

CONSIDERATIONS REGARDING THE ACHIEVEMENT OF SPORADIC CADASTRE IN ROMANIA

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Abstract: *Cadastral activity in Romania is limited mainly to the accomplishment of the cadastral sporadic works, which refers to the unclear character of registration procedures in the Land Register and other legal actions referring to properties. The legal and regulatory support for this category of works is Decree no 700/2014 which approves the Regulation regarding the content and the elaboration of the cadastral documentation for the registration in the Land Register, Cadastre and Real Estate Advertising Law no. 7/1996, amended and supplemented. This paper presents the sporadic cadastre works after Law no. 7/1996 entered into force and some problems that occurred in common practice.*

Keywords: *sporadic cadastre, evolution, documentation, legislative updates.*

1. Introduction

In December 1995, the House of Representatives adopted a changed version of the law which was later discussed in the Senate in January 1996, together with the humanitarian law project which was the result of this debate, then approved by both chambers, in separate meetings held in February 1996, under the title The Law on Cadastre and Real Estate Publicity (Rotaru, Anculete, 1996).

Law no 7/1996, regulated two different but linked institutions: the technical institution of cadastre and the legal institution of the new land registry, aiming to accomplish the cadastre works for the whole country, thus creating a single publicity system for the whole country which is intended to replace the systems previously applied in different regions and in different ways throughout the country (Cucu, 2007).

The importance of the general system of cadastre and real estate advertising was highlighted by the three arguments presented below (Rotaru, Anculete, 1996):

a. This law embodies a very old desideratum of all the specialists in the field in our country and there had been made several attempts to fulfil it along the years, the most important ones being at the end of the 19th century and the beginning of the 20th century, namely, in 1947 and 1983. All these attempts failed due to different objective but mostly subjective reasons.

b. This law represents an important step towards the accomplishment of a legal and constitutional frame, appropriate to the field of cadastre and real estate, considering that its quick reorganization was imposed by the economic reform as well as the transition process towards the market economy. It was also imposed by the necessity to use the financial

resources more efficiently, to establish a unique system of registering property, settling clear boundaries and legal mentioning of all the owners in all administrative regions of the country and to put the basis of a coherent taxation system related to properties.

c. It is a vital law for the future of cadastre, geodesy, cartography and real estate publicity in our country, as one step forward on the way to quickly reform Romania.

Consequently, cadastre in its current variant leaves out these unpleasant aspects, as it is more complex, related to increased needs from the technical, economic and legal point of view to make an inventory of lands, to which there were added demands and needs related to the creation of cadastre.

The legal provisions which regulated the reports we studied lost value once Law no 7/1996 was in force. To mention a few, there were settled the attributions of the state as regards the cadastre, the management of land resources, protection of the public and private rights in legal terms related to the real estate, namely there was created the mechanism to put order in the national wealth.

The lack of interest in enforcing Law no 7/1996 could be clearly seen since 1996 when this law did not have any implementing regulations. These regulations came into force in 2001 by Decree no 534 from October 1st 2001 regarding the general cadastre. The dynamics of the cadastre, not really alligned to the legal frame in Romania correlated to the great volume of information involved, made it harder to enforce the law.

The cadastre activity in Romania resumes mainly to the accomplishment of sporadic cadastre works which actually mean registering the papers and the legal actions related to properties in the land registry, on temporary terms. The legal frame for this category of works is Decree 700/2014 which regulates the approval of the Regulations regarding the contents and the method of creating the cadastre documents in order to be registered in the Cadastre register, as well as the Law of Cadastre and Real Estate Publicity no 7/1996, including the subsequent changes and supplements. This paper presents the evolution of the sporadic cadastre since Law no 7/1996 entered into force until now, as well as some problems which appeared in the current practice.

The technical documentation for the sporadic cadastre works aims to identify, measure and describe properties, on the date of their drafting, the papers and legal deeds related to them are registered and all these require the following stages:

- identify the position of the property,
- analyse the technical and legal documents,
- make the measurements in the field in order to gather the graphic and text information related to cadastre and process them in the office,
- make a draft and final version of the cadastre documents,
- receive the papers and register them in the cadastre register.

The acquisition of the cadastre information and processing it is an easy process, considering the high technical level reached nowadays, however, the major problems come from the different ways of interpreting the laws in force and this has led to an ambiguous and incomplete sporadic cadastre and also to the immediate need to implement a systematic cadastre.

The implementation of the systematic cadastre in order to eliminate these obvious drawbacks requires huge efforts and complex works on national level, modern logistics, professionalism and highly qualified staff so that work can be accomplished with total efficiency and cover for the unjustified delays. In a contrary situation, the consequences might be dangerous for all the economic and social areas, including our alignment and inclusion in the European Union.

