INDUSTRIAL PARKS AND ZONES IN THE CZECH REPUBLIC AND THE SLOVAK REPUBLIC – THE COMPARATIVE LEGAL ANALYSIS



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A. Introduction

A proper functioning of modern industry cannot be reached without resolving fundamental legal questions of land ownership and connected contractual relations. This problem is particularly peculiar in so-called "transitional economies". Concerning the Czech Republic (hereinafter as "CR") and Slovak Republic (hereinafter as "SR") they had to face to crucial challenges shortly after the Velvet Revolution in 1989 and in the late 90s. Despite of the fact that the economic transformation in both parts of the former Czechoslovakia has been done in a similar manner and the challenges were practically identical, there have been applied slightly different ways out with regard to industrial land issues. That offers us material for assessment of effectivity of both solutions on the basis of a comparative legal analysis. Such gained knowledge shall enable us to formulate general conclusions, which will be applicable in the countries in similar transitional situation nowadays.

B. Initial Conditions

The subject matter of this essay has not been complexly analysed yet. Therefore the comparative analysis of Czech and Slovak solutions of legal relations to industrial land is still lacking as well as any relevant secondary legal literature. As a result of that we have to work with primary sources, i.e. Czech and Slovak laws, bylaws and certain well-established administrative practices. With regard to data we will use statistics of official authorities. In order to support our legal analysis with economic rationale, we are quoting several particular sources of Czech and Slovak economists, which are, unfortunately, not comparative. Thus we also have to bear a burden of economic comparison.

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C. Objectives

We aim to describe certain models of functioning of industrial parks and industrial zones in the SR and the CR in this paper. We will be specially focused on a status of land in these areas and related contractual relationships as well as a wider economic, social and ecological impact. This description and attempt of analysis of the state policy in the SR and the CR in the sphere of industrial infrastructure during the last decades, which reflects changes of economic environment towards an open market economy and integration to varied international organisations as well as to the European Union, shall make a basic picture of the situation. Experiences of the SR and the CR show that more than direct monetary support of biggest investors is needed a simple, flexible and transparent policies concentrated on the most problematic parts of an investment environment.

1. Economic background

The fall of the rule of Communists had a far-reaching impact on economy of the former Czechoslovakia. They founded way out from economic misery by a quick privatisation of a state property firstly to domestic entrepreneurs and subsequently to foreign entities. The integration to international structures and the EU was the top political priority. Encouragement of foreign investors to invest in the SR and the CR is considered as one of the most valuable benefits of the accession to these organisations. But a simple political openness towards foreign investments was definitely not sufficient in order to attract foreign direct investment (hereinafter as "FDI") in wanted amount.

There were many practical obstacles to development new industrial capacities. First of all, the market with industrial land was not functioning properly, because of the unclear scheme of land owners. There was also heavy administrative burden of creation of a new industrial area. Finally, the so-called brown-fields needed expensive and time-consuming upgrades of infrastructure, rectifying environmental burdens and introduction of a new management structure and practices.

Those problems required quick and sophisticated solutions at all stages of a public administration. Government adopted laws, which set down basic conditions for state support for creation of industrial zones and industrial parks. In 2000 there was adopted the *Act on Investment Stimulus,*[1] which set down equal conditions for support of new investments for domestic and foreign entities in the CR. The similar function had the *Act on State Support,*[2] adopted in 1999 in the SR. The core idea of

[1] *Zákon č. 72/2000 Sb. o investičních pobídkach.*

[2] *Zákon č. 231/1999 Z. z. o štátnej pomoci.*

those laws was to provide prospective investors with some monetary support in order to compensate them some additional expenses steaming from a rather substandard business environment. However, direct incentives fall within a scope of the Title VII of the Treaty on the Functioning of EU, which forbids unlimited "bribing" of investors by the member states, because it harms the internal market. Therefore, the states have to focus on increasing of other qualitative indicators of the business environment.

Perhaps, the most effective tool was (and still is) creation of special industrial zones with already developed infrastructure, settled and adjusted property issues and liquidated environmental burdens. It means that industrial zones and industrial parks have become the top priority of the both governments.

2. Theoretical issues of the industrial infrastructure areas

Not all types of industrial areas have the same qualitative and quantitative indicators. Criterions of their differentiation are really numerous. In this chapter we aim to define basic features of industrial parks and industrial zone and provide the reader with the most important classifications of them.

2. 1 What are an "industrial park" and an "industrial zone"?

