes on land use.

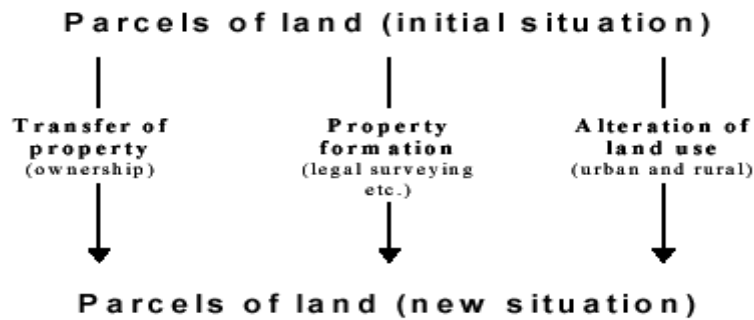


Figure 2: Three necessary procedures for change in land law (Mattsson 1997:13).

Land administration performs the following four functions:² legal, regulatory, fiscal and information management (Dale & McLaughlin 1999). Each of these three first functions is connected with one of the three components of land administration. The legal function namely refers to land tenure, the regulatory one to land use and, finally, the fiscal function deals with land value. Information management is an integral function and refers to all three of the above-mentioned components through the sharing of common land-related information. Dale & McLaughlin specifically point out that problems of land administration mostly depend on institutional rather than technical solutions.

Identifying stakeholders involved in land administration is pertinent. They normally include the public at large, property owners, land administration authorities, the State, banks and legal professionals (e.g., notaries). Each of these has their own incentives, interests and behavioural models. For example, property owners are mostly interested in simpler and cheaper property transactions not requiring too many visits to different authorities with many hours of waiting time. The public at large is interested in easily accessible public services and their transparency. The state seeks to increase tax collection on real property to enhance effectiveness of public services and to keep costs low. Legal experts, as any other professional group, wish to protect their own professional areas in order to keep reaping benefits. It may be concluded that

² Zevenbergen (2002) defines function [of an element] as “what this element causes to happen as a desirable contribution to the greater whole, in order to achieve the goal(s) of this whole”.

stakeholders operating on the property market study their own interests, which may be private or corporate.

To take into account all of the stakeholders in the property market and give them incentives to realise joint goals seems an arduous task. Countries around the world resolve this problem with more or less degrees of efficiency. Norway and Sweden, for example, belong to the top ten countries with the fewest number of procedures when transferring commercial property between two companies (i.e., one and two procedures respectively as of 2010).³

At the end, it seems reasonable to ask the question of why property transactions in some countries are simple and easy, while the same in countries in transition are lengthy and intricate? Does the fewer number of stakeholders involved make a difference in property transactions? Can we match the stakeholders involved with activities of property transactions in a “transaction-cost-economising” way?

1.2 Research problem

1.2.1 Roadmap of the research

Land is a scarce natural resource, which potentially could be overused if no property rights existed. To reduce uncertainties while utilising land, formal property rights have been developed. These rights cannot exist without a legal framework facilitating property transactions on the market. Institutions are specifically necessary to a property market and enhance the economic development of a country in general. If institutions do not meet the requirements of a market, economic growth is hampered.

For the property market to operate efficiently, real properties ought to be smoothly and securely conveyed. For this, land is divided into separate property units recorded in a register. For owners to be able to use land in the most efficient way, various processes of property formation and property transactions must be in place. These property processes are not separate but nested and linked with other processes in the economy through an institutional framework.

Specifically, property formation processes are normally employed to form real property units. The former serves as a tool for rearranging not only the legal content but also the geometry of a new real property. These processes include subdivision, partition, amalgamation and reallocation. A subdivision

³ An international overview of such transfers (in terms of the number of procedures required as well as time and cost) can be obtained from the World Bank ‘Doing Business’ report (World Bank 2011).

process⁴ can be seen as the most common for a new allocation of land. For example, the annual number of newly formed land plots created mainly through subdivision is approximately 20 000 in Sweden, while the number of partition cases is around 300 and amalgamation is not more than 100 cases per year (Ekbäck 2009b).

Property transaction processes are categorised into purchase, gift, inheritance and exchange. These change the legal attributes of a real property, whereas its physical/geometrical attributes remain unchanged. Thus, while property transactions are regarded as the general processes for the functioning of the property market, the property formation processes serve as supporting systems normally visualising a real property on the market.

A property transaction is acknowledged as a formalised form of exchange. The latter has developed over time. In particular, an initial “personalised” exchange is characterised by small-size production, repeated deals and non-enforcement. Under such conditions, transaction costs are low, while production costs are high (due to low specialisation and division of labour). Under such conditions, economies normally do not expand and remain small (North 1990).

An impersonal exchange is based on kinship, merchant codes of conduct and cross-national trade. Enforcement emerged when the state extended its role by protecting merchants and adopting their codes. However, state enforcement rather negatively affected exchange due to an increase in transaction costs and insecurity of property rights.

The third type of exchange is defined as an impersonal exchange with enforcement. In particular, high specialisation and impersonal exchange, protection of the parties from cheating and shirking, becomes inevitable in the modern world. This kind of exchange (i.e., a property purchase) is analysed in the present study.

A property purchase process⁵ is widely acknowledged as the most frequently employed among property transactions on the market. For example, in Sweden property purchases stand for about 100 000 property units (2009⁶), while gifts of real property amount to 9 000 transactions, inheritance is about 25 000 and exchanges equal approximately 30 property units. Due to differences in national legal systems, activities within a real property process vary among countries.

The implementation of real property processes generates tangible transaction costs for a society. Changing a well-established process is a considerable challenge demanding a political will and resources, resulting hopefully in a new process arrangement to improve economic results.

⁴ Discussed more closely in section 5.2.1.

⁵ Discussed more closely in section 5.2.2.

⁶ <http://www.ssd.scb.se/databaser/makro/start.asp> [accessed 5th May 2011].

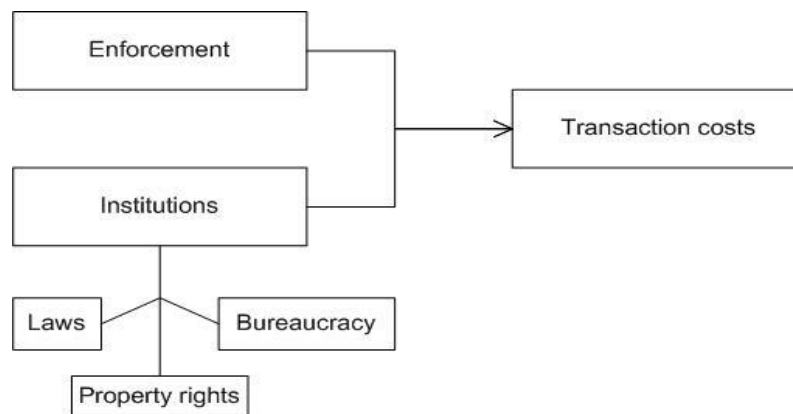


Figure 3: Dependence of transactions costs on institutions and enforcement.

In general, the costs of transacting depend on the effectiveness of both institutions and enforcement (North 1991) (Figure 3). The ways institutions are arranged may increase or reduce costs of transacting. If the chain of activities runs properly, a real property process occurs frictionless and harmoniously. Otherwise, misunderstandings and conflicts normally cause delays and other malfunctions and thereby increase transaction costs. Specifically, costliness of information as well as a high risk premium increase transaction costs and therefore hinder land from being conveyed on the property market. To reduce transaction costs, these real property processes need to be smoother and shorter. In particular, they may be streamlined in terms of time consumed and number of stakeholders involved.

This research proceeds from the assumption that an examination of transaction costs assists in revealing weaknesses in property processes. Specifically, this study mainly focuses on investigating existing laws and property rights in the selected countries. Enforcement is identified as being outside the aim of this research and therefore not investigated here. Bureaucratic issues including corruption are also not examined due to their complexity and often insufficient and unreliable documentation.

1.2.2 Research aim

The aim of this research is to contribute to advancing the scientific understanding of the real property processes stimulating the property market in a way to promote its development in Belarus. This study examines these

processes through a prism of New institutional economics and applies transaction costs theory as a core concept.

This research focuses on an analysis of transaction costs for specific real property processes in the selected countries. Specifically, it aims to examine a particular process as a single whole with a focus on the specific criteria based on the stakeholders involved, their functions and interactions. This study further seeks to compare the particular property processes through the transaction costs estimated in relative terms. This implies analysing the integrity and logic of an administrative structure of the specified property processes, while not, however, estimating direct transaction costs in terms of time and money spent by stakeholders.

Specifically, this research examines property formation processes and property transaction processes in three European countries (i.e., Slovenia, Sweden and Belarus), comparing them in order to enrich the theoretical knowledge in this area. The main emphasis is placed on the existing situation as to property formation and property transactions in Belarus, while the corresponding property processes of the selected European countries are taken as benchmarks for new ideas. This research assumes that real property processes are differently arranged all over the world and that countries thereby may learn from each other's experiences.

The overall ambition here is to proceed further with possible improvements for real property processes in Belarus by suggesting a new model of property formation and of property transaction. These new property processes may sensibly be applied in Belarus with the long-term aim of facilitating the functioning of the national property market and thereby reduce the overall costs to society. Consequently, this research seeks to propose possible ways of promoting development of the property market in Belarus and thereby bring existing practices of land administration closer to the general public, i.e., to economise on transaction costs.

In summary, the main theoretical input of this research is seen in elucidation of the connections between institutions including property rights, real property processes and transaction costs. This in turn assists in substantiation of the differences from the transaction costs perspective between identical processes in the selected countries. This research also makes a contribution to practice by proposing new models of the specific property processes for Belarus through investigation and comparative analysis of those processes in the selected countries including Belarus in which this scientific domain seems to be rather at an embryo stage. In addition, this study has thoroughly tested the method of process modelling for comparative analysis of the real property processes on an international level.

1.2.3 Objectives and questions of the research

With regard to the aim of this research, the following objectives and related research questions are formulated. These questions specify the fundamental issues of this research and are answered in their respective chapters:

1. To develop a conceptual analytical framework and theoretical models by which to examine property rights and specific property processes from the transaction costs perspective (Chapters 3-5).
 - a. What are the institutions and how do they affect transaction costs?
 - b. Which factors facilitate an estimation of transaction costs of the real property processes?
 - c. How can one analyse property rights and specific property processes?
2. To examine the real property processes of the given jurisdictions (Chapters 6-8).
 - a. How are property rights and specific property processes arranged in a particular country?
3. To comparatively analyse the real property processes among the jurisdictions (Chapter 9).
 - a. What are the main comparative findings of those property processes?
 - b. How are the property processes evaluated from the transaction costs perspective?
4. To propose new general models for property formation and property purchase processes in Belarus (Chapter 10).
 - a. How can the particular property processes in Belarus be enhanced?

Once having answered these research questions, this study intends to produce a body of new knowledge on the relations between institutions, specific property processes and transaction costs. The formalised models of property formation and property transaction within given jurisdictions as well as potential improvements for Belarus are to form new specific knowledge as derived from this research.

1.2.4 Research objects

This research specifically examines two types of real property processes, namely the processes of property formation and of property transaction. Thus, these two processes are the primary objects of this research.

Property formation processes in Slovenia and Sweden are investigated through the process of the subdivision of a privately-owned land plot into two plots with the same owner, where a subdivided land plot is assigned for building purpose. In Belarus, this process is in turn examined through a process of subdivision of land in state ownership with a subsequent transfer of the new land plot into the private ownership of an individual (i.e., a process of land privatisation⁷). In this case, a newly formed land plot with a specific land use is assigned to a new property owner. The activities of property demarcation on the ground and its further recording in a register are covered in all three countries.

The examination of property transaction processes is implemented through a property purchase process in all three countries where a land plot and a building on it belong to the same owner. In particular, in Slovenia, Sweden and Belarus, the purchase of a land plot with an attached single-family house is comparatively analysed.

Property formation and property purchase processes are often narrowly interconnected. Specifically, a real property may be established through a property formation process and further transacted on the market through a purchase process. Through this “production” chain, a real property market normally operates smoothly and without delays. However, the degree of ease may differ among countries.

The most general research object in this work is the real property processes (Figure 4). These processes may in turn be divided into two basic categories, namely property formation processes and real property transactions. These are generally intended for the creation of a real property and for the transfer of property rights, respectively.

⁷ Discussed more closely in section 5.2.1.

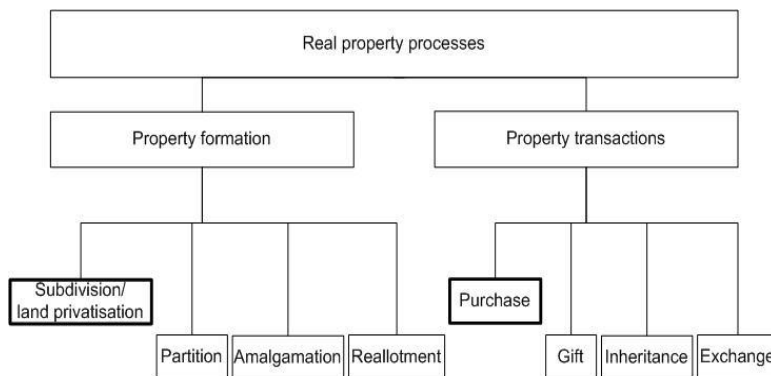


Figure 4: Objects of the research⁸ (within dedicated boxes).

Along with subdivision/land privatisation, the processes of partition, amalgamation and reallotment may also form new real property units. More specifically, a partition process forms a new property unit from one jointly owned by several individuals, while an amalgamation process consolidates several property units with the same owner into a single one. Reallotment in turn rearranges existing property units by transferring land from one property to another for a more efficient land use.

By purchase, gift, inheritance or exchange processes, a real property is conveyed on the market, i.e., it is transferred from one owner to another by selling it, giving as a gift, by the right of succession or exchanging the real properties, respectively.

Interrelations between the specific research objects are illustrated through the systems to be studied (Figure 5).

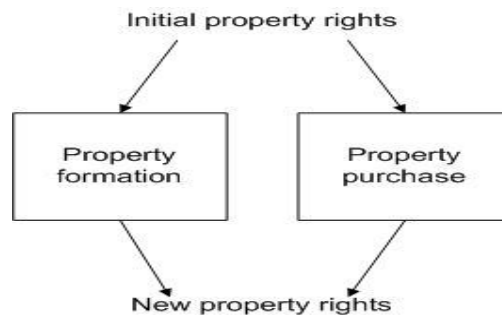


Figure 5: The systems to be studied.

⁸ The differentiation of property formations and property transactions is based on Swedish legislation.

In addition, the land tenure systems of particular countries are of special interest for this research since they reveal the complexity of available property rights. Specifically, the existing property rights in each selected country are investigated due to their direct involvement within the real property processes.

1.2.5 Definitions and limitations

This research considers formal institutional arrangements, specifically those regulating property processes (i.e., a legal framework and related property rights). However, it omits any investigation of informal norms and enforcement along with the transparency of the processes and bureaucracy in order to keep the emphasis on the main functions of the property processes. Since real property legislation continuously changes over time in all countries, the research period of the legislative study is limited up to 2009.

This research places a special focus on an analysis of existing formal rules, specifically in the field of land administration in Slovenia, Sweden and Belarus. Specifically, it concerns the ownership right to land, internationally recognised as a fundamental one, when dealing with real property.

To avoid confusion with multiple meanings of the applied concepts and to provide the reader with a clear comprehension of the research, these concepts are described below.

A real property (i.e., a real property unit) is regarded as a land plot with or without an attached house. Separate buildings and apartments are not considered as real property. They are instead treated as fixtures.

This study generally treats *a real property process* as a chain of activities resulting either in emerging, re-shaping a real property or in identifying a new right holder thereof. Theoretically, a process might be presented as a service moving along a technological interface with mechanical frictions that are equated with transaction costs in economy (Williamson 1981). A real property process may particularly generate tangible changes in the geometrical shape of a real property as well as intangible changes in the set of property rights attached to a right holder or a real property.

A property subdivision process serves as a tool for the creation of new real property units for the property market. The overarching aim of property subdivision is to promote a more efficient land development, i.e., to put land to a better use (Simpson 1976). Subdivision alongside with adjudication and transfer are acknowledged as the main functions of a land registration system (Zevenbergen 2004). Specifically, subdivision of a land plot is regarded as the division of an existing land plot into two or more parts determined physically (on the ground) and legally (in the cadastre and land register).

The academic literature defines a transaction as a process performing a business between two or more persons (Gifis 2003). In its application to the property market, a *property transaction* is regarded as a system of interacting activities, actors and institutions for achieving the final goal – the registration of a new owner (Lisec, Ferlan & Sumrada 2007). In essence, a real property transaction facilitates a transfer of property rights in land and/or buildings (Stubkjaer 2003).

Specifically, a *property purchase process* is used to denominate a specific type of property transaction assisting in a transfer of the ownership right. It in turn means only a change of title in the cadastre and land register, while the real property itself remains physically unchanged. Thus, a property purchase process is seen as a transfer of a registered property unit from one owner to another. Property processes generally result in a range of formal decisions that might be appealed. An appeal procedure is treated within a certain institutional framework and not often invoked in practice. Thus, it is not specifically investigated in this research.

This research also touches upon concepts such as cadastre, land register, a Cadastral and land registration authority and efficiency. In particular, *cadastre* (i.e., a cadastral system) is referred to here as a public inventory of data based on a survey of real property boundaries. It includes mainly information on the geometrical characteristics of a real property, namely location, area, coordinates, its property identifier, and cadastral map. A *land register* (i.e., a land registration system) is in turn considered a system primarily containing information about the rights as to land supplemented by the owner's information. As a rule, a land register records the information answering the questions of which party owns a real property and how.

The Cadastral and land registration authority is defined as a governmental authority responsible for surveying and land registration activities on a national level in a country. It is also in charge of the development and maintenance of the cadastre and land register, which may also be unified into one system or separate. To follow the activities of the Cadastral and land registration authority in each selected country and to simultaneously avoid potential confusion with its English translation, their local names are therefore omitted. Moreover, it is worth noting that in some countries, this authority is a single one, while in others its functions are divided between two governmental authorities (i.e., the Cadastral authority and Land registry) separately responsible for collection and maintenance of surveying and legal information.

Research on transaction costs analysis normally focuses on *efficiency* (Williamson 1981). Thus, to avoid confusing the term *efficient* as used in the research, this term is here elaborated. In general, efficient is seen as specific conditions that ensure an economic growth (North 1990) as well as maximum satisfaction of human wishes within resource and technology constraints (Reiter 1998). From a theoretical perspective (i.e., Pareto efficiency), efficiency implies a way of adjusting things in order to make at least one person better off, while

making no one else worse off. In an application to institutions, they cannot be regarded as efficient or inefficient in an absolute or abstract manner. Institutions may only be relatively compared where one may be better or worse off under specific conditions (Mattei, Antonioli & Rossato 1999).

Thus, *efficient* defined through transaction costs implies whatever lowers transaction costs and thereby makes a legal system function better, i.e., whatever aims at developing a better organised human society. Specifically, this research applies efficiency as a relative concept to property processes. This means that a property process is seen as more efficient than others if it provides the same results (i.e., formation and transaction of property rights) with lower transaction costs.

1.2.6 Structure of this study

This research is organised into eleven chapters in which the answers to the research questions are elaborated. This study furthermore concludes with a reference list divided into several parts as literature, internet documents along with the legal documents of Slovenia, Sweden and Belarus and personal communications.

More precisely, this first Chapter contains introductory and explanatory information giving a clear insight into this research. In particular, it provides the background of the research domain along with the aim, objects and questions of the research. It also clarifies the research objects and presents the limitations and definitions of this study.

A detailed description of the applied research methodology is further presented in Chapter Two. In particular, system approach and a choice of the case study countries along with modelling are particularly highlighted.

Chapter Three develops the theoretical framework of this research by clarifying fundamental concepts such as institutions, property rights, transaction costs along with institutional change. The particular focus is set on transaction costs with an elaboration of their components and indicators including organisations and information. Thus, Chapter Three formulates the general theory upon which the subsequent chapters are based.

Chapters Four and Five introduce the theoretical frameworks for comparison by presenting general models for the analysis of property rights and that of real property processes. In particular, the available property rights of the selected countries are clarified in accordance with the presented model in Chapter Four, while the model for the analysis of real property processes is presented and discussed in Chapter Five.

While the foregoing chapters clarify the theoretical aspects of this research, the three subsequent Chapters Six to Eight aim at investigating the specific property processes in each of the three selected countries. In particular, Chapter Six examines the case of Slovenia including the principal property

rights as well as the property subdivision and property purchase processes. Chapter Seven in turn presents the central property rights along with the processes of property subdivision and property purchase in Sweden. Finally, specific information concerning essential property rights and the two specific property processes in Belarus is reviewed in Chapter Eight.

Chapter Nine aims at a comparative analysis of the two specific property processes in the selected countries. The first part of the chapter is devoted to the property formation process, while the second part discusses a comparison of the property purchase processes in Slovenia, Sweden and Belarus. It employs general and modular comparisons in terms of the activities performed by specific stakeholders with a subsequent comparative analysis. Specifically, at the end of each part, differences within the particular property processes among the countries are analysed and transaction costs are relatively estimated. In other words, existing links between respective institutional arrangements of the specific property processes and generated transaction costs in each country are revealed and discussed.

Based on the implemented comparative analysis, Chapter Ten proposes new models of property formation and property purchase processes for Belarus that may tentatively be applied to the existing practices in the country. Chapter Eleven closes this research by presenting conclusions on land policy including the land tenure system as well as real property processes in Belarus, suggesting a range of topics for further research in the land administration domain.

2. Research methodology

The choice of methodology is of utmost importance for the success of any research project as it influences the results and determines its quality.

Since a cadastral system⁹ is often acknowledged as a socio-technical system consisting of both social and technical elements (Ottens 2005), the methods of social and technical science are of equal interest for the research projects in land administration. In particular, the research methods of social and behavioural science are currently actively applied within the land administration domain, which previously was dominated by geodetic surveying methods (Cagdas & Stubkjaer 2009). This shift from pure technical problems to social, institutional, political and economic ones within land administration may easily be observed, e.g., in Zevenbergen (2002), Steudler (2004), Silva (2005), Rakai (2005), Havel (2009).¹⁰

Generally speaking, this research operates within interdisciplinary and international contexts. Therefore, the employed research methodology includes both methods from social and comparative sciences. However, it would be more precise to refer to the current research as a legal study dealing with legal concepts such as real property, ownership right and property rights.

A continuous modernisation of the real property legislation in Belarus has occurred during the years of this PhD project (2002-2012) that has complicated this study by the necessity of updating the case study description continuously. For example, the new Land Code and the Mortgage Act as two fundamental laws influencing the real property market in Belarus were passed in 2008. In contrast, the legal situation in Sweden is rather stable, i.e., without any radical legal changes strongly affecting the real property market since 1970s. In Slovenia, the only remarkable legal change was in 2007 with the introduction of the new Spatial Planning Act. Thus, in spite of this author's ambition to cover the full range of on-going legal changes in the countries until the completion of this PhD, the period of the legal study is limited to 2009,¹¹ while statistical data in all the countries is presented as updated as possible based on the availability of information.

This research covers the practical and tactical levels through developing the theories and models and thereby providing solutions to a problem (Gigch

⁹ Referred to here as an equivalent of a land administration system.

¹⁰ For a deeper insight into methodology of the social sciences applied in the cadastral research, see Silva and Stubkjaer (2002).

¹¹ However, the research also indicates the newest legislative acts in each country for the sake of completeness.

1991). Specifically, it conducts a comparative study on two specific property processes in Belarus and those of the selected European countries with better functioning property markets. Thus, an accurate reflection of the Belarusian situation in light of the European experience is intended in order to provide a better understanding of the national property market and to improve its efficiency in Belarus. The case study descriptions mainly focus on the specific legal and administrative aspects of the real property processes in Slovenia, Sweden and Belarus and do not cover the entire spectrum of existing problems within this domain. However, general descriptions of the countries with short historical backgrounds and corresponding summaries of the legal systems are also presented in order to provide a deeper insight in the national environments.

As this research mainly focuses on an examination of the Belarusian situation, the methods of direct and participant observations were also applied. A direct observation is acknowledged as a field visit to the case study “site”, while a participant observation is a way of studying the research object from the “inside” rather than “outside” (Yin 2003). Thus, a participant observation entirely involves a researcher within the problem (Pelto 1970 from Williamson & Fourie 1998) for collecting the empirical data. Specifically, direct observation was carried out while studying a property formation process in Belarus and a participant observation was implemented in a case of a property purchase with its completion by ownership registration at a local office of the Cadastral and land registration authority.

To assist in a better understanding of a country’s situation, the English terms as used in the descriptions are normally supplemented by their equivalents in the original languages given in parentheses. Such representations of the scientific terms are to facilitate comprehension for readers familiar with the described concepts in one of the selected countries. Moreover, this research applies a uniform term for the designation of a particular legal concept within the national property processes. However, the reader should be aware of the fact that a variety of English translations of the same concept might exist.

Data collection

The collection of qualitative data for this research has been mainly performed through studying documentation including relevant scientific literature and the corresponding legislation in each selected country. The latter mainly includes the legislative acts and regulations of the countries in question. In Sweden and Belarus, the legal sources were studied in the original language, facilitating a deeper understanding, while with respect to Slovenia, English translations were solely employed. This reliance on translations to some extent may lead to misinterpretation of the Slovenian legislation in comparison with the use of original sources for Sweden and Belarus.

Interviews with experts working either in academia or in practice were employed as supplementary data sources. These were conducted in all the countries with the aim of integrating the theoretical knowledge obtained from the legislative study and literature overview with the practical experiences. A majority of the interviews took place in Belarus, being the primary target country, through a range of field studies to the main stakeholders involved in the studied property processes, namely to a bank, a notary office and a real estate agency. Moreover, the Cadastral and land registration authority and a state surveying organisation were also visited to interview employees. A municipality's involvement in the specific property processes in Belarus was also investigated through a field study. Such extensive field studies were motivated by the obvious lag in development of the real property sector in Belarus in comparison with Slovenia and Sweden, where these property processes have a long history of evolution within the market environment and are well-documented and studied. All the interviews in both these countries were performed during several study visits to the respective countries and informally undertaken at the respective working places of the legal experts, practitioners and the academic staff of the universities. No special questionnaires were prepared as each interview aimed at revealing a particular aspect within research domain.

This research has also applied empirical data for demonstration of differences between the property purchase processes of the selected countries in terms of direct transaction costs born by the contracting parties while transacting a real property. These costs consist of all compulsory fees and taxes paid by the parties during the entire purchase process. In contrast, indirect costs such as, for example, lost network, capital gain tax, labour costs of the parties in terms of their time, spent directly for the process activities, were not considered by this research.

The primary quantitative data was collected from a variety of sources such as literature including the relevant regulations supplemented with personal communication with competent experts in the countries (Slovenia and Belarus) along with the official statistical source (Sweden). The specific statistical data employed for the transaction costs calculation is mainly related to 2010-2012 in order to make this calculation as close to the present date as possible. The transaction costs of the purchase processes were calculated by summing up these fees and taxes for each country.

Oppositely, the direct transaction costs of the property formation processes in the countries were not calculated due to several reasons. First, it seems difficult to determine the average value of newly formed land plots in Belarus as their transfer to private ownership occurs in accordance with the cadastral value.¹² The latter might fluctuate between 60-80% of the

¹² Cherkas (email 5th March 2012).

corresponding market value.¹³ In addition, exact payment for a new land plot might vary between 20-100% of its cadastral value depending on an applicant, for example, a land plot is intended for a large family. Moreover, these compulsory payments¹⁴ for the property formation process are exclusively determined by the government and directly linked with the basic value (*bazovaja velichina*)¹⁵. The payments might specifically reduce due to existing discounts for various groups of applicants, which would not correspond to the market-established fees and taxes in Slovenia and Sweden. Therefore, it might be assumed that such variation in land prices shows that the Belarusian economy is quite regulated by the state and Belarus is just on the way to the market economy, in contrast to Slovenia and Sweden. Second, last several years Belarus has gone through a deep economic crisis with high inflation.¹⁶ Third, it has been supposed improper to quantitatively compare the property subdivision processes in Slovenia and Sweden with the process of land privatisation in Belarus. Specifically, in Slovenia and Sweden this process forms a new land plot from privately-owned land, while in case of Belarus a new land plot is formed from state-owned land. The compulsory fees would thereby differ in their nature. All these prove that a quantitative comparison of the direct transaction costs of the property formation processes in the selected countries would be rather misleading.

For reliable comparison of the property purchase processes in terms of generated transaction costs, the percentage of these costs to the average price of a typical real property¹⁷ situated in a middle-sized city was taken as a compatible criterion. The more detailed calculation of the direct transaction costs for the property purchase process is presented in each national chapter. In addition, it might also be stressed that these calculations should not be understood as complete or fully accurate as they are normally based on the approximate average property values as results of the author's personal judgement (when the official statistics was unavailable).

The system approach, modelling, case study methodology and comparative analysis are directly applied in this investigation of the real property processes and are discussed in detail below.

¹³ Depending on type of land use (Shavrov 2010).

¹⁴ With clearly established maximum limits.

¹⁵ It is a specific economic indicator reflecting the abstract purchasing power of the money not connected with evaluation of material and nonmaterial wealth. It is determined and regularly revised by the government.

¹⁶ The inflation in February 2012 is approximately 107% on an annual basis

http://belstat.gov.by/homep/ru/indicators/doclad/2012_2/12.pdf [accessed 16th March 2012].

¹⁷ A land plot with a single-family house on it is applied for comparison of the property purchase process.

2.1 System approach and modelling of a system

This section describes the system approach as applied in this investigation of real property processes and introduces a tool of a system modelling.

2.1.1 System approach

The system approach was generated due to the complexity of the real world as well as the convergence of technical and social sciences. In this way, the systems theory as a science was born and system thinking came into the existence.

Specifically, the system approach is based on the core idea that any human problem might be solved if all its components are considered together and in a sensible way. Moreover, it provides an understanding of a system by identifying interactions and processes between its components. Such interactions are the main part of any system. As far back as the 17th century, Hegel for the first time stated that a simple sum of the components is less than the whole (Skyttner 2001). However, these components are separated from an external environment and at the same time connected with it through inputs and outputs (Olsson & Sjöstedt 2004).

The boundaries determine a system and thereby differentiate what is included in the system from what is excluded. There are no absolute boundaries, they are simply a matter of definition (Bowler 1981). The systems are often connected to each other and one system may include another. However, it is rather difficult to separate systems (Bowman 2004). All the systems are hierarchically structured and more complex systems have several various hierarchies.

Various classifications of systems exist. Existing systems may be divided into open and closed ones. In particular, a closed system does not communicate with the environment, in contrast to an open system, which has relations with the environment (Bertalanffy 2006).

In addition, the systems may be differentiated as concrete (i.e., physical), conceptual (based on symbolically expressed ideas), abstract (with the components that may or may not be empirically observed) and unperceivable (whose actual parts and interrelations are hidden) (Skyttner 2001). They can also be distinguished as static and dynamic: a static system does not perform any activity, while a dynamic system consists of the structural elements and the dynamic activities.¹⁸

¹⁸ To exemplify the models of a static system for the cadastral surveying as well as the dynamic systems for the parcel subdivision and information dissemination, see Tuladhar (2004).

The most comprehensive study to-date from a system approach in the field of land administration has been performed by Zevenbergen (2002) and further applied by Rakai (2005), Nkwae (2006) and Ottens & Stubkjaer (2007).

2.1.2 Present research

This research applies the system approach enabling the examination of the property formation and property purchase processes from their “wholeness” and thereby not separating them into components. Specifically, the real property processes are seen as business systems with the involvement of a decision-making process. They interact with the human and social components of a society, while the natural and technological components are marginally involved.

These processes are also acknowledged as open and dynamic systems as they are linked to reality through a number of the different inputs and outputs as well as constantly changing due to reforms in the legal system. In different countries, real property processes normally achieve their final results by different means. Thus, the property formation and property purchase processes are seen as the dynamic systems of land administration and hierarchically divided into smaller modules with generalised activities for further comparison and analysis.

Theoretically, a real property process is regarded as an internal working process and may in turn be presented as a coloured box (i.e., white, gray, or black) depending on the degree of understanding of the process itself (Figure 6). A black box means that one has no clues about the way the results are produced, i.e., only inputs and outputs of a system could clearly be determined. A gray box partially provides knowledge of an internal process, while a white box gives complete information about the process.

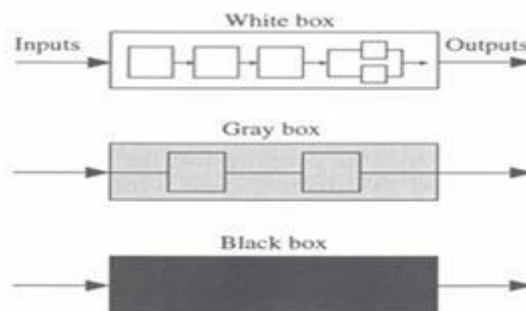


Figure 6: Degrees of internal understanding of a system (Skyttner 2001:73).

In summary, this research seeks to transform the gray boxes of the real property processes of Belarus and those of the selected European countries into whiter ones with more complete information.

2.1.3 The modelling of a system

This research employs modelling to reveal the components of the real property processes and to recognise their internal interactions. Modelling is a process aimed at developing a model describing a system's behaviour with the aim to enable it to generate a greater benefit and, thus, to provide services more efficiently. It is a tool for identifying the obstacles of a system and the ways for its improvement. Modelling normally results in a model regarded here as an incomplete picture of the reality as to approaching a particular problem (Diamond 2010).

As the research objects are real property processes, this study specifically applies a process modelling and considers a process as 'a series of actions taken in order to achieve a result' (Cambridge 2003). A process may be regarded as an "economic activity" associated with inputs and outputs (Nelson & Sampat 2001). In this study, a property formation process and a property purchase process are compared through the developed models in the form of diagrams describing how a particular process is arranged. Furthermore, the analysed property processes are "unpacked" into smaller modules with a set of uniform activities in each of them. To develop the models of the particular property processes of the selected countries, a specific ontological modelling is employed.

2.1.4 Ontological modelling

This research considers ontological¹⁹ modelling as formalised modelling where the formalisation is a way of presenting a complex phenomenon in a clear and accurate form (Simon 1957). Ontological modelling reflects complex processes in a 'transparent way' and thus provides 'cognitive transparency' of the processes regarded as the main 'added value' of the ontology (Guarino 1997).

There are several examples of earlier studies examining a particular problem of land administration with an assistance of formalisation. In particular, the Austrian land registration law is examined with help of an algebraic tool facilitating evaluation of the law's consistency (Navratil 2002).

¹⁹ Ontology is the most fundamental branch of metaphysics and attempts to identify what entities and what types of entities exist (<http://en.wikipedia.org/wiki/Ontology>) [accessed 10th February 2010].

Another example of development and application of IT-based methodology in land administration is an international comparison of the property transactions in Denmark and England/Wales carried out with the help of the ontological reasoner Pellet (Hess & Vaskovich 2007) (Figure 7).

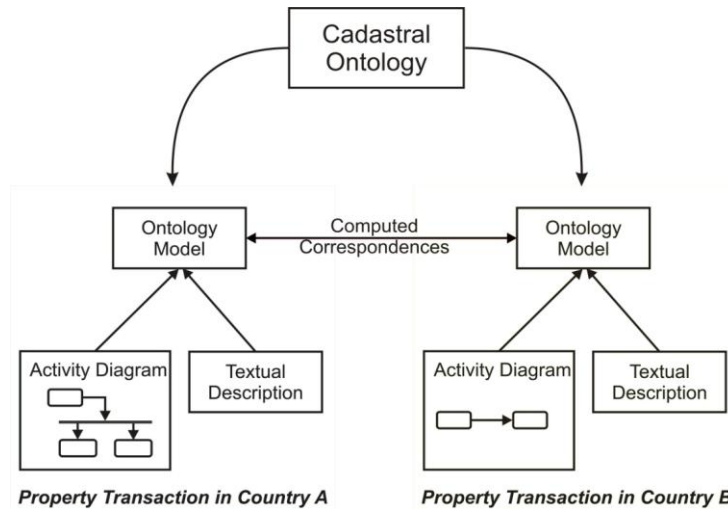


Figure 7: The ontological comparison of property transactions (Hess & Vaskovich 2007).

Hereby a new formal, ontology-based approach facilitating analysis of differences and commonalities between national property transactions has been developed and initially tested. This formal comparison of national processes has used concepts from a cadastral ontology that has been also developed.

The present research specifically develops the formalised models of the specific property processes and compares them by applying a reasonable thinking and analysis. An ontological model of a real property process in each selected country is based on a specific textual description (Figure 8).

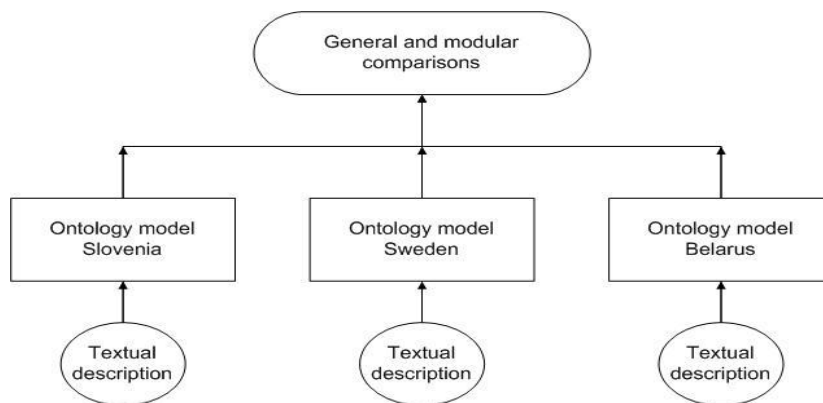


Figure 8: Ontologically-based comparison of real property processes in Slovenia, Sweden and Belarus.

Such an ontologically-based comparison is carried out separately for both selected processes. These processes are represented as the dynamic models, while the land tenure systems of the selected countries are described through a static model.²⁰

A comparison of the processes is achieved in two phases, namely through general and modular comparisons. While a general comparison seeks to reveal general institutional differences in the processes within Slovenia, Sweden and Belarus, a modular comparison is applied for exposing the particular institutional differences within each module of a process.²¹ Based on the comparisons, proposals of new property processes for Belarus are suggested at the very end of this study.

2.2 Case study methodology

Case study methodology as invoked here is adapted from social sciences where it was initially developed and further refined. Case studies are becoming one of the most frequently used methods for collecting empirical data in research concerning land administration. This method has recently been applied for example by Zevenbergen (2002), Dijk (2003), Törhönen (2004), Griffith-

²⁰ Explained in more detail in Chapter 4.

²¹ The ontological approach employed for comparison of the selected property processes is described in detail in Chapter 5.

Charles (2004), Silva (2005), Dalrymple (2005), Paulsson (2007), Havel (2009) and Liedholm-Johnson (2010), just to name a few.²²

A case study aims at investigating an event generating changes (Frankfort-Nachmias & Nachmias 1996). This methodology provides a useful tool for examining a modern phenomenon existing in reality. A case study might especially be useful for an investigation, for example, of legal and organisational problems (Yin 2003). In particular, applying a case study approach for the investigation of institutions is recognised as the only approach developing knowledge on institutional change (Alston 1996). However, a comparison is only successful if the cases are impartially described in detail (Williamson & Fourie 1998).

Case studies can be distinguished into three types, namely explanatory, exploratory or descriptive. It can be difficult to clearly identify case studies as only one category as they might overlap. The current research specifically invokes case studies mainly of a descriptive and, moreover, exploratory nature as to legal and organizational phenomena. In addition, it applies a multiple case study, regarded as being more robust than a single one, since the data from a multiple case study is deemed to be more conclusive (Herriott & Firestone 1983).

2.2.1 Choice of countries

Slovenia, Sweden and Belarus are chosen as representative case studies due to a variety of reasons.

The Republic of Belarus is the focal case study as this research is mainly aimed at exploring the Belarusian situation and improving its property market. Belarus is initially chosen since this author has spent a long time living and working there and therefore is very familiar with the past and current situations and the existing problems in land administration. Slovenia and Sweden are chosen as examples of countries promoting a market-oriented economy with higher government effectiveness.²³ This criterion serves as an indicator of the establishment of a well-functioning property market in a country. In addition, the available contacts within the national scientific communities ought to be acknowledged as playing a significant role in the choice of these case studies.

The three selected countries differ in a number of ways. Specifically, Slovenia, Sweden and Belarus have a different degree of economic and institutional development. They differ, for example, in economic potential (e.g.,

²² An integrated view on the case study methodology in cadastral reform is presented by Williamson & Fourie (1998).

²³ Government effectiveness reflects perceptions of the quality of public and civil services with the degree of their independence from political power, the quality of policy definition and its implementation and the credibility of the government's engagement to these policies (Kaufmann, Kraay & Mastruzzi 2010).

GNI²⁴ per capita). In addition, the countries' institutional organisations are also recognized as diversified from lesser efficient government (Belarus) to almost completely efficient (Sweden) (i.e., ease of doing business and government effectiveness in Table 1).

While Sweden and Belarus may be symbolically placed on opposite sides of an economic development axis, Slovenia is located somewhere at a midpoint. Specifically, Belarus is in the process of the establishment of its market-oriented institutions including legislation and governance structure, whilst Slovenia with its recent affiliation with Yugoslavia and a present membership of the EU is in turn at an intermediate stage. It might be separately emphasised that the country has moved further than Belarus to market-oriented economy (Table 1) and therefore it seems reasonable to learn experience of the Slovenian property market.

Table 1: General overview of the selected countries.

Country	Population²⁵ (M)²⁶	GNI per capita (USD)²⁵	Ease of doing business (rank)²⁵	Government effectiveness (country's % rank)²⁷
Slovenia	2.0	23 520	42	75-90
Sweden	9.3	48 930	14	90-100
Belarus	9.7	5 540	68	10-25

Thus, the study of these three selected countries seeks to discover a variety of institutional solutions existing in Europe including legal ones in order to expand the theoretical understanding of the property formation and property purchase processes.

Sweden is internationally recognised as a country with a modern land registration system along with more efficient property formation and property purchase processes. For example, Sweden is acknowledged as one of the leaders among land administration services within the European countries (Pomelov 2001). Swedish expertise in land administration may be of a special interest for Belarus for several reasons. Along with a significant parallel of

²⁴ Gross national income (GNI) consists of the total value produced within a country and its income received from other countries.

²⁵ World Bank Doing Business (2011) www.doingbusiness.org/ [accessed 7th March 2011].

²⁶ M designates million.

²⁷ World Bank Worldwide Governance Index (2009)

http://info.worldbank.org/governance/wgi/sc_country.asp [accessed 7th March 2011].

environmental conditions including climate, soil and population between the two countries, Belarus is on its way to a market economy where public and private interests are balanced for the benefit of the entire society. Sweden is one example of such a welfare state.

In spite of the fact that Belarus (ranked 6th) is ahead of Slovenia (97th) and Sweden (15th) in registering property (i.e., a land plot with a 2-story warehouse) according to the Doing Business report in 2011 (World Bank 2011), problems still exist within the real property market in general and with real property processes in particular.

Along with the above-mentioned differences, the selected countries have a similar historical development of legal systems in line with the Continental law system. Their legal systems belong to a Civil law tradition originating in Roman law and the centrality of the individual (Glenn 2004). Specifically, the legal systems of the Continental law originate in the university studies with a strong belief in a systematic vision, while the Common Law stems from case law with the denial of any generalization.²⁸ The established rules of the Continental law ensure a framework for finding a solution, where lawyers think abstractly, in terms of institutions and operate with ideas (Zweigert & Kötz 1998).

Slovenia, Sweden and Belarus are respectively placed into three different legal families, the Germanic, Scandinavian,²⁹ and East European (Newman & Thornley 1996). In addition, Belarus as being a part of the former Soviet Union may be related to the Socialistic law group (David & Brierley 1985). The Socialistic law of the former Soviet Union is regarded as rather close to the Roman law through the application of main legal doctrines originating in Russian law.³⁰ Specifically, legal rules are developed by legislators, not judges. The deficiency in the Russian law lies in the weakness of its legal tradition and the very idea of law. Moreover, unlike continental Europe, law there was not regarded as a complement to morality and a basis for building society (David & Brierley 1985).

Furthermore, since Belarus was a part of the former Soviet Union until 1991, it inherited its legislative framework. In particular, Belarus still maintains a close legal connection to the modern Russian legal tradition, partly through the adaptation of the Civil Code (1998) nearly entirely based on the Civil Code of the Russian Federation (1995).³¹ The fundamental laws of Belarus on the relationship between the state and its citizens, natural resources, housing stock are at present codified (e.g., Civil Code, Land Code, Housing Code, Water Code, Forests Code).

²⁸ The Common law system is not described here.

²⁹ The Scandinavian legal family (distinguished by Newman & Thornley 1996) is regarded as the Nordic legal family (distinguished by Zweigert & Kötz 1998).

³⁰ This was rather well-established in the 1800's.

³¹ For a detailed overview of the Civil Code of the Russian Federation, see Butler (1997).

2.3 Comparison

This research compares qualitative data from the selected countries to propose solutions for making the real property processes in Belarus simpler and more efficient (Figure 9). This research is based on a general idea of identifying a suitable solution for Belarus by analysing the existing solutions of the same problem in Slovenia and Sweden independently of their social organisation and economic development.

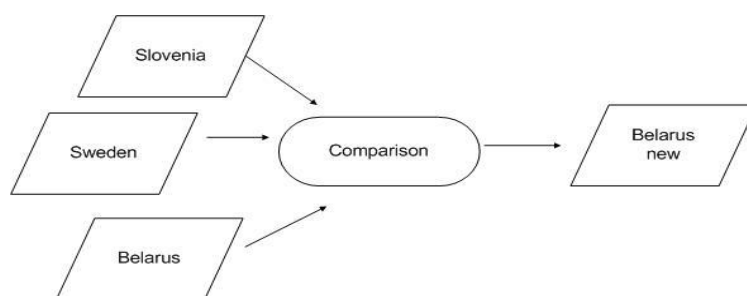


Figure 9: Case study approach (derived from: Williamson & Fourie 1998).

The method of an international comparative study provides a much wider range of possible solutions than any national study, i.e., the different systems of the world offer a greater variety of solutions as opposed to only one system, even if it is the most advanced one (Zweigert & Kötz 1998). Thus, “by examining solutions in other countries one can achieve a better understanding of the problems in one’s own region” (UN-FIG 1999). Specifically, in respect to institutions, a cross-national comparison assists in revealing distinctions in existing institutional arrangements among countries (Williamson 2000b). Moreover, an international knowledge transfer stimulates the economic growth of a country. A country experiencing more intensive “knowledge spillovers” increases its growth rate (Torstensson 1999).

This particular research is conducted via four methodological phases. It collects data (i.e., exhibiting) and then assesses it by comparing the real property processes (valuing). That in turn is followed by an analysis explaining the results (explaining) and completed by proposing a new solution for Belarus (advising) (Dijk 2002). This last phase, the most important one for this study, concerns a knowledge transfer from two countries to a recipient country, i.e., Belarus.

The present research is conceived as an advising study comparing three European countries and proposing improvements for the Belarusian property processes. Specifically, by comparing the countries, attempts are made not only to find an answer to the question of how these specific property processes are

arranged within specific jurisdictions, but also to develop improved models of these property processes for Belarus under the given social and economic circumstances.

