

The Agreement of Romanian Legislation with EU Requirements Concerning Cadastre Juridical Function. Real Estate Registration in the Land Register.

Alexandrina ZAHARIA, Romania

Key words: general cadastre, juridical function, landed record book, tabulation, temporary registration, private property, dismemberment of ownership right.

SUMMARY

The general cadastre as a unitary and compulsory system includes a technical, economic and juridical expertise of resources concerning the management of all estates (land, waters, forests, real estate etc) all over the country, in the absence of which, sustainable development and environmental cannot be ensured. The absence or the inadequacy of cadastral records in some areas has produced a series of negative effects, such as: continuous soil degradation as a result of inadequate exploitation, the chaotic developments of human settlements, the wreckage of various land improvements (irrigation systems, anti erosion works, forest curtains, etc) and the 2005 unparalleled floods. The cadastre has three functions: the juridical, technical and economic. The juridical function cannot be achieved without the existence of the other two. That is, should the juridical function be absent, the technical and economic functions would be purposeless. This function consists in identifying the owner based on his ownership documents as well as registration of the real estate in the land register at the local land registration office.

Romania is receptive to transposing the community Acquis in the field of cadastre and real estate publicity with a view to establishing and consolidating the cooperation framework for real estate protection.

1. CADASTRE AND SUSTAINABLE DEVELOPMENT

The land, as a major resource of food - and not only, imposes a new approach in its management and rational use as a result of a rising disparity between supply and demand of food products, this new approach being determined by the demographic factor and the limited arable land resources. The cadastre as a general system records the existence of all real estates, that is natural resources (land, waters, forests, etc) and artificial ones (buildings, industrial structures, lines of communications and works of art, hydro-technical works, harbors, airports etc) in order to use them rationally and in accordance with the requirements of sustainable development and environmental protection. All these objectives can only be attained within a complete technical, economic and juridical registration system inclusive of all resources, and of real estate in particular. At present, the cadastre has turned into an interdisciplinary domain of vital importance for a sustainable economical development and it also represents the interface between human

societies that designs and achieves all the actions upon resources (soil, subsoil, water, air, vegetation etc) and the environment.

The absence of a general cadastral registration determines an increasing loss of human lives as well as damage to property when nature rages. The 2005 floods as well as the floods occurring at the beginning of 2006 in Romania would not have produced so much destruction had there been a correct and up-to-date cadastral registration in the following fields: agriculture, forests, water, road and railway transportation, risk prone areas liable to natural calamities or affected by pollution and degradation etc.

What ought we to do? It is imperative to allocate funds for the completion of the general cadastre, this mirror that reflects man's actions in the surrounding environment, preventing him from acting destructively.

2. CADASTRE AND REAL ESTATE PUBLICITY. PAST, PRESENT AND FUTURE.

2.1 The Cadastre

- After World War I (1919 – 1933), cadastre activities consisted of estate measurements and plots for putting into possession.
- Law 23 /1933 put the basis for the modern cadastre and introduction of land registers, but in 1941 this activity was interrupted because of the war.
- Decree 281 /1955 and HCM no. 1240 / 1955 represented the basis of land registration, the ultimate goal being to merge agricultural lands for collectivization.
- In the interwar period there were specialized cadastres such as the mining cadastre, the oil cadastre, the railways cadastre, the water cadastre, the cadastre of the Autonomous House for state-owned forests. Following the Second World War they lost decision power and in 1970 they were merely simplified systems of land evidence with little connection to the cadastre technologies (Scriciu, 2000).
- Before 1990, all landed properties had been taken away from the civil circuit, while the cadastre registered only state and cooperative property.
- Law 7/1996 concerning cadastre and real estate publicity unified the general and the agricultural cadastres and the land publicity system was introduced in the land register books.
- From 2004, after more than 50 years of communism and envisaging our adhesion to the EU, we passed to a unified registration system for real estate. A National Cadastre and Real Estate Agency was set up and it coordinates and controls cadastre and land registers activity. All regional offices in all counties and Bucharest are subordinated to it. There are cadastre and real estate offices at all administrative levels (villages, towns, cities) .

2.2 Real Estate Publicity

- In Romania, the real estate publicity was done in two ways, through transcription and inscription books or the land register books.

- The system based on the transcriptions book (documents of transcriptions and constitutions were fully transcribed in the register) and inscriptions book (with reference to privileges and mortgages only) have a individual character, because real estate records refer to the owner and not to the property.
- The real estate publicity system based on land registers is a real registration system because it is the building that is taken into account.
- In our country, the system of revocable land record book has been in place since July 1st 1999, when Law 7 /1996 became operative. The Law no. 115/1938 on real estate books unified the provisions concerning them, some of these provisions being inserted in Law 7/1996 due to their comprehensiveness and ease in application.

