

Peculiarity of Preparing Synchronized Lists in Poland on Territories of Former Austrian Annexation¹

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ABSTRACT

There are two main registers in Poland, dealing with land information. The first is grounds and buildings register (EGiB), called also “cadastre”, based upon surveying and mapping law act [13]. It registers parcels, buildings and dwellings, and their physical features. According to [7] one can say, that data contained in EGiB answer such question as: “where an object is situated within cadastral unit”. The second register is “land register” (KW), which in turn contains rights to physical objects. So, land register answers such a question as: “what rights are assigned to these objects, especially to parcels. These two mentioned registers are run by different institutions. So, EGiB register is run by the head of district (starosta) while KW register is run by local court.

Both registers are connected one another. In cadastre there is a number of land register. In turn, in land register, in file I-o, there is an information about real estate description, coming from cadastre.

Unfortunately, now and again, information concerning real estate description, contained in these registers are mutually inconsistent. In order to make them consistent, a so called “synchronized list” is prepared, according to [7]. It concerns parcel and it is prepared in case of discrepancies between parcels data kept in cadastre, and the same data shown in land register.

There are many reasons of such discrepancies. One of them, especially in southern-eastern Poland’s territory is that new established land register does not exist and right are enrolled to old, former Austrian land books called LWH (it means: number of mortgage list). One should add, that the basis for real estate description in LWH were cadastral parcels.

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1 CADASTRE OF FORMER AUSTRIAN ANNEXATION

The shape and contents of synchronized list made on the territories of former Austrian annexation is peculiar and demands by the surveyor knowledge connected with functioning this cadastre, its history and possibilities of contemporary application

1.1. Establishing Austrian cadastre and rules of its functioning

The base for founding cadastre was an Act from 1817, given by emperor Franz the 1st, concerning tax land [9], [15]. That time, were performed investigations over surveying cadastral technologies. That time was published surveying cadastral regulation and first surveys works were also made. Started in 1817 surveys were performed on the whole Austrian territory, included Polish annexed lands. Works, dealt with new created cadastre, lasted up to 1860 year. In 1871, so called “mortgage books”, were also improved through common Act – dealt with land registry.

The basis object of this cadastre was cadastral parcel. According to the instruction from 1870, “parcel is a piece of ground owns by the same person, has the same kind of use and is located in the same cadastral unit”. Thus, former cadastral parcel is an equivalent of the parcel existing nowadays in cadastre, with some exceptions.

Each cadastral parcel had its own identifier (number) and description. The rules of parcel numbering were like the rules used now in contemporary Polish cadastre. Parcels were described in the following way:

- pgr.lkat 205 – denotes land parcel having cadastral number 205,
- pb.lkat 50 – denotes building parcel having cadastral number 50.

On the territories of southern Poland, included to former Austrian annexation, there were three cadastral reference systems: Lvov, Hungary and Wien ones. Parcel surveys were performed mainly by graphic method with use of plane table.

Cadastral maps were made in so called “detailed units”. The basic scale of cadastral map was scale 1:2880, resulting from accepted nonmetric, Wien system of measure, being in use that time.

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2.2 Types of source cadastral documentation

From the legal point of view, cadastre guaranteed in ground books ownership right and made it possible real estate turnover. Cadastral map saved real estate boundaries because one could restore them on the basis of cadastral map [3].

The basis for keeping and performing cadastre was cadastral file, containing many documents. Cadastral file was made on the basis of original data gathered for the needs of ground tax. Cadastral file contained:

- graphic (cartographic part) including, first of all:
 - ~ cadastral map,
 - ~ cadastral sketches;
- descriptive part, including the following documents:
 - ~ parcel protocol,
 - ~ sheet of possessing,
 - ~ list of owners.

Cadastral map was the fundamental document of cartographic part. There were copies of them, kept in cadastral offices [4]. There were, like cadastral maps, suitable coloured. Additionally, cartographic part contained so called “manualia” being copies of source cadastral field sketches [15].

Parcel protocol was prepared on the basis of measured, computed and adjusted areas of parcels. Parcel protocol contained, first of all: number of cadastral map sheet, name of field, number of parcel, name of owner, type of ground use and class, area of parcel, income and others [4].

