

Masters of Transition?

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Abstract:

My grandmother lived in six different regimes. Influence of Austrians, then Germans and later on Russians on Czechs and Slovaks - with Jewish flavor until the 40th - framed Central European region and its spatial planning culture in the XX century. One may say people living there supposed to be masters in transition. The paper presents outcomes of a qualitative comparative research of planning law in the central European region and seeks possible lessons to be learned to tackle with upcoming challenges. The study demonstrates - based on data from residential development in the Czech Republic - the impact of social and economic changes to statutory (regulatory) planning system and its instruments. Transition from socialist to capitalist system combined with current and upcoming challenges (sustainability, hazards, social changes etc.) creates colorful puzzle to be disentangled. There were many attempts to address these issues in different ways but it does not seem the light at the tunnels' end might be seen. After almost 30 years of democracy in the central European region there is permanent legislative uncertainty in the construction business there. This depreciates private savings and diminishes competitiveness of the country. Nevertheless, there were and are examples of legislative interventions which try to tackle the never ending transition.

Keywords: planning, construction; public and private; planning legislation; central Europe

Introduction

My grandmother lived in six different regimes. Six regimes, three times under foreign authority. I did not pay attention to that fact when I was young. It was just the way it is in complicated location of central Europe. But the fall of iron curtain in 1989 changed the scale of thinking of people living there. The „eternal times with Soviet Union“ suddenly changed to „temporary times“ for my generation.

Regimes go away, people stay

Habsburg Monarchy (I)

But let's start chronologically. In 1904, when my grandmother was born, Habsburg „Kaiser“ reigned in Bohemia. The legal framework has been stable for dozens of years, last time improved by Metternich in middle of XIX century. The society lived almost 100 years without serious troubles except of stormy 1848 and a short conflict with Prussia in 1866. Exactly in the same year the very first planning rules were introduced in Bohemia (10. 4. 1886 No. 40 z.z., valid for Prague, Pilsen and Budweiss). The law commenced the longest and the steadiest period of planning regulation which

lasted in fact until 1949. Building code from 1866 and its modifications founded basic principles of public building legislation in the modern way, anchored its basic legal institution and set up rules for building permitting, change of buildings, rules for construction supervision as well as final construction inspection. The first rule had rather a police character to prevent damages or hazards impending from construction activities. In the same time the rules limited the ownership rights of citizens, which was new in building industry. The building code was the only document in this field to regulate construction business and fixed the competence of building authority and regulated sanctions for building offenses. The rules were simple, very much pointed to reach the goal in straight way. Therefore it was not complicated to become a builder or even a developer. An example: a secondary school professor Mr. Edvard Benes purchased a plot in a suburb of Prague in 1904 and with a help of his mother-in-law financed the construction of house of flats. The income from rents helped him to survive when he dedicated his career to work on dismantling of Habsburg monarchy during the World War I. And he succeeded to found a new state: Czechoslovakia.

Czechoslovakia (II)

The new state brought a second regime in which my grandmother spent her productive life. Czechs call this period 1918 – 1938 *The First Republic*. Czechoslovakia was a democratic country with very high level of parliamentary democracy and juridical power. Nevertheless the legislation was based on Austrian model, which was step by step improved. The new government tried to propose a new building code, but the works were never completed. Since 1919 the new state approved every year so called „construction traffic act“ to streamline market discrepancies, particularly in housing stock. The country dealt with housing shortage right after the WWI. The shortage became critical namely after the Big Crises in 1929. The legislation focused on programs of development of so called minimal apartments for people in need. Czech architectural scene took actively part in housing shortage solution, many architects entered into left or even communist oriented groupings. And the former professor – developer became the second president of Czechoslovakia in 1935.

Protectorate of Germany (III)

The interruption of democratic development came with occupation of Czechoslovakia in the eve of the World War II. When Hitler entered Prague on March 1939 – this was the third regime in my grandmother's life, he changed everything. The most visible change which occurred in the very first moment was change of driving cars left to driving right. This indicated further changes. Planning became also a focus of new rulers. In the times when many respected planners sit in SS-headquarter in Berlin and served the Nazis, there were made several practical changes in Czech building legislation. The land use planning principles adopted from Germany were implemented to structure the settlement system (this approach remained in socialist period too). The very first rules for financing of municipalities were introduced (decree No. 109/1942 Sb.). Planning committee for City of Prague was established.

Czechoslovakia rebirth and clinic death (IV)

My grandmother was 41 when World War II ended. A short period of three years (the fourth regime) combined with presence of Russian „advisors“ in the country between 1945 – 1948 determined the destiny of reborn Czechoslovakia. This period was too short for new building legislation activity. Nevertheless the Czech experts who had no real job during World War II were working on new legislation for a restored state.

The socialist state 1948 – 1989 (V)

In 1948 after communist putsch begun another period of planning legislation. This was the fifth and the longest lasting regime my grandmother lived in. The early communists building code came already in 1949 (No. 280/1949 Sb.). As mentioned earlier its base was created in left oriented groups during the war and later on. The next codes (No. 84 and 87 /1958 Sb.) outlined a qualitative new approach of land use planning where spatial issues are solved in their complexity in contrary to older types of plans focusing on specific land and its regulation. Since then the socialist law distinguished between private and state builders, whereas the private construction was limited to individual family housing only. Socialist building legislation evolved a system of decrees and restrictive norms (hygiene limits first of all) which tied up the construction business and converted towns into „block of flats“. The branch (transportation, heavy industry, agriculture, forestry etc..) way of thinking in planning and legislation settled in that time (and survived till today). The socialist bureaucracy changed the building code once more. The new law from 1976 (No. 50/1976 Sb.) was a modern type of planning and building legislation. There were long discussions in construction industry including evaluation of international experiences prior the final approval of the code.

Last transition – from socialism to capitalism (VI)

My grandmother died on April 1990, four months after election of Vaclav Havel as Czechoslovak president. He was very much involved in planning issues not only because he had many friends among architects. Havel believed that a suitable order in the society, an order in a broader sense, may re-establish stability of democratic system. The planning in the Czech Republic was faced with a question how to react on completely changed vision of the goals of the society [Maier, 1998].

Central European context

Czechs were in similar situation like their neighbours in central European region. In post socialist countries that now form the eastern member states of the European Union there was a general vision of the society from the early nineties to catch up to the developed West. The dream of reaching the level of western European economic development and living standards was the main driver for economic transition and EU integration [Salamin, 2015]. Post-communist states initially had to embrace the substantive concept of the rule of law drawing on liberal and democratic values, which became a valid ticket for ‘The Return to Europe’ journey [Prihan, 2017]. In spite of modest convergence, however, the difference between the West and the East has remained dominant until today.

In the last three decades, post-communist states experienced a fascinating political journey, from using the rule of law concept in the most general way as an early signal of the coming constitutional

and political transformation, to specifically (as EU Member States) addressing the problem of the supremacy of EU law and its effect on emerging national democracy and constitutional sovereignty. In other words, they moved from asking the question ‘which rule of law?’ to the question ‘the rule of which law?’ [Priiban, 2009].

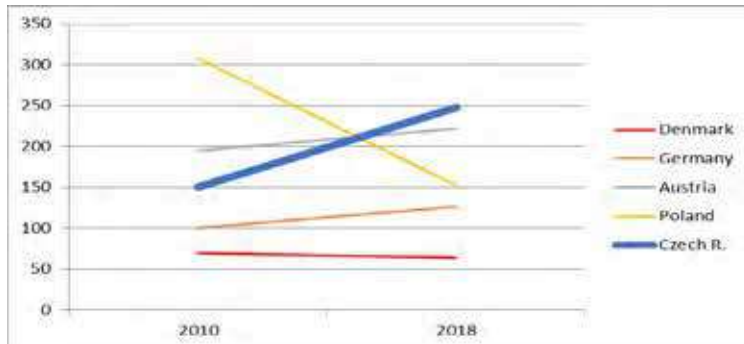


Figure 1: Length of building approval process in central European region in days, *source: World Bank, 2011 and 2019*

In the field of planning legislation every country went through a complicated process.

Slovakia brings to mind former Czechoslovakia situation from the thirties of XX century. After almost 30 years after the change to capitalism there is no new planning legislation. The Slovak building code is still based on the Czechoslovakian 1976 Building Act. In the meantime, so many changes were adopted that the concept is hardly distinguishable. But the principle of two stage decision making process based on land use plan reminded. As a reaction of way out in complicated cases (highways, international private industry projects) the Slovak parliament passed the code No. 175/1999 Sb. about „key investments“ which can be declared - if meeting certain conditions - publicly beneficial. The point is that the state government may declare finally any project as publicly beneficial even though it does not meet any criteria.