At present, it seems quite difficult to harmonize the national legislation in the field of real estate publicity with that of the EU. However, there are member countries (Czech Republic, Slovakia, Hungary, Greece) that have unified the two components: cadastre and real estate publicity. As for the material right with reference to property, mortgage and other privileges and also for the registration proceedings of the ownership right and of other obligations in the registers, there are still great differences among national legislations. Given the high degree of mobility of EU citizens, the real estate transactions, both for personal and investment purposes, containing an extraneous element, there is dire need for a law on real estate. Romania is receptive to the Aquis in the field of cadastre and real estate publicity with a view to establishing a communitarian cooperation framework with the direct consequence of real estate protection.

3 REGISTRATION IN THE LAND RECORD BOOK

3.1 The Land Register

The juridical and technical functions of land registration are complementary and ensure a smooth implementation of the general cadastre. The juridical function is accomplished through the identification of the owner and the registration in the real estate book/register.

The economic function of the general cadastre helps fixing the value of real estate, a prerequisite in establishing and collecting taxes by the courts of law, notaries and other tax collecting institutions and in establishing the amount of legal redress in cases of expropriation. Nevertheless, the methodology on real estate evaluation is incomplete and lacks uniformity (Boş, 2003).

These registers were also called funduary books, from Latin *fundus* - land ownership and were introduced in Romania in Transylvania by Austrian initiative (Albu, 1997). It represents the basic unit in the real estate publicity where registration is kept by properties and not by owners. It is issued distinctly for each real estate and it comprises data about all translative and constitutive documents on the property itself. The book is made up for each settlement. The register comprises three parts where the registrations concerning the description of property are given,

then the right of ownership and the registrations of dismemberment of ownership rights and other obligations.

The system of publicity of these books offer a clear recording of each real estate from the very first moment when it enters the civil circuit and it comprises all the changes in its material or juridical situation.

All registers issued on the administrative territory of each settlement make up the cadastral book of real estate publicity of that territory which is completed with: entrance book, cadastral sketch; building number in the number record book and the order number of the land registers where the building is included; an alphabetical index of owners; a portfolio where document registration applications are kept with copies of the acts and documents under analysis. The land book is made up of a title and three more parts. The title shows the number of the book and the name of locality where the building is. The first part refers to the description of the building with its order number and its cadastral number given to the plot after the real estate identification plan. The second part refers to the transcripts concerning the right for ownership and the documents it is based on, while the third part contains transcripts concerning the dismemberments of the right for property and other obligations as well as juridical facts, personal rights, real estates pursuits etc.

The object of the register is real estate that is all kinds of lands as well as the goods incorporated, either naturally or artificially. The basic elements of cadastral registration and publicity are: the plot, the building and the owner. A piece of real estate according to Law 7/1996 is made up of one or more adjoining plots, with or without buildings and belonging to the same owner. A plot is a land piece having the same usage category. The building represents the structure erected and which appears on the same register where the plot itself was put in. The owner can be either a natural person or a legal entity. The transcriptions in the land book/register and the extracts are assimilated to original documents and can be defeated only by a forged registration. Its probation force is given by its repealable quality in relation to a third party. The extract proves the content of the book and has a proving force of the relative legal assumption, which operates until the contrary evidence. All operations and information are being archived and preserved electronically.

3.2 Book Registration Procedure

The transcripts in the Land register represent all written proofs, descriptions, registering and notes from the opening of the book (description, the naming of successive owner/s, of other real rights, of obligations, of personal rights, of acts, facts and personal positions in relation to the real estates in question, of erasing and rectifications) up to the closing transcript.

Transcriptions are made on request of the interested parties, except the cases when transcription is performed ex officio. Tabulation or temporary transcription can be requested by any person who brings in the original document, the judicial sentence, or the decision of the administrative authority, which is to transfer, constitute, modify, obtain or put out a tabular right. The original

document or a certified copy, which ascertains the act or fact to be transcribed, must accompany the request. The certified copy will be kept in the portfolio of the office. In case of judicial resolution, a certified copy will be presented. Mention must be made that this is definitive and irrefutable. The act based on which the request is forwarded must fulfill the following conditions: it is issued according to the law, validation requests of any juridical act are met, it has full proof power, the names of the parties are specified; the real estate is identified by a unique identifier; it has a certified translation should it not be written in Romanian; it also has a copy of the land book extract for certification or of the charges certificate which was at the basis of the document.