On the basis of parcel protocol, list of alphabetical owners was prepared. In turn, on the basis of list of owners, an extract was prepared, called “sheet of possessing” [10]. Sheet of possessing was created for each owner according to a so called “tax unit” [11].

Cadastral file was kept in accordance with actual status and in accordance with ground books. It became out of date only in the interwar period and especially after the second world war time [4].

2.3 Ground books – selected problems

Ground books, where rights to real estate were enrolled, was established in Austria on the basis of law from 1871 – about ground books, and for Galizia (Polish part of former Austrian Empire) on the basis of law from 1874 – about establishing ground books [1], [11].

Ground books was established on the basis of cadastre for each cadastral unit (commune). They function till today, and colloquially they are called, as it was mentioned earlier, LWH or mortgage books [12]. The objective of ground books was revealing real estate status, mainly

for the needs of safety of mortgage loan [7]. Ground books are equivalent of contemporary land register in Poland.

Ground book contained main book and file of documents. File of documents were the basis of enrolling rights to ground books. Main book contained mortgage list described by following numbers (LWH) for each real estate. An individual mortgage list created a structure, contained so called "charts" described by letters A, B and C.

Chart A, describing property status, contained two parts (name of property and list of parcels). Chart B contained records, concerned ownership. Chart C contained records, concerned encumbrances, including mortgage.

Data changes concerned parcels in ground books, were done on the basis of list of land changes. It expressed former and actual status of parcel. A piece of former, Austrian ground book, modified for the need of running cadastre in Poland before the second world war is shown on the fig. 1.

A.

Liczba wykazu hipotecznego: 129 Gmina katastralna: Losie
 Sąd grodzki: Gorlice

Liczba porządkowa	Liczba katastralna	Oznaczenie parceli (numer domu, rodzaj uprawy)	Liczba porządkowa	Liczba katastralna	Oznaczenie parceli (numer domu, rodzaj uprawy)
1	481	rola			
	605	rola			
	606	łąka			
	607	rola			
	608	rola			
	609	pastwisko			
	648	pastwisko			
	634	pastwisko			
	635	las			
	647	las			
	1080	parcela uciążliwa			

B.

Liczba porządkowa	WPIS
1	Na podstawie art. 45 ustawy z dnia 31. VII. 1923 (Dz. U. R. P. Nr. 92 poz. 833 z r. 1927), ustawy z dnia 17 marca 1932 r. (Dz. U. R. P. Nr. 38 poz. 392 z r. 1932) oraz orzeczenia <i>Kojewickiej Komisji Leczniczej w Krakowie</i> z dnia <i>14 lutego</i> 1936 Nr. <i>8.11.7-2/6/36</i> intabuluje się prawo własności tej realności na rzecz: <i>Karyla Gala z żoną</i>
<i>2</i> <i>ad. 1.</i>	<i>h. 14 pod. 15 stycznia 1941. - 1941.</i> <i>Na podstawie umowy darowizny p. p. Galice 18 stycznia 1939. Dział. 38/39 intabuluje się prawo własności tej realności w częściach: Karyla Gala z żoną</i> <i>został nad przez:</i> <i>a) Grzegorz Furtak</i> } <i>z p. 1/2</i> <i>b) małż. Furtak i Galdo Furtakowej</i> } <i>z p. 1/2</i>

Fig. 1 An example of former Austrian ground book (so called LWH) – chart A and B

2. REASONS OF INCONSISTENCY OF REAL ESTATE DESCRIPTION DATA IN FORMER AUSTRIAN GROUND BOOKS AND CONTEMPORARY POLISH CADASTRE

Peculiarity of the Polish territory (where former Austrian cadastre was in force) causes, that preparing synchronized list is very often necessary in process of real estate legal status regulation. Establishing cadastre in Poland on the basis of decree [2] initiated an idea of lot. According to Order from 1969 – about cadastre [16], a lot is “a continuous piece of land, surrounded by lands of separate possessing”. Such definition caused, that lot could contain few pieces of land of different use. It is inconsistent with parcel definition given earlier. This fact and also putting into cadastre new numbers for lots, caused (among others) inconsistencies between former Austrian ground books and created cadastre.

