

CADASTRAL SURVEYS CONDUCTED WITHIN THE REPUBLIC OF MOLDOVA

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Abstract

The paper aimed to present the organization of immovable property registering process encompassed in cadastral works made in Republic of Moldova. It is based on the 828-XII / 25.12.1991 law from Moldova's land code especially on the 12th and 13th articles. The four main registering categories are divided into primary, selective, massive and current recording of immovable property followed up by the principles and objectives of the registering process. An illustration of a primary massive registration of a field acquired under the law reveals a chain of certain particularities concerning content of immovable property, manner of acquiring the property and method of organization of registering process. Acquiring the property rights under the law has its own particularities as well. Further on, the 12th article provides that a committee is gathered in order to establish the various social categories of people that are entitled to receive land as owners whereas actual ascription of property is regulated by the 13th article, both of them assuring the legal foundation on which the right of property is formed. As a conclusion, the forming of immovable property implies the materialization of the right acquired under the 12th article of the land code. Moreover, the 12th article provides a rights authentication title for the land owner issued by central and local authorities.

Key words: *cadastre, immovable property, land code, property rights, registration.*

INTRODUCTION

The recording or registration, in the Immovable goods Book, of basic information and details concerning it and its rightful owner represents a “state registration” due to its content. The four main registering categories are divided into primary, selective, massive and current recording of immovable property. The selective recording represents an action taken by the state that has the purpose of registering an immovable property separately both primarily as current. The current registration represents an action taken by the state that has the purpose of modifying the content of previously written information in the immovable property book. The massive registration represents an action taken by the state that has the purpose of recording in an

organized form more immovable goods found in a specific territory.

MATERIALS AND METHODS

One particularity of the primary massive registration is the fact that it is made without the demand (acceptance) of immovable property owner.

The primary massive registration is made under a state order using centralized financial resources after an unique method. The regulation that initiated the primary massive registration was approved through Government Decision nr. 1030 / 12.10.1998.

The power invested by the Cadastral immovable goods law and Regulation regarding the means of primary massive registration making helped in elaborating instructions (in October 1998) concerning registration of immovable goods and rights to them.

A decisive role in the process of primary massive registration of immovable goods is the correct selection of locality. It is obvious that the success of massive registration depends a great deal on co-operation (support) of public local authorities. Through this local authorities bear some obligations concerning the process of massive registration.

The first cadastral Project in Moldova had the purpose to: elaborate proper legislation, norms and instructions; to coordinate and control massive recording cadastral works. In the process of primary massive registration most private property lands, designated to agriculture were recorded.

The selective registration is made under owner's decision because it is obvious that the potential of such a recording does not satisfy solicitations of all owners in current status.

In such conditions the primary selective registration is applied, which will always be on the map. Therefore primary selective registration is not a periodic activity concerning the implementation step of cadastre but a permanent one that will last throughout the existence of cadastral system.

The primary selective recording has its particularities: in the process of recording, supplementary cadastral works is mandatory: of identification, of determination of immovable goods, etc.

It is important that the applicant of a primary selective recording to correctly formulate its will. However, field reality proves that one will meet a variety of instances that need to be dealt with.

The content of cadastral works will depend a great deal on the structure (content) of immovable good that is to be recorded, such as: a land free of constructions, installations, plannings; a land which has constructions, installations, plannings; a house (multiple constructions) placed on a foreign land; an isolated room (an apartment) belonging to a construction placed on a foreign land; a basement.

Contents of cadastral works, necessary for registering the immovable good will be different in every instance. To all of this cadastral informational system requirements

are added. Nowadays cadastral works necessary for recording immovable goods are made by local cadastral offices; the executor must know all requirements of the unique coordination system used in the informational system, etc.

Learning from other countries' methods, all cadastral works that are connected to immovable goods registration are made by licensed companies in this field, including private ones.

The current registration is made under selective and massive form. Up to now it is concluded that massive registration both primary and current is made mostly out of public interest. However, the private interest in registration of immovable goods is not less important. The right of property on goods can be achieved only if it is registered in the immovable property Book. Only in such a condition a transaction will be legal, possible, protected. This is the main reason of current selective registration of immovable goods.

The primary recording is an inevitable activity in the conditions of cadastral informational System implementation. Moreover, the social-economic development anticipates the creation or disparition of some immovable goods.

The current massive registration is made on purpose of realizing the state economic policy and under various Government programs, for example the one oriented towards realizing the fiscal policy.

Taxation of immovable goods, appointing fiscal payments according to their market value requires a massive market evaluation. For this, gathering supplementary information about immovable goods that are already registered in the Book is required.

