

THE EFFECTS OF APPLYING THE LAW IN CADASTRE ACTIVITY – A COMPARATIVE STUDY OF THE RESOLUTIONS THAT CAN BE ADOPTED FOR THE REGISTRATION OF REAL ESTATE PROPERTIES IN THE LAND REGISTRY

Andreea BEGOV-UNGUR¹, Ioana Aurica BERINDEIE², Levente DIMEN¹

¹“1 Decembrie 1918” University of Alba Iulia,

13 Gabriel Bethlen Street, 510009, Alba Iulia, Romania

²Total Business Land SRL, 5 Bucovinei Street, 510217, Alba Iulia, Romania

Corresponding author email: ioana_berindeie@yahoo.com

Abstract

Starting from the statement "A good cadastre of the parcels will be the complement of my civil code," the fundamental importance of the cadastre in the management of land and real estate properties becomes evident. It provides a detailed and up-to-date record of land parcels, including their owners, describing the boundaries and characteristics of each property. Through this, the cadastre facilitates the implementation and adherence to legal norms regarding property rights and their transfer. In the context of societal development and evolution, a well-maintained cadastre becomes an essential tool for urban planning, natural resource management, and infrastructure project implementation. Furthermore, a modern cadastre system can help prevent legal disputes related to property and serve as a crucial instrument in urbanization and economic development processes. An efficient cadastre is not only a technical necessity but also a fundamental element for the functioning of a coherent legal system and for responsible real estate management, contributing to the establishment and maintenance of a cohesive societal structure.

Key words: property rights, legislative changes, real estate, collectivization, possession.

INTRODUCTION

The study of the effects of applying the law in cadastre activity, through a comparative analysis of the resolutions adopted for the registration of real estate properties in the land registry, represents a research endeavor that warrants the attention and careful analysis of the academic community and decision-makers. This complex and current topic is essential for the preservation and efficiency of land and real estate management systems.

The evolution of legislation in the field of cadastre and real estate is inevitable in a continuously changing society. In this context, the current law regulating the cadastre and real estate publicity in Romania, Law no. 7/1996, represents a crucial pillar in defining the legal framework for land and property management (Badea & Badea, 2015 a).

The year 2023 brought significant legislative changes, highlighted by the modification of Order 700/2014 into the new reception and registration order 600/2023. This legislative change was subsequently adjusted by Decision

no. 6 of 13.04.2021 regarding Minute no. 16893/2753 of 13.04.2021 of the Director of the Real Estate Publicity Directorate and Decision 1255 of 17 July 2023, reflecting the necessary adaptations to the continuously changing societal requirements. Through these changes, the legislation aims to streamline cadastral processes, provide a clear and updated framework for owners, and facilitate the implementation of new technologies within cadastre and real estate publicity activities. It is essential to evaluate and understand these legislative changes to appreciate how they might influence research and practice in the field of cadastre.

A well-defined and clear legal framework regarding the cadastre offers owners confidence in the management system of their properties. By adopting effective resolutions, property rights can be protected, and real estate transactions facilitated, contributing to the stimulation of the real estate market and economic growth.

MATERIALS AND METHODS

Technical and cadastral documentation is prepared based on Law 7/1996 on cadastre and real estate publicity and Order of the General Director no. 600/2023 with subsequent amendments and completions. The technical documentation for initial registration is categorized into the following main types

(Badea & Badea, 2015 b; Pădure et al., 2006):

➤ Initial registration in the integrated cadastre and land registry system; This involves preparing technical documentation for initial registration in the integrated cadastre and land registry system, with the allocation of a cadastral number for:

1. The registration of property rights acquired under property laws:

Law 18/1 991	Law 123/2023	Law 15/1990	Law 1/2000	Law 247/2005
Land Fund	For the amendment and completion of Law 18/1991	Regarding the reorganization of state economic units as autonomous regies and commercial companies	Reconstitution of property rights over agricultural and forest lands	Regarding the reform in property and justice domains, as well as some adjacent measures

2. Technical documentation for initial registration – possession notation (Art. 41, para. (8) of Law no. 7/1996 on Cadastre and Real Estate Publicity, Art. 119 ODG 600/2023, for which no registrations have been made in the last 30 years prior to the coming into force of Law 287/2009 regarding the Civil Code). For preparing the documentation, after measurements are completed, land registry identification will be necessary (required both if the property is located within and outside the built-up area of a locality).

3. Technical documentation for initial registration based on a civil judgment; Given that the judgment noted in the land registry, it must be final, irrevocable, and enforceable.

4. Technical documentation for initial registration – identification of the property located in a different administrative territorial unit (UAT) than the one recorded in the land registry (Art. 120-122 of ODG 600/2023). In fact, this is an update of the old land registry

with current attributes and the registration of the correct UAT. The particularity of this documentation is represented by the "report of finding and cancellation of cadastral number, prepared by the cadastral inspector and approved by the chief engineer, which is registered ex officio in the General Entry Register, based on which the old land registry is terminated".

5. Consolidation of properties registered in the land registry opened according to Decree-Law no. 115/1938, which were not the subject of registration in the land registry by allocating a cadastral number with the appearance of Law 7/1996 on Cadastre and Real Estate Publicity, but have always been part of the same property body; If only part of the property registered in a land registry based on Decree-Law no. 115/1938 was the subject of one of the aforementioned normative acts, it is necessary to detach that part by forming a new property for which a new land registry will be prepared. This procedure will be mentioned in the existing land registry. The unaffected part will be re-registered in favor of the old owners from the old land registry, while the detached part will have a new land registry created. The existing land registry will mention the cadastral number and the land registry number in which the property has been transcribed. Regarding the opening of the new land registry, if the property is assigned a cadastral number, the area and categories of use will be assimilated according to the cadastral documentation, and for the second and third parts of the land registry, the information will be taken. Thus, a land registry decision will be generated, which will be communicated to all interested parts.

Registration in a new land registry is carried out by preparing initial cadastral documentation for the actual measured area of the property, based on the provisions of Art. 41 of Law 7/1996 on Cadastre and Real Estate Publicity and Art. 72, para. (1) of ODG 600/2023.

When referring to the area where the property is located, we will consider the built-up area and outside built-up area of the administrative territorial unit within which it is classified. Thus, concerning these areas, both in terms of address and the choice of suitable and correct documentation type, we will refer.

This refers to the initial registration in the integrated cadastre and land registry system of a property located in the built-up area, where the area determined from measurements may be up to 15% larger and in the outside built-up area up to 5%, otherwise, registration is not permitted. Regarding the categories and subcategories of land use, these are determined based on observations made in the field and the documents proving the legality of the changes made.

In other words, for registration, we distinguish the following cases:

Urban land	Rural land	
	Cooperativism area	Uncooperative area
The categories of use will be entered according to the actual use (of the cadastral documentation). The deviation from the rule is made in the case of vineyards with an area greater than 200 sq m, which will not be able to be modified. Equally, the categories of use will be those in the sentence, if it exists.	The categories of use of the property do not change unless it is removed from agricultural use.	The categories of use will be recorded according to the cadastral documentation (with the updated fiscal attestation certificate according to the location and delimitation plan) or based on a civil sentence, where applicable.

➤ Registration in the cadastral plan of real estate located in the land registry regions subject to Decree-Law 115/1938.

This type of documentation applies if the real estate has not been the subject of registration in the land registry by allocating a cadastral number since the advent of Law 7/1996 on the cadastre and real estate advertising, but it was registered based on Decree-Law 115/1938, in other words in the situation where the land has never been the subject of cadastral documentation. This case should not be confused with the situation in which the real estate comes from the same old land registry, being registered under the title of reconstitution by tabulation of some plots of a property title, in which case correction of the error by conversion is requested.

This will result in a single land registry which will subsequently be subject to the cadastral data update offer.

RESULTS AND DISCUSSIONS

This study refers to the Land Registry of identifying a property, with records dating before 1st of October 1981. It is important to note that the registered owner in the document is not in the direct line of descent of the benefiting family. According to the documentation, the nominal area of the property is 462 m², while actual measurements indicate an area of 528 m². In fact, the property is owned by Mr. Nicolae Popescu, who is also the seller in the transaction that constitutes the subject of this study. It is noted that the real estate transaction will occur between the father and his son, Marcu Popescu. Since the property is located in a cooperative area, as certified by the Cugir City Hall, the following resolutions can be adopted for the property under study:

➤ Technical and Cadastral Documentation for Issuance of the Property Title Based on the Provisions of Law No. 18/1991 on the Land Fund and Law No. 1/2000 for the Restoration of Property Rights on Agricultural and Forest Land. The property title will be issued in favor of Mr. Nicolae Popescu, who is registered in the agricultural register for which a tax certificate can be issued. The technical documentation will be delivered in 3 copies (one copy for the beneficiary, one copy for the municipality, and one copy for the Local Land Fund Commission, which will be forwarded to the Cadastre and Real Estate Publicity Office for verification and approval). Following the issuance of the property title, it will be registered in the land register as the first entry based on the property title. Subsequently, based on the land registry extract and the sale-purchase contract, the notary will submit the registration request to the Cadastre and Real Estate Publicity Office for registration in favor of the new owner.

➤ Technical Documentation for the First Registration Based on Article 41 (10) of Law No. 7/1996, Republished with Subsequent Amendments and Additions. In this case, the atypical document required is the certificate according to Annex 1.51/1 of Order No. 3442/2019, which demonstrates that the owner was a cooperative member, thus enabling him to obtain registration in his favor. For this property, until April 13, 2021, possession could have been noted in favor of the actual possessor. However,

according to Decision No. 6/April 16, 2021, and Minute No. 16983/2753 dated April 13, 2021, attached to it, point b) states that possession "is not possible for properties located in former cooperative zones, regardless of whether property titles have been issued under Law No. 18/1991 on the Land Fund".

➤ Extra-Tabulary Adverse Possession: First Registration Based on a Civil Judgment. Extratabular adverse possession is defined as the situation where the adverse possessor is not registered as the owner in the land register (even though the property has a land register) or the property does not even have a land register. The adverse possessor can claim adverse possession as an exception if sued by the rightful owner or can file a request with the court to definitively consolidate his ownership right. The conditions that must be met by the beneficiary of our work are as follows:

1. Possession of 10 Years: This period can be interrupted due to defects in possession; however, these defects only suspend the process of adverse possession (if they occur). Overall, the possessor must hold the property as a true owner for a period of 10 years. It is possible to combine (junction) possessions when multiple possessors use the property successively. To prove this union or accumulation of possessions, especially regarding the peaceful transfer of possession from one possessor to another, appropriate evidence is needed. The 10-year period refers to the possession of the property, not to the possessors themselves. During these 10 years, there can be 2-3-4 possessors, and the last possessor who completes the legal 10-year period can benefit from adverse possession if he can demonstrate the connection between his possession and previous possessions.

2. A useful Possession: The possession must be unblemished, public/non-secrective, and peaceful.

3. No Land Register or Deceased/Removed Registered Owner: The property must not have a land register, or if there is one, the registered owner in the land register has died or is no longer alive (being removed/dissolved in the case of legal entities), or he has submitted a declaration of renunciation of ownership in the land register. In the case of death or removal/dissolution of the registered owner, the 10-year term begins at the earliest from the date

of death/removal/dissolution, even if the possession began before this event. In the case of a declaration of renunciation of ownership, the 10-year term begins at the earliest from the date of registration of that declaration in the land register.

Once the above conditions are met, based on the technical judicial expertise report prepared by an authorized physical/legal person, a definitive, irrevocable, and enforceable civil judgment will be issued, which will grant ownership that will subsequently be registered.

➤ First Registration Based on the Property Title + Other Successive Documents of the Property. This possibility is viable based on successive documents issued up to January 1, 2005. The explanation for this is that, until this date, extratabular sales and transfers of rights were conducted. Since then, any authentic transaction (carried out through a notary), except for inheritance, could no longer be performed. However, a transaction can be carried out through a handwritten document, regardless of the number of transactions. The documents are registered and recorded in chronological order, and their history is detailed in section B of the land register, which contains information regarding owners and documents. The accelerated digital transformation of cadastral operations, spurred by the integration of GIS technologies, poses notable adaptation challenges for professionals, particularly in terms of aligning with continuously evolving procedural and legislative frameworks (Tereșneu & Tereșneu, 2023).

