CHALLENGES AND TRENDS OF THE REPUBLIC OF NORTH MACEDONIA FOR EFFICIENT AND EFFECTIVE CADASTRAL SYSTEM OF REAL ESTATE

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Abstract

The purpose of this paper is to provide an overview of the current situation, to identify the challenges it faces and the trends the real estate registration system has in the Republic of North Macedonia. This issue is notable for its relevance, given that property rights continue to maintain a key place in the human rights corpus as an economic right, with the Universal Declaration of Human Rights (Article 17) and the European Convention on Human Rights (Article 1 of Protocol 1 to the Convention) at the international level, but also to the Constitution of the Republic of North Macedonia (Article 30), at the domestic level. When it comes to immovable ownership, the one based on legal work is gained by registering in the public register for real estate registration – the Cadastre. It is a public book in which property and the other real property rights are registered, which is managed and maintained through the Agency for Real Estate Cadastre (Agency). The adoption of the Law on Real Estate Cadastre in 2013, and the amendments that followed it, proved the legislator's intention to increase efficiency, effectiveness and accuracy in maintaining cadastral plans in direction of digitizing and updating them. To this end, the Government of North Macedonia has approved the Strategic Plan of the Agency for the period 2020-2022 reflects the priorities and goals, as well as the planned reform processes in the areas under the competence of the Agency for a period of three years, in compliance with the Program of the Government of North Macedonia and its strategic priorities.

Keywords: real estate, registration, digitalization, cadastre, Agency

1. Introduction

One of the key measures needed for a fully enjoyment of the rights deriving from the ownership of the immovable property and functioning of the market is a system for registering legal rights, that right holders can be easily identified and have their rights protected. Poor registration systems had proven that may: (a) create legal uncertainty for current and future owners; (b) prevent transactions for sale or lease; (c) reduces the willingness of investors to invest in the country. The ownership of immovable in the Republic of North Macedonia is evidenced by the Agency, who possesses sole competence for maintenance and registration of real estate rights (such as ownership) and issue appropriate certification on the same in the form of Property Sheets. Additionally, the Registry of Rights over Real Estate, as part of the Central Registry of North Macedonia issues information of informative character on ownership rights, data on land parcels and objects on such parcels, as well as information on liens. Information on immovable ownership registered by the Agency with a Property Sheet is considered as public and contains the name and address of the owner.

Right to own property – the need for legal protection

The right to own property has declained since its inclusion in the Universal Declaration of Human Rights:¹"(1) Everyone has the right to own property alone as well as in association with others; (2) No one shall be arbitrarily deprived of his property". The echoes of such a provision of the Declaration led many documents to include the right of ownership in their texts. So several human rights documents, state that individuals are entitled to enjoy all their human rights without discrimination related to property.² These include the Convention on Elimination of all forms of discrimination against women (Article 15(2)); the International Convention on the Elimination of all forms of racial discrimination (Article 5); and the Convention on the rights of the child (Article 2(1)). Among regional documents,³ Protocol Number 1 to the European Convention for the protection of human rights and fundamental freedoms,⁴ Article 1, also protects the right to own property: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law". The right to property being available to "every natural or legal person", so that companies and building societies may seek protection just as much as any individual.5

At the domestic level, the Republic of North Macedonia, following the example of the majority of countries with advanced systems of guaranteeing and protecting human rights and freedoms, has elevated the right of property to a constitutional level, based on the importance that it has for every person, in particular for its connection with the exercise of other rights guaranteed by the Constitution. Article 30 of the Constitution strongly guarantees the right to property by expressly stating: "The right to property is guaranteed." Subsequently, the same article emphasizes the social function of the right to property, so its use must serve the good of the community: "Ownership creates rights and obligations and must serve the good of the individual and the community".⁶

⁴Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (as amended by Protocols Nos. 11 and 14; supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16),

https://www.echr.coe.int/Documents/Convention ENG.pdf[12.10.2019].

⁵ Peter Sparkes, *A New Land Law* (2nd edition), Oregon: Hart Publishing, 2003, 71-72.

¹Universal Declaration of Human Rights (1948), <u>https://www.un.org/en/universal-declaration-human-rights/</u>[12.10.2019].

²These include the *Convention on Elimination of All Forms of Discrimination against Women* (Article 15(2)); the *International Convention on the Elimination of All Forms of Racial Discrimination* (Article 5); and the *Convention on the Rights of the Child* (Article 2(1)).