There are three types of transcriptions:

- tabulation - having as object the final transcription of the real rights and it produces the following effects: opposability in relation to third parties from the very moment of its registration; to determine the rank of transcription according to its registration number;
- temporary transcription of real rights under the condition of its subsequent justification. It has an identical object with the tabulation, but it is conditioned by justification. Temporary transcription is only used when tabulation cannot be accepted.
- notation having as object the transcription of personal rights, of juridical acts and facts referring to the state and capacity of persons, the legal actions and ways of attack as well as of measures of inalienability in case of the real estate in the book. The main effect of notation is that of letting other persons find out about it, who, if they don't take into account the things noted in the register, are running the risk of becoming dishonest sub-owners, being under the threat of losing their rights (Motica, Trăilescu, 2001, Zaharia, 2002).

3.2.1. Property ownership tabulation procedure

The property right is written in the 2nd part of the land register. Whether that property right is an exclusive property right of a single person or common property belonging to several persons on individual quota or joint property must be taken into consideration. In the case of buildings, the property right on floors and apartments will be considered and if the property right belongs to different persons.

Exclusive property is be transcribed under the name (denomination) of the unique owner and for the entire real estate belonging to the same person. In this case, the following transcripts occur: in the first part the real estate is transcribed by description and individualization; in the second part the owner with his name, surname and his address is transcribed; in the third part, notations are made, when necessary.

In case of common real estate or in joint ownership, all owners are to be transcribed in the same book. In case of joint ownership, the quota of each co-owner will be specified or mention will be done that quotas are unknown. In this case, they may be considered to be equal. For common property with shares the following transcriptions are performed: in the first part, the real estate is transcribed by description and individualization, in the second part, all the co-owners are

transcribed, with personal data of identification and the fractioned parts of each share belonging to them; in the third part notations are made, when necessary.

As for ownership in case of couples we distinguish the following:

- the common goods of couples, the right for property is shown in the second part of the book. Names of the couples, their marriage status and as for the juridical regime of the building there is mention that it is in common;
- in case they bought a building before marriage in co – ownership and it was mentioned in the land book as for the quota for each, these data are preserved after the marriage, too;
- in case after the divorce, as a result of partition of goods, the building being easily divided in nature and allowed shares for each of them, the initial book where that building was transcribed will be suspended and two other individual books will be opened, of course with other owners.
- following divorce and partition of goods if a real estate is attributed to one of the former spouse, he/she becomes the exclusive owner of the real estate in question. The name of the other spouse is erased from the land book/register.

As for couples' joint property, the following transcriptions are done: the first part inscribes the building, by description and identification; in the second part, the couple is noted, identified and the state of co-joint position over the property is mentioned; the third part consists of notations if that is the case.

For properties on floors or flats, two books are opened, one- collective for the entire building and individual books for each floor or flat, which have different owners. The building will be recorded in the collective register with a non- fraction number of plot.

In individual books, each floor or flat will be written with a fractioned number whose numerator is the plot number shown in the collective book, while the denominator – the floor or flat number. The inscriptions for the whole building will be done in both books.

In order to inscribe the property on floors or flats, the following rules must be applied:

- if we want to inscribe a real property right on a floor or a flat which represents the object of a individual property on floors or flats, it is therefore necessary to open up a collective book for the whole building. The sketch with vicinities for individual properties on floors or flats will be done by the local cadastre and real estate office, which, together with a notification and reception of the location plan and sketch of the flat, will give a cadastral number to the flat and the whole building as well. Each flat individual book will be opened for each owner when he asks this at the real estate office, and the cadastral number for each flat will be a fractional number whose numerator is the cadastral number of the building, while the denominator will be the number of the floor or the flat. When flats are not given numbers, but only sections, the cadastral number of each flat will be a fractional number whose numerator is the cadastral number of the building, while the denominator will be the number of the building section.

- based on the vicinity plan, the collective land book will be opened. It will consist of a title - the building which is the object of all individual properties on floors or flats, together with the cadastral number of it non-fractional, while in part 1, the cadastral number of each floor or flat with the book it is transcribed in.
- there will be opened as many individual books as the number of floors or flats with different owners.
- in these individual books the number of the book for the whole building will appear under the heading *Observations*.
- as individual books are opened, the collective one will be updated.

The property on floors or flats ceases to exist under this form if the whole building has only one owner and when all books are closed and a new one will be opened. The joint forced property right over some parts of the real estate can be transmitted and only along with the property right on floors and flats. The following transcriptions are performed in the collective land register: first part – the building with all its floors or flats as well as the common undivided parts of the structure; the second – all the owners of flats or floors; the third – notations, if necessary, and the obligations that tax both the whole building or individual floors or flats, obligations may influence the undivided, common parts of building.