The term "Industrial park" means conceptually developed area situated in legally settled and adjusted land with high concentration of infrastructure and containing among industrial buildings also green zones, commercial and administrative buildings or storage facilities. Usually, there is concentrated mostly "lightweight" industry and companies providing main producers with some services. In the highly developed countries, they put accents on an integration of industrial parks with other parts of cities, with housing areas, commercial centres, schools, universities or leisure-time zones. Another important feature is high dynamism of development – entrepreneur continuously move in and out. Usually there is one managing institution, either public or private, which provides producers with some services (accounting, marketing, advising, etc.), and offer land parcels for rent or sale. The industrial park is usually not specialised only in attraction of big companies, but there is set apart some piece of land for small and medium enterprises. By this strategy the management tries to reduce a risk of economic problems connected with a leaving of some big company. Sometimes the managing company also provides support of sharing innovations, promotes applied research or assists in increasing of an export. With regard to a structure of industrial enterprises, there can be also sectorial industrial parks, which are specialised in a certain type of industry (e.g.

automobile), but also there may be industrial parks, which try to reduce excessive dependence on one sector of economy by diversification of their portfolio by enterprises conducting business in different types of industry.

On the other hand, the term "Industrial zone" is usually defined as a huge area, with some level of infrastructure (usually lower than in industrial parks), on which is situated mostly heavier and space-demanding enterprises. Usually, it is not such integrated like industrial park and also it can be located much further from urban areas. The most important requirements for location are good access to highways, railways or airports, i. e. to the traffic infrastructure.[1]

The abovementioned definitions are only theoretical attempt to describe some basic features and set distinction criteria. However, there are almost never present pure applications of those notions in practice. Also legislators and state authorities are not consistent in using these terms (usually they prefer "industrial parks"). We believe that such distinguishing is reasonable, because both terms describe significantly different concepts of industrial infrastructure with different tools and different aims.

2.2 Classification of the industrial parks and zones according to size and locality

There are many classifications with regards to size and location of the industrial parks and zones. For the purposes of our article we chose our own classification based on combination of few others:[2]

I. **Local industrial park or zone** is mostly orientated on small and medium enterprises, which employ mostly local people. It is built on a small territory, which usually does not exceed 10 ha. As benefits of such areas we consider a better regional diffuseness, a smaller necessary investment for its creation and a cultivation of regional comparative advantages.

II. **Regional industrial park or zone** is mostly located nearby municipality with at least 40 thousands inhabitants. It includes developed infrastructure with good access to quality roads (optimally a highway) or a railway. On the area of 30 ha there should be situated among small and medium enterprises also some administrative or commercial buildings. There is need to have own advertisement materials. The own management team is advantage.

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[1] The definition is made on the basis of the work: Kiseľaková, D., Kiseľák, A.: Analysis of the Effects of Establishment of Industrial Parks on Regional Development and Competitiveness, Available at: http://www.pulib.sk/elpub2/FM/Kotulic10/pdf_doc/13.pdf (Retrieved: 3 May 2015)

[2] 1. Study: „Development of Entrepreneurs Parks – Program for CR" made for CzechInvest
2. Kiseľaková, D., Kiseľák, A.: Analysis of the Effects of Establishment of Industrial Parks on Regional Development and Competitiveness, p. 4

III. **Industrial park or zone of national (international) importance – strategic park** is specially prepared for biggest, mostly foreign, investors. It covers area approximately 100 ha and more. A very high level of infrastructure is absolutely necessary. It should be located in area, where lives at least 180 thousand people. This type of zone definitely has to have own management and a proper marketing.

2.3 Classification of the industrial parks and zones according to a type of management

I. **Industrial parks and zones managed by public authority** (a municipality, a regional authority or a state) is one of the tools of public policy on creation of sufficiently developed industrial areas. The idea is that a public authority should invest some financial sources and/or convenient land, resolve complicated ownership structure of such area and try to attract some investments. The public authority offers such land for sale or rent. They also try to provide some additional services – either for free or for some consideration – or be helpful to investors by other way.

With regard to a "business model", public investments to industrial areas are not primarily orientated to profit. In some situations the profit is even not possible at all (specifically in regions without sufficient transport infrastructure). In such situations the benefits like increasing of employment or GDP of a territorial unit usually prevail.

There is also no consensus about the "exist strategy". Some successful municipalities try to sell all the land as soon as possible and quickly transfer liability for functioning of the park or zone to some commercial subject. The most important cons of such strategy we see in possibility to re-obtain some invested money back, which may be re-used potentially in some other project. Opposite to that stands strategy of a permanent engagement of the public authority in the project. Defenders of such approach usually underline that the public authority should not put out of its hands the valuable asset and try to accumulate a profit by renting. They also stress the importance of direct public control, because sometimes can have private investors lack of motivation to re-introduce a production or sell the land to some other subject, which will use it more effectively. However, we believe, that such situation could not occur, if the land was sold to investor for price reasonably related to its market value. In addition to this, the ownership does not represent the only method of influence of the public. They can still use taxation, which is in this situation more than suitable. The tasks of manager of the industrial park may be either be provided by public

authorities for fees (which will cover expenses), or via specialised entrepreneurs hired by the owner of the land plots.