³*The American Declaration of the Rights and Duties of Man*, Article 23 guarantees: "The right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home." *The African Charter on Human and People's Rights*, Article 14, states that: "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws".

⁶Constitution of the Republic of North Macedonia, Official Gazette of the Republic of North Macedonia, No. 02/1991 (as amended by Amendments to the Constitution, Official Gazette of the Republic of North Macedonia Nos. 01/1992, 31/1998, 91/2001, 84/2003, 107/2005, 03/2009, 49/2011, 06/2019).

2. Significance and mission of property right registration

Viewed from the perspective of their spatial position, goods are categorized into: movable and immovable. While movables are those that in their whole can move or be moved from one place to another without, at the same time, damaging their essence, immovable goods are those that cannot move or be moved from one place to another without damaging their essence at the same time. Thus, immovable goods within the meaning of the Law on Ownership and other real rights are: lands (agricultural, construction, forest and pasture) and buildings (separate or common parts thereof) as well as installations rose over them or under them and which are permanently connected to them.⁷ It is said that, in particular the public enjoys two vital interests in private land – the right of compulsory purchase and the right to impose a (town and country) planning regime.⁸

Immovable property rights in order to act on everyone (ergaomnes) and in order to be able to defend and oppose all persons must be public in a way that enables everyone to have knowledge of them. If these rights, their content and scope, and their authorizations are known and visible to all, anyone has a chance to understand that those rights exist and that anyone can be required to respect, respectively, refrain from harming them.⁹ Registration is an almost inevitable consequence of having a large number of interests in immovable property. Further, registration plays an important role in recording and simplifying the often complex documentation used in this kind of property transactions.¹⁰ In spite of the distinctive features of the various systems, it is common to all that the publication of immovable property rights is organized into separate records of the public real estate rights registers, which, where provided, represent the only instruments, and exclusive for the registration and publication of immovable property rights. The external overview of these rights is given in the public records, from which everyone may understand what rights, to what extent, and to whom the rights to certain immovable property rights exist.¹¹ The so called land registers are public registers in which immovable goods and immovable property rights are registered, as well as other legal relations and actions related to the legal circulation of the immovable property in question.¹²Yet the registration rules themselves distinguish between legal and equitable rights. In particular, they are entered on the register in different ways; the different forms of entry have differing effects.¹³ As such, these registers in North Macedonia are represented through the real estate cadastre. "Real estate cadastre" is a public book which records the right to ownership and the other real property rights, real property rights data, as well as other rights and facts whose registration is defined by law.¹⁴Thus, the task of land registers is not only to serve as simple evidence of their real estate and real property rights. They must provide the legal way provided for the acquisition of the immovable property rights. Also, such registers enable the provision of security in the process of legal circulation of immovable property.¹⁵ Strongly aided by the

⁷Compare: Article 13 of the *Law on Ownership and Other Real Rights* (Official Gazette of the Republic of North Macedonia, No. 18/2001 as amended by Law Amending the Law on Ownership and Other Real Rights, Official Gazette of the Republic of North Macedonia, Nos. 92/2008, 139/2009, 35/2010. The Decision of the Constitutional Court, No. 173/2007); Article 2(3) of the *Law on Real Estate Cadastre* (Official Gazette of the Republic of North Macedonia, Nos. 41/2014, 115/2014, 116/2015, 153/2015, 192/2015, 61/2016, 172/2016. The Decision of the Constitutional Court, No. 67/2013).

⁸ Peter Sparkes, op. cit., 67.

⁹Nikola Gavella et al., *Stvarno Pravo* (2 izmijenjeno i dopunjeno izdanje), Zagreb: Narodne Novine, 2007, 273.

¹⁰ Roger J. Smith, *Introduction to Land Law* (2nd edition), Harlow: Pearson Education Limited, 2010, 23-24. ¹¹Nikola Gavella et al., op. cit., 276.

 ¹²Petar Klarić, Martin Vediš, *Građansko Pravo* (12 neizmijenjeno izdanje), Zagreb: Narodne Novine, 2009, 304.
¹³ Roger J. Smith, op. cit., 13.

¹⁴Law on Real Estate Cadastre (Article 2(2)).

¹⁵ Petar Klarić, Martin Vediš, op. cit., 304.

principle of publicity, the task in question is the cornerstone of legal certainty. It creates legal certