

THE OBJECT OF THE CADASTRAL REGISTRATION PROCESS

Cornelia ȘOIMU, PhD student, Doctoral School, Tehnical University of Moldova, Faculty of Constructions, Geodesy and Cadastre, Chișinău, 41 Dacia St., Republic of Moldova, phone: +37379557632, e-mail: cornelia.soimu@gmail.com

Ion BOTNARENCO, PhD, Republic of Moldova, phone: +37369935639, e-mail: botnarenco50@gmail.com

Ludmila CIUGUREANU, PhD student, Doctoral School, Tehnical University of Moldova, Faculty of Constructions, Geodesy and Cadastre, Chișinău, 41 Dacia St., Republic of Moldova, phone: +37369084568, e-mail: ciugurludmila@gmail.com

Abstract: *Under the influence of the need to raise the level of protection of land rights, the cadastral process, including land registration, merged into the "Cadastral registration process". Starting with this period of development of society, land right is indispensable (inseparable) from the cadastral system, from land measurements (cadastral), from the necessity of its protection. Cadastral registration in cadastre content becomes a "mechanism" for achieving the purpose of cadastre – protection of property rights. But ownership may be limited by restrictions and subject to responsibilities. So, the protection of cadastral registration (objects) spreads not only to property rights, but also to restrictions and responsibilities.*

Keywords: *Registration process, cadastral registration, protection of property rights.*

1. Introduction

Correct determination of the object of registration is a basic element in the process of cadastral registration as a whole. The issue of the object of cadastral registration is a topic of discussion among many authors. The Republic of Moldova focuses on the topic of discussion related to what is the object of registration: land, right or document?

The answer to this fundamental question can be found during the cadastral registration process: protection of the right over land (real estate). This was and remains the purpose of the cadastre starting with the stage of its merger with the land law system.

From the analysis of the evolution of the cadastral registration process we find that the object of the process, starting with its initial stage, was under the influence of answering four fundamental questions: what, who, when and where.

„what” includes land law;

„who” owns the land right;

„when” land law has entered into force or ceased to apply;

„where” is located the land right in space.

The form and content of the object of cadastral registration are determined by the purpose and necessity of the cadastral registration process.

Along the way, the object of cadastre (object of registration – right over land) has passed a long stage of development (evolution), from ownership of land to right of: possession, use, bonds, restrictions, priorities, interests.

2. Object of cadastral registration

The object of registration represents all rights over land accompanied by quantitative, qualitative and legal information. The object of cadastral registration is indispensable to the object of cadastre. The right to land is the object of both the cadastral process and the cadastral registration process. At the same time, the object of cadastre can be analyzed only in the context of its peculiarities:

- The object of registration represents an integrity of two objects from two merged processes: law and land;
- Law is a social category, a set of rules of conduct;
- Land is a limited part of the earth's surface;
- Land law is based on land relations;
- Obiectul relațiilor funciare este terenul.

A carried out analysis of the particularities of land entitlement in this process is proposed based on the following scheme (sequence) shown in Figure 1:

land – object of land relations;

land relations – object of land right;

The right to land – object of the cadastral registration process.

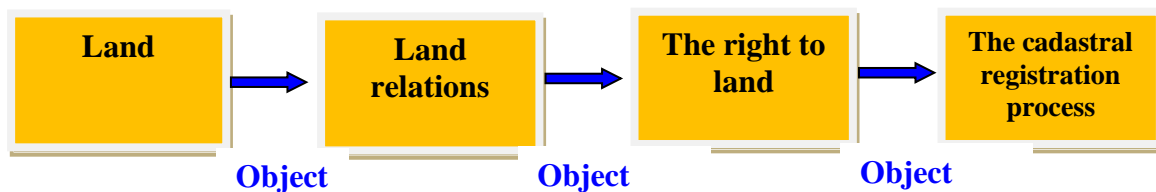


Fig. 1. Evolution of the object of the cadastral registration process

The land by its quantitative and qualitative diversity content, relations on land diversity, the right to land as a derivative of land relations, all taken as a whole, represent an integrity, a chain link of objects (land), phenomena (land relations), categories (land right) and processes (registration of land rights).

The land (real estate) becomes the object of registration only by its integrity with the right over the land. In the absence of land rights, interest in registration is diminished.

The object of land relations became first agricultural land and then the entire land fund (waters, forests, mountains, subsoils, etc.). The diversity of land through its qualities, first of agricultural land then of the land fund as a whole, led to a diversity of land relations. A similar situation can be found in the practice of all countries.

The diversification of the land fund into destination categories is also argued by the content of land relations within these categories. In terms of the content of land relations formed by land intended for agriculture, they will not be similar to those formed under the influence of the fund occupied by forests, the land fund of water, that occupied by constructions, installations and facilities.

So, the term „land” does not apply only to land. It is used in the context of land rights and encompasses the definition of rights below land/seabed (*e.g. mineral rights, tunnels*) and above it in airspace, or in the case of lakes, rivers and marine areas, etc.