The following transcriptions must appear in an individual book: first part – the fractional number of the floor or flat, with observations for the number of the collective book; second part, - the owner/s of the flat or flat; third, notes, if necessary; obligations – to be mentioned in the collective book.

The transcription in the book of a right for property by acquisitive prescription will be done only by an irrevocable legal decision. The right of property for goods erected can be transcribed in the book on the basis of a building certificate from the city hall that proves the presence of a building license and of cadastral documents.

The buildings belonging to the public domain and to the private domain of state or territorial-administrative units are transcribed in the special books of the respective unit the building is placed on, with some legal exceptions. These special books are kept at the cadastre and real estate publicity local offices.

The public notary who issued an act of tabular right must ask for an ex officio transcription in the book at the territorial office the building belongs to. This obligation is explicitly shown in the document. When certifying the act constituting, modifying or extinguishing a real estate right, the notary helps the citizen by asking the extract of the land register or of an charges certificate.

3.2.2 Transcriptions of other rights in the land register

The superficies right is transcribed in the third part of the land register and the book where the superficies right is shown as an independent property body is mentioned. So, two land books will be opened for the transcription of this right: the book of the land on which the superficies was

created and the book for superficies for the property on the building. In the first book, the superficies right will be transcribed in the third part; in the second book, which will be opened as a common property book, the following transcriptions will be included: in the first part, the description of the building as a body of property; in the second there are the superfiary and the superficies, and in the third – the charges encumbering the superficies.

When the register office has to deal with transcribing a superficies right the plan of the entire building will be necessary, in two copies, each for the two books to be opened.

When transcribing concession rights over state public or private domain or of territorial-administrative units, the same procedure is applied. As in the case of superficies, two books will be opened: the book for the public or private state-owned land or territorial-administrative units land, and the concession book where the right of property on the building is transcribed. The superficies and concession right exists as long as the building or the plantation, property of a different owner exists. When, according to the law, the landowner also becomes the owner of the construction erected on it, this right is extinguished. The book containing the superficies or concession book is closed. All the works, buildings or plantations will be registered in the first part of the book, which emphasizes the land they is built upon.

In the third part of the book, dismemberments of the property right are registered, namely the usufruct right, the usage and the habitation. All these can be transcribed for the whole body of property, but also for a part of property or of a part of a plot as in the case of right of servitude. This right has a double transcription: in the third part of the subservient fund as obligation and in the second part of the dominant fund whose value is increased by servitude.

Mortgages and privileges are transcribed in the third part of the book. When there are more co-owners, the mortgage right may be transcribed only upon the quota of only one of them. If the mortgage encumbers a flat or a floor in a building, it will be transcribed both in the individual and in the collective books. In case of joint property, mortgage transcription can be performed only with the other owners' agreement. Real estate privileges and legal mortgages will be transcribed only for the buildings they are related to.

When errors occur in the register, any interested person is entitled to ask for alterations.

4 CONCLUSIONS

To improve the present situation of the juridical function of the cadastre with a view to improving the correct circulation of real estate as well as for securing private property in all its forms the following are necessary:

- the completion of cadastral works with effect upon the creation of a real tax basis and the transcription of all real estate in the final register book.;

- the necessary funding for the achievement of the three functions of the cadastre and for personnel training in this field, so that all registering operations be done correctly and in time;
- a more complete legislation in point of the juridical and the economical functions of the cadastre;
- a better contact between the notary and the real estate office for rapid change of information and for shorter deadlines;
- a program for keeping population well-informed and up-to-date about cadastre and its advantages;-
- the introduction of data processing and its security in the cadastre and real estate publicity unique system.

REFERENCES

- Albu, I. 1997, Noile cărți funciare, Lumina Lex, Bucharest
 Boș, N. 2003, Cadastru general, All Beck, Bucharest
 Motica, R. & Trăilescu, A. 2001, Drept funciar și publicitate imobiliară – Noile cărți funciare, All Beck, Bucharest
 Scrieciu, F. 2000, Drept agrar și drept funciar, Lumina Lex, Bucharest
 Zaharia, A. 2002, Drept funciar și publicitate imobiliară, Fundația Universitară „Dunărea de Jos”, Galați

BIOGRAPHICAL NOTES

Academic background

- doctor's degree in legal sciences since 2000

Current position – judge at the Galati Court of Appeal, Romania

Experience

- 27 years serving as a professional magistrate
- 13 years serving as a university professor
- participation at the FIG Congress in Athens, 2004
- multiple papers and books published in and outside the country

CONTACT :

Alexandrina Zaharia
 8 Martie 16b, Galați
 ROMANIA
 Email: adizaha@gmail.com