To implement such a comparison, this research applies an ontological approach for a comparison of property processes developed and employed within the COST Action G9 (Zevenbergen, Frank & Stubkjaer 2007, Mattsson 2006 & 2011, Ferlan, Sumrada & Mattsson 2007).

Earlier comparative research on property formation and property purchase processes in five Nordic countries (Kort & Matrikelstyrelsen 2006) may be mentioned here as an example of an evaluating comparison, while an exhibiting comparison may be exemplified in LMV (2003) with the description of the real property and property rights in the Nordic countries (i.e., Denmark, Finland, Iceland, Norway and Sweden). An example of an explaining comparison is about clarifying the effects of different regulations on business transactions and indicates where business transactions are more burdensome (Stone, Levy & Paredes 1996).

In other words, the entire idea behind the comparison is to identify general principles from the relevant foreign experience, country by country and then to critically evaluate the situation in Belarus, concluding with suggestions for appropriate future changes. This comparative research has no ambition as to proposing either a superior solution, or a new one not represented in any studied country. Quite the opposite, it seeks to develop solutions that are better than existing ones.

3. Theoretical framework

This research is based on the assertion that in order to comprehend the economic performance of a country, an understanding of its institutions and institutional changes is vital (Alston 1996). The economic performance of a country in general, and of a property market in particular, cannot be improved without establishing efficient institutions characterised by lower transaction costs.

This chapter explains the fundamental theoretical concepts upon which this research is built. Specifically, the concept of institutions and their influence on the economic performance of a country are elaborated in detail. The concepts of property rights and transaction costs are also discussed along with how the latter are affected by certain specific factors.

3.1 Economic performance under New institutional economics

Only recently has the institutional framework of a country been directly connected theoretically to its particular economic results. The interdependency between economic performance and institutions is recognised as a successive chain comprising, for example, institutions, exchanges and their costs (Coase 1998). To increase economic results, a well-functioning exchange on the market with low costs (i.e., transaction costs) is a requirement. This complicated interrelationship may be seen as a “complex interrelated structure” (Coase 1995:245).

During the domination of *neoclassical economics*, the existence of an institution-free society was widely accepted. Specifically, neoclassical economics rejects any key role of institutions in increasing the economic performance of a society. Neoclassical theory assumes a perfectly competitive market, complete property rights, zero enforcement, neutral government and permanent tastes (North 1978). It may also be characterised through zero-transaction and adjustment costs including zero costs as to obtaining complete information and negotiating contracts. All resources are fully allocated to private owners, who normally have profit maximising behaviour (De Alessi 1983). This theory specifically assumes that maximum income can only be reached if transactions are costless and property rights are well-defined (Coase 1937, 1960; Stigler

1966). Thus, neoclassical economics is firmly rooted in a rational choice model (Eggertsson 1990a).

For the entire economy in general, zero transaction costs mean an independent allocation of economic results despite the property rights' structure (Coase 1960). If it costs nothing to transact, the parties will transact until they are in the most favourable conditions.

The foregoing is relevant to a perfect market, which is not the case in today's reality: "The world of zero transaction costs turns out to be as strange as the physical world would be without friction" (Stigler 1972:12). Following this development, *new institutional economics* (NIE) has emerged due to the recognition of a close connection between institutions and economics (North 1990, 1992, 1993). Specifically, NIE introduces the concepts of non-zero transaction costs and institutions with property rights (Eggertsson 1990a).

New institutional economics is differentiated from "old" institutional economics (Coase 1998). NIE is built upon institutional economics, which in turn interconnects conflict, dependence and order, based on the principles of scarcity, efficiency and futurity. NIE also acknowledges institutions as collective actions influencing individual actions through control, liberation and expansion (Commons 1931).³²

The theory of institutions is rooted in a theory of human behaviour and of the costs of transacting (North 1990, 1993, 1994a). NIE is based on three affirmations, namely that there are other appropriate property rights along with the ownership right; these property rights allocate resources in predictable and particular ways; and finally, there are non-zero transaction costs (Pejovich 1990).

In contrast to neoclassical economics, NIE assumes an imperfect market with scarce resources and, consequently, inevitable competition. It also recognises the crucial role of institutions and, therefore, accepts the importance of ideas and ideologies for economy. It further assumes incomplete information and consequently informational asymmetry between transacting parties. This in turn generates transaction costs. When transaction costs arise, institutions matter as they form a framework for human interactions including exchange (North 1990). One of the specific features of NIE is the susceptibility of institutions to analysis (Williamson 1998).

A process in which a buyer is competing against others for the goods being obtained from a seller is acknowledged as an exchange (Alchian 1965). From an individual point of view, an exchange is connected with a pure private benefit, i.e., when this benefit exceeds the cost incurred.

It would be a mistake not to mention that the economy of a country depends not only on institutions but also on production with new technology. Thus, both are of utmost importance for increasing economic performance, as

³² To further explore the differences between "New" and "Old" Institutionalism from a historical perspective, see Hodgson (1998) and Scott (1995).

they influence production and transaction costs. Among a wide range of institutions, well-established formal rules and appropriate property rights play significant roles since they directly affect a magnitude of transaction costs. Specifically, the economic performance of a country depends on production and institutions, including formal and informal rules along with enforcement (Figure 10).

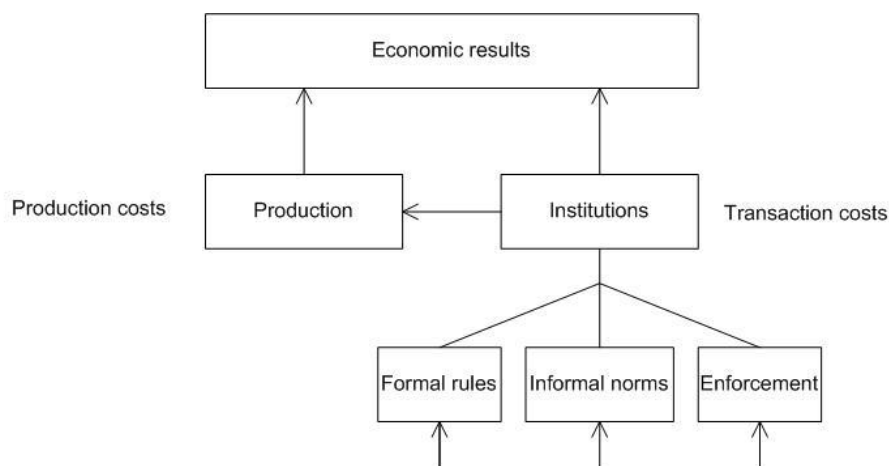


Figure 10: Interrelation between economic performance, production and institutions.

Thus, the total costs of the economy consist of production and transaction costs. Specifically, production costs are generated by production processes and include, for example, the costs of all resources used for the transformation of inputs into outputs (Williamson 1990), while transaction costs are the result of the existence of institutions aimed at reducing uncertainties on the market. Transaction costs include the costs of defining and protecting formal rules, including property rights, as well as the costs of enforcement. How large the transaction costs are depends mainly on the motivation of the players (i.e., human behaviour), the complexity of the environment (i.e., specialisation) and the measurement and enforcement abilities of the players (e.g., how detailed contacts are and how strong the players feel about the coercive power of the state). Direct connections between transaction costs and institutions are easier to recognise than those between production costs and technology (North 1990).

Consequently, this research proceeds from new institutional economics as a theoretical basis and further employs the concepts of institutions and transaction costs for examining and comparing real property processes.

3.2 Institutions

This section explores the concepts of institutions serving as the foundation for this research. In particular, emergence, definitions and components of institutions are elaborated in order to place the real property processes within the institutional environment of a country.

Institutions are generally considered as the constraints consciously developed for shaping human behaviour. This is based on the assertion that efficient institutions are one of the prerequisites for the functioning of a country's economy in general, and the property market in particular, as they affect transaction costs. Thus, institutions define a way things must be done, while efficient institutions define productive pathways for doing things. When such institutions are absent, doing things becomes impossible or very costly. Moreover, institutions have to be mobile and open-ended in order to function smoothly and at a low cost that is adjustable to new circumstances (Furubotn & Richter 1997).

Institutions normally emerge spontaneously or intentionally (Furubotn & Richter 1997) and are framed and changed by individuals (Hodgson 1998). An institution intentionally established is deliberately designed by an authority (e.g., a parliament or president), through a special order referred to as a "made order", while the self-interest of individuals triggers the spontaneous establishment of institutions recognised as "evolutionary rationalism" (Hayek 1973). Moreover, the rules regulating human behaviour may also be developed without conscious human influence in the form of conventions and kept without any formal enforcement. The human desire for approval is a driver for the transformation of these rules. In particular, rules of property are considered to evolve in this way (Sugden 1989).

The present research elaborates a regulative component of institutions as it formally connects the real property processes with a property market (Scott 1995).

3.2.1 Significance of institutions

A significant market economy is only possible with appropriate institutions (Coase 1992). One purpose of institutions is to keep individual behaviour within permissible limits (Furubotn & Richter 1997) and to determine the incentives of a society (North 1994a). Institutions have historically emerged to reduce uncertainties and thereby, decrease transaction costs by making exchanges more secure and predictable. Uncertainties in turn are the results of incomplete information as to human behaviour. Thus, the major role of institutions is to establish a stable (however not always efficient) environment to support human activities (North 1990).

In recent decades, many scholars within the framework of new institutional economics have produced multiple definitions of institutions while addressing various institutional issues.³³ The most cited present institutions as “the rules of the game in a society” or “humanly devised constraints that shape human interaction” (North 1990:3). Institutions as non-technologically determined constraints affect social interactions and create incentives for social behaviour (Greif 1998). Specifically, they determine an incentive structure of a society (North 1996).

Institutions may be presented as a combination of cognitive, normative and regulative activities created in order to provide stability and meaning to social behaviour (Scott 1995). The regulative component of institutions emphasises the formal rules and enforcement mechanism along with the costs of regulations (i.e., transaction costs) (North 1990). The normative element of institutions consists of norms and values that not only constrain social behaviour but also enable and empower social actions (March and Olsen 1989). The cognitive dimension of human existence is a central concept of cognitive elements with an emphasis on symbols, beliefs and meanings of social life.³⁴

Institutions are consequently often identified as a combination of formal rules (can change quickly), informal constraints (can change gradually) and an enforcement mechanism. Specifically, formal rules include laws, constitutions and property rights, while informal constraints consist of sanctions, customs and traditions (North 1991).³⁵ Such a combination ultimately structures human behaviour and produces valuable outcomes.

Both formal and informal rules may trigger changes in existing institutions. These changes might lead to either efficient or inefficient outcomes. Thus, institutions may be presented as a “mixed bag” consisting of those decreasing and those increasing transactions costs (North 1990). Institutions with “positive incentives” may increase economic performance and vice versa (North 1992). In particular, institutions stimulating competition, decentralised decision-making and creating incentives for obtaining new knowledge trigger economic growth.³⁶ If institutions generate inefficient incentives within a system, such a system will most likely produce inefficient results.³⁷

Applied to the property market, some institutions, such as rules for securing property rights and legal frameworks for smoother exchanges on the market, reduce transaction costs, while others, such as rules establishing

³³ For a general overview of these definitions, see Eriksson-Zetterquist (2009).

³⁴ A wide range of cognitive elements can be found in D’Andrade (1984).

³⁵ Further elaborated in sections 3.2.2 and 3.2.3.

³⁶ The entire set of insights on how institutions provide incentives may be found in Laffont & Martimort (2002). Various examples from the economic literature with close relations between the economic results of a country, property rights and incentives might also be studied in Furubotn & Pejovich (1972).

³⁷ Economic incentives are normally decentralised as they are directly linked with human behaviour, in contrast to governmental regulations considered as quite centralized (Schultze 1977).

bureaucratic “barriers” and a weak enforcement mechanism, raise transaction costs.

Institutions are not necessarily socially efficient as they serve those stakeholders possessing the bargaining power for the creation of new rules (North 1993). Therefore, they normally serve as an indicator of whether a system will survive or fail in the course of development. The Soviet system with its vague property rights system and higher transaction costs (i.e., measurement and enforcement costs) may be taken as an example (Eggertsson 1994). The system’s failure may be explained by the fact that assets were not put to their most efficient use, which in turn triggered the rationality conflict between individuals and groups.

3.2.2 Formal rules

A society may reduce transaction costs by introducing formal rules decreasing the costs of enforcement, monitoring and information. Formal rules present a set of political rules (e.g., decision-making and monitoring), economic rules (e.g., property rights³⁸ with an ability to generate income) and contracts (e.g., specified provisions) (North 1990).

These formal rules are interconnected, namely a specific allocation of property rights corresponds to a particular political structure, and any change in one will most likely trigger adjustments in the others. The Russian revolution³⁹ may serve as an example of when a new political structure initiated changes in land ownership: land previously privately-owned became state-owned literally overnight.

Political rules take priority over economic ones and therefore an allocation of property rights may often result in inefficient arrangements (North 1981). In particular, property rights determine economic performance and the distribution of resources. Property rights also determine resource utilisation, assign costs and benefits, create incentives and limit periods of investment, production and exchange. In general, property rights influence economic growth through incentives (Coleman 1966, Libecap 1986). However, if the link between results and corresponding rewards is tenuous, the incentives do not lead to significant economic results (Madhok 1996). Such a link in turn reduces incentives to work. However, it also lowers the risk of cheating.

The move from informal norms to formal rules is widely acknowledged as lengthy and uneven over time. This occurs due to the increasing specialisation and division of labour, i.e., a transformation of a personal market into an impersonal one and the emergence of more complex societies. Formal rules may moreover increase the effectiveness of informal norms (North 1990).

³⁸ Further elaborated in section 3.3.

³⁹ In October 1917.

3.2.3 Informal norms and enforcement

Informal norms and enforcement are not examined in-depth in this research. However, for a clearer insight into an institutional framework, their functions and definitions are explained below.

Informal norms

Informal norms comprising, for example, codes of conduct, conventions, and norms of behaviour, influence an economy to no lesser degree than legislation and property rights despite the difficulties in structuring and describing them (North 1990).

Informal rules are never consciously designed, although all parties are interested in keeping them (Sugden 1986). Even countries with similar formal rules might produce different economic results. This can be due to the fact that various informal norms affect human behaviour in a way that individuals do not always make rational choices, e.g., duel (Frank 1987).

Countries willing to improve their economic performance consequently should introduce formal institutions such as those found in developed countries along with compatible moral norms (Bitros & Karayiannis 2010). The establishment of such moral norms is a lengthy process requiring many years of development. This might be one explanation for why developing countries have not achieved significant economic results after rapid political and economic reforms (Platteau 2009).⁴⁰

Enforcement

The main goal of government is not only to assign rules for the game but also to control and enforce those rules (Pejovich 1990). Enforcement can be either self-executing or accomplished either by other party or by the state or society (third-party enforcement) (North 1994b). The most efficient enforcement is regarded as enforcement carried out by a neutral third-party normally performed by the state as a coercive power monitoring property rights and effectively enforcing contracts (North 1990).

⁴⁰ A more theoretical elaboration on the issue of moral norms and market order can be found in Platteau (2000).

3.3 Property rights

This section develops the theoretical concept of property rights as a significant component of institutions. This description is intended to facilitate an understanding of the modelling of existing property rights⁴¹ in the selected countries.

3.3.1 Defining property rights

In a legal sense, owning land means possessing rights over land and, therefore, trading in land is transacting in these rights. Law determines these rights that individuals possess (Coase 1960, 1992). Thus, not land but the rights over it are exchanged on the market.

Property rights are generally seen as relations among people with regards to scarce resources and their use (Pejovich 2001). Specifically, property rights authorise individuals to select any type of use of a property from lawful ones (Eggertsson 1990b) and thereby to exclude others from using it (Alchian 1965). No party may have legal access to or physically damage the property of another person possessing a private right to it. However, property rights do not provide full protection and complete certainty for right holders. A state may legitimately curtail any freedom of action in cases to prevent harm to others (Mill 1982).

A property right entitles a party to the utilisation of a specific resource (Alchian 1993). A property right is assigned to a particular holder (e.g., an individual or state) and exchangeable for a similar right over other property. Open access to land is a specific property right not assigned to anyone and, therefore, no one is excluded from utilising this land.⁴² This property right differs from the property right of commons where non-members of a community are excluded from utilising a particular resource. The property rights over common resources may not create incentives for protection and consequently in turn can lead to their overuse (Alchian 1998). Under this right over land, an externality problem may emerge in cases when land users do not bear the costs entailed by them while utilising it (Ekbäck 2009a).⁴³ Thus, market efficiency is negatively affected by externalities (Clark 1991).

Three main types of property rights are distinguished, namely the right to use a property including its transformation and even destruction; secondly, the right to receive income by contracting with non-owners; and thirdly, the right

⁴¹ Discussed more closely in section 4.3.

⁴² This can alternatively be defined as the absence of property rights.

⁴³ The public-good type externality is elaborated by Grossman and Hart (1980) as well as O'Flaherty (1994).

to permanently transfer the ownership right of a property to another person (Eggertsson 1996).⁴⁴

3.3.2 Property right regimes and incentives

Property rights emerge only within a social environment in response to people's needs to deal with each other. The emergence of new property rights occurs due to the wishes of the parties to implement a new cost-benefit allocation and due to changes in relative prices and technology (Demsetz 1967, Alchian & Demsetz 1973). Incentives for applying new technology are also an important factor for emerging property rights (North & Thomas 1977).

The initial allocation of property rights precedes a market economy. If the future value of resources under market conditions is higher than the current one, the market will postpone the current use of resources. However, if the property rights are not allocated, there will be no incentives to save it for future use.

The development of property rights is an on-going process in a society where government plays a crucial role with regard to property rights. This process directly involves state authorities with their comparative advantages (i.e., compulsion and enforcement) over private owners.

Property rights need to be easily observed, enforced and exchanged in order to provide incentives for investment (Deininger 2004). Since the delineation of property rights is a costly process, property rights are never absolutely defined (Barzel 1989). If property rights are not clearly defined and not fully assigned, the value of resources decreases as the exchange of such resources is more costly and thereby less efficient (Coase 1960). In addition, unclear property rights in turn reduce incentives for long-term investment due to expectations of a lower return rate. This thus forces parties to more precisely define property rights through collective actions for reforming existing property institutions. An optimum allocation of property rights is only possible on a contractual basis (Bajt 1993).⁴⁵

Certain scholars distinguish three main types of property right regimes:⁴⁶ state, communal (i.e., commons) and private ownership (e.g., Demsetz 1967). Individuals, groups and the state are normally specified as potential right holders (Libecap 1986).

State ownership emerges when a state politically declares who is not authorised to use a state-owned property and thus excludes those from exercising this right.

⁴⁴ To learn about economic analysis of property rights, see Barzel (1989). A wide range of materials discussing property rights and economic performance of different countries along with property right and economic reforms in Eastern Europe is also developed by Pejovich (2001).

⁴⁵ For more on this issue see Buchanan (1975).

⁴⁶ Further elaborated in section 4.4.

Resources including land may also be more or less successfully governed through commons (Ostrom 1990, Hardin 1968). In particular, members of a community may possess a communally-owned right and forbid both private persons and the state from interfering with any member's exercising of rights. The nature of such rights closely depends on the type of government (Alchian 1998).

If the value of a communally-owned property increases, individuals spend more resources to transform it into private ownership. Such transformations may be brought about either by individuals or the state. Conversely, a real property remains communally-owned when the benefits from owning it are considered insignificant (Barzel 1989). The foregoing, in application to transaction costs, means that the costs of excluding outsiders from the use of a property are lower than the costs of making and enforcing agreements within a community (Field 1989).

Private ownership emerges when the right to exclude non-owners from exercising private rights is recognised by society. Thus, a private property right guarantees an owner an exclusive right as to the property's disposal. However, an owner uses a property as long as any physical attributes of another person's private property are not concerned (Alchian 1965). Private property rights generate economic wealth (Bromley 1989) by facilitating exchange and thereby reallocate resources to a more efficient use (Libecap 1986). By excluding others, private rights internalise externalities at a lower cost in comparison with communally-owned right.

In reality, an ownership right is not absolute as public law underlies the decisions of private owners, i.e., the ownership right might be fettered by a number of restrictions. It may be planning restrictions or the right of expropriation of land for public purposes (e.g., new public housing or a public road) (UN-ECE 2004) as well as restrictions regarding the extent and duration of private property rights.

Property rights, more strongly linked with private ownership, have a higher value than weaker property rights. To be transacted on equal terms, weaker private property rights (with a weaker range of rights assigned) require a larger value of the asset.

For an economy to function more efficiently, property rights in society should be assigned to those using them in a more efficient way. To achieve this, real property processes seek to be simpler and quicker. Thus, lower transaction costs are a pre-condition for a more efficient property rights distribution.

3.4 Institutional change

Various systems of property rights exist worldwide in spite of well-established solutions resulting in more efficient property rights allocation, growing

globalisation and permanently reducing information costs. Since this research aims at proposing changes to real property processes through reducing their transaction costs, issues of institutional change are of a special interest for a better understanding of the background to this research. Changes are generally triggered by economic losses caused by use of resources. Specifically, institutions change due to decreasing returns and imperfect markets with higher transaction costs.

From the very beginning, human beings faced similar problems resolved by different methods within different environments with different human capabilities. These differences might be explained by diverse institutional frameworks, differently facilitating transaction costs reductions (North 1990). Indeed, institutions in some countries significantly reduce transaction costs, while others do it to a lesser degree.

If an institutional framework and society in general stimulate changes and support a more efficient behaviour, such a society will survive (Alchian 1950, North 1990). Oppositely, those societies unable to change established institutions fail to meet new social challenges and therefore hamper their own economic growth. However, given time all societies adjust existing or develop new institutions in order to cope with reality (Simpson 1976).

Specifically, changes in land value, political pressure on land distribution, new production techniques, a number and heterogeneity of negotiating parties activate institutional change. Competition of interests also initiates the rearrangement of property rights and undermines institutions that hinder economic growth (Libecap 1986). Changes in relative prices are identified as sources of change (Demsetz 1967). They trigger the parties to political or economic exchanges where both or one become better off under a new agreement.⁴⁷

All parties, including politicians, bureaucrats and right holders, only support institutional change if they expect an increase of future utility. Therefore, new arrangements of property rights hypothetically take place if all parties involved are fully compensated. However, this is not the case in reality as gainers do not fully compensate losers and, therefore, the latter in every way possible resist proposed institutional changes. Thus, the more the formal rules change, the higher number of losers and, therefore, greater opposition is created (Libecap 1989).⁴⁸

Moreover, a development trend of a country may lead to inefficiency if a better technological solution fails to be introduced. Locked-in decisions, when a taken decision is costly to abandon in the long run, as well as path dependence when the past affects the present and future, are also influential

⁴⁷ Further elaboration of the crucial role of changes in relative prices can be found in North & Thomas (1973) and North (1981).

⁴⁸ The detailed elaboration of causes and consequences of institutional change can be found in Alston, Eggertsson & North (1996).

factors (Arthur 1988).⁴⁹ Past decisions on property right allocations limit the choice of future institutional solutions (Libecap 1989). Most legal systems in a critical situation normally accept path-dependent solutions, i.e., taken within existing well-established institutional frameworks (Mattei et al. 1999).

This research deals with real property processes anchored in existing institutions. Therefore, changes of institutions lead to changes in real property processes. Those changes are regarded as costly and time-consuming processes of which all parties should be aware.

3.5 Transaction costs

Transaction costs influence the economic performance of a country by triggering changes within institutions, normally from being less to more efficient. To conceive these changes, it is essential to examine a concept of transaction costs, as through transaction costs, different legal systems may be measured and meticulously compared (Mattei et al. 1999). This section thus elaborates on transaction costs in general along with related components and estimation in particular.

3.5.1 Defining transaction costs

An interested reader can find a multitude of transaction costs definitions in the recent scientific literature. Transaction costs are generally recognised as costs, divided into fixed and variable costs, generated by running an economic or social system (Furubotn & Richter 1997). Fixed costs specifically include the costs of specific instruments made in setting-up institutional arrangements, while variable costs are the costs of negotiation, drawing up contracts, settling disputes as well as monitoring and enforcement. In short, all costs not directly incurred in the production process are transaction costs (Cheng 1998).⁵⁰

With an application to a private property transaction, transaction costs are the costs of the establishment, execution and enforcement of private agreements. Thus, they are the costs related to the exchange of ownership titles, i.e., the costs of exchanging titles between real property and money (Demsetz 1968).

Through property rights providing right holders with an ability to exercise control over a property, transaction costs might be determined as the amalgamated costs of the resources required to transfer the property rights

⁴⁹ The sources of path dependence can be further studied in Arthur (1989) and David (1985).

⁵⁰ See Figure 10 in section 3.1.

from one party to another (Pejovich 1990) as well as the costs for establishing and maintaining the property rights (Allen 1991).⁵¹

3.5.2 Transaction costs components

Transaction costs⁵² generally consist of costs for measuring and protecting property rights along with policing and enforcement (North 1990). A change of any of these cost components may lead to a change in the total costs. Specifically, a modern specialised society seeks, first of all, to reduce transaction costs through a decrease of the costs of measuring the goods' attributes as well as that of an agent performance. The easiest way to do this is to establish standards that would be widely employed.⁵³

However, the costs of protecting and policing are more difficult (i.e., costly) to reduce. More efficient and performed at lower cost enforcement should also be regarded as reducing transaction costs. In particular, complete information, repeated deals and a tight social network (best based on kinship) form lower enforcement costs. It might be noted that the higher the moral principles (i.e., developed informal rules), the lower the enforcement costs and, therefore, the lower the transaction costs (North 1990). Shirking and cheating costs are also considered a part of the total transaction cost (Hennart 1993).

Furthermore, the well-developed formal rules and related informal constraints also affect, to a greater or lesser extent, the transaction costs. A change of formal rules is a costly process. In particular, formal rules are designed in a hierarchy: formal rules of a higher level are more costly to change than ones of a lower level. Thus, when designing rules, the costs of proving and measuring rule violations and the damages caused are always taken into account (Furubotn & Richter 1997).

Transaction costs also generally depend on the costliness of information. Specifically, a seller has full knowledge about the state of a real property and the quality of a neighbourhood, while a buyer possesses complete knowledge as to its own financial situation beyond that of the seller's knowledge. Some knowledge is easy to obtain, for example, knowledge about the physical

⁵¹ Some other notions of transaction costs, which are close to the foregoing definitions are given, for example, by Jensen & Meckling (1976), Goldberg (1989) and Barzel (1994).

⁵² An extensive theoretical overview on transaction costs economics with a systematic assessment of the empirical evidence can be found in David & Han (2004). Carter & Hodgson (2006) argue that the empirical evidence does not decisively support transaction cost economics.

⁵³ Some activities in this direction are also being implemented in the land administration domain. For example, INSPIRE Initiative (<http://inspire.jrc.ec.europa.eu/> [accessed 10th August 2011]), the FIG Guide on Standardisation (FIG 2002), the Land Administration Domain Model (LADM) submitted to the International Organisation for Standardization (ISO) in 2009 for acceptance

(http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=51206 [accessed 5th April 2011]).

conditions of the house can be gathered during an inspection on the spot, while the quality of a neighbourhood is more difficult (i.e., more costly and lengthy) to evaluate. To reduce transaction costs, the contracting parties therefore should be provided as complete and reliable information as possible.

3.5.3 Estimating transaction costs

A magnitude of transaction costs is directly connected with the ways by which an economic activity is arranged and performed (Furubotn & Richter 1997). In the past, a higher risk premium often negatively influenced a country's economy by preventing complex exchanges (North 1990).

A variety of attempts at transaction costs estimation has been undertaken worldwide on different economic levels. One of the initial attempts to express transaction costs in figures proved that in 1970, transactions made up more than 45% of the U.S. national income (Wallis and North 1986). During the ensuing years, the international scientific community has attempted to quantify the costs of property transactions on macro and micro economic levels. Specifically, the costs of the purchase of a constructed one-family house on one's own site in Finland have been calculated in monetary terms (Viitanen 2003). In the Netherlands, the transaction costs for purchasing a residential property have also been quantified (Molen 2003). In addition, an economic effect of secured property rights in the Netherlands (i.e., on a macro level) has been identified through the relationship between land administration and security of tenure, the land market and land use planning, as well as land taxation nationwide (Molen 2004).⁵⁴

Transaction costs have also been determined on a basis of the System of National Accounts (UN 1993) with an emphasis on the investments in the judicial-administrative infrastructures supporting the property rights and the real property transactions (Stubkjaer 2005). The transaction costs of the specific real property processes on national levels have been evaluated in Namibia (de Vries, Lewis & Georgiadou 2003).

The transaction costs (expressed in a monetary term) of property transactions with single-family homes have been estimated and compared in a range of the countries, namely Sweden, Finland, Norway, Poland, England and USA (Lindqvist 2008). In particular, the calculation of the direct transaction costs (i.e., compulsory taxes, compulsory fees including broker and other fees) served as a basis for identifying the crucial aspects to be taken into consideration for reducing transactions costs. These aspects are the number of professionals involved in the transactions, the balance of the interests of the

⁵⁴ A practical elaboration on the linkage between the land market, land registration and transaction costs might be studied in Zevenbergen (2000).

transacting parties, standardisation of a contract form and transparency of the transactions.

The transaction costs of the real property processes may be estimated either in terms of money (i.e., total sum of different fees and taxes as paid by the parties) or hours spent (i.e., visiting different organisations and information search), or a number of the activities performed by stakeholders.

Since the present research seeks to compare the national property processes, an estimation of the corresponding transaction costs is recognised as a suitable approach. However, transaction costs of the real property processes are further determined in relative terms, i.e., without quantifying exact sums in term, for example, of money or hours. This statement is based on the assumption that precisely measuring the total transaction costs appears to be an unrealistic task as a part of transaction costs is “hard-to measure” costs such as time spent queuing, acquiring information and corruption (North 1990).

3.6 Transaction costs indicators

3.6.1 Property rights

Transaction costs are closely connected with property rights (Barzel 1989). In particular, private property rights entitle an owner to freely use and exchange a property. The latter generates transaction costs and thereby directly connects property rights with income maximisation.

Specifically, if property rights are undefined, a transaction generates no profit and oppositely, if property rights are clearly defined, a transaction generates maximum profit. Thus, the allocation of property rights determines income allocation⁵⁵ (Allen 1991).

The markets of developed countries differ from those of developing countries, for example, in the level of security of property rights (North 1990, De Soto 2000) and accordingly, the transaction costs generated. In particular, the security of property rights positively affects the value of a real property and is inversely related to the uncertainty of the buyer. The magnitude of transaction costs is in turn linked with the level of security of property rights and the value of real property as a buyer’s utility function. Specifically, this means that the higher the security of property rights, the higher the value of real property and the lower the transaction costs (Figure 11).

⁵⁵ This statement is based on the Coase Theorem (1960).

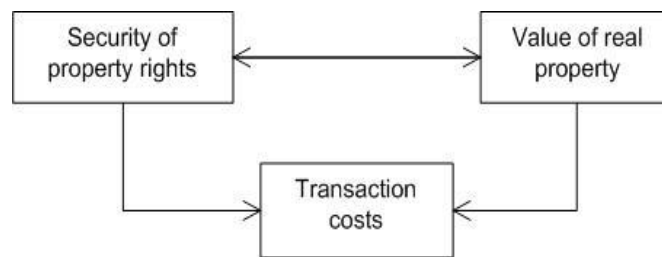


Figure 11: Interdependences between the value of real property, security of property rights and transaction costs.

While transacting a property, uncertainty conditions including information asymmetry affect the behaviour of the contracting parties. Specifically, the greater the uncertainties are, the higher the risk that profits go to risk-taking rather than to cautious individuals (Alchian 1950).

Thus, a solution for reducing transaction costs generally lies in the clarity of law and specifically in less onerous legal requirements as to exchanges of property rights (Coase 1992). This statement is particularly applicable to the real property processes. Specifically, simple property processes seem to reduce transaction costs and thereby activate a property market. This in turn affects the economic results of a country in general.

3.6.2 Organisations

On a macroeconomic level, transaction costs increase due to the fact that national economies are becoming more specialized and complex and, therefore, more resources are needed for coordinating the activities. Thus, issues of human coordination and cooperation are of significant importance for a transaction costs reduction. The parties take decisions based on incomplete information and thereby decisions are sometimes erroneous. Strong incentives are therefore demanded to trigger cooperative behaviour by individuals (North 1990).

Organisations are identified as “players of the game” determined by the institutions (North 1996). Specifically, an organisation is seen as a group of people united by a common goal and acting in respect to this goal (North 1990). An organisation normally applies a wealth-maximising behaviour, i.e., it either takes decisions within the existing institutional framework or puts efforts into changing that. An organisation normally survives due to its willingness to accommodate change. In particular, organisations with worse transaction cost economizing are replaced by those with better ones. In other words, those organisations performing their tasks more efficiently will remain, while those

that do not will disappear in the course of an economic development of a country (Williamson 1981).

The objectives of organisations may differ and organisations can be divided into human (e.g., a family, bureaucracy, a tribe, a corporation, an army) and real organisations such as the economy, the market and a firm (Marschak 1998). An organisational structure of a society may consist of state and private organisations that differ in respect of the ownership right to the assets. Specifically, the managers of state organisations are not able to transfer the ownership right that in turn leads to their opportunistic behaviour, oppositely to private owners with their freedom of ownership transfer. In addition, the private organisations normally take decisions increasing efficiency⁵⁶ and during a shorter decision-making period in comparison with state organisations. This depends, for example, on the absence of political pressure and a fewer number of the activities. The state organisations are less likely to introduce innovations reducing managerial costs (De Alessi 1983).

Furthermore, in some countries a municipality may operate as a state organisation with a collective decision-making process and unavoidable political influence from higher administrative levels, while in other countries a municipality may act as an independent public body where, moreover, a decision-making process may be delegated to the civil servants within a municipality (i.e., experts within particular fields of expertise). The former requires extra time due to, for example, a wider range of the formalities and thereby generates higher transaction costs. This is in contrast to a municipal decision-making process delegated to an expert who is responsible for all the decisions taken and actions performed. In such a case, transaction costs seem to be lower due to a shorter time for decision-making. In addition, it is hardly possible for a municipality as a state organisation to eliminate political pressure and to avoid possible confrontations within a municipality. Thus, within a municipality, a specific decision-making process (i.e., collective vs. expert decision) along with a risk of political influence (if a municipality is a state organisation) may affect transaction costs. All these need to be taken into consideration when estimating transaction costs of real property processes.

Efficient organisations are an important component in order to increase the economic performance of a country. Factors making an organisation efficient are, for example, competition, decentralised decision-making, detailed contracts as to property rights and well-developed bankruptcy laws (North 1990).⁵⁷

In application to the present research, coordination and information flow among stakeholders affect transaction costs of the real property processes. Indeed, the fewer the stakeholders with a smoother flow of complete

⁵⁶ This is not always the case in the state organisations.

⁵⁷ For an in-depth insight into effective organisations, see Williamson (1985), Nelson & Winter (1982), Pelikan (1987).

information, the lower the transaction costs of a property process in general. Thus, the number of stakeholders with their information flows is another aspect of transaction costs estimation.

3.6.3 Information

To improve its economic structure, a society continuously searches for all knowledge accumulated. However, this knowledge is spread among different individuals and not 'given' to one person, i.e., it is not complete. One of the main problems of society is finding a better way of using this 'global' knowledge consisting of the scientific knowledge and knowledge of the particular circumstances (i.e., of time and place). While the former can be obtained through experts, the latter is only available for a limited number of individuals familiar with the local conditions not known by most people (Hayek 1945).

Information costs are one of the components of transaction costs (Coase 1998). Incomplete information asymmetrically held by the parties and their different perception of the reality creates the prerequisites for an imperfect market. Markets fail to a large extent due to information asymmetry (Arrow 1970).

Information asymmetry is distinguished as *ex ante* and *ex post* asymmetries (Dietrich 1994). *Ex ante* asymmetry occurs when one transacting party possesses lesser information on a particular property transaction than another. However, it disappears as soon as the transaction is completed. Such asymmetry often results in adverse selection (Akerlof 1970). *Ex post* asymmetry takes place when one transacting party has lesser information than the other even after the completion of the transaction. This type of asymmetry, though in the insurance company context, is recognised as moral hazard (Arrow 1963).

Human beings often take a decision based on incomplete information and on subjectively derived and mostly erroneous models (North 1996). Information feedback is normally missing or insufficient to adjust these models. Therefore, incomplete information affects the transaction costs and thereby an economic performance of a country in general. In particular, the less complete the available information, the higher the transaction costs and the more the results are going to be inefficient (Mattei et al. 1999). Thus, costs of information influence transaction costs as information is costly and the parties hold it asymmetrically (i.e., information is incomplete).

3.7 Transaction costs as criterion of property process comparison

Institutions establish an incentive structure for the activities carried out by the organisations. Specifically, institutions create particular incentives, while organisations put efforts for their implementation within the formal legal framework. As a result, the economic results positively change, however, they may also even be reduced or stay invariable. Many countries are aware that their current low economic results are related to an inappropriately developed institutional framework (North 1990). Institutions theoretically lower transaction costs not only through reducing uncertainties but also through establishing simple and stable processes facilitating transactions (Meyer 2001).

This research applies transaction costs as a key concept for the comparison of real property processes since it directly affects the process's efficiency. Having learnt how the processes are arranged and performed in a particular country, it is deemed feasible to compare them through the transaction costs generated.

Specifically, this study seeks to relatively identify transaction costs, first of all, through the number of stakeholders involved as the time of a process implementation directly depends on their number. A larger number of stakeholders involved and thereby a complexity of their individual information, transferred between each other, may lead to market inefficiency with informational asymmetry among the parties concerned. This in turn increases transaction costs, including moral hazards (i.e., hidden action problems) and adverse selection (i.e., hidden information) (Fernagut et al. 2004).

Furthermore, the responsibilities of the stakeholders also appear to affect the transaction costs of the property processes. In particular, this concerns, for example, the involvement of state and private stakeholders along with a role of a local government body as a potential formal decision maker or as an advisor. Specifically, while taking a formal decision, the activity time normally increases due to a range of formalities mandated to be carried out. In addition, a variation of activities with their repeating character within a process is acknowledged as influencing transaction costs, as the more the activities that are repeated within a process, the longer the process that is implemented. Moreover, if an activity has an indefinite period with unclear time limits, this is regarded as increasing transaction costs due to a risk for delays caused mainly by a stakeholder.

The magnitude of transaction costs particularly depends on the institutional arrangements of the property processes. This research assumes that totally measuring the transaction costs of a property process is a complicated task with many economic indicators employed.⁵⁸ It thus estimates transaction costs in relative terms.

⁵⁸ This is not an objective of the present research.

Specifically, a real property process consists of the activities performed by a number of stakeholders varying among the countries. They process and distribute information among each other. This in turn generates transaction costs at the end of a property process (Figure 12).

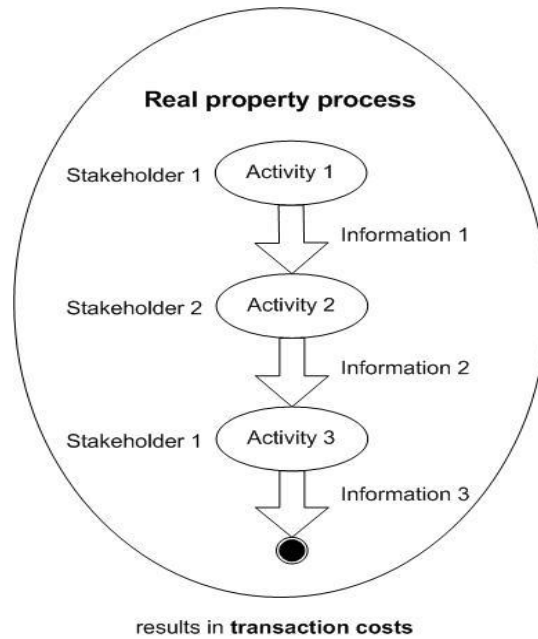


Figure 12: Transaction costs as result of the real property process.

Thus, this research relatively estimates the transaction costs of a specific property process and further compares these as between the countries.

4. Framework for analysing property rights

The previous chapter elaborated on the fundamental theoretical concepts underlying this research. This chapter further examines the concept of property rights and provides a model for the examination of the property rights in the selected countries.

4.1 Real property

Globalisation considerably increases the mobility of products and capital. In particular, real property transactions now stretch over national borders with this number consistently growing. However, until recently, real property law has remained substantially national and therefore the concept of *real property* varies in the different countries.

A large body of scientific literature provides a range of property definitions. For example, a *property* is “an object to which legal rights may be attached” (UN-ECE 2004:8). More detailed, a *real property* is defined as “land and anything growing on, attached to, or erected on it” (Black’s Law Dictionary 2005). This definition excludes anything that may be separated from the land without damage. Thus, an object and the related legal rights are two main components comprising a concept of a real property.

The foregoing definition is in line with the European (e.g., English law) definition of a real property. Specifically, in English law a real property (i.e., land) includes everything that is affixed to it, along with the air (the right above into the sky) and whatever is below (the right down to the centre of the earth). Moreover, it may include land that is under water (i.e., sea-bed) (Simpson 1976).⁵⁹ The things attached to land are considered its fixtures in compliance with the principle of *superficies solo cedit* (i.e., the surface yields to the ground). This principle has its origin in Roman law and serves for governing land ownership.

In general, land is normally regarded as a real property in a legal sense. The rights to a real property (i.e., to the land with attached buildings) are treated as a bundle of rights. To decrease uncertainty for an owner, all property rights

⁵⁹ A more detailed elaboration of the respective definitions of a real property in Slovenia, Sweden and Belarus is presented in the separate country chapters.

should be clearly defined, i.e., they should be exclusively delimited, protected and enforced. Different types of ownership exist due to the divisibility of the bundle of property rights associated with this resource (Alchian & Demsetz 1973).

4.2 A bundle of property rights

Property rights can be represented as a bundle of different rights, for example, such as the right to lease and a right of way, which an individual has over resources. These rights may be divided among different right holders. This separation is acknowledged as a partitioning of the property rights (Alchian 1965). This means that several persons possess the private property rights to various partitioned uses of the land.⁶⁰

Each land plot has its unique set of property rights (i.e., a bundle of rights), which may belong to different individuals (Payne 1997). This “bundle of sticks” reflects the number of rights, their size (i.e., thickness) as well as their duration (i.e., length of the rights) (Simpson 1976). In particular, land held in private ownership by an individual, for example, can be leased to another person and have an easement right as to another property.

Moreover, some rights, such as the right to erect a building on the land, can be taken away by the state. Some rights perhaps are never available (i.e., prohibited) for disposal by a proprietor, (e.g., the right to capture a protected species). The property value does not necessarily decrease if a specific right is taken away from the owner (Meyer 2000). Specifically, this can occur in cases of installation of electricity, water or sewerage systems for residential properties.

The property rights assigned to land in a country vary depending on the national legislation. Some scholars may also acknowledge rights to land as social conventions regulating the distribution of benefits gained from the specific uses of land (e.g., Deininger 2004). Admittedly, the complete bundle of property rights is rarely documented in most countries.

4.2.1 Land tenure

Land tenure is the legally or customarily defined relationship among individuals or groups with respect to land (FAO 2002). Land tenure generally connects real properties with their respective right holders through the property rights.

Land tenure is internationally distinguished as private, state, communal and open access⁶¹ (FAO 2002). The term ‘tenure’ originates from English

⁶⁰ An analysis of partitioned use rights may be found in Coase (1960).

⁶¹ See section 3.3.

feudalism, a derivative from the Latin term for *holding* or *possessing*, meaning “the terms on which something is held: the rights and obligations of the holder” (Bruce 1998:1).

Tenure systems all over the globe are distinguished as formal (i.e., regulated by formal laws) and informal or customary (i.e., ruled by customs or traditions). A formal tenure system is normally regarded as the basis for economic development (UN-ECE 2005a) and managed by land administration (Nichols 1993). Nowadays, increasing attention is being paid by the scientific community as to the possibilities of a transformation of customary tenure systems into formal or semi-formal ones.⁶² The idea of transformation for strengthening national credit markets and mortgage financing to further activate economic development is recently being actively promoted (De Soto 2000).⁶³

4.2.2 Land registration

The registration of property rights is one of the most common ways to secure land tenure. Under a formal tenure system, property rights on land are protected and enforced by the state and recognized by other parties. However, this is not always applicable to customary tenure systems. Indeed, indigenous users (converted to leaseholders of the state) may lose their land due to a risk for potential eviction. Thus, the state and its titles may also act as a source of insecurity (Bruce & Migot-Adhola 1993).

Within Europe, there are countries (e.g., Germany, Finland, the United Kingdom, particularly England and Wales) with different approaches to land registration. In the Nordic countries, for example, a property purchase is valid without registration, since ownership is already transferred by the signing of a purchase contract and not by registration, as is also the case in Germany. England and Wales, in turn, introduced obligatory land registration only in 1990 through amendments to the Land Registration Act (Millgård 2003).

Land registration mainly produces data on land plots (i.e., objects), property rights and their holders (i.e., subjects). This data ensures answers to questions such as who possesses what at this particular moment of time, in which manner and where (Figure 13).

To establish a link between land and its holder, both parts should be clearly defined. Without these pre-conditions, property rights cannot be established in a secure way. Specifically, a land plot should be recorded in a land cadastre and its boundaries are normally to be demarcated on the ground. As

⁶² General insights into this problem can be found in Fitzpatrick (2005), Nkwae (2006), Toulmin (2008) as well as Meinzen-Dick & Mwangi (2008) and Benjaminsen, Holden, Lund & Sjaastad (2008). Specific research on the customary tenure institutions and its respective drawbacks in peri-urban areas of Ghana can be found in Arko-Adjei, de Jong, Zevenbergen & Tuladhar (2010).

⁶³ However, land titling does not necessarily stimulate economic growth nor reduce global poverty (Payne et al. 2008).

soon as the land plot is recorded (i.e., recognised both physically and legally), it might be connected with a right holder via a property right.

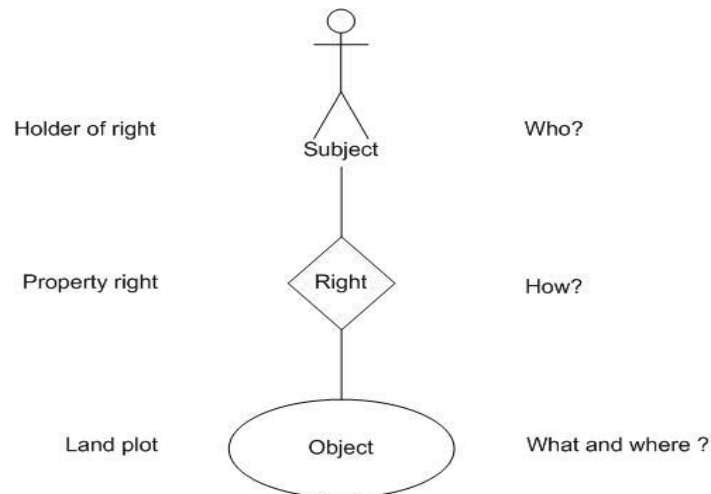


Figure 13: Relationship between a person and real property (based on Henssen 1995).

If the link between land and a right holder is missing, no individual holds the property right over the land. In such a case, ‘open access’ to land emerges and everyone is able to benefit from utilising it. This may, in turn, lead to an overexploitation of the land, and in some cases, cause a decrease in efficiency of land use (Hardin 1968).