The principles of registration: the legal status of immovable goods Book is settled in the cadastral Law of immovable goods no.1543 – XIII issued in 25.02.1998. According to this, the immovable goods Book is the basic document in the practice of immovable goods cadastre (Buzu, 2002).

The information in the above Book will be considered truthful as long as it is not confirmed otherwise. The first actions of

immovable goods registering in the Book were made starting with the year 1998.

The recording of immovable goods is made by respecting some basic principles such as: obligation of registration, public interests of registration, private interests of registration, transparency of registration.

Registering the immovable goods is a compulsory activity and it is dictated by the cadastral Law of immovable goods no. 1543 – XIII / 25.02.1998 (art.5). The compulsory principle comes from the state’s obligation to protect owners rights, and is imposed by the public and private necessity.

Regarding the public interests, the state is concerned that all immovable goods to be registered in the Book, this benefits the fiscal policy of the state as well as ownership protection.

Regarding the private interests, it is in every owner’s interest to have the immovable good registered and rights regarding it. Otherwise an unregistered good or rights concerning it is not recognized by other persons. This can create great difficulties in goods exploitation and having rights about it.

Transparency represents another registering principle, which imposes an open trait of immovable goods registration. The body that makes the recording (cadastral territorial office) is required to issue to any physical or legal entity information about the registered immovable good.

Correct determination of registration object in the Book of immovable goods is of great interest for the informational system of cadastre and it includes: immovable goods, ownership rights on the immovable goods. Immovable good as object of registration can have various forms: a land free of any construction or arrangement, a land that has constructions and arrangements, an open space that has constructions and arrangements, a basement under which there is a mine or another underground construction

In practice, the social-economic necessities impose to register not only the immovable good but also a portion of it. Therefore one can have: the immovable good as a whole, a land

free of any construction, a land together with all the constructions and arrangements, a separate construction, an isolated room, a irrigation system, a vineyard or fruit trees.

No matter the elements of immovable good that are to be registered, all these will be joined to the land (land sector) as a primary unit in the cadastral structure. The Law of immovable goods cadastre no. 1543 –XIII / 25.02.1998 expresses the consecutivity of registration (Book entries).

In cases when constructions, isolated rooms, arrangements, are object of recording, they can be registered only in the conditions in which the land will be registered. The isolated place (apartment) will be registered in the same conditions in which the whole construction will, on the registered land it sits.

Therefore the procedure can be simple or composed. In cases where a land where a construction exists belongs to a person, the construction belongs to another one, and the isolated place belongs to a third person, registration of the whole ensemble of legal connections dictated by the situation given will be applied.

Property right as object of recording arise out from the principle that the good and right over it represents an integral unit. Even though the law in force recognizes the concept of goods “without ownership”, this situation has a short, provisory nature. Despite recognizing that some goods are without ownership it is well known that such goods, during this lack of ownership period, become public property (Figure 1).

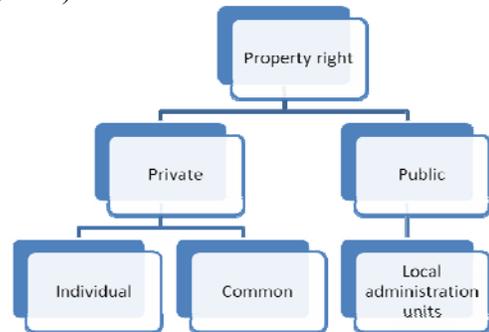


Figure 1. Property rights

For a better understanding of ownership rights as object of registration it is necessary for the

structure of ownership rights to be known. The ownership right is made of: possession right, right to use, disposal right, and a variety of types of property right.

Subjects of ownership rights are owners of immovable goods and other bearers of patrimonial rights: citizens of Republic of Moldova, foreign citizens, stateless persons, legal entities domestic and foreign, international organizations, the Government of the republic (in the name of Republic of Moldova), district and regional councils in the name of local public authorities.

Other real rights given by the Civil Code: usufruct, the right to use and occupancy, easement, the right to use the land, to use it as a deposit.

In a generalized manner usufruct, the usage, occupancy, easement, and the right to use the land, are usage rights that will be recorded according to the law, in the Book of immovable goods. The deposit, being a debt, it is also registered in the Book, accordingly to the law (Gutu, 2003).

Therefore, registration of a usage right can be made only with the condition when the good and property right on it are already registered. In all cases, registering other real rights will be made on demand.

Register entries of immovable goods and rights concerning them in the immovable goods Book are made as recordings by a designated person –a registering clerk. Entries are divided in three categories as follows: registration, provisional entry and the action of taking notice.

Any entry in the Book is identified, i.e. oriented towards a actual immovable good. The cadastral code/number acts as an identifier formulated according to cadastral-territorial structure of the republic. Each entry has a number and the date attached, the clerk being responsible for the accuracy of all entries.

The registration pins ownership and other real rights over immovable rights in the Book, it is not only about making recordings but also about making modifications in the immovable goods Book's file. This is a valid process for all four registration types. Introduction of modifications in the content of the Book is

made through updating the files and Book and rectifying errors.

The update is made on the public authorities' or land owners' initiative, the first being made mostly for fiscal purposes while the latter is made for obtaining a loan (mortgage).

Economic reasoning can bring other reasons for information updating both for public or private interest. Rectifications are in order in cases of technical or juristic errors. According to their content errors can also be divided into the ones that provoked material wrongs and the ones that did not.

Provisional entries are materializing in the acquirement, modification or cancelation of ownership or other real rights.

Acquiring a right through applying a provisional entry can take place in the conditions in which the subject does not hold all rightful documents concerning the good. For gathering all necessary paperwork the clerk establishes terms and can apply a provisional entry.

The provisional entry has only one condition: that the owner, through supplementary papers to justify its right over the good. Such an entry does not translate into an absolute, final right, i.e. its holder will not be recognized as owner until the entry is replaced by registration. However, this entry does not exclude other subject's right to present convincing documents regarding the immovable good and obtaining property rights.

Modifying ownership through applying provisional entries can take place due to some conditions –like passing property rights from one person to another- which are included in the entry. Such a condition can be the mortgage.

When the land owner did not respected the mortgage contract terms, the property right can be modified in the benefit of another person. Cancelation of such a right due to provisional entry can occur if the immovable good is to be terminated; it can also take place due to court orders or mortgage contracts.

It is important to be clarified when the provisional entry will apply in the context of mortgage. It shall be applied only when the

immovable good being on mortgage is sold by owner and when the assets are dealt with.

The action of taking notice refers to registering the debt claim –obligations, assets- and the property right appears consecutively to the recordings made in the Book. The date when the application is forwarded remains as registration date.

This process is made according to the law or by request of the interested parties.

RESULTS AND DISCUSSIONS

In practice, in the recording of immovable goods a chain of certain particularities are found out. Analyzing them proves that they are motivated by: content of immovable good, the way of obtaining rights on the immovable good, method of registration process organization.

Obtaining property rights under the law has its particularities. In such cases the law establishes in detail both subject as well as object of property rights (Ganju, 2000).

The following example of primary massive registration of a land designated for agriculture acquired under the law is relevant for analyzing ownership. Article 12 from the Land Code (law 828 / 25.12.1991) can shed some light regarding ownership under the law.

In the case of the example given, “conditions of the law” formulated by the 12th article are: land councils establish lands that remain in public property, within the territorial-administration unit (sets aside up to 5% from land with agricultural destination for social development needs of the district and sets aside proper places to be used as public grazing fields).

The difference between total surface of the territorial-administration unit and land surfaces assigned to public property makes up the privatization fund. Land councils establish the equivalent share that is attributed to private property.

The content of cadastral works will depend a great deal on the structure (content) of immovable good that is to be recorded, such as: a land free of constructions, installations, plannings; a land which has constructions,

installations, plannings; a house (multiple constructions) placed on a foreign land; an isolated room (an apartment) belonging to a construction placed on a foreign land; a basement.

The authentication of ownership on the equivalent share is achieved through to local public administration resolution, by issuing a ownership paper confirming this right.

The actual assigning of land shares is made in accordance with the 13th article of the Land Code which states the following: location of the land which will be assigned as equivalent shares will be determined by the village (district) or city without the share bearer’s demand, on the basis of territory organization. The project of territory organization, is approved by the village /district /city’s hall, on proposal from land council. When elaborating this project the list of group owners of shared land will be taken into account, as well as the sequence of land assigning (Botnarenco, 2012).

On share’s owner demand, during project development, the village /city hall can decide to actual assign on the spot the share of land and garden from land outside the settlement in one single area.

The share of land that is given on the spot according to the organizational project can be divided depending on the situation in maximum 3 lands (arable land, vineyard, fruit trees).

The above mentioned regulations, extracted from the 12th and 13th article made the legal ground for ownership of arable lands. They precisely establish the object (arable land) and the subject (its owner) of land property.

The 12th article actually transformed itself in a 10 year activity project for the local public authorities. On its basis, central and local public authorities took many important actions: created the lists of persons who obtained ownership over the arable land; determined total surface of lands that were supposed to be assigned in property and their deployment (privatization fund for each town); they calculated the medium surface of arable lands that is supposed to be assigned to someone that had the certain rights; developed

the territory organization project; actually assigned lands to each owner according to the approved list and project; developed the ownership bearer act.

In order for the land surface assigned to each citizen to be determined, firstly, the surfaces for privatization funds for each location were determined. In the process, the following scenario was adopted: arable lands supposed to be kept for social development of the community were determined; from the total surface of arable lands, the ones for social development were excluded; identification of large areas for privatization and an analysis of characteristics was made.

It is important to be mentioned that not all communities were under privatization. The funds designated for privatization in the manner described above were approved through Government resolution.

For determining the surface supposed to be assigned to a citizen was based on the social equity, which applied in the privatization process in Moldova implies that each citizen who will have the right to own arable land will obtain equal share.

In order to find a solution to this issue, the "equivalent land share" formula was applied. Each citizen acquired in property a land that includes an equal grad-hectare number. During that stage it was discovered that an equal number of grad-hectare will respect the social equity principle.

Unfortunately, recent discoveries revealed that this purpose was not achieved, the main reasons being: each community in the republic owned a different privatization fund; equality of grad-hectares number of assigned lands cannot be considered equal from an economic point of view.

Actual locating the land for privatization was made on the basis of a land organization project. The purpose of the project was to minimize the surface factors in privatization process. The projects were developed by specialists in the field of territory organization. The formation of immovable good (land) implies the materialization of the right acquired due to the 12th article of the Land Code. This article offers the required

information but the land itself is determined by some concrete measurements. The land surface calculated according to the 12th article was named "equivalent land share".

The equivalent share of land is connected to the quality of soil this is what differentiate it from a regular surface of land. Therefore, the smaller the share surface is, the higher fertility rate has the soil.

The equivalent share of land represents a product (resulted from multiplication) between the physical surface and fertility rate. Each citizen of a community that according to the 12th article that disposes of right to have a share, obtained a share (a product) equal to everyone's. one of the most important and expensive actions that were ever undertaken in the process of privatization (obtaining ownership on behalf of the 12th article) was developing and establishing actual acquired land.

Assigning actual land was made by applying the "ticket drawing" principle. It is obvious that concerning quality and quantity, lands are different.

In the process of concrete land allocation the degree of kinship was also taken into consideration for assigning them closer one to another. In reality most of citizen's lands were not assigned in nature. Their spatial location was determined in the cadastral plan. Assigning in nature of lands was another step of the allotment process.

It is necessary to establish that the 12th article ascertain the application of ownership authentication title only on condition that the right is acquired without payment in the privatization process.

The ownership authentication title for equivalent share of land is made on grounds of local public administration resolution by issuing a title that confirms this right. Application of the respective title for authentication of other rights will not be valid. Furthermore, in the conditions of the law and by effect of the administrative document public property lands are transmitted in the management of public company or to territorial-administration units.

It is important that this document (ownership authentication title) to coincide with the content of the local council's decision. This decision also includes information about persons, sizes of equivalent land shares that is owned; the document includes information concerning the absolute surface (but not equivalent) and its spatial location on which the ownership spreads.

It is obvious that these two surfaces (from the local council's decision and ownership authentication title) will not coincide in the process of arable land privatization.

Concerning the actual measurement procedure was made in respect to the 13th article of the Land Code, law no.828. For each land an ownership authentication title was issued. In most of the cases, for surfaces of land owned the citizens received multiple titles.

The spatial arrangement is established through the cadastral plan. In the content of ownership authentication title an excerpt from the cadastral plan is also included which establishes the spatial arrangement.

In order to respect the indications given in the local council's decision in the process of releasing the ownership authentication titles, the latter are authenticated by signature of the local council's designated person.

The scenario concerning the registration of a property right on a arable land acquired under the conditions of the law is the following: the local public administration authorities identified through respective titles ownership of land owners, presented the ownership authentication titles to the territorial cadastral offices for primary massive registration; the territorial cadastral offices control the truthfulness of presented documents (in this case the ownership authentication title) writes down in the immovable property Book files, apply the registration stamp on every document, opens cadastral files for each land, gives a copy of the registered document to the owner.

CONCLUSIONS

This paper aimed at proving that at the moment it is hard to imagine economic

relations isolated from cadastre. Being an information system it influences the economy on three important levels: real estate market relations, fiscal policy and property rights protection.

The major economic influence can be both positive and negative, but the cadastral mechanism by its content does not allow economic relations with a strong negative social or environmental impact. Clearly, the constant development of the cadastral informational system will make it be more operative in finding negative economic influences and provide ways for protection.

In general terms the importance of cadastral works is of great importance in drawing up the informational system of a given territory (here Republic of Moldova) being able to rapidly supply with data accurate data to all institutions from various sectors of the national economy.

Because it is conceived as a informational system of all lands and immovable property no matter their destination or owner it can be said that cadastre is for the market economy an important instrument that supplies the documents that give security to all transactions that concern real estate goods. A informational system of modern cadastre can only be created on the grounds of an adequate science and practice.

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