

REGISTRATION OF LAND RIGHTS DEPENDING ON THE EVOLUTION OF LAND LEGISLATION

Ion BOTNARENCO, PhD, Associate Professor, State Agrarian University of Moldova, Faculty of Cadastre and Law, Chisinau, 42 Mircesti street, Republic of Moldova, phone: +37369935639, e-mail: i.botnarenco@uasm.md

Efim ZUBCO, Senior Lecturer, State Agrarian University of Moldova, Faculty of Cadastre and Law, Chisinau, 42 Mircesti street, Republic of Moldova, phone: +37369238114, e-mail: e.zubco@uasm.md

Abstract: Over a relatively short period of time, the legislative framework of the Republic of Moldova has undergone a fundamental evolution: from state monopolism to private ownership of the land fund. Land legislation, which is dominated by private ownership, in the period 1992-2017, which we will consider as the current period, has also undergone, under the influence of economic relations and implementation of economic policies, a structural evolution by forming new types of rights with social, economic and ecological content. The main issue that has become current in the context of these developments is related to the recognition and protection of the newly formed rights. An important role in solving this crucial problem is given to the registration of the newly formed rights. The analysis of the created situation confirms its objective need and also the interaction between the land registration process (real estate as a whole) and the law development process. The lack of interaction and the denial of objectivity of this interaction represent the beginning of a social economic crisis. Current status of this situation is being studied in the Republic of Moldova.

Keywords: land legislation, registration of rights, social economic crisis, protection of rights.

1. The role of land rights registration in the Republic of Moldova

1.1. The essence of the registration process. Conceptual aspect.

After a 52-year interruption (1940-1992), the Republic of Moldova returned to the process of registration of land rights. Conceptually, it is necessary to determine the reason and the purpose of this return to the registration process. In other words: does the process of right registration represent an objective need or a simple implementation?

We'll focus on this idea throughout the whole study. This problem persists in the society. Doubts about the registration process appear more often, especially regarding the main purpose of the registration process.

Given the fact that the registration process represents an objective necessity, what is the object and subject of the registration process?

Determining the correct reason and the purpose of the registration process, we'll avoid a series of social and economic mistakes.

The Republic of Moldova has evolved a lot in the field of implementing the registration process as part of the cadastral system. Over the years, Moldova has implemented

the Real Estate Register. The results of implementing this Register were defined by private ownership of land in our country and market economic relations.

Does this mean that the registration process has achieved its purpose? Not yet.

At the same time, mistakes were made in the process of implementing the Register. By definition, the Real Estate Register is focused on the land and less on the land rights. This error in turn caused the emergence of the law on Real Estate Formation, but not of land rights.

In this context, conceptually, the policy on real estate (land) formation and registration is more oriented to the physical aspect of the estate but not to legal one.

We can conclude that the registration process in the Republic of Moldova is already being attacked by these errors.

At present, the Republic of Moldova is at a new stage in the development of social and economic relations, when legal relations are increasingly responding to the needs of society. The lack of a mechanism to protect the new rights in such a situation has a profoundly negative impact.

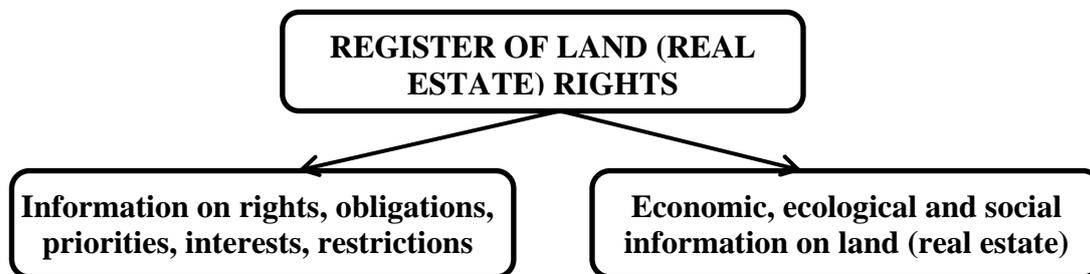


Fig. 1. Conceptual structure of the Register

Source: elaborated by the author

1.2. Topic and object of study

This study is devoted to the analysis of social and economic land relations in the Republic of Moldova in the post - privatization period and at the same time to the development of land legislation as a derivative of land relations.

The post-privatization period in the study will be recognized beginning with the completion of implementing the ownership of agricultural land, of plots afferent to the individual houses and of the land parcels afferent to the privatized constructions according to the Privatization Program until the present day.

What are the peculiarities of this period related to social and economic development viewed from the perspective of the topic and object of the study?

The Land Code (LPRM 828/1991) is one of the first laws of the Republic of Moldova adopted under the conditions and with the purpose of reforming the social and economic relations.

It is obvious that the Land Code content reflects a necessity of the respective period of time, the years 1990-2000. The main purpose of the Land Code is highlighted as a red line throughout its whole content - *the privatization of land and implementation of market economic (land) relations*.

Taking into consideration its main purpose, we identified on the basis of the Land Code (LPRM 828/1991) three important issues that have been achieved:

- *formation and obtainment of the land ownership rights;*
- *setting the physical boundaries of the property right acquired under the law on the ground;*
- *registration of the land ownership rights and thereby the enforcement of the property protection mechanism.*

The implementation of these three important issues meant the creation of premises and the opening of ***the way to solving*** a conceptual social and economic reformatory problem - *the implementation of the market economic relations in the rural area.*

Obviously, in order to solve these problems and to organize and mobilize the society, a number of regulations and instructions were developed based on the Land Code. As a result, the equivalent and value land shares were estimated, the legal documents were elaborated and handed, the program „Pamant” was implemented, etc.

Over time, it became obvious that making land owners from peasants is not enough to reach a high level of living. The organization of private ownership in organizational and legal forms has become an objective necessity.

The agricultural enterprises based on state ownership of land (Kolkhoz, Sovkhoz) and other forms of organization that prevailed at the stage of approval of the Land Code in force were liquidated, being replaced by new organizational-legal forms:

- limited liability companies (Ltd);
- agricultural production cooperatives (APC);
- agricultural farms (AF);
- joint stock companies (JSC).

The three important activities (issues), which aimed at creating the conditions for the transition (transition period) to market land relations were already implemented in the years 2008 - 2010. Based on the undertaken activities, the owner and the private property were reborn and a new stage of the rural economic relations has begun.

It is necessary to note that the Land Code (LPRM 828/1991) **didn't go beyond** the accomplishment of these three important issues of transition to market economic relations. The Land Code (LPRM 828/1991) was exhausted already in 2008-2010 and another new one didn't exist up to the present.

In other words, from the point of view of land law relations, the Republic of Moldova experiences other new conditions. At the same time, the legislative framework regulating the new economic relations of the next stage (second stage) has not been developed.

The attempts to modify the existing Land Code and bring it to a format that would meet current social and economic requirements suffered a failure from the very beginning.

As a result, we have the private owner, private property, land market, adequate institutions, banking (credit) system, insurance, etc. But we do not have the legal framework regulating land relations under the conditions of market land relations.

Most part of the society is already convinced of the need to develop a new legislative framework appropriate to new land relations.

1.3. The purpose of study, materials and methods

It was already mentioned that the studied period is the post-privatization period.

Thus, the main (general) directions that are not developed (or poorly developed) in the Land Code (LPRM 828/1991) and therefore motivate the need for the development of a new Land Code, are the following:

The First Direction, private land ownership and the way private property is used exceed the existing legal framework and require a new approach to the object of rural (land) economic relations. It is necessary to identify that segment of the object of economic relations, which will be directly affected by the right.

Explaining the object of land economic relations using such general economic notions as „rational use”, „sustainability”, etc. ultimately results in non-compliance with the rule of law;

The Second Direction. The spectrum of rights, obligations, restrictions, interests, priorities in the context of market economic relations is much higher (larger) than the one stipulated in the Land Code (LPRM 828/1991). The clarity of the object, which will be affected by the rule of law is one of the basic conditions for the new project;

For example: high quality land and poorly productive land will be affected by different rules of law. The obligations of landowners in the sanitary areas will differ from other types of land. It is necessary to respect the interests of obtainment of land rights;

The Third Direction One of the main priorities (main purposes) of the registration process is the protection of all rights, interests, priorities and monitoring of obligations, restrictions, etc. The necessity to protect the rights and to monitor the obligations, the restrictions on land requires to give a new aspect to the cadastral registration process in the Republic of Moldova.

One of the basic principles of cadastre (especially of the Cadastral Register) in the EU countries is the protection of land right. The implementation of cadastre as a mechanism for right protection is important in the context of new land relations;

The Fourth Direction. In the Republic of Moldova, the implementation of the Land Code (LPRM 828/1991) led to an excessive fragmentation of agricultural land. One of the basic principles of the process regulating land economic relations in the content of the new legislative framework - the Land Code project - will be the creation of favourable conditions for the consolidation of agricultural lands;

The Fifth Direction An unresolved problem in land relations still rests „the procedure for changing land use categories”. The existing legislative framework includes rules that go beyond constitutional land ownership. These rules are hidden behind the slogan of „social interests”. In reality, these rules create barriers to the implementation of property rights.

The Sixth Direction In order to implement the new legislative framework, it is necessary to create an environment of social economic stability in rural areas which, by regulating the economic (land) relations, will also have a significant influence on the demographic situation. It is necessary to recognize that namely the new economic-land relations have destabilized the demographic situation in rural areas.

2. The evolution of rights and objectivity of the registration process

2.1 Rights, obligations, restrictions, priorities, interests

The right to property. In most countries, the Land Code is the basic law regulating the economic-land relations. This practice is also accepted in the Republic of Moldova.

The scenario of land ownership rights formation in the Republic of Moldova was the following:

- *declaring the right to property and the issuance of legal documents (first of all the provisional documents then the basic ones);*
- *establishing the limits of land rights on the ground and thus - establishing the borders;*
- *registration of property rights for the purpose of rights protection.*

These three stages of rights formation are specific only to land.

The existence of land boundaries in the process of identifying the rights on the ground formulates different features of land law: landmarks, coordination with adjacent owners, registration in the register, peculiarities of the legal document (cadastral plan), etc.

The right of use. The lease will be the most widespread right to use. Lease relations in the Republic of Moldova are regulated by a special law but are subject to the Land Code. The registration of lease rights has its peculiarities in Moldova. Thus, the lease for a period of up to 3 years is registered in a special register maintained by the mayoralty.

At the same time, the experience proved that the registration of the lease (use) rights for up to three years within the mayoralty still rests an ungrounded decision. It was carried out in order to solve (simplify) the process of rights protection through registration, while the municipalities, which were not endowed with the necessary potential, have transformed this important action of rights protection into a formality, an action without a positive effect.

The attempt to substitute the Real Estate Register by another mechanism has reduced the credibility of the registration process.

Superficie. The necessity to apply superficies as a right of use emerged immediately after the privatization of constructions according to the Privatization Program. Privatizing the constructions, the parties not intentionally but omitted from the process the land that then created a situation of conflict for many years.

Obviously, the most applicable form of solving the problem was the implementation of superficies.

The essence of superficies is to acquire a right to land for the purpose of exploiting a construction or even building a new facility. Inevitably, under such circumstances, there is a need of limiting the land included in the superficies and of its registration.

Servitude has so far remained in the framework of land relations a very necessary right to use but poorly implemented. The construction and rational exploitation of various technical public utilities is impossible without implementing the right of servitude. Most of the land within the localities is either public property of the territorial administrative units or private property. The owners of technical-municipal utilities can normally construct or exploit the respective pipes only by applying the right of use (servitude) to the respective land.

The land use right, in the framework of new land relations, remains as a right to manage the land exploitation process by a juridical or legal person on behalf of the owner or empowered by the respective state or local public authorities.

The issue mostly concerns the public land ownership: the creation of enterprises (starting public enterprises); the right to found, use and manage land. All these issues are current in the content of present land relations.

Some features of the land use rights also arise from the category of „abandoned land”. Obviously, these lands need to be managed (rationally used) for a certain period of time. Who will have these rights?

The need for private land management is also a current issue.

Priority right on land. Within the present land relations (relations), the pre-emption right to land concern:

- the land afferent to the privatized constructions;
- adjacent land;
- common property land;
- land destined for the construction of individual houses.

Under pre-emption conditions:

- the owner of the privatized construction will have the priority to acquire the land afferent to the construction;
- the neighbour will have priority to purchase the adjacent land;
- the members of common property will have priority to the alienation of the land by co-owners;
- the young families will have priority to acquire the right to land parcel for the construction of the individual house.

In order to solve public interests, the local public authority also has the pre-emption right.

Restricted land rights. Under current conditions of exploitation of land resources (especially agricultural land), the establishment of some restrictions represents both a social and economic-ecological need.