4.3 Modelling property rights

Real property processes serve as tools for arranging property rights. They may rearrange both land and any property rights attached. Thus, an examination of the property rights of a particular country is assumed to facilitate a subsequent analysis of the real property processes. Classifying a set of existing property rights nationwide is a demanding task, as rights are routed in a national legal system, which normally is intricate and nuanced.

To provide a framework for the systematisation of existing property rights in the selected countries, and to establish a foundation for obtaining in-depth

insights into these property rights and their legal content, the legal cadastral domain model⁶⁴ is recognised as a suitable instrument.

4.3.1 Cadastral domain modelling

Cadastral domain⁶⁵ modelling is referred to as a modelling of a particular problem domain. It has become a 'hot' research topic within the international surveying community, invoked by a growing number of research projects (e.g., within the FIG framework and the COST Action G9⁶⁶). The latest development in this field is the submission of the land administration domain model (LADM) to the International Organisation for Standardisation (ISO).⁶⁷

Legal cadastral domain model

The legal cadastral domain model (LCDM) is seen as a specialised part of the land administration domain model,⁶⁸ originally tested on Swedish real property legislation (Paasch 2005, 2011). An attempt at classifying and modelling the rights, restrictions and responsibilities related to a real property in Portugal was recently undertaken (Hespanha, Jardim, Paasch & Zevenbergen 2009). LCDM specifically seeks to systematise existing property rights and bring to light their interdependencies from a theoretical perspective.⁶⁹ For this present research, a theoretical perspective of systematisation is of a special interest.

LCDM is specifically described as a conceptual schema, placing the ownership right in the centre (Figure 14). It thereby acknowledges ownership as the principal property right, to which other property rights refer. This right legally connects a person (i.e., an owner) to the land.

In addition to the ownership right, LCDM describes those property rights beneficial and limiting a property owner and/or a real property, along with any public advantages and regulations as well as providing their legal content

⁶⁴ Paasch (2005, 2011).

⁶⁵ Equated here with the land administration domain.

⁶⁶ http://w3.cost.esf.org/index.php?id=233&action_number=G9 [accessed 10th August 2009].

⁶⁷ To learn more about the initial standardisation efforts of the cadastral domain, see Lemmen, Molen, Oosterom, Ploeger, Quak, Stoter & Zevenbergen (2004).

⁶⁸ The land administration domain model (LADM) incorporates cadastre and land registration, specifically referring to the rights, responsibilities and restrictions affecting land (or water), as well as the geometrical (spatial) components thereof. It may serve as an extensible basis for the development of an efficient cadastral system in order to refrain from reinventing the same system functionality over again. LADM also aims at serving as a tool for the establishment of standardized information services both on national and international levels (Oosterom, Groothedde, Lemmen, Molen & Uitermark 2009).

⁶⁹ A recent attempt to view the interdependencies of rights, restrictions and responsibilities from technical standpoint has also been undertaken, see Lemmen, Oosterom, Eisenhut & Uitermark (2010).

(Figure 14). In particular, the ownership right is linked with the specific property rights considered as being assets or burdens to the ownership right. The positive rules (i.e., beneficial rights and public advantages) are referred to as assets, while negative rules (i.e., limiting rights with public regulations) are determined as burdens.

Specifically, beneficial and limiting property rights may emerge or be cancelled through either an agreement, or a decision of a court or an authority. LCDM divides these rights into five general classes of property rights that in turn specify their legal content. These classes are property to property right, person to property right, common right, latent right and monetary liability.

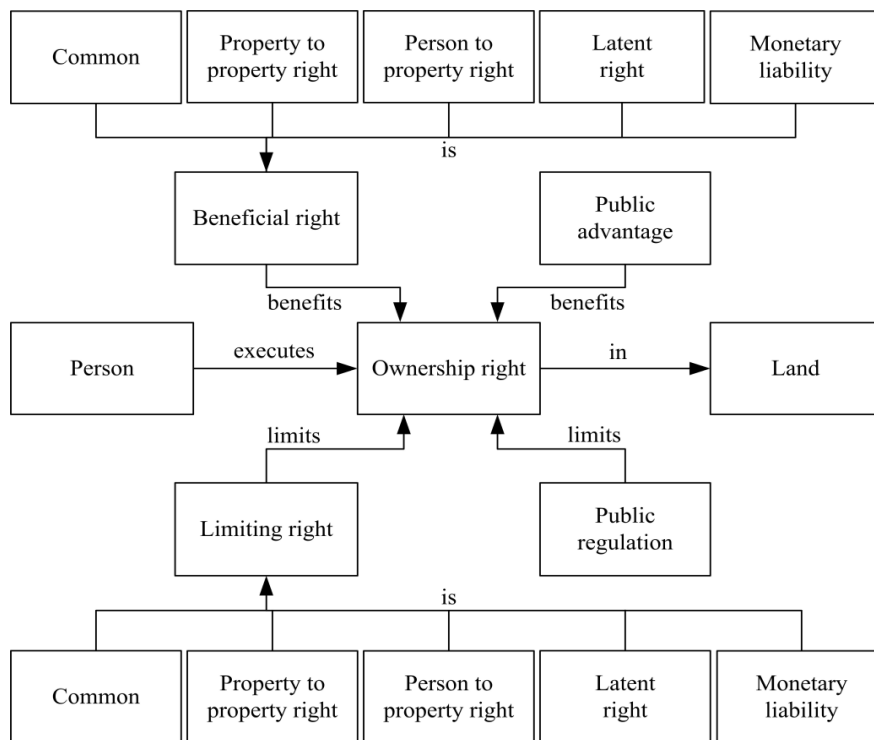


Figure 14: The legal cadastral domain model (Paasch 2011).

A range of property rights recognised as those most important for a real property process is described in detail below and further examined in the selected countries, while public advantages and regulations are outside of this work.

4.4 Classification of property rights

This section develops the classification of property rights intended to facilitate an understanding of real property processes. This research employs the LCDM classification and describes the existing property rights in the selected countries in accordance with it.⁷⁰

Certain property rights are frequently treated during the real property processes and their examination in each selected country will assist in the analysis of these real property processes. From the perspective of this research, the following property rights are appropriate for further examination:

- Ownership right;
- Property to property right;
- Person to property right; and
- Monetary liability.

Common rights and latent rights may also be treated during the real property processes, though obviously to a lesser extent. Due to this, these rights are considered as less significant in respect to the aim of this research.

4.4.1 Ownership right

In legal terms, ownership was initially defined by the French Civil Code of 1804-1808 as the right of free enjoyment of a property and its disposal as long as such does not contradict existing laws and regulations (Payne 1997).⁷¹ Among a variety of property rights, the ownership right provides an owner with a maximum set of rights permissible within the formal tenure system.

The international surveying community widely recognises *ownership* as the right to use a property, to dispose over it and to benefit from the right connected with it (UN-ECE 1996, 2005b). The ultimate power of disposal is recognised as the crucial element of ownership (Ryan 1998). Ownership also means the right to exercise control (Grossman & Hart 1986). This differs from the right of possession and occupation in the fact that ownership is regarded as the right to enjoy, while possession and occupation are the ability to enjoy (UN-ECE 1996).

⁷⁰ A division of property rights into rights *in rem* (i.e., real rights) and *in personam* (i.e., personal rights) may also be mentioned. Specifically, real rights are recorded in a public register and enforceable against third parties (The regulation 1346 of the European Communities 2000). However, in some countries, personal rights can also be registered (Arrunada 2001).

⁷¹ The two most common forms of formal tenure in Common law countries are distinguished as freehold (i.e., ownership right) and leasehold (i.e., the lease right). A general distinction between them is the right's duration. Specifically, freehold is an interest in land with uncertain duration, while leasehold is one with a defined duration (Howarth 1994).

Ownership may be presented as the box for the bundle of rights to a person (i.e., an owner) having the right of their disposal. Transfer of ownership means a transfer of the entire box with no remaining interests of the former owner in its present or future (Simpson 1976). Thus, ownership is regarded as a legal process, which formally results in title serving as proof of the right to a real property.

A holder of the ownership right is a person enjoying the right to transfer, gift and hand-down a land plot demarcated on the ground and recorded in a person's name (Noronha & Lethem 1983). However, an owner of the property is not necessarily the person having its possession.

4.4.2 Property to property rights

A property to property right is recognised as the right executed by one property in another, i.e., a right connecting one real property with another (Figure 15). In essence, an owner of one real property is entitled to utilise another property in a specified manner. In a case of ownership transfer, this right does not disappear, it follows with the real property.



Figure 15: A property to property right.

Easement, as the right to use or control the land for a specifically determined purpose without the right of its disposal (Black's Law Dictionary 2005), serves as an example of a property to property right. An easement may last for an indefinite period and can be exemplified through a right of way, a right to light and air, and a right to water. A specific right of several properties to use a joint facility (e.g., private road) may also serve as another example of a property to property right.⁷²

4.4.3 Person to property rights

A person to property right legally connects a real property with a particular person. Thus, this right is executed by one person in a real property, i.e., it establishes a person to a real property legal relation (Figure 16). Specifically, this

⁷² According to LCDM (Paasch 2011).

property right restricts or expands the ownership right through granting it to a person for a particular period of use or for lifetime.

The lease right is an example of a person to property right. This right is based on an agreement, according to which a lessor (i.e., normally an owner) transfers the right to possess land to a lessee for a fixed amount of money for a definite period. A 99-year period is regarded as common (UN-ECE 2004).

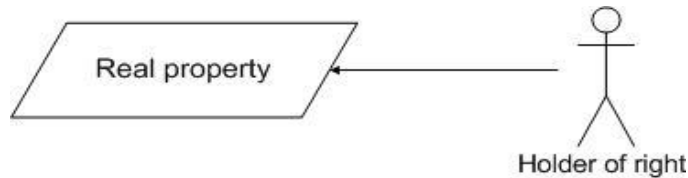


Figure 16: A person to property right.

A land use right is another example of a person to property right. This right varies all over the world. Specifically, in some countries this right is an independent property right, while in others it is enfolded into a lease right.

Sequential and concurrent types of land uses may be distinguished in a case where the ownership right belongs to the state. In particular, sequential use of land implies the use of land by several appropriators, however, at different periods during a year, namely one appropriator uses the land for cultivation during one season, while another uses it thereafter for grazing. A concurrent use of land means an utilisation of land by several appropriators at the same time. For example, one right holder cultivates the land, while another has the right to use the trees on that land (Noronha & Lethem 1983).

4.4.4 Monetary liability

A mortgage as a monetary liability is acknowledged as the right that a creditor has in another's property to secure the credit in the case of its non-payment (Figure 17). A mortgage is widely recognised as a lien on a real property and may be taken as a particular example.

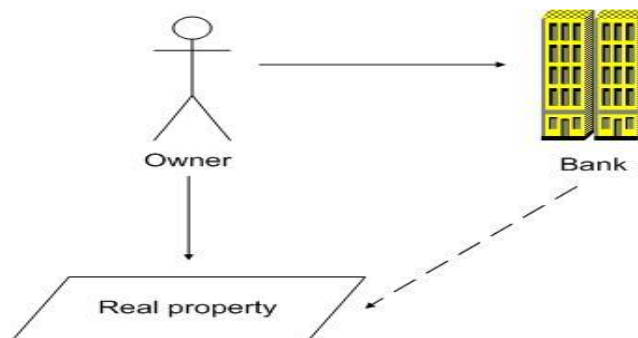


Figure 17: A mortgage.

This right entails financial security in a real property, i.e., it is granted by a mortgagor (i.e., the owner) to a mortgagee (i.e., a bank) to be executed in a case of payment failure. In this way, a mortgagee has the right to sell a real property and to cover its own expenses if the financial claim has not been satisfied. A mortgage normally lasts until a credit is satisfied.

4.4.5 Other rights

To complete the picture of available property rights worldwide, the common and latent rights are also presented below.

Common right

The common right can be characterised as a legal relation between one and several properties (Figure 18). This means that each property has a certain share in a common land owned by these properties. Specifically, if a land plot is sold, the common right follows it. Thus, a common right legally attaches land (i.e., a real property) to two or more real properties.

The common right can be identified in many countries and imposed on land or water exclusively owned by other properties. In such cases, a joint property unit is formed with shares for all involved properties, but not for the owners. Thus, the co-ownership right is exercised by the owners of the properties involved. However, it does not concern land jointly owned by several persons.

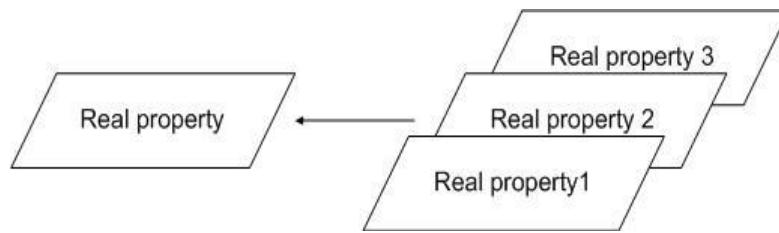


Figure 18: A common right.

The right to harvest timber, fish or graze animals on another property may be seen as examples of this property right.

Latent right

A latent right is a dormant, i.e., not yet executed right but already imposed on ownership. It implies a different kind of intervention from the state or other bodies including individuals. The expropriation right and pre-emption right exemplify latent rights.

In particular, the pre-emption right means the right of priority over others in claiming a real property (Black's Law Dictionary 2005). The right may, for example, be invoked in a case of a sale of a share of land held in joint ownership. In addition, a municipality may have a right of a priority purchase of a real property (Zevenbergen, Ferlan & Mattsson 2007).

The expropriation right (i.e., the right of eminent domain) is regarded as the exclusive right of the state to withdraw privately-owned land and transfer it into public use in the national interests (Black's Law Dictionary 2005).

5. Framework for analysing real property processes

This chapter develops the models for the subsequent comparative analysis of the real property processes in the chosen countries. This research seeks to analyse the specific property processes through a comparison of their formalised descriptions, i.e., models. To achieve this, a process modelling in general, and modelling of the real property processes in particular, is theoretically outlined below.

5.1 Process modelling

The aspects of process management, as well as of process design, are currently receiving constant attention all over the world due to the demand by governments and companies (Bruijn, Heuvelhof & Veld 2002). Process management can be referred to as a quite intense research domain, while process modelling within a particular domain is specifically narrowed and rather taken as minor and insignificant.

The land administration domain, with its moderately developed modelling, is not an exception in this regard. The main emphasis given to date is to the modelling of property-related information kept by different databases, while a process modelling is still lagging. The latter mainly concerns a process modelling of various land administration aspects, in the first place, land registration. This task may be acknowledged as rather complicated since it takes into consideration mainly legal and organisational components of an administrative system and not the technical ones.

In addition, the processes within the land administration domain are often burdened by human behaviour, in which corruption may be mentioned as one. Corruption in public administration is an emerging research issue of institutional economics where a link between corruption and transaction costs is examined.⁷³

A real property transaction may be referred to as a transfer of property rights from one right holder to another within a particular jurisdiction.

⁷³ For further elaboration on this issue, see, for example, Rose-Ackerman (1999), Bardhan (2005), Lambsdorff (2007).

Modelling a real property transaction means rendering a formalised description of a process, i.e., to model a dynamic system of a legal transfer.

One of the examples of a process modelling within the land administration domain is presented below (Figure 19).

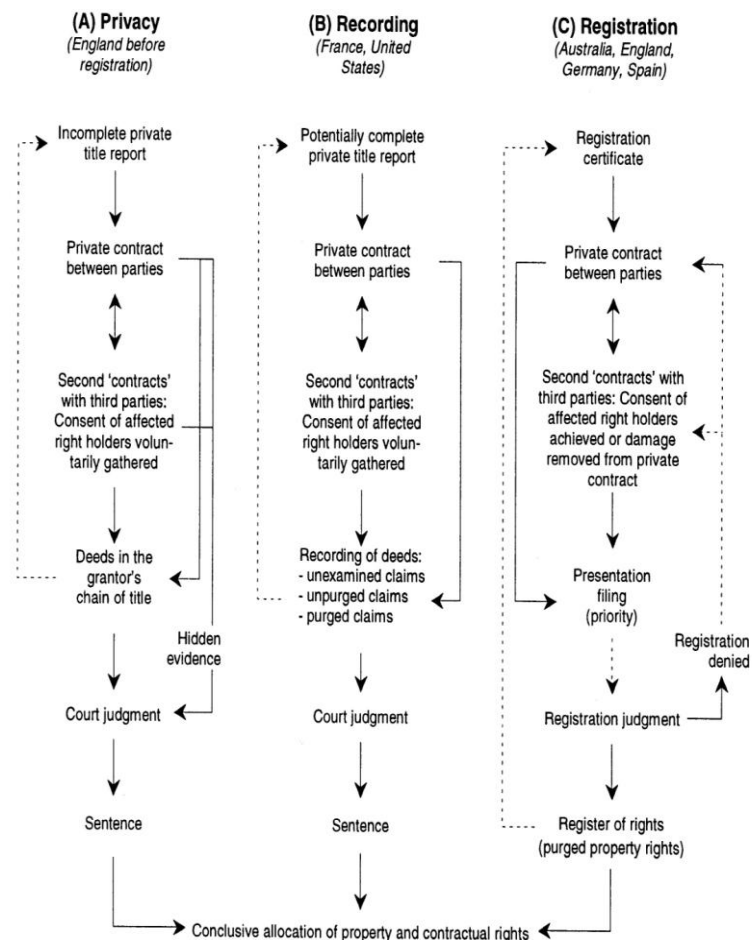


Figure 19: Comparison of privacy, recording and registration processes (Arrunada 2003).

This example incorporates three models of property transactions, i.e., privacy, recording and registration, representative for different legal systems. While designing these models, the main information flows are taken into

consideration with respect to decisions made by the different stakeholders. These decisions concern, for example, a demand for a report on title, resolution of contradictory rights, archiving of evidence as well as judgement on registration. Such modelling permits comparisons of the same process in different legal systems.

5.2 Modelling property formation and purchase processes

To achieve an in-depth insight into the formalised models of property formation and property purchase processes, the theoretical approach of the modelling also needs to be examined. This in turn facilitates the understanding of further comparisons of the selected processes.

The present research applies the comparative method developed within the framework of the COST Action G9⁷⁴ (Ferlan, Sumrada & Mattsson 2007). This method is based on a comparison of formal (i.e., ontological) descriptions of the processes. This methodology is believed to assist in revealing the differences in institutional arrangements of the real property processes in different countries. To obtain as many reliable comparative results as possible, the most identical property processes within the given jurisdictions are selected.

Model architecture

A particular property process corresponds to a developed formalised model (i.e., a diagram) supplemented by its textual description for each country. For a technical support of modelling, the Microsoft Visio Professional (2003) software is employed.

To begin with, the selected property processes are regarded as open systems and, according to a system hierarchy, divided into general modules, i.e., larger blocks of work implementing a specific goal. These modules correspond to the essential functions of property formation and those of purchase.

Within each module, a range of general activities is further determined. An activity is acknowledged as an item of work normally performed by a single stakeholder and forming one step within the process (Hess & Vaskovich 2007). Thus, in the course of modelling, the main stakeholders and their corresponding activities are identified. The stakeholders are represented by state and/or private organisations and individuals directly involved in a property process. Based on transaction costs estimation, it might be emphasised that the greater the number of stakeholders involved in a property

⁷⁴ <http://costg9.plan.aau.dk/> [accessed 10th August 2009].

process, the higher the number of interactions between them and, therefore, the higher the transaction costs generated.

To link the activities with their functions within a process, a function of an activity may be characterised as that which the activity causes to happen as one of the contributions to the success of the entire process (Zevenbergen 2002). For a property process, a function of an activity might be, for example, to secure land ownership against a third party.

Noticeably, while developing a model, there is always a risk of overloading it with insignificant details and thereby complicating further comparisons. For example, appeal procedures are omitted from this process modelling since they might shift the focus on the less significant features of a process instead of its fundamental ones. To avoid this, activities are generalised in regard to the main goal of each module.

Graphically, each activity is presented on a diagram as an oval with the name of the particular activity in it. Each process begins and ends at a specific point that is visually indicated by a dark circle on a respective diagram (see for example, Figure 22 and Figure 24).

5.2.1 The property formation process

This study specifically compares the property subdivision processes in Slovenia and Sweden with the process of withdrawal/granting land⁷⁵ in Belarus as those best matching among the existing property formation processes (e.g., partition and amalgamation).

A property subdivision process generally implies a transformation of one land plot into several with the same owner and the ownership right might be supplemented by rather different bundles of property rights (Figure 20).

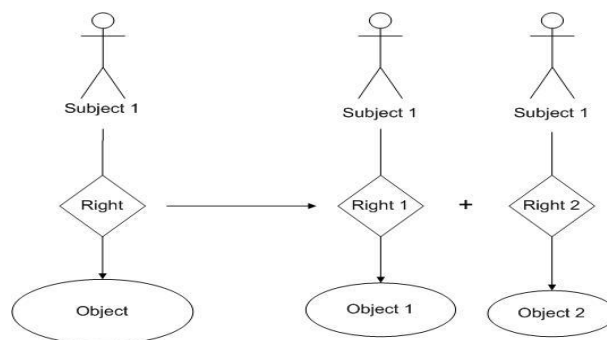


Figure 20: A property subdivision process.

⁷⁵ For example, a land privatisation process.

This research specifically investigates the particular subdivision process of a land plot in Slovenia and Sweden and applies the following conditions:

- Land plot in private ownership;
- Within the detailed plan area; and
- A new land plot assigned for building purpose.

Subdivision under the above-mentioned conditions is often employed in these countries. Such a subdivision case is acknowledged as normal, while the subdivision cases under more specific conditions are defined as exceptional and thus not relevant for the present study.

A subdivision process in Belarus can hardly be examined due to the small number of land plots held in private ownership, along with the range of existing legal restrictions on subdivision of privately-owned land. In this case, a land plot subdivided from state-owned land and transferred into private ownership for a private building purpose within the area of a detailed plan is identified as the most appropriate and normally employed in practice for housing construction (Figure 21).

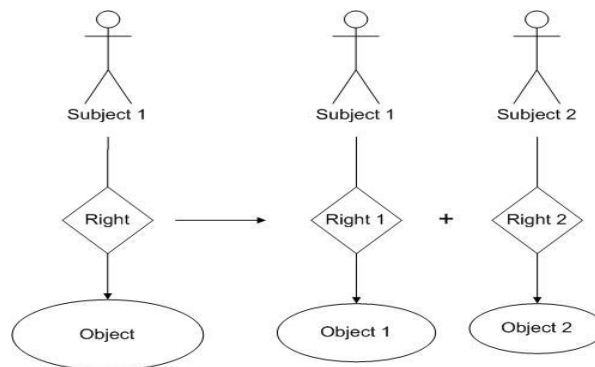


Figure 21: A land privatisation process.

Thus, a withdrawal/granting process of land assigned for a building purpose in Belarus is compared with the subdivision of land plots in Slovenia and Sweden.⁷⁶

The process of property formation in each chosen country is divided into four general modules: land policy control, preparation, decision and

⁷⁶ To avoid confusion, these three processes are referred to as property formation processes.

registration. However, the order of these modules within a country may vary depending on the current legal rules.

Model architecture

The property formation process of a particular country as a model is divided into four general modules with the respective activities performed by a range of stakeholders (Figure 22). This model is an abstract one, not specifically reflecting a property process in any of the countries. The intention is to provide the reader with an understanding of a framework for analysis of a property process.

The activities of each module are in turn identified in accordance with their basic tasks, for example, the application for property formation, surveying, cadastral decision, just to name a few.

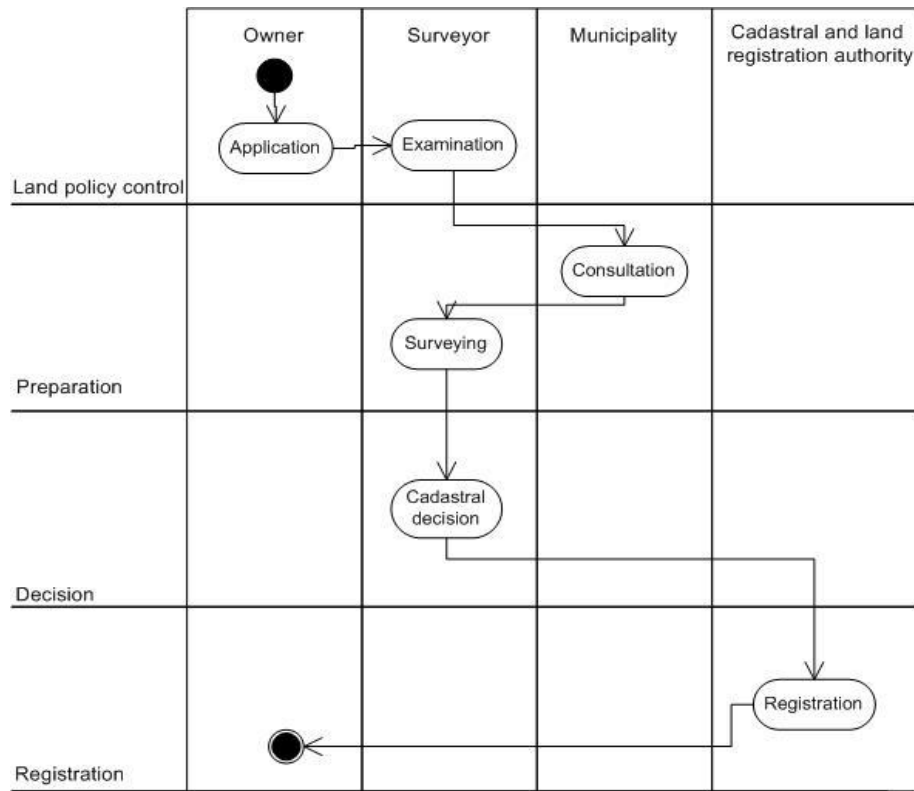


Figure 22: A modular structure of a property formation process.

As emphasised above, every module aims at accomplishing a specific goal. In summary, a land policy control module implies, for example, the compliance of a property formation process with the current planning regulations. The preparation module is mainly about the visualisation of a real property through surveying, including demarcation of the property boundaries on the ground. The decision module is distinguished as a separate module since the legal decision about the emergence of a new land plot may be taken at this stage of the process. The most important module of the process from the social and economic points of view is the registration module, as its goal is to ensure security of tenure. The latter is vital for long-term investments and efficient land development. Thus, registration provides a property process with “finality” (Simpson 1976).

5.2.2 The property purchase process

A market transaction is an exchange of the bundles of property rights reflecting the values of the exchanging assets (Demsetz 1967). A property purchase, as a particular property transaction, means the legal transfer of a real property from one owner to another (Figure 23). Specifically, a real property along with a specific bundle of property rights attached to it is invariably transferred to the disposal of another right holder.

All three selected countries have equivalent property purchase processes, with a similar range of stakeholders involved and therefore, any adjustment of these property processes for their further comparison is not required.

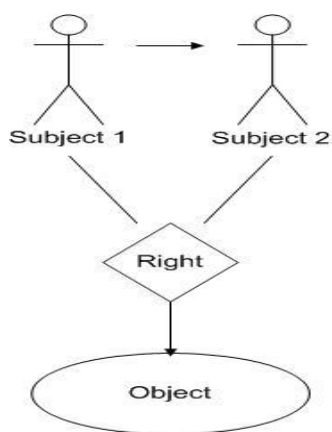


Figure 23: A property purchase process.

The purchase of a land plot with a single-family house is taken as the example here for further international comparison. The following normal conditions are set up for this purchase process:

- A land plot and building are in private ownership of the seller;
- A preliminary purchase contract is to be concluded;
- A buyer makes a normal loan contract with a bank;
- Both land and building are to be mortgaged; and
- The purchase sum is to be paid during signing of a purchase contract.

To facilitate the comparative analysis, a property purchase process in each selected country is divided into four general modules (Ferlan et al. 2007), namely marketing activities, pre-contracting, contracting and registration.

A property purchase process is described through uniform terms as equivalent as possible to simplify the international comparison. It needs to be emphasised that the terms of *a preliminary contract* and *a purchase contract* may have several English translations. Specifically, a preliminary contract (i.e., pre-contract) is used as the designation for a preliminary document voluntarily concluded by the parties at the beginning of a purchase process securing them against the withdrawal of one of them from the purchase process.⁷⁷ A purchase contract is, as a uniform term, used throughout this research, meaning a final document concluded between the transacting parties and finalising the exchange of the assets (i.e., money vs. a real property).⁷⁸

Model architecture

The purchase process in Slovenia, Sweden and Belarus are divided into the four above-mentioned modules. In addition, in Belarus the final module – the mortgage module – is separately distinguished due to the national specificity of a purchase process (Figure 24). The presented model is highly generalised and does not contain the features of a property purchase process in the selected countries. It is only intended to clarify a model structure prior to the examination of the national processes.

The modules of a property purchase process are distinguished in accordance with their particular goals. The module of marketing activities is directed at communicating and managing the seller's and buyer's relationships in a beneficial way. This module can be considered as the preparatory one. The pre-contracting module is mainly about securing the parties against a breach of an agreement through a preliminary contract and a deposit payment. The contracting module is normally aimed at exchanging the assets between the contracting parties and thereby at transferring possession of a real property.

⁷⁷ The term 'contract of sale' may have the same meaning in some other translations.

⁷⁸ Some translations put the same meaning in the term 'a deed of purchase'.

This module includes the general activities – contract signing with or without notary authorisation as well as the transfer of the purchase sum. Registration as promoting ‘mobility’ of a real property is the main component of the registration module. The latter is intended to transfer the ownership right over a real property in question, i.e., to secure the ownership right against third parties. However, the moment of transfer of the ownership right might differ among the countries as it directly depends on the national legal rules. Finally, the mortgage module, specifically distinguished in Belarus, is to secure a financial obligation by the purchased property, i.e., in this way the property serves as collateral.⁷⁹

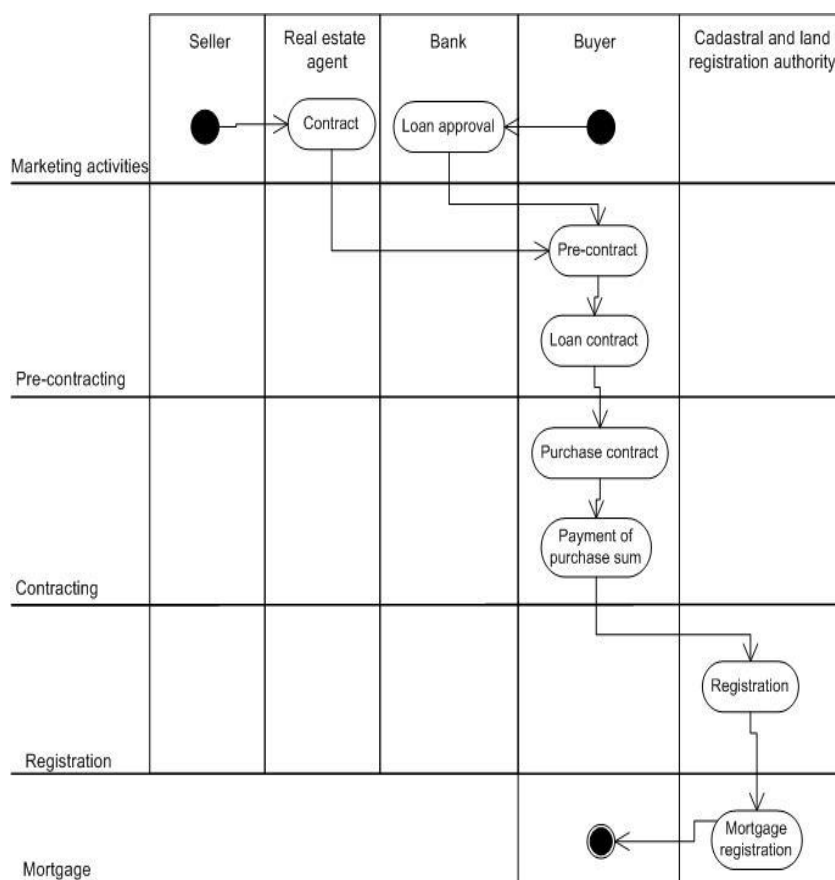


Figure 24: A modular structure of a property purchase process.

⁷⁹ Discussed more closely in section 9.2.

Each module is divided into a number of activities aimed at implementing a specific task. The activities are generalized in accordance with their tasks and performed by specific stakeholders in each country. These modules may further be broken up into smaller activities, e.g., producing corporeal (documents and contracts) and incorporeal (decisions and approvals) results. However, such a degree of detail of the activities is acknowledged as not relevant for the present study.

Consequently, it seems logical to suppose that as for the property formation processes, the property purchase processes of the selected countries consist of the different activities performed by the different stakeholders.

5.3 The comparison of property formation and purchase processes

Having described above the formalised models of the real property processes, their comparison within different jurisdictions also needs to be clarified. As this research focuses on a comparative analysis of the property formation and purchase processes in three countries, three formalised models of these processes are simultaneously developed, compared and analysed in this research. A particular property process is modularly compared, i.e., an identical module in one country is compared with the same modules in the two others.

Specifically, within each module, the available activities are compared with the activities of the same module (Figure 25). The stakeholders performing a specific activity in each country are also identified and further compared between the countries.

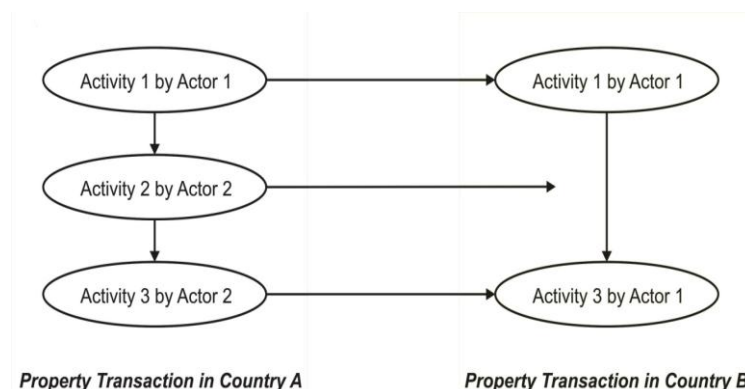


Figure 25: Comparison of property transactions by actors and activities performed (Hess & Vaskovich 2007).

Theoretically, it could happen that, for example, Activity 2 may be present in one country, while absent in another. Moreover, the countries may differ in terms of the stakeholders performing the same activities in each country. On the whole, during the comparison the different combinations may be revealed in terms of the activities performed, the stakeholders involved and the information processed.

The comparison is not aimed at discovering all the differences among the property processes of the selected countries. Such an approach would complicate the analysis. Instead, it seeks to reveal the main functional differences among the countries. As soon as the differences are identified (if any), they are discussed within the developed theoretical framework. Thus, the comparison intends to highlight the inconsistencies and the main differences of the property processes in a formal and transparent way.

6. Slovenia

6.1 Background information

The Republic of Slovenia (Slovenia/SLO) covers an area of 20 273 km² populated by approximately 2 million inhabitants.⁸⁰ The country was one of the six republics of the former Socialist Federal Republic of Yugoslavia, gaining its independence in 1991. Even prior to its independence, Slovenia had its own parliament, government structure as well as legal system (Galligan & Smilov 1999). It applied the real property law uniform for the entirety of Yugoslavia, while the cadastral and planning legislation differed from the other republics.⁸¹ At present, Slovenia is a parliamentary democratic republic with the Constitution adopted in 1991.



Figure 26: Map of the Republic of Slovenia.⁸²

⁸⁰ <http://eulis.eu/service/countries-profile/slovenia/> [accessed 28th November 2011].

⁸¹ Ferlan (discussion 24th June 2010).

⁸² http://www.slovenia.si/slovenia_in_brief/ [accessed 18th June 2010].

6.2 Land registration system

Slovenia has a long tradition of real property registration. The first law on Land registry dates from 1871 and originated under the Austro-Hungarian Empire. From the very beginning, the land register was under the responsibility of the local courts and consisted of three components, namely the main book, the register of deeds and the copies of land cadastre maps. The most important part, the main book, was divided into three folios: real property (A) including the identification numbers of land parcels, ownership folio (B) and encumbrance folio (C)⁸³ (Ferlan 2005).⁸⁴

This structure is still valid and has not radically changed since its enactment. However, the law of 1871 was replaced by the law on Land registry in 1930, which was in effect until 1995 when independence was followed by changes in the political system of Slovenia. For this reason, a new Land registry law was introduced for the regulation of property registration in Slovenia. The latter was in turn replaced by the Land Registry Act of 2003.⁸⁵

The Slovenian land registration system currently consists of two parts: the land and building cadastres (*Zemljiški kataster in kataster stavb*) and the land register (*Zemljiška knjiga*). The latter is a part of the local courts⁸⁶ (*Okrajno sodišče*) and responsible to the Ministry of Justice. The land and building cadastres are maintained by the Surveying and mapping authority of the Republic of Slovenia⁸⁷ (*Geodetska uprava Republike Slovenije*). This public body, under the Ministry of Environment and Spatial Planning, is responsible for the maintenance of the land cadastre over the entire territory of Slovenia. In spite of the fact that the information in these two registers is presented in digital form, these databases are not directly connected.⁸⁸

The land cadastre covers technical data on land plots including area, boundaries, current land use, owners along with code of a parcel number and a cadastral municipality. The land register in turn is based on the different types of deeds, including transaction contracts attested by notaries or certified by court decision, containing legal data on the real property rights of real properties (Ferlan & Sumrada 2008).

The activity in the real property market in Slovenia can be seen from available statistics on the existing real property units as well as on property

⁸³ It can be noted that these portfolios are united in accordance with the amendments to the Land Registry Act (2003) adopted in May 2011.

⁸⁴ Informal translation from Slovenian by Dr. Ferlan (2010).

⁸⁵ A deeper insight into the historical development of the land registration system of Slovenia can be found in Ferlan et al. (2007).

⁸⁶ The Land registry.

⁸⁷ The Cadastral authority.

⁸⁸ For a detailed description of Slovenian real property registers and their respective contents, see Ferlan & Sumrada (2008).

formation processes, property transactions and mortgages registered annually in the land cadastre and the land register.

The number of real property units (including land parcels and buildings) recorded in the land register is approximately 1.5 million (Lipej 2005), while the total number of land parcels registered in the land cadastre⁸⁹ as of 2009 is about 5.1 million parcels.⁹⁰ In particular, a land parcel in Slovenia is regarded as a spatially-defined land plot with demarcated boundaries serving as an elementary unit in land transactions (Lisec & Drobne 2009). A land parcel is situated within one cadastral area (*katastrska občina*) with the same legal ownership status and a unique parcel identification number. The land cadastre also contains information on approximately 900 000 owners of land parcels.⁸⁹ This number does not comprise the owners of either buildings or parts of buildings, concerning owners transacting solely in land parcels.

In general, approximately 190 000 land parcels were affected by approximately 5 500 property formation processes in Slovenia in 2008. These property formation processes mainly included subdivision, amalgamation, demarcation and adjudication of boundaries as well as land consolidation.⁹¹ The total number of recorded transactions with land, buildings and parts of buildings submitted by real estate agencies in 2008 was approximately 7 800 (SMA 2009). The number of building permits issued in 2008 amounts to approximately 13 500 permits including those for buildings and dwellings.⁹²

To give an idea of the total number of mortgages registered in Slovenia, the total amount of loans granted for the purchase of residential property may serve as a general indicator. As of 2009, this total amount equals € 3.462 trillion as presented by the Institute of Macroeconomic Analysis and Development (IMAD 2009). This amount specifically consists of loans granted solely for the purchase of residential properties such as, e.g., single-family houses and apartments.

6.3 Real property legislation

There is no unified legislation at present in Slovenia related to real property, such as the Civil Codes in many EU countries (Ferlan 2003). The modern Slovenian real property legislation consists of separate legal acts and bylaws. The fundamental acts are the Law of Property Code (*Stvarnopravni zakonik*

⁸⁹ http://prostor.gov.si/cepp_ang/index.jsp [accessed 18th June 2010].

⁹⁰ However, since 2011 in Slovenia one land parcel corresponds to one property unit due to the amendments of the Land Registry Act (2003).

⁹¹ The total number of various property formation processes is provided by Dr. Ferlan (University of Ljubljana) and is extracted from the land cadastre database maintained by the Surveying and mapping authority.

⁹² http://www.stat.si/eng/novica_prikazi.aspx?id=2950 [accessed 18th June 2010].

2002), the Land Registry Act (*Zakon o zemljiški knjigi* 2003),⁹³ the Real Estate Recording Act (*Zakon o evidentiranju nepremicnin* 2006), the Spatial Planning Act (*Zakon o prostorskem načrtovanju* 2007) as well as the Housing Act (*Stanovanjski zakon* 2003).

According to the Law of Property Code (2002), real property (i.e., immovables) is a spatially-defined area of land including all its fixtures. Fixtures in turn are everything permanently affixed to or on an immovable, above or below the land including buildings. Thus, the Slovenian definition of real property mirrors the internationally recognised definition of a real property unit as a land plot with buildings as fixtures.

The Land Registry Act (2003) prescribes registration not only of property rights but also of legal facts and changes in data recorded earlier. In the first place, this concerns obligatory registration of land parcels and buildings. The registration records are connected to a respective person via an identification number from the population register.⁹⁴

The different legal facts affecting real property transactions should also be entered into the land register. Facts such as the duration of a land lease and right of way are intended to further clarify the current legal situation on a land parcel. Specifically, the legal facts can relate to a person entitled to freely use a real property. The pre-emption right of preferential purchase of a land parcel is another example of legal facts. If a land plot belongs to a farm, it cannot be sold separately and such a farm notice is also recorded in the land register as a legal fact.

6.4 Land tenure system

A set of various property rights and obligations determining the legal regime of a real property exists in Slovenia. These property rights are differentiated as between real property⁹⁵ and obligatory rights. Real property rights are to be registered and therefore secured against third parties. An independent thing individually defined is regarded as an object of real rights (Law of Property Code 2002).

The following property rights in Slovenia are to be registered:

- Ownership;
- Mortgage;
- Land debt;
- Easement;

⁹³ This Act was considerably amended in May 2011. However, the amendments are not covered in this research due to time limitations.

⁹⁴ Tratnik & Vrencur (2008) might further be consulted on the Land Registry Act (in Slovenian).

⁹⁵ As distinguished by the Law of Property Code (2002).

- Right of encumbrance; and
- Right of superficies (i.e., building right).

A leasehold right belongs to the class of obligatory rights⁹⁶ as it reflects property relations among different right holders. Obligatory rights do not need to be registered. All the above-mentioned property rights are classified and described below in accordance with the theoretical LCDM model.

6.4.1 Ownership right

The ownership right (*lastninska pravica*) in Slovenia is recognised as the right to possess, use, enjoy and dispose of a real property during an indefinite period of time. The ownership right to a real property may be acquired either by a property transaction (i.e., a legal contract), inheritance, law (i.e., adverse possession) or by decision of a state body. It can only be restricted by law. However, an owner may also limit this right for any person if such is not prohibited by law. A person entered in the land register is officially regarded as the owner of a real property (Law of Property Code 2002). The state guarantees the owner's right and secures it against third parties. However, the ownership right normally is not the only right attached to a real property.

The rights of co-ownership and joint ownership are also recognised in Slovenia. The former implies a case when two or more individuals hold a real property in co-ownership with proportionally determined shares (i.e., ideal shares). If these shares are not decided, they are assumed to be equal. A co-owner is entitled to dispose of the corresponding right without the consent of the other co-owners. However, the other co-owners have a pre-emption right in case of a property sale.

Joint ownership (*solastništvo*) in turn means that several individuals can jointly own a real property with not beforehand determined shares. However, shares may be divided on demand among the joint owners. Those owners are jointly obliged to use the property in question as well as to dispose of it.

6.4.2 Property to property rights

An easement (*služnosti*) is the right to use the real property of another person for a restricted purpose or to demand from the owner of this property to abstain from actions that otherwise would be carried out on the property. Two types of easements are distinguished in Slovenia, namely real and personal easements (Law of Property Code 2002). Both of these are to be recorded in the land register, though belonging to different LCDM classes.

⁹⁶ As recognised by Filipov (2009).

Specifically, a real easement (*stvarna služnost*) is acknowledged as belonging to the property to property class, since it links one real property with another. A real easement follows the real property it belongs to, e.g., in case of a property transaction. This right regulates relations between neighbouring properties for a more efficient land use. It might be established either by law, decision of a state body or on the basis of a contract.⁹⁷ This right may be created for a specific time (years) or for a specific time of the year. A real easement is normally established for a right of way.

The right of encumbrance (*pravica stvarnega bremena*) is defined as the right binding the owner of an encumbered property to a future service and charge, for example, to deliver the farming products (Law of Property Code 2002). Specifically, it might be established on a real property in favour of an owner of a specific property or a specific person.⁹⁸ Thus, this right entitles the right holder to use another property for this specific purpose. It may be established through a contract or a law and is to be registered.

6.4.3 Person to property rights

One of the person to property rights in Slovenia is the leasehold right (*najem*). The leasehold right is also to be recorded in the land register in cases when the lease period lasts more than one year. This right is granted to a right holder for a specific period of time. For example, a minimum period for leasehold of vineyards is 25 years and for orchards is 20 years (Ferlan et al. 2007).

A recorded leasehold right in the first place implies the fact of its existence. Such rights recorded in the land register might change or be abolished (Agricultural Land Act 2003).

The right of encumbrance might also be established on a real property in favour of a specific person who is entitled to use another person's property in a particular manner. This property right is thus recognised as a person to property right.

A personal easement (*osebne služnost*) is the right of a holder to use another property and to benefit from this right until the holder's death. In addition, it may also be set up in favour of a legal person with duration not more than thirty years (Ferlan 2003). A way to create a personal easement is either through a contract or a court decision. This right is non-transferable as it is established in favour of a specific person. Thus, a personal easement is classified as a person to property right attached to a specific person and therefore not following a real property.

A personal easement in Slovenia is distinguished between usufruct, use and habitation. Specifically, usufruct is a property right entitled to use and enjoy

⁹⁷ Mainly for public utility infrastructure.

⁹⁸ In this case this right is regarded as the person to property right.

another property or the right in accordance with its essence. The object of usufruct might specifically be a non-consumable thing or the right from which benefits are obtained. Use is the right to use another property in compliance with its economic purpose. Non-consumable things may exceptionally be subject to use. Habitation entitles the right holder to use a real property for residential purpose (Law of Property Code 2002).

The right of superficies (i.e., the building right) (*stavbna pravica*) is also classified as a person to property right. Specifically, it enables a right holder (i.e., an individual or legal person) to erect and to own a building above or beneath the real property belonging to another person. This right may not last more than 99 years. This right is transferable and should be recorded in the land register.

Additionally, other person to property rights are also recognised: the right to prohibit an encumbrance or alienation, a contractual pre-emption or redemption right as well as a special right to use a public asset⁹⁹ (Filipov 2009).

6.4.4 Monetary liability

A mortgage (*hipoteka*) is formally defined as a lien on an immovable (*zastavna pravica*) (Law of Property Code 2002). It serves as the main tool for property purchase financing in Slovenia and is used to secure a claim. A mortgage takes effect when a mortgage agreement between a mortgagee and a mortgagor is established and recorded in the land register. If a real property is mortgaged several times, the dates of mortgage registration determine the order for their repayment.

Several types of mortgages, such as statutory mortgage (i.e., established at the moment when all legal conditions are accomplished), joint mortgage (i.e., several properties secure the same claim), maximum mortgage (i.e., maximum amount is used to secure claim) and supermortgage (i.e., a lien on a claim secured by a mortgage) are recognised in Slovenia (Law of Property Code 2002). Specifically, a mortgagee may establish a supermortgage for the benefit of a third person without the consent of the mortgagor (i.e., owner).

