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**Transition of Land Administration in Post-War Croatia**

**Prof. Željko BAČIĆ, PhD, Director General  
State Geodetic Administration, Republic of Croatia**

# **Transition of Land Administration in Post War Croatia**

**Željko BAČIĆ**

**Key words:** Croatia, Land Administration, Transition, Cadastre, Land Registry

## **Summary**

The Republic of Croatia was created in the process of the break-up of Yugoslavia, which started in the 1980ies. The creation of the country was connected with the Homeland War which lasted for four years and which left great destruction, both material and social. In the above period we achieved not only the independence and recognition, but we have also changed our political and economic system, we have established the state administration, we have made a territorial organisation of the state, and have also actively started the transition process of the whole society. In other words, paralelly with the patriotic war we have had the transition of the society from the communist to the politically economic system of market economy.

This intertwining of the two comprehensive processes resulted in the fact that the role of Land Administration which was systematically neglected in the last fifty years, became very complex and multi-layered in the above events. On one hand, it was necessary to make pragmatic and operative solutions which enabled the implementation for some processes in the given circumstances, while on the other hand it was necessary to define the future system of Land Administration which will permanently ensure the security in the legal transaction of immovable property and the efficient functioning of land registers in order to enhance the economic development. In such circumstances the solutions and the activities have yielded considerable results and in individual areas the transition has advanced, but those solutions and activities were also burdened with mistakes.

This paper presents the course of events, the role of Land administration in the events, the influence of the processes on the Land Administration, the new regulatory frameworks and its implications on the Land Administration, as well as the activities undertaken to achieve the set objectives. The stress is on the registration of immovable property (cadastre) and the registration of ownership on the property (Land register).

## **Facts about Croatia and its Land Administration System**

The Republic of Croatia is a sovereign independent state which, after the break-up of the former Yugoslavia, declared independence on 25 June 1991, achieved international recognition in mid-January 1992, and became a member of the UNO on 22 May of the same year. The state territory of Croatia has an area of 56,537 km<sup>2</sup>, where, according to the 2001 census, live slightly over 4.5 million people (a quarter of a million less than according to the 1991 census). At the end of 2003, the Croatian GDP was 25.7 billion US\$, or US\$ 5,650 per capita. Croatia is a parliamentary democracy with a one-house parliament, and the executive power is divided between the Government of the Republic of Croatia (hereinafter GRoC) and the President of the Republic of Croatia.

The real property registration in Croatia was established in the middle of the 19th century in the Austrian monarchy, and is still operating on this basis. This is a classical dual system of registration where the land registers are kept in the municipal courts (106 of them), and the registration is done in a court procedure. The responsibility for the whole Land Registry system lies with the Ministry of Justice (hereinafter MoJ). Of a total of 3,324 cadastre municipalities, land registers were never established in 232 cadastre municipalities, a part of them were destroyed or alienated during the patriotic war (49), while, for a number of cadastre municipalities, they were put out of force (20). The basic law regulating the issue of ownership pursuant to the provisions of the Croatian Constitution is the Law on Ownership, GRoC (1996), passed in 1996 and amended in 1998, 1999 and 2001. The property registration is done pursuant to the Land Registry Law, GRoC (1996), also passed in 1996 and amended in 1998, 1999, 2000 and 2001.

In the municipal courts, about 900 clerks and about 150 land register judges are involved in the registration of property. Every year 380,000 new cases are filed in the Land registers in Croatia, while the total number of backlogs was 323,020, SGA and MoJ (2004.).

At the same time with the land registers, the Cadastre started to be established for the purpose of taxation (tax on cadastre revenues) and is established for the whole territory of Croatia as such cadastre. The Cadastre and the Land Register were not maintained properly as can be seen from the age of surveys and the techniques used for the survey (Figure 1).