Hungary made benefit of regulatory instruments which worked even in the socialist time [Albrecht, 2014]. Their approach is investor friendly oriented, housing policy is market led [Tosic, 2013]. The branch planning view is very strong, spatial planning sometimes might have a service function only.

The most courageous way had chosen Poland. After several years of negotiations the government decided to follow German way of planning system with conceptual land use plan (obligatory for authorities only) and regulatory plans (obligatory for individual builders). This reform from 2003 was painful, there is still a lot of criticism there [Ossowicz, 2014], but the code placed Poland to a level with readable planning approach which is attractive to international businesses.

Case study: new planning legislation vs. housing

The young democratic state adopted the take-over policy and relatively quickly updated the building code form 1976 to new political circumstances without meaningfully touching the procedures (No. 262/1992 Sb.). As soon as the country waked up form high inflation and collapse of heavy industry new

foreign investments occurred [Sykora, 1994]. The building code was not able to cope with that pressure and had to be modified even twice a year. Finally, a principally new code was adopted in 2006 (No. 183/2006 Sb.). Unfortunately, it did not help much and since then 23 modifications and 2 major amendments (No. 257/2013 and No. 225/2017) had to be approved. More and more tasks were and are put on the arms of building authorities. As soon as the load becomes critical a reaction from responsible bodies suggests another improvement of the law which supposed to shorten the process. But, as a rule, new fields of unexpected troubles are created. Example – one process which was manageable by building authority in hours (a half page of text) was replaced by a qualified legal statement of a new authority which requires several days of work (four pages dealing with the same content).

This spiral of interventions led to housing shortage in larger cities, first of all in Prague. The Figure 2 shows the relationship between housing development in Prague, mortgage index and GDP growth. There is an evident slowdown in construction business in the last 5 years in spite of fact that the economy is flourishing and mortgage rates are lowest ever. Many argues [ARTN, 2019, OECD, 2017], likely by right, that the reason is the complicated Czech legislation.

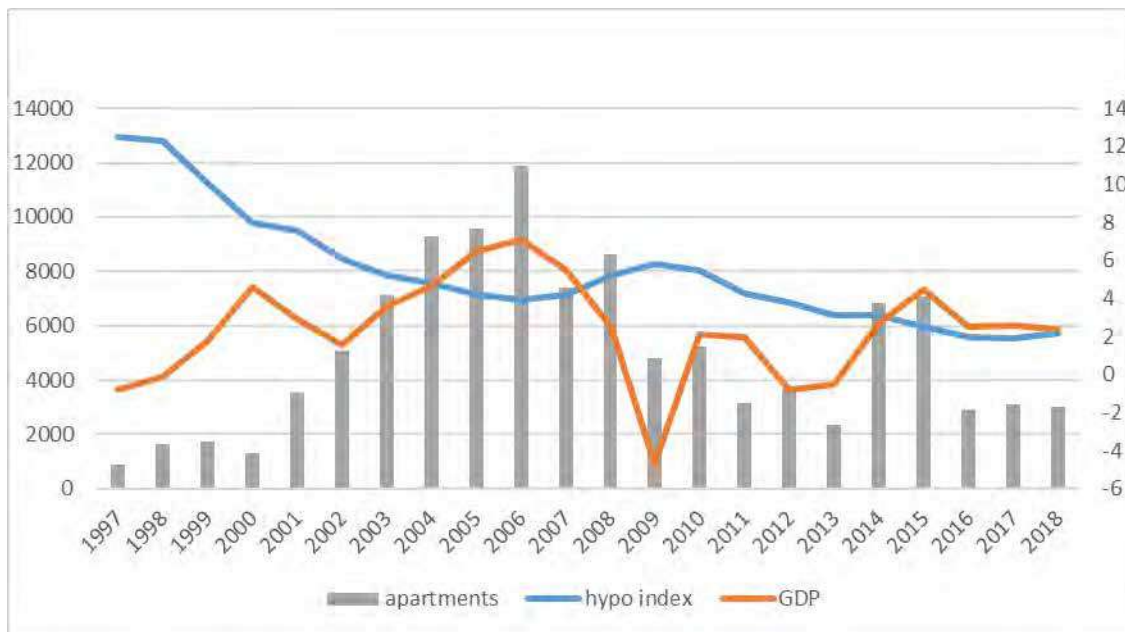


Figure 2: Housing development in Prague, hypo index and GDP in the Czech Republic, source: Czech National Bank, 2019

And it is likely true. The building code has an overlapping field of other 80 codes (environment, infrastructure, agriculture and forestry, transportation, preservation etc.). There supposed to be submitted about 40 to 60 statements of different bodies prior any decision making. The planning process and adjacent following permitting process works if there are no doubts or obstacles on the way to realization. In small towns where there is a lack of investment and any new project is welcomed to improve the quality of life (housing, creation of new working places) the legislation works well. But in large cities or in complicated locations the system is not able to generate outcomes (approval or refusal) in reasonable time.