If the mortgaged real property is subdivided, new properties are to be entirely mortgaged as well. Moreover, the mortgage remains unchanged until it is completely paid back. In other words, the mortgage is not reduced even if it is partly repaid.

A land debt (*zemljiški dolg*) is a special tool providing a possibility to secure a preferential mortgage. It exists independently from the claim and can only be established on a property by an owner or a mortgagee. It is normally created through a notary deed by entering the land debt into the land register and issuing a land debt letter to the property owner. The owner freely disposes of

⁹⁹ Due to their peculiar utilisation, these rights are not considered here.

the letter. Any person who owns the letter can transfer it to others (as security) or give it as a gift.

This right enables a request for repayment of a cash sum from the value of real property ahead of other creditors with inferior ranking. A creditor, in exchange for the letter, pays out the stated amount of money. It is very close to the German *Grundschild* (Ferlan et al 2007). A land debt ceases to exist as soon as it is removed from the land register, which can exclusively be done upon the submission of the letter.

6.5 Property formation process

A selected property formation process in Slovenia deals with a case of subdivision of a privately-owned land assigned for building purposes within a detailed plan area (Figure 27).¹⁰⁰

The land policy control module begins when an owner applies in writing for a subdivision directly to a private surveying company that in turn assigns an authorised surveyor for the particular case. The surveyor formally acts on behalf of the owner in accordance with an agreement. As soon as the subdivision case is assigned to the surveyor, the latter examines a municipal detailed plan to become familiar with the existing planning restrictions on site and thereby avoid possible delays or even a cancellation of the subdivision process on a later stage.

A detailed plan of a municipality generally determines the size of a land parcel. In particular, the parcel cannot exceed or be less than a specified area (for example, a land parcel normally composes 500 – 800 m²). Moreover, it specifies acceptable deviations for the subsequent preparation of the building permit project as well as contains, for example, a subdivision plan and directly connects the neighbouring property units (Spatial Planning Act 2007).

After the enactment of the new planning legislation (the Spatial Planning Act 2007), the land policy control function of the subdivision process is handed over from the municipality to a surveyor. Prior to that, a municipality as a controlling body was entitled to issue the permits for the subdivision of urban land, while the subdivision of agricultural land was earlier exempted. Thus, the new planning legislation simplified the subdivision process as a whole.

The responsible surveyor checks the formal requirements of subdivision with regard to the existing restrictions, including the specific subdivision conditions settled by a municipality. These conditions are to be obligatory and taken into consideration. The surveyor is personally responsible for performed work and, in a case of failure, can be sued.

¹⁰⁰ This description is partly based on Sumrada (2006) and Ferlan, Sumrada & Mattsson (2007).

Having analysed the gathered information, the surveyor decides whether to proceed with the subdivision or not. If negative, subdivision cannot be continued and the subdivision process is to be cancelled. If positive, a surveyor carries on the property formation process.

The preparation module begins with an investigation of available data concerning the property in question, in the first place, from the land register, cadastral databases and digital cadastral maps. Furthermore, the legal conditions of the subdivision process are investigated and the owner is consulted (if appropriate). If all the details of subdivision are clear, the surveyor carries out surveying measurement in the field. This normally includes measurement of the property boundaries, their demarcation on the ground and updating of the cadastral map for new parcels. The surveyor prepares the detailed report for the property owner, invoicing the owner for the work done. As soon as the surveyor's work is paid, the surveyor transfers the report to the owner. From this moment, the owner possesses the report and may freely dispose of it. Thus, the cost of surveying measurement is covered prior to its implementation. The period of payment is not strictly regulated by the legislation. The payment may take a few days up to several months. However, the property owner is normally interested in a faster completion of the subdivision process.

The decision module is about taking a formal cadastral decision on a property subdivision. This begins when the owner (or the surveyor on the owner's behalf) applies for cadastral registration to the Cadastral authority. An application, together with the detailed report, may also be posted to the authority. While applying for registration (i.e., at the date of the application), the surrounding boundaries' situation (i.e., around the subdivided land plot) shown in the detailed report, must be identical with the boundaries' situation shown on the cadastral map previously recorded in the land cadastre. The Cadastral authority formally verifies whether various conditions and technical requirements of the detailed report are fulfilled. If any of them is unsatisfied, the detailed report is returned to the surveyor for further improvement. If all the requirements are met, the Cadastral authority invoices the owner for the cadastral registration, who in turn covers the registration fee.¹⁰¹ It then takes a formal cadastral decision in the form of a written decision decree sent both to the owners and the affected neighbours. Furthermore, a fifteen-day appeal period begins when the owner receives the decision. During this period, affected parties are entitled to appeal against the subdivision.

¹⁰¹ The amount of the registration fee is regulated by the Administrative Fees Act (2007).

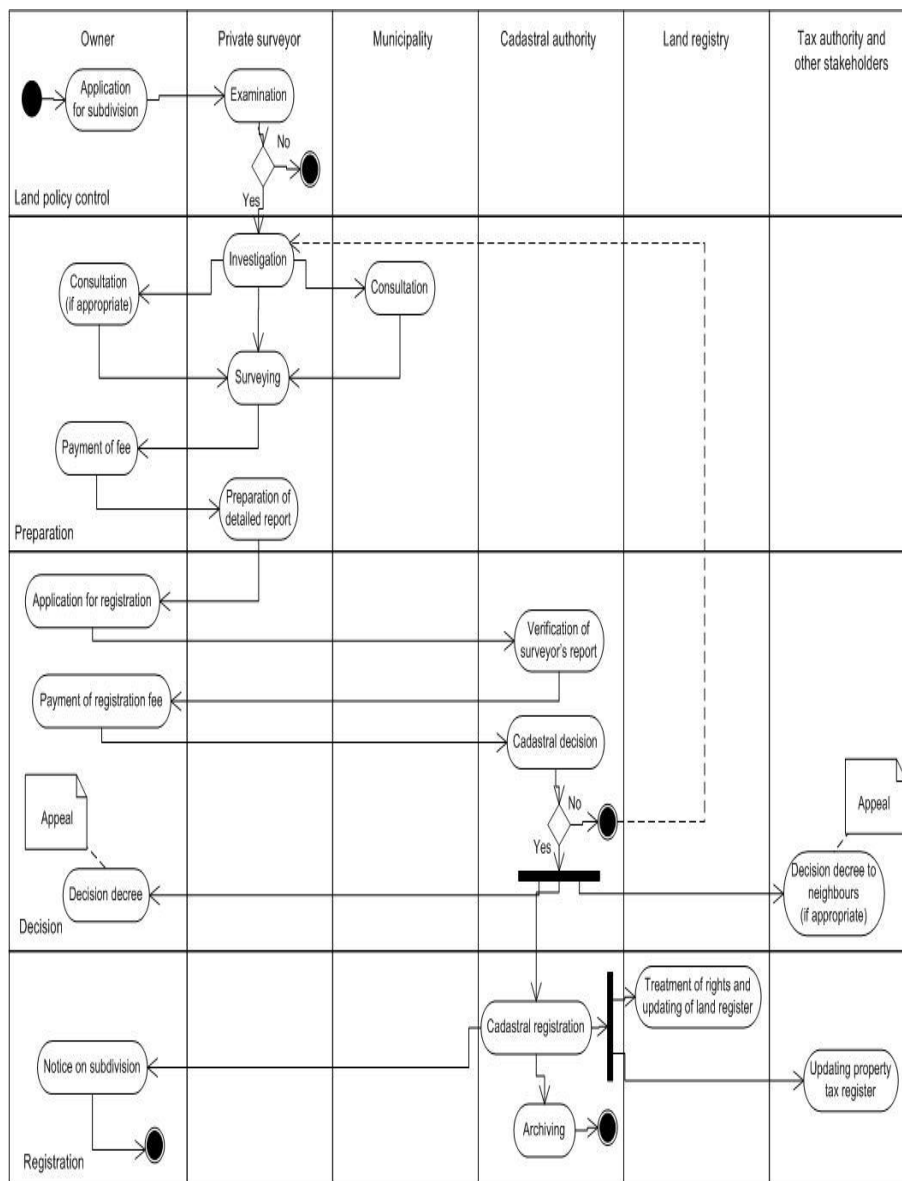


Figure 27: A property formation process within a detailed plan area in Slovenia.

The registration module includes cadastral and ownership registration of subdivided land plots. As soon as the appeal period expires, the Cadastral authority

formally completes the case and updates the cadastral databases. It then sends a notice and a copy of the relevant documents to the owner as well as stores the detailed report in the archive. The Cadastral authority is also obliged to inform the Land registry, which in turn updates the land register and transfers the existing mortgages and easements (if any) to the new parcels. With this activity, the subdivision process is completed.

The Cadastral authority is also to inform the Tax authority on all changes occurring. However, this update takes place only once per year. The Tax authority in turn calculates the new tax amount, which in urban areas implies a compensation for a building plot (*nadomestilo za uporabo stavbnega zemljišča*).¹⁰² In the future, this compensation is assumed to be substituted by a property tax.

6.6 Property purchase process

A property purchase within an urban area in Slovenia is hereunder described.¹⁰³ Specifically, this research examines the purchase of a land plot with a single-family house on it and the involvement of a notary and the Land registry along with a real estate agent and a bank¹⁰⁴ (Figure 28). A property purchase normally occurs with the assistance of a real estate agent¹⁰⁵ who is licensed by the Ministry of Environment and Spatial Planning. To facilitate further comparison, the purchase process is divided into four general modules (based on Ferlan et al. 2007).

The marketing activities module includes the contracting between a seller and a real estate agent as well as searching for a potential buyer on the property market. Negotiations between a buyer and bank are also an important part of the module. Specifically, having concluded a contract, a real estate agent inspects the real property in question through an examination of the physical conditions of a house and land plot as well as advertises it. While the seller is obliged to inform the buyer about physical defects (if any) of the real property, the buyer is also bound to carry out the physical inspection of the real property to discover any deviation as well as to examine the land register. Simultaneously, the buyer negotiates loan conditions with a bank. If the buyer is satisfied, the bank approves the loan.

¹⁰² While taxes for agricultural and forest land are specifically paid as a part of the income tax (*katasterski dobodek*).

¹⁰³ For a purchase of rural land in Slovenia, see Liseč, Felan, Lobnik & Sumrada (2008).

¹⁰⁴ The purchase description is partly based on Sumrada (2005) as well as Ferlan, Sumrada & Mattsson (2007).

¹⁰⁵ A property purchase without a pre-emption right of a municipality is considered here. However, the pre-emption right is normally used by a municipality to obtain land for urban development and this is to be settled at the very beginning of the purchase process. The various pre-emption rights existing in Slovenia are described in detail by Zevenbergen, Ferlan & Mattsson (2007).

The pre-contracting module is mainly aimed at signing a preliminary contract between the parties in order to secure them against the withdrawal by one of them from the agreement. A real estate agent or a notary assists the parties in drawing up such a pre-contract. The latter normally indicates a partial pre-payment or a security deposit that is paid to the seller and amounts to 10% of the purchase sum.

The contracting module begins as soon as the parties agree on the purchase conditions. The module normally includes preparation and signing of two contracts, namely a purchase contract between the seller and buyer as well as a mortgage contract between the buyer and a bank. Specifically, the parties prepare a purchase contract with the assistance of a notary who is entitled to check all available data on the property in question including the land register (Law of Property Code 2002). While meeting, the notary clarifies for the contracting parties the contract's rights and obligations as well as assists them in preparation of a purchase contract.

When all the contract details are settled, the parties sign the purchase contract. The latter elaborates a minimum set of aspects such as:

- Declaration of purchase;
- Identification of the parties;
- Identification of the real property in question (from the Cadastral authority and the Land registry);
- Purchase sum and terms of payment;
- Manner and deadline for transfer of real property in possession;
- Payment of taxes;
- Date of validity of the purchase contract;
- Date and place of contract signing; and
- Signatures of the contracting parties and notary attestation.

If any of these points is missing, the contract is void. A purchase contract may also indicate a division of responsibilities between the parties. In addition, permission for ownership registration (*intabulacijska klauzula*) in the land register as well as liability for mistakes and disputes may also be included in the contract. However, this information might also be separated in a special deed in order to protect a seller from potential frauds since this deed may provide the buyer with permission for registration when the purchase sum is paid to the seller.

As soon as both contracts are signed, the seller pays the transfer tax¹⁰⁶ to the Tax authority. A seller is normally liable for payment of transfer tax. However, the transacting parties may agree on tax payment by the buyer (Filipov 2009). The main function of the Tax authority is to compare the purchase sum and the assessed value of the property. This occurs through a

¹⁰⁶ The amount of transfer tax is normally equal to 2% of the purchase sum (Lisec et al. 2008).

direct access to a database with the mass appraisal data. If the purchase sum raises doubts, the authority may undertake a new assessment of the real property for defining its market value. This process may take up to 15 days. Moreover, the Tax authority also updates the property tax register by recording the new purchase sum.

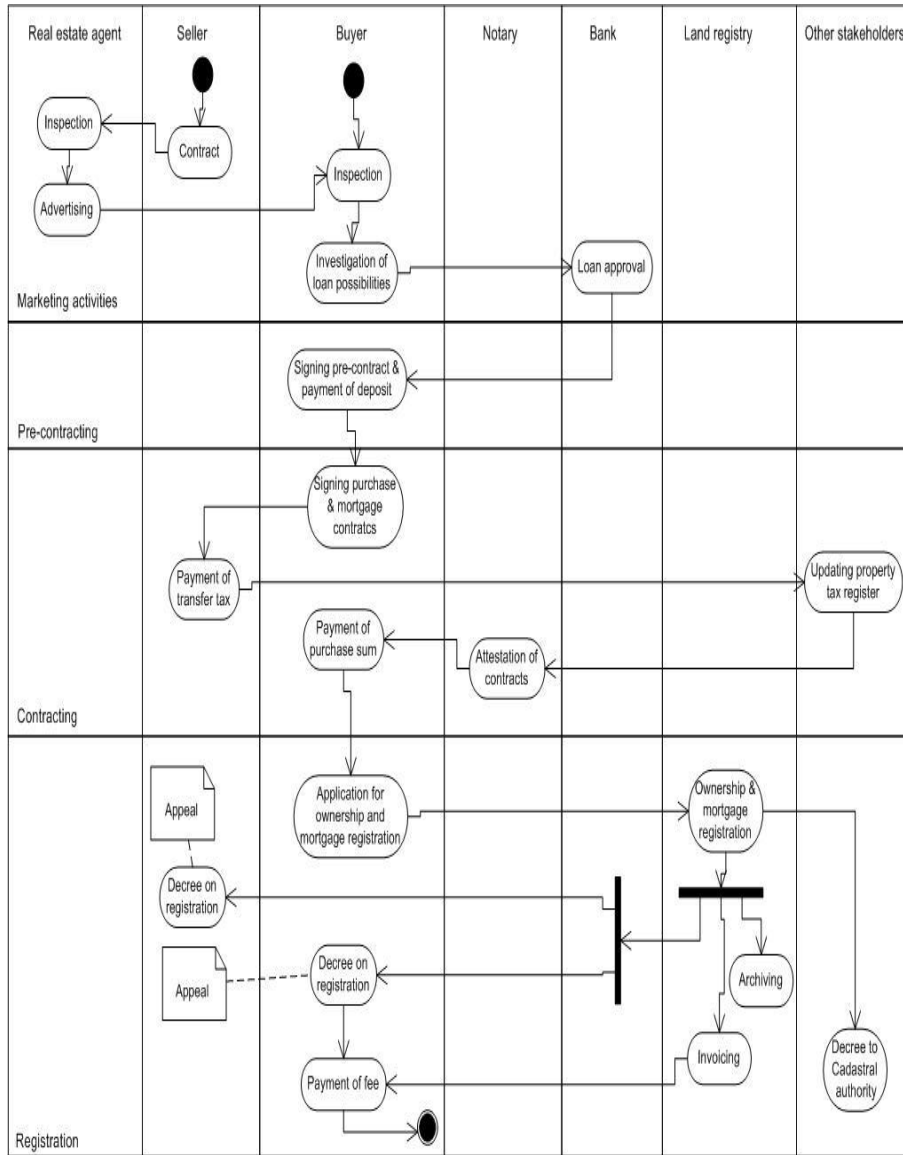


Figure 28: Purchase of a land plot with a single-family house and assistance of a real estate agent and a bank in Slovenia.

Furthermore, after payment of the transfer tax, the notary verifies and attests the contracts.¹⁰⁷ The purchase sum is then paid in accordance with the terms identified in the purchase contract. Thus, payment of the purchase sum takes normally place after signing the contracts with the notary's attestation and payment of the transfer tax. Admittedly, the purchase sum is normally transferred on the day of the notary's attestation of the contract. It is worth stressing that the date of signing the purchase contract is the date for transfer of possession of the purchased property.

The registration module begins when the buyer applies to the Land registry for ownership and mortgage registration. In particular, the verified purchase contract, together with a registration request, is sent to the Land registry that in turn makes a priority entry note. The latter serves as a legal protection of the buyer against a third party when the title registration is not formally accomplished. It may take up to several months for the purchased property to be registered in the land register (Lisec et al. 2008). The registration of a mortgage contract is to be simultaneously performed with registration of ownership, which in turn should be done within a six-month period from the date of the purchase contract. However, it is also possible to postpone registration until a later date despite mandatory ownership registration in Slovenia.¹⁰⁸

The Land registry makes a new record on change of ownership and updates the land register. As soon as registration is finalised, the land registry informs both contracting parties in the form of a decree about the new entry. An eight-day appeal period begins from the date of receiving these decrees. Upon the appeal period's completion, the Land registry informs the Cadastral authority about the new changes for updating the land cadastre as well as archives the property transaction. It also invoices the new owner, who pays the registration fee within a fifteen-day period after registration (Court Fees Act 2008).

6.6.1 Empirical investigation of transaction costs

The empirical investigation of the direct transaction costs of the purchase process in Slovenia implies calculation of all components of the transaction costs including compulsory fees and taxes. Relevant quantitative information

¹⁰⁷ A purchase and mortgage contracts are interconnected in Slovenia as a mortgage loan is feasible only after a notary's attestation of the purchase contract.

¹⁰⁸ In the case of non-registration, the new owner is still in possession of the purchased property, but is not protected against a third party. Thus, the responsibility of ownership registration rests with a new owner.

was mainly collected through legislative acts and personal communication.¹⁰⁹ The average price of a land plot with a single-house on it is assumed around 150 000 EUR in a middle-sized city of the country in 2011.¹¹⁰ The fee for property inspection is not taken into consideration as it would be included into the real estate agent's fee if the purchase of a real property is successfully completed.

Specifically, while the real estate agent's fee and property transfer tax are calculated as percentage to the average purchase price of the real property, the notary and registration fees are quantitatively determined by the specific legislative acts. The value added tax (VAT) is included into this calculation (Table 2).

Table 2: Direct transaction costs of the property purchase process in Slovenia.

Direct transaction costs	Percentage	EUR
Real estate agent fee	4	7 200
Notary fee	-	165
Transfer tax	2	3 000
Registration fee	-	516

Having calculated the above-mentioned fees and taxes, the direct transaction costs for the purchase of a land plot with single-family house on it in Slovenia amount to 7.3%¹¹¹ of the average price of the real property in question.

¹⁰⁹ Ferlan (discussions 12th March 2012).

¹¹⁰ Own evaluation based on data from

<http://search.globalpropertyguide.com/property/slovenia/> [accessed 11th March 2012].

¹¹¹ That is equal to 10 881 EUR.

7. Sweden

7.1 Background information

The Kingdom of Sweden (Sweden/SWE) covers an area of approximately 450 000 km² and is populated by approximately 9 million inhabitants. About 85% of the population lives in urban settlements.¹¹² Nowadays Sweden is a constitutional monarchy governed by a unicameral Parliament. The nation was founded in 1523 (with Gustav Vasa elected as king) and became a member in the European Union in 1995. Sweden is administratively divided into 21 counties and 290 municipalities.



Figure 29: Map of Sweden.¹¹³

Approximately 8% of the country's territory consists of agricultural land (SCB 2008), while agricultural production is only 2% of the GDP and involves 2% of

¹¹² <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/Sweden.pdf> [accessed 19th October 2011].

¹¹³ <http://static.howstuffworks.com/gif/willow/geography-of-sweden0.gif> [accessed 18th June 2010].

the labour force.¹¹⁴ However, agriculture is still considered an important sector of the country's economy. Furthermore, according to the Swedish Forest Agency (SSYF 2010), productive forest land covers 55% of the total land area. This forest area is mainly divided among private companies (25%), individual owners who are mainly farmers (50%) and state-owned companies (14%).¹¹⁵

7.2 Land registration system

The land registration system of Sweden is referred to as more closely belonging to the systems of title registration than to the deed registration systems, though property registration in Sweden does not prove title (Millgård 2003). The limited state guarantee of the authenticity of the property owner is the reason why the system is not fully a title registration system. The state has a certain damage liability for the correctness of registration and if inaccurate, the state is to compensate the loss. In addition, a limited financial liability of the state is also in place when registration is the result of a forgery. Such a system, in comparison with a deed registration system, may be characterised by a greater degree of certainty as to land ownership and other property rights as well as by higher maintenance costs as borne by the state (Carlson 2008).

The land registration system consists mainly of two formal registers, the real property register and the mortgage certificates register,¹¹⁶ while the real property price register and the register of joint property management associations may be referred to as informative registers containing related information on real properties. However, each of these registers is developed and maintained by the Swedish mapping, cadastral and land registration authority (*Lantmäteriet*)¹¹⁷ and updated by the land registration authorities, cadastral authorities within the municipalities and others. From 2008, the Swedish mapping, cadastral and land registration authority (the Cadastral and land registration authority) is a single public authority responsible for cadastral and ownership registration, falling under the Ministry of Environment.

The real property register (*fastighetsregister*) contains comprehensive data on properties and joint property units for the entire territory of Sweden. The register consists of five parts: the general part (*allmänna delen*), the land register part (*inskrivningsdelen*), the address, the building and the tax assessment parts (Figure 30). The general part comprises geographically oriented data on properties and joint property units including, for example, the register

¹¹⁴ <http://geography.about.com/library/cia/blcsweden.htm> [accessed 18th June 2010].

¹¹⁵ [http://www.skogsstyrelsen.se/Global/myndigheten/Statistik/Skogsstatistik%20årsbok/02.%202011%20\(Kapitelvis-Separated%20chapters\)/02%20Fastighets-%20och%20ägarstruktur.pdf](http://www.skogsstyrelsen.se/Global/myndigheten/Statistik/Skogsstatistik%20årsbok/02.%202011%20(Kapitelvis-Separated%20chapters)/02%20Fastighets-%20och%20ägarstruktur.pdf) [accessed 20th February 2012].

¹¹⁶ The register of digital mortgage certificates.

¹¹⁷ <http://www.lantmateriet.se> [accessed 21st June 2010].

designation, coordinates, area, location, shares in joint facilities as well as the corresponding cadastral index maps with the administrative boundaries and origin of the properties.

The land register part mainly contains the legal information on the registered property units including registration of ownership and site leasehold, information on the purchase price, the purchase date and the name of the owner. In addition, information on existing mortgages, granted rights, notes and information about previous conditions is also recorded.

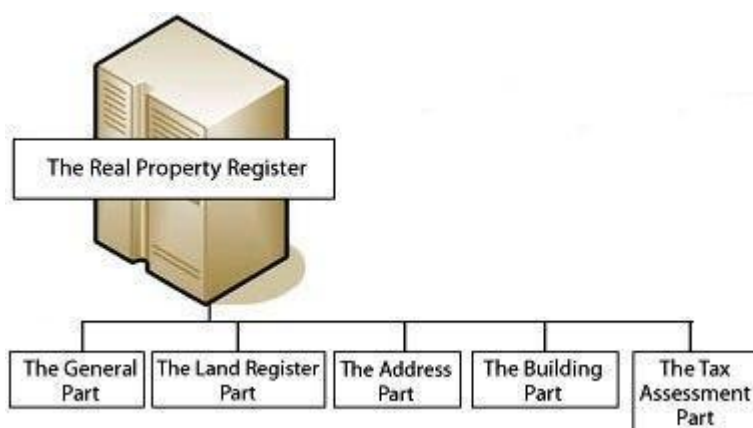


Figure 30: Real property register of Sweden.¹¹⁸

The address part records data on the physical addresses of the real property units including the corresponding postal code and district, and the name of the respective municipality.

The building part contains data on buildings such as dwellings, non-residential premises and industries. This includes information, for example, on the location of the building and the corresponding data from the address and the tax assessment parts. It is worth stressing that the information within the building part is continuously updated by the municipalities. Each municipality is responsible for recording the related information, however, the updating occurs with varying frequency among the 290 municipalities.

The tax assessment part comprises information on the assessed value of the land and buildings and is used for tax purposes. This information is annually collected from the taxation database of the National tax agency (*Skattemyndighet*) (the Tax authority).

Sweden has more than 3.2 million real property units.¹¹⁹ A property unit may be referred to as an owned property with a unique registration

¹¹⁸ Modified from <http://www.lantmateriet.se> [accessed 21st June 2010].

identification name and recorded in the real property register (Carlson 2008). The Swedish property market is also characterised by a sizeable annual number of real property processes. For example, according to the data obtained from the Cadastral and land registration authority, the total number of subdivision, partition, amalgamation and reallocation processes was about 19 000 in 2006. Moreover, over 135 000 cases of property transactions for all types of real property were registered in 2009,¹²⁰ while the number of mortgages number approximately 11.3 million (2010).¹²¹

7.3 Real property legislation

Sweden has a comprehensive system of real property legislation, with the Land Code (1970) and the Real Property Formation Act (1970) recognised as the main legislative acts regulating the various real property processes. The Environmental Code (1998), along with the Planning and Building Act (2010), provides a legal framework for sustainable land management as well as planning, with a special emphasis on the climate and environment in a planning process. In particular, these acts prescribe the basic and specific provisions concerning good management of land and water areas from the perspective of the public interest. Moreover, a wide range of legislative acts related to land and cadastral legislation may be identified. These acts are the Real Property Register Act (2000), the Joint Facilities Act (1973), the Utility Easement Act (1973), the Mortgage Certificates Register Act (1994) and the Real Estate Agents Act (1995).¹²²

The Land Code (1970) provides a general notion of a real property and sets out the provisions concerning its transfer and mortgage. In particular, it prescribes that real property is land divided into property units covering the entire territory of Sweden.¹²³ Everything connected to land belongs to it¹²⁴ and is regarded as fixtures or improvements to land and, therefore, does not need to be registered. Fixtures can be of a physical (e.g., a utility conduit) or legal nature

¹¹⁹ http://www.lantmateriet.se/upload/filer/fastigheter/fastighetsinformation/FR-allmanna_delen/Nyhetsbrev/2011/Nyhetsbrev_2011_1.pdf [accessed 20th October 2011].

¹²⁰ <http://www.ssd.scb.se/databaser/makro/Visavar.asp?yp=fecoqz&cxu=A4289001&huvudtabel l=LagfartAllaRegionAr&deltabell=R1&deltabellnamn=Beviljade+lagfarter+f6r+samliga+fastighetstyper+i+hela+riket+efter+typ+av+f6rverl%5telse%2E+C5r&omradekod=BO&omradetext=Boende%2C+byggande+och+bebyggelse&preskat=O&innhall=Amtal&starttid=1999&stopptid=2005&ProdId=BO0501&fromSok=&Fromwhere=S&lang=1&langdb=1> [accessed 21st June 2010].

¹²¹ http://www.lantmateriet.se/upload/filer/fastigheter/fastighetsinformation/FR-inskrivningsdel/Statistik/Inteckning_02.pdf [accessed 22nd December 2011].

¹²² Their English translation can be found in Swedish Land and Cadastral Legislation (2007).

¹²³ 3D-properties can also be created as of 2004.

¹²⁴ If owned by the owner of the real property.

(e.g., easement). A building, as a rule, belongs to the land and cannot be separated from it.¹²⁵ To be separately sold, a building normally must be physically removed (Mattsson 1998). Since 2004, another possibility to separate a building from the land is to create a three-dimensional (3D) property unit of this building or a part thereof.¹²⁶ If someone other than the owner (e.g., a tenant) has erected a building, the latter is normally regarded as movable property and not as a fixture (Victorin 1997a).¹²⁷

The Real Property Formation Act (1970) mainly sets out the regulations as to property formation (through subdivision, reallocation, partition and amalgamation) and registration with a regular involvement of the authorities. In particular, for example, it regulates a variety of property formation processes establishing property units in a legally secure manner for all the parties concerned.

7.4 Land tenure system

The land tenure system in Sweden comprises the property rights related both to private and public law (Victorin 1997a). In general, the fundamental property rights relating to land in Sweden may be recognised as follows:

- Ownership;
- Leasehold;
- Site leasehold;
- Easement;
- Joint facility;
- Utility easement; and
- Mortgage.

The above-mentioned property rights are described below in accordance with the LCDM classification.

7.4.1 Ownership right

As in many legal systems, the ownership right (*äganderätt*) is negatively defined in Swedish law. Specifically, some actions on a respective real property are not permitted by legislation and, therefore, an owner is entitled to do anything that

¹²⁵ If both building and the land have the same owner.

¹²⁶ It is separate from a 2D property unit.

¹²⁷ However, if it is erected by someone on behalf of the property owner, it is regarded as a fixture.

is not forbidden. The essence of ownership is its economic value and briefly may be identified as the right to a value brought about by a real property.¹²⁸

In general, a real property may be utilised by an owner in a number of ways, thereby generating a range of potential uses or various property rights. The right of absolute ownership implies an infinite possession of the complete bundle of property rights. However, as in many other countries, ownership of real property in Sweden is hardly absolute. It normally is burdened by a set of legal restrictions. The restrictions on ownership rights concern, for example, the extent to which ownership rights stretch to the centre of the earth and up into the sky. In certain cases, another individual is entitled to use a real property against its owner's wish (Mattsson 1998). For example, a mining right may be exercised by an applicant claiming a mining concession on another person's land. Absolute ownership may thus be distinguished into a latent and a current set of property rights. The latter is a bundle of property rights currently available for a property owner, while the former includes certain rights as taken away by society (Mattsson 2003b).

The ownership right may belong both to private (i.e., natural or legal persons) and public (i.e., state or municipal) entities. It is not legally distinguished with respect to the status of owners. Other legal rules, however, define a set of property rights available for a specific owner. For example, a real property held in municipal ownership may not be mortgaged by a municipality,¹²⁹ while public authorities cannot be either bankrupt or running a business for profit. However, it is worth stressing that such regulations normally concern a type of owner, but not a type of real property.

The current description of the ownership right in Sweden is incomplete without including a description of 3D property units. Prior to 2004, only traditional property units could be established through property formation. These property units formally had two-dimensional limits (i.e., X and Y coordinates). However, these were used in three dimensions, i.e., theoretically below the ground and upwards into the sky (Mattsson 2003b). Nowadays, an establishment of 3D property units along with 2D ones is possible and normally employed. These properties must entirely be delimited both horizontally and vertically.¹³⁰

7.4.2 Property to property rights

An easement (*servitut*) is identified as a property to property right. Specifically, this right is granted to one owner of a real property (i.e., the dominant property unit) to enjoy another real property (i.e., the servient property unit) for a

¹²⁸ For an in-depth analysis of the core of ownership, see Mattsson (2003b).

¹²⁹ However, a municipality can take over a real property with the existing mortgage (Local Government Act 1991).

¹³⁰ To learn more about development of 3D property in Sweden, see Paulsson (2007).

particular purpose of enduring importance. This might be done in two ways, i.e., a positive or negative easement might be created. While a positive easement means an obligation of the owner of the servient property to permit or experience something to be done on this property, a negative easement prevents such an owner from utilising the real property in a way that diminishes the right enjoyed by the dominant property. In reality, positive easements prevail (Julstad 2003). Thus, the easement right is linked with the dominant property and thereby may not be independently transferred, i.e., this right “runs with the land”.

Easements can be divided into two categories, namely contractual easements (*avtalsservitut*) and official easements (*officialservitut*). The basic provisions on contractual easements are set out in the Land Code (1970), while official easements are normally governed by the Real Property Formation Act (1970). In particular, the latter specifies provisions as to an official easement, that it has to have an indefinite duration and is formed, amended or cancelled through a property formation process (e.g., subdivision and reallotment), sometimes even in cases of owner protest. A right of way serves as an example of this type of easement.

A contractual easement is granted on the basis of an agreement between the interested parties. A right of way might serve as an example of this property right. This type of easement should be concluded in writing and normally registered upon the request of one of the parties, as unregistered easements are not protected against third parties (in a case of *bona fide*). Along with official easements, contractual easements can be amended and cancelled through property formation against the wishes of the property owners.

Even oral easements may still exist in Sweden (Strang 2006). A personal easement (i.e., use and habitation), which existed under the Roman law, is now abandoned in Sweden (Victorin 1997a). However, there are some rights, which are very close to this easement, such as a utility easement and site leasehold described as person to property rights below.

The right to a joint facility (*gemensamsambetsanläggning*) is also recognised as a property to property right. Specifically, this right entitles the parties to build a facility (i.e., a construction) in favour of several real properties with an aim of lasting importance for those properties. A joint property unit is normally established if land should follow the joint facility. Land for a joint facility may be taken from the participating properties or from another property unit. In cases granting land for a joint facility, a property owner should be financially compensated (Joint Facilities Act 1973). A parking area or private road might be established as a joint facility in which the participating real properties hold the shares. This right follows a participating property in the event of a property transaction.

7.4.3 Person to property rights

The bundle of person to property rights existing in Sweden includes the following property rights: leasehold, site leasehold and utility easement. The common identifier of these rights is their attachment to a person normally during a specified period of time.

The leasehold right (*arrende*) assigns land for agricultural, residential and commercial purposes. Any landowner is entitled to conclude a lease contract based on market negotiations and an annual rent. There are no restrictions on its maximum rate. A residential leasehold contract is normally made for a period of not less than five years or for the lifetime of the lessee. Moreover, the lease contract cannot exceed 25 years in urban areas as well as for agricultural purposes (Land Code 1970). The leasehold might be renewed upon its expiry and, moreover, an agricultural lessee has a pre-emption right in cases of a sale of the real property under special conditions. Leased land cannot be mortgaged by the lessee, however, the leasehold might be transferred with the owner's consent. A lease contract can be registered. However, leasehold rights are rarely registered in the real property register as tenant rights are guaranteed by the law without any requirement of registration (Ferlan et al. 2007).

Site leasehold (*tomträtt*) is a special property right introduced in 1907. Specifically, it is granted to individuals for a specific land use exclusively for payment of an annual ground rent (Land Code 1970). The amount of rent normally reflects the land value and the current interest rate. Only real properties owned by the state or municipality (or otherwise publicly-owned) may be granted in site leasehold. A lessee owns any building on the leased land as well as other fixtures (if any), while the landowner keeps ownership of land (Mattsson 1998, 2003a). Moreover, a lessee may also mortgage this right, while only the landowner may terminate a lease contract. This right connects publicly owned land with private site lessees.

A site leasehold is granted for an indefinite period, normally for housing and facilities purposes. However, such a leasehold contract may be terminated through the purchase of the land or its expropriation. Moreover, an indefinite site leasehold contract assigned for housing purposes can only be terminated by the landowner at defined intervals, first sixty years, which might in turn be followed by an interval of forty years and so forth (i.e., 60-40-40-... years). A lessee receives full compensation¹³¹ for the value of any buildings and other fixtures if the contract is terminated. However, the minimum contract period is twenty years for the other types of site leaseholds. A leasehold contract cannot be void in case of a default on the rent payment (Victorin 1997a). Based on a leasehold contract, a building owned by a lessee and situated on leased land is considered movable property (Mattsson 2003b).

¹³¹ If nothing else is agreed.

The site leasehold right is close to an ownership right in terms of that it can be sold, mortgaged and subleased by a leaseholder to a third party. Easements may also be established in favour of a site leasehold. The site leasehold must be registered and this should be done within a three-month period after the granting of the site leasehold right. By this, the right is secured through registration to the same degree as the ownership right. Thus, the site leasehold right may be regarded as ownership shared between a landowner and a lessee. When the former enjoys ground rent, the latter possesses all other rights and pays the ground rent to the landowner.

A utility easement right (*ledningsrätt*) can be granted to a person desiring access to other land for the installation or maintenance of utilities, such as public water and sewerage mains, underground cables and pipelines, for an indefinite period. If the land is claimed from a real property, which value decreases due to the right, its owner is entitled to financial compensation. The right of a utility easement is created through a utility easement process (Utility Easement Act 1973). For example, this might be the formation of public sewerage and water systems, or telephone lines for a public purpose. A utility easement may not be formed if it diverges, for example, from the existing plans or in a case when private and public inconveniences outweigh the benefits generated by the utility easement. A holder of this right should be a legal entity (e.g., an authority) and, therefore, a dominant property is not required. The absence of a dominant property distinguishes the utility easement from an ordinary easement. In contrast, an indefinite duration of this right provides a similarity with an ordinary easement. Since utility easements, along with official easements, are formed, altered or cancelled by a property formation process, they are to be recorded in the real property register. Moreover, the right might also be attached to a real property, e.g., to install utilities across another property unit (Julstad 2006).¹³²

7.4.4 Monetary liability

A mortgage (*inteckning*) is a legal instrument available in Sweden for a mortgagee (e.g., a bank) to secure a loan normally granted to the mortgagor (i.e., the property owner). A mortgage provides access to credit through linking real property as security to a certain amount of money. In particular, real properties held in ownership or site leasehold might be mortgaged. In addition, several property units jointly owned by the same right holder may also be mortgaged through one joint mortgage, while it cannot be applied to only a part of a real property (Land Code 1970). One real property may be mortgaged several times. In such a case, the priority of the mortgages is based on the date of their registration. In particular, the oldest mortgage has the highest priority in

¹³² However, in this case the utility easement right is recognised as a property to property right.

contrast to the most recent one in a case of a foreclosure sale of a mortgage property.

The current mortgage system was introduced in Sweden in 1972, substituting a system of promissory notes registered and stamped by the courts (Jensen 1997). A mortgage certificate is the core of the Swedish system with the organisation within the Cadastral and land registration authority that keeps records on mortgages. Each mortgage corresponds to a specific mortgage certificate. The latter may be issued in a written form (*pantbrev*) that is at the free disposal of a mortgagor. In addition, a mortgage certificate may also be issued as a digital mortgage certificate (*datapantbrev*) that is registered in the mortgage certificates register (Mortgage Certificates Register Act 1994). This register is not public and mortgagees (i.e., banks) exclusively have direct access to that register. In addition, property owners are entitled to make an enquiry to the Cadastral and land registration authority about a holder of their digital mortgage certificates. However, it is worth mentioning that the mortgage information on the mortgage security amount is visible in the land register part of the real property register, which in turn is a public register. Most mortgage certificates nowadays are issued in electronic form (Strang 2006).

The mortgage certificate, as a security for a mortgage triggered by a property owner, is a distinguishing feature of the Swedish system. This is in contrast to other national legal systems where a creditor records the interest (Carlson 2008). Specifically, a property owner applies to the organisation within the Cadastral and land registration authority for a mortgage certificate serving as a security of mortgage.

7.5 Property formation process

A real property unit is formally recognised in Sweden if established in accordance with a property formation process and registered in the real property register with a unique registration destination (Real Property Formation Act 1970). A subdivision process (*avstyckning*) is the process of forming a new property unit as clearly marked on the ground and having a unique property identifier. Prior to registration, a subdivided property unit is known as a lot (*styckningslott*), while the original property is recognised as a residual property unit (*stamfastighet*). Through subdivision, real property units are normally established and easements may simultaneously be formed. To be formed, a new real property unit ought to be suited for its purpose for a lasting duration, be suitably designed and have access both to a road and acceptable sewerage and water supplies. Subdivision is acknowledged as completed as soon as the respective entry into the real property register is made.

A property owner may wish to create a new property unit by subdividing a certain area from an existing property unit. After the completion of the

subdivision, two separate property units with diverse property identifiers owned by the same property owner are established. In particular, the property identifier of the residual property unit remains unchanged as from prior to the subdivision, while a new property identifier for the subdivided lot is assigned.

Furthermore, prior to subdivision, the sale of a part of a property unit is permissible provided that an application for subdivision is made within a six-month period from the date of the drawing up of the purchase contract. In other words, a subdivision is to be initiated within the mentioned period, otherwise, the sale is void.

A subdivision process is exclusively performed by a public surveyor employed either by the Cadastral and land registration authority (21 local offices) or by a municipality (about forty municipalities have cadastral offices), while a private subdivision of land is void. A completed subdivision may only be changed by a decision of a surveyor employed by the authority or through a court decision. The public surveyor bears full responsibility for all measures and decisions taken in the course of the process. However, in some cases the authority may also involve two trustees who are to act as co-decision makers in the process.

Noteworthy, the surveyor is to be objective as to all private interests and consequently apply the law impartially (Millgård 1997). In particular, the surveyor is responsible not only for the measuring and demarcation of a property unit on the ground, but also for the handling of existing and new property rights and sometimes also mortgages. The surveyor also carries out the cadastral registration.

This research specifically examines a Swedish subdivision process of a land plot assigned for a building purpose (within a detailed plan area) performed by a surveyor employed by the Cadastral and land registration authority (Figure 31).¹³³ Following the applied methodology, the Swedish subdivision process is divided into four general modules.

The land policy control module includes an examination of the overall conditions for subdivision, including conformity of the subdivision with the existing detailed plan. In addition, the surveyor checks as to who is the owner in the general part of the real property register. The subdivision process begins with an owner's application for subdivision submitted to a local office of the Cadastral and land registration authority.¹³⁴ The application must be in writing and be personally signed by the applicant or co-applicants.¹³⁵ It should identify the property unit in question and state the measures to be performed along with a future land use. As soon as the application is registered, a public surveyor is appointed to the particular case and starts examining the general conditions of the subdivision process. In particular, the surveyor carefully

¹³³ The description is partly based on Julstad (2006), Mattsson (2006, 2011) and Ferlan et al. (2007).

¹³⁴ In some other cases, it might be a cadastral office of a municipality.

¹³⁵ If the land is jointly owned.

examines the collected information and assesses whether a requested subdivision is consistent with the current planning, land use regulations and public land policy. The duration of the suitability of the new land plot for the assigned purpose must be checked. The size of the land plot, whether it is a suitable neighbourhood, along with access to road, water and sewerage systems, are taken under particular consideration. A surveyor also consults, when appropriate, with a municipality and other stakeholders including public authorities as to road access and environmental protection. In cases of conflicting interests, a meeting with interested parties may also be held to clarify details before subdividing the real property. A notice of the meeting is to be given to all the interested parties. Minutes of every meeting are also to be taken and collected in a dossier. It is worth stressing that a surveyor is rather free to arrange the subdivision process in the way seen as most suitable, not being bound by statutory regulations as to this aspect.

The preparation module follows the land policy control module and includes two main activities, surveying measurement and treatment of property rights. Surveying implies the demarcation of a new property unit (a subdivided unit) on the ground and the establishment of any easement (if appropriate). At this stage, the surveyor can also decide about any mortgage, namely whether it is to belong solely to the residual property or to both properties (i.e., residual and subdivided). Noteworthy, mortgage holders are not considered interested parties as to the subdivision and, therefore, are not called to the meetings. Instead, a surveyor has to observe their interests and can also contact them in writing if necessary. A cadastral plan of the units in question is also drawn up.

The cadastral decision, taken by the surveyor after having completed the previous activities, belongs in turn to *the decision module*. The latter is marked out as a separate module due to its key role in respect to the emergence of a new property unit. As soon as the cadastral decision is taken, a bundle of respective property rights is formally attached to the new property unit. After settling up all the issues, the surveyor takes a decision about the completion of the subdivision in the form of a final order as well as makes a preliminary entry in the real property register in order to avoid errors. All interested parties (i.e., the applicant and other stakeholders including a respective municipality) should be notified about the formal decision. This must be done within a seven-day period after the decision is taken. Each of these has the right to appeal the decision. The surveyor also invoices the property owner for the work done under the process.

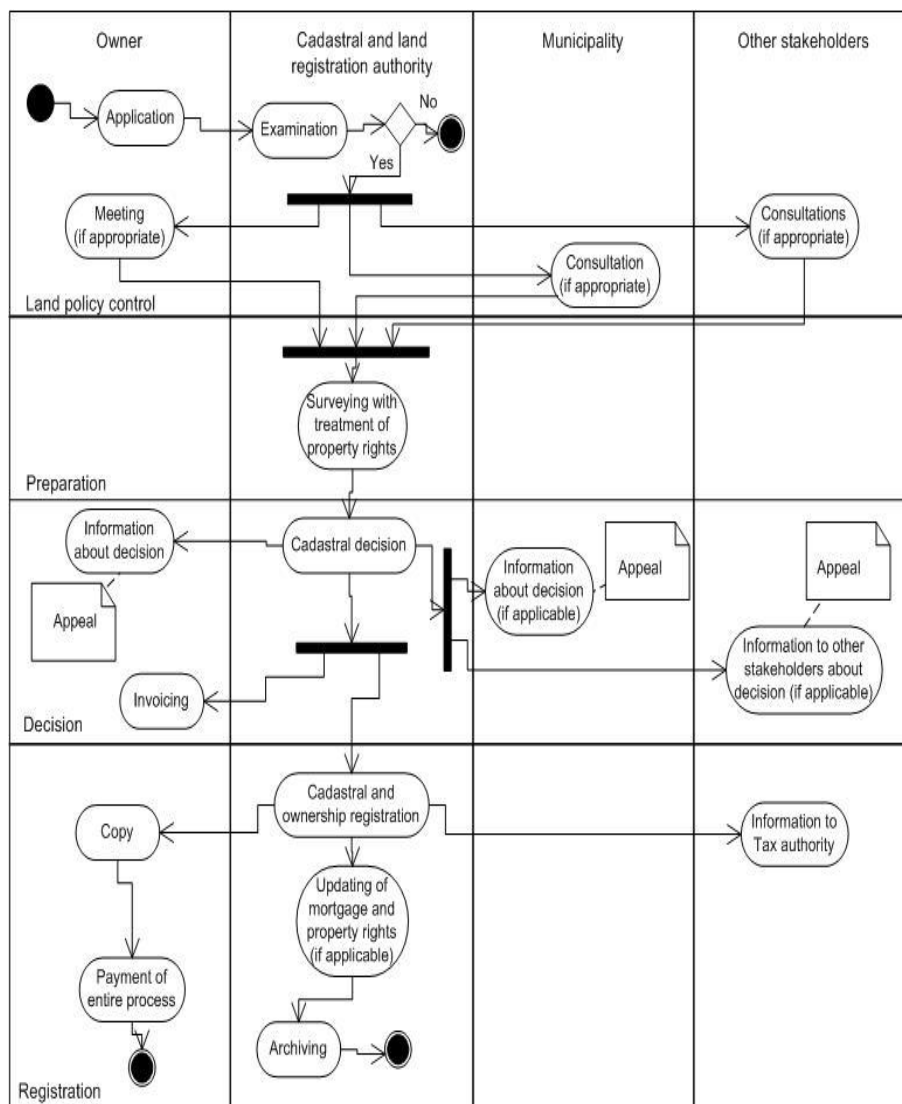


Figure 31: Property formation process within a detailed plan area in Sweden.

