

Current issues in the field of immovable properties' registration and their prospects for settlement

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Abstract

Considering the discussions taking place, in the current period, at national level, in this article are approached specific aspects of different issues relating to the preparation of cadastral documentations and registration of properties in the land book register and possible solutions in order to improve the legal framework.

Keywords

cadastre, real estate publicity, sporadic property registration, systematic property registration, cadastre and land registration law no. 7/1996, ANCPPI's Director General order no. 700/2014.

1. Introduction

- Law no. 7/1996 has put the legal bases of a real system of unified cadastre and land registry for the Romania, designed to replace the old real estate publicity systems that were applicable until the date of implementation of this law.
- The challenge aimed by the unique law was to create normative legal prerequisites of an integrated cadastre and land book system through a gradual and progressive expansion of the new real estate publicity system, based on the cadastral plan of immovables and land books established for each of these properties.

- In support of these issues, it is noted that in the original version, Article 61 of the Law provided that, until completion of implementation of the general cadastre for each administrative unit, registrations having non-definitive character shall be carried in land books, in and upon the completion of the general cadastre, land books become definitive.

- These considerations have been taken into account right from the design of Law on cadastre and real estate publicity and were the motive for which, over time, were developed subsequent enactments, amendments and additions were made to the special law, so that to achieve a regulatory framework for the creation of an appropriate integrated cadastre and land registry system and adapt working methods regarding cadastral measurements, to the practical realities in order to simplify property registration methods, in terms of sporadic registration, but especially in terms of systematic registration of immovables.

- The major importance of cadastre and land book is recognized by the New Civil Code, which pays particular attention to real estate registration, dedicating to this area, of national importance, a title - Title VII, entitled 'Land Registry' in Book III (On ownership).

- In considering these issues, the Civil Code uses for the first time the term cadastral number, thus recognizing the importance of building's unique identifier and confirms the benefits of systematic registration of real estate rights by regulating constitutive effect of entries in the land book applicable following completion of cadastre at the level of an administrative-territorial unit.

- Mission of creating an appropriate regulatory framework by simplifying, optimizing and ensuring the effectiveness, uniqueness, accessibility and unity regarding the operation of cadastre and land registry system, for ensuring the civil circuit of buildings belongs to the National Agency for Cadastre and Land Registration as single state authority in the field of cartography, cadastre and real estate publicity.

- National Agency for Cadastre and Land Registration (ANCPPI) manages in Romania the integrated cadastre

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and land registry system, a uniform and mandatory system of technical, economic and legal evidence of national importance of all immovable throughout the country, having a defining role in the identification and registration of real property that creates the potential to achieve a real basis for evaluation, taxation and guaranteeing of property rights.

- Creating a coherent legislation and a necessary infrastructure for the implementation of best working methods involves political, economic and administrative decisions, to create a conceptual framework and structured actions and coherent solutions regulating situations applicable which cause problems in the practice of local offices, both in terms of cadastre component and real estate component is the main concern of ANCPI.

- No less important is the preoccupation of ANCPI to improve mapping service provided to a wide range of users, by the National Mapping Centre, which provides products and services in the fields of geodesy, topography and cartography.

- Related to these issues, ANCPI drafted Rules of approval topographical plans, reception cadastral works and registration of rights in the land book records, approved by Order of the Director General of ANCPI no. 700/2014, hereinafter called Regulation, normative act that establishes work procedures on registration immovable properties in the integrated cadastre and land registry system, endorsement and acceptance of topographical plans and cadastral works.

- The regulating act, drawn up pursuant to Law no. 7/1996, currently subject to amendment and completion, is a regulatory and problems solving instrument of situations that been reported in the current activity of cadastre and land registry, constituting a guideline for specialized, staff in the regional offices, for collaborators as well notaries, legal or natural licenced surveyors, on the procedures and rules required to be complied with in the cadastre and land registry.

- Also related to ANCPI's role, as regulatory state institution, sole public authority in the fields of cartography, cadaster and real estate publicity, as well as the power conferred by art. 9 of Law no. 24/2000 to give note to normative acts which affect this area, to the authorities concerned in their implementation, depending on the purpose of the legislation, the National Agency will perform all the necessary steps for the modification of the regulatory framework incident to the field, namely the legislation on the construction, planning, civil law, commercial and mortgage-related legislation, etc., in order to eliminate conflicting rules and simplify the procedures for registration of buildings in the integrated cadaster and land register.