Established that time cadastre payed attention mainly for possessing not for ownership. It seems, that such idea also caused inconsistencies between legal status and factual status of real estate. One should explain that in case, when owner, revealed in ground books, did not really own real estate, so called “autonomous possessor” was only recorded in cadastre. Such person is still revealed in Polish cadastre as possessor, until legal status of real estate is regulated.

Such regulation is performed while adverse possession process against a court. One of the necessary document, demanded by court is synchronized list

The next reason of inconsistency between legal status, revealed in ground books, and factual status recorded in cadastre is caused by the Act from 1971 – about farms ownership legal status regulation [14]. According to this law, titles to land were given to persons who were not owners but only possessed this land. Although this law is not in force, given title still have validity. It means, that the only owner of land is a person having mentioned title, despite the fact that in ground books is still recorded the other person owner.

One should add, that mentioned titles were given, on the basis of real estate description by both numbers of former Austrian cadastral parcels or numbers of newly established cadastral lots. It depended the fact whether cadastre was established or not. So, in many cases persons who has these titles, does not have contemporary land registry record.

Created in 1946 institution of land registry did not expect establishing of ground book for each real estate. So, many real estate still don't have such book, and the only fact, confirming ownership (not possessing) is former Austrian ground book.

3. SYNCHRONIZED LIST AS AN ELEMENT OF LEGAL REGULATION PROCESS OF REAL ESTATE ON THE TERRITORY OF FORMER AUSTRIAN CADASTRE

Synchronized list is fundamental document, necessary both by real estate legal status regulation or by establishing new land register book for the person who has ownership title, mentioned earlier.

Synchronized list is prepared in the shape of table, where lot data (from cadastre) and parcel data (from LWH) are compared.

Before this document is created, the following works are done:

- getting information about lots numbers for which synchronized list has to be made,
- obtaining contemporary cadastral map copy and obtaining copy of suitable piece of cadastral map of former Austrian cadastre,
- transformation cadastral contemporary map and then transformation of former Austrian cadastral map,
- finding out those former cadastral parcels, which fit contemporary cadastral lots,
- searching out in court number of LWH for found cadastral parcels, and then obtaining information from its following charts (A, B and C), including parcels areas,
- checking areas differences between former cadastral parcels and contemporary cadastral lots,
- performing subdivision process on former cadastral map in case of necessity using only piece of cadastral parcel.

Because of the fact, that former cadastral map was made mostly in 1:2880 scale, but contemporary cadastral map is kept usually in scale 1:1000 or 1:2000, finding out a suitable piece of cadastral map can be time-consuming, sometimes. Moreover, accurate comparison of these maps is a crucial problem. In order to do that, suitable transformation should be done. Contemporary cadastral map is transformed mostly to coordinate reference system on the basis of cartographic net or on the basis of control points. Former cadastral map is transformed mostly on the basis of points, being a junction of three boundary lines (called: three boundary strips”), which coordinates are determined by digitizer from transformed contemporary cadastral map. In case of processing the whole cadastral unit, transformation based on so called “zoll dividing lines”, is advisable [5], [6].

In case when cadastral lot contains only piece of former cadastral parcel, it is necessary to „divide’ it on the cadastral map. Such case is shown on fig.2.



Fig. 2 An example of necessity of „dividing” former cadastral parcel, by creating synchronized list. The cadastral lot - number 659 occupies only piece of cadastral parcel - number 303.

Not applied here piece of former cadastral parcel, can be used by preparing synchronized list of neighbour lot. One should add, that in such case it will be necessary to make a plan with projected subdivision.

Finding out in court suitable LWH register (where are demanded parcels, having numbers determined through comparison) is possible thanks list of parcels or parcels protocol. Both documents contain number of LWH, where parcel is enrolled.

Before synchronized list is made, it is necessary to compare area of cadastral parcel with area of corresponding lot. Permissible deviation can be calculated on the basis of formula (1), used by cadastral modernization process [8]. The shape of formula is as follows:

$$dP_{\max} = 0,001P + 0,2\sqrt{P} \quad (1)$$

where: P – denotes area of cadastral lot.