2. The beginnings of the sporadic cadastre in Romania

1. Decree no 946/2000 for the approval of the Regulations regarding the technical documents required for the temporary registration in the Cadastre Register of all the papers and legal actions regarding properties and buildings, published in the Official Gazette of Romania, Part 1, issue 90 from February 22nd 2001.

Starting from July 1st 1999, considering the Ministry of Justice Decree no 1.330/C/1999, the temporary registration in the Cadastre Register was allowed. Consequently, any legal action or document regarding lands or buildings should be registered temporarily in the Cadastre Register, if the registration procedures in the general cadastre were not finished for that particular area.

According to article 61 from Law no 7/1996, "Legal papers and deeds regarding the lands and buildings from an administrative unit for which the registration in the general cadastre has not been finished, shall be inscribed with a temporary character in the Cadastre Registry, followed by a final registration once the general cadastre is implemented in that area.

Under the same conditions, the property titles issued according to Real Estate Law no 18/1991 shall be also inscribed. The registration form will have attached a site plan for the land or building it refers to, drawn by a specialist authorized by the County Office of Cadastre, Geodesy and Cartography (COCGC). The site plan will include the configuration of the land stripes or buildings, the surfaces, the categories of usage, the features of the land, the details related to the coordinates of the building, the date and signature of the specialist who drew up the plan.

In short, the information flow regarding the temporary registration in the Real Estate Register includes the following stages:

a. the applicant (the owner of the property or the legal representative) addresses the Real Estate Office after having contacted a certified specialist to conceive the cadastre technical documents.

b. the certified specialist draws up the cadastre technical documents and hands them in to COCGC or to the owner.

c. COCGC checks and replies to the owner, if necessary or endorses the documents, gives a temporary cadastre number and issues them to the certified specialist or to the owner.

d. The applicant takes the documents issued by COCGC to the Real Estate Office which then opens a temporary real estate register and issues an authentication.

e. When there is signed any legal document or any legal deed takes place regarding lands or building works, considering the cadastre technical documents that he was presented, the public notary authenticates the documents and sends them to the Real Estate Office or to the applicant (in case of transactions).

f. The Real Estate Office forwards to COCGC the authenticated documents regarding the new registrations and their numbers and if necessary, the data regarding the new owner.

We can mention some of the important elements regulated by this decree:

- in case the applicant wanted only a temporary number in the real estate register with the only aim of the enforceability of the already acquired right, the need to conceive the cadastre documents is excluded;

- for the buildings which are under mortgage agreements or which have several owners, regardless of the final purpose, the ground survey will be made by a certified specialist; in case the building has only one owner or it is not under mortgage, it is not necessary to make the ground survey;

- the file should include all the technical data required to make the real estate layout plan with indication to borders (including the data referring to 4 points which should be fulfilled in case the geodetic network points are within a distance which is smaller than 3 km and the surface of the building is smaller than 10 ha).

II. Decree no 634/2006 for the approval of the Regulation regarding the contents and the creation of the cadastre documents in order to be registered in the Real Estate Register.

The cadastre documents, hereafter called documentation, are the basis for the registration in the real estate register of the legal documents and deeds regarding:

- a) properties which require documentation for the first registration;
- b) properties which require documentation for subdividing;
- c) properties which require documentation for joining;
- d) properties which require documentation for the final registration of a „
- e) properties which require documents for changes in the property limits;
- f) properties which require documentation for changes in the surface;
- g) properties which require documentation for the description of sharing and splitting the property rights;
- h) properties which require documentation for the reconstruction of the lost, destroyed or stolen real estate documents;

The documentation includes the identification, measurement and description of the real estate goods, at the date of their registration and ensures the registration of the papers and legal deeds related to them. The documentation is drawn up in *unique file* which includes the technical documents needed for the cadastre registration as well as the legal papers required for the real estate registration. After the cadastre and the real estate registration, the beneficiary receives the real estate authentication, the real estate excerpt and the real estate layout and border line plan.

The accomplishment of the documentation required for the registration in the real estate register or the legal actions regarding properties require the following stages:

- a) determine the coordinates of the real estate goods;
- b) the works should be completed by certified specialists, including drawing up technical documents, work in the office and on the field, drawing up other documents;
- c) hand in the documents at the cadastre and real estate department (hereafter called the county department) or at the cadastre and real estate office (hereafter called the county office) and register them in the General Register;
- d) receiving the documents, including the registration in the cadastre register of real estate goods, hereafter called cadastre index, receiving the cadastre documentation and sending the documents to the registration-assistant;
- e) registration in the real estate register.