II. **Industrial parks and zones managed by a private entity** start to appear at some level of already created market spontaneously. It is based only on principles of a market economy. The investor, usually specialised in building and managing of industrial property, buys a suitable land with a good location, ensures fulfilment of all necessary legal requirements, builds basic infrastructure and attracts investors (concrete producers).

After this point can business strategy be different. One option is to sell land plots to investors and go away with the profit (difference between costs of the land and the infrastructure and final costs of developed land plots suitable for building industrial property). Another option is to lease parts of the land to concrete investors, or even cooperate with them in a construction of industrial buildings, provide varied services, etc.

2.4 Green-fields or Brown-fields?

The new one or the old one? It depends.

A "Greenfield" industrial park or zone is built on a "green meadow", i.e. on agricultural or forest land. This type of investment is quite frequent in the post-communist countries because of a lack of properly located industrial areas. Regardless the fact that there are numerous huge areas of former socialistic enterprises, in vast majority of cases their location does not meet contemporary requirements for industrial parks. Moreover, the revitalization of such areas requires more money and time – the things which these states cannot spare.

On the other hand, the abandoned huge areas closed to towns and cities is excellent opportunity to create more sophisticated "organic" zones for development of not only industry, but also some commercial, administrative, housing or leisure-time facilities, i.e. the industrial park in narrow sense of this word. Moreover, public authorities should not leave the environmental burdens lay on a place forever. Also some of abandoned constructions can be re-used again and the sources for constructing new buildings will be saved. The "Brownfield" industrial park brinks another "philosophical" question: Should we transport people to industrial facilities located in new parks far from a city, or we should rather revitalise older industrial areas directly in a city? And another one: How long we will be able to convert new and new agricultural land to industrial and the abandoned industrial areas just let on their own fate?

3. State policy on development of the industrial areas in the Czech Republic

Already in the early 90s some municipalities started to pay more attention to problems of unemployment, underinvestment and subsequent emigration from their regions to regions with better working possibilities and living standards. Few of them have not only correctly identified the problem, i.e. a lack of motivation of investors to promote their activities and create new working positions, but moreover they had found also the proper solution – i.e. development of infrastructure and providing investors with necessary support.

One of the most impressive examples of successful municipality engagement is the town Vyškov, located 27 km eastern from Brno, Czech second biggest city. Already in 1993 the town initiated creation of the industrial zone "Sochorova I" without any support from either the state budget or private sector. They used 7 ha of land, which they had already owned before, and bought another 3 ha and prepared a complex technical and traffic infrastructure. Subsequently, they offered developed land plots for a sale to prospective investors and the whole area was completely covered by new investors as early as in 1998. By this activity the town also accumulated some capital, because the gains of land sale exceeded required investment costs.[1] These sources and gained experiences as well as a very good reputation among investors enabled the town Vyškov to create other new industrial zones ("Sochorova II", "Nouzka I"and "Nouzka II") and also to provide support to German enterprise Fritzmeier to regenerate the area of the former "Zbrojovka Vyškov" enterprise[2] – this time with the support of the state.

Good results of some municipalities in attracting FDI via creating industrial zones as well as similarly good experiences with this tool in another countries, specifically in Poland and Hungary, where development of new industrial zones were even more dynamic in 90s, has directed the government policy towards the strong support for creation of new industrial parks and zones or for revitalization of the old ones.

3.1 Legal framework in the CR

Via the "Program for Industrial Property Development (1998-2005)" Czech government provided municipalities, association of municipalities and regional authorities (later also industrial developers and important investors) with financial

[1] Šoltys, J.: History and present of industrial zones in the Czech Republic – expectations of redevelopment. Brno 2008, p. 53

[2] *Vyškov.sk* [online] available at: http://vyskov.cz/firmy/cs/mesto-vyskov [Retrieved 18.4.2015]

sources or transferred a title in land – which was owned by the state or land managed by the Land Fund of CR[1] – on them[2]. The implementation of this policy was in competence of *CzechInvest* – The Investment and Business Development Agency of the Czech Government, which has been established already in 1992. However, policy on the development of industrial infrastructure started much later in 1998. The rules for admission of state support were stipulated in the Government decree No. 298/98 Coll. and subsequently amended by the above-mentioned the *Act on Investment Stimulus*,[3] which in the Section 1 Subsection 2 defines, what is considered as a state support, as follows:

a) Discount on corporate taxes according to the special law,[4]

b) *Transfer of technically developed land for a more favourable price,*

c) Material support for creation of new working positions according to the special law,[5]

d) Material support for requalification or training of employees according to the special law,[6]

e) *Transfer of land according to the special law,[7] which is listed in Cadastral of Real Property as agricultural land, or transfer of another land for prices stipulated by the special law[8] effective in time of completion of the contract of transfer. The special laws restricted the transfer of land in state ownership is not affected by this provision.*