2. Current Issues identified in cadastral and land book activity and how to solve them

- In light of the above, showing the permanent concern of ANCPI to design and implement best practices in their activity, there have been identified, in order to solve to solve them out, problems that generate blocking situations to accelerating systematic registration of properties as well as their sporadic registration.

- Amending the Law no. 7/1996, the subsequent normative acts issued for its implementation and the regulatory framework in the field incident or the law relating to building, planning, civil law, commercial and mortgage-related legislation, etc., linked to taking necessary measures for human and material resource allocation to ensure implementation of the measures proposed below, constitutes means to address these problems and improve the cadastral and land registry work.

- The lines below will expose these issues and punctual necessary measures to be implemented in order to solve respective practical aspects identified as possible causes of some negative effects if optimal ways of solving shall not applied that involves clarification, harmonization, revisions and adjustments at strategic, institutional and legal level.

I. ISSUES RELATED TO CADASTRE COMPONENT:

1. Lack of cadastral documentation issuing procedures for registration of de ownership real rights on dismemberments established over a determined portion of the property registered in the land book, registration governed by art. 88 of the Regulation, in which case it is necessary, in order to ensure full enforceability of the right, to reflected in the wording of the cadastral documentation and of the attached graphical annex to the land book, which contains the description of the building, of the part of the building affected by dismemberment;

- WAY OF SOLVING:

- Develop a procedure for issuing the cadastral documentation dedicated to registration of ownership rights ' dismemberments established over a determined portion of the property registered in the land book, ensuring, by amending the e-Terra IT application, the taking over of the wording of cadastral documentation annexed to lad book, of the graphic description of part of the building affected by dismemberment, meaning that it will produce a PAD, accepted through the technical acceptance workflow without cadastral number assignment;

2. The need to settle additional criteria to be respected during preparation of cadastral documentation that concern construction registration in order to ensure

consistency between the reality on the ground and their legal situation, following to the lack from the building permits and the minutes of reception of sufficient evidence to give cadastre inspector the possibility to check compliance with the building permit, verification incumbent as reported to art. 37 Para. (5) of Law no. 50/1991, according to which "Constructions erected without building permits or in breach of its provisions, and for which have not been made the reception on completion of works, according to the law, shall be considered as finalized and cannot be tabulated in the land book."

- WAYS OF SOLVING:

- Completion of the provisions of the Regulation regarding compulsory attachment to the cadastral documentations whose subject is registration of construction, of the plans attached to the building permit, procedure which is applicable until the amendment of Law no. 7/1996 as proposed in paragraph 26 bis of Pl-x -131 / /2014, through which it is provisioned the modification of art.36, Para (1) of the Law, according to the following provisions "Ownership right of the building is registered in the land book under a attestation certificate provided by the local authority which is issuing the building permit confirming that the construction was erected according to building permit and minutes from completion of reception exist" . If this provision is approved, responsibility for certifying compliance with the provisions of the building permit to complete the construction will return to local authority issuing the permits, and the specialists from the regional offices will be relieved of such verification;

3. The lack of detailed rules governing the technical method of preparation of the fitting to the Tarla plans, regarding the determination of the limits of tarla respectively by measurement or by digitization;

- WAYS OF SOLVING:

- Completion of the provisions of the Regulation, by introducing digitization of cadastral measurements as an alternative method, used for determining the Tarla limits;

4. Omission of regulation for adjoining and detachment of individual units respectively apartments, despite the fact that special legislation provides so, and the issuance of permits for any kind of construction works, redevelopment, restructuring, etc.;

- WAYS OF SOLVING:

- Completion of the provisions of the Regulation, by expressly regulating and detailing procedure for the issuing of documentation on condominium and individual units or apartments, including the clarification of ways to draw up sketches and of reports and documents required to be submitted as justification for this operation, based on special legislation, namely art. 3 Para. (1) of Law no. 50/1991 which states the necessity of issuing permits for reconstruction, consolidation, modification, extension, rehabilitation, repair or change of destination, and the provisions of art. 648-659 of the