This order regulates important elements out of which we mention:

- measurements for the accomplishment of geodetic networks of thickening and land uplift in the national topographic system - Stereografic 1970, registering the cadastre planning details on the border and inside the real estate goods, gathering data, checking and approving the existing data. The ground survey points will be iron pegs in the built-in areas and wooden pegs outside the built-in areas and their topographic description should be found in the documentation. They will be painted in red;

- when drawing up the measurement and layout details, there will be considered the following: the borders of the real estate will be established at the middle of the fence width, except when the two neighbours indicate a different limit;

- present a clear content for each type of document, its features as well as the necessary documents to be attached to the file handed in for authentication;
- clear the situations in which the measured land is wider than marked in the papers, as follows: *for the properties which is fenced in*, if the difference is smaller than 2%, the documentation is accepted and the surface written in the property certificate is also registered in the land register while in case the difference is between 2% and 5%, the documents are accepted and the surface is registered in the land register only if there is attached a neighbourhood report, in case the difference is bigger than 5%, the documentation is not accepted, the surface will be registered correctly based on a certificate proving the property right; *for the properties which is not fenced in*, if the difference is smaller than 2%, the documentation is accepted and the surface written in the property certificate is also registered in the real estate register while if the difference is bigger than 2%, the documentation is registered in the land register only based on a certificate proving the property right.

III. Decree no 785/2011 on the approval of the regulation regarding the contents, the drawing up and the approval of the cadastre documentation required for the registration in the Real Estate Register.

It introduces the notion of repositioning, which means changing the geometry and diminishing the surface by a percentage bigger than 2% and this can be accomplished as follows:

- ex officio, by the cadastre adviser, without the agreement of the owner, in case the repositioning requires rotation, movement or changes in the geometry or the surface by +/- 2%, including the surface of the real estate as it was introduced in the data base. These provisions are enforced in case the real estate is fenced in or/and there has been received a site layout;

- on the agreement of the owner, if the repositioning requires changes in the geometry and diminishing the surface by more than 2%. The owner will sign the agreement together with a certified specialist or at the county office with the appointed representatives.

There are introduced special sanctions for the certified or self-employed people:

- for not accomplishing the measurements on the field, the certified person is sanctioned with the suspension of the licence for 3 months;

- absent without leave from a meeting noticed by the county office is sanctioned with the suspension of the licence for 3 months;

- refusal of the certified person to draw up the .cp file for the repositioning operation which includes changing the geometry or the surface is sanctioned with the suspension of the licence for 3 months;

- the certified person is sanctioned with the suspension of the licence for a month in case the submitted documentation was not filled in thoroughly, according to the regulation in force.

- any certified person who was sanctioned twice with suspension of the licence will no longer possess a licence if another infringement will take place within 12 months from the first sanction.

Amend the definition of cadastral plan of the land registry is in the new sense, a technical document, drawn up in the coordinate system stereographic 1970 which contains the limits of the buildings and permanent constructions registered in the land registry, cadastral number and is performed for each administrative unit -territorial.

The responsibility for the accuracy of the documentation and correspondence with the field reality, and to identify and materializing property limits in accordance with the documents proving the right to property provided by the owner, fall to the authorized person.

3. Critical analysis of the current stage of the sporadic cadastre in Romania

Decree no 700/2014 on the approval of the regulation regarding the authentication, approval and registering in the Cadastre and Land Registry currently regulates the activity of the sporadic cadastre.

It regulates the activity in the cadastre and real estate publicity, mentioning that it follows the rules of the Civil Code and Law no 7/1996, as well as the special procedures regarding the cadastre and real estate included in other laws. It regulates that the Integrated System of Cadastre and Real Estate includes the technical and legal records of the properties from the same administrative region.

In case the integrated application used on national level as a unique tool (e-Terra), generates reports structured according to the analog registers, the registrations made by the county offices in these registers are not compulsory. The basic entities in the integrated cadastre and real estate system are the real estate good/ property and the owner. By property we mean the land, with or without buildings from an administrative unit, belonging to one or several owners, identified by a unique cadastre number.

Starting with 2009, The National Agency of Cadastre and Real Estate introduced the integrated system of cadastre and real estate publicity called e-Terra. *”This project aims to implement an integrated system to register properties, offering an easier access to information from the real estate system”*. Thus, NACRE invested in the development of an IT system which would ensure a fluid and quick registration in the cadastre and real estate register and which would manage all the processes in the field of cadastre as well as real estate. The statistics centralized by NACRE in 2014 show that the number of properties registered in e-Terra is approximately 7.5 million, which represents approximately 18.68% out of the total number of properties estimated on national level.

Decree 700/2014 specifies that the accomplishment of the cadastre documentation requires going through the following stages:

a) *technical documentation*, which means analysing the current situation, according to the data and documents held by the owner compared to the data from the field, as well as requiring updated information from the data base of the county department/office;

b) *the accomplishment of the field and office works* includes choosing the work method, doing the measurements for the execution of the geodetic networks of thickening and land uplift, finding out the cadastre details on the layout for the border and inside the property, gathering the features, checking and approving the existing data; the border of the property indicated by the owner will be analysed by the certified specialist, according to the property certificates, the information taken from the county office and the measurements; the certified specialist will make note of all linear elements or points in the field, on the property or in the neighbourhood and will represent them on the layout plan in analogic format and in a .dxf file; the property parts which represent different categories might be determined by means of quick methods, making sure they are presented on the surface of the property and on the layout plan by dotted lines and codes;

c) drawing up the documentations, according to the addendum of this decree.