From an engineering perspective, the imperative to translate conceptual work into tangible, measurable outcomes is a defining professional attribute. In this sense, for easier evidence of cadastral documentation and resolutions that can be adopted we propose an interactive cadastral WEB Page.

This WEB page is designed as an interface between the contractor and beneficiaries and could provide support for all those interested in cadastral operations in the field of cadastre and land registry (employees of cadastral companies, beneficiaries of works, as well as other interested parts from related fields, students, etc.).

The graphical interface of the WEB Page is presented in Figure 1.



Figure 1. Graphical interface of the WEB Page

The WEB Page presented in Figure 1 has the following structure:

- Theoretical concepts;
- Types of documentation;
- Property location;
- Equipment and working methods;
- Resolutions that can be adopted.

The developed WEB Page includes all types of cadastral documentation that can be elaborated according to Order 600/2023 (Figure 2).



Figure 2. The Cadastral Documentation Menu of the WEB page

By selecting a certain type of cadastral documentation from Cadastral Documentation Menu, is shown a list with all cadastral documentation, of that type, elaborated within the company.

By selecting one type of cadastral documentations from the list, the cadastral documentation is displayed as well as all the information regarding that documentation (Figure 3).



Figure 3. Information regarding cadastral documentation

Property location menu - provides information about property localization and help users to locate their properties using cadastral maps and geographic tools.

Also, for each cadastral documentation elaborated, the WEB Page provides information about the topographic equipment used for measurements, the working methods, the solutions adopted and about the resolution that can be adopted.

The WEB Page incorporates current legislation and explains relevant laws, regulations and procedures related to property registration into the Land Registry.

It includes contact forms, chat support or FAQs for user assistance, which allow users to request or submit cadastral documents online and check the status of their cadastral documentation.

CONCLUSIONS

In the context of globalization, adapting to international standards becomes a priority. Comparative studies provide relevant information regarding the need or advantages of complying with these standards, which can contribute to increasing competitiveness at the national or even international level.

Moreover, the results of such a study can serve as a significant contribution to discussions on the legislative reforms needed in the field of cadastre and real estate publicity. This can guide legislative decisions towards optimizing and improving existing processes, ensuring that the legislation reflects current needs and challenges. In conclusion, the examination of the effects of applying the law in cadastre activities is not just

an academic concern but a vital step for ensuring effective and transparent management of real estate properties. It not only reflects but actively contributes to the evolution and efficiency of the legal and administrative system in the field.

REFERENCES

- Badea G. & Badea A.C. (2015 a). A study about new cadastral legislative provisions in Romania correlated with Cadastre 2034, 15th International Multidisciplinary Scientific GeoConference SGEM 2015, 2(2), 21-26.
- Badea G. & Badea A.C. (2015 b). From Cadastral Background of Romania to the Present. *FIG Working Week 2015*, 1-14.
- Pădure, I., Koncsag, E., & Ungur, A. (2006). *General cadastre – Practical work guide*. Cluj-Napoca: Risoprint.
- Tereșneu C.C. & Tereșneu C.S. (2023). GIS facilities for the automation of cadastral documentations. *Scientific Papers. Series E. Land Reclamation, Earth Observation & Surveying, Environmental Engineering*, 12, 371-376.
- Agenția Națională de Cadastru și Publicitate Imobiliară. (2023). *Ordinul directorului general nr. 600/2023*. Retrieved from https://www.ancpi.ro/wp-content/uploads/2023/02/ODG-600_2023.pdf
- Ministerul Justiției. (n.d.). *Legea fondului funciar nr. 18/1991*. Retrieved from <https://legislatie.just.ro/Public/DetaliiDocumentAfis/25>
- Parlamentul României (1996). *Legea cadastrului și a publicității imobiliare nr. 7/1996*. Retrieved from <https://lege5.ro/gratuit/gm2dmobtgy/legea-cadastrului-si-a-publicitatii-imobiliare-nr-7-1996>
- Parlamentul României (2000). *Legea nr. 1/2000 pentru reconstituirea dreptului de proprietate asupra terenurilor agricole și celor forestiere*. Retrieved from <https://lege5.ro/Gratuit/gi3domzz/legea-nr-1-2000>