The decision is needed in order to further proceed with registration, which is also the responsibility of the surveyor. *The registration module* follows the decision module and includes all the activities connected with the cadastral and ownership registration as well as payment of the subdivision process.

Moreover, the updating of property rights and mortgage (if applicable) is performed within this module.

The surveyor makes a record of the changes that have occurred in the general part of the real property register¹³⁶ as soon as the previous activities are implemented. Ownership registration, along with possible mortgage exemption in the land register part, is in turn carried out later by a registrar.¹³⁷ When the appeal period (i.e., four weeks) expires, the surveyor finalises the registration of the real properties in question. Furthermore, the Tax authority is to be informed about the subdivision since the subdivided and residual property units need to be assessed. Moreover, all subdivision documents are to be digitally archived. Copies are sent to the property owner.

Highlighted here, the cost of the subdivision process including the cost of registration is covered after the formal decision on subdivision is taken and the owner is invoiced. This is normally done after the subdivision process is completed. It seems reasonable to suppose that such an arrangement may reduce transaction costs due to a shortening of the process.

The registration module and, therefore, the subdivision process on the whole is acknowledged as completed when a copy of the documents is sent to the property owner as well as, for example, maps, minutes of meetings and a description of the property rights, which are archived and the Tax authority is informed.

7.6 Property purchase process

This research describes the purchase of a land plot with a single-family house and the involvement of a real estate agent, bank and the Cadastral and land registration authority. In reality, depending on the range of stakeholders involved, a real property purchase might be rather complicated. It should be particularly emphasised that buildings treated as fixtures cannot normally be sold separately from land (Victorin 1997b).

A purchase of real property, along with exchange and gift, are acknowledged as the typical property transactions on the property market in Sweden. Prior to a purchase, the real property ought to be clearly demarcated on the ground and recorded in the real property register.¹³⁸ However, the purchase of a part of a real property unit is also possible in Sweden. In particular, this occurs under the condition that a subdivision process is applied for no later than six months after the signing of a purchase contract. In such a case, the purchase contract serves as a basis for the subdivision.

¹³⁶ A surveyor performs cadastral registration.

¹³⁷ Who is also an employee of the Cadastral and land registration authority.

¹³⁸ 3D property units are not considered here.

The purchase process (*köp*) of land with a permanent house in Sweden¹³⁹ is divided into four general modules for further analysis (Figure 32).

The marketing activities module is generally aimed at connecting all the interested parties on the property market, such as the seller, real estate agent as well as buyer and bank. It normally begins when a seller and real estate agent enter into a contract, which becomes the legal basis for the agent to act. The agent is legally obliged to represent both parties, i.e., seller and buyer. Initially, a real estate agent advertises the real property in order to reach as many potential buyers as possible. When a seller and buyer are connected, they negotiate with the assistance of the real estate agent about the general purchase conditions.

A potential buyer further triggers the process by contacting a bank to investigate the possibility to obtaining a loan to finance the purchase, due to insufficient self-financing. Having completed the negotiations, the buyer obtains a loan promise from the bank.

The pre-contracting module begins when a seller and buyer (with the assistance of a real estate agent)¹⁴⁰ negotiate a purchase price. The negotiation might in some cases be a time consuming activity. As soon as negotiations are completed, the parties may wish to sign a preliminary contract (*köpekontrakt*) drawn up with the assistance of the real estate agent. The signing of a pre-contract legally binds the contracting parties in Sweden. A preliminary contract with a deposit payment serves as a guarantee for future continuation of the purchase in case one of the contracting parties decides to withdraw from the process.

Moreover, the buyer has the obligation to perform a physical inspection of the real property (i.e., to check the technical and physical characteristics of the house). Since this inspection indicates future potential costs, it normally is performed by a professional, i.e., a property inspector. The buyer has no duty to perform an inspection of the real property. Consequently, the failure to inspect entails that the buyer may not claim compensation or cancellation of the purchase for missed defects discovered later. The seller in turn is obliged to inform the buyer about all the existing encumbrances on the property as well as about specific planning restrictions related to the real property in question (Victorin 1997b). Inspection may be performed before or after the signing of a preliminary contract and payment of deposit.¹⁴¹ It is worth stressing that a property inspection is one reason for the separate signing of preliminary and purchase contracts.

The contracting module incorporates the preparation and signing of a purchase contract between the parties. Contract signing signifies the moment when the real property is transferred and the buyer normally obtains ownership with

¹³⁹ The description is partly based on Johansson (1998), Julstad (2006), Mattsson (2006, 2011) and Ferlan et al. (2007).

¹⁴⁰ It is not necessary in Sweden to involve anyone in a purchase process except a buyer and seller (if the mutual home, the seller's spouse/cohabitee must consent).

¹⁴¹ This normally is 10% of the purchase price.

possession. Along with signing of a purchase contract, payment of the purchase sum and the signing of the loan contract are also included in this module.

As soon as the contracting parties agree, they can draft a purchase contract (*köpebrev*) in a rather elementary form without needing to invoke external help. A purchase contract is a formal requirement for the parties to transfer the ownership right. A Swedish purchase contract is rather simple, however, it still is acknowledged as one of the few exceptions to the existing contractual freedom in Sweden (Carlson 2008). In particular, the Land Code imposes rather rigorous requirements such as that the purchase contract must be signed by the seller and buyer, identify in writing the real property in question, name both contracting parties and the purchase price as well as state the seller's declaration about the transfer of the real property to the buyer. If any of these requirements is not explicitly stated in the purchase contract, the contract is void.

Furthermore, along with the seller and buyer, the purchase contract is to be attested by two witnesses.¹⁴² The institution of witnesses exists in Sweden and substitutes the rather costly notary institution. In addition, a formal witnessed consent from a seller's spouse is also relevant when transferring a residential property.

At this stage of the purchase process, a loan contract between a buyer and a bank is simultaneously treated. In particular, the buyer's bank transfers the purchase sum to the buyer. The sum is further passed on to the seller and the seller's bank. A mortgage certificate is normally transferred in the opposite direction. Nowadays the latter is normally issued in an electronic form and transferred between the banks through changes in the mortgage certificates register.

If a bank assigns a loan for a property purchase, it is willing to secure it through mortgage of the real property. In reality, a mortgage contract is dealt with together with the signing of a purchase contract and ownership registration since the purchased real property can only be mortgaged after ownership registration. This explains the reason why banks are willing to perform ownership registration (on behalf of a buyer). A mortgage application can be made by the buyer (often by a bank on behalf of a buyer) to the Cadastral and land registration authority. The latter issues a digital mortgage certificate (*datapantbrev*) indicating the amount of security. It is lawful to issue several mortgage certificates on the same property. In such cases, priority of payment is established in accordance with the mortgage registration dates. As soon as the loan is paid back to the bank, the mortgage certificate is transferred to the disposal of the property owner and may be used for securing a new loan.¹⁴³

¹⁴² Absence of witnesses' attestation simply delays registration, however, it is not a legal requirement as to validity.

¹⁴³ The more detailed description of the mortgage options in Sweden might be found in Ferlan et al. (2007).

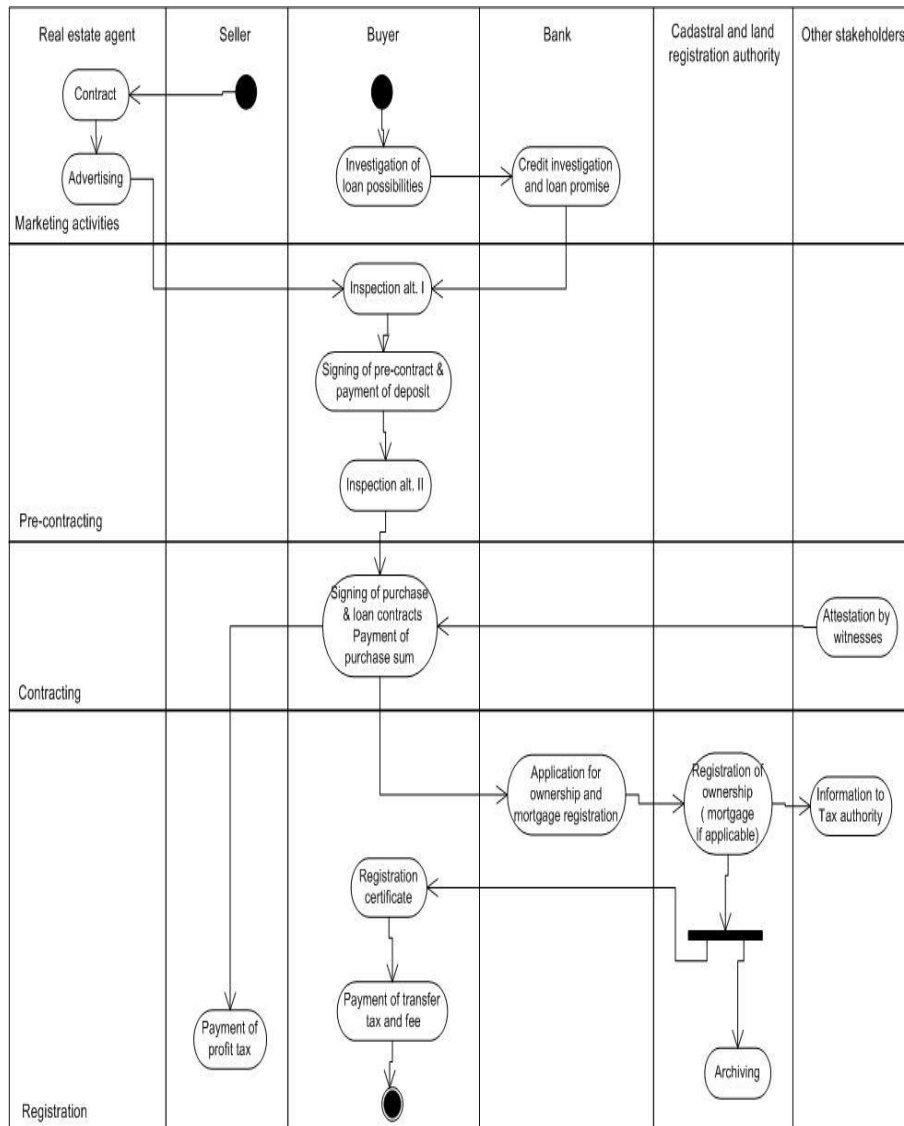


Figure 32: Purchase of a land plot with a single-family house and the assistance of a real estate agent and bank in Sweden.

Thus, after signing the purchase contract and transferring the purchase sum, the ownership right over the real property is transferred in spite of the fact that registration might be done later.

The registration module formalises the process of recording owner information in the real property register and in this way provides security for a new owner's rights against a third party. These activities are necessary for making the real properties transparent for the property market and thereby to use them as collateral for obtaining loans.

When all the contractual formalities are completed, the buyer or a respective bank (on the buyer's behalf) applies to the Cadastral and land registration authority for ownership and mortgage registration. The latter in turn makes a formal check and decides about ownership registration by making records in the real property register. Furthermore, it also informs other related governmental authorities on the changes that occurred. In particular, it informs the Tax authority on the owner's change. Moreover, it also calculates transfer tax (i.e., 1.5% of the purchase sum) as well as issues an invoice for both transfer tax and registration fee. Worth stressing is that the validity of the purchase is not dependent on payments of tax and fees. The Cadastral and land registration authority informs the buyer about registration by sending out a registration certificate. Eventually, the seller declares any capital gains obtained for payment of capital gains taxes.

A buyer has a three-month period for ownership registration. Thus, the buyer is rather free to dispose over this for registration of the property transaction. A late application (even after a three-month period) does not result in a void purchase contract (Julstad 2006). However, disregard of registration can be prosecuted (Mattsson 1998). To avoid ownership registration being declared inactive, a purchase contract should be signed by witnesses in spite of the fact that there is no explicit formal requirement (Carlson 2008).

7.6.1 Empirical investigation of transaction costs

As in case of Slovenia, the empirical investigation of the direct transaction costs of the purchase process of a land plot with a single-family house on it in Sweden supposes combining all components of the transaction costs including compulsory fees and taxes. Relevant quantitative information is based on the available scientific literature (Lindqvist 2008) and the official statistical source supplemented with the internet search of home pages of the professional branch organisations.¹⁴⁴

Specifically, for 2010 the average price of a land plot with a single-house on it is officially determined in Sweden around 210 620 EUR¹⁴⁵. The real estate agent's fee and property transfer tax are calculated as a percentage of the average

¹⁴⁴ <http://www.besiktningssman.se/koepasaelja/oeverlaatelsebesiktning.aspx>,
<http://www.lansfast.se/koepa/koepguide/4-undersock-huset.aspx>,
<http://www.fastighetsbyran.se/Salja-bostad/Vara-tjanster/Besiktning/> [accessed 17th March 2012].

¹⁴⁵ http://www.scb.se/Pages/TableAndChart_53969.aspx [accessed 12th March 2012].

purchase price of the real property in a middle-sized city (Table 3). The registration fee for the property purchase in Sweden is calculated as 2.5% of the annual basic price index (*prisbasbelopp*¹⁴⁶) that was equal to 42 400 SEK¹⁴⁷ in 2010. The property inspection fee is approximately determined due to rather variable prices for this activity among the specialised companies and real estate agencies. The value added tax is not separately indicated in this calculation.

Table 3: Direct transaction costs of the property purchase process in Sweden.

Direct transaction costs	Percentage	SEK	EUR
Real estate agent fee	3	60660	6319
Property inspection	-	8000	833
Transfer tax	1.5	30330	3159
Registration fee	-	1060	110

Having calculated the above-mentioned fees and taxes, the direct transaction costs for a purchase of a land plot with single-family house on it in Sweden amount to 4.9%¹⁴⁸ of the average price of the real property in question.

¹⁴⁶ http://www.scb.se/Pages/TableAndChart_33883.aspx [accessed 17th March 2012].

¹⁴⁷ 1 EUR is approximately 9,6 SEK for 2010

http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm [accessed 17th March 2012].

¹⁴⁸ That is equal to 10 421 EUR.

8. Belarus

8.1 Background information

The Republic of Belarus (Belarus/BLR) is an inland country with an area of 207 600 km² and population of 9.5 million inhabitants (2009).¹⁴⁹ Of these, about 70% reside in urban settlements. The Republic of Belarus is nowadays regarded as a country in a transition economy from planned to market-oriented.¹⁵⁰



Figure 33: Map of the Republic of Belarus.¹⁵¹

In general, the countries having planned economies are normally ruled by bureaucratic control and power relations (Hoskisson, Eden, Lau & Wright 2000). In such cases, the state holds and protects property rights, while

¹⁴⁹ Official statistics of the Republic of Belarus

<http://belstat.gov.by/homep/en/indicators/population.php> [accessed 20th March 2011].

¹⁵⁰ Detailed description of the EBRD country strategy can be found on <http://www.ebrd.com/pages/country/belarus.shtml> [accessed 28th September 2011].

¹⁵¹ <http://countrystudies.us/belarus/14.htm> [accessed 20th March 2011].

individuals use the assets but do not own them (e.g., land). Until now, the system of centrally planned economies with minor changes mainly operated in countries in transition (Csaki 2000). Belarus is not an exception. The situation in land administration in Belarus is often acknowledged as retrograde (e.g., Kasten 2003). At present, the dominance of state ownership of land within the large-scale farming sector seems to remain strong (Csaki 2000).

Due to increasing urban expansion, problems of land acquisition for urban development have become more urgent and complex year to year. These mainly concern the legal aspects, for example, of transfers of land from state to private ownership, along with the involvement of manifold stakeholders in the land development process. Moreover, Belarus faces rather similar problems in land administration as many other countries all over the world. In particular, these concern the establishment of a national spatial data infrastructure (NSDI), development of customer-friendly property processes along with the revival of the real property market in general. To increase foreign investments in the country, and therefore to foster its economic development, Belarus ought to specifically focus on strengthening its system of property rights with exclusivity, transferability and quality of title (Devlin, Grafton & Rowlands 1998).

8.2 Land registration system

The land registration system in Belarus is originally established as a unified system - the state land cadastre in 2003. It mainly serves as a tool for keeping up-to-date records for the needs of the property market. Since 2003, land plots with corresponding rights and encumbrances, along with buildings and respective right holders, are recorded in the system. At present, the state land cadastre is formed by five registers:

- The uniform register of administrative territorial and territorial units of Belarus;
- The uniform state register of real property, rights and transactions with real property;
- The register of land price;
- The register of land value; and
- The register of land resources of Belarus.

To get an insight into the informative content of the state land cadastre, a brief overview of the composing registers is presented below.

The uniform register of administrative territorial and territorial units of Belarus is mainly aimed at keeping updated information on the name, size and borders of both administrative territorial units and their administrative centres.

The uniform state register of real property, rights and transactions with real property (the uniform state register) is recognised as the main register meeting the growing demand of the property market. The register includes information on the registered land plots together with buildings situated on them (if any). It specifically contains data on location, size, boundaries, the current land use and the current encumbrances including easement (if any) as well as data on property transactions and the right holders. The register is based on principles of uniformity, reliability, openness, comparability and compatibility (the State Registration Act 2002). Specifically, an individual may obtain information on a particular property. However, aggregated data on the real properties belonging to a particular person is not public. The foregoing is in line with the general principle of state registration anchored by the Civil Code (1998). Thus, the uniformity of the public access principle in both legislative acts is obvious.

Furthermore, the register of land prices is mainly aimed at recording price information on land plots with other types of real property (e.g., buildings) located on them. The recorded prices are the sale prices of completed transactions. The register of land value includes information on cadastral value¹⁵² of land plots based on mass valuation. The register of land resources of Belarus maintains, for example, information on land categories, types of land use and the respective land users, land quality and types of economic land use.

The registers of the state land cadastre are normally financed by the state, however, the uniform state register might also be financed through other sources (e.g., service fees).

According to the official statistics from the national registration authority – the National cadastral agency,¹⁵³ as of February 1, 2010 the uniform state register consists of records concerning over five million property units including 1 351 455 land plots, 1 722 528 buildings and 1 958 731 apartments. Registered land plots cover about 12% of the entire territory of Belarus.¹⁵⁴ The mortgages of land plots account for 0.5% of the total number of mortgages¹⁵⁵ registered in the uniform state register as of June 2010 (UN-ECE 2010b).

The most active sector in the real property market in Belarus deals with transfers of privately-owned apartments (mainly in multi-story buildings). Specifically, 10% of the flats held in private ownership are annually involved in property transfers (Arguments and facts in Belarus 2003). At the same time, the

¹⁵² It is close to the market value if the sufficient market data is available and the current land use is the most efficient one (State Standard of the Republic of Belarus 2007). It might not deviate from more than 25% of the market value in a case of correct assessment (Gudkova 2007). This is calculated in accordance with a specific methodology taking into account, for example, the quality of soil and location of a land plot in question.

¹⁵³ http://www.nca.by/rus/news/~group_m12=3~page_m12=1~news_m12=803 [accessed 10th March 2010].

¹⁵⁴ Kudryakova (email 2nd August 2010).

¹⁵⁵ Mortgages of buildings, apartments and land plots.

land market still seems to be underdeveloped.¹⁵⁶ In particular, a hidden land market still exists, emerging when a house is sold together with a respective land plot that is in turn restricted for transacting on the property market.¹⁵⁷ In such a case, the land price is informally included into the price of the house situated on it. Obviously, there is an urgent need to accelerate this segment of the property market and to increase its efficiency in Belarus in general.

Belarus belongs to ‘notary-operated’ countries, such as, for example, the Netherlands (e.g., Slangen & Wiggers 1998; Zevenbergen 2004), France (Dubois 1998) and Germany (Wegen, Lingemann, Spoerr, Jousen, Wasmann, Schweyer & Kuner 1998).¹⁵⁸ In such systems, drawing-up the necessary documents, their mandatory authentication and counselling are normally performed by a licensed notary (either public or private). However, a clear trend of the notary’s role in the property market might be identified in Belarus. Registrars along with professional notaries are entitled, for example, to attest purchase contracts (State Registration Act 2002). The Ministry of Justice in turn monitors notaries’ activities and licenses them.

8.3 Real property legislation

After the declaration of independence in 1991, Belarus undertook an economic reform in which a free market of privately-owned land and apartments was a crucial component. Since then, Belarus has been transforming the ‘old’ Soviet tenure system with its exclusive state ownership on land and a keen state control into a system of the co-existence of state and private land ownership.

The transformation process started with a comprehensive land reform. However, the land reform varied in its intensity during the independence period. In the beginning, the land reform was marked by the introduction of private land ownership and an active land privatisation. However, over the years, the land reform has lost its novelty and began to decelerate. This might be explained by a lack of clarity in land policy and contradictions of land legislation with other legislative acts. The Civil Code of 1998 gave a powerful incentive to start the land reform anew. At that time, it was mainly aimed at introducing a modern property registration system.

Since 2002-2003, a significant institutional reorganisation of the land administration sector began in Belarus. This was specifically aimed at uniting

¹⁵⁶ This might be proven by available statistics from one of the local registration offices. Of 3 082 various purchase contracts (e.g., cars, other movables or immovables) attested by public notaries during the first half of the 2003 in the Polotsk district, only 27 contracts concerned the purchase of either land or land plots with buildings, comprising less than 1% of the total contract number.

¹⁵⁷ Shavrov (email 1st November 2011).

¹⁵⁸ Core functions of the Latin notary and Swedish brokers may be further investigated in the recent study on contract-engineering in real estate transactions (Jingryd 2008).

separate governmental functions on recording land and other types of property (i.e., buildings) performed by two different governmental bodies. Specifically, one was responsible for the registration of land plots with respective rights, while the other kept records on buildings and other structures with attached legal rights. At present, the entire spectrum of property-related activities, including property registration, is exclusively under the responsibility of a single governmental body - the State committee on property (*Goskomimushchestvo*).¹⁵⁹

The on-line access to the property registration system urgently demanded by an emerging property market has been in operation since 2006. Partly due to the undertaken modernisation, the number of registered land plots has increased from 100 000 up to 1.1 million plots between 2003-2008 (UN-ECE 2010a).

8.3.1 Historical development

This historical overview is intended to provide an insight into the evolution of land ownership in Belarus¹⁶⁰ in modern times. Several historical events serve as milestones in this evolution. These events include the October Revolution (1917), the adoption of the first Constitution of the Socialistic Soviet Republic of Belarus (1919) and World War II (1939-1945). In particular, the October revolution may be identified as a primary driver of changes in land ownership at that time. The Decree on land (Decree on land 1917) adopted in 1917 has proclaimed, for example, an abolishment of private land ownership on the territory of the entirety of Russia (including a part of modern Belarus). Land could not be sold, bought, rented or mortgaged and the state consequently became the sole land owner. The first Constitution of Belarus (1919) next formally consolidated the sole right of state land ownership. However, another part of Belarus (belonging to Poland until 1939) still experienced private ownership of land.¹⁶¹ World War II changed the borders of many European countries. Belarus then received its current contours with an expansion of the existing Soviet land tenure system over the entirety of its territory.

8.3.2 Modern real property legislation

The Law on the right of land property (1993) might be acknowledged as one of the fundamental legislative acts as to the introduction of private land ownership

¹⁵⁹ Cadastral and land registration authority.

¹⁶⁰ Until 1939, the territory of modern Belarus belonged mainly to two states, Poland and Russia/the Soviet Union. The history of the establishment of the Soviet Union is not considered here.

¹⁶¹ The detailed historical overview of the state and law of Belarusian SSR between 1917-1936 may further be studied in Margunski, Poteruzha & Chigir (1970).

in modern Belarus. It establishes, for example, the basic principles of transfers and cessation of land ownership. It also declares existence of state and private land ownership as well as introduces joint ownership of land irrespectively of being held in shares or jointly by co-owners. This law is deemed to have laid down the fundamentals for land privatisation process in Belarus.

The Law on denationalisation and privatisation (1993) announces the start of privatisation, providing its general definition and declaring that no restitution is to be applied in Belarus. In particular, this means that restitution of land to persons who lost ownership before 16 July 1993 or to their heirs is not allowed. Those persons might only get land in private ownership in accordance with the current legislation. By declining restitution, Belarus avoids many problems faced by other post-soviet countries (e.g., Latvia, Lithuania), which introduced restitution earlier. These problems, for example, are mostly caused by unidentified or identified but missing property owners, rights to non-existing land parcels or by unclear property rights (Barnes, Stanfield & Barthel 2000).

The Constitution of the Republic of Belarus (1994) consolidated the amendments as to the ownership right with the attached rights along with the corresponding responsibility of the state. It clearly proclaimed the existence of two types of ownership, namely state and private. It also prescribed an exclusive state ownership on the mineral resources, water, forest and agricultural land. These statements were successively anchored by both Land Codes (1999, 2008).

At present, property rights to land are governed, for example, by the Civil Code (1998), State Registration Act (2002), Decree of the President (2007), Mortgage Act (2008) and Land Code (2008) (Table 4).

Table 4: Land administration enactments in Belarus.

Year	Name of legislative act	Main features
1991	Constitution	Sovereign state with an elective president
1993	Law on the right of land property	Division on state and private land ownership
1998	Civil Code	Adaptation to the market environment Land plots and buildings are two separate types of real property
1999	Land Code	Private ownership for specific land use only

2002	State Registration Act	Obligatory state registration Transfer of ownership after registration Single authority for cadastral and ownership registration Introduction of cadastral value ¹⁶² of land
2003	Amendments to the Land Code	Land inventory
2007	Decree of the President	An elaborated process of land transfer from state into either private ownership, lease, or life heritable possession
2008	Mortgage Act	Unity of destiny for mortgage of land plot and building on it, mortgage of privately-owned or leased land plots
2008	New Land Code	Land ownership to foreign citizens and stateless persons Right of adverse possession

Specifically, the Civil Code (1998) regulates the ownership right on real property in general, while the Land Code (2008) and the Housing Code (1999) settle the specific legal issues on land plots and residential properties (respectively).

Though real property issues have been under political discussion in Belarus since 1991, more serious attention has been paid to them in the past decade. They are currently intensively discussed and already elaborated in a wide range of recently adopted legislative acts and Presidential decrees.¹⁶³

Prior to the Land Code of 1999, an inconsistency between property rights to land and those to attached buildings was clearly evidenced. In particular, buildings could be held in private ownership, while land was exclusively owned by the state. Thus, individuals could only own a building on a land plot held in life heritable possession or use, granted by the state. The legal separation of buildings from land at that time was a principle making possible transactions with buildings and disregard of the ownership right to underlying land. Such an

¹⁶² Assessed value.

¹⁶³ The latest Decree of the President (2011) moves land reform in Belarus further forward. However, it is not covered by this research due to the limitation of the research period.

institutional arrangement might be compared with the system to the long-term leasehold on land with the building right (Butler 1996). This formal separation of land from buildings on it was terminated by the Land Code (1999). The latter for the first time in modern Belarus declares a fundamental principle that all the buildings “follow” the land to which they are permanently attached.

The State Registration Act (2002) modernises the existing system of property registration, where the rights as to land and buildings are registered in the single uniform state register. In addition, it establishes the hierarchy of registration of real properties in the uniform state register. Specifically, a land plot and corresponding property rights should first be registered. Next in the hierarchy is the registration of a building located on it with respective rights. This in turn is followed by the registration of an apartment and related property rights (if applicable). Thus, a building cannot be registered without prior registration of a respective land plot.

The new Land Code (2008) promotes the growing activity of the property market by elaborating various aspects of private land ownership. However, the current legal framework might still be regarded as incoherent and overburdened with details from the “old command” system. The existing, still legal restrictions on property transactions hinder, to some degree, expansion of the real property market. In spite of an intensive development of a comprehensive registration system, the need for unification of more or less elaborated components into a complex system of property registration with intense interactions between the stakeholders might still be recognised. For example, the State Registration Act (2002) highlights, for example, functions of the registration authority, the course of the registration process as well as the documents required for registration, while surveying activities aimed at forming property units are still regulated by separate governmental regulations. Thus, a unification of the property processes and their further simplification seems to be timely, relevant and surely demanded by the reality.

The first step, underpinning the institutions of land administration with complex legislation regardless of bureaucratic affiliation, in Belarus was done through the Decree of the President (2007). There the main steps of property formation are stated and the responsibilities of different stakeholders are identified.¹⁶⁴

8.3.3 Defining real property

A real property in Belarus is a resumptive term collecting separate concepts such as land, buildings and structures (Civil Code 1998). Specifically, a real property unit may separately be a single-family house, a multi-story building, a warehouse or a land plot where these building are situated, i.e., those things

¹⁶⁴ Described in detail in section 8.5.3.

which in many other European countries are regarded as fixtures to land and treated simultaneously. Additionally, the Civil Code declares forest, water as well as an enterprise¹⁶⁵ as different types of real property.

Since the land and buildings are different types of real property, they are both to be registered, according to the registration hierarchy, in the uniform state register. After registration, a land plot is identified by a unique property identifier (i.e., cadastral number) consisting of eighteen digits. A building is in turn distinguished by an inventory number. An owner proves the right of ownership on land by possessing a registration certificate. In cases where an individual owns a building on the leased land, the registration certificate also serves as proof of ownership to a building. Thus, the right of ownership to land and that of attached buildings might be treated separately if the owners of the land and buildings are different. In other words, land and an attached building might be held by different persons (e.g., a legal entity or an individual). For example, a person can hold a building in ownership and lease the land (where the building is located) from another person or the state.

8.4 Land tenure system

A wide range of legislative acts provides an overview of the existing land tenure system with available property rights in Belarus. In particular, the Civil Code (1998) defines the fundamental property rights to land such as ownership, life heritable possession, permanent use and easement,¹⁶⁶ while the State Registration Act (2002) in turn sets out a list of property rights to be registered in the uniform state register.

Not to overload the present study with insignificant¹⁶⁷ rights and restrictions available in Belarus, the following rights identified as fundamental ones are described below:¹⁶⁸

- Ownership (including joint ownership);
- Life heritable possession;
- Permanent use of land;
- Temporary use of land;
- Leasehold (including sublease of land);
- Easement; and

¹⁶⁵ Defined as a separate enterprise complex.

¹⁶⁶ The Civil Code (1998) simultaneously proclaims two other types of property rights (not connected to land), the right of economic administration and that of operational (day-to-day) management. These property rights are outside the scope of the present study.

¹⁶⁷ From the standpoint of their availability.

¹⁶⁸ Fundamental property rights in Belarus are described in accordance with the presented theoretical model for systematisation of property rights (LCDM).

- Mortgage.

Belarus is a transition country with a distinguishing set of property rights, combining the rights remaining from the Soviet time (e.g., the rights of permanent and temporary use) and those of a developing market economy with private ownership as the core concept.

8.4.1 Ownership right

The right of ownership (*pravo sobstvennosti*) is the right of possession, use and disposal of a property (Civil Code 1998). An owner is entitled to freely possess, use and dispose of a property, however, within the certain limits, such as in contravention of current legislation, causing damage to the environment, or interfering with the rights of others. Thus, ownership rights are not absolute, however, they are regarded as indefinite, i.e., without time limits.

The right of ownership is restricted to state or private. State ownership is dual, i.e., it is legally recognised as either republican (the ownership of the Republic of Belarus) or municipal (the ownership of the administrative territorial units). Only 14% of the land in Belarus may potentially be transferred to private ownership (Sirotko 2007). This means that only this land is eligible for private property transactions and accessible for the property market, while the other lands are not entitled for transfer. Specifically, agricultural land remains entirely in state ownership. The latter also extends over forest land and land under water as well as land plots for public purposes.

Citizens of Belarus, foreigners, stateless persons, non-governmental legal entities, foreign states as well as international organizations may hold land in private ownership (Land Code 2008). However, this ownership right is to a greater or lesser extent restricted.

Specifically, Belarusian citizens are entitled to hold land plots in private ownership exclusively for the following types of land use:

- Construction and/or maintenance of a dwelling house;
- Maintenance of registered flat in a multi-story building;
- Running of a personal subsidiary farm;¹⁶⁹
- Running of collective gardening¹⁷⁰; and
- Construction and maintenance of a summer cottage.

¹⁶⁹ A subsidiary farm is a small private agricultural enterprise in urban or rural settlements cultivating vegetables, fruits and/or breeding animals to secure to some extent an individual or family's food supply.

¹⁷⁰ Collective gardening is a legal entity consisting of a number of private land plots and mainly aimed at producing vegetables and fruits for own consumption.

The land plots transferred to private ownership within urban or rural areas differ in size. They may vary between 0.05-1.0 hectare depending on a specific type of land use as well as type of the area (Land Code 2008).

Foreign citizens as well as stateless persons may solely hold land in private ownership if they get land in ownership by the right of succession from a close relative with Belarusian citizenship. Non-governmental legal entities may obtain land in private ownership only through auction or without auction solely for the maintenance of privately-owned buildings. Foreign states and international organizations may obtain land plots in private ownership only for placing their embassies or respective missions (Decree of the President 2003).

The right of private ownership may be terminated either by a court decision or by a decision of a respective local executive body (e.g., municipality or village). Specifically, private land ownership is terminated by a decision of a local executive body due to a number of reasons, for example, such as the absence of a landowner, voluntary transfer of land to the state, expropriation of land for public purposes, or the liquidation of non-governmental legal entity being the owner. Upon termination, a just compensation is to be paid to the property owner (Land Code 2008).

The court in turn terminates the right of private ownership to land based, for example, on the following causes:

- Non-payment of land tax during two tax periods (i.e., two years);
- Failure to use land in accordance with the assigned type of land use;
- Failure to use land as designated within the first year¹⁷¹ for an individual and within six months for non-governmental legal entity;
- Non-implementation of the particular soil-protecting actions (separately enumerated by the Land Code 2008);
- Confiscation of land plot (without compensation)¹⁷²; or
- Loss of citizenship.

Privately-owned land held by a foreign state or international organisation may be expropriated in cases where a similar land plot situated in the territory of the foreign state is also expropriated from the ownership of Belarus.

Since state registration of real property in Belarus is obligatory, this may create another ground for termination of the property rights including the ownership right. Indeed, if ownership registration in the uniform state register is not undertaken during a two-month period from the moment when the granting decision is taken, the latter may be annulled subject to compliance with current legislation. As evident, a decision of termination of the private ownership on land may be appealed by an owner.

¹⁷¹ From the date of registration.

¹⁷² This is a compulsory gratuitous land taking as a sanction for a crime as well as an administrative or civil law violation.

In a case when a legal entity is only reorganised, the corresponding privately-owned land is to be transferred to the reorganised legal entity (i.e., to a successor) without the decision of a local executive body on the conditions that the types of property right and land use, as well as the size and borders of the land plot in question, remain unchanged.

In addition, the owner of a land plot may allow erecting activities on its own land performed by other persons (e.g., users). In such a way, the user gets the ownership right to the erected building. An owner of a building is entitled to use a part of the land plot necessary for utilisation and maintenance of the building. If such a building is transferred to the ownership of another party, the right to use a part of the land plot under the same terms as the previous owner is also transferred. Thus, a connection of land with an attached building is legally secured.

One of the novelties of the Land Code (2008) in comparison with the previous Land Code (1999) is a broadened circle of subjects entitled to possess land in private ownership. In particular, the Land Code (1999) declared the ownership right to Belarusian citizens with a special restriction merely to those who are permanently living in Belarus. Thus, those who permanently lived abroad were not entitled to hold land in private ownership. Moreover, foreign citizens, stateless persons as well as international organizations were also out of the land ownership right in Belarus. Thus, the novelty seems to prove a recent positive trend in the development of land legislation of Belarus. Another novelty of the Land Code (2008) is the introduction of the right of adverse possession after fifteen years of uninterrupted use of land in a good faith. This exclusively concerns Belarusian citizens.

Joint ownership

Along with the ownership right, joint ownership (*obschaia sobstvennost*) held by several persons (i.e., two and more) is also recognised in Belarus. The corresponding shares of the co-owners may be defined (shared joint ownership) or the entire land plot may be jointly owned by all co-owners. The disposal of privately-owned land then occurs with the consent of all co-owners. However, a separate share in jointly owned land can be disposed of independently. If a share of jointly owned land is being sold by one co-owner, the others have a pre-emption right to purchase this share. In such a case, a written purchase proposal indicating the purchase price and other contract terms is to be sent to all co-owners who in turn have a one-month period to reach a decision.

8.4.2 Property to property rights

An easement is classified as a property to property right connecting one property unit (a dominant property) with another one (a servient property). The easement right follows the land plot if the ownership right is transferred to another right holder.

Easement (*servitut*) is the right of limited utilisation of another property granted for a particular purpose (Land Code 2008). It might be a right of way, construction and maintenance of electricity and communication lines, pipelines as well as melioration systems, water and sewerage systems.

Two types of easement with respect to duration are specifically distinguished. Specifically, easements may be either time-bound (i.e., for a definite period) or permanent (i.e., for an indefinite period). If the period of easement is not stated, the easement is regarded as permanent.

An easement may be established by a mutual agreement between the right holders of dominant and servient properties. If an agreement is not reached, an interested party may bring a court action. A right holder may demand the establishment of an easement on a servient property, whose right holder is in turn entitled to demand payment for it. The amount of the payment may be determined voluntarily by the interested parties or in a case of disagreement, by a court decision. The easement may normally cease either through its expiry, mutual agreement, or court decision. Registration of easement in the uniform state register is based on the agreement or a court decision containing a description of its nature, boundaries, duration and amount of payment.

It may be assumed that due to growing and complex urban land development, application of the easement right will increase in the future.

8.4.3 Person to property rights

The LCDM class of person to property rights in Belarus includes several rights, namely the right of life heritable possession, the right of use (permanent and temporary) and the leasehold right. This bundle of property rights presents the rights remaining from the Soviet time and those emerging under the independence period. All these rights are to be recorded in the uniform state register in a predetermined manner (State Registration Act 2002).

Right of life heritable possession

The right of life heritable possession (*pravo pozhiznennogo nasleduemogo vladenia*) to land was established in 1990. Prior to that date, all land was owned by the state, while citizens were solely entitled to its use. In addition, land transfers were formally prohibited. Development of real property market in the 90s led to an increasing demand for private land transfers. Thus, this right was introduced

for providing citizens with a possibility to formally transfer land (particularly by succession). It was derived from the exclusive right of state land ownership and might be identified as a transitional right from the right of use to the right of private ownership.

The right of possession to land differs from that of ownership. Generally speaking, ownership is a matter of right, while possession and occupation are matters of fact at any given time (UN-ECE 2005b). Specifically, the right of possession provides a holder with the ability to use land or in other words, it entitles the party to physically control it (UN-ECE 1996). A right holder is able to individually arrange land use and to transfer it by succession. However, it should be pointed out that heirs are entitled to inherit such land plots only either with the ownership right or lease. In addition to Belarusian citizens, foreigners and stateless persons are also entitled to get such land plots by succession (Land Code 2008).

Land plots held in life heritable possession are assigned for equivalent types of land use as land held in ownership. In addition, they may also be designated for handicraft production and private farming. The latter might be acknowledged as the main type of land use for this specific property right. The area of land granted in life heritable possession is strongly limited by the type of land use and urban/rural location. Specifically, it is equivalent to the area of land plots held in ownership. However, a land plot assigned for farming may be up to 100 hectares.

This right is not limited in time and may only be established on state-owned land. Land plots in life heritable possession are prohibited from sale, exchange, gift, lease or mortgage. If a building in private ownership is transferred (through purchase, gift, or inheritance) to another right holder, the right of life heritable possession to a land plot where the building in question is located also follows the new owner.

The right of life heritable possession may be characterised by the following attributes:

- Endurance – not limited duration;
- Hereditability – the right to possess and use a land plot as well as to transfer it by succession;
- Predetermined specific land use – a specific type of land use (e.g., agricultural, residential purposes or gardening);
- Independence – freedom to control land, build on it, or choose any type of crops; and
- Guarantee – the right to an equal land plot in a case of expropriation.

It might be assumed that in the future, the right of life heritable possession will cease to exist due to its gradual substitution by ownership and leasehold rights.

Right of use (permanent and temporary)

There are two types of use right in Belarus, namely the rights of permanent use (*pravo postoianogo polzovania*) and temporary use (*pravo vremennogo polzovania*). These use rights can be distinguished by their respective duration: the right of permanent use has no limitation in time, while the right of temporary use is restricted by a period of ten years (for individuals) and 99 years (for national and foreign investors based on the concession contracts) (Land Code 2008).

Permanent and temporary use rights have distinctive right holders. Specifically, while a permanent right of use is exclusively designed for legal entities such as governmental and non-governmental organisations, agricultural enterprises (including farms), housing and garage cooperatives, the right of temporary use in the first place is assigned to individuals for gardening, pasture and mowing down purposes. The holders of temporary use rights are not entitled to erect permanent buildings on such land plots. On the contrary, they may erect temporarily buildings (e.g., garages) that are to be taken away as soon as the period of use expires.

A user who holds land in permanent or temporary use is not entitled to transfer, lease, exchange, mortgage or grant the land as a gift. However, if a privately-owned building on land held in permanent use is sold, a land plot follows the building, i.e., land is transferred to the new owner of the building with the right of use. Upon the sale of this building, the value of the use right is covertly included within the price of the building and thus in the final purchase price. Therefore, the transfer of state land held in permanent use into ownership may informally occur.

It is noteworthy that legal scholars in Belarus (e.g., Stankevich 2001) specifically distinguish two types of use right depending on the right holder, namely general and specific rights of use. In particular, the general right means that land is not assigned in use to any specific holder and, therefore, land is accessible to anyone. In contrast, a specific right of land use is assigned to a particular holder. In the case of general right of use, there is a risk of land abuse due to the absence of a specific holder responsible for the protection and efficient use of the land. In the case of the specific use right, two proprietors (i.e., owner and user) are both aware of their common responsibilities and duties.

The right of permanent use is seen as being similar to that of life heritable possession, although with different appropriators. The use right can only be kept as long as the land is used according to prescribed period and purpose, for example, land assigned for gardening is supposed to be used for growing vegetables or potatoes. Thus, if users use land for any other purpose, that land might be withdrawn.

Thus, there exists a variety of use rights with different durations and various right holders in Belarus. Such differentiation is managed by a variety of

legislative acts that in turn may lead to higher transaction costs on the property market.

Leasehold

The leasehold (*arenda*) is another right belonging to the class of person to property rights. It normally is recognised as the right transferred by the owner (i.e., a lessor) to a leaseholder (i.e., a lessee) against a particular payment for a specific period of time (normally 99 years). A lease period is normally specified by a lease agreement. However, the lease of agricultural land may not be shorter than ten years, while the lease of land assigned for construction purposes is normally determined by the life cycle of a building. However, the lease period cannot exceed a period of 99 years. At the end of the prescribed period, the leasehold right should be returned to the owner (UN-ECE 2005b).

Land plots may be leased to individuals, national and foreign legal entities, foreign states and international organisations (Land Code 2008). The lessors of land plots may be both state and private entities including individuals. If privately-owned land is leased, its land use should remain unchanged under the entire lease period. Moreover, a private land plot should exclusively be leased with a building located on it.

A land plot may be leased in two different ways, i.e., the lease right may be sold by auction or granted without it. If a leased land plot is transferred by auction, i.e., against a lump-sum, it may exclusively be subleased and mortgaged until the end of the lease period. Those cases are particularly prescribed by several legislative acts (e.g., Decree of the President 2007, Land Code 2008, Mortgage Act 2008). In addition, a lessee may transfer this lease right to another person, however, with the consent of a lessor (Civil Code 1998). The lease right to land is transferred without auction to various governmental authorities, religious and agricultural organisations, non-governmental legal entities for particularly specified purposes such as infrastructure development. Moreover, individuals urgently in need of a place for living, get land plots for private housing in lease as well.

Construction on leased state and private land is permitted if it agrees with the designated land use and the lease conditions. Specifically, an owner of a land plot may allow erecting or demolishing activities on its own land performed by a user. In such a case, the user gets the ownership right as to the erected building. An owner of the building is entitled to use a part of the land plot necessary for use and maintenance of the building. If such a building is transferred to the ownership of another person, the right to use a part of the land plot under the same terms as the previous owner is also transferred. Again, the connection of land with an attached building is obvious.

Thus, the leasehold right provides a leaseholder with a wider range of land use types in contrast to the ownership right. The time limits of a leasehold right for individuals are similar to those of the right of use.

This right may be identified as a complement to the rights of use. It provides a right holder with a broader manoeuvrability within the existing legal environment. However, common sense states that consolidation of this right with the use right sooner or later will occur.

8.4.4 Monetary liability

A mortgage is acknowledged as the right belonging to the LCDM monetary liability class.

Mortgage (*ipoteka*) is legally recognised as a lien on a real property. It normally serves as a security for an obligation (i.e., debt) and is extinguished upon a full debt re-payment. A mortgage is formally established or ceases as soon as it is recorded in the uniform state register. It might be created either by law or a written contract attested either by a notary or a registrar. A mortgage contract should be supplemented by a cadastral map with the marked boundaries of a land plot or a copy of the boundary plan issued by the Cadastral and land registration authority (Mortgage Act 2008).

State land is excluded from mortgages, while land in private ownership in turn may be mortgaged. The lease right of a land plot is only eligible to secure a timely return of a loan granted by a bank. In addition, the mortgage of leased land is only possible if the right to lease a land plot is granted against payment (Land Code 2008).

Land plots held in ownership and assigned for residential purposes can only be mortgaged together with buildings (or incomplete construction) situated on it. However, in a case when it is impossible to seize such a building, a private land plot may be mortgaged separately. Moreover, if a private building is situated on land held in life heritable possession or use, a mortgage of such a building occurs without the mortgage of land plot.

A mortgagor may transfer a mortgaged property to another right holder with a written consent of the mortgagee. Without this consent, a mortgagor is entitled to lease a mortgaged property, to establish an easement on it or to grant it for a gratuitous use only if the granted period is shorter than the period of mortgage and the mortgaged property is used in compliance with the designated purpose. A mortgagor may also erect a permanent or temporary building without the consent of the mortgagee. The latter may in turn transfer a mortgage contract to another potential mortgagee.

The assessed value of a mortgaged land plot cannot be below its cadastral value, while the assessed value of a mortgaged building cannot be lower than its market value.

A real property may be mortgaged several times by a mortgagor. In case of insolvency of a mortgagor, the first mortgage possesses advantage over subsequent mortgages established on the same property. This priority order is arranged in accordance with the records in the uniform state register. In addition, each subsequent mortgage contract should contain information about previous mortgages. A mortgagee has priority over other types of debts as well (Insolvency Act 2000).

Land plots are only to be mortgaged by specific banks as determined by the President of the Republic of Belarus (Mortgage Act 2008), while buildings might be mortgaged by any bank. Recently, the number of the banks entitled to mortgage land significantly increased, while in 1999 there were only eight such banks.

The existing mortgage system of Belarus may be identified as not enticing for the banks. This might be explained by the complicated procedure of taking over a property in a case of default of payment of the loan back by a bank (especially if it is a family with dependents). Specifically, the banks are hindered by the Housing Code (1999) from seizing collateral in a case of mortgagors' defaults. A high inflation rate might be mentioned as another reason hampering the development of mortgage market in Belarus.

Moreover, not every land plot is valuable for a bank and therefore appropriate for mortgage. For example, if a land plot assigned for private construction was acquired more than one year ago and an owner has not started a building process yet, a bank may refuse to mortgage such a land plot since a municipality is entitled to initiate an expropriation process¹⁷³ and afterwards sell it through auction. On the other hand, if an owner is able to mortgage such a land plot before the municipality starts the expropriation process, there is theoretically a probability that the owner will be able to keep this land plot during the entire mortgage period.

Thus, it might be concluded that the above-mentioned restrictions hamper development of a robust mortgage system and thereby prove that Belarus is still in transition towards the market economy.

