

THE RESOLUTION OF THE CADASTRE AND LAND REGISTRATION OFFICE AND THE LEGAL REMEDIES THAT MAY BE EXERCISED AGAINST IT

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Abstract: *The publicity of real estate rights, as a component of the legal security of their circulation, is carried out through the land register. Entries in the land register are ordered by the land registry registrar by way of a resolution. The land registry resolution is an administrative act, adopted through a non-contentious procedure, which may be challenged under the special conditions provided by law. The law regulates the possibility of a staged and hierarchical legality review of the land registry resolution*

Key words: *publicity, land register, resolution, re-examination complaint.*

1. Introduction

Real estate publicity represents, on the one hand, a system of legal record-keeping of immovable property, and on the other hand, a means of informing third parties about legal acts, legal facts, material facts, and any other elements that define the status of such properties.

The instrument that ensures the implementation of real estate publicity is the land register. The land register records all information concerning the legal and factual status of immovable property, given that, according to the provisions of Article 855 of the Civil Code, real rights are acquired, modified, and extinguished only through the land register.

Land register operations are carried out upon request, by means of a resolution issued by the land registry registrar, which is subject to the special remedies provided by law, in a staged and hierarchical manner.

The article aims to provide an exhaustive study of the land registry resolution, focusing on its legal nature and on the possibilities offered by law for conducting an effective legality review of such resolutions. The study seeks to demonstrate the importance of understanding these legal instruments made available for ensuring the security of civil transactions and achieving the purpose of real estate publicity.

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2. General Aspects regarding the Land Register

The legal relationships through which real rights are created, transferred, modified, or extinguished revolve around the land register. In a broad sense, the land register represents the system of real estate publicity based on the topographical identity of immovable property, on cadastral technical documents, and on the comprehensive legal record of real rights in immovable property. In a narrow sense, the land register represents an authentic document of a public nature that describes immovable property and indicates the rights, acts, facts, or legal relationships concerning the registered properties, as well as the persons mentioned as holders of those rights (Nicolae, 2006, p. 131). In other words, the land register is a public register that contains a complete and accurate legal record of immovable property within that administrative-territorial unit (Banu, 2021).

Any legal operation concerning the creation, transfer, or extinction of real rights in immovable property is carried out through the land register. For this reason, the land register provides complete and reliable information regarding immovable property and the rights attached to it. This information refers to the identification of the immovable asset and its components, the holder entitled to exercise a right over the asset, the title on which the right is based, certain limitations on the exercise of the right, the encumbrances affecting the registered asset, etc.

The content of the land register is not immutable; it changes as the factual or legal situation of the property changes, as to ensure full consistency between the registered (tabular) situation and the actual situation of the property. The modification of the content of the land register takes place upon the making of entries that effect or record such changes.

Entries in the land register are made upon request. The request may be defined as the procedural act by which a person or an interested authority seeks the registration of an entry, on the one hand, and as the act that vests the land registry registrar with the power to carry out the entry, on the other hand. The request is submitted to the territorial office within whose jurisdiction the property is located and is filed separately for each immovable property.

Regarding the application for registration, the land registry registrar decides by way of a resolution.

3. The Land Registry Resolution

The land registry resolution may be defined as the procedural act by which the land registry registrar rules on the application for registration, ordering either its approval or its rejection.

The competence to issue such a resolution belongs to the land registry registrar within the Cadastre and Real Estate Publicity Office in whose territorial jurisdiction the property is located.

The rules governing the procedure for examining the application and issuing the resolution are those applicable to non-contentious matters.