There is no problem with the support according to the paragraph b), because such support is fully regulated by *the Act on Investment Stimulus*. Among general rules for admission of state stimulus, there is only one special provision regarding to *"transfer of technically developed land"* (this term obviously refers to the land in industrial parks or zones). According to the Section 4, a municipality within its own

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[1] "The Land Fund of the Czech Republic" *(Pozemkový fond ČR)* was a legal entity established on 1st January 1992 by the Act No. 569/1991 Coll. on Land Fund of the Czech Republic *(Zákon o Pozemkovém fondu České republiky)*. They dealt with restitution claims of former owners of agricultural or forest land before the rule of communists (1948). They were also managing the land of „unknown owners" and people, who have not applied for land restitution yet. They have budget separated of the state budget. It was been canceled by the Act No. 503/2012 Coll. and replaced by the State Land Office *(Statní pozemkový úřad)*, which have similar function, structure and competences like its predecesor. For more information look at: http://www.spucr.cz/ [Retrieved 18.4.2015]

[2] *Prumyslove-zony.cz* [online] available at: http://www.prumyslove-zony.cz/blog/financovani-a-podpora-prumyslovych-zon-40 [Retrieved 18.4.2015]

[3] *"The Act on Investment Stimulus"* is legal instrument, which set down not only conditions for state support of creation of industrial parks and industrial zones, but it also covers whole spectrum of varied tools for attracting investment, within which is development of industrial infrastructure only one of the elements, albeit very important.

[4] The Sections 35a and 35b of the Act No. 586/1992 Coll. on Income tax *(Zákon o daních z příjmů)*

[5] The Section 111 of the Act No. 435/2004 Coll. on employment *(Zákon o zaměstnanosti)*

[6] As in note no. 11

[7] The Section 17 Subsection 3 the Act No. 229/1991 Coll. on Covering Certain Issues of Ownership of the Land and Other Agricultural Property *(Zákon o úpravě vlastnických vztahů k půdě a jinému zemědělskému majetku)*

[8] The Section 11 of the Act. No. 151/1997 Coll. on Assessment of Property *(Zákon o oceňování majetku)*

territory is one of the state bodies with power to issue a binding decision with regard to the prospective incentive. Unless they issue such binding decision within a 30 days period, the law stipulates presumption of a positive decision and procedure will continue to the next stages.

However, the state support according to the paragraph e) is extremely complicated issue. The only basis for transfer of agricultural land we can find in the Section 17 Subsection 3 of *the Act No. 229/1991 Coll. on Covering Certain Issues of Ownership of the Land and Other Agricultural Property*, where the Law deals with *"the land on which has not been applied a claim for restitution in stipulated period"*. Such land can be among the other things also *"in a case of emergency, transferred to subjects, who should realise the construction, according to a valid documentation"*.[1] The transfer of land itself is governed by another law. We can consider the *Act No. 92/1991 Coll. on Conditions of Transfer of the State Property to Other Subjects* as *lex generalis* with regard to previous one, because it concernes wider spectrum of state assets. However, not all land parcels owned by the state may be transfered for the pertinent purposes according to this law. In the Section 3 thereof is stipulated some exceptions,[2] by which we just cannot apply this law.

To conclude this part we have to say that such fragmentation of regulation is very unwelcomed, because it crates enormous legal uncertainty. However, there is needed of a complex reform of this sphere of legal regulation, which is not only very difficult to make, but some main problems of contemporary law are the result of lacking political consensus on some delicate issues (e.g. a restitution of church land).

3.2 Implementation of the Czech legislation

The Program disposed only with sources from the state budget (not from the EU funds) and there could be supported only those industrial parks, which were connected with the investor, who obtained investment stimulus according to *the Act on Investment Stimulus*, or was considered as making a "strategic project". This Program contained four subprograms as follows:

1) Development of industrial zones,
2) Regeneration of abandon industrial zones – so-called "brownfields",
3) Construction and reconstruction of renting industrial buildings,

[1] Paragraph c) thereof

[2] 1. Property, which should be returned to some subject according to special laws (e.g. Act No. 298/1990 Coll. on Covering Certain Property Issues of Church Orders, Congregations and the Archdiocese of Olomouc - *Zákon o úpravě některých majetkových vztahů řeholních řádů a kongregací a arcibiskupství olomouckého*)
2. Property, which has been transfer on state until 25th February 1948 from the property of churches, orders, congregations and religious societies.
3. Property, which can be a subject of restitution, until the period for making a restitution claim will not expire.

