



Investigation of cadastral real estate registration in Europe

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ABSTRACT

Objective: According to the legislation, cadastral activity in Europe has three functions: technical, economic and juridical. **Methodology:** The technical function is to identify, describe and cadastral registration of real estate documents by their nature, measurement and representation on maps and cadastral plans as well as computer data storage backing. **Results:** the legal function is provided by the identification and registration of all owners and other holders legal of buildings in order to enter in the land register with finality and economic function consists in providing the necessary data system for the correct tax and the tax liability of taxpayers requested by the state authorities of the three functions. **Conclusion:** we refer to the technical function of cadaster, this activity is provided in our country by a particular professional category, that of the Geodesists.

1. Introduction

We suggest in this paper to make an analysis of current status of the profession of geodesist in Europe or to present the history of this profession. We just point out some significant issues regarding the role of the National Agency for Cadastre and Real Estate Registration (ANCPPI) through regional offices in the organization and status of this profession. (Kim, 2015)

2. Materials and methods

In accordance with art. 59 of Law 7/1996 republished, legal acts and deeds of the buildings situated on an administrative territory, for which no documents have been completed general survey will be entered in the a book of land registry. Under the same conditions, shall be registered the ownership titles issued under land laws. The application for registration will be attached to cadastral documentation covered by registration, made by a person or entity authorized by the National or regional offices as appropriate. Documentation content and how to prepare the land shall be established by the Agency. (Choi, 2015)

So, cadastre and real estate advertising law and regulations adopted for its application are normative acts that regulate how cadastral documentation necessary to enter properties in land register and estate records. (Kim 2015)

However geodesist profession is regulated by special law, Law 16/2007, published in Official Gazette no. 43 of 19/01/2007, this bill provides in Art. 1: 'this law regulates the exercise of the profession of geodesist the Order of Geodesists establishment in Europe in accordance with Art. 63 para. (2) of Law No cadastre and real estate advertising. 7/1996, republished, hereinafter Order, as a form of professional organization, independent, autonomous, apolitical, nonprofit and public interest ". (Ahmed, 2015)

The profession of geodesist may be performed by specialists with university degree long or short term the field of geodesy, recognized by the Europe state as well as Europe citizens who have obtained such a document in an EU Member State or EEA European economic. The profession of geodesist can be done by post high school education graduates with qualifications in specialized or professional training courses in geodesy, which have acquired

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appropriate knowledge. The geodesist is exercising the profession both the private sector and in the public sector, as required by law. (Hosseinzadeh, 2015)

Regarding the right to sign, it involves taking the person who carries the entire professional responsibilities to the beneficiary by public authorities on projects and works, by observing the legislation. Exercising the right to sign implies making independent decisions involving the professional nature. According to these regulations, the profession of geodesist may be exercised within individual offices or private companies that operate one or more geodesists with the right signature. (Kang, 2015)

Under special legislative act, Geodetic Order was to authorize individuals which draw up cadastral documentation and not the National Agency for Cadastre and Real Estate Registration, as provided for by Law 7/1996. Therefore, authorization for such operations were conducted by the cadastre officials. (Niranjan, 2016)

Ombudsman notified the Constitutional Court March 20, 2008 with the exception of unconstitutionality of Law 16/2007 regarding the organization and practicing the profession of geodesist, published in Official Gazette of January 19, 2007. Constitutional Court discussed, in November 6, the exception of unconstitutionality of the Law 16/2007 regarding the organization and practicing the profession of geodesist. Thus, the Constitutional Court found that Act 16/2007 regarding the organization and practicing the profession of geodesist, which according to the mention of the Official Gazette, Part I, No. 43 of January 19, 2007, "was adopted by the Europe Parliament, with the provisions of Article 75 and of Article 76 paragraph 1 of the Constitution, republished is unconstitutional. Constitutional Court decision, rendered in a public meeting of November 6, 2008, is final and mandatory. (Niranjan, 2016)

How the framework law governing the organization of the profession has been declared unconstitutional, authorizations of these people were taken again by the National Agency for Cadastre and Real Estate Registration, according to art. 4, letter. d) of Law 7/1996 republished, which provides the task of this institution to authorize individuals and businesses that can perform specialized work in the field of cadaster, geodesy and cartography, in Europe, in special law governing the establishment of a professional union of them. (Leung and Chan, 2016)

In accordance with art. 4 points. 1) of Law 7/1996 republished, National Agency for Cadastre and Real Estate Registration approves technical and valuation by court experts in the specialty of topography, geodesy and land register on the accuracy of topographic data used to request the courts. The opinions above are given by territorial office under a regulation jointly issued by the National Agency and the Ministry of Justice. (Vargas-Hernández, 2016)