8.4.5 Summary of the land tenure system

Due to the diversification of property rights in Belarus, it seems appropriate to present an overall picture of the existing land tenure system (Table 5). A private owner may grant a leasehold right in a land plot, mortgage it or grant an easement right on it.

¹⁷³ With the right to compensation.

Table 5: Available property rights to land in accordance with types of ownership.

Property rights to land	State ownership	Private ownership
Easement	x	x
Life heritable possession	x	-
Permanent use	x	-
Temporary use	x	-
Leasehold	x	x
Mortgage	-	x

The right of life heritable possession and the right of use can only be established on state-owned land. The leasehold and easement rights are available on state and private land, while mortgage is only available for privately-owned land.

Moreover, the particular property rights are directly linked to the specific types of land use. Land held both in private ownership and life heritable possession is mainly assigned for equivalent types of land use. However, land held in life heritable possession may, additionally, be used for farming and handicraft production. Thus, the right of life heritable possession is available for a wider range of land uses than that of private ownership.

The property rights available in Belarus may also be distinguished by various attributes attached to them (Table 6). In general, the ownership right has no formal restrictions and thus creates greater incentives to invest in land as compared with the other property rights. The right of life heritable possession is formally restricted along with the right of use and leasehold right.

Land plots held in life heritable possession, use and lease cannot be sold, exchanged, leased, mortgaged or given as a gift. However, at the same time, the holders of these rights are entitled to demand the establishment or abolishment of easements. In addition, land plots held in life heritable possession can be transferred by succession (i.e., bequeathed), however, not given as a gift. Moreover, the right of life heritable possession and the right of temporary use are only granted to individuals on state-owned land.

Table 6: Attributes of property rights to land held by individuals.

Property rights	Attributes of property rights							
	Sale	Exchange	Gift	Succession	Lease	Mortgage	Easement	Construction
Ownership	x	x	x	x	x	x	x	x
Life heritable possession	-	-	-	x	-	-	x	x
Temporary use	-	-	-	-	-	-	x	x _r ¹⁷⁴
Lease	-	-	-	-	x _r	x _r	x	x _r

A construction possibility distinguishes the right of ownership and life heritable possession from the right of temporary use and leasehold right. While construction on owned or possessed land plots is directly linked with a specific type of land use (e.g., construction of a dwelling house or a summer cottage), construction on leased land is prohibited except for construction according to assigned land use and lease conditions. The right holders of land in temporary use may only build a temporary building on it (e.g., an individual garage).

A sublease of a land plot is regarded as void if the consent of the owner is absent or the lease right is granted without a lump-sum payment.¹⁷⁵ A mortgage of leased land is also restricted to a payment for the lease right.¹⁷⁶

8.5 Property formation process

8.5.1 Land privatisation

Since this research examines a property formation process in Belarus by way of land privatisation,¹⁷⁷ its concept principally needs to be explained. Privatisation

¹⁷⁴ Subscript “r” means that these property rights have specific restrictions.

¹⁷⁵ This may be determined either in accordance with the cadastral value of a land plot or as a result of auction.

¹⁷⁶ To learn more about the restrictions on ownership, leasing and transfer in Belarus as well as in other countries of Europe and North America, see UN-ECE report (2003).

is widely acknowledged as the transfer of assets from public to private ownership or control (Hanke 1998). The objectives of privatisation are distinguished as general and specific ones. A specific objective aims at improving the economic performance of an asset. In contrast, the general objectives are aimed at developing the society as a whole. Those objectives are as follows:

- The decentralisation of economic decisions and expansion of the private ownership; and
- The increase in public revenues and reduction in public expenses.

Indeed, a broad land privatisation with corresponding property titling, modernisation of a cadastral and land registration system improve tradability of real properties and thereby support economic efficiency of land use. Specifically, through land privatisation private real properties become visible for the market and thereby capital is linked with the properties through the mortgage system (PRA 2009).

Certain scholars (e.g., Butler 1996) equate land privatisation to adjudication regarded as a basic tool for reducing state land ownership. The productivity of private land is about four times higher than that of public land as private owners have greater incentives, for example, for monitoring, eliminating waste and innovations (Hanke 1998).

However, the impact of land privatisation across a country with varying agronomic potential and diversified land uses is conversely expected to be variable. In other words, to obtain better results, land privatisation should apply a more pragmatic approach when a diversity of physical, economic and social conditions exist within the territory in which it is operating, and these should be taken into consideration (Hunt 2005).¹⁷⁸

8.5.2 Land privatisation in Belarus

Privatisation is acknowledged in Belarus as a process of an acquisition of the ownership right by individuals or legal entities on the assets belonging to the state (Law on denationalisation and privatisation 1993). Specifically, land privatisation was on the state agenda from the very moment of the independence of Belarus due to the prevalence of state ownership on land inherited from the Soviet Union. Even now, state ownership on land is recognised as dominating in Belarus since agricultural land (45%) as well as land under forest and water (41%) is exclusively owned by the state. These totally

¹⁷⁷ This is considered as a combination of a subdivision of state-owned land with its subsequent transfer to private ownership.

¹⁷⁸ The first methods and types of land privatisation in one of the former republics of the Soviet Union (the example of Lithuania) may be studied in detail in Mikuta (1999).

account for 86% of the entire territory (Sirotko 2007). Thus, at present, land privatisation is seen as the most appropriate process of property formation to facilitate a smooth transition to a market-oriented economy on the property market in particular.

This process was ambiguously met primarily by society and experts in particular. Land privatisation was initially recognised as being a minuscule distinction from the right of possession (in fact, the right of use) through additional insufficient power over land and thus, unnecessary to be legislatively anchored (Sokolov 1994).

Surprisingly though, there is no a specific legislative act on land privatisation, while the fundamentals of the privatisation of state housing and leased state property are settled by the Law on denationalisation and privatisation (1993). At present, land privatisation is simultaneously regulated by a set of various legislative acts. Specifically, the Land Code (2008) lays down the main principles of withdrawal and the subsequent granting of land plots, while the Decree of the President (2007) specifies the details of this process. It specifically prescribes property formation measures and subsequent transfer of state-owned land into private ownership, life heritable possession, temporary use and lease. In addition, it determines time limits for each stakeholder to carry out a corresponding activity.

Noteworthy, the term *land privatisation* is not used by the Decree of the President (2007). It instead applies two terms, withdrawal (*izjatie*) and granting (*predostavlenie*) of land plots. This process may to some degree be recognised as a specific case of property formation when land in state ownership is transferred into exclusive possession of a private owner or legal entity for specifically designated land use. In such a case, this results in a transfer of state-owned land to private ownership.

Beginning 2007, the prices of land plots are based on their cadastral value. Specifically, land in private ownership in Belarus can be acquired by either purchase according to its cadastral value or through auction. A distinction between these two prices is that the auction price of land cannot be lower than its cadastral value (Land Code 2008). The income from land sold through auctions normally replenishes the local budget spent for infrastructure development and its maintenance along with improvement of a registration service.

Along with a process of withdrawal/granting of land plots, the processes of partition (*delenie*) and amalgamation (*slijanie*) are also employed in Belarus as alternative property formation processes. However, these are rather rarely used. The reasons for this might be a small number of land plots held in private ownership generating a lesser number of partition and amalgamation processes as well as the area limits of land plots held in private ownership.

In particular, the area of land plots assigned for building of a single-family house in Belarus is to be between 0.05 – 0.15 hectare within urban areas and between 0.15 – 0.25 hectare within rural areas (Land Code 2008). Such land

plots for housing are transferred into ownership, life heritable possession or lease. If there is a need to subdivide a privately-owned land plot, the owner is not entitled to do so due to the existing restrictions on the size of land plots. Indeed, there are no privately-owned land plots (i.e., with all the legal attributes, such as clearly demarcated boundaries, an assigned type of land use, and a rightful owner), which are suitable for subdivision. Thus, a pure subdivision is hardly employed in Belarus.

8.5.3 Withdrawal and granting of land plot

The present research considers a combination of withdrawal and the granting of a land plot as a property formation process. In particular, this research examines a process of property formation where state-owned land is subdivided and further transferred into private ownership for construction of a single-family house. In such a case, a formal approval of location of a land plot from the municipality is not required.

As stated above, a land plot may be transferred from state into private ownership on a paying basis, i.e., either through purchase or auction¹⁷⁹ or getting a land plot in accordance with its cadastral value.¹⁸⁰

The description of this process of property formation is partly based on the Decree of the President (2007) as well as Vaskovich, Dixon-Gough & Stubkjaer (2006). Moreover, this also reflects this author's observations and numerous discussions with experts both from academia and in practice in Belarus. The property formation process is divided into four general modules as for other selected countries (Figure 34). In order to enable a comparison, the activities are generalised.

A municipality in Belarus generally includes several departments under the governance of a municipal decision-making body. In particular, a surveying department of the municipality and a decision-making body are directly involved in the property formation process.¹⁸¹

Specifically, *the land policy control module* begins with a written application submitted to a municipality by an individual¹⁸² wishing to obtain a land plot in private ownership for construction of a single-family house. The application must be in writing and contain the following data:

- Identification of the applicant;
- Type of assumed land use;

¹⁷⁹ The auction price of a land plot cannot be lower than its cadastral value.

¹⁸⁰ Payment for state land transferred into private ownership is omitted from the analysis due to its insignificant role in a property formation process.

¹⁸¹ To avoid overburdening the corresponding diagram, the municipality is presented as a single whole.

¹⁸² As (s)he is not an owner yet.

- Type of requested property right;
- Location of a potential land plot and its area;¹⁸³
- Financial sources for compensation to a former owner;¹⁸⁴
- Total area of all land plots in the applicant's use, life heritable possession, ownership or lease.

The municipality makes official inquiries (within a three-day period) to several stakeholders (i.e., organisations), for example, as to the premises occupied by the applicant and the applicant's household members as well as on other real property owned by the applicant and registered in the uniform state register (if any). The respective stakeholders in turn provide the municipality with the required information within five days.

Based on the responses and an examination of the application, the municipality permits the granting of a land plot and informs both the applicant and a surveying organisation¹⁸⁵ about the granted permission within a seven-day period. If the municipality rejects the application, the applicant is informed with an explanation of the reasons for refusal within a three-day period. In cases of refusal, the applicant is entitled to appeal against the decision to a higher decision-making body or/and to the court.

The subsequent *decision module* begins when the municipality transfers the granted permission along with all the documents and a copy of the cadastral plan with the depicted property boundaries of a new land plot to the selected surveying organisation for subsequent implementation. The surveying organisation in turn draws up a contract with the applicant stating, for example, the content and duration of the work to be done as well as the terms of payment (normally an advance payment). This contract is to be signed within a three-day period from the date of receiving the permission from the municipality.

As soon as the contract is signed and the advance payment of the planned work is made, the surveying organisation first checks the existing regulations and the current detailed plan. It further prepares a file with the applicant with specific documents – the case file (*projekt otvoda zemelnogo uchastka*) containing information about the area and plot's boundaries as well as information about soil quality and amount of compensation to be paid to the state. This case file is to be prepared within a 15-day period from the time when payment is made. The case file then ought to be approved by an architectural department of a municipality as well as by local environment protection, emergency and sanitary inspections. The time limit for all these approvals is three days. Simultaneously,

¹⁸³ The list of available land plots is prepared by each municipality in advance. This information is to be complete, open, reliable and accessible.

¹⁸⁴ State/municipality.

¹⁸⁵ Surveying organisations are under the responsibility of the State committee on property (i.e., Cadastral and land registration authority).

a particular state owner should in writing agree as to the withdrawal of the land plot.

The approved case file is then transferred by the surveying organisation back to the municipality (i.e., its surveying department). The latter evaluates the documents and makes appropriate changes (if needed) as well as prepares a draft of the decision within a five-day period. Further, it submits all the documents to a decision-making body of the municipality for taking a formal decision on granting the land plot in question to the applicant. The decision must include information on the particular land plot including its assigned use, area, the property rights attached and the granting conditions. The decision on granting of a land plot is to be taken by the municipality within a five-day period upon receipt of a complete set of the documents.

Noteworthy, an appeal procedure at this stage is not formally prescribed, while the municipality's permission might be appealed at an earlier stage (i.e., within the land policy control module) (Decree of the President 2007).

As soon as the decision is taken, a decision-making body of the municipality transfers all the documents back to its surveying department within a three-day period for subsequent demarcation of the property boundaries and property registration. A copy of the taken decision along with other documents is also transferred both to the applicant and the former owner.

The preparation module follows the decision module and includes a survey of the land plot in question and demarcation of its boundaries on the ground. Prior to any activity, the surveying organisation enters into a contract with the applicant on the implementation of the surveying measurement. The contract states, for example, the time limit to carry out the surveying work that should not exceed 15 days from the date of the payment of the service fee. The selected surveying organisation may in turn subcontract with a private surveyor to exclusively perform the survey and demarcation of property boundaries on the ground. Thus, surveying measurement begins after the applicant pays the service fee as well as when all the approvals are collected and the cadastral decision is taken by a municipality.

The applicant, former owner and neighbours (if appropriate) are to be present under the surveying measurement. They are also to familiarise themselves with the established property boundaries and to sign a special deed (*akt*) approving this familiarisation. Moreover, the surveyed boundaries have to be clearly demarcated on the ground. Having implemented the surveying measurement, the surveying organisation (or a private surveyor) prepares a detailed report (*zemleustroitelnoe delo*) with all the necessary documents and drawings for subsequent registration. These documents should be transferred to the surveying organisation (i.e., in a case with private surveyor). The transfer should take place within a five-day period from the date of signing the deed.

The registration module begins when the surveying organisation (within a two-day period after completion of the detailed report or receiving it from a private

surveyor) applies for cadastral and ownership registration. Notably, the application for registration may be submitted either by the applicant or by the surveying organisation (on behalf of the applicant).

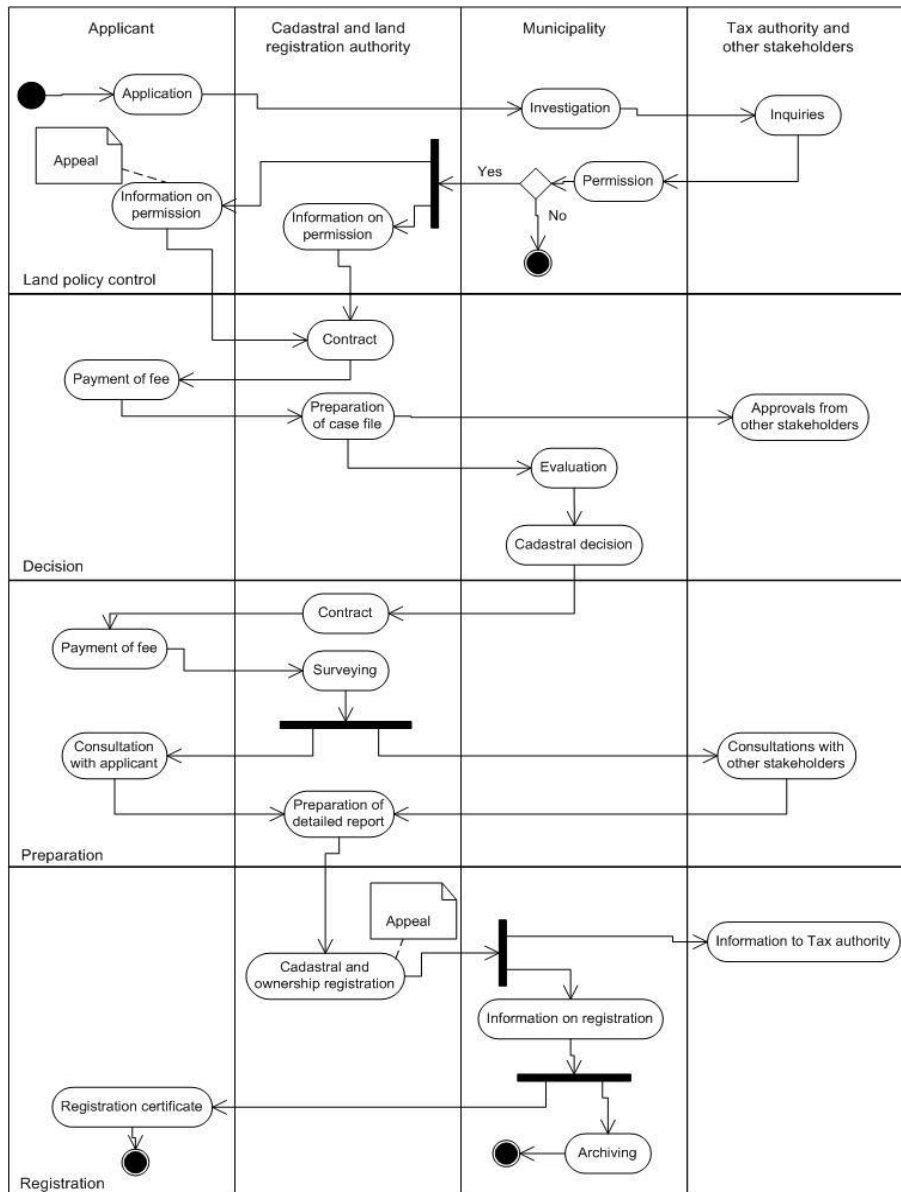


Figure 34: Property formation process within a detailed plan area in Belarus.

A local office of the Cadastral and land registration authority performs cadastral and ownership registration after having examined the application. The examination includes, for example, treatment of the existing property rights to land. Specifically, a registrar examines them and takes a formal decision on registration that might be appealed. The entire registration process is limited to seven days. The applicant becomes the rightful owner of the land plot upon registration and not when the decision of the municipality is taken.¹⁸⁶ Thus, registration serves as the date of the ownership transfer.

The ownership is endorsed by the registration certificate. When the land plot is registered, the owner should begin constructing activities on the land within a one-year period. If the owner does not undertake any planned activity within the prescribed time limits, the municipality warns the owner and orders them to act accordingly within a one-month period. If no actions are still taken, the municipality begins a court procedure for termination of the ownership right.

After registration completion, the local office of the Cadastral and land registration authority transfers the detailed report to the municipality within a three-day period for archiving. It simultaneously transfers the registration certificate for further forwarding to the owner. If the applicant has independently applied for registration, the registration fee is to be paid before the application is completed. Afterwards, the new owner collects the registration certificate at a local office. The local office also notifies the Tax authority about the new registered land plot within a five-day period after registration.

It is worth mentioning that the period between the formal decision on granting a land plot with private ownership taken by the municipality and its registration should not exceed two months. If the activities of the preparation module do not begin in time, the applicant is notified by the municipality. In a case of no action within the prescribed time (not more than one month), the granting decision is nullified.

8.6 Property purchase process

8.6.1 Background information

Property purchase (*pokupka nedvizhimosti*) is one of the most frequently used property transactions worldwide including in Belarus. In some countries, the

¹⁸⁶ After an application for registration, the ownership right of an applicant is protected, while an applicant becomes a rightful owner only after registration. Formally, the date of the application for registration is regarded as the date of registration.

process of property purchase goes smoother than in others. Generally speaking, property purchase functions efficiently if the following conditions are in place (Simpson 1976):

- Clear definition of land plot;
- Proof of seller's ownership on land plot in question; and
- The buyer's complete information on interests followed with land.

To understand the purchase process entirely, institutions of real estate agents and notaries are further described below.

Since 2004, the activities of real estate agents are to be mandatorily licensed and the government determines their rates. It is noteworthy that those activities are classified as legal ones, which is acknowledged as an innovation not only for the Soviet time but also for Europe (Khlaborodov 2004). A person wishing to become a real estate agent is to satisfy a wide range of requirements, such as that a candidate should have a legal, economic, or civil engineering academic background and experience in the profession for more than one year. The general activities of a real estate agent are, for example, advertising, consultations, assistance in negotiations, registration as well as information collection and document preparation.

Since 2006, a "one window" system for the activities of real estate agents is in place in Belarus (Decree of the President 2006a). Specifically, a real estate agent is entitled to assist clients in the course of the entire purchase process, e.g., from advertising and the collection of the required documents to ownership registration. Therefore, a real estate agent may act as an assistant and mediator as well as an authorized representative of a contracting party (i.e., either the buyer or seller). The fee of a real estate agent is determined as a percentage of the sale price (Decree of the President 2006a). However, the contracting parties have the choice of involving a real estate agent in a purchase process or doing it on their own. Thus, it might be supposed that the involvement of a real estate agent may increase the transaction costs of a purchase process.

While the institution of real estate agents was gradually introduced at the stage when Belarus was stepping towards a transition to market economy, the institution of notaries remains well-established from the Soviet time. To perform the respective activities, notaries (both public and private) should be licensed. In particular, a private notary should have a license (valid 5-10 years), while a state notary - a certificate (Notary Act 2004). The Ministry of Justice, along with the departments of justice of a municipal decision-making body, supervise the activities of notaries.

Since 2006, notaries also are to perform their activities based on a "one-window" system (Decree of the President 2005). A client-oriented system was introduced to reduce the time spent by clients for a notary service. In particular, for a purchase contract attestation, a buyer and seller may merely submit

identification documents, while the notary further requests (on behalf of a client) the documents from different governmental authorities. The latter are in turn obliged to submit these documents to a notary within a two-week period. As soon as the requested documents arrive, the notary informs the client in writing no later than the next day after the arrival of the documents. However, if the parties wish, they can collect the required documents on their own.

Furthermore, notaries may claim electronic documents digitally signed by registrars. At the end of 2006, 4 000 e-documents circulated per month among 700 persons or organisations (Shavrov 2007).

8.6.2 Property purchase

To approximate the descriptions of the purchase processes in other selected countries, this research exclusively focuses on the purchase of a land plot with a single-family house on it, as well as the assistance of a real estate agent and bank for purchase financing in Belarus. A private land plot may simply be purchased together with an erected or incomplete building, while a purchase of privately-owned land assigned only for building purposes is prohibited in Belarus. However, a gift of such land plots to close relatives is permitted. The foregoing does not concern land plots purchased in private ownership at auction (Land Code 2008).

To facilitate the comparative analysis, the purchase process is divided into four general modules (based on Ferlan et al. 2007) and supplemented by a fifth module – mortgage additionally identified in Belarus. The model developed here is also generalised and simplified for further international comparison (Figure 35).

The module of marketing activities begins when a seller initiates the process and contacts a real estate agent. Prior to any further activity, an agreement between the seller and real estate agent is to be concluded. This should, for example, specify the range of activities to be performed, a way of payment as well as the amount of fees. As soon as all the formalities are settled, the real estate agent inspects the property in question, i.e., examines the property conditions on the site and then advertises the property in various ways.

The buyer in turn investigates the possibility of obtaining a loan for financing a planned purchase. In general, an individual can obtain a bank loan under regular or favourable terms. In particular, a loan with favourable terms (i.e., a lower interest rate or longer period of repayment) may be granted to a person who urgently needs, according to the governmental standards, housing for living.¹⁸⁷ A regular loan (e.g., with a higher interest rate) is in turn granted to those who not meeting these standards. The negotiations for financing take place parallel to the property inspection by a buyer and the collecting of legal

¹⁸⁷ It is preferential state crediting.

information. During the buyer's inspection of the property, the real estate agent is obliged to inform as to existing defects.

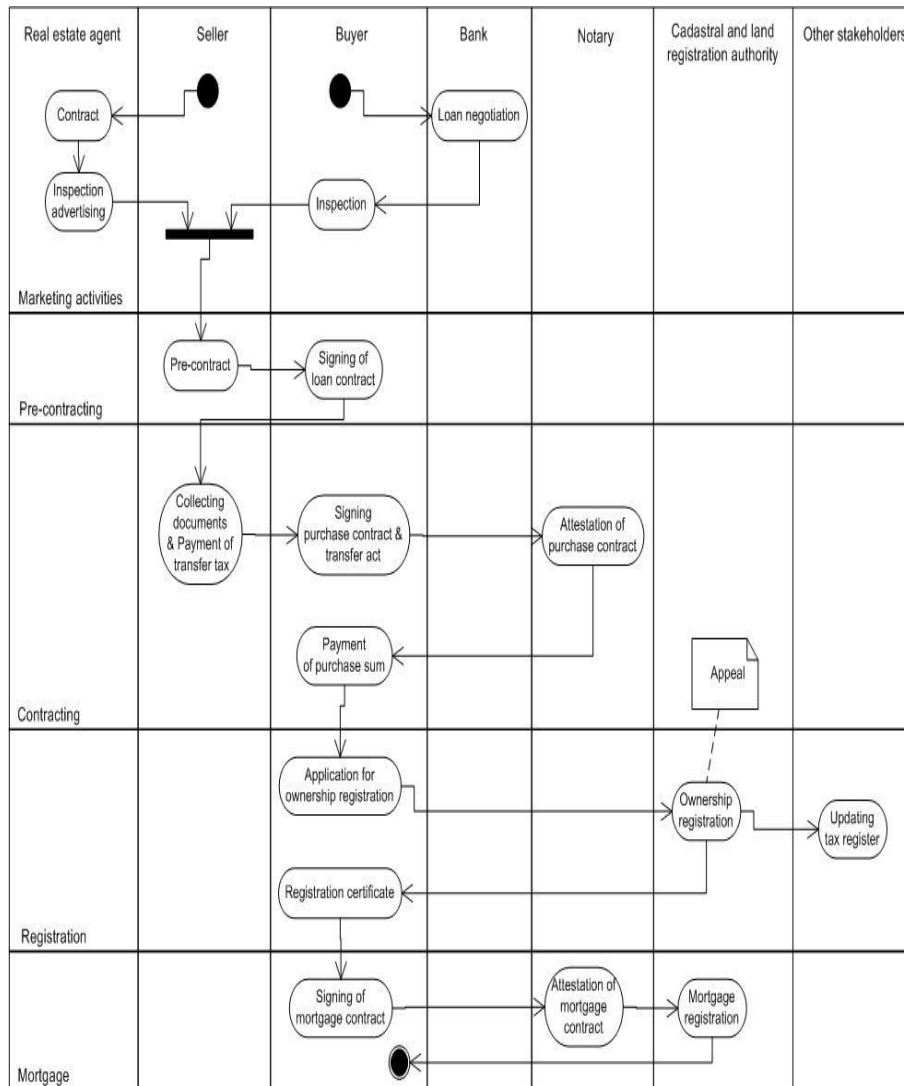


Figure 35: Purchase of a land plot with a single-family house and the assistance of a real estate agent and bank in Belarus.

The activities of the *pre-contracting module* are mainly based on the willingness of the contracting parties to make a preliminary contract (i.e., pre-contract) with

the assistance of a real estate agent. The pre-contract normally outlines the purchase conditions and declares that the parties in principle agree on implementing the property transaction, i.e., on the exchange of real property for money. It is legally binding, while in writing and mainly aimed at securing the parties' positions in the transaction until the final contract is signed. Furthermore, to secure purchase financing, the buyer concludes a loan agreement with the bank. In this way the financing for the property purchase process is secured.

Purchase financing

Purchase financing is separately discussed due to its complex character in Belarus.

According to the available statistics (the first Brest state notary bureau 2003), the 249 mortgage contracts attested by all the notary offices of the Brest region between January 2001-October 2002 amount only to 1% of the total number of attested contracts. Thus, it is logically to assume that mortgage financing in Belarus is rather backward.

Specifically, a loan process begins with a buyer's application to a bank (Figure 36). When the preliminary consent of the bank for granting the loan is received, the applicant collects the documents proving income and the income of other family members. The monthly payment to the bank should not exceed 50% of the total income of the applicant's family. If this sum is not enough to secure re-payment of the debt, up to nine warrantors as to this financial obligation are required.

In addition, the applicant submits a certificate stating the total assessed value of the purchased property consisting of a value of land and value of a building on it. In particular, the value of a land plot cannot be lower than its cadastral value, while the value of a building cannot be lower than its assessed value. This value certificate might be issued by either the Cadastral and land registration authority or any other organization (private or public) having a number of licensed evaluators. This certificate is required for any further loan calculations. A loan cannot be higher than 75% (subject to a bank) of the assessed value. If the purchase price and the assessed value differ, the bank applies the lower of the two figures.

Prior to granting a loan, the bank in turn checks the applicant (e.g., employment, income, or criminal register). If the bank is satisfied, the parties make a loan contract. The loan is normally issued for a 15-year period with a 15%¹⁸⁸ interest rate. The next day after signing the loan contract, the bank transfers the entire sum to the applicant's bank account. From this moment, the repayment of the loan is secured by the applicant's income.

¹⁸⁸ Spring 2007.

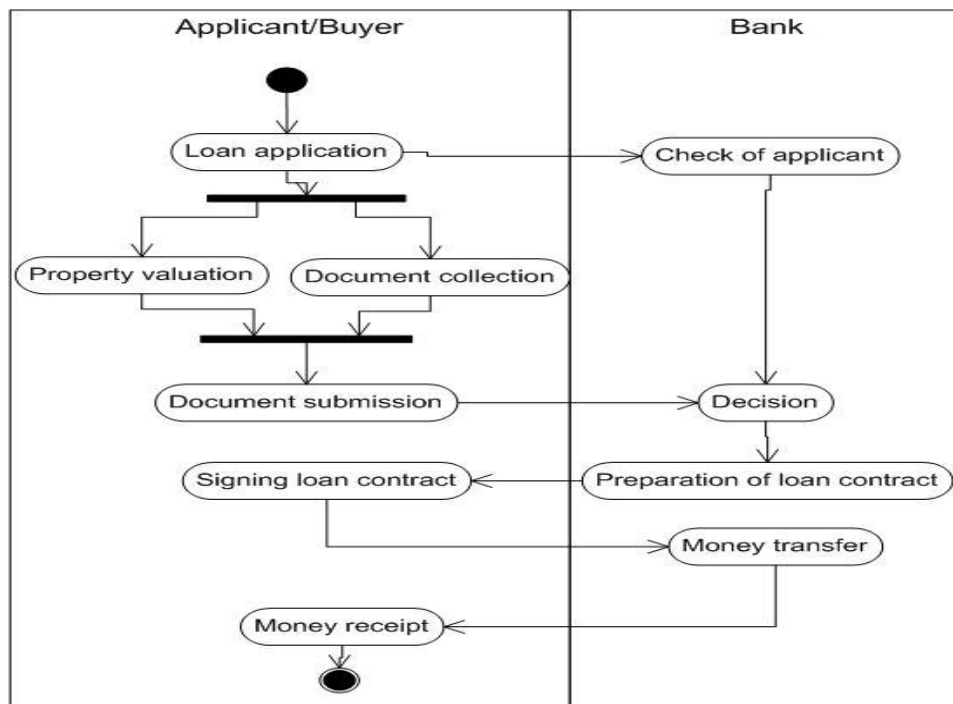


Figure 36: The process of obtaining a loan to purchase land with a house in Belarus.¹⁸⁹

Within *the contracting module*, a notary normally prepares a purchase contract (*dogovor kupli-prodazhi*). However, upon agreement, a real estate agent might draft this document as well. Prior to signing the purchase contract, a set of documents (e.g., from the Tax authority, the Cadastral and land registration authority) is to be presented to a notary. These documents may be collected either by a contracting party or notary (Decree of the President 2005). In the latter case, the notary is entitled to contact the governmental authorities and request these documents. However, in order to reduce the costs of the transaction, the seller, as a rule, instead collects the necessary documents.

The notary, together with the buyer and seller, prepares the contract which is to be signed by both parties, however, the written approval from the seller's spouse is needed (if applicable).

The final contract contains extensive information. It includes, for example, the following:

¹⁸⁹ That is separate from the mortgage process.

- Identification of the parties;
- Declaration of the purchase;
- Identification of the land plot, namely its cadastral number, area, attached property rights;
- Identification of the building, namely type of building (e.g., residential house, summer house or dacha), its area;
- Proof of land and building ownership;¹⁹⁰
- Easements and other encumbrances on land (if appropriate);
- The purchase sum (indicated both as total and separately for land and for a building);
- Terms of payment (i.e., before/during/after of signing the contract);
- Manner and deadline for transfer of real property in possession (according to the transfer act¹⁹¹);
- Seller's guarantee for absence of the claims on land and building;
- Identification of a local office of the Cadastral and land registration authority for ownership registration;
- Means for covering the fee for the final contract;
- Signatures of the parties (the seller's spouse approves the property transfer in writing);
- Date and place of the contract signing; and
- Notary's attestation.

As soon as the purchase contract is signed, it is attested by the notary. The notary's fee and the transfer tax are to be paid in advance. The rate of the transfer tax for property transfer does not depend on the purchase price. In contrast, it is directly connected with the basic value. Notary attestation takes place at the notary's office on the day of the submission of the required documents.

A transfer of real property in possession of a buyer is to be certified by a transfer act prepared by the notary and signed by both contracting parties (Civil Code 1998). This concerns only buildings and not land. The transfer act specifically states that the seller transfers the building to the buyer who in turn receives it. It also mentions that the building conditions correspond to the terms of the contract. The transfer act is signed by both parties simultaneously at the signing of the purchase contract.

The purchase sum might be paid to a seller in three different ways, namely before, during or after the signing of the purchase contract. Specifically, if a buyer pays the sum after signing the contract, the terms of payment are to be

¹⁹⁰ It might be a registration certificate or an extract from the uniform state register. The latter is normally provided in a digital form.

¹⁹¹ The purchase contract and a transfer act are two separate documents that normally are elaborated during the purchase process. By the transfer act, the real property is transferred into the possession of the buyer.

specifically stated in the contract. Thus, the buyer enters into possession of the property only after the payment of the entire purchase sum to the seller. If the purchase sum is paid before the signing, the notary is not able to check it. This is based on the words of the contracting parties. The third option for the buyer is to pay the purchase sum during the signing of the contract, when the notary acts as a witness of the money transfer. The present study considers the most applicable case that of payment of the purchase sum while signing the purchase contract.

Having signed the contract and the transfer act, as well as having paid the purchase sum, the buyer is in the possession of the real property and becomes responsible for any damages that might occur as well as for insurance and payment of services such as water supply or heating. However, at this moment of the purchase process, the buyer is not yet the rightful owner. This formally occurs only after registration. Neither signing a purchase contract, nor payment of the purchase sum entails a transfer of the ownership right.

The most important activities in this module seem to be the signing of the purchase contract as well as the payment of the purchase sum.

The registration module begins with a written application for ownership registration to be submitted and signed by both contracting parties, except for in those cases when the purchase contract determines that a particular party responsible for registration. However, the contract normally specifies the particular party who should apply for registration. As a rule, it is the buyer as the most interested party. To register the purchase contract and transfer of ownership from the seller to the buyer, the purchase contract, the transfer act and the invoice on the payment of the registration fee are to be submitted to a local office of the Cadastral and land registration authority (Decree of the President 2006b). Written consent from all the seller's adult family members and that of a seller's spouse to sell the land with a building are previously presented (i.e., to the notary while attesting the purchase contract). While registering the property, the time of the registration recorded in the uniform state register is the time of the application submission.

Furthermore, a registrar checks the case and if any inconsistencies are found, the registrar is entitled to postpone the registration. This decision can be appealed to the court or to the Cadastral and land registration authority. The registration period is normally restricted to seven working days. If all the submitted documents are correct and valid, the registrar enters records in the uniform state register and issues a registration certificate (*svidetel'stvo o gosudarstvennoj registracii*) on the land plot in question and on the building that together with its technical passport¹⁹² are transferred to the buyer.

In addition, the Cadastral and land registration authority is also responsible for updating the relevant information to the Tax authority. Specifically, the tax

¹⁹² This is the technical description of the building in question (i.e., a schema of the building and its technical parameters).

register is updated as to the new owner within a week after registration. Updating occurs regularly through e-transfer of the information from the local offices of the Cadastral and land registration authority to the Tax authority. Simultaneously, the surveying department of the respective municipality is also informed about new property transaction.

A registration certificate serves as evidence of registration and its issue is the final activity of the registration module. Specifically, registration provides security against third parties and serves as the legal basis for the ownership transfer in Belarus. To rephrase it, only after registration does the buyer become the rightful owner of the purchased property and the title on the purchased property is exclusively transferred. The time when the application for registration is submitted is regarded as the time of registration.

It is worth stressing that there is a formal time limit for property registration in Belarus. In particular, within a two-month period a new owner acquiring the real property has to register it. Furthermore, the buyer should enter into possession of the purchased property within a one-year period from the moment of registration. If this does not occur (e.g., construction work on the land plot has not started), the municipality brings a civil suit against the owner to terminate the private ownership of the land.¹⁹³

The mortgage module proceeds and accomplishes a purchase process in Belarus. This module is separately identified due to the specifically arranged mortgage financing. In particular, a mortgage of a land plot is only possible as a security for the timely repayment of a bank loan obtained at the beginning of a purchase process (i.e., within the pre-contracting module). Specifically, a land plot may be mortgaged only together with a building situated on it and assigned for residential purposes.

After the transfer of the ownership right (i.e., after its registration), the buyer executes a formal mortgage contract with the bank to secure an earlier obligation. The mortgage contract ought to be attested by either a notary or a registrar of the Cadastral and land registration authority. Prior to the attestation, the buyer pays the necessary service fee. As soon as all the details (including the preparation of the documents) are settled, the contract should be registered in the uniform state register in order for the mortgage to become valid. However, application for registration can also be carried out by the bank (on behalf of the buyer). For registration, the mortgage contract should always be accompanied by the respective loan agreement. As soon as the mortgage registration is performed by the Cadastral and land registration authority, the mortgage is valid and the purchase process is regarded as accomplished in the particular case.

¹⁹³ This is not considered by the present research.

8.6.3 Empirical investigation of transaction costs

Relevant quantitative information for Belarus was mainly collected through personal communication¹⁹⁴ as due to the weak property market in Belarus, the official statistics related to the property market is not extensively developed as in Sweden. The empirical investigation of the direct transaction costs of the purchase process in Belarus implies summation of all components of the transaction costs including compulsory fees and taxes.

In 2011 the average price of a land plot with a single-house on it in a middle-sized city of Belarus is approximately estimated¹⁹⁵ around 38 600 EUR.¹⁹⁶ The main difficulty for such estimation is the significantly fluctuated prices and exchange rates due to high inflation. Specifically, the real estate agent's fee is calculated as a percentage of the average purchase price of the real property (Table 7). In contrast, calculation of the notary fee and transfer tax is based on the basic value.¹⁹⁷ At present, the notary fee for a purchase contract attestation is equal to six basic values, while the transfer tax amounts to one basic value. The registration fee for a property purchase is in turn determined as 80 000 BYR. The property inspection fee is quite insignificant and therefore, it is excluded from this calculation. In general, it is a buyer who carries out a property inspection as institution of property inspectors is not well developed in Belarus yet. The value added tax is not separately indicated for this calculation of the direct transaction costs.

Table 7: Direct transaction costs of the property purchase process in Belarus.

Direct transaction costs	Percentage	BYR	EUR
Real estate agent fee	1.6	-	618
Notary fee	-	210 000	20
Transfer tax	-	35 000	3
Registration fee	-	80 000	8

¹⁹⁴ Bobrik (emails 29th February and 19th March 2012).

¹⁹⁵ Own evaluation.

¹⁹⁶ The official exchange rate as of March 16, 2012, 1 EUR is 10 610 BYR <http://www.nbrb.by/eng/statistics/Rates/CurrBasket/?fromDate=2012-3-16> [accessed 17th March 2012].

¹⁹⁷ As of March 2012, one basic value is equal to 35 000 BYR or 3.3 EUR. For information, as of April 1, 2012, the basic value is supposed to be equal to 100 000 BYR.

Having calculated the above-mentioned fees and taxes, the direct transaction costs for a purchase of a land plot with single-family house on it in Belarus approximately amount to 1.7%¹⁹⁸ of the average price of the real property in question.

¹⁹⁸ That is equal to 649 EUR.

9. Comparison

This chapter compares the Belarusian processes of property formation and land purchases with similar processes in Slovenia and Sweden. This comparison, including the diagrams and tables, is based on the detailed descriptions presented above in the separate national chapters.

9.1 Property formation processes in Slovenia, Sweden and Belarus

Comparing the Belarusian property formation process with the Slovenian (SLO) and Swedish (SWE) ones is quite an ambitious task as these three processes operate within different institutional environments. A property formation process in Belarus facilitates the transfer of state-owned land into private ownership. It normally occurs against a payment for a subdivided land plot to the former owner, i.e., the state. In SLO and SWE, the processes subdivide land into two separate land plots with the same owner. Thus, in order not to overcomplicate the following comparison, the component of ownership transfer in the Belarusian property formation process is not considered here.

To facilitate this comparison, the activities of each country are combined into separate boxes in accordance with a particular stakeholder performing the activity (Figure 37). In other words, the activities within one box are performed by a specific stakeholder. This might be either a private surveyor, municipality or the Cadastral and land registration authority. However, the activities performed by the applicant/owner are separately identified due to the applicant/owner's engagement in the entire process. The proposed generalisation is assumed to facilitate the comparison of the activities performed by the same stakeholder in each country.

The comparison seeks to answer, for example, the questions of which activities within the property formation process are present in each country, which stakeholder performs them and what are their functions. Moreover, the sequence of activities is another point of interest as equivalent activities might be performed at different stages of a process. In particular, repeated activities normally increase transaction costs. The proposed comparison attempts to identify and elucidate these differences.

9.1.1 General comparison

The property formation processes in the three countries are generally evaluated as rather similar. This might partly be explained by the fact that the legal systems of the selected countries are to a greater or lesser extent influenced by Roman/German law. Moreover, their property formation processes are arranged in a uniform way. In particular, the countries have identical sequences of the general activities within a property formation process, such as legal control, surveying measurement and registration. However, the legal system of Belarus specifically differs due to its 70-year old Soviet history with its recent dominance by socialist laws, which influence cannot be understated.

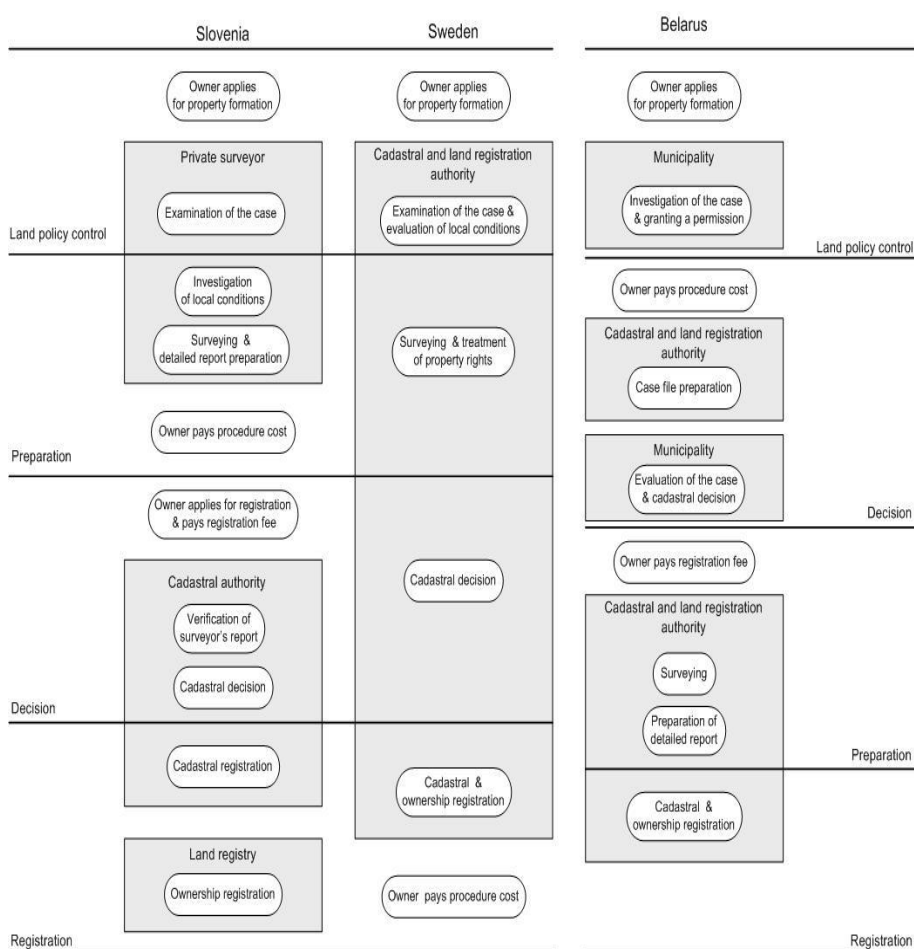


Figure 37: Property formation processes in Slovenia, Sweden and Belarus.

The beginning and end of the processes are identical in all the countries. In particular, the processes begin with the application and are completed by cadastral and ownership registration. An applicant/owner applies for property formation since (s)he is interested in obtaining a new land plot in ownership with a unique property identifier, recorded in a corresponding registry and, therefore secured and protected by the state.

A single governmental authority in charge of cadastral and ownership registration is established in Belarus and Sweden. Slovenia, still retaining the German/Austrian legal tradition, has two separate registers, namely the land cadastre (connected with the building cadastre) and the land register. These are maintained by two separate governmental authorities, namely the Ministry of the Environment and Spatial Planning and the local courts under the responsibility of the Ministry of Justice, respectively. These two authorities are separately responsible for cadastral and ownership registration.

The sequence of the modules within the processes also differs among the countries, i.e., Slovenia and Sweden are on one side and Belarus on the other (Figure 37). In particular, the countries differ in the priority of the preparation and decision modules within the processes. While in SLO and SWE the preparation activities (including surveying) are implemented before the cadastral decision is taken, in BLR the sequence of these activities is the opposite, namely the activities of the preparation module follow the activities of the decision module.¹⁹⁹

9.1.2 Modular comparisons

This section compares the national property formation processes through a comparison of their equivalent modules. In particular, the land policy control, preparation, decision and registration modules in Slovenia, Sweden and Belarus are separately compared with each other and their differences are identified and explained from a transaction costs perspective.

The land policy control module

This module basically invokes the public control over land use and its compliance with the existing planning regulations in particular.

In Slovenia, the public control over land use is performed by a private surveyor who investigates the formal conditions of the property formation and then decides whether it is possible to form a new property in this particular case. Previously, land policy control was assigned to a municipality that was

¹⁹⁹ Further clarified below.

entitled to perform this control function. At present, a municipality in SLO acts mainly as a consulting and referencing body regarding planning issues.

The investigation of formal conditions in Sweden rests in turn with a public surveyor who works independently of an employer but is employed by the state or a municipality and entitled to act according to the current legislation and practice in order to secure both private and public interests. A Swedish surveyor independently takes the decision regarding the possibility of accomplishing a property formation. However, approvals from municipality and other authorities might be relevant, if the general suitability and planning conditions for subdivided plots are not fulfilled. Thus, the Swedish subdivision process might be characterized by a higher responsibility of public surveyors in the decision-making at all stages of the subdivision. This fact significantly distinguishes Sweden from most other European countries (Mattsson 2006).

A municipality as the main stakeholder of a property formation process in Belarus examines the local conditions and specifies the details with the local authorities (if needed). Having analysed all the collected information, the municipality grants permission.

On the whole, the land policy control modules in all three countries differ in the main stakeholder (i.e., a private surveyor - SLO, a public surveyor - SWE and municipality - BLR) as well as in the formality of obtaining the property formation permission. In SLO and SWE, a surveyor (private or public respectively) takes a decision on property formation implementation after consultation (if appropriate) with a municipality, while in BLR a formal permission from a municipality is required for a surveyor to initiate a property formation process.