Civil Code on co-ownership of the common parts of buildings with several floors or flats;

5. Failure to regulate the procedure for removal of the words: "immovable registered in a cadastral plan without proper shape and location" - notation which is designed to warn third parties on uncertain technical situation of the building, so that the absence of a provision establishing mandatory deletion of such note can generate negative consequences such as inability to access real estate loans and breach of the principle of legality of land book entries through reflection of an inaccurate situation on the technical state of the building;

- WAY OF SOLVING :

- Completion of the provisions of the Regulation, by the procedure for deletion of the words: " property registered in the cadastral plan without proper shape and location ", deletion that will be performed automatically on the basis of the note issued by the Cadastre Service of the OCPI stating that buildings no longer overlap in the electronic cadastral plan or the property was correctly located by repositioning, following the restoration of cadastral documentation by agreement or parties or by final judgment in this regard;

6. The failure to regulate the content of the required cadastral documentation for the reception of cartographic documents necessary for public use, although there are many requests in this regard;

- WAY OF SOLVING :

- Completion of Art. 275 of the Regulation with dispositions on the content of documentation for the reception cartographic documents intended for public use;

7. Need for detailing the contents of cadastral documentation issued in the application of art. 1051 par. (3) f) Code of Civil Procedure, which provide compulsoriness for the attachment at the request of usucapio submitted in court, by the plaintiff, of "the technical cadastre documentation of the real estate carried out (...) by a natural or legal person authorized by law"; and of which basis shall be ruled a sentence that ascertains the acquisition of property right;

- WAY OF SOLVING :

- Completing provisions of art. 76 para. (2) Of the Regulation with mentions that refer to the method of issuing, necessary supporting documents to be attached, the service code used to file the application and requirements to be met for acceptance of cadastral documentation drawn up in pursuance of art. 1051 par. (3) f) Code of Civil Procedure relating to adverse possession (usucapio), based on the need to ensure an uniform practice and to the fact that the approval procedure of judicial technical expertise, to which the present provision of the Regulation refer, does not detail these aspects;

8. The need to regulate a simplified way of making parceling plans, needed to unlock particular situations identified both as sporadic registration and systematic

registration of properties, given the issuance of numerous land titles based on analog plans and the status of land inventory is carried out based on Law no. 165/2013 on completion of which will proceed to issue property titles to entitled persons on the basis of parceling plans;

- WAY OF SOLVING :

- Regulating a simplified procedure for making parcelling plans which provide for the possibility of drawing up documentation aimed for the reception of parceling plans based on analogue parceling plans in the archives of municipalities, converted into digital format and integrating data taken from surveys made by authorized persons for the purpose of issuing property titles on their basis;

9. The need for detailed rules of procedure applicable to buildings acquired in extravillan under the laws on property restitution, which passed in the intravillan (see art. 87 of the Regulation) following the approval of the PUZ, PUG, in relation to particular situations in which certain plots of an immovable or the entire immovable situated in a tarla have undergone transition to intravillan and where on such lands constructions have been erected;

- WAY OF SOLVING :

- Completion of Regulation by detailed rules to take into account situations where it is necessary or warranted the drawing up of plans for location in the tarla for buildings that have passed from extravillan to intravillan by punctual description of applicable procedure in terms of buildings fenced in whole or in part, placing the whole immovable or only some components in the intravillan, issuance of a building permit on a land that was located in extravillan, etc;

10. The need to clarify the concept and procedure for amending the buildings' limits, involving in most cases also a change in the immovable's area, by reference to the legal effects of such operations, which may involve impairment of essential attributes of ownership rights, such as the decrease of the area of land in favor of the neighboring building owner, which may be interpreted as a disguised sale;

- WAY OF SOLVING :

- The clear definition of the concept of amending the limits and of the applicable procedure in order to avoid possible confusion regarding the revision and repositioning of buildings for cases where such operations generate area changes, reported the provisions of art. 914 in Civil Code, which governs the amendment of the description of the building, according to which: "The property owner registered in the land book can demand in any moment changing notes contained by the land book regarding the description, destination, or building surface, according to the law.", and the establishment of percentages applicable to surface modifications that are generated by this operation;