Some of the important aspects regulated by this decree are the following:

- inclusion in a single set of rules of all the provisions regarding the registration of property in the Land Registry, as well as regarding the approval of the specialized works and legal and technical expertise;

- changing the methods of repositioning the properties: *“repositioning is the operation of correcting the coordinates of a property which had been wrongly registered in the cadastre map by rotation, changing the geometry of the previously registered property, **without the***

agreement of the owner; changing the geometry might lead to changes in the surface of the property by +/- 2% out of the surface measured and registered in the real estate register” ;

- it regulates the authentication of the property titles; this will be done by the public notary, at the premises of the county office; after a written request expressed in an official form by the owner, the public notary can authenticate the property title requested by the owner, hence the process requires less time and there is no need to involve other institutions;

- decide upon the contents of the file for each cadastre documentation; this solves a serious problem, namely that the certified specialists working in another administrative unit than the residential one will no longer have difficulties in accomplishing the work.

Some of the drawbacks of this decree are the following:

- there is required an addendum which includes *the structure of the information layers*, so that the layout plan in digital form could be replaced on national level, thus the certified specialists working for cadastre documentation or property in another county than the subject’s address is much easier;

- there are needed specifications regarding *the establishing of the surfaces for the built areas*. There have been used different solutions given by builders and architects which can be interpreted differently when establishing the areas of built areas when the measurements are made. For instance, the definition which says *”the built area* is represented by the surface built on the ground, except the terraces without roof on the ground floor which outstretch the facade, the platforms or the access stairs. The ground level of the balconies with a lower height than 3 m and of the loggias upstairs included in the built area is not available or true in all situations. What should be done in the case of other stretched out wings (apart from balconies and half-loggias) of the buildings and their ground level when they are or not supported by pillars. The above mentioned definition applies to the covered balconies and loggias;

- when a new *condominium* is built, the common surface is considered a separate unit? If yes, there should be mentioned what happens to the undivided share for that particular unit;

- the method of drawing up the layout for the area outside the built-up area is difficult, expensive and useless; the certified specialists consider that if measurements were made to establish the borders of the unbuilt-areas would increase the final costs for the documentation required for the temporary registration, as well as the fact that the old layout maps are overlapped. The explanation would be that the borders of the unbuilt areas are established by digitization and already included in the data base. For the documentation approval there have been used these borders for a very long time, changing them might lead to overlapping and all the other registrations might be influenced;

- there is a provision stating that there should not be built properties *smaller than 100 sm*, but there are exceptions to the rule and it is incomplete; the lists do not include all the exceptions (parking places, terraces on the ground floor, so on);

- *changing the geometry* might lead to changes in the surface of the property by +/- 2% of the measured area and registered in Land Registry, without any constraints on changing the borders or the length, the appearance or disappearance of certain inflexion points in the perimeter. In practice, changing the geometry entails changing the borders, their length, appearance or disappearance of inflexion points in the perimeter; there should be mentioned the tolerance degrees in case of these changes. If it is estimated that the percentage of changing the surface is +/-2% and this is the only criterion for drawing up the repositioning documentation, then this aspect should be mentioned clearly;

- the certified specialists should highlight on the layout plan the *inventory of the points property borders* (especially for setting out the borders);

- it is not in accordance with the provisions regarding drawing up the documentation for the properties situated on the *border line* between the built and unbuilt areas which are included in Decree 700/2014 and Law 7/1996;
- the necessity to introduce a new article in Law 7/1996 and Decree 700/2014 which would state that the first registration imposes the access right or the free right of way for any property;
- the different practice in case of *lack of cadastre identifying details* in the property titles for land plots requires a new article to regulate this situation;
- an unclear provision referring to the documentation for *changing the borders of the properties*; some inspectors consider that this operation could not be accomplished together with the repositioning of the properties or changing their surface.

4. Conclusion

The importance and topicality of this work consists in the fact that the availability of resources can be analysed at any time only through cadastre, their status over time, how they are used in compliance with the requirements and conditions imposed by sustainable development.

However, the implementation of the systematic cadastre in order to eliminate these obvious drawbacks requires huge efforts and complex works on national level, modern logistics, professionalism and highly qualified staff so that work can be accomplished with total efficiency and cover for the unjustified delays. In a contrary situation, the consequences might be dangerous for all the economic and social areas, including our alignment and inclusion in the European Union.

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