4) Accreditation of industrial zones – increasing of competitiveness.

The subprogram "Development of industrial zones" was designed to create new industrial areas (so-called "green-fields") with complete necessary infrastructure. The applicant for support (a municipality, an association of municipalities, a regional authority or a developer) could obtain financial incentive determined by the so-called "costs-gap".[1] A percentage of state support in total costs was usually at the level of 46%, but there were also other conditions, i. e. the preference of under-developed regions (75%), the preference of so-called "strategic industrial zones"(100%), the preference of public infrastructure, etc.,[2] which might increase the rate.

Between the years 1998 and 2006 there were supported 96 industrial zones in total within the abovementioned program. The structure of this support and its subsequent impacts are shown in the table:

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006
Number of supported zones	2	20	46	58	71	79	89	92	102
Number of investors	0	36	67	131	166	108	284	360	398
Number of announced working position	0	7991	24962	39626	43821	49076	57369	72338	92308
Number of created working position	0	4650	7619	15806	21857	22718	32948	50810	63830
Sources invested by investors (mils. CZK)	0	10574	54799	88491	103387	117307	137332	147475	161851
Sources invested by the state (mils. CZK)	61	357	602	1117	2353	3202	4260	5267	7227

Source: According to the Annual Report of CzechInvest 2006. Quoted from: Šoltys, J.: History and present of industrial zones in Czech Republic – expectations of redevelopment. Brno 2008, p. 20

[1] „Costs-gap" is a remainder between profit and needed investments.

[2] As in note no. 9.

We can claim that after a massive engagement of the public sector in development of new industrial parks during the first decade of the 21st century, there has been created a functioning market with industrial land, which is now fully operational mainly by private developers and managers excluding some projects of regeneration of abandon former industrial areas (brown-fields) and the so-called "Strategic industrial zones".[1] CzechInvest can now fully concentrate on upgrading of existing industrial zones,[2] attraction of a high-tech investment[3] and a managing of financial support from the EU funds.

4. State policy on creating new industrial zones in the Slovak Republic

In the Slovak Republic started the process of creation of industrial parks later than in the surrounding countries (CR, Poland, and Hungary). It was the result of not very suitable government policy strongly biased against a foreign capital, which was supported by very non-standard means (direct financial support from banks controlled by the state, strong links between politicians and the so-called honourable entrepreneurs "Mečiarovci",[4] etc.). As a result of this the SR attracted only few foreign investments, and prospective investors rather built their factories somewhere else.

After the elections in 1998 the left-right coalition of 4 parties created a majority in the parliament and sent the former government to opposition. One of the strongest accents was put on the successful admission to the NATO and the EU and stimulation of almost collapsed economy by the massive liberalisation, decreasing of tax rates (19% flat direct taxes as well as 19% flat VAT). In a short time became the SR more attractive for investors than other countries of the Central and Eastern Europe. But as we mentioned above, there was needed to create a proper scheme, which would simplify an acquiring of the land by the investors.

4.1 Legal framework in the SR

In 2001 the National Council of the SR (the Parliament) adopted the *Act No. 193/2001 Coll. on Subsidies for the Establishment of Industrial Parks and*

[1] As "strategic industrial zone" is consider an green-field with extent at least 200 ha or brown-field with extent at least 100 ha and some other zones prepared directly for certain big investor. For more information see: http://www.czechinvest.org/strategicke-prumyslove-zony [Retrieved 18.4.2015]

[2] The program „Accreditation of industrial zones" is directed to development of human sources - specifically in management and marketing of industrial zones and developing abilities to attract high-mobile capital.

[3] *CzechInvest.cz* [online] available at: http://www.czechinvest.org/strategicke-prumyslove-zony-jsou-pripravene-na-vstup-investoru [Retrieved 18.4.2015]

[4] According to Vladimír Mečiar, the former prime minister of the SR.

Amendment of the Act No. 180/1995 Coll. on Selected Measures for Land Ownership Settlement[1] (hereinafter the "Act on Industrial Parks"). According to that law, only municipalities or regional authorities may apply for the state support for creation of the so-called "industrial parks"[2]. A founder of industrial park can be only the municipality within its own territory.[3] The law recognises four areas of support from the state budget for the industrial park creation in the Section 3, as follows:

a) support for technical development of area and engineering structures required for creation of industrial park,

b) compensation for expropriation of land parcels required for creation of industrial park,

c) reimbursement of costs of purchase or rent or exchange of the land parcels assigned for creation of the industrial park, or reimbursement of costs needed for creation of easement to land, including a costs required for transfer of the land managed by the Slovak Land Fund[4] to ownership of municipality or regional body according to the special law,[5] or reimbursement of rent, or costs of exchange or costs of creation of an easement to that land, and

d) reimbursement of fee for extraction of the land from the Forest Land Fund *(Lesný pôdny fond)*.