As for the legal nature of the resolution issued by the land registry registrar, the Constitutional Court stated, by Decision No. 980 of 8 July 2010, that it constitutes a provisional administrative act subject to a special form of administrative litigation regulated by Law No. 7/1996. In line with the opinion expressed in legal doctrine, the Court stated that resolutions by which applications for registration are resolved by the land registry registrar—who is a public official and not a judge—are, by their legal nature, provisional administrative acts that do not have the authority of *res judicata*, since they are not adopted within an administrative-jurisdictional procedure. The registrar has the exclusive competence to verify whether the legal conditions for registration are met, and this competence is exercised by virtue of the administrative function he or she performs. The limits of the registrar's review therefore concern, according to Article 30 of Law No. 7/1996, only: compliance with the formal requirements of the document submitted for registration, and not its substantive validity; the existence of grounds of absolute nullity expressly provided by law (Article 30 paragraph 2); and the fulfilment of specific conditions laid down by the applicable regulations (Article 30 paragraph 2). The High Court of Cassation and Justice held, by Decision No. 102/2024, published in the Official Bulletin, Part I, No. 1273 of 17 December 2024, that “the registrar's verifications cannot be extended beyond the scope of manifest, clear and unequivocal grounds of invalidity, so as not to affect the necessary balance between the fundamental principles of the land register and not to improperly interfere with the judicial review of notarial acts regulated by Article 158 para. (1) of Law No. 36/1995, which the legislature has reserved exclusively to the courts, under the conditions of Article 159.”

The resolution issued by the registrar bears the same number as the registration application and must include the determination of the right or fact, the indication of the cadastral number of the property and of the land register, as well as the part of the land register where the entry is to be made, indicating the positions that have been struck out and the name of the person in whose favour or against whom the entries have been made, regardless of their nature. Furthermore, the resolution must contain the elements provided for in Article 45 paragraph 2 of the 2023 Regulation on the reception and registration in cadastral and land register records, namely: (a) the name of the office and of the territorial bureau; (b) the registration number and date; (c) the name and surname of the registrar and of the assistant registrar; (d) the name and surname or, as the case may be, the designation of the applicant; (e) the object of the application; (f) the document on which the application is based; (g) the fee paid; (h) the legal reasoning for the approval decision, respectively the legal and factual reasoning for the rejection decision; (i) the administrative-territorial unit where the property is located, identified by cadastral or topographical number and land register number; (j) the sequential number of the entry; (k) the type of entry; (l) the modalities of the registered rights; (m) the persons to whom the resolution is to be communicated; (n) the remedy, the time limit for exercising it, and the territorial office or court before which it is to be filed; (o) the signature of the registrar and of the assistant registrar; (p) the date of settlement.

The resolution is drafted in as many copies as are necessary for communication. It is communicated to the person who requested the registration or deletion of a legal act or fact, as well as to the other interested persons according to the entries in the land register concerning the property in question, within 15 days from the issuance of the resolution, but no later than 30 days from the date of registration of the application. The following qualify as interested persons according to the entries in the land register regarding the property concerned: persons who requested the registration or deletion; persons whose registered right or legal fact has been affected by the entry made; persons in whose favour obligations arise from the entry made and whose identity can be established from the contents of the land register.

Each copy of an approval resolution intended for communication is accompanied by an informational extract from the land register attesting the manner in which the entry was made in the land register. By contrast, a resolution rejecting the application does not need to be accompanied by such an extract.

The certification of authenticity and the legal force of the land registry resolution are ensured by the qualified electronic seal of the National Agency.

4. Remedies against the Land Register Resolution

If the solution delivered by the land registry registrar through the resolution is not satisfactory, it may be challenged by filing an application for re-examination.

The application for re-examination represents a special remedy of an administrative nature, by means of which the land registry resolution is subject to a legality review carried out by the hierarchically superior authority.

The general effect of filing an application for re-examination is to vest the chief registrar with the competence to verify the legality of the resolution issued by the registrar. The specific effect of filing such an application consists in the temporary suspension of the course of entries in the land register until a new decision is issued by the chief registrar.

According to Article 31 of Law No. 7/1996 on cadastre and real estate publicity, the holders of the right to file an application for re-examination are interested persons or the public notary. Interested persons are those whose rights or interests are affected by the entry, namely: the person who filed the application for registration in the land register, the person with respect to whom entries existed in the land register prior to the application, and the person with respect to whom entries are ordered by the challenged resolution. With regard to the situation of the notary public, they undertake the necessary steps to effect registration not in their own name, but on behalf of the right holder, on the basis of a legal and special mandate (Dârjan, 2013, p. 330).