The getaway of the current status is an attempt to change the building code fundamentally after 12 years of its validity. The key argument is that the system breaks away from itself and is not functioning anymore. The opponents argue that the building industry as well as the society got used to the legal framework of the valid code form 2006 and any principal changes open new fuzzy legislation fields.

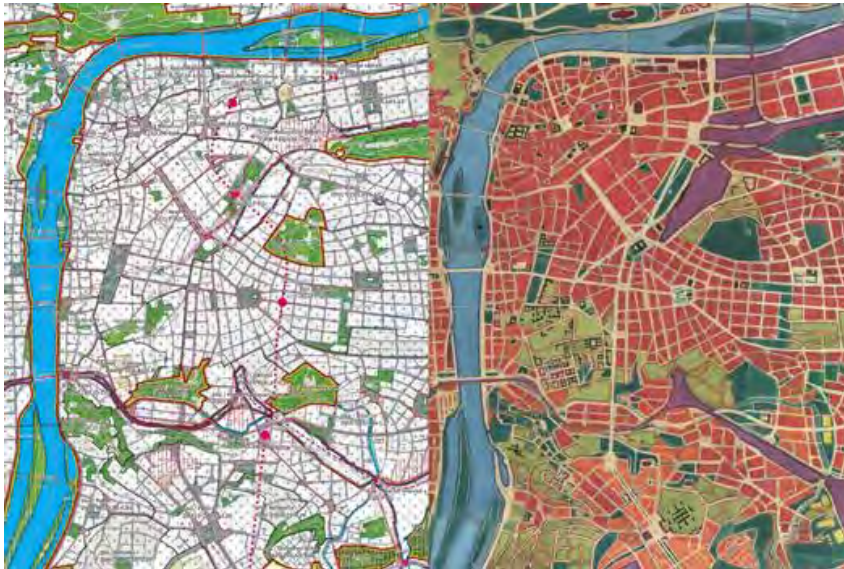


Figure 3: New Metropolitan Plan proposal (left) vs. current valid land use plan of Prague (right),
source: IPR Prague, 2019

Another attempt to escape from the paragraph labyrinth is simplification of current rules. One speaks about change of planning paradigm [IPR Prague, 2018]. An example is the new Metropolitan Plan of Prague, which is being designed and discussed. The old functional approach was refused and replaced by structural approach (compare in the Figure 3). The city, in this plan, consists of 3D structures and the agreement about the use of land is to be reached by meeting criterion of beauty and sustainability. The traditional colours on plans were replaced by zones of kindred structures.

Conclusions

The sketched case of planning in transition shows that planning is a complicated matter very deeply anchored in the legislation culture and tradition of individual countries. International models cannot be simply copied as the construction code is said to be as complex as civil code. Code is anchored in dozens of other acts, in administrative proceedings, in taxation, in sovereignty principles of municipality etc.

Planning legislation shall follow not only the best know-how but also reflect the behaviour patterns and habits of its users. If there is not enough time, measured in decades, transition flavour mutes the attempts to find an agreement in the society.

Somehow the history in our country repeats: major transition in the society followed by a good will to change is combined with using an old but known system anchored in refused regime from practical

reasons. Finally, the old system is refused however (an endless) search of a new one begins risking that no majority can be reached.

Being a member of European Council of Town Planners I noticed when informally discussing with my foreign colleagues that planning legislation is very fluent one and almost nobody is really satisfied with current status of respective building code. There is slow but permanent movement of planning legislation, coming either from construction industry, environmentalists, or motivated by economy of the country. But it seems to me that there is one country with a very stable system with almost no audible complain. It is Germany. I asked this question to prof. Schmidt-Eichstaedt, one of the key experts of German building legislation. He stated that any attempts to change or modify the German planning system failed as the expert community appreciate stability and predictability more than any other expected positive / practical outcomes. I guess it might be a lesson for us, transition masters. Transition makes you flexible, creative, aspiring for the better future, but it does not target predictability – one of the key issues of proper spatial planning.

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