11. The lack of a procedure to reposition the buildings from extravillan for situations where there is no parcelling plan;

- WAY OF SOLVING :

- Develop a procedure to reposition the buildings from extravillan, in the absence of parcelling plan in the respective tarla, which relate to the existence / non-existence in the database, of the geometry of the surrounding buildings, in which case the repositioning will follow common rules, being also necessary to detail the procedure for registration and repositioning of buildings from non-cooperativized zones, by regulation of alternative solutions for situations of unavailability or refusal of signing the neighborhood minutes by one of the owners of neighboring buildings, provided that the existing limit to be defined by fences or other natural landmarks easily identifiable.

12. Absence of regulations that address how to handle requests for registration of buildings located on lands that are affected by overlapping, land that had previously been registered in cadastral records based on cadastral documentation prepared in a local reference system, the overlap being ascertained during any type of cadastral documentation preparation in STEREO 1970 system. In this case, clarification of the legal situation of the property, belongs to courts of law, failing agreement of owners of affected neighboring buildings, but this should not affect the registration of ownership rights over construction for the scope of opposability against third parties, especially since the civil Code and Law no. 7/1996 defines the immovable as land with or without buildings;

- WAY OF SOLVING :

- In order to reflect the actual technical state of buildings affected by the overlapping, if registration request of buildings located on them, based on the definition of the immovable and on condition that these building should not be located on the part of the immovable that was affected by overlapping, cadastral documentation is receptioned by mentioning on the PAD the fact that the building is affected by overlapping, mention what will be done also in the land book;

13. The need for special regulations to eliminate the possibility of ruling a legal sentence regarding an immovable, which may not be based on a legal technical expertise approved by the competent territorial office, motivated by the fact that although the Regulation has provided in such cases the possibility to register the immovable in the land book, by appropriately mentioning the overlaps in order to eliminate the risk of formulating criminal complaints against staff involved in processing the application, such a solution does not clarify the legal situation of the immovable, but opens gate for a number of litigations that may relate bordering, corrections of land book entries, etc.;

- WAY OF SOLVING :

- In order to eliminate the risk of issuing court decisions on the immovables, which produce tabular effects containing errors in the immovable's description, and registered in the land book, Code of Civil Procedure

would require an amendment enforcing that expertise reports on real estate prepared in judicial proceedings, to be approved by the competent territorial office. A similar solution should be emphasized in all court proceedings in which judicial decisions have an impact on land registry records. Also reported to the lengthy procedures to amend the Code of Civil Procedure, it is necessary to amend the provisions of art. 57 Para. (1-3) of GEO. 80/2013 regarding judicial stamp duties, in the sense of enforcing technical expertise necessary to draw up legal in all cases concerning property and tabular effect and in situations where buildings are registered in the land books court to consider cadastral documentation received by the territorial office with regard to the technical issues related to immovable;

14. The mandatory allocation of cadastral numbers to distinct portion of the property located in intravillan, respectively to the portion in extravillan of the same building, as there have been reported complaints about the cost of drawing up cadastral documentation for dismemberments, updating cadastral documentation and detachment ones, and in some cases there have been registered mortgage lenders refusing to accept the dismemberment of the building. Agreement of mortgage lenders is mandatory under the provisions of art. 879 Para. (3) of the Civil Code, stating: "The annexation or detachment of encumbered property cannot be done without the consent of the holders of those tasks";

- WAY OF SOLVING :

- In order to eliminate problems caused by costly procedure for updating the cadastral information of the buildings included in the integrated cadastre and land book system, followed by the dismemberment of the building if the buildings have been registered in the land book, crossed the demarcation line between the extravillan and intravillan reported also to the provisions of art. 47 Para. (2) of Law no. 350/2001, under which: "After approval by the local council decision of the PUG and PUZ, municipalities are obliged to submit the decision accompanied by documentation for PUG and PUZ approval to the Cadastre and Land Registration Office in view to update by default the destination of registered immovable in the integrated cadastre and land system " in conjunction with art. 481 Para. (2) of the same law, according to which: "The establishment of intravillan limits through general and zonal urbanistic plans will be made in relation to the development needs of communities within a certain administrative-territorial unit", provisions showing that intravillan limit is dynamic and urban planning special law stipulates the need to update the destination of immovables and not their dismemberment in view of the allocation of separate cadastral numbers, it is appreciated as useful to the repeal of paragraph (4) of Article 2 of Law no. 7/1996;