In the Section 4 there are stipulated several conditions, which have to be met in order to obtain the state support, as follows:

1. An area of prospective industrial park is delimitated as an „industrial land" in the plan of municipality or in the plan of zone,[6]

2. A founder is able to cover at least 15%[7] of total expenses by its own sources,

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[1] *Zákon č. 193/2001 Z. z. o dotácii na zriadenie priemyselných parkov a o doplnení zákona Národnej rady Slovenskej republiky č. 180/1995 Z. z. o niektorých opatreniach na usporiadanie vlastníctva k pozemkom.*

[2] In the Section 2 of the Act on Industrial Parks 2001 is defined „industrial park" as area defined by „The plan of a municipality" or „The plan of zone" where is running or it should be running industrial production or providing of services by one or more entrepreneurs.

[3] If an industrial zone lies on area of more than one municipality, all municipalities should commence a special contract (according to the section 20 of the Act No. 369/1990 on Municipalities 1990 – *Zákon o obecnom zriadení*) on cooperation.

[4] *„Slovenský pozemkový fond"* was established in 1991 as legal entity responsible for restitutions of land, management of land in state ownership and administration of land of „unknown owners".

[5] Section 34 subsection 3 paragraph d) of the Act No. 330/1991 on Land Adaptations, Consolidation of Ownership of Land, Land Offices, Land Fund and Land Societies *(Zákon o pozemkových úpravách, usporiadaní pozemkového vlastníctva, pozemkových úradoch, pozemkovom fonde a o pozemkových spoločenstvách)*

[6] Plan of municipality and plan of zone is binding regulations of municipality and they cover complex issue of concrete a steric configuration of certain area. A plan of zone specify these issues for smaller area more specifically and when it is adopted, there is not required so-called „Ground decision" – a result of procedure, which ensure fulfilment of some project with requirement stipulated in Plan of municipality (or in other binding planning documentation).

[7] If a prospective industrial park will be situated in region with unemployment rate higher than 10 %, the founder shall cover only 5% of a total investment costs (see Sec. 4, Subsection 5 thereof).

3. A founder and a prospective investor has signed a preliminary contract,
4. The founder has obtained binding opinion of supplier of energies and water to prospective industrial park.

According to the Section 5 thereof, the final decision about support from the state budget should be made by the Ministry of Economy on the basis of the decision of the Government of the SR (the Cabinet of Ministers). Based on the final decision of the Ministry, the Ministry and the municipality will sign a contract on granting the financial sources.

In the Section 8, the law also adopts a special procedure on transferring a land from the Slovak Land Fund to the founder of industrial park. The Fund and the founder should conclude a contract. They should preferentially make a contract of exchange.[1] The second option is a contract of a sale of land, where the purchase price should be at least at level stipulated by the special statute.[2] The last option is to make a lease contract for period of 50 years at least, which will transfer on the founder also the right to build all necessary infrastructure and buildings as well as the right to create an easement to the land, and also the right to sublease[3] a land to entrepreneurs.

In the Section 11, the law governs the issue of return of land back to the Fund in case of failure to start to build the infrastructure of industrial park within the period of 2 years upon completion of the contract (sale, exchange or lease), or if a founder does not comply with other contractual provisions. When there occurs such situation, the founder is obliged to return the land to the Fund and the Fund should re-list the land back to the register of agricultural land (eventually to the register of forest land).[4]

In 2003 there was a first substantial amendment[5] of *the Act on Industrial Parks*. As one of the most important changes we consider adding the section 8a, which enables to transfer a land and an infrastructure of industrial park on entrepreneur, which is making a business there. The founder can *"convey a title of ownership on*

[1] Section 611 of the Act No. 40/1964 Coll. on the Civil Code *(Občiansky zákonník)*.

[2] The section 1b subsection 2 and section 15 subsection 2 of the Statute of Ministry of Finance of the Slovak Republic No. 465/1991 Coll. on Prices of Buildings, Land Parcels, and Meadows and on Reimbursements for Creation of Right to Personal Use of Land and on Compensation for Temporal Use of Land *(Vyhláška Ministerstva financií SR o cenách stavieb, pozemkov, trvalých porastov, úhradách za zriadenie práva osobného užívania pozemkov a náhradách za dočasné užívanie pozemkov)*.

[3] This sublease contains also right to erect the buildings.

[4] A founder should on their own account return a land to the Fund in such state in which it has been transfer to them by Fund.