Modular analysis

It seems sensible to assume that the municipalities of the selected countries are involved in the property formation process to different extents and therefore the corresponding transaction costs vary in the selected countries. While in SLO and SWE a municipality is not directly involved in the process, in BLR it acts as a permissive body for the further execution of a property formation process. This in turn prolongs the process and thereby increases its transaction costs.

Moreover, land policy control activities in Slovenia and Sweden take a shorter time in comparison with Belarus as land policy control in these two countries does not imply obtaining an authorised permission. Contrariwise, a formal permission in Belarus includes submitting a set of information prepared and provided by the surveyor to the municipality for granting the formal permission for property formation.

Thus, Slovenia and Sweden may be characterised by lower transaction costs, while in Belarus these seem to be higher due to the obligatory formal

procedure with the involvement of the municipality and subsequent granting of the formal permission.

The preparation module

The differences in the preparation module among the countries are identified through the analysis of arrangements of field measurements with the simultaneous treatment of property rights.

Surveying measurements in SLO, SWE and BLR are performed by the surveyors. However, one difference among the countries is the surveyor's affiliation.

In Slovenia, private surveyors are solely entitled to conduct a field survey, while the subsequent control of the surveyor's report is performed by the Cadastral authority. Thus, in SLO the private surveyors enter a property formation process from the very beginning and complete their work when the cadastral decision on the emergence of a new land plot is taken. To avoid any mistakes and inconsistencies, all surveying measurements are further controlled by the state authority.²⁰⁰ In SWE, surveying measurements are exclusively performed by public cadastral surveyors,²⁰¹ employed either by the state or by a municipality. Thus, control of surveying measurement occurs permanently as surveyors fulfil the controlling function themselves.

The third institutional arrangement of surveying measurement is found in Belarus, where it might be carried out by either private or public surveyors depending on the wishes of the applicant. The role of private surveyors needs to be specially emphasised since their activities in BLR are quite narrowed by the state, namely only after the subcontract with the governmental surveying authority may private surveyors carry out a field survey with demarcation of the property boundaries. Thus, private surveyors may only perform field measurement as in SLO, while public surveyors are moreover involved in the activities in the other modules (e.g., the decision module).

In spite of the fact that all surveyors are included in the preparation module in these countries, they are entitled to perform different activities. While private surveyors are limited to purely technical work on surveying, the public surveyors are additionally authorised to be in contact with the municipality as a facilitator of the process within the land policy control and decision modules.

A bundle of property rights (e.g., easement) is also treated during the property formation processes in all the countries, though this happens within different modules. Specifically, in SLO these property rights are formally arranged by the Land registry and transferred in full from the original land plot

²⁰⁰ Further clarified below.

²⁰¹ However, there are private technical surveyors working in different organisation who are not entitled to carry out property formation.

to the new ones. This differs from Sweden, where property rights are normally arranged by a public surveyor simultaneously with surveying. However, this can also be done afterwards by a property owner in contact with a registrar. In Belarus, those property rights are normally treated by the Cadastral and land registration authority upon registration.

Thus, in SLO the property rights are normally arranged by a legal expert at the Land registry, in SWE by surveyor or by an owner, in Belarus the property rights are treated by a registrar.²⁰²

Modular analysis

It might be assumed that SWE has the lowest transaction costs within the preparation module, while SLO and BLR have higher ones. This assumption is mainly based on the number of stakeholders involved in each country as well as on their functions within this module. In SWE a public surveyor implements the field survey and simultaneously arranges the encumbered property rights. Thus, one stakeholder implements all the activities in the preparation module.

These activities in SLO are carried out by various stakeholders, namely a private surveyor who does the field measurements and the Land registry which in turn arranges property rights upon registration.

In Belarus, this chain is longer than in Sweden due to the potential involvement of a private surveyor in field measurement. This in turn requires a quality control of the private surveying which is carried out by the governmental organisation and further by the Cadastral and land registration authority simultaneously with the arrangement of property rights.

Thus, a combination of several stakeholders performing separate activities within the process increases the transaction costs as the number of stakeholders determine, for example, the amount of information to be processed and therefore the time of processing. On the whole, this prolongs the length of the process and increases transaction costs. In other words, the higher the number of stakeholders involved, the higher the transaction costs due to the expectation of the prolonged processing time.

The decision module

The decision module generally results in the emergence of a new land plot. This occurs when a cadastral decision is taken by various stakeholders in all three countries. This module is compared through the activity of taking the cadastral decision including any verification of the work performed. Moreover, a sequence of the modules within the process in the countries is also discussed.

²⁰² A registrar in Belarus normally has a legal or surveying academic background as well as having passed an attestation examination.

Cadastral decision

The cadastral decision on the emergence of a new land plot is a key activity of the property formation process since it establishes a legal basis for the further appearance of a new real property in a corresponding register and therefore its formal recognition. Cadastral decisions in SLO and SWE are respectively taken by a registrar of the Cadastral authority and by a public surveyor.

Another solution for the cadastral decision is identified in Belarus where a respective municipality takes a formal decision about the possibility of the emergence of the new land plot after its preliminary investigation and the formal case preparation by a public surveyor. However, the new land plot is not formally recognised as a real property until it is registered in the uniform state register.

In these countries, three specific solutions for decision-making are identified. All decisions are taken by a public entity, however, under different affiliations. In particular, decisions are taken by a registrar (SLO), by a public surveyor who is a state or municipal employee (SWE) and finally by a municipality being a state entity with a collective decision-making (BLR). Thus, to take a cadastral decision in Slovenia and Sweden does not require bureaucratic formalities, while in Belarus this decision is formally taken by a municipality before surveying begins.

Furthermore, in SLO this decision is taken after verification of a detailed report prepared by a private surveyor. In SWE, it is performed by a public surveyor simultaneously with or directly after the surveying measurement. Specifically, verification of a submitted detailed report directly before registration in SLO is necessary in order to control the quality of the work previously performed by a private surveyor. This control is carried out by a registrar of the Cadastral authority through a survey of the detailed report. Thus, it formally links private and public stakeholders within the process.

In Sweden, in contrast, a public surveyor is responsible for the quality of work performed in the course of the entire process and therefore, (s)he permanently controls the quality of their own work. Thus, there is no need for any additional verification of the work implemented. However, document verification occurs later in the process as it is carried out upon cadastral registration.

The formal verification of documents in Belarus is also under the responsibility of a registrar of the Cadastral and land registration authority who performs the cadastral and ownership registration at the end of the process. However, if the surveying work is performed by a private surveyor in Belarus, a detailed report formally controlled by a governmental organisation must be obtained prior to registration. Without such a control, the registrar is entitled to refuse the registration.

A sequence of the modules within the process

An obvious difference in the decision module is its disposition within a property formation process. In Slovenia and Sweden, the decision module follows the preparation module, while in Belarus its activities are performed before the preparation module. This might be explained by the specific institutional framework in the particular country. Specifically, this concerns the moment of taking a cadastral decision, i.e., the moment of the emergence of a new land plot. In the selected countries, this occurs before or after surveying measurements. Specifically, in Slovenia and Sweden, a cadastral decision is taken after the surveying measurement with no delay in process implementation. In Belarus, the order of these activities is the opposite, i.e., first a cadastral decision is formally taken by a municipality and only then can surveying measurement be accomplished. Thus, in Belarus a property formation process depends on the formal decision of the municipality, which may in turn prolong the process due to the bureaucratic procedure of taking a formal decision.

Modular analysis

The transaction costs within the decision module might be identified as lower in Slovenia and Sweden in comparison with BLR. This can be explained by the larger number of stakeholders involved at this stage of the process in Belarus. In particular, the involvement of the municipality in taking a cadastral decision significantly prolongs the process due to the set of formalities attached to it. Moreover, a public surveyor indirectly participates in taking a decision through the preparation of relevant documents for further evaluation by a municipality. A cadastral decision is taken by a registrar while registering a real property in SLO and by a public surveyor after completion of the surveying measurement and treatment of property rights in SWE. This normally does not cause any additional time delays due to the absence of a formal procedure.

Thus, a delay in taking a decision by a municipality postpones surveying measurement, lengthens the property formation process in general and thereby increases its transaction costs in Belarus. Moreover, further involvement of private surveyors in surveying measurements may additionally prolong the process and therefore increases transaction costs.

Quality control of surveying measurements increases transaction costs of the process in general. This double control done by both the surveyor and the authority increases the total length of a property formation process in SLO and BLR and therefore respective transaction costs.

The registration module

The registration module in all three selected countries generally includes both cadastral and ownership registration. Cadastral registration serves as a formal way for the appearance of new land plots in a corresponding register, while ownership registration is about attaching legal rights to land and thereby ensuring their security through the recording in a register.

Cadastral and ownership registration

A distinguishing feature of the registration module is the various institutional arrangements for cadastral and ownership registrations among the countries. Specifically, whereas in Sweden and Belarus cadastral and ownership registration is formally under the responsibility of a single governmental authority, in Slovenia it is divided between two separate ones. The Cadastral authority in SLO performs cadastral registration of new land plots, while the Land registry (i.e., local courts) is responsible for ownership registration including the treatment of property rights.

In Sweden, ownership registration was previously carried out by a separate authority under court authority. Since 2008, this authority is under the responsibility of the Swedish mapping, cadastral and land registration authority. In Belarus, cadastral and ownership registration is carried out simultaneously by the Cadastral and land registration authority.

In all the selected countries, registration is specifically determined. In particular, in SLO an owner may apply for registration at any appropriate moment after having received the detailed report on the property formation from a surveyor. However, registration is only performed if the surrounding boundaries' situation shown in the detailed report is identical with the boundaries' situation shown on the cadastral map previously recorded in the land cadastre. Only if the current and earlier recorded surrounding boundaries are equivalent is registration feasible. Otherwise, a subdivision case is remanded for further improvement. In Sweden, a new land plot should be recorded as soon as the property formation process is completed (i.e., when the appeal period expires). In Belarus, registration is obligatory within the specified time limits. The period assigned for registration in Belarus is two months from the moment of the taking a cadastral decision by a municipality.

Payment for property formation

Payment of fee for a property formation process including registration is another interesting aspect that can be compared between the countries. In Slovenia, a private surveyor does not hand in a detailed report to the owner prior to the latter covering the service fees for surveyor's work. The same rule in SLO is valid for payment of the registration fee, namely to get new land plots registered, an owner must pay the fee in advance. In Belarus, a similar approach

is applied as well. In particular, a case investigation, surveying measurement and registration are to be paid prior to their implementation. In contrast in Sweden, all payments to be covered by an owner are normally made after the cadastral decision is taken. Consequently, this saves time for the owner and simultaneously shortens the process.

Modular analysis

The institutional arrangements for cadastral and ownership registration play a significant role in determining transaction costs. The solution of performing cadastral and ownership registrations by two different stakeholders (SLO) seems to generate additional transaction costs through prolonged time for data processing, a higher risk for duplications, data inaccuracies and data inconsistencies. To resolve this problem, one single authority responsible for both types of registration, as is nowadays arranged in SWE and BLR, might be regarded as optimal. Such an institutional arrangement in turn reduces transaction costs and thereby makes the property formation process more efficient.

Moreover, the restrictions for ownership registration are also interesting to discuss from a transaction costs perspective. In particular, in Belarus as a country in transition, a time limit for registration is clearly stated (State Registration Act 2002). In Slovenia, there is no determined limit for registration but instead registration is based on the equivalence between the current boundaries' situation at the moment of registration and the boundaries' situation already recorded in the land register. In Sweden, ownership registration is normally performed by a registrar as soon as a new land plot is formed through a cadastral decision taken by a public surveyor.

A property formation process is normally completed as soon as the registration is performed. An unregistered real property is invisible to the property market and, therefore, the property formation process is not completed and transaction costs may still increase. It seems logical to suppose that the more optimal solution for registration from a transaction costs perspective seems to be not time-bound (due to the risk for work overload and therefore deterioration of the results' quality) but connecting to the moment of the emergence of a new real property (i.e., the case in Sweden).

Payment for the process also influences transaction costs. In particular, payment for the entire process after its completion saves, on one hand, time for an owner and on the other hand, it facilitates the process in Sweden in contrast to Slovenia and Belarus where payment is made prior to the activities themselves.

Thus, transaction costs generated by the registration module are evaluated as higher in SLO and BLR than in SWE due to there being two authorities responsible for registration (SLO), private surveying (SLO and BLR) as well as

payment for the activities before their implementation in Slovenia and Belarus (up to several times within the process – BLR).

9.1.3 Conclusions from the modular comparisons of the property formation processes

The national property formation processes of Slovenia, Sweden and Belarus represent three different models of institutional arrangements. This section summarises the discrepancies discussed above and seeks to estimate transaction costs of a property formation process in each country.

It seems reasonable to primarily stress one difference among the countries in the definition of a real property. While in Slovenia and Sweden a real property is land with everything attached to land and regarded as its fixtures, in Belarus land and buildings are declared as two different types of real property with their specific formalisation on the property market. Such a separate legal treatment of land and buildings seems to increase the costs of transacting for the property market in general.

This research has identified the noteworthy differences of these national institutional arrangements among the countries based on a set of comparing criteria. These criteria are extracted from the following questions identified while comparing the property formation processes between the countries:

- How is a municipality involved in the process?
- Who is entitled to carry out surveying (i.e., private and/or public surveyor)?
- Is double control of process data needed?
- Who takes a cadastral decision and when it is taken (i.e., before or after surveying)?
- Which governmental authority/-ies is responsible for cadastral and ownership registration (i.e., a single authority or several)?
- When payment for a property formation process occurs (i.e., at which stage of the process)?

These criteria are intended to assist in the estimation of the transaction costs of a property formation process in relative terms (i.e., lower or higher). A relative magnitude of transaction costs as generated by the process is discussed below and estimated among the three countries (Table 8).

The municipality as local government is differently involved in the property formation processes of the selected countries. The most influential role a municipality plays is in Belarus, where it permits a case investigation in the beginning of the process and takes a formal decision about the emergence of a new land plot. In SLO and SWE, the municipality is exclusively involved as a consulting body in the process. Such an intense involvement of a municipality

in BLR through taking a formal decision seems to increase transaction costs in comparison with SLO and SWE. This statement is grounded on the possible risk for delays relating to the formalities of collective decision-making and political influence from higher administrative levels. Thus, in BLR transaction costs of a property formation process are estimated as higher in comparison with SLO and SWE.

In Slovenia, the subcontracting of technical work for the forming new properties to the private sector is utilized. This particular institutional solution generates a need for the quality control of data delivered by private surveyors. Such control seems to be more expensive due to its lengthening of the process in general. In particular, data is firstly produced by a private surveyor and then this data is checked by a registrar. This in turn prolongs the process and, therefore, increases the transaction costs of the Slovenian property formation process. Thus, the Slovenian model is in a way “burdened” by the involvement of private surveyors.

The Swedish model, in contrast, is almost entirely performed by a public surveyor and therefore there is no need for time-consuming information exchange and quality control. In Sweden, a surveyor, as a public employee, is responsible for the property formation process including cadastral registration and quality control. In particular, the surveyor consistently consults with other interested parties and takes independent decisions (e.g., a cadastral decision on an emergence of a new land plot). (S)he often also creates easements and other property rights. Thus, there are normally no additional delays within a property formation process.

The potential involvement of private surveyors in Belarus also seems to delay the property formation process due to required quality control and thereby triggered information exchange. This may lead to a higher number of activities within the process and therefore to higher transaction costs in comparison with Sweden. Thus, the Belarusian model seems to be less attractive as this institutional arrangement requires additional time and therefore higher costs for a process completion in comparison with Sweden.

The performed comparison has identified that a cadastral decision is also influential on the transaction costs of a property formation process through the specificity of the stakeholder entitled to take a decision. In Sweden, the decision is made by a public surveyor in the course of the process and therefore transaction costs are estimated as lower. In Belarus, the municipality plays a key role in taking the decision on the emergence of a new real property. The participation of a municipality as a decisive body seems to lengthen the process in BLR due to the formalities of taking a collective decision and therefore to increase transaction costs. In Slovenia, this decision is taken by a registrar upon registration when surveying is performed and all the documents are submitted to the Cadastral authority. Such an institutional arrangement seems to produce lower transaction costs in comparison with Belarus. Thus, this research has identified two different solutions for taking a cadastral decision. In Slovenia and

Sweden the decision is taken independently by an expert, while in Belarus such a decision is taken by a collective body, i.e., a municipality as a local political power. This thus makes it possible to conclude that transaction costs of such a decision are higher than a decision taken by an expert.

Table 8: Relative transaction costs of property formation process in Slovenia, Sweden and Belarus.

Country	Slovenia	Sweden	Belarus
Role of municipality	consulting/ lower	consulting/ lower	permissive/ higher
Surveying by public or private surveyor	private/higher	public/lower	both/higher
Double data control	yes/higher	no/lower	yes/higher
Cadastral decision by	registrar/ lower	public surveyor/lower	municipality/ higher
Cadastral decision (before or after surveying)	after/lower	after/lower	before/higher
Cadastral & ownership registration by	two authorities/ higher	single authority/ lower	single authority/ lower
Payment of fee (before or after transaction)	before/higher	after/lower	before/higher

Furthermore, a cadastral decision in Slovenia and Sweden is taken after the surveying measurement. The latter in turn serves as a foundation for making this decision. Contrariwise, in Belarus surveying measurement is performed only after a cadastral decision is formally taken by a municipality. Thus, transaction costs of a property formation process in Belarus are estimated as higher since the municipality's decision might be delayed, which in turn causes delays in surveying in particular and the entire process in general. Therefore, if a decision is taken after surveying without any formalities involved (SLO and SWE), this is estimated as lowering the transaction costs in comparison to BLR where these seem to be higher.

In Slovenia, the Cadastral authority and the Land registry are in charge of cadastral and ownership registration, respectively. In Sweden and Belarus, a single governmental body, the Cadastral and land registration authority, performs both types of registration. Thus, a single authority is ultimately estimated as generating lower transaction costs, while two separate authorities responsible for cadastral and ownership registration conversely seem to invoke higher transaction costs.

The transaction costs estimation also includes a way of covering the costs of property formation as a comparing criterion. In particular, the Slovenian and Belarusian property formation processes arrange payment of the service fee prior to the implementation of an activity, which in turn stipulates higher transaction costs due to possible time delays. The Swedish process implies payment of fees after the completion of the entire process. It seems reasonable to conclude that the Swedish process of property formation from a transaction costs perspective does not allow extending the process time and therefore keeps its costs lower, while in SLO and BLR the process generates higher transaction costs.

The range of applications in Belarus is supplemented with the range of contracts concluded by the applicant throughout a property formation process. This probably increases the transaction costs for applicants through process prolongation. Specifically, an applicant concludes a contract with a surveying organisation for preparing the documents for a cadastral decision to be further taken by a municipality. This should then be followed by another contract for performing surveying measurement. And at the end, the applicant should apply for ownership registration (if this is not commissioned to a surveyor). The whole may increase transaction costs for an applicant. Thus, a single contract or even a single application recognised as a contract and made at the beginning of a property formation process might be a more efficient solution from a transaction costs perspective.

In conclusion, the Swedish property formation process looks more advantageous from the transactions costs perspective as among the three compared countries as it is almost entirely implemented by a public surveyor who is responsible for the creation of the new property including any mistakes that might occur. Such an institutional arrangement generates lower transaction costs. The Belarusian property formation process is oppositely acknowledged as the lesser advantageous with higher transaction costs due to the municipality's intervention and a combination of private and public surveyors with additional quality control and information exchanges as seen from the results of the comparison with the property formation processes in Slovenia and Sweden.

9.2 Property purchase processes in Slovenia, Sweden and Belarus

The purchase of real property with the involvement of a real estate agent and a bank for purchase financing is a complex process. To facilitate a comparison among the selected countries, respective property purchase processes are combined into one diagram with identical modules and sets of varying activities (Figure 38). This comparison seeks to reveal specific differences among the countries and to relatively evaluate the processes from a transaction costs perspective.

9.2.1 General comparison

This research compares and relatively evaluates the particular case of property purchase with the involvement of a real estate agent and financial institutions in Slovenia, Sweden and Belarus (Figure 38).

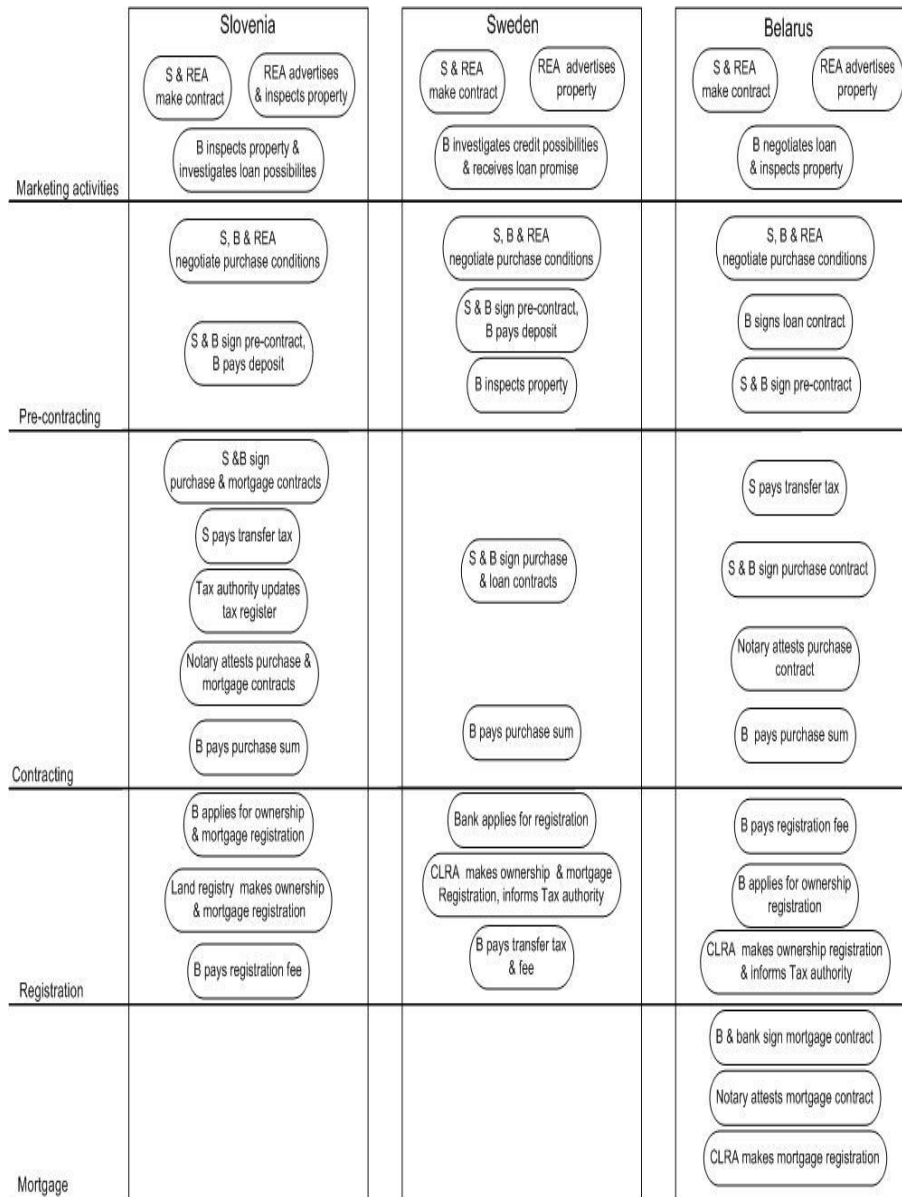
The purchase process generally implies a transfer of a real property from a seller to a buyer against a purchase sum with the subsequent registration of the buyer's ownership right in a corresponding register. The comparative example is a land plot with a single-family house on it.

The purchase process in all three countries are initiated by a buyer willing to sell a real property and a seller willing to buy it. A purchase is normally regarded as completed when it is registered and thereby the ownership right is protected by the state against a third party.

In spite of quite similar property purchase processes among the three countries, several differences in their institutional arrangements are identified.

First of all, one difference is the varying number and sequence of the modules with respective activities. In Slovenia and Sweden, the purchase process consists of four general modules, marketing activities, pre-contracting, contracting and registration. In Belarus, in addition to the above-mentioned modules, the mortgage module is separately recognised. This may be explained by the special institutional arrangement for purchase financing existing in Belarus. Specifically, prior to ownership registration, purchase financing is secured by a loan agreement between a bank and an applicant, while after ownership registration, financing is secured by a mortgage. Oppositely, in SLO and SWE the mortgage may be estimated as jointly handled with signing of a purchase contract.

Another distinguishing difference among the countries is the institute of notaries in SLO and BLR, while in SWE it is substituted by the witness institute. In particular, in Slovenia and Belarus a notary prepares the purchase contract and attests it after the signing by the contracting parties. In Sweden, two witnesses confirm the fact of the contract signing.



S – seller, B – buyer, REA – real estate agent, CLRA – Cadastral and land registration authority

Figure 38: Property purchase processes in Slovenia, Sweden and Belarus.

The transfer of the ownership right from a seller to a buyer is also a crucial point of property purchase as it is at this moment the buyer becomes an owner of the purchased real property with corresponding rights and responsibilities and bears all the related costs. This moment differs among the countries. In particular, in SWE ownership is transferred when the purchase contract is signed, while in SLO and BLR it occurs only after ownership registration at the end of the process.

The more detailed modular comparisons of the purchase processes in Slovenia, Sweden and Belarus are described below.

9.2.2 Modular comparisons

To illustrate differences in the purchase process among the countries, the modular comparison is a useful tool. In particular, the purchase process of the three selected countries are analysed through comparisons of the corresponding modules. Those modules are the marketing activities, pre-contracting, contracting and registration. The activities of the mortgage module of Belarus are analysed along with the corresponding activities of Slovenia and Sweden.

The marketing activities module

Marketing activities are meant for the parties to find each other on the market as well as for a buyer to arrange purchase financing. These activities normally involve a real estate agent who acts on behalf of a transacting party and whose relations are based on a contract.

Specifically, the module may include not only the signing of a contract between a seller and a real estate agent and the inspection of the property by a buyer but also loan/mortgage negotiations between a buyer and a bank. In particular, in SWE and BLR a buyer normally makes an informal arrangement of the loan before starting any purchase negotiations, while in SLO a formal loan approval from the bank is the accepted practice at this stage.

The role of a real estate agent in terms of responsibility differs among the selected countries, which in turn affects transaction costs. Specifically, while in BLR and SLO a real estate agent is responsible either to a buyer or a seller depending on who hires the agent, in SWE a real estate agent is obliged to protect the interests of both transacting parties.

While transacting, the buyer in all three countries should also be aware of the property conditions and, therefore, is fully responsible for a property inspection. The latter concerns obtaining up-to-date information on the purchased property. The performed inspection impedes the process from being cancelled due to a buyer's lack of knowledge on any eventual property flaws and this keeps transaction costs lower.

Specifically, in BLR and SLO a property inspection is carried out normally by a buyer within the module of marketing activities. However, in SLO it is also possible to hire a technical expert for this task. Conversely, in SWE property inspection is done within the pre-contracting module, i.e., before or after making a preliminary contract and payment of deposit.²⁰³ On the whole, the buyer in SWE has an obligation to examine the property in question, while a seller is responsible for informing a buyer about hidden faults that are impossible to detect through a property inspection.

Modular analysis

In general, the marketing activities module is acknowledged as quite similar in all three countries. However, the responsibility of a real estate agent differs in SWE in comparison with SLO and BLR, which in turn affect, to a larger or lesser extent, the transaction costs of a property purchase process. In particular, transaction costs of the process in SWE may be assessed lower than in SLO and BLR due to the dual responsibility of a real estate agent obliged to observe the interests of both transacting parties. In Slovenia and Belarus a real estate agent is exclusively responsible to one of them. This conclusion is grounded on the lesser number of stakeholders involved in the process in SWE in comparison with SLO and BLR.

In addition, since a seller in SWE (however, not in SLO and BLR) is responsible for providing complete information on a property to a buyer, this may also reduce transaction costs in the process. This occurs in cases when a buyer discovers hidden faults in a property after the purchase completion.

The pre-contracting module

The pre-contracting module is also identified as rather similar in the selected countries. Its activities are mainly aimed at preliminarily binding the contracting parties through the signing of a preliminary contract for securing the parties against the early withdrawal of one of them from the process. This module normally consists of negotiations of purchase conditions between a buyer, seller and real estate agent followed by a preliminary agreement as to the purchase with a deposit payment. Also, in Sweden the inspection of a property may be performed at this stage of the process.

The payment of a deposit ensures a continuation of the process and serves as security in SLO and SWE. This is made when the preliminary contract is executed. In BLR, the deposit payment may also be utilised, however, this normally is not often applied in practice. In BLR the parties may make a preliminary agreement with or without the payment of a deposit.

²⁰³ Further elaborated within the pre-contracting module.

Modular analysis

The foregoing comparison leads to the conclusion that the transaction costs of the pre-contracting module are assessed as rather equivalent in three countries. This is based on the set of available activities and their functions within the process. Specifically, these activities are almost identical except for the payment of deposit in BLR and property inspection in SWE. Since these differences are acknowledged as insignificant, the transaction costs for this module are assessed as equal in all three countries.

The contracting module

The contracting module is generally aimed at legitimising a property purchase through the signing of a formal purchase contract and the transferring of the purchase sum from the buyer to the seller. Contracting is the main module since it makes a purchase process tangible due to the transfer of property possession (in all three countries) along with the transfer of ownership (SWE). The contracting module in SLO, SWE and BLR mainly includes signing purchase and mortgage contracts along with the payment of the purchase sum.

One general difference as to the signing of a purchase contract among the countries is the notary's preparation and attestation of the contract in SLO and BLR, which is absent in SWE. In particular, in these two countries, the purchase process demands a notary's attestation of the contract, while in SWE two witnesses perform an equivalent function.²⁰⁴

The sequence of main activities also differs in the countries. The payment of a transfer tax in SLO and BLR is separate from the signing of the purchase contract and transfer of the purchase sum within this module. In Sweden, the transfer tax is paid after the ownership registration at the end of the process. Specifically, in Slovenia the payment of the transfer tax may take up to 15 days after the signing of a purchase contract. As soon as the transfer tax is paid, a notary attests the contract and the remaining purchase sum is paid. In Belarus, a purchase contract is signed only after the payment of the transfer tax. Specifically, having presented proof of transfer tax payment, the transacting parties sign the purchase contract in the presence of a notary who then attests it. After attestation the purchase sum is normally paid to the seller in BLR.

The magnitude of the transfer tax also differs among the countries. To calculate the transfer tax, the Tax authority in SLO may employ an appraiser who assesses the purchased property if the purchase price is dubious. In SLO and SWE, the transfer tax is normally calculated as a fixed percentage of the purchase price. Belarus applies another approach, namely that the transfer tax is independent of the purchase price, but instead is based on a percentage of an average salary rate as regularly determined by the state.

²⁰⁴ However, witnesses do not need to have a legal background.

The difference in handling purchase and mortgage contracts in the selected countries should be distinctly highlighted. Within this module, active negotiations between a bank and buyer normally end up with the signing of the mortgage contracts (SLO and SWE) and the transfer of a definite sum to the buyer's account prior to the signing of the purchase contract. In particular, in Sweden a final mortgage negotiation is often done after the pre-contract signing. In SLO and SWE, the purchase and mortgage contracts are handled simultaneously, whilst in BLR these two activities are separated in time. In particular, in Belarus a loan contract is signed before the signing of a formal purchase contract in order to ensure the purchase sum for a buyer, while a mortgage contract is further arranged after ownership registration.

The signing of the purchase contract in SLO and BLR means only a transfer of possession, while the subsequent ownership registration serves as the legal basis for the transfer of ownership. In Sweden, in contrast, the parties become legally bound and the rights of possession and ownership are simultaneously transferred as soon as the purchase contract is signed and the purchase sum is paid. In addition, in Sweden the contracting parties become legally bound even after having signed the pre-contract if it does not include a special clause stating the obligations for a breach of contract. Thus, the signing of the purchase contract in SWE normally means the transfer of both ownership and possession, while such is not the case in SLO and BLR.

Modular analysis

The institute of notary is one distinguishing difference in the module within the countries. The involvement of a notary in a purchase process in SLO and BLR increases its length due to the required formalities and payment of a notary fee. Thus, this increases the transaction costs of the process in SLO and BLR in comparison with SWE, where a notary's attestation is substituted by witness signatures. Such a simplification of the purchase process at the expense of the abolishment of the notary institution appears to favour a purchase process in SWE by decreasing its transaction costs.

The disconnection of the activities within the contracting module is a special institutional arrangement in SLO and BLR. Specifically, in SLO the payment of a purchase sum directly depends on the timely payment of the transfer tax and subsequent notary's attestation of the contract. In BLR the payment of the transfer tax is done before the signing of a purchase contract, while in SWE it is performed at the end of the purchase process and therefore there is no disconnection of activities. Such an institutional arrangement seems to reduce transaction costs due to its shorter time for the contracting module. Thus, the disconnection of the activities generally increases the transaction costs of this module in SLO and BLR in comparison to SWE. The payment of the transfer tax at the end of the process (SWE) keeps transaction costs down due to the absence of unnecessary delays in the property purchase process. The

foregoing is based on the assertion that a lesser number of activities reduce transaction costs in comparison with a larger one.

The institutional arrangement of purchase and mortgage contracts within this module modifies the transaction costs of the purchase process as well. In particular, the separation of purchase and mortgage contracts in BLR leads to an increase in transaction costs, while in SLO and SWE purchase and mortgage contracts are handled simultaneously, shortening the time for the parties and therefore lowering the transaction costs in comparison with BLR.

Generally speaking, assessing the contracting module from a transaction costs perspective, the transacting parties are forced to spend more resources in SLO and BLR than in SWE. In conclusion, the transaction costs of the module may be estimated as higher in Slovenia and Belarus in comparison with Sweden.

The registration module

The registration module is extensive with a variety of activities in the three countries. In general, the module completes the purchase process since registration guarantees the ownership right of the new owner and protects him/her against a third party. Moreover, registration in all of the selected countries is required. The module normally includes the application for registration along with mortgage and ownership registration.

In the three countries, the module begins with the application for registration normally made either by a buyer (SLO and BLR²⁰⁵), or a bank on behalf of the buyer (SWE).²⁰⁶ Ownership registration is normally in the interests of the buyer who formally becomes the rightful owner of the purchased property after its completion. In each selected country, a governmental authority²⁰⁷ changes the records in the land register²⁰⁸ and informs the Tax authority on the changes occurring. The authority also verifies the application prior to registration. In Sweden, a failure to apply for registration within the determined period may lead to a contingent fine.²⁰⁹ This application period lasts three months from the moment when a purchase contract is signed. In Slovenia, this period is limited to six months, while in Belarus two months are assigned. In particular, within a two-month period, a new owner acquiring a real property has to register it. Moreover, in SLO and SWE, mortgage and ownership registration is performed simultaneously, while in BLR it is separated in time.

²⁰⁵ However, the parties in Belarus normally agree that the buyer applies for registration.

²⁰⁶ In cases of mortgaging a property.

²⁰⁷ This is a generalised term for a governmental authority responsible for ownership registration in a country.

²⁰⁸ This is a generalised term for a specific register existing in a country.

²⁰⁹ However, as practice shows, this never happens.

A buyer in BLR pays a registration fee prior to registration, while in SLO and SWE this payment is postponed to the end of the purchase process, i.e., after a registration completion. Specifically, as soon as this fee is paid in BLR, a registrar formally registers a purchased property. A transfer tax in SWE is also paid after registration is completed, in contrast to SLO and BLR, where it is implemented within the contracting module.

A registration certificate is sent to the buyer in all the selected countries after registration is completed. In SLO, SWE and BLR, an appeal procedure is anticipated after ownership registration. The registration decision may be appealed within a limited period of time (e.g., four weeks in SWE and two weeks in BLR). After that, the decision becomes final and from that moment the state protects the rights of the owner against a third party.

The existing time gap between the date of contract signing and ownership registration in the countries is worth mentioning. In particular, in SWE this gap is shorter since the signing of a purchase contract means transfer not only of possession but also of the ownership right to a buyer. Specifically, in BLR and SLO, this gap is normally longer since the signing of the purchase contract and ownership registration are separated by several activities, such as a notary attestation and payment of the transfer tax. Having signed a purchase contract, a buyer in SLO and BLR is in a fragile situation as the purchase sum is paid but the ownership right is not transferred and thereby not yet protected. Thus, the existence of a time gap between the signing of a purchase contract and registration seems to be a shortcoming in the purchase processes in SLO and BLR. Decreasing this time gap would mean reducing the risk and thereby potential transaction costs for an owner.

The updating of the tax register in BLR and SWE occurs within this module, while in SLO it takes place as soon as the purchase contract is signed and the transfer tax is paid.

The archiving of the purchase documents is an activity presented in all three countries within this module. Nowadays, documents are normally stored in an electronic form. By the archiving activity, the process of purchase of a real property in SLO and SWE is completed, while in BLR it continues with a mortgage contract and its registration.

Modular analysis

Institutional solutions for the registration module of a purchase process significantly vary in the countries from a transaction costs perspective.

The payment of a registration fee prior to registration in BLR appears to prolong the purchase process, while in SLO and SWE a buyer covers the registration fee at the end of the process. Such an arrangement shortens the process and thus keeps the transaction costs down in comparison with BLR where transaction costs are estimated as higher. The application for registration made by a bank in Sweden is regarded as favouring the purchase process due to

the shortened time of the process in general. In contrast, this activity in SLO is normally performed by the buyer who is obliged to apply for ownership registration. To do so, the buyer needs additional time. However, in BLR both contracting parties are formally obliged to apply for ownership registration.

A difference among the countries in the transfer of the rights of possession and ownership is also estimated as affecting transaction costs. Specifically, a simultaneous transfer (upon the signing of a purchase contract) in SWE seems to generate lower transaction costs than separate transfers of possession and ownership in SLO and BLR (i.e., upon the signing of a purchase contract and registration, respectively). The higher transaction costs might be explained by the multiplied time for obtaining identical results of these activities.

The mortgage module

Since mortgage handling in Belarus includes several activities, it is distinguished as a separate *mortgage module* within the property purchase process. In contrast, mortgages in SLO and SWE are handled at earlier stages in the process simultaneously with the signing of the purchase contract and ownership registration.

Specifically, in Belarus the mortgage module begins with the payment of a fee and subsequent signing of a mortgage contract between an owner and a bank only after ownership registration. Again, at this stage a notary is normally involved and the fee is covered by the owner prior to the mortgage registration performed by the Cadastral and land registration authority. Thus, this activity generally prolongs the purchase process.

Modular analysis

Mortgage is an important instrument for the development of a property market in a country. Specifically, the mortgage arrangement in Belarus is entirely different from those in SLO and SWE.

Mortgage is handled in BLR quite separately from other activities at the very end of the process, i.e., after ownership registration. In particular, a mortgage arrangement in BLR may be identified as a small separate property process beginning with a mortgage application to the Cadastral and land registration authority and the payment of a registration fee, concluding with the notary's attestation of the mortgage contract and subsequent mortgage registration. All the mentioned activities are separated in time (Figure 39) and thereby generate additional time and therefore higher transaction costs.



Figure 39: The chain of activities for mortgaging a real property in Belarus.

Specifically, the existing mortgage arrangement in Belarus may be acknowledged as a negative factor increasing the transaction costs due to the involvement of a notary, a separate mortgage registration and an advance payment of a fee that in turn requires a longer time for processing. All this causes an increase in the transaction costs. To improve upon this, mortgage and purchase contracts, along with their registration, might be handled simultaneously.

9.2.3 Comparative analysis of direct transaction costs

The carried on calculation of the direct transaction costs of the property purchase process in the selected countries has presented ambiguous results. In fact, it has demonstrated that these transaction costs in Slovenia are equal to 7.3%, in Sweden 4.9% and in Belarus the transaction costs of the purchase process amount to 1.7% of the average purchase price of a real property consisting of a land plot with a single-family house on it. Certainly, these results should be taken with caution as they are based on a range of approximate data, including the author's personal judgement of the average purchase prices of a real property in Slovenia and Belarus.

In general, these results have proven that the property purchase process differs in terms of its institutional arrangement between the selected countries. According to the calculation, the BLR purchase process has appeared to be cheaper, while SLO and SWE purchase processes, on the contrary, are more expensive for the contracting parties. A similarity of the purchase process among these countries is that the real estate agent's fee makes up the largest part of the calculated transaction costs.

In order to interpret these results, it seems rational to divide the countries into two groups, namely Slovenia and Sweden as the countries with the market-oriented economy, on one hand and Belarus as a country with the economy in transition, on the other. Having considered the two former countries, it seems sensible to point out that their property purchase processes operate within the environment with the market price determination. Specifically, in Slovenia and Sweden the fees and taxes are normally based on full costs coverage and mirror the costs incurred. In Sweden the contracting parties bear lower transaction costs than in Slovenia that might be shortly explained by a complexity of their

institutional arrangements of the purchase process and thereby a smoother purchase process with fewer formalities in case of Sweden.

The purchase process in Belarus has resulted in the minimal transaction costs among these three countries. This result might be explained by a range of the reasons. These reasons are mainly connected with a transition character of the Belarusian economy identified, for example, by the fees and taxes exclusively determined by the state irrespective of the costs incurred. In particular, these payments are normally subsidised by the state. Moreover, this explanation might also be supplemented with the on-going economic crisis in Belarus that in turn might have made this calculation more confusing.

While in case of the property formation process, impossibility to obtain the results clearly reflecting the existing situation with transaction costs was assumed in advance, the calculation of the transaction costs of the purchase process seemed oppositely to give more feasible results. This assumption was based on a twenty-year period of functioning the property market within the established market environment in Belarus. However, it has been proven that it is hardly feasible to calculate and further compare the transaction costs of the purchase processes between the countries, operating in environments with different levels of market development in general and market price regulations in particular.

9.2.4 Conclusions from the modular comparisons of the property purchase processes

The property purchase processes in the three selected countries appear to be quite identical, however, this research has identified several variations among the countries. These variations are analysed and estimated by criteria developed from the following questions:

- To which contracting party/ies is a real estate agent responsible?
- Is a notary involved in the purchase process?
- When does the payment of the transfer tax occur?
- How are mortgages arranged within the purchase process (i.e., before or after ownership registration)?
- When does payment of the registration fee take place (i.e., at which stage of the process)?
- Who applies for ownership registration?
- When does the transfer of ownership right occur (i.e., simultaneously or separately from the right of possession)?

One specific issue indirectly connected with the property purchase process seems appropriate to accentuate prior to this analysis. This concerns the single governmental authority responsible for both cadastral and ownership

registration. As discussed earlier, this is not the case in Slovenia, while in BLR and SWE this single authority is now in operation. Merging all the cadastral and property registration activities under one umbrella favours property purchase processes and thereby lowers transaction costs in general.

By answering the foregoing questions, the magnitude of the transaction costs of a purchase process in Slovenia, Sweden and Belarus is relatively estimated. This approach facilitates a comparison of the purchase processes from a transaction costs perspective. However, it should be noted that comparing criteria reflects only the main general differences of the purchase processes among the countries. Undoubtedly, there are many less significant differences that might also be analysed. However, for the sake of clarity and to avoid too great a degree of detail, these main criteria are exclusively employed in this research for the analysis (Table 9).

The influence of the real estate agent on the total costs of a property purchase needs be emphasised. In SWE, the real estate agent is obliged to represent the interests of both contracting parties, while in SLO and BLR each contracting party normally contracts with a separate real estate agent. Such double responsibility in SWE seems to be more productive from a transaction costs perspective as it lowers the number of stakeholders and therefore keeps transaction costs for the parties lower. In contrast, if a buyer and a seller each hire a real estate agent, transaction costs seem to increase.

The involvement of a notary is an institutional arrangement influencing the transaction costs of a purchase process due to the formalities which in turn lengthen the purchase processes in BLR and SLO as a whole and thereby make them more costly. To decide whether a notary is an unavoidable stakeholder in a purchase process, the Swedish purchase process in which a notary is substituted by two witnesses is discussed below. In particular, such a witness institution seems to operate properly²¹⁰ since the reliability of a purchase contract attested by witnesses in SWE is similar to the reliability of a contract attested by a notary in BLR and SLO. Thus, Sweden along with other Nordic countries is an example of a successful use of the witness institution in a property purchase process (Kort & Matrikelstyrelse 2006). Witness institution is cheaper than that of notary from a transaction costs perspective due to the reduced time for attestation of a purchase contract and therefore lower costs for the parties. Thus, it seems reasonable to conclude that the notary institution for a property purchase process should not necessarily be obligatory. Its abolishment will most probably reduce transaction costs for both individuals and society in general.

The separate payment of a transfer tax within the contracting module is identified in SLO and BLR. This seems to negatively affect a magnitude of transaction costs due to the process prolongation. In contrast, in SWE the

²¹⁰ The number of frauds in Sweden is 1-6 of 150 000 property transactions per year (Justitiedepartementet 2009).

transfer tax is paid after the ownership registration at the end of the process. To decrease transaction costs, it seems reasonable to assume that the transfer tax and registration fee should be paid simultaneously. By this, there is no need for delays and therefore costly information exchanges. Thus, due to a separate payment of the transfer tax, transaction costs are estimated as higher in SLO and BLR, while lower in SWE.

The simultaneous arrangement of purchase and mortgage contracts with their parallel registration is identified in SLO and SWE. This research acknowledges this as the better solution from a transaction costs perspective as it seems to keep transaction costs lower. In contrast, in Belarus a formal arrangement of purchase and mortgage contracts are separated in time within the property purchase process. Specifically, the signing of a mortgage contract occurs after the ownership registration and is followed by a separate mortgage registration at the end of the process. Such an institutional arrangement of mortgages obviously lengthens the entire process in BLR and increases transaction costs. Thus, it is estimated that the transaction costs of the mortgage arrangement in BLR is higher than in SLO and SWE. In other words, the mortgage system in Belarus is still in its infancy in comparison to that of SLO and SWE.

Furthermore, the date of payment for the registration fee also is distinguished in the countries. In particular, in BLR this payment is carried out prior to ownership registration, while in SLO and SWE it is performed after ownership registration, i.e., at the very end of the process. The latter appears to generate lesser transaction costs due to the shortened time of the purchase process.

The application for registration changes the transaction costs of a purchase process as well. Specifically, at present in Belarus both contracting parties are formally required to apply for ownership registration. In contrast, in SLO and SWE it is the buyer, as the most interested party in the property purchase process, normally applies for registration. In such a way, the application is localised to one contracting party, which in turn decreases the number of stakeholders and therefore transaction costs.

The noteworthy difference of the purchase process is the transfer of the rights of possession and ownership that takes place at various phases of the purchase processes in the countries. In particular, transfer of possession is similar in all three countries and occurs on the date of the signing of a purchase contract. However, a transfer of the ownership right in SLO and BLR occurs at the moment of registration, in SWE it occurs with the signing of a purchase contract. Thus, a gap in time between the date of the signing of a purchase contract and that of registration is acknowledged in SLO and BLR, while in SWE both these activities are simultaneously performed. During this period of time gap, the buyer's position remains insecure. This existing uncertainty for a buyer in SLO and BLR seems to increase the transaction costs of the purchase process. Therefore, transaction costs are estimated as higher in SLO and BLR

and lower in SWE. However, until registration is performed, a buyer in all the selected countries is not secured against a third party and a risk for fraud still exists.