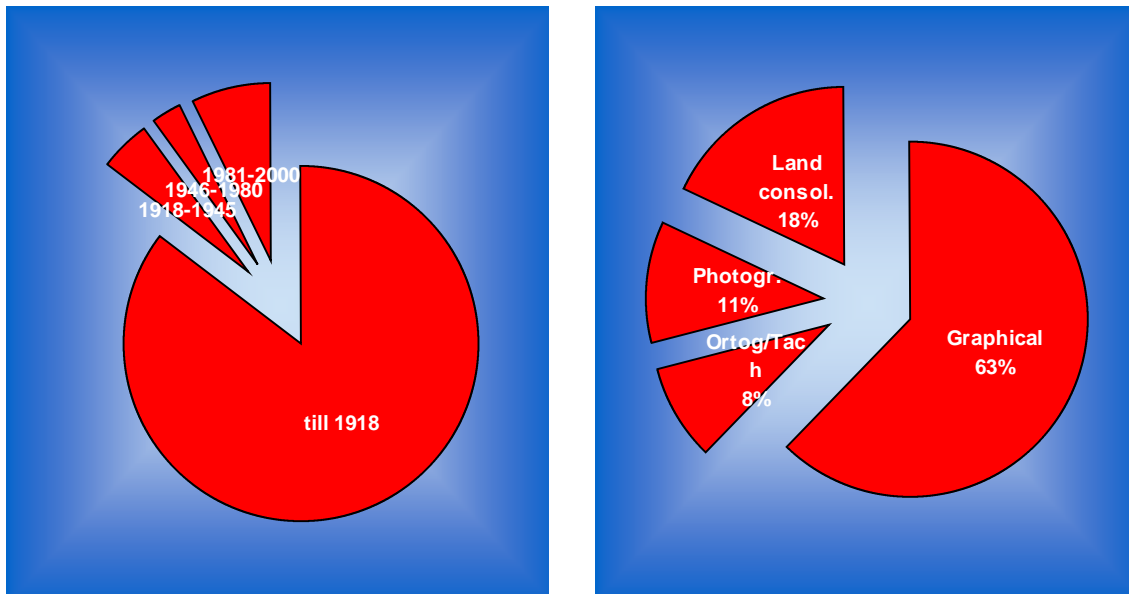


Figure 1: a) Age of cadastre survey

b) share of surveying techniques

The basic regulation for the Cadastre in Croatia is the Law on State Survey and Real-estate Cadastre, GRoC (1999). On the basis of this Law, the authority in charge of the reconstruction, keeping and maintenance of the Cadastre is the State Geodetic Administration (hereinafter SGA), but in the past, the system underwent several organisational forms. Cadastre activities are done by 20 regional cadastre offices and their 92 branch offices, and the City cadastre office of Zagreb. The system has a total of 1,400 employed. The activities of

surveying and of real estate cadastre also done by special physical and legal persons (licenced by SGA), 493 of them, participating in the implementation of the SGA programme and providing services to the economy and to citizens. Numerical data on the cadastre operate and annual changes in it are shown in Table 1 .

Table 1: Numerical data on cadastre operate and changes in it

Number of cadastral municipalities	3,324
Number of cadastral plots	13,436,037
Number of cadastral plots in parts	9,179,122
Number of cadastral map sheets	55,867
Number of cases in administrative procedure (2002.)	96,798
Number of cases in non-administrative procedure (2002.)	907,530

The problem of both of these registers is that they do not reflect the real state of things and ownership, which is more pronounced in land registers. There are many reasons for this. After 1918, both of these registers were systematically neglected, partly for real political reasons – struggle for power in the newly established state of Yugoslavia, the need of the new state to establish the cadastre and the land registers on the greater part of its territory (the registers were established only for Slovenia, Croatia and Vojvodina), and later in the socialis Yugoslavia for ideological reasons, the wish to abolish the private ownership and introduce social ownership.