[5] In order to proviode complete information about all existing amendment we have to state, that there were another two amendmets to the Law: Act No. 542/2004 Coll. and Act No. 466/2006 Coll. However, they brought just some technical changes and therefore there is no need to analyse them more deeply.

entrepreneur for consideration",[1] which should consist from value of land and value infrastructure determined by an expert assessment worked out according to the special law.[2] The transfer can be done as in the whole area of the industrial park or also as a part of it. In case of the partial transfer, a value will be set down proportionally. The gains from the transfer should become the income of the budget of municipality and the state budget in the same proportion as their contributions to the investment at the beginning.

However, there is some other scheme for state support of development of industrial infrastructure in Slovakia. Under the *Act No. 561/2007 Coll. on Investment Support* can apply for the investment support only the investors, i.e. entrepreneurs which fulfil the requirements. As one of the tools of state support the Act considers *"transfer of title in real property or exchange of such property for price lower than a common value of the asset is"*.[3] For a transfer of land is required to conclude a contract on transfer of a real property or a contract on exchange of a real property between a provider[4] and an entrepreneur. Such contract should also contain lien in favour of the provider for at least 5 years upon a completion of the contract. The rest of the rules are the same like in other types of the investment support according to this law.

4.2 Implementation in Slovakia

The implementation of state policy on development of industrial infrastructure in Slovakia is very similar to the CR. Regardless the later beginning, the dynamism of development was quite impressive. Until 2009, there were 81 industrial parks fully operational, out of which 17 was full despite of the economic crisis. The timeline of total state support (including sources of the EU structural funds) for investors you can see in the table:

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[1] The expression used in the Law is rather vague, because as „convey for consideration" we can consider not only contract of sale, but also contract of exchange with very varied objects (not only another land plot, but also some goods, services or even some rights). Even that there is literally mentioned „a sale" with regard of a partial transfer one sentence later, grammatical interpretation of pertinent provision, which in general prevails in judgments of the Slovak courts, will lead us to possibility of transfer of whole industrial park for non-monetary consideration. We hope that there is no need to accent that this provision is extremely dangerous, because of relatively easiness of „legal fraud" by exchanging a very valuable asset for some obscure consideration.

[2] The Act No. 382/2004 Coll. on experts, interpreters and translators *(Zákon o znalcoch, tlmočníkoch a prekladateľoch)* Statute of Ministry of Justice of the Slovak Republic No. 492/2004 on Assessment of General Value of Property *(Vyhláška Ministerstva spravodlivosti SR o stanovení všeobecnej hodnoty majetku).*

[3] Section 2, Subsection 1, Paragraph d) thereof.

[4] Provider can be either owner or custodian of a real property, the Slovak Land Fund, municipality, regional authority or some legal entity created by a municipality or a regional authority.

Year	2002	2003	2004	2005	2006	2007	2008	2009
Amount of state support in mil. of EUR	143,36	163,34	265,02	306,29	307,32	300,93	406,08	440,27

Source: The Report of Provided State Support in the Slovak Republic for 2009. Ministry of Finance: Bratislava 2010 (Správa o poskytnutej štátnej pomoci v Slovenskej republike za rok 2009. MF SR: Bratislava 2010)

However, the SR has a problem to attract the FDI to some remote regions (e.g. Prešov or Banská Bystrica), which are in comparing to the regions of the western Slovakia significantly underdeveloped. It is a result of lacking infrastructure (namely proper highways as well as railways). As a result of this the investments flow to those regions of Slovakia slower than needed. Because of that, the government and the EU provide the investors, who will build their factories in those regions, with a bigger support than usual. The government meantime also tries to develop lacking traffic infrastructure in the remote regions, but this aim requires a lot of financial sources and time. However, there is no other option.

Influx of investment (2001 – 2007) according the regions

Region	Amount of investment	Number of created working positions	Amount of the state support (including regional support)
	mil. of EUR		mil. of EUR
Trnava	1 773,16	7 215	312,54
Žilina	1 506,72	4 732	255,56
Košice	747,49	5 369	147,84
Trenčín	653,97	8 453	99,57
Nitra	527,62	4 889	116,17
Banská Bystrica	223,28	1 950	56,70
Prešov	15,15	138	6,97
Bratislava	139,42	2 037	22,13
Total	**5 586,80**	**34 783**	**1017,47**

Source: Kyseľáková, D. and Kyseľák A.: Analysis of the Effects of Establishment of Industrial Parks on Regional Development and Competitivnes, p. 136. Available at: http://www.pulib.sk/elpub2/FM/Kotulic10/pdf_doc/13.pdf [Retrieved 18.4.2015]

5. Analysis of effectiveness of the legal regulation in the CR and the SR – comparative perspective

Similar material and legal conditions in the CR and the SR gives us an opportunity to compare, how two slightly different solutions of the same problem are working in practice. From a formal point of view, there was adopted only one single act, generally dealing with questions of state incentives in the CR, which contains *inter alia* also incentive in a form of land transfer. Unfortunately, it does not contain a special procedure for a transfer of land from the state (represented by Land Fund of the CR) to investors (or municipalities) and the general procedure is too inflexible. On the other hand, the Czech *Act on Investment Stimulus* is very flexible in question of subjects capable to apply for the state support. By this law it is possible to provide with the state support also developers, who aim to create the industrial zone in places, where it is not fully commercially rentable, in the extent of the cost-gap. Another positive aspect we see in absence of excessive obstacles in transferring a land from public authorities to private entities.