15. The need to clarify situations which require preparation of cadastral documentation on interrupted

stream in pursuance of Article 131 Para (2) of the Regulation, in order to eliminate the possibilities of interpreting situations in which possession noting requires proper documentation, according to art. 40 Para. (7) of Law no. 7/1996 and the interpretation that these provisions are applicable or not to land books in the area of application of Decree Law no. 115/1938;

- WAY OF SOLVING :

- In order to eliminate the possibility of interpreting the situations in which one can draw on interrupted stream cadastral documentation for drawing up acts and certificates of inheritance or sharing documents based on possession exercised in the name of the owner or author of the succession, it is necessary to amend section 3 of the Cooperation Protocol no. 1404/2010, published in the Official Gazette no. 475 / 09.07.2010, concluded between ANCPPI and UNNPR, meaning to expressly provide impossibility to make such legal acts in the area of application of Decree Law no. 115/1938, where has operated constitutive effect rights so that one cannot appreciate the inexistence of the title, as well as to update references to the text of the Law no. 7/1996

16. The need to clarify cases where it is necessary the issuance and annexation of urbanism certificate to the cadastral documentation to be subject of registration os condominiums, of individual units, etc, related to the regulatory framework;

- WAY OF SOLVING :

- Introducing clarifying rules to every type of cadastral documentation, or operation, stating expressly that the urbanism certificate ought to be attach a component part of the reception and registration documentation and that the person responsible in charge for verification of urbanism certificate relative to art. 29 Para. (2) of Law no. 350/2001, according to which: "Urbanism certificate should be issued for cadastral documentation on consolidation or dismemberment of at least three land parcels, where those operations concern apportioning or aggregations of plots required for the achievement of construction and infrastructure and the establishment of an easement of passage on an immovable. In the situation of property sale or purchase, planning certificate contains information on the legal consequences of the transaction, while requesting of urbanism certificate is optional when apportioning operations or amalgamations of parcels are subject to giving up joint property, unless the request is made for the purposes of the construction and / or infrastructure works. " ; Also, based on these provisions it is necessary to amend the text of the Law no. 350/2001, to expressly provide that entity has an obligation to check the issuing of urbanism certificate in these situations, respectively the notary public, executor, liquidator or specialized staff in the regional offices;

17. Lack of procedures to enable authorized natural and legal persons access to the information managed by the e-Terra information system, in view of download and uses them in the technical cadastral documentation.

- WAY OF SOLVING :

- In order to enable authorized natural and legal persons to access to the information managed by the e-Terra information system, to download and use them in the technical cadastral documentation, it has been developed a procedure which includes also an annex with terms and conditions, to be approved by Order of the Director General of ANCPI in application of Art. 3 Para. (6) of Law no. 7/1996, according to which: "Providing online cadastre and land book services can be made available to other interested natural and legal persons in accordance with procedures established by normative order of the Director General of the National Agency.";

II. CURRENT ISSUES IN THE FIELD OF REAL ESTATE PUBLICITY:

1. The need for regulation at the level of detail of the procedure for registration of public or private buildings of state and territorial administrative units for situations where statements describing the building of the centralized inventory of goods in question, attested by the Government under the law or the Property Act such as expropriation decree does not correspond with reality on the ground, reported to the fact that the that enrollment in the land book of the immovable is seen as a prerequisite for the update of the Annex to the Government Decision no. 1705/2006 respectively of the inventory position where the property is found, are issues that have generated many difficulties in the proper administration and management of the state public domain;

- WAY OF SOLVING :

- To allow registration of ownership of immovable property belonging to the public domain of the state where their description in the centralized inventory does not correspond with the real situation on the ground, can be achieved based on the documents referred to in art. 40 Para. (5) of the Law, which can be filled in, to make up with inadequacies on the individualization of immovables, with a certificate issued by the legal representative of the State or public legal person who has the right to manage, use or lease on the building, certifying the identity between the property identified by the cadastral documentation with the one in the legal supporting document.

2. The elimination of the interpretation of the shape of the supporting documents, land registry operations and charges levied for the relocation of mortgage right as a result of its surrendering by any of the forms permitted by law such as novation, subrogation and assignment of debt guaranteed by mortgages ;

- WAY OF SOLVING:

- Reported to tabular effects of entries resulting from the preparation of legal documents which interferes subrogation, assignment of receivables secured by mortgages, novation by change of creditor, i.e. the requirement to mention the quality of mortgage lender

person / entity who subrogee mortgage lender enrolled in part III of the land register, the three institutions should be treated similarly, both in terms of form of the supporting documents and in terms of the operation that is performed on the basis of such acts. In terms of seniority of entries, will be able to make appropriate entries in relation to the legal effects conferred by the Civil Code, that debtor to settle the obligation to the original creditor and the birth of another obligations to the new lender or conversion obligations in a new one. Therefore, amending the provisions of art. 36 Para. (19) - (25) of Law no. 7/1996, because the procedure for registration regarding these legal institutions be treated as one. As regards the form of legal acts that will be the basis for entry in the land register or request legal basis enabling authentic form, are mentioned provisions of art. 888 of the Civil Code which provide that: "Registration in the land book shall be based on the authentic notarial document, the final court decision, the certificate of inheritance or under another act issued by administrative authorities, in cases where the law provides as so.";

3. The need for regulation at the level of detail of the form of documents and modality of cadastral documentation issuing for first registration, respectively the cadastral documentation for dismemberments issued following the executor's request in the process of foreclosure;

- WAY OF SOLVING :

- Regulation in the Collaboration Protocol between ANCPI and UNEJ, currently under issuing of a provision stating that:" In the situation provided by art. 845 Para. (3) Sentence II of the Code of Civil Procedure, the executor may request, on the basis of cadastral documentation, reception and land book registration of dismemberment in which case it is not necessary to establish authentic act of dismemberment. A document issued by the executor stating that the sale will be conducted separately for a specified part of the building shall represent the justificative act in order to register the dismemberment in the land book." Also, to address issues arising from inability of the executor to obtain in all cases of property acts subject to prosecution under the debtor's property estate it was necessary to regulate the express exception to the rule of art. 28 Para. (1) Law no. 7/1996, as a supporting document of the registration application to be submitted in original or certified copy. In this regard, by Pl-x no. 131/2014 was proposed by UNEJ, to place par. (21) Art. 28 of the Law, as follows: "In the case of foreclosures, in the absence of original documents or certified copies, reception and registration application filed under Art. 828 Para. (2) Code of Civil Procedure may be accompanied by a copy of property deed certified by the issuing authority ". Also, pursuant to the Civil Procedure Code, which gives the executor possibility of requesting the establishment of the land book in the name of the debtor, in case of foreclosure the collaboration protocol between ANCPI and UNEJ still

under completion, is detailing component parts of cadastral documentation drawn up in this regard, as well as the necessary format of documents to be considered by the land book registrar, during the settlement of the claim;

4. Lack of correlation of dispositions of Regulation with the current provisions of the Code of Civil Procedure regarding registering rights of property acquired through adjudication, as a result of enforcement by the executor and explicit regulation of legal deeds necessary to erase the noting of levy of execution of the immovable and prohibitions of alienation and encumbrance of immovable, until full payment of the price and of appropriate interest as a result of adjudication of the building with the installment payment;

- WAY OF SOLVING :

- In order to eliminate inconsistencies between the Regulations and Code of Civil Procedure regarding entry that will be based on the adjudication document and the mentioning of document under which basis may be requested to erase interdictions and marking initiation of forced criminal pursuit, it is necessary to amend and complete the provisions of the Regulation, the way of mentioning that based on the adjudication deed will proceed to the intabulation of property rights and notation carried in ex-officio or upon request of an executor, following a forced pursuit start the will be made based document issued by the executor in that purpose;

5. Lack of regulations on how to intabulate property rights of immovables acquired by former law partners, following the voluntary liquidation followed by the erasing of the company, in cases where the certificate issued by the Register of Commerce in accordance with art. 235 Para. (4) Law no. 31/1990 does not identify buildings with land registry data (art. 171 par. (1) of the Regulation);

- WAY OF SOLVING :

- Amendment of art. 235 Para. (4) Law no. 31/1990 Amendment of art. 235 Para. (4) of Law no. 31/1990 in the sense to complete text allowing the entry in the land book based on ascertaining certificate of the ownership of the distributed assets, noting that it is mandatory to identify the property by the confirmation of cadastral number and number of land book;

6. Need for delimitating cases of provisional registration of mortgage right from intabulation cases reported to Law no. 7/1996, the Civil Code and Law No. 190/1999 on mortgage ;

- WAY OF SOLVING :

- Defining cases of provisional registration of mortgage rights related to provisions of Law no. 7/1996, art. 898 pt. 1 Civil Code, according to which: "In addition to other cases provided by law, provisional registration in the land book will be required: (...) if the acquired real right (...) regards or burdens on a future construction" and provisions of art. 31 Para.(2) on Law on real estate

mortgage no. 190/1999, according to which: „ Mortgage established under this law on a future good is registered in the land book if previously was noted the building permit " , can only be performed by amending and supplementing the provisions of Art. 176 paragraph (1) and (2) of the Regulation in the sense of precluding the need to drawing cadastral documentation in this case, noting that the building permit notation will be made provided the attachment to the application for registration of a document confirming accessing a loan for real estate investments, otherwise it would proceed to provisional registration of mortgage right, pursuant to the provisions of the Civil Code;

7. Lack of correlation of the provisions of Regulation to the ones of the Code of Criminal Procedure regarding the necessary documents for noting, respectively erasure of noting of the commencement of criminal action for an entry in the land book made by an offense under criminal law;

- WAY OF SOLVING :

- In order to correlate the special regulations on the matter with the provisions of art. 17 of the Criminal Procedure Code regarding the necessary documents needed for noting, respectively erasing noting of the commencement of criminal action for an entry in the land book by an offense under the criminal law should be amended and completed provisions of Art. 197 of the Regulation;

8. The need to regulate, at the level of detail of the aspects regarding the pricing of particular situations resulting from the conversion of land books to be assimilated to the first registration of the immovable in the integrated cadastral and land registry system, pursuant to art. 39 Para. (3) of Law no. 7/1996;

- WAY OF SOLVING :

- In terms of how to solve the different interpretations given in practice to the provisions of art. 79 Para. 1 of the Regulations is necessary to reconsider the proposal to introduce paragraphs (11) and (12) in relation to the provisions of art. II of Law no. 133/2012, according to which: "Until 31 December 2020, reception of cadastral documentation and opening of land books will be done according to provisions of Law no. 7/1996 republished, as amended and supplemented, with exemption from charges, ex officio or upon request of: ... b) of holders of real rights registered in the land books opened under Decree-Law no. 115/1938; ... " considering useful the proposal coming from OCPI Brasov, according to which are assimilated to the first registration in the integrated cadastre and land book system the cadastral number assignment and the opening of a new land book for the immovable registered into land books issued in accordance with Decree Law no. 115/1938, with the exception of condominiums which are subject of an updating regardless of the type and number of cadastral and land registry operations carried out in this regard .

9. Making more simple the procedures for systematic registration of real property in view to accelerate the registration process, the development of rules providing for exemptions from the regulatory situation concerning the sporadic registration of ownership;

- WAY OF SOLVING :

- Simplification of the systematic registration of immovable was envisaged by the draft amendment to Law no. 7/1996, included in the list of draft laws under debate in the Chamber of Deputies (PL-x no. 131/2014), which provides a series of regulations aimed at reducing costs borne by owners of buildings and to accelerate the procedure of systematic registration of property, consisting of regulations concerning:

- an exemption from direct and indirect taxes owed to the state / local budget in the process of systematic registration in order to speed up the systematic registration process and compliance with the free of charge nature of these works. Note that by GEO no. 6/2015 was abolished mandatory verification of payment of the tax on income from transfer of property, registrars being thus relieved of the responsibility of such checks. The reasoning behind this regulation was that the property registration is not required to be subject to checks for payment of such tax, which certifies the arguments made by ANCPI in the proposed deletion of this provision from the Fiscal Tax Code, which had the effect of making it impossible, unjustifiably, for the acquirer of an immovable, to enjoy his right, although the quality of taxpayer belonged to the one from whose patrimony the property rights were transferred.