One should pay attention to the fact, that compared areas come from descriptive parts of suitable cadastral files (Austrian former cadastre and contemporary cadastre) and additionally, that accuracy of writing down an area of lot is 100 m², while accuracy of areas of cadastral parcel of former Austrian cadastre is 1 m². This is a reason, among others, that calculated differences between areas (shown above) could be greater than expected. An example of synchronized list, is shown on fig. 3.

Województwo: małopolskie
 Miasto: Kraków
 Jednostka ewidencyjna: Podgórze
 Obręb: 106
 Gm. Kat.: Bieżanów

WYKAZ SYNCHRONIZACYJNY (RÓWNOWAŻNIK)

DLA SĄDU REJONOWEGO KRAKÓW-PODGÓRZE WYDZIAŁ KSIĄG WIECZYSTYCH

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 Nr ks. rob.: 3547/264/2007

STAN DOTYCHCZASOWY (LWH)								STAN NOWY (EGiB)										
Lp.	Nr KW	Imię i nazwisko właściciela (władającego)	Polozenie nazwa - b. gm. kat. lub jedn. ewid.	p.gr. l.kat. dz.	Powierzchnia			Rodzaj zaszelej zmiany	Nr arkusza mapy	Nr działki	Określenie położenia - obr. jedn. ewid.	Powierzchnia			Powierzchnia	Powierzchnia	Imię i nazwisko właściciela (władającego)	Uwagi
					ha	a	m ²					ha	a	m ²				
1	2	3	4	5	6			7	8	9	10	11			12	13	14	15
	LWH 571	Tadeusz Kowalski (Henryk, Krystyna) - udział 1/1	Gm. Kat Kraków Bieżanów	Lk 904/14	0	05	48	Zmiana oznaczenia działek (parcel)	-	326/2	Kraków Podgórze Obr.106	0	43	15	G. 247	21493	Tadeusz Kowalski (Henryk, Krystyna) - udział 1/1 30-741 Kraków ul. Rączna 55	
razem					0	43	43											

Niniejszy dokument służy za podstawę wpisu do księgi wieczystej stosownie do Ustawy z dnia 17 maja 1989r. Prawo geodezyjne i kartograficzne (Dz. U. Nr 240 poz. 2027 z 2005r.)

Fig. 3. An example of synchronized list. On the left side of list former status (cadastral parcel – LWH) is shown, while on the right side of the list is shown contemporary status (cadastral lot). Within a space of column 6 the whole area of parcel is computed and within a space of column 11 the area of lot is shown.

4. CONCLUSIONS

Documentations of former Austrian cadastre on southern-eastern Poland territories are still in use and they are the basis materials applied by real estate legal status regulation.

Mostly of surveying works connected with real estate legal regulation need to prepare synchronized list. It is caused by different description of former cadastral parcel (in LWH) and lot (in contemporary cadastre). It is also caused by lack in many cases obligatory land register record for these lots, whose persons gave ownership titles by force of law [14]. Thus, application these former Austrian documents is simply necessity.

Applying this documentation, as it has been proved in the paper, needs broad knowledge from surveyor within cadastre and land register functioning. It also demands, first of all, knowledge within problem of former Austrian cadastre.

One should also emphasize that wrong prepared synchronized list can generate following errors made especially by less experienced surveyors.

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SUMMARY

Synchronized list is a document created in Poland in order to unify data, concerning real estate description in two main registers dealing with land information that is in cadastre and land registry. Making synchronized list on territories of southern-eastern part of Poland is a very peculiar work taking into account that former Austrian cadastral documents and land books are still in use, there. So, making such a list needs knowledge of creating this cadastre. Thus, it is necessary to apply both surveying files created contemporary and former documents made over 100 years ago. The paper shows the main reasons of discrepancies in real estate descriptions in contemporary cadastre and former Austrian land books and also possibilities and methods of using cadastral documentation coming from former Austrian annexation. One should remark, that in many cases, the main aim of preparing synchronized list is regulation of legal status of real estate. Non regulated status of real estate means, that there is no any in land book or legal document. So, it is not possible to determine a person who has right to real estate. It causes, in turn, that for such real estate it is difficult or even not possible to use procedure suitable both for real estate management and for real estate turnover.

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