### **The Patriotic War 1991-1995**

Already in the mid-eighties of the last century problems wer felt in the functioning of the federal Yugoslava, culminating in the events on Kosovo (miners’ strike in the Trepča mine, rally on Kosovo Polje), but essentially it was a clash of two concepts, which can be simplified by the names of confederate (advocated by Slovenia and Croatia) and centralistic (advocated by Serbia and Montenegro). With the break-up of the Communist Party of Yugoslavia which, at its congress in Belgrade in 1988, could not agree on the direction of development of the country and with the interruption of the congress, and particularly with the fall of the Berlin Wall, the processes in Yugoslavia were enhanced, democratic elections were held in Slovenia and Croatia and a multi-party system was introduced. During 1991, both these countries declared independence By the Constitutional decree of 25 June 1991, the Croatia Parliament declared the Republic of Croatia an independent and a sovereign state.

At Easter 1991, the first victim fell in the Croatian Homeland War which escalated after the short war in Slovenia at the end of summer of the same year. Military operations lasted in Croatia until 6 August 1995 when, in the Operation Storm, occupied areas of north Dalmatia, south and east Lika, Kordun and Banija were liberated. This was followed by disarmament and peaceful integration of the Croatian Danube region under the auspices of the UNTAES mission, and on 15 January 1998. the Republic of Croatia realised the complete jurisdiction over its territory. The destructions of Vukovar and Dubrovnik became the symbols of the war and of the irrational wish to destroy (Figures 2 and 3).



Figure 2: Destruction of Vukovar and the exile of the population after the fall of the town.



Figure 3: Shelling of Dubrovnik.

In the four years of the conflicts, over 11,000 persons were killed, over 37,000 were wounded, about three quarter million people fled their homes and the material damage inflicted is estimated at 30 billion US\$. Following that, from the neighbouring Bosnia and Herzegovina, which was involved in an even fiercer and cruel war, another quarter of a million people escaped to Croatia. Although these figures clearly quantify the losses and damages inflicted by the war, they do not describe the suffering and the long-term losses of all the people affected by the war. It was only at the end of 2003 that the Republic of Croatia reached the GNP it had in 1990!

Although one of the qualifications of the war in Croatia was the issue of territorial claims, or the realisation of the concept to "provide the Lebensraum", the peace accords marking its end (especially the Dayton peace accord) had primarily a political character of agreements between the warring states and people, with an intensive participation of the international community. The Land Administration at that stage of establishing peace did not have an obvious significant part in the processes. However, the peace accord regulated basic issues in establishing peace, while a number of issues was left for bilateral solving at a later time, such as agreements on the delimitation of state borders and numerous other issues. Those activities are based on the basis of international law and bilateral agreements, where the role of Land Administration and real estate registers, and on their ownership, is of exceptional importance.

## Transition

With the independence of the Republic of Croatia, in spite of the fact that there was still war on its territory, the new, democratically elected political forces decided to start transition processes in Croatia. The processes included a series of activities, of which the following are relevant for land administration:

- change of political system,
- change of judicial system,
- change of economic system,
- separation of monetary system,
- abolition of social ownership and promotion of private ownership,
- change of administrative division and organisation of Croatia,
- restitution of property taken from owners during the Communist rule (and before),
- privatisation of economy,
- privatisation of the socially owned housing,
- privatisation of state-owned agricultural land, and other.

## Land Registry

Due to the character and role of the register, the problems appearing in the transition are particularly evident in the land register system. Thus, until the Constitution of the Republic of Croatia was passed in 1990, there was dual ownership, i.e. there was private ownership and public ownership. Until 1990, land registers were systematically not updated, especially concerning the public ownership. This situation was not helped by the regulations of the time which regulated the real property legal system, nor by some specific regulations which considerably influenced the fact that many subjects did not make an inscription in the land register (fiscal regulations, some regulations concerning physical planning). As a consequence, a great number of real property was not registered in the land registers, and in a way the role of land registers was taken over by the cadastre, thus increasing the discrepancy between the cadastral data and the actual land register data, SGA and MoJ (2004.).

Until 1990, the legal system did not use the principle of *superficies solo cedit*, i.e. that the building should follow the legal destiny of the land. What is more, the principle was converted in the way that there was legal separation of the land from the building constructed on the land, which additionally complicated the entry in the land register. In this way there was a possibility that the owner of the building was one person, while the owner of the land was another person.