Land relations depending on the content and structure of their object (land) form a differentiated content of relations, works, facts, ideas regarding the role of land (land fund) in society.

The regulation of land relations is a function of society. Protection of land rights, recognized as a basic goal of cadastre, cadastral registration process, is also an important component of the regulation of land relations.

Land law as a social category, within land relations, represents a mechanism (methodology) of regulation and, at the same time, an object of the land registration process. The more advanced the land rights registration process will be, the more credible the protection of land rights will be, the more efficient the level of regulation of land relations will be.

The property right is one of the first rights to be subject to registration.

The property right, is a social property relationship regulated by the norms of law, the norms of the Constitution, Civil Code, Land Code, Law. The property right expresses the attitude towards a good like his, it is a real right that gives the holder the real possibility to use the good according to its nature or destination, to use and dispose of it exclusively and perpetually, within and in compliance with the law, the rule of law and good morals. Only ownership gives the holder full power over the property. Other rights (usufruct, right of use, easement, superficies, etc.) allow the holder only possession and use or only one of them, but never the right to dispose of the good, or the right to dispose of the good or to decide the legal fate of the good.

Along the way, to the needs of social and economic relations, the *object of registration* became wider: possession, disposition, use together with other restrictions, responsibilities, obligations, interests, etc.

The right to property is considered as a central right that is restricted by other rights.

Land-related interests can be characterized as identifying things you can do (*rights*), things you can't do (*restrictions*), and things you need to do (*responsibilities*). [1] These three (rights, restrictions and responsibilities) are abbreviated as "RRR" (*right, restriction and responsibility*).

Property rights normally relate to property, while restrictions usually control land use and activities. Responsibilities refer more to a social, ethical commitment or an attitude towards environmental sustainability and good growth. Each of the rights, restrictions and responsibilities comprises a human rights dimension that relates to general national land policies.

The content of the object of cadastral registration includes - categories of land and categories of law. Both land categories and land rights categories develop under the influence of social, economic, ecological factors. In the context of the cadastral registration process, land categories and land law categories are integrated into the „form” of the object of cadastral registration.

Both the form and content of the object of cadastral registration are fundamental elements that evolve in the content of the cadastral registration process. There are known two stages in the development of the form of cadastral registration object: the stage of registration by „deed” and the stage of registration of „title” of right over land.

3. Deed, form of expression of the object of cadastral registration

For a long time (starting with the initial period of the cadastral process) the right to land as an object of protection was (in many countries it still exists) expressed through a set of rights, obligations and restrictions. The action by which the rights, obligations and restrictions

are transmitted to another person has acquired the name of deed. In each specific case, the content of the act of transfer of rights is different. One act is distinguished from another by:

- land shape and content (*land shape; surface, length, width, slope, soil quality, etc.*);
- location and content of rights (*the place is identified by various viewing objects (artificial, natural), terrestrial measurements (geodetic, topographical) fixed by stakes, etc.*);
- the form and content of the rights included in the deed (*a variety of rights, obligations, restrictions, etc.*).

At the initial stage, the object of registration is an act referring to a right over a land, described in detail in the respective register (land) and accompanied by graphic information about the spatial location of the limits of the right.

Thus, we find that at this stage the object of registration represents „*deed*” that includes: the acquisition, formation, transmission, alienation, exchange, etc. of a sector of land. The content of an act as the object of registration includes a wide spectrum of issues (actions).

The deed may also include much smaller rights in terms of content, such as: the subjects' right to graze cattle; the right to place an apiary; the right to hunt, collection of other fruits from the forest, fishing, etc.

The act as an action (form, method, mechanism) of transmitting rights was implemented in practice simultaneously with the recognition of the process of registration of land rights as a mechanism for their protection within the cadastral process. In its capacity, the „*deed*” served the registration process for a long time, starting with the emergence of the cadastral process and ending with the current stage of the cadastral register.

The deed existed in the absence of the obligation to register land rights, and the „*protection of rights*” manifested itself only as a voluntary request of the rights holder. The principle of mandatory registration emerged through the necessity and public interest in implementing a tax policy. The massive volume of information regarding the right to land, the need for correctness, operative analysis of information could no longer be provided by the „*deed*” through its individual content, especially the content of the right included in the deed.

As the object of registration, deeds describing a right are individual by content. Two deeds entered in the register (registered) will necessarily differ from each other.

The purpose of the „*deed*” is to give the object of registration an integral form of expression of content in the process as a whole.

The role of the „*deed*” in the development of the object of registration is significant because it was the basis for the appearance of the object of registration.

Analyzing the historical course of the process of registration of land rights in the Republic of Moldova, we will find a long period of application of the deed as object of registration and, respectively, protection of land rights. An important role in the activity of the system of description and registration of facts was played by the notary system.

It is necessary to recognize another reality that had a major influence on the object of registration. The content of the right to land that was determined in kind did not have a stable, standard content. The law that has become classic and is applied by the whole society, in the content we know, appeared much later.