High quality land. One of the most widespread restrictions relates to high-quality land. Thus, „it is forbidden to use high quality land for other than agricultural purposes”. This restriction does not require strong arguments. It is a problem of society as a whole.

Limiting activities in the sanitary protection areas has an ecological social content. Such restrictions are applied in the areas of rivers, drainage basins, along the roads (highways) of high category.

Limiting the maximum area of ownership right to agricultural land. Based on the world experience, most countries, especially where agriculture is dominant set limits to the maximum area of agricultural land owned by an owner.

The situation in the rural area of the Republic of Moldova, as already mentioned in the chapter „general provisions”, is still complicated. Population dynamics is in a constant decline. Urgent measures are required, one of which could be to restrict the maximum area of agricultural land for an owner and thus to give the possibility to a large number of citizens to set up agricultural enterprises. Thus, it is proposed that the maximum area owned by a citizen should not exceed 300 hectares. The practice of limiting the maximum area of agricultural land is implemented in many EU countries.

Limiting foreigners acquiring property rights on agricultural land. Such restrictions exist in all EU countries. The EU does not allow to acquire property rights on agricultural land to citizens from non-EU countries.

For the sustainable use of land resources, there is a number of ecological restrictions. Thus, restrictions are established on the use of land in the sanitary protection areas, protected areas, green areas, etc.

These restrictions should be registered and brought to the attention of owners. It is obvious that if the owner does not know the content of the restriction he will not respect it.

The obligations of the subject of land relations. Property rights and other land rights are accompanied by the respective obligations.

Obligations on irrigated or drained law. Along with the excessive land fragmentation it became necessary to observe some obligations in the land use process.

These obligations stem from the peculiarities of land irrigation. Thus, the owners, in order to use the irrigation system rationally, will agree to respect the composition of crops and the irrigation period. Under tangible conditions, they will agree to modify the shape of land parcel for the rational use of the irrigation system (drainage).

Discovering the fertile layer of soil. It is a measure observed in all countries based on the non-measurable value of fertile agricultural land. We can also refer here to the payment of compensations for the losses in the agricultural sector (s) because of the exclusion of the land parcels from the agricultural circuit.

Land tax. The payment of land tax remains a fundamental obligation of landowners.

2.2 Protection of land rights

Once the land law emerged, it necessarily requires certain protective measures. Penalty measures for failure to comply with the legislative framework are on second place. World experience has historically demonstrated (for thousands of years) the role and necessity of the land rights registration process for the purpose of their protection (rights).

The experience of the Republic of Moldova in the context of the Land Code (**LPRM 828/1991**) proves that the most serious and largest number of violations of land rights during the period 1992-2017 took place within the land in public property of the state or of the territorial administrative units because of two reasons:

- the lack of registration in the real estate register;
- the lack of owner's responsibility towards the land in public property.

There is still the misconception regarding the land in public property: our land, the land of all, the land of none.

2.3. Land consolidation

Objective necessity. Along with other problems of current agriculture, one of the most important is the problem of agricultural land consolidation. The importance of land consolidation compared to other issues is manifested by the creation of: optimal land parcel sizes and as a result of spatial conditions for the implementation of modern technology, advanced technologies, for the spatial land use planning as a whole.

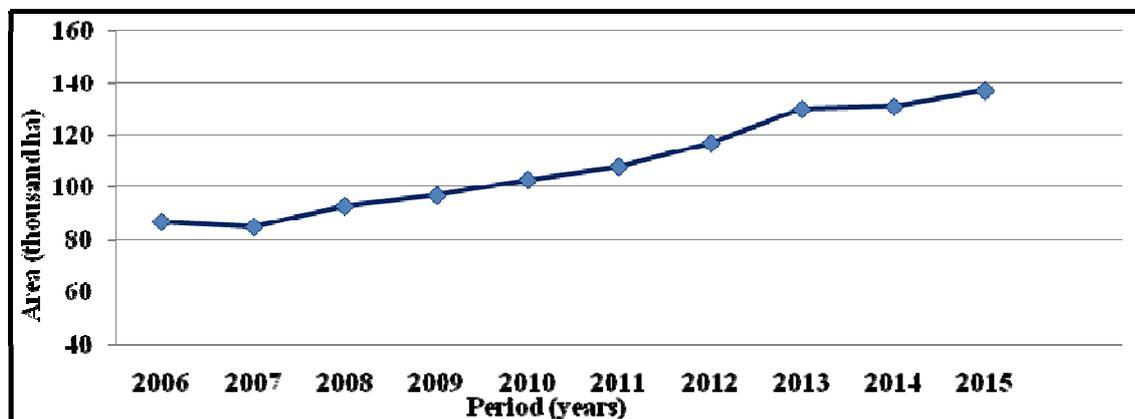


Fig. 2. Dynamics of the agricultural farms in the Republic of Moldova

Source: elaborated by the author

At first sight, consolidation allows us to solve some simple problems, but looking deeply they have a major impact on enhancing the working process and the efficiency of modern agriculture. Current agricultural market severely punishes the producers who do not pay due attention to the profitability and product quality.

Figure 2 shows an example of agricultural land consolidation within the agricultural farms (AF).

The conceptual aspect of agricultural land consolidation lies in the fact that it (consolidation) represents a link in the chain of land relations reform. The first stage of the reform that included land privatization has already taken place (1992-2000).

Privatization has induced the excessive land parceling and fragmentation. The consolidation process will aim to redistribute and optimize the shape and size of private property.

It took too long for us to understand that the problem can't be avoided. The problem has to be solved.

Each stage in the agricultural reform will also create some new problems that also need to be solved in their turn.

The problem of the Republic of Moldova consists in the fact that it has penetrated too deep into the land parceling process. The average land area per country of 1.5 ha in the privatization process was fragmented in 3-5 land parcels at minimum, in many cases in 5-7. Our European partners have been talking lately more and more about the need of agricultural land consolidation.

The FAO has formulated a definition (notion), which stipulated that agricultural land consolidation begins in the merging of some (two and more) parcels in order to form a more optimal one in size. But the privatization process, in turn, caused the emergence of such “phenomena” as indefinite lands. Obviously, the legislative framework at that stage left this “form of law” unresolved. However, it does exist and requires certain formulation.

What really happened? More than a half of the landowners have received legal documents, including property registration in the real estate register. But they do not know the location of the land parcel on the ground. Perhaps there were no problems if there would be a “land mistakes program”.

Given that the owner of the registered land wants its physical identification on the ground, some major problems emerge. Even the authors of those mistakes - the Agency of Land Relations and Cadastre - avoid to solve the problem.

The problem is the one of the owners.

It is necessary that these lands obtain a legal status that would allow to unlock the situation and solve the problems.

An important problem of land relations in the rural area, also caused by the privatization process, is related to the demographic situation, the age of population, the impossibility of the landowner to cultivate the land, etc. The world experience in land relations (including Romania) has applied the “agricultural life annuity”. This practice includes the right of the old people to transfer to local councils their agricultural land for rent or property for an “agricultural life annuity”.

Under the conditions of rational organization, the agricultural annuity has a positive impact on land consolidation and respectively a social impact on older people. Present situation requires the elaboration of a special law in order to implement the agricultural life annuity.

The current real situation of Moldova's agriculture forces us to take concrete and urgent steps in this direction. The future of the whole rural area as well as the statehood of the country depends on agricultural development.

Along with solving the problems directly related to the optimization of land parcels size in Moldova, it is necessary to formulate a state policy regarding the legal organizational forms in agriculture.

2.4. Changing the land use category

Changing the land use category represents an old problem in land relations. The Land Code (**LPRM 828/1991**) did not find the adequate solution to this important issue. From the point of view of the process of regulating land relations, this problem is indeed a current one. The area of forests in the Republic of Moldova compared to the EU average is 2-3 times lower.

As for the water fund, because of the lack of an effective record system, the situation is even worse. Agricultural land is permanently subject to degradation. Generally, the chapter "Changing the land use category" refers to the scenario of transferring the land destined for agriculture to the land destined for constructions, plants, facilities and other special destinations.

The interest in "Changing the land use category" finally consists in the following fact: who will manage the financial resources obtained from the exclusion of land from the agricultural circuit? It is (really) necessary that the financial resources obtained from the exclusion of land from the agricultural circuit be used for the public benefit of the locality from where the agricultural land was excluded.

However, the experience of both the EU and the Republic of Moldova proves that the process of changing the land use category, by its importance and complexity, can't be attributed only to the public authorities of the first level. Local public authorities do not have the possibility to create the necessary mechanism. The reality requires us to change the legal framework, which will observe the following scenario for changing the land use category:

- the initiative of changing the land use category belongs to the landowner who takes such a decision, determines the concrete location of the land parcel, formulates the purpose of the change;
- the decision to change the land use category is coordinated with the mayoralty in order to observe the pre-emption right;
- if the land parcel is not of public interest, the decision to change the land use category should be coordinated with the public institutions specialized in the sanitary, incendiary, ecological, architecture and construction and other fields according to the legislation in force depending on the purpose of the land use change;
- the decision of the landowner to change the land use category, to which the positive approvals issued by the responsible sanitary, incendiary, ecological, architectural and construction institutions, etc. will be attached, is submitted to the central public authority in the field of land relations (territorial cadastral office);
- the territorial cadastral office examines the documents submitted by the landowner and decides on the permission to change the document in the Real Estate Register (changing the land use category);
- in terms of a positive approval, the territorial cadastral office will estimate the amount of compensation for losses in the agricultural field;

- the landowner will transfer the respective financial resources to a special account of the local public authority;
- after compensating the losses in the agricultural field, the territorial cadastral office will change the document in the real estate register and will issue the respective extract from the register for landowner;
- based on the obtained extract on the change of the document in the real estate register, the landowner will acquire the right to use the land for the new land use purposes.

Changing the land use category represents the action to modify the document in the real estate register. The category of land use will be considered modified when the document establishing the status of the respective category is modified by the registrar of the territorial cadastral office.

Such a proposal to change the legislative framework is proposed to be examined by the civil society. Obviously it can be modified. In this chapter the author made an attempt to prove that the economic-land relations during the post-privatization period have passed a long stage of development (evolution). In this context, the legislative framework has evolved and continues to develop.

3. Adjustment of the registration process to the new land relations

The process of rights registration remains the most important protection mechanism. It is impossible to imagine a right in the absence of a protective mechanism. A similar situation has been created at present in the Republic of Moldova.

The land registration process has remained unchanged since the beginning of the privatization. For these reasons, the credibility of legal actions is low. A number of legal rules, because of the lack of possibilities to be viewed, are not respected.

The economic policies are the most affected by these gaps.

A significant example is represented by the need to protect high quality land. This legal norm has a universal content but it will remain just a statement as long as it is not materialized and entered in the cadastral register, as well as respecting the regime of sanitary protection areas. Every physical or juridical person should have the possibility to view the limits of the restrictions established by the legislation and entered in the cadastral register.

Chapter A						
<i>Subchapter II. Property right to real estate</i>						
						The presence of subchapter III Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
nr.	Real estate T,C,I	Data about the owner	Legal document based on which the entry was issued	The share	Date and Registrar's signature	Notes
1	2	3	4	5	6	7
2.1	T,C	Name, surname, date, month, year of birth, personal code, address. The form of entry: tabulated	Land. The title authenticating the ownership rights nr. 34261011001, date of issue. Construction – 34261011001.01 The act of recording on the ground attesting the compliance of construction with project documentation.	1.0 1.0	10.10.2009 10.10.2009	
2.2	I	Name, surname, date, month, year of birth, personal code, address. The form of entry: tabulated	Isolated room – 34261011001.01.001 Tabulated Owner's decision	1.0	20.10.2009	

Fig. 3. The content of Real Estate Register

Source. ARFC

4. Conclusions

1. The economic-land relations are in a constant development and as a result cause the emergence of new rules of law appropriate for the situation. These rules need to be formulated and protected. The protection of all legal norms of law, interests, priorities, as well as monitoring the compliance with obligations, restrictions, etc. can only be done by applying a register of rights to land.

2. The legislative framework regulating the land relations in the Republic of Moldova is not suitable for land relations. The land code established in 1991 is exhausted and another one is not yet elaborated. The lack of the legislative framework puts an end to the effective implementation of social and economic reforms.

It is necessary to elaborate and approve a new Land Code, which will reflect the most crucial problems of the current economic relations.

3. It is necessary to direct the real estate register towards the registration and protection of rights. The coordination of the legal framework and of the land (real estate) rights register content is still an important issue. The Land Register or Real Estate Register can be effective within the specialized cadastres (specialized or functional).

4. The present and most of all the future will create more and more surprises related to the functional dependence of the register of rights, obligations and interests on the development of these rights, obligations and interests.

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