The 1990 Constitution of the Republic of Croatia recognises only one kind of ownership, with the possibility of different persons as owners. Thus, since the enactment of the Constitution of the Republic of Croatia, and since the passing of the Act on Ownership and other Real Property Rights there has been the transition of the socially owned property. The transition of the socially owned property was done on the basis of a series of separate regulations which are on principle the ways of acquiring ownership rights. As a rule, by this transition of property, the Republic of Croatia acquired ownership on the basis of law, e.g. by the Forestry Act, Law on Agricultural Land, etc., and the most frequent feature of this way of transition and acquiring ownership rights was that there were no documents to determine the subject of acquiring the property, nor were there documents suitable for making an entry in the land registers.

The transition of socially owned enterprises was done on the basis on the Law on transition of socially owned enterprises, with the decree by the competent authority defining the ownership of the legal person, but the decrees do not identify the real property whose value is included in the equity of the enterprise. Such decrees are therefore not a valid tabulation document for the entry of ownership rights by the trading company as the legal successor to the socially owned enterprise. This deficiency was partly amended in 1996 by the Privatisation Law when the competent authority passes a decree defining which real estate are included into the company equity. However, as a rule, even this decree is not a valid tabular document for an entry of ownership rights by a trading company.

In the legal transaction of selling the flats with tenancy rights, the transition of this part of social ownership was successfully completed. In this, however, it was impossible to define the land belonging to a building for many blocks of flats constructed in the socialist time and to privatise it together with the block, because the land had never been defined.

The Law on the compensation for the property taken during the Yugoslav Communist rule is also being applied, partly returning the real property taken from the owners, which further increases the number of cases in Land Registers.

The partly described transition of the social ownership has not sufficiently been accompanied by the changes in real property relations in the land registers, nor were the land registers technically or professionally equipped for such changes. Starting from these facts, therefore, the Law on Land Registers and the Law on ownership and other real property rights has postponed the application of the principle of trust in the authenticity and integrity of data in the land registers until 1 January 2007, by which date all owners of real property not registered in land registers can make an entry of their rights in the land registers.