Unlike the category of technical experts, the National Agency for Cadastre and Real Estate Registration is not responsible for authorizing and coordinating this professional category. Should be noted that the same person may serve as a person authorized by ANCPI and the legal expert. In this case, depending on activity will submit to the legal rules governing the meeting. (Hildayanti and Alie, 2016)

Taking into account that, as noted, ANCPI approval is does not do technical tasks such surveys only in the accuracy of the data used, it is possible - common - that surveys made (which are part of the court decision) cannot be integrated in the technical data. As a direct consequence, the court decision will not be tabulated. (Varghese, 2016)

According to the European Court of Human Rights, art. Article 6. 1 of the Convention - the right to proceedings in a fair - applies to the realm of enforcement of the court decision, that we consider, and if its tabulation. Therefore, the administrative authorities have a duty to accommodate the operative part entered of the court decision for it in the land register.

3. Discussion and results

In practice, inserting a cadastral documentation database is done by submitting its electronic and paper to meet certain requirements of the IT system. Legal expertise does not meet these requirements and is submitted for registration, while the court decision in analog format. To illustrate, if a court decision out of possession, the newly established buildings will not have geometry on the cadastral plan, while the owners to update their measurements after the rigors imposed by Law 7/1996 of the cadastre and real estate advertising and regulations adopted in its implementation. Such work involves additional costs from the owners, but especially a new operation measurement of the properties, which could trigger a wave of complaints. New measurements, performed this time by a person authorized by ANCPI and financially supported only by one party, the plan should strictly observe legal experts appointed by the court. This latter plan, most often not done in national reference system, thereby an authorized person is impossible to observe strictly the possibility of triggering a new dispute between the parties on the property limit.

This problem, apparently hopeless, was solved by adopting the National Agency and the Ministry of Justice of a common regulation.

Thus, in 2011 a protocol was adopted by the Ministry of Justice undertake to territorial cadastre offices seek advice from before submitting technical expertise in court.

By the Order of the Minister of Justice no. 1882/2011, Regulation of 12/09/2011 was adopted, regarding the technical approval of the judicial valuation issued by the judicial experts in the field of topography, geodesy and land registration, published in the Official Gazette, part I no. 715 in 11/10/2011, which entered into force on the 9th of January 2012.

This legal document provides that the National Agency, by its local offices, approves technically only, regarding the correctness of the topographical data within the judicial valuations of the judicial experts in the field of topography, geodesy and land registration.

The technical approval of the judicial valuation, consisting of the technical reception performed is free of charge.

The judicial experts may request to the local offices, on the basis of the legal papers regarding their nomination and the data of the real estate concerned, free of charge data and documents necessary for performing the cadastral works.

The technical approval of the judicial valuations, according to art. No. 4, let. I of the Law 7/ 1996, republished, is issued by the request of the Court of Law who asked for the valuation.

The responsibility for the correctness of the cadastral plan and for the precision of the work related to the real situation in the field belongs to the judicial expert, who is indebted to perform the measurements in the field.

In order to register the real estate concerned in the lawsuit in the IT system of registration, according to the Law 7/ 1996, republished, the plan of emplacement and delimitation can substitute the cadastral work after the peremptory judgment enters into force.

The local office issues the cadastral number, after the verification of the reliability of the data provided regarding the real estate emplacement in the field and the legal aspects of the registration.

Thus, the judge, appeal has been determined, will know for sure that it can be enforced and that its execution will change the cadastral plan without starting a new dispute between the parties. Unfortunately, this regulation was adopted more than 15 years since the entry into force of Law 7/1996.

4. Conclusion

Persons authorized to perform cadastral works are coordinated by the National Agency of Cadastre and Land Registration in two ways:

According to art. Article 64. (1) of Law 7/1996 republished, Interior Ministry, the Agency is empowered to control the activity of all individuals and businesses, operating in Europe in the fields of cadastre, geodesy and cartography, applying the administrative sanctions;

Technical approval given by cadastral documentation of land services regional offices, providing the opinion is, in our opinion control professional sanction imposed is to reject the work submitted. So, in terms of cadastral documentation work required for its entry in the land register buildings, professional category Geodetic is both professionally and administratively subordinated to the National Agency of Cadastre and Land Registration.

As far as the work of preparation of legal expertise, we believe that we can speak of such subordination, technical advice territorial offices of real estate cadastre and may not censor the technical means of settling the dispute between the parties proposed by the expert judiciary.

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