The implementation of a rights protection system based on cadastre and registration, having as object the protection, registration, totality of rights-producing facts, from the beginning was permeated by a number of shortcomings that were not so obvious at the first stage.

Through deeds, a totality of rights can be transmitted that cannot always be formulated in rules, within the legislative framework to be respected by subjects. Also, not all facts in their quality as the object of registration can be identified in nature.

4. The need to move from „deed” to „title”

Over time, the social necessities of protection of the right to land were modified. First of all, the content of the right to land was diversified (peculiarities of the object of registration). In the second, the role of property rights in society and the need for its protection (social, economic, ecological) increased. It became necessary to establish and comply with forms, principles in the registration process (obligation, massive registration, etc.).

Under these circumstances, the practice of cadastral registration of „deeds” of transmission, co-affirmation of rights becomes difficult to apply. The application of the „deed” as a form of expression of the object of cadastral registration for the purpose of protecting the right to land is becoming less and less applicable.

The essence of the transition from „deed” to „title” as a form of the object of registration consists in „dismantling” the deed from a totality of rights, obligations, restrictions, priorities, interests, etc. Each element of the dismembered „deed” becomes a separate object of registration, „a title” as a form of expression of the object of registration.

The priority of this form of expression of the object of registration lies in the possibility of standardization of titles (rights, obligations, restrictions, priorities, interests, etc.).

In this context, it is important to transfer the form of the object of registration (right to land) from „deed” to „title”.

Currently, the object of registration of land rights in the Republic of Moldova is the „title”.

In the Republic of Moldova, the need to apply the „title” as a „form of the object of cadastral registration” has become topical, starting with the implementation of the land reform, in which land relations, market and private property rights have been legally recognized.

The entire rural population participated in the privatization process in various forms, and the application of the „deed” with its individual content of formalizing the right to land (the object of cadastral registration) became impossible.

5. Title, form of expression of the object of cadastral registration

„Title” is expressed in a standardized written form (contract, certificate, decision, administrative act, etc.) and is protected by law thus raising the level of credibility. Unlike the registered act, the „title” is protected by both law and the registry.

The application of the „title” as the object of registration may be subject to continuous development.

Any problem that occurs can be repaired. If the holder of the bona fide title loses his rights, he will be compensated.

Thus, the register of titles is considered to reflect the correct legal situation and no further investigation is required.

Anything recorded is guaranteed to be the truth to a bona fide third party.

As the object of registration „title” includes rights, obligations, restrictions, priorities, interests:

The current period of the registration process and, at the same time, the vector of social, economic development, including the 2034 Cadastre, orients us towards modernizing the registration process. Already the current situation of the registration process does not cope with both legal development and economic problems. In addition, the registration process faces the need to include in the register a wide range of new restrictions, responsibilities, obligations and interests, not current until recently.

6. Conclusions

- Knowledge about the object of cadastral registration is an important aspect in the process of implementing the cadastral registration process as a whole. Only by knowing the object of cadastral registration can the methodology of registration be developed. This problem is quite topical in Moldova. At the present stage of cadastral process development, it is highlighted a lack of knowledge of the object of cadastral registration depending on social, economic, ecological development. The object of cadastral registration specific to the level of social, economic, ecological development in each country. The „form” and „content” of the object of cadastral registration depend on this factor.
- The cadastral registration process in the Republic of Moldova has to solve three important issues: protection of rights over land (real estate) (spatial, underground, expressed by their volume); implementation of modern economic policies (tax, credit, subsidy, etc.) on the basis of massive valuation of real estate; development of the registration process by developing the object of registration (registration of public restrictions, responsibilities).
- The existing cadastral registration process and, at the same time, the vector of social, economic development, including the 2034 Cadastre, orients us towards modernisation of the registration process. The current situation of the registration process does not cope with both legal development and economic issues. In addition, the registration process faces the need to include in the register a wide range of new restrictions, responsibilities, obligations and interests, which haven't been up to date so far.

7. References

1. Grant, D. *Cadastru 2034. A 10-20 Year Strategy for developing the cadastral system: Knowing the 'where' of land-related rights*, 2014.
2. Botnarenco I., *Problemele cadastrului în Moldova. Universitatea Agrară de Stat din Moldova, Lucrări Științifice, Volumul 11, Chișinău, 2003, p.173-178.*
3. Botnarenco I., Zubco, E., Cotorobai, E. *Cadastru modern sau integritatea multifuncțională a cadastrului. În: Lucrări științifice vol. 46, Cadastru și Drept, 2016, p. 91-96. ISBN 978-9975-64-284-2*
4. Williamson, Ian (1997). *The Justification of Cadastral Systems in Developing Countries, In: Geomatica, Vol. 51, No. 1, 1997, p. 21-36*
5. „Cadastru 2034” Paul Harcombe. *Chair, Intergovernmental Committee on Surveying and Mapping (ICSM). Consultation document. April 2014*