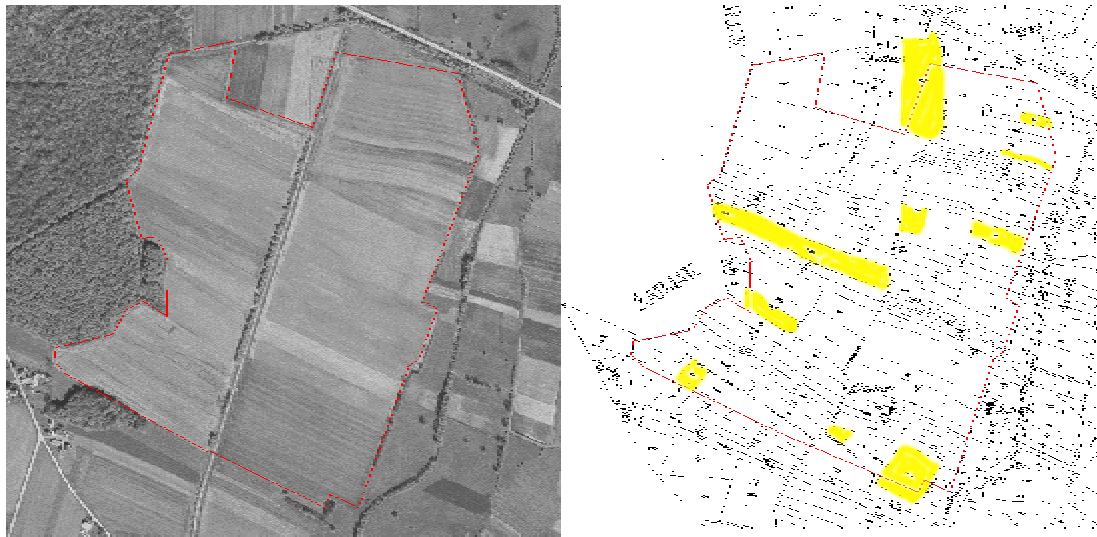
### Cadastr

The probles that the cadastre had to face in the transition period were of a different nature. Namely, by introducing the sales tax on 1 January 1998, the Ministry of Finance abolished the taxation on cadastral income, with the cadastre losing its main former function. As in the period since Croatia gained independence the land registers got a completely new importance and the need for the data to be updated and harmonised with the real situation, it was logical to pass the Law on State Survey and Real Estate Cadastre. This law envisages a transition from the land cadastre, which by its character was possessor-taxpaying to the real property cadastre which has the ownership character. This new normative organisation of the cadastre has not, however, solved problems of transition of the land cadastre into the real estate cadastre.

The new function of the cadastre called for the need to handle data in a different way, at the same time harmonising the solution with the best practice of the EU whose member Croatia wants to become. This created the need to amend and harmonise a series of by-laws and normative decrees. The aggravating circumstance was that a great part of regulations in force were exceptionally outdated, dating from the 1920ies and 1930ies. This is not just an issue of updating the existing bylaws, but many regulations had to be redefined and rewritten.

Parallel with the changes in the cadastral system, cadastral offices had to meet the needs of many privatisation laws by providing the necessary data on real estate. The reason is that the data in the cadastre better corresponded to the real situation of the real estate and of the ownership (although they enetered the possessors) and because of a higher level of operability because already at the beginning of the transition process the written part of the cadastre was greatly in the digital form and was maintaned on computers.

In order to implement individual laws it was necessary to find specific solutions and models for specific problems appearing during the implementation of those regulations. Thus the Law on Agricultural Land defined the framework for the use (sale or concession) of the state (formerly socially owned) agricultural land, of which Croatia has about one million hectares. Since the law provides that this use is only possible with agricultural land which is duly registered in the cadastre and in the land registers, a model had to be found for the entry of some 250,000 ha of land which belongs to the state but is not entered as such in the registers. For this purpose it was necessary to define a financially acceptable technical procedure, develop a model of co-financing with the interested subjects, and harmonise the procedure of the state institutions involved in the process. The scope of the problem can be illustrated by one such site shown in Figure 4.



a) Real situation in the field

b) Situation on the cadastral map

Picture 4: State owned agricultural land unsorted in cadastre

Together with all these and numerous other problems, the Law on State Survey and Real Estate Cadastre provided for the reorganisation of the cadastral offices, which were county offices till then, into an integrated State Geodetic Administration, as well as the introduction of authorised physical and legal persons for the performance of the state survey and real estate cadastre according to criteria clearly defined by law. Although the process was not free from problems, it has been successfully completed, and the newly established system is operating and showing the ability to implement all tasks set.

### **Role of Land Administration after the war – the Croatian way**

The basis of a systematic solution are the Act on Ownership and the Law on Land Registers, as well as the Law on State Survey and Real Estate Cadastre. These laws provide not only the legal framework for the functioning of the land registers and of the cadastre, but provide a step forward towards a modern and rational system of real property registration and



of ownership by creating a unique Land database (hereinafter BZP). BZP was defined in Article 163. of the Law on Land Registers and presents a systematically kept and maintained base of digitally kept land registers where the electronic data processing keeps a record on the legal status of real estate relevant for legal transactions, consisting of cadastral data on the shape, area and the state of development of the land, as well as of data of the Land Registry court on the legal status of the land.

The above framework, with the SGA vision to make the cadastre an efficient, effective and reliable register for the general benefit of the state and of the citizens, shown in the Law on State Survey and the Real Estate Cadastre were sufficient for passing the key implementation act, the Programme of the State Survey and the Real Estate Cadastre for the 2001-2005 period, GRoC (2001), (hereinafter the Programme), passed by the Croatian Parliament. This Programme defines the work and tasks in the competence of SGA to be done in the programme period, the manner of their execution, the people responsible for the execution, as well as the ways of their financing, specifically defining the areas where basic geodetic works and topographic surveys will be performed and state maps will be made, surveys, and demarcation of the state borders, and make and establish a real estate cadastre, which presents a basis for the implementation of the reform and modernisation of the cadastre in Croatia.