The law does not establish the content of the application for re-examination; therefore, it is considered that it must contain at least the following elements (Cioroabă, 2011): the name and surname, domicile or residence of the applicant; identification of the property by land register number or cadastral number, as the case may be; indication of the challenged land registry resolution; the factual and legal grounds on which it is based; and the applicant's signature.

The time limit for filing the application for re-examination is 15 days and runs from the date of communication. As this term is a procedural one, it is calculated in free days, meaning that the first and last day are not included.

The competence to resolve the application belongs to the chief registrar within the Territorial Cadastre and Real Estate Publicity Office in whose jurisdiction the property is located. For the purpose of resolving the application, the chief registrar may request new documents but must rule only within the limits of the application on which the initial resolution was based, without the possibility of modifying or supplementing it through the remedies exercised.

When seized in this manner and within the limits of the initial application, the chief registrar shall rule by way of a decision, admitting, partially admitting, or rejecting the application for re-examination. The time limit for issuing the decision is 20 days. Since the law does not provide for any sanction for failure to comply with this time limit, it may be considered a recommendatory time limit.

The application for re-examination is subject to notation in the land register, and the mention of the exercise of this remedy is made in Part III of the land register.

Against the decision of the chief registrar, interested persons or the public notary who authenticated the deed subject to registration may file a complaint within a procedural term of 15 days from communication, which is also calculated in free days. The complaint is the procedural means available to those dissatisfied with the solution given to the application for re-examination, allowing them to address the competent court and request a judicial legality review of the decision issued by the chief registrar.

The complaint may be submitted to the Territorial Cadastre and Real Estate Publicity Office, which is obliged to forward it to the court of first instance within whose territorial jurisdiction the property is located, along with the file of the resolution and a copy of the land register, without delay but no later than 15 days from registration, so as not to unjustifiably delay the proceedings. The complaint submitted to the territorial office is recorded in the general register of entries under the initial number, indicating the name of the person filing it and the date of submission.

The complaint may also be submitted directly to the court of first instance within whose territorial jurisdiction the property is located, in which case the court will, ex officio, request from the territorial office the transmission of the file of the resolution, a copy of the land register, and the notation of the complaint in the land register. This possibility was introduced following Constitutional Court Decision No. 467/2008 concerning the exception of unconstitutionality of Article 50 paragraph (2) second thesis of Law No. 7/1996 and is justified by the need to ensure the constitutional rights of free access to justice and to a fair trial within a reasonable time. In this case, the complaint is recorded in the general register under the initial file number, without being assigned a new registration number, with an indication of the date of receipt.

The legislator does not establish in Law No. 7/1996 a time limit for forwarding the complaint to the court, nor a sanction for failure to do so; however, this omission is supplemented by the 2023 Regulation, which, under Article 51 paragraph 5, provides that, after verifying the file and making the notation of the complaint in the land register ex officio, it shall be forwarded immediately, but no later than 15 days from registration,

to the court, accompanied by a forwarding address signed by the chief registrar or coordinating registrar, as the case may be, and by the archive officer. The file sent to the court includes: a certified copy of all documents and technical documentation underlying the issuance of the land registry resolution, as well as the decision of the chief registrar resolving the application for re-examination, the original complaint, where applicable, a certified copy of the land register if it has been opened, and proof of service. If additional complaints concerning the same file are subsequently registered, these shall also be forwarded to the court, with indication of the initial registration number.