- an introduction under national cadastre and land registry Program of co-financing for systematic registration carried on cadastral sectors, initiated by the administrative authorities as well as for systematic registration works started within the Project CESAR;

- streamlining the update of administrative-territorial units through a similar procedure to the one for setting limits. Correction / updating limits will only be carried by on the basis of ground measurements, which will ensure the principle of systematic registration, reflecting the reality on the ground and allow the urgent initiation of systematic registration.

- Also, by the new draft law on cadastre and real estate publicity, objective of the project "The property - the foundation for national and European policies", conducted with the participation of World Bank consultants, it is intended to promote simplified procedures for systematic registration of property.

- The new draft law on cadastre and real estate publicity has been designed in order to ensure transparency, to simplify systematic registration of property, the basic principle of this record being the massive registration of properties according to the reality on the ground, by focusing on public display.

- In this respect, the draft law includes a number of regulations referring to:

- a public information campaign, which makes public, inter alia, systematic works procedure, their benefits and the rights and obligations of property owners (holders of interests in land and property owners) during this work ;

- registration of land and construction according to the reality identified in the field in favor of their holders;

- registration of possession in fact using a simplified procedure that does not involve authentication procedures;

- procedure of debating the non-debated successions, when conducting systematic registration of immovables;

- a provisional registration of property rights in favor of holders who were issued certificates of ownership and minutes of reinstating of possession, in accordance with land laws;

- a quality control of information will be conducted by outsourcing reception works or by reception prior to the publication of technical documents by the specialists of functional compartments for systematic registration of immovables, established at the level of field offices and at headquarters level;

- a prior announcement on the public display of technical documents locally and centrally, that are published, for public information purposes, on how public display of technical documents of the cadastre is made, in a newspaper of wide circulation, in a local newspaper, at the headquarters of the local council, the local government's website and on the website of ANCPI;

- an extension of the duration of public display for technical documents from 30 days at present to 60 or even 90 days;

- enhancing of public display methods in order to ensure public information by posting at the headquarters of the local council or in another specially place appointed for that purpose by the mayor and on the website of the local public administration and centrally on the website which will be created by ANCPI for this purpose;

- eliminating the land book conclusion from the systematic registration process.

3. Conclusions

Generally the regulations implementing the main normative acts, as in this case the Regulation of approval topographical plans, reception cadastral works and registration of rights in the land book records, approved by Order of the Director General of ANCPI no. 700/2014, issued pursuant to Law No. 7 of cadastre and real estate publicity, shows the procedural rules of work that are in a constant change, as they have direct impact in practical work of both specialised staff in the cadastre and land registry offices, starting with clerks from the register, specialized cadastre inspectors, assistants registrars, registrars , and archive clerks as well as the main collaborators to the integrated cadastre and land

book system respectively persons licensed by ANCPI / OCPI to execute works in the field of cadastre, geodesy, and surveying, public notaries, judicial executors, lawyers and even courts of law in some cases and on special procedures.

This paper proposes participation in public debate on the need to improve current regulations regarding cadastre and land registry, based on the requirements expressed by practitioners, who use these procedural rules in everyday life.

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[5] Regulation of approval topographical plans, reception cadastral works and registration of rights in the land book records, approved by Order of the Director General of ANCPI no. 700/2014

[6] Order no. 1330 / C / 1999 of the Minister of Justice, published in the Official Gazette of Romania.

[7] Pl-x -131/2014 - Draft Law for amending and completing the Law on cadastre and real estate publicity No.7 / 1996 on the agenda of the Chamber of Deputies.

[8] The Government of Romania's Decision nr. 1705/2006.