The Programme consists of four sub-programmes:

- **A:** The first phase of the Real Estate Cadastre,
- **B:** Development and completion of basic geodetic bases for the state survey,
- **C:** Establishment of a multi-purpose information system to support the space management authorities and public utility companies,
- **D:** Establishment of an IT system for the collection, management and distribution of data of the State survey and Cadastre.

Within the above sub-programmes there are 25 concrete tasks to basically regulate:

- **A:** 400,000 ha of the most valuable land in Croatia by implementing systematic measures of Cadastre reconstruction
- **B:** production of a new digital topographic map in the scale 1:25,000, organisation of new geodetic networks, cyclical aerial survey of all Croatia, completion of the Croatian base map, scale 1:5,000
- **C:** Production of 5,000 sheets of the Digital orthophoto map, scale 1:5,000, vectorisation of 15,000 detailed sheets of cadastral maps and the establishment of the Multi-purpose spatial information system
- **D:** IT equipment of SGA, establishment of the necessary databases and organising the system to perform the tasks.

The total value of the work in the Programme is about 121 million € of which 37 million € were realised in the first three years of implementation.

Implementation effects so far in the Cadastre area, Sub-programme A, which, by its value and importance is the most important part of the Programme, are shown in Table 2. Shown results were possible because the Programme was focussed on several basic tasks which were given absolute priority, as well as due to the fact that it defined total qualified areas for a particular sort of works and the quantities planned to be realised in the course of the Programme implementation. For example, one of the tasks is to organise the Cadastre and Land Registers in the coastal area, for which cadastral municipalities are qualified, with the area of 400,000 ha, while the Programme foresees the organisation of some 150,000 hectares over five years. As a system of co-financing was established at the same time, where

any type of works from the Programme (except cyclical aerial survey) is co-financed by the units of regional and local government and by public utility companies, and the system is based on the principle of voluntariness and on the interest of the co-funder, after three years of efforts a positive atmosphere was created for the Programme implementation, and every Euro from the budget is matched by another Euro from the co-funder.

Table 2: Implementation indicators for Subprogramme A in the 2001-2003 period

	<b>Finished systematic cadastral resurveys</b>	<b>Ongoing cadastral resurveys</b>	<b>Cadastral resurveys in preparation – Signed Agreement</b>
<b>2001.</b> cadastral municipalities	11,018 ha 4	44,672 ha 32	-
<b>2002.</b> cadastral municipality	5,092 ha 6	52,472 ha 32	68,154 ha 48
<b>2003.</b> cadastral municipality	32,565 ha 32	67,650 ha 70	59,241 ha 84

The criteria for the selection of the areas where the Cadastre and the Land Registers will be systematically organised are the value of the real estate, the number of transactions and the population density in the area, so by sorting out less than 10% of the state territory, 40% of the population will be covered. This philosophy is justified by the state on the real property market in Croatia, which has experienced a boom and a great increase in prices in the last two years. The prices of land and real estate have doubled in the last two years, and in specially attractive sites on the Adriatic coast they are as much as 1,000 Euro per square metre for undeveloped building land.

Such an expansion of work over the last four years, with the funds five times the original ones, has also caused some problems. The first, and possibly the basic one for the successful implementation of the organisation, modernisation and transition of the registers, is the cooperation of the state institutions involved in the processes. They are primarily the MoJ and SGA with municipal courts and cadastral offices, but an important part is played by other institutions, such as the General Attorney, Ministry of Environmental Protection, Physical planning and Construction, Ministry of Agriculture, Forestry and Water Management, Ministry of the Sea, Tourism, Traffic and Development and, others. Harmonisation of plans of all the institutions and synergy activities require, exceptional effort on one hand, but on the other hand, they can multiply the positive effects of the work undertaken.

Capacity problems appeared in both institutions which led the activities – MoJ and SGA, and were solved in different ways. Thus, in order to deal with the above activities, and for the intensive transfer of data from the Land Registers into the digital form in order to establish digital Land Registers and to deal with backlogs, MoJ has employed in municipal courts some 500 short-term clerks (data entry in computer, backlog reduction), while SGA is making an internal redistribution of its personnel and reorganisation of its system. In this, both systems have problems in training their staff, especially clerks, who, with the introduction of IT, have to radically change their way of work. The staffing problem is also present in the private geodetic surveying circles, and in individual tasks there is a lack of

capacities to perform them. In all three cases, the basic problem is not in the quantity of the people necessary, but rather it is the lack of highly professional, qualified staff, experienced judges and managers of Land Registers, or geodetic experts, office managers and project managers. In one word, what we lack are capable managers.

Because of the deficiencies, SGA turned to international cooperation with the aim not to waste its limited resources on knowledge, especially technical knowledge which is already developed and applied in the world, to use this cooperation to get a picture of the state of its system compared to others, primarily in Europe, and to use this cooperation to train its staff in new knowledge and management skills. In this way, intensive bilateral cooperation was established with the Netherlands, Germany, Norway, Sweden, the USA and the UK, resulting in numerous projects and financial grants by those countries (about 6 million euro in the 1999-2003 period), which has proved exceptionally useful.

Bilateral projects were used as a basis for the Real Property Registration and Cadastre project, worth 40 million euro, financed from the World Bank loan, EU grants and the Croatian state budget. This Project, started in 2003, lasting until 2008, has the aim to solve the above priority issues, i.e. system issues, establishment of BZP, staff training, digitalisation of Land Register data and Cadastre maps, to supply the courts and Cadastre offices with IT equipment and to change the prevailing negative public opinion about the system.

We should be sincere and admit that we have launched these activities even before defining and organising all elements of the system, so the system is being developed and upgraded at the same time as the large scale activities. This makes us more vulnerable to mistakes, i.e. the impact of the mistakes can be at or beyond the acceptability limit. That is to say, in some situations the price we pay is higher than it would be if the system were completely organised. Still, the state of the registers in Croatia has been recognised as a greatly limiting factor for a number of areas; legal security, restitution, privatisation, creation of investment atmosphere, agricultural reform, organisation of the state in construction, so the time factor has become crucial in the cost/benefit equation.

Special problem and challenge for both institutions is public opinion about the registers. Care about public image of registers was neglected. Transition and privatisation processes have increased amount and character of changes in both registers, for which institutions, especially municipal courts were unprepared. Therefore, there is today a negative image of registers in public. This fact has great impact on functionality of registers and this problem got special status in the reform of land administration. Strong public awareness campaign is foreseen in frame of the Real Property Registration and Cadastre project aiming, together with improvement of efficiency and reliability of registers to change public opinion.

## **Conclusion**

The example of Croatia, as well as of other countries affected by war conflicts, shows that numerous factors, historical heritage, legal system, organisation of state administration and especially land administration, transition and others, influence the solutions to be applied in each individual country.

The main problem of the country which gained independence only 14 years ago, and, together with the war conflict, entered the processes of transition and establishment of an efficient administrative apparatus, lies in the coordination of the state institutions, the need to change attitudes, both by the civil servants about their work, and by the public about the

ownership, overcoming the negative aspects appearing during the war and during the transition, and in the lack of qualified personnel able to face the new sorts of problems.

If there is a functional legal framework, clear vision about what is to be achieved and cooperation among key players in the area of land administration, then remaining problems, like lack of by-laws and technical specifications, answers on open questions and tested solutions can be solved.

An active approach to the public and to the media by means of public information and awareness campaigns is also an essential and unavoidable factor in the transition and in the reform of the registers.

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**Contact:** Prof. Željko Bačić, PhD, Director General  
State Geodetic Administration  
Republic of Croatia  
HR-10000 Zagreb, Gruška 20  
Tel. +385-1-6157-390  
Fax. +385-1-6157-389  
E-mail: [zeljko.bacic@dgu.hr](mailto:zeljko.bacic@dgu.hr)  
Web: [www.dgu.hr](http://www.dgu.hr)