From the wording of the law, the complaint may be filed only against the decision by which the chief registrar resolved the application for re-examination, and not directly against the resolution admitting or rejecting the application for registration issued by the land registry registrar. Therefore, the application for re-examination constitutes a special remedy within the meaning of Article 94 paragraph 3 of the Civil Procedure Code and represents a mandatory prior administrative procedure before filing the complaint before the competent court. If a court complaint is filed before completion of this prior procedure and finds that it has not been followed, it will reject the claim as inadmissible under Article 193 of the Civil Procedure Code, rather than as premature. The requirement to follow this prior procedure does not contravene the principle of free access to justice, since the right to bring a case before a court is not absolute and is compatible with implicit limitations imposed by the state, if they do not restrict access to a court (Boroi, 2016).

Legal doctrine aligns with the case law of the Constitutional Court, which has consistently held that “the establishment of a prior or administrative appeal represents a simple, rapid procedure exempt from stamp duty, by which a person whose rights have been infringed by a public authority may obtain recognition of the claimed right or legitimate interest directly from the issuing authority. Thus, both the protection of the injured party and of the administration is ensured, and at the same time the administrative courts are relieved of disputes that can be resolved administratively, thereby giving effect to the principle of celerity.” The Court also held that “no constitutional provision prohibits the establishment by law of a prior administrative procedure, without jurisdictional character, such as a hierarchical or administrative appeal.” Moreover, it emphasized that the right of access to justice is not absolute and may be subject to certain conditions. Consequently, the Court ruled that “the requirement to follow a mandatory prior administrative procedure, without jurisdictional character, does not restrict free access to justice, as long as the decision of the administrative body may be challenged before a court” (see, in this regard, Constitutional Court Decision No. 687 of 12 June 2008 and Decision No. 132 of 25 February 2010).

The role of the court in examining the complaint is not merely formal. Thus, “the court, even if it dismisses the complaint filed by the applicant, may rely on additional grounds beyond those considered by the land registry registrars, or may consider that only the solution is correct, not the reasoning. Likewise, the court may find that some of the grounds of the re-examination decision are unfounded” (Toma, 2022).

Although the land registry resolution is an administrative act and, consequently, jurisdiction would normally belong to the administrative courts, according to the legal provisions, the complaint is resolved by the court of first instance. The reason lies in the fact that the resolution concerns a civil right, namely the right of ownership. The competent court is the one within whose territorial jurisdiction the property is located.

Actions having as their object a complaint against a land registry resolution are of a non-contentious nature. In cases concerning land register complaints, the Cadastre and Real Estate Publicity Office do not have passive procedural standing, as established by the High Court of Cassation and Justice in Decision No. LXXII (72) of 15 October 2007. The reasoning is that “in cases concerning remedies against resolutions issued in relation to applications for land register entries, the court is not required to determine the existence or non-existence of a right of the cadastre and real estate publicity office, but only the legality and merits of the challenged resolution; therefore, the office cannot be summoned as a party, the only persons having standing being those interested according to the entries in the land register”.

The judgment delivered by the court of first instance may be challenged only by appeal.

The final court decision, bearing the mention “true copy of the original,” delivered in the case concerning the complaint against the land registry resolution, is communicated ex officio, without delay, to the territorial land registry office for the purpose of making the entry.

The entry made based on the court decision does not operate ex officio but is ordered by a resolution that is not subject to any remedy. This resolution has the nature of an administrative act implementing a court decision. The entry made based on such a court decision produces retroactive effects from the date of registration of the application with the territorial office, and not from the date on which the court decision becomes final.

If the complaint against the application for re-examination is rejected, the notations made are cancelled ex officio. The cancellation is likewise ordered by a resolution that is not subject to any remedy.

5. Conclusion

Entries in the land register are governed by a special procedure carried out based on Law No. 7/1996 on cadastre and real estate publicity and on the 2023 Regulation on the reception and registration in cadastral and land register records. Given their effects and to ensure the legality of the entries made, the law has specifically regulated special review procedures concerning the resolutions issued by land registry registrars. These are the application for re-examination and the complaint.

Knowledge of these procedures is important because it guarantees the possibility of exercising an effective, staged and hierarchical control over land register operations. The need for such knowledge stems from the fact that only accurate publicity can ensure the security of civil transactions and, implicitly, the achievement of the purpose of real estate publicity.

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