In Slovakia there is applied dualistic structure of regulation of the development of industrial parks and zones. Similarly like in the CR the general regulation for state support of the investment – *the Act on Investment Support* – contains as a form of state support also a land transfer. However, this land transfer is possible only for investors – producers – not for developers. The special law – the *Act on Industrial Parks* – contains a complex regulation of industrial parks and also special procedural rules for transfer of land on municipalities or regional authorities. As one of the best aspect of this law we consider the creation of special procedure for transfer of land from the Slovak Land Fund, which is comparing to general rules beyond any doubts more simple, clearer and quicker.

From a doctrinal point of view, we also appreciate better systematic solution of this dualistic concept. On the other hand, the Slovak regulation contains more unreasonable obstacles to dealing with property of created “public” industrial parks. Unfortunately, the amendment from 2003, which added the new section 8a, as well as all subsequent changes of the law did not resolve the impossibility of transfer ownership of whole industrial park to some other legal entity, which is not making business in a pertinent industrial park – i.e. to developer companies, who are usually

specialised also in managing the industrial parks. Such companies are currently not able to obtain any state support, what we consider as one of the reasons of bigger differences in economic development of some underdeveloped regions of Slovakia.

By comparing the quality of regulation in both countries we have to conclude that howbeit legislation in Slovakia is doctrinally better and contains some very useful procedures, the flexibility of the Czech laws creates in total better legal environment for development of industrial infrastructure. We can demonstrate it on better results of the Czech market of industrial property, which currently does not require support from the state any more.

D. Conclusions

To formulate certain general outcomes of our comparative analysis presented above, we have to highlight few interesting points prospectively relevant also for other countries in the transitional situation. First of all, formal consistency of newly adopted regulations is very important and the Slovak example shows, that in helps avoid ambiguity of fragmented legislation. However, the formal purity is not the most important. The Czech regulation contains only several "hidden" provisions in different legal regulations with different legal force, but as a matter of fact they creates less unnecessary restrictions and thus open more options for development of flexible administrative practices. Therefore we can conclude that law-maker should set out only essential legal requirements in the law, namely in situation, when it is hard to predict the optimal standards because of a substantially new situation. There should be rather supported institutions, which should manage the administrative procedures in more open, professional and responsible manner than it is usual.

Стаття присвячена аналізу політики промислової інфраструктури в Чеській Республіці та Словаччині впродовж останніх десятиліть. Мета статті - визначити, чия політика є більш придатною до застосування у поточній перехідній ситуації і приєднання держави до міжнародних організацій та ЄС. Автор доходить висновку, що словацький досвід є кращим з доктринальної дочки зору, а чеський - створює менше непотрібних юридичних перешкод для поширення державної підтримки розвитку виробничої інфраструктури, і, отже, є більш ефективним.

***Ключові слова**: промисловий парк, промислова зона, Чехія, Словаччина, інфраструктура, державна підтримка, іноземні інвестиції, передачі землі, девелопмент.*

Статья посвящена анализу политики промышленной инфраструктуры в Чешской Республике и Словакии в течение последних десятилетий. Цель статьи - определить, чья политика является более подходящей для применения в текущей переходной ситуации и присоединения государства к международным организациям и ЕС. Автор приходит к выводу, что словацкий опыт является лучшим из доктринальный дочери зрения, а чешский - создает меньше ненужных юридических препятствий для распространения государственной поддержки развития производственной инфраструктуры, и, следовательно, является более эффективным.

***Ключевые слова**: промышленный парк, промышленная зона, Чехия, Словакия, инфраструктура, государственная поддержка, иностранные инвестиции, передачи земли, девелопмент.*

The article is focused on analysis of industrial infrastructure policy in the Czech Republic and Slovakia during the last decades. The main objective is to detect, which policy was more suitable in circumstances of a transitional situation and an accession of a state to international organisations and the EU. The author comes to conclusion that howbeit the Slovak solution is better from a doctrinal point of view, the Czech one creates less unnecessary legal obstacles for a distribution of a state support for industrial infrastructure development, and therefore is more effective.

***Keywords**: industrial park, industrial zone, Czech Republic, Slovak Republic, infrastructure, state support, foreign investments, land transfer, development.*

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