From a transaction costs perspective, the implemented comparison reveals that the Swedish purchase process is shorter and therefore, seems to be less costly as among the three selected countries. Specifically, the Swedish property purchase process consists of a lesser number of activities than that in SLO and BLR. Many of the activities in SWE are performed simultaneously (i.e., the signing of the purchase and mortgage contracts). Moreover, the registration fee and transfer tax in Sweden are paid after the purchase process is completed, while in SLO and BLR the transfer tax is covered before registration and therefore may postpone the entire process.

Table 9: Relative transaction costs of property purchase process in Slovenia, Sweden and Belarus.

Country	Slovenia	Sweden	Belarus
Responsibility of a real estate agent	one party/ higher	both parties/lower	one party/ higher
Is notary involved	yes/higher	no/lower	yes/higher
Payment of transfer tax	separately/ higher	simultaneously/ lower	separately/ higher
Treatment of mortgage	before registration/ lower	before registration/ lower	after registration/ higher
Payment of fee	after registration/ lower	after registration/ lower	before registration/ higher
Application for ownership registration	buyer/lower	buyer/lower	both parties/higher
Transfer of ownership rights	registration/ higher	purchase contract/lower	registration/ higher

According to the Doing business report (World Bank 2011), Belarus is included in the range of countries with efficient systems of property registration. The government had initiated the creation of a one-stop shop in March 2004. In early 2006 the legal changes necessary for the one-stop shop to become operational took effect. To complete its implementation and to address remaining bottlenecks within property registration, the government launched a broad administrative simplification program in November 2007. The program introduced strict time limits, computerized the registry and digitized property records.

However, based on the foregoing analysis, this research concludes that there are still several shortcomings as to the purchase processes in Belarus that may be improved in the future. Such improvements might, for example, be based on the international experience.

10. New property processes for Belarus

This chapter summarises the main research findings by proposing improvements for the selected property processes in Belarus, specifically in terms of reducing transaction costs. The improvements theoretically imply a streamlining of the property processes.

The research objectives have been twofold, aimed at analysing the existing property processes and proposing new ones generating lower transaction costs as well as responding to future demands in Belarus. Consequently, while this research focuses on the present situation, its results are intended to be attractive with respect to future choices.

At present, due to the on-going land privatisation along with the urbanisation of the rural population and increasing living standards in Belarus, more individuals require land plots in private ownership for housing construction. It seems logical to suppose that in the future, a variety of property formation processes would be in demand in Belarus. This first concerns a property subdivision process aimed at changing the size of the existing private land plots through division into smaller ones owned by the same owner. Thus, the primary aim of the subdivision process is a change of land use for new land plots. As soon as land privatisation in Belarus is complete, this process will be one of the most demanded ones.

Furthermore, the analysed property formation processes in Belarus may be broken down into a chain of two independent property processes, namely a subdivision process that is followed by a purchase process. Such a property formation process results in a new land plot formed from state-owned land and transferred through a purchase to a private owner.

Thus, these property subdivision and property purchase processes are indirectly used during land privatisation in Belarus and most probably will continue to be employed. Therefore, this research seeks to propose improvements for these two functionally different processes, namely property subdivision and property purchase processes. The new process models are intended to serve to some extent as a theoretical basis for the future development of land administration practices in Belarus.

The proposed process models do not pretend to present a full range of activities in great detail. The models should only be considered as pointing out the general activities evaluated as important for the successful implementation of the particular property processes. They thus indicate a direction for future possible changes.

The new models proposed below are entirely based on the performed comparison with the questions and corresponding criteria developed in Chapter Nine in accordance with the theoretical background elaborated in Chapter Three.

10.1 A new property subdivision process

This research came to the conclusion that the Swedish process of property formation is estimated as generating lower transaction costs than those of SLO and BLR. Therefore, this research accepts the Swedish process as a basis for a new model of property subdivision in Belarus.²¹¹

The following conditions are already in place in Belarus as to the proposal of a new model of a property subdivision process. Specifically, the Cadastral and land registration authority is a single governmental body responsible for the entire range of surveying activities. In addition, it maintains a single register consisting of cadastre and land register with obligatory registration. Also, updating of information occurs automatically via e-transfer on a regular basis.

10.1.1 Building a new property subdivision process

The main changes of the subdivision process in Belarus are proposed as follows:

- A public surveyor as a key stakeholder with a higher responsibility for subdivision;
- A decreased role of municipalities with transfer of their decision-making functions;
- Surveying measurement is implemented prior to taking a cadastral decision;
- A cadastral decision and registration are under the responsibility of a registrar; and
- The payment of all service fees to take place after process completion.

In general, an applicant/owner and a public surveyor are proposed to be the main stakeholders actively participating in a property process. No private surveyors are involved in a new property subdivision process.

²¹¹ To be further elaborated at the end of this section.

Municipality as a consulting body

The municipality is a crucial factor affecting the transaction costs of the entire process in Belarus. In particular, collective decision-making within a municipality requires more resources and takes a longer time due to a wider range of bureaucratic formalities, while decisions taken by a professional within a state organisation seem to require a shorter time with fewer resources. Thus, this research proposes to transform the role of the municipality from a decisive to a consulting one in order to reduce processing time and therefore transaction costs for the entire process. In such cases, the municipality will be responsible for local planning and development of a particular area along with a preparation of a detailed plan, which establishes the general restrictions for subdivision.

It seems obvious that the role of the municipality cannot change without changing the procedure of taking a cadastral decision. In the new model, the decision is proposed to be taken by a registrar. In this manner, the transaction costs might be reduced in comparison with the costs generated through a formal decision as nowadays taken by a municipality.

Public surveyor

This research also proposes providing public surveyors with a higher degree of responsibility for the process implementation, including examination of the local conditions and consultation with the stakeholders involved as well as surveying and preparing documents. In addition, this research suggests transforming private surveyors into public ones entirely responsible to the Cadastral and land registration authority.

Specifically, a public surveyor should investigate all the conditions as well as act on behalf of the society and the property owners. Surveying measurement is a key function of a surveyor. The research proposes surveying to be implemented before a cadastral decision is taken. In this way surveying prepares a basis for subsequent decision making.

Since private surveyors are proposed to be excluded from the subdivision process, it is worth emphasising their current responsibilities from a transaction costs perspective. In practice, a state surveying organisation²¹² is entitled to subcontract with a private surveyor only for surveying measurement of boundaries and their demarcation on the ground. An applicant is not entitled to independently make a contract with a private surveyor (Decree of the President 2007). As soon as surveying is implemented, the private surveyor transfers a prepared detailed report to the surveying organisation that further proceeds with the property process. Thus, private surveyors nowadays play a minor role in the property formation process in Belarus and their exclusion seems to reduce transactions costs. However, this is not an uncontroversial solution.

²¹² Responsible to the Cadastral and land registration authority.

An exclusive involvement of public surveyors and a corresponding exclusion of private surveyors from a property subdivision process have obverse sides. On one hand, this would positively affect a property process since the state through public surveyors keeps the satisfactory standard of work under state control. Thus, a need for double data control disappears. On the other hand, this would reduce competition among professionals on the market due to the state monopoly for this type of activity and, therefore, may increase the price.

A new model of the property subdivision process for Belarus

Specifically, the subdivision process begins with an application submitted by an owner to the Cadastral and land registration authority²¹³ (Figure 40). The authority in turn appoints a surveyor who is responsible for most activities in the course of a process.

The surveyor proceeds with the property formation through investigations of planning regulations and further consultations with different stakeholders including the municipality. As soon as these activities are completed, the surveyor carries out the surveying measurement and simultaneously arranges the property rights concerned. Specifically, while surveying on the ground, the public surveyor handles the existing property rights (e.g., easement and mortgage), namely whether one or both property units should be encumbered by these rights. Thus, the surveyor takes into consideration the interests of the general public in general and the property owners in particular.

As soon as all the necessary issues are settled, the surveyor finalises the subdivision case and transfer the case file to a local office of the Cadastral and land registration authority.

Thus, the modules of decision and preparation are interchanged in the proposed model for Belarus in comparison with the existing one. Such an interchange is another significant proposal for the improvement of a property subdivision process.

All the documents are transferred to a local office of the Cadastral and land registration authority for the taking of a formal cadastral decision along with cadastral and ownership registration. Specifically, the registrar takes the cadastral decision about the creation of a new real property and makes records both in the cadastral and the legal parts of the uniform state register. Thus, cadastral and ownership registration is performed by the registrar²¹⁴ and, therefore, both registration activities remain unchanged in comparison with the existing ones.

²¹³ Its local offices.

²¹⁴ A practice similar to that which exists today.

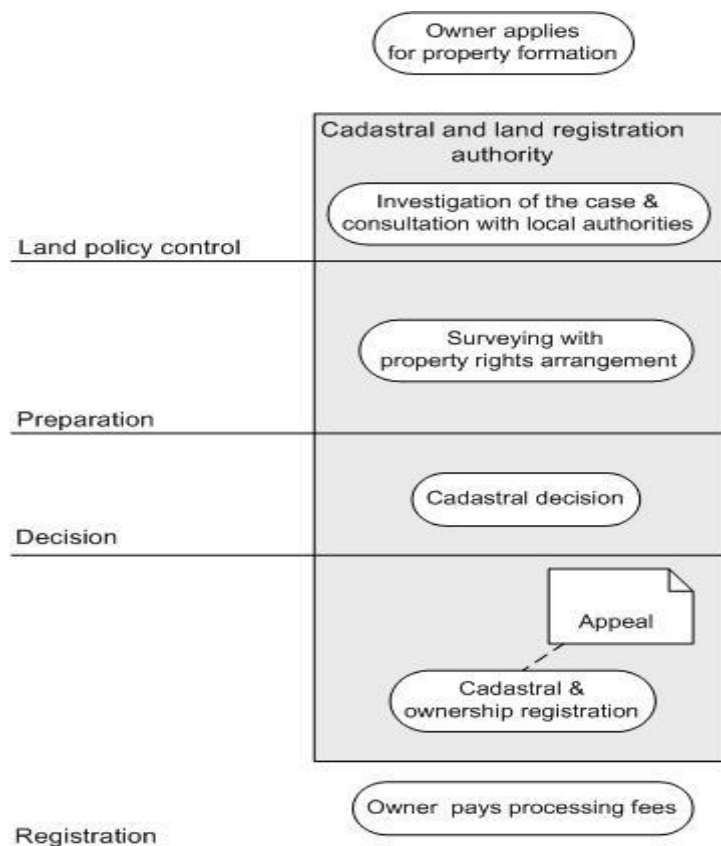


Figure 40: A proposed property subdivision process for Belarus.

The owner is entitled to appeal as soon as the registration is performed. Thus, an appeal procedure is also proposed to remain unchanged. Such an institutional arrangement is legally well-established and properly functioning nowadays in Belarus.

The owner is to be informed as to the ownership registration either in a paper form or electronically as well as an invoice is to be issued and sent to the owner simultaneously.

A single invoice comprising all the requested payments (i.e., surveyor's and registration fees) is sent to the property owner after process completion and should be paid within a determined period. It seems obvious that such a chain does not generate unnecessary delays in the entire process and therefore reduces its transaction costs. This may moreover give more flexibility for owners and shorten the property process as a whole. This proposal is based on the conclusion that an advance payment seems to lengthen the process due to

occasional delays in payment and therefore transaction costs of the process may correspondingly increase. Formally, the property subdivision process is completed as soon as the invoice is paid by the owner.

Closing reflections

Having implemented the comparative analysis of the property formation processes in these three countries, the decision of taking the Swedish property subdivision process as a basis for a new property formation process in Belarus is grounded on the research findings. First of all, the transaction costs of the Swedish process of property formation are estimated as lowest in comparison with those of Slovenia and Belarus. Secondly, the SLO property formation process has several features common with the Swedish and Belarusian property formation processes. For example, a municipality in SLO acts as a consulting body as well as a cadastral decision is taken after surveying measurement that is similar to Sweden. On the other hand, private surveyors actively participate in the property formation process in SLO that in turn requires double data control like in Belarus. Moreover, in Slovenia, two separate governmental authorities are responsible for cadastral and ownership registration. Such a solution for property registration is widely acknowledged as outdated. In contrast, in Belarus as in Sweden, a single authority performs both types of property registration.

The research evaluates the Slovenian property formation process as intermediate between the Swedish and Belarusian property formation processes. Thus, the Swedish solution is acknowledged as preferable one for being a basis for a new property subdivision process for Belarus.

However, it should also be indicated that the Swedish property formation process is not entirely copied for Belarus. The established land administration practice as well as the existing institutional framework with the progressive, well-functioning the State Registration Act (2002) and a single registration authority are taken into consideration while proposing a new process of property subdivision for Belarus. Specifically, cadastral and ownership registration remain a responsibility of a registrar. In addition, a registrar is proposed to take a cadastral decision instead of a municipality.

It should specifically be pointed out that a rather similar process model of a property subdivision has earlier been developed (Mattsson 2011). However, the proposed model differs slightly due to the adjustment to the current land administration practices in Belarus. Specifically, this proposed research model of the property subdivision process for Belarus suggests a cadastral decision along with cadastral and ownership registration to be implemented by a registrar, while in the previously developed model, the public surveyor is supposed to perform all the mentioned activities.

On the whole, this proposed research model of the subdivision process seems to be an intermediate one between that existing in practice in Belarus and the earlier proposed one (Mattsson 2011). Specifically, such a solution is not supposed to radically change the property formation process but sensibly introduce changes. It is merely a next step in a direction of increasing efficiency in the subdivision process. In other words, this model is developed as a compromise of theory with the current land administration practice and education in Belarus. The proposal as to a public surveyor with a higher responsibility for the entire process (including making a cadastral decision and registration) cannot be fully ruled out and may become more relevant in the more distant future.

Thus, the research came to the conclusion that for Belarus it would be more sensible not to duplicate the Swedish property formation process and instead gradually introduce several smaller changes. It is believed that the latter would be more efficient than radical changes of the entire property formation process.

10.2 A new property purchase process

Having observed the recent developments of the property market in Belarus, its increasing intensification from year to year was easily predicted. For the property market, in order to meet the growing number of property transactions in Belarus, a smoothly designed process of property purchase is of significant importance.

The proposed model for a new purchase process in Belarus is based on the previous comparison of the three similar national processes. As emphasised in the previous chapter, the existing Belarusian purchase process is estimated as generating higher transaction costs in comparison with the Slovenian and Swedish ones. Since the latter appears to generate the least transaction costs, it is taken as a basis for a new purchase model in Belarus.²¹⁵

This new process model implies the participation of a real estate agent facilitating the process for both transacting parties along with a bank financing a property purchase. The involvement of a bank in the purchase financing is widely acknowledged as a more attractive way of financing within a formal legal framework. Ownership registration is retained as obligatory. Updating the tax register occurs automatically as soon as ownership registration is performed through e-transfer of information.

²¹⁵ To be further elaborated at the end of this section.

10.2.1 Building a new property purchase process

Institutions of both real estate agents and notaries along with a mortgage arrangement are determined to be the main factors affecting the transaction costs of a BLR purchase process. The rearrangement of the payment of fees along with the application for ownership registration may also influence transaction costs.

In particular, the following changes are proposed for a reduction of the transaction costs of the property purchase process in Belarus:

- The real estate agent is responsible for both contracting parties;
- The notary is substituted by two witnesses;
- A mortgage arrangement is implemented simultaneously with signing of a purchase contract;
- A buyer is responsible for ownership and mortgage registration; and
- The payment of all service fees is performed after a process completion.

Real estate agent

It seems sensible to suppose that the transaction costs of the purchase process might decrease if the real estate agent would be obliged to represent both transacting parties instead of representing only one during the entire process. In such cases, the number of stakeholders decreases and therefore the transaction costs of the purchase process may be reduced. To be obliged to represent both contracting parties is not a new practice. This has been proven to be feasible in Sweden and moreover at lower transaction costs. However, it should be noted that there is always a risk that a real estate agent might favour one of the transacting parties and thereby transaction costs might increase due to information asymmetry creating in turn the prerequisites for an imperfect market. As soon as dual responsibility of a real estate agent is introduced, this risk might be higher, however, seems to fall in the long-run due to adjustment of administrative routines and an increasing tolerance.

Notary institution as increasing security and transaction costs

As emphasised in the previous chapter, the existing purchase process in Belarus is burdened by notary involvement. In particular, this negatively affects the transaction costs of the purchase process due to the formal attestation of both purchase and mortgage contracts generating additional time and money for the parties. Like other institutional arrangements of a society, notary institution represents different sides of the same coin. From one side, notary's involvement increases security of the purchase process and thereby security of

property rights along with the value of the real property. However, from the other side, the transaction costs of the purchase process burdened by a notary significantly grow not only due to a direct notary fee but also due to lengthening the purchase process per se. This increase in transaction costs influences both the transacting parties and the entire society in general. The participation of witnesses oppositely decreases the time and respective costs for legalising a purchase contract as well as reduces to some extent security of the purchase process. It might be argued that to reduce transaction costs is more valuable than to increase security of the purchase process as a risk of cheating by dishonest owners insignificant (as proven by the long Swedish experience). However, for reduction of transaction costs of the purchase process in Belarus, the introduction of a witness institution might be considered a preferable solution.

Mortgage and ownership arrangements

The mortgage activities in Belarus might be merged with the other activities within the contracting module. In particular, the simultaneous signing of the purchase and mortgage contracts along with the simultaneous ownership and mortgage registration obviously shorten the process itself and reduce transaction costs in general. At present in Belarus, a notary is involved for the mortgage contract attestation, which in turn additionally increases transaction costs in terms of spent time and money for the parties.

For a reduction of transaction costs, the buyer may be proposed as a single stakeholder formally responsible for the application of ownership and mortgage registration. However, the buyer may also authorise a bank for implementation of these activities. Such an institutional arrangement shortens the total time of a process. This in turn demands that respective banks and the Cadastral and land registration authority cooperate more closely than they do nowadays. Thus, a smoother interaction among the banks as well as between the banks and the Cadastral and land registration authority allows maximally shortening the period between the ownership and mortgage registration of a real property and may be acknowledged as reducing transaction costs.

Furthermore, it seems also logical to propose a synchronisation of the payment of all taxes and fees after ownership registration (i.e., when all the practical details are settled). Such an institutional change lowers transaction costs in comparison with transaction costs generated by separate payments on the different phases of a purchase process. In such a case, waiting times for the next activity are removed and therefore transaction costs reduced. This suggestion is based on the assumption that a well-established procedure for the execution of payments not paid in time may be identified in many European countries.

This research does not propose changing the moment of transfer of ownership right in Belarus in spite of the fact that the simultaneous transfer of the rights of ownership and possession decreases the risk of a buyer being cheated. This is an issue for future research and discussion.

A new model of the property purchase process for Belarus

The proposed purchase process begins with the seller's contacting a real estate agent for entering into an agreement on selling the real property (Figure 41). A potential buyer investigates the possibilities for financing the future property purchase. The negotiations with a bank might be completed by the signing of a financial agreement between the buyer and bank stating that future financing is guaranteed.

The buyer and seller negotiate the details of the contemplated property purchase. From this moment, a real estate agent is obliged to observe the interests of both transacting parties. Thus, the need for two real estate agents is abolished and therefore transaction costs are pressed down due to the decreased number of stakeholders involved.

An inspection of a real property is an obligatory activity carried out in the beginning of the process. In this way, the inspection reduces risks for latent defects that might arise after the process is completed. This is directly connected with future insurance payments and, therefore, the total transaction costs. In such cases, the buyer is appointed as the party obliged to carry out the inspection of the real property on site as the most interested stakeholder in this activity, while the seller is obliged to inform as to latent defects in the real property.

The signing of a preliminary contract with a deposit payment is indicated as an optional activity and estimated as reasonable to propose for the new model. Specifically this may, on one hand, reduce transaction costs by keeping away "unserious" buyers, i.e., increase security of the process for both parties. On the other hand, it may lengthen the entire process and therefore increase its transaction costs. Thus, this activity is left to the contracting parties to decide whether it is vital in a particular case.

The loan/mortgage contract is arranged in parallel with the purchase contract signing, intended to shorten the time of the purchase process. Two witnesses attest the purchase contract and simultaneously the purchase sum is paid to a seller.

The existing mortgage arrangement might be defined as a separate process with one respective application, a notary attestation and mortgage registration. This process in turn serves as a part of a property purchase process. If the existing mortgage activities are combined with the activities of the contracting module, the total transaction costs of the purchase process would significantly decrease.

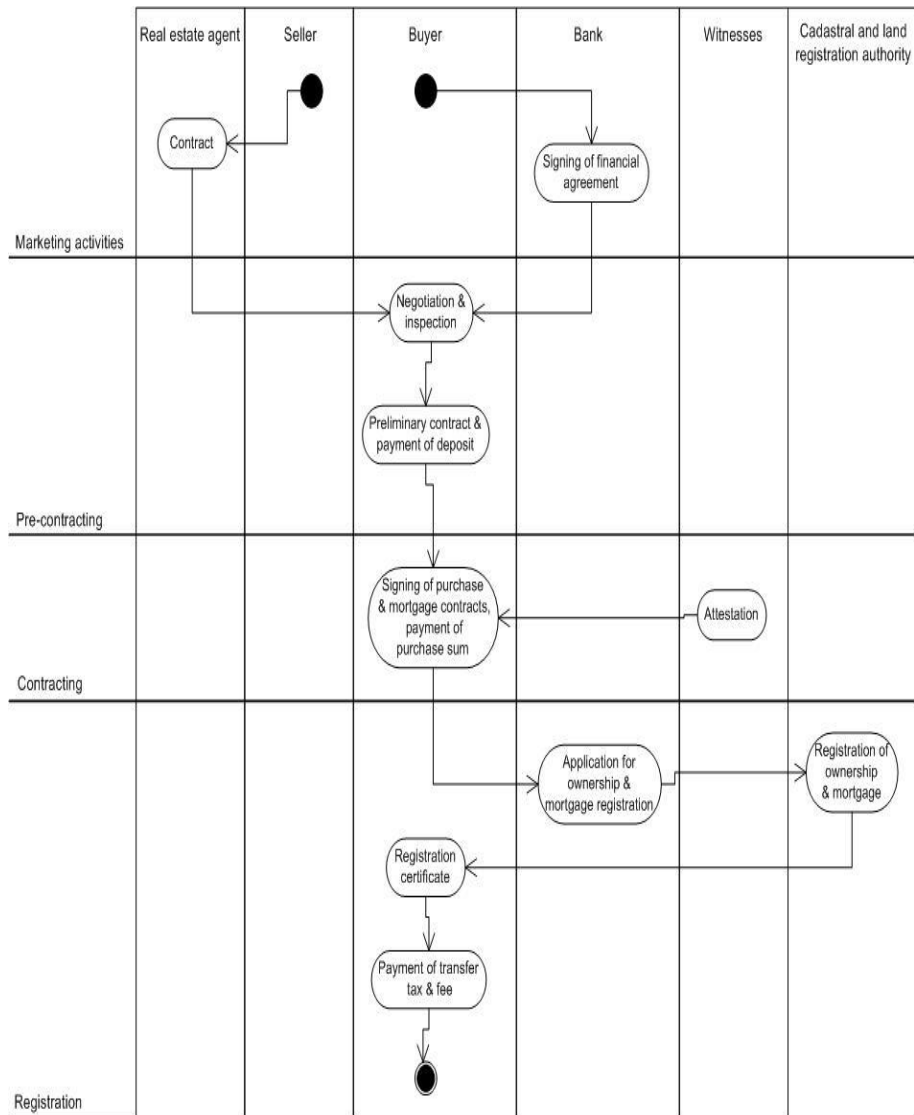


Figure 41: A proposed property purchase process for Belarus.

As soon as the purchase and mortgage contracts are signed and the purchase sum is paid, an involved bank (authorised by a buyer) proceeds with an application for mortgage and ownership registration (i.e., two applications in one). The Cadastral and land registration authority further performs

simultaneous ownership and mortgage registration. The new owner is informed about registration either in a paper form or in e-format.

All the respective payments (e.g., registration fee, transfer tax) are proposed to be settled at the end of the process, in particular when the purchase is formally completed.

Closing reflections

The Swedish purchase process is chosen as a background model for a new Belarusian process due to its lower transaction costs (as compared above). The SLO purchase process is in turn estimated as being between SWE and BLR purchase processes because of its likeness with both. In case of Sweden, it mainly concerns treatment of mortgage along with a closing payment of fee. The likenesses of the purchase processes in Belarus and Slovenia mainly consist of similar responsibilities of a real estate agent, notary institution and the moment of ownership transfer.

Again, it should be pointed out that the Swedish process of property purchase is proposed to be employed as a general frame with the main key activities as benchmarks. The latter include a common real estate agent for both transacting parties, witness institution instead of notary, a simultaneous purchase and mortgage contracts signing and a closing payment of fees. Thus, for building a new model for Belarus this research proposes to include the main activities of the Swedish process to be also supplemented with the activities remaining from the existing Belarusian process. For example, it is applied to transfer of the ownership right which is proposed to remain unchanged.²¹⁶ It seems more feasible to change the purchase process in Belarus through evolutionary changes instead of revolutionary, i.e. by making a new purchase process from a scratch.

As for the property subdivision process, a pattern model of a property purchase has been developed previously (Mattsson 2011). In general, both proposed models for the property purchase process provide a similar range of general activities. Certain minor differences may anyway be indicated. In particular, these concern the inspection of real property and signing of a preliminary contract between the parties. While in this proposed research model, the inspection is an obligation of the buyer before signing of a preliminary contract, the previous pattern model proposes that the real estate agent arranges the inspection, prepares the estate report and advertises the real property in question. It also indicates that a preliminary contract should only be concluded if necessary, while the deposit payment is not mentioned.

On the whole, this research proposes a model more adjusted to the local conditions of Belarus including the existing legal framework. Moreover, this model gives a more detailed distribution of the activities among the particular

²¹⁶ A practice similar to that which exists today.

stakeholders in comparison with the pattern model (Mattsson 2011). Nevertheless, both proposed models of a property purchase are quite similar. Their common feature is the witness attestation of the purchase contract instead of a notary. However, it seems realistic to suppose that the introduction of a witness institution in Belarus might be a quite challenging task.

11. Conclusions

11.1 Main contributions

This research has contributed to science and practice in several ways. Specifically, the selected real property processes in Belarus have been described in detail and these descriptions have formed a solid bundle of knowledge for further systematisation for Belarus in particular and the entire research domain in general. Thereby, a theoretical basis for other countries in transition has been developed and might be employed for further consideration of own real property processes.

The fundamental theoretical contributions of this research have been identified in a clear explication of the connections between institutions including property rights, real property processes and transaction costs. In addition, the revealed differences of selected real property processes in the countries have been substantiated from a transaction costs perspective.

From a practical point of view, the contribution of this research has been seen in proposing potential institutional changes for Belarus based on the chosen theoretical background and empirical findings. This research has particularly indicated practical ways of reducing the transaction costs invoked in property processes in Belarus by learning from the experiences of other countries. This international comparison has provided the “bricks” for building up new property processes in Belarus. These bricks are taken mainly from the Swedish property processes as these were determined to result in lower transaction costs. However, possible risks after introduction of these new property processes for Belarus have been indicated for awareness while taking land policy decisions.

Moreover, this research has tested process modelling as a method for building up the models of the processes. These models have been identified as being suitable for comparative analysis of the real property processes.

11.2 Policy implications

This research touches upon diverse policy issues that might be taken into consideration by policy-makers in Belarus. It concerns, first and foremost, the responsibilities of the stakeholders within the real property processes such as a municipality, a surveyor, a notary and a real estate agent. Obviously, these issues

belong to the sphere of the government as they affect national policy on land and other related issues.

Specifically, in the case of a municipality, the main proposed change concerns a transfer of a decision-making function from a collective decision-making body (i.e. a municipality) to an individual expert (i.e. a public surveyor). In addition to a diminution of the role of a municipality, this research proposes to broaden a scope of duties for public surveyors including their responsibility of independent decision-making. For implementing these changes, a range of governmental decisions need to be taken. However, there is a risk that some of those decisions would be quite unpopular and might meet the invisible resistance from a bureaucratic apparatus.

In addition, this research suggests substituting the institution of notaries by that of witnesses, which seems to be the most challenging transformation. It would surely generate a strong resistance from the practicing notaries (both private and public) in Belarus as this institution is determined by historical development of the country (i.e. a path-dependent development) and well-grounded in the national institutional framework. Besides, this change implies a change in minds of people perceiving notaries as a guarantor of the security of property transactions. Therefore, a resistance from the general public seems to be inevitable. An extensive explanatory work among the population along with a strong will of the government might be recognised as necessary measures for a successful transformation.

A change in liability of real estate agents who are supposed to consider the interests of both transacting parties appears to be minor. This seems to be easily implemented, though a change in human perception of responsibilities of real estate agents might be estimated as requiring a longer time perspective.

Other fundamental change proposed by this research concerns property financing where the banks are the main stakeholder. It implies the signing of a mortgage contract simultaneously with a purchase contract along with a simultaneous mortgage and ownership registration. Specifically, to intensify the financing of property purchases through mortgages, the banks should be guaranteed that mortgaged properties would go to the banks in cases of non-payment by mortgagors. It appears advantageous to have a clear and transparent policy for the financial market in general and for the banks in particular. Thus, this change is intended to affect not only the financial market and the real estate market but also social policy related to families with under-aged children. This change is thereby supposed to be complex and therefore requires a careful preliminary elaboration.

In general, it seems unrealistic to implement all the above-mentioned changes only through formal decisions, even if a political will is persuasive. It remains to be seen whether the society is prepared to delegate a larger authority to an individual public expert (i.e. a surveyor) who is intended to ensure the public interests. Moreover, to act on the behalf of the society, surveyors should have appropriate educational background with deep knowledge on legal and

economic issues, especially in respect to real properties. Therefore, for changing the real property processes, changes in education of surveyors should also be taken into consideration.

In summary, having proposed these changes, the research has not provided clear answers on the question of how to overcome all the resistance. One of an acceptable solution might be seen in a diligent control of the state supplemented by a wide explanation of the changes for people in general and the professional communities in particular.

Any reflections on policy implications would be incomplete without reflections on the land tenure system of Belarus presented below.

11.2.1 Land tenure system of Belarus

The Republic of Belarus inherited a diversity of real property types (i.e., land and buildings) from the Soviet legal system where two administrative systems for recording and management of land and buildings separately existed and were maintained by the different authorities. Not surprisingly, at present land plots and buildings are formally declared as independent mortgage objects (Civil Code 1998).

In contrast, the current mortgage legislation proclaims a simultaneous mortgage of land plot and building on it, i.e., it asserts a principle of unity of land plot and an attached building (Mortgage Act 2008). Thus, there still exists a legal inconsistency between the mortgage provisions of the different legislative acts. The property rights attached to the different types of real properties are governed by a variety of legislative acts complicating the legal environment. Complete information as to the legal treatment of a particular property right must be gleaned from several laws and bylaws. This significantly confuses the stakeholders operating within such a legal environment.

The different real properties are recorded in a single uniform state register maintained by the single governmental authority. Obviously, the existing legal duality of real property types contrasts with a unified property registration. Such a separate institutional arrangement might be regarded as an institutional drawback directly affecting transaction costs and the efficiency of the property market in general. This research insistently proposes an urgent institutional change through a legal unification of the land plot and building on it into a single property unit. In such cases, buildings would be treated as fixtures of the land plots, while land plots as the real properties.

The wide bundle of property rights existing in Belarus complicates the legal environment in which these property processes are operating. These property rights (except ownership) cannot normally be transferred by

individuals²¹⁷ in spite of a significant number of land plots utilised by them. The prohibition to sell, exchange, give as a gift, lease or mortgage land plots generally reduces the mobility of real properties on the property market and therefore the property market's efficiency. Such prohibitions create a hidden land market where the price of land is informally included in the price of a building transacted on the property market. Thus, the price of land held in life heritable possession, permanent use and even leasehold is approaching the price of land held in private ownership.²¹⁸

Such a legal limitation may trigger the creation of an informal property market and reduce the number of formal property transactions and therefore state revenue. A further simplification of the land tenure system is acknowledged as being vital for establishing good land administration in Belarus. It seems logical to propose decreasing the number of available property rights for private owners exclusively to ownership and lease. Specifically, the right of life heritable possession and that of use might be transformed into the ownership right or leasehold. A permanent use right for legal entities might also be substituted with the leasehold right. All this will simplify the legal environment in general and may also positively affect the real property processes in particular.

Even if agricultural land is not the object of this research, it should be emphasised that its exclusion from the property market has been seen as a factor restraining an increase in productivity of agricultural land in Belarus. The foregoing is based on the conclusion that to some degree, it decreases incentives for long-term investments in land. Therefore, the ban to sell agricultural land on the property market might lead to a lesser demand for land improvements and thereby lower productivity.

The subdivision process in Belarus is not to-date widely used and one of the reasons for this might be the existing restrictions on the size of land plots held in private ownership. The current land legislation restricts the size of land plots granted to a private owner within 0.05-0.15²¹⁹ hectares (Land Code 2008) and therefore such land plots can restrictedly be subdivided. This might negatively influence the property market in the long run, as real properties are not utilised in a more efficient way. It seems sensible to ease these restrictions in term of abolishing the area limits of land plots that might be instead regulated through a planning tool (i.e. detailed plans with the areas of particular land use). In such a case, limitation of land plots falls away as it would be directly connected with land use.

Thus, decreasing the number of available property rights and thereby simplifying the entire picture of land tenure in Belarus is a vital institutional change. In addition, the land privatisation process needs to broadly continue in

²¹⁷ The only exception is the right of life heritable possession, which may only be transferred by the right of succession in ownership or lease.

²¹⁸ When a building situated on the land is conveyed.

²¹⁹ In urban areas.

order to activate the property market and thereby increase the economic performance in the country. In order to implement the above-mentioned changes, a political will and a wider acceptance of these changes by the general public are considered as a decisive factor. This acceptance is assumed as being less difficult to achieve than to overcome the bureaucratic resistance.

11.2.2 Real property processes

This research has identified the real property processes as differently arranged in Belarus in comparison with Slovenia and Sweden. Specifically, Belarus as a country in transition has a more diverse range of process activities.

Property formation process

For a property formation process, the change in the first place concerns the role of the municipality and that of the surveyor directly affecting the transaction costs. Specifically, the municipality plays a decisive role within the property formation process in Belarus by issuing permission to form new land plots and by taking cadastral decisions. Only after this is a property formation process feasible. This research, based on an international comparison, has proposed transforming this role of the municipality into a consulting one with total responsibility for local planning. This proposal is intended to reduce the process times and thereby transaction costs. This entails a significant institutional change and its implementation requires a political will.

In contrast to a municipality, the role of a public surveyor has been proposed to be expanded by empowering public surveyors with a higher responsibility. This may reduce transaction costs, for example, due to the absence of repetitive transfers of information among stakeholders. Thus, a general conclusion might be to broaden the duties of a public surveyor in particular and the Cadastral and land registration authority in general and simultaneously to limit the participation of municipalities in Belarus.

This research has postponed the transfer of the activity of taking a cadastral decision from the registrar to a public surveyor due to the insufficient training of today's Belarusian surveyors in legal questions. An increase in the responsibility of surveyors requires the corresponding adjustment of the surveyors' education in accordance with the demands of the profession. Currently, surveyors in Belarus are mainly trained in technical subjects, while their legal and economic training can be seen as deficient. Changing existing practices and thereby introducing institutional changes is necessary to modify the corresponding educational programmes.

Another distinguishing feature of the property formation process in Belarus is that almost all of the activities are formally time-bound (Decree of the President 2007). This entails the dual consequences of limiting the overall

time for a process and entitling the applicant to demand a process completion within the set time limits. On the other hand, these time-bound processes appear to be rather superfluous with the many time limits determined almost for each activity. This may create the need for unnecessary control with a possible work overload for civil servants.²²⁰ This research has identified the time limits as negatively influencing the property process, appearing to reduce its efficiency. It might be useful to consider the possibility of further simplifying the property process instead of increasing its bureaucracy.

An application for property registration within a property formation process nowadays is practically performed in two ways. An applicant can directly apply to the Cadastral and land registration authority for property registration and thereby a real property process might be shorter. Another way is when an applicant commissions a selected state surveying organisation for cadastral and ownership registration. In such a case, the latter performs all the activities on behalf of this applicant. This is more convenient for the applicant but at the same time, it appears to be more time consuming and costly. However, the possibility to authorising a public surveyor for property registration might be identified as a positive sign of the on-going development in Belarus.

Critical reflections

The proposed changes of the property formation process in Belarus are intended to simplify the process in terms of a number of the stakeholders and their activities. It would reduce the time, spent by applicants while obtaining new real properties in ownership and thereby decrease the transaction costs of the process.

In the first place, it concerns changes in role of the municipality and that of the public surveyor. On one hand, these changes are aimed at reducing bureaucratic formalities of the process and thereby decreasing the processing time. On the other hand, they might increase a risk of, for example, taking incorrect decisions by public surveyors.

One of the advantages of the simplified process is the decreased transaction costs for the contracting parties in particular and the country's economy in general, while disadvantages are not only seen in unavailability of the society to provide public surveyors with a higher responsibility but also in the incapability of these experts to handle a wide range of diverse activities due to a lack of necessary knowledge. In particular, a lack of correspondence between the knowledge demanded by the modernised professional practice and knowledge obtained during training at universities might become acute. Besides, these changes should be widely accepted by the general public who should also have trust in the government. In case of a rapid introduction of the

²²⁰ And thereby increases stress levels.

proposed changes, there is a risk that they would be opposed and thus gradually disappear.

Specifically, these changes may generate a range of problems. First and foremost, it concerns a possible resistance of bureaucratic apparatus against redistribution of the responsibilities between the municipality and the public surveyor. Besides, a diminishing role of municipality might lead to a decreasing control over land distribution and the property formation process in general. This in turn may cause inefficient land distribution, favouring some individuals while forming new real properties and risks of reducing trust in the government and growing informal property market.

Obviously, all the advantages and disadvantages of the proposed changes should be carefully considered prior to decision-making while reforming the property formation process in Belarus in order to minimise or escape the above-mentioned potential problems and bottlenecks. It might be concluded that to change the property formation process seems to be a challenging task, especially if taking into account the historical development of Belarus, including its path-dependence.

Property purchase process

Despite the existing similarities, the property purchase process differs between the selected countries. In particular, involvement of a notary and a payment of fees along with mortgage arrangements differentiate the process on an international level.

In general, the number of stakeholders involved and the activities performed have been recognised as factors directly affecting the transaction costs of the real property processes. Normally, the more the activities united and implemented by the same stakeholder, the lower the transaction costs of the process. This concerns, for example, the payment of all fees proposed to be united into a single payment and covered by the parties after the property process completion.

Specifically, this research has proposed leaving the preliminary contract with deposit payment within the property purchase process as an optional activity ensuring protection for both contracting parties. At present, it seems almost impossible to abolish this due to the underdeveloped institutional framework within the inceptive market environment in Belarus.

A difference in the attestation of a purchase contract of land and that of a building has been identified in this research. In the case of a land purchase, a notary is nowadays obliged to attest the contract, whilst if it concerns the purchase of a building or apartment, the registrar of the Cadastral and land registration authority is also legally authorised to do so. It is thus seen that the notary's monopoly is gradually disappearing, which in turn leads to the simplification of the purchase process. This might be acknowledged as another

sign of the positive development underway in Belarus. The substitution of a notarial attestation by witnesses, as proposed by this study, in cases of land purchases, has been perceived as a positive institutional change decreasing transaction costs.

In order for real properties to become visible on the market, they must be registered. Visibility accelerates the ‘mobility’ of a real property, leading to its more efficient use. Obligatory registration has been surely seen as one of the prerequisites for the economic growth of a country with a formal system.

A couple of words should be said about the legal responsibility for property registration. A variety of solutions might be found worldwide, i.e., different countries solve problems differently. For example, in one country registration may be under the responsibility of two executive governmental authorities, while in another country it may be under the responsibility of a single one. However, it has been noted that the single solution supplemented with a properly functioning single property register might be more efficient in the long-run.

Critical reflections

The changes of the purchase process proposed by this research mainly concern the institution of notaries and mortgage arrangements. These changes are supposed to decrease the transaction costs of the process due to the reduced processing time.

On one hand, abolishment of notaries is assumed to simplify the purchase process and decrease its costs for the society, for example, in educating this group of professionals. On the other, it might decrease security of property transactions and therefore, the value of real properties in general. In addition, a number of frauds might grow, to some extent, due to introduction of a new institution of witnesses. The anchoring of the witness’ institution in the society would need some time and the transaction costs might increase in the short run while in the long run this institution would assist in shortening the property transactions and lowering the transaction costs.

It should also be noted that abolishment of notaries is assumed to be a not easy process. It generally implies an inevitably strong resistance from both the professionals and the general public who perceive a notary as a guarantor of secure transactions. Generally speaking, people’s perception of notaries is strongly rooted in tradition in Belarus along with other European countries where notaries still operate in the property market. Therefore, this would take a time for people to become accustomed to the witness institution within property transactions.

In contrast, modification of the mortgage arrangement in Belarus is assumed to occur smoother and without a strong resistance. It might be explained by obvious benefits for the contracting parties in particular and the society in general. However, the banks might expect some difficulties with the

adjustment of their IT systems to new requirements. This IT modernisation does not need to start from scratch as the development of the e-government is already under way in Belarus.

In summary, as in a case of the property formation process, any changes of the purchase processes would be impossible without a strong political will and the governmental engagement supplemented with the people's trust in the government.

Mortgage system of Belarus

The mortgage system of Belarus has been identified as rather undeveloped, though the current mortgage legislation indicates a positive trend in development. However, it would be correct to say that the mortgage system of Belarus is still in its infancy, which is bolstered by the fact that banks generally do not favour the current mortgage system and are not interested in mortgaging due to the cumbersome and costly process of getting a property back in cases of payment failure. Moreover, the banks entitled to mortgage land are also to have a license for this specific type of activities. The licensing of banks formalizes mortgage financing and thereby hampers, to some degree, its development towards a market solution.

Specifically, this research has proposed to move the mortgage activities from the end to the beginning of the purchase process. In particular, it implies a simultaneous treatment of the purchase and mortgage contracts supplemented with their simultaneous registration. This implementation would demand an absolute convergence of these activities. Merging of the existing IT system with a new administrative routine might be burdensome.

Furthermore, dispersed land legislation restricts the mortgage process in Belarus. In particular, the wide range of limited property rights confuses the stakeholders in the property market. It might, for example, be emphasised that privately-owned land plots may merely be mortgaged for securing a timely return of a bank loan. Buildings situated on land plots held in life heritable possession, temporary or permanent use may only be mortgaged without a mortgage of those land plots. To improve the existing mortgage system, systematisation along with simplification of the relevant legislation is a must. Moreover, a closer cooperation of the banks with foremost the Cadastral and land registration authority is seen as a viable solution.

Critical reflections

Obviously, the proposed changes of the current mortgage system are closely linked with the changes of the land tenure system in Belarus. It concerns a reduction of a number of the existing property rights encumbered with the various mortgage restrictions. Thus, modification of the mortgage system might be implemented in parallel with simplification of the land tenure system.

Specifically, one of the main changes proposed by this research is the simultaneous signing of the purchase and mortgage contracts. In particular, this requires a closer contact of the buyer with the bank in the beginning of the process in order to solve the financial issue. Therefore, a new administrative routine for this might also be needed.

Another problem for banks might be a lag of the existing technology with the proposed administrative changes. For implementation of this change, a modernisation of bank IT systems requires large investments that would pay off only in the future. There is also a risk of unwillingness of the banks to make these investments. Therefore, it seems reasonable to assume that the state should create incentives for the banks to make them interested in such large investments. A resistance of the bureaucratic apparatus is assumed to be inessential.

Moreover, abolishment of the licensing of the banks might lead to diverse results. Specifically, this change would most probably intensify the property market in particular and the entire economy of the country in general. However, there is also a risk of entering into the property market a number of unqualified smaller banks and thus an emergence of the unregulated financial market.

Having completed this research, this author believes that the proposed institutional changes, if implemented, would result in a more efficient property market and therefore lead to greater economic growth in Belarus in general, in spite of the indicated problems and bottlenecks.

11.3 Suggestions for future research

The ambition of this section is to generally outline, based on the research conducted here, directions of possible further research within several of the subject domains. This research has dealt with a variety of questions, both theoretically and practically oriented. These questions normally might be motivated either by the reality with efficiency criterion as a driver or by the science for creating a body of new knowledge. In particular, this research has touched upon theoretical concepts such as efficiency, institutions and transaction costs, property rights and their classification, ontology and process modelling.

Process modelling within the land administration domain reveals sets of complex problems located at the juncture of separate domains such as economy, law, technology and sociology. These problems may be resolved through ontological modelling where ontology normally assists in the understanding of a particular domain, while modelling serves as a tool for its formalised presentation. Undoubtedly, process ontology in an application to land administration might be an extensive research field. The formalisation of

complex property processes along with the issues of organising and structuring information, data interoperability and domain formalisation in general are separate research topics that may be further investigated through an ontological application.

Furthermore, the stakeholders involved in property processes may have different affiliations and consequently normally operate within a variety of laws and regulations. Legal studies aimed at studying such institutions and introducing more efficient property processes may be of further interest. In addition, the harmonisation of national legal frameworks is a vital task for frictionless property processes and can be worth further investigation.

The integration of property formation and construction processes into a fluent sequence of the activities could also potentially be a research topic. This especially concerns countries in transition where this chain, beginning from the formation of a new property unit and completing with construction work, is normally separated into smaller parts. A special research focus may be on reducing time gaps between these parts. Thus, the question of how to make the entire chain function fluently with no time delays could be examined.

Quantitative estimations of the total transaction costs of a property purchase are recognised as an active research topic, while measuring transaction costs of other property processes seems to be rather at an embryo stage. Transaction costs calculation is generally acknowledged as both a complicated and attractive research topic. Such can be indicated, for example, from the fact that during a number of research presentations, this author has received many questions concerning the quantitative determination of the transaction costs of the selected property processes. It appears to be quite dubious to precisely quantify transaction costs of processes within a scientifically accepted framework. However, identifying the components as borne by each stakeholder and further systematising key factors influencing transaction costs of property processes might be a step in this direction and seen as suitable for future research.

Belarus, as any country in the transition from a planned to a market economy, may learn more from the international experiences within land administration domain. In particular, proposing smoother land distributions through property processes may attract the attention of researchers. Such a thorough analysis of respective international practice assists in avoiding obvious mistakes while introducing changes in real life. Therefore, international comparative studies within the land administration domain still appear rather topical for the countries of Eastern Europe and emerging economies undergoing significant institutional changes. For further comparisons, it seems useful to compare countries within similar legal families. In such cases, changes might harmoniously be assimilated into the existing practices of a recipient country.

The workflow within the separate organisations performing surveying and registration activities might also be addressed. There still exist, for example,

inconsistencies or conflicts of interests hampering land registration processes. In addition, issues of corruption in land administration, and land distribution in particular, are becoming “hot” topics for in-depth research. In spite of their sensitivity, these issues are always at the top of agendas for countries in transition. In general, future research may focus on answering questions of how to make the land administration domain more transparent and less dependent on human factors. It would perhaps be interesting to think about more intensive applications of information technology within the land administration domain.

As to the final results, this research has proposed a set of institutional changes for the real property processes to be introduced in Belarus for increasing the efficiency of the property market. Therefore it seems timely to approach the subsequent problem of how to introduce these changes. In general, a change of institutions is a demanding and time-consuming task where, for example, political and financial constraints along with bureaucracy must be overcome. The difficulties and potential risks are also to be taken into consideration while changing institutions. On the whole, another proposed research topic is about the implementation of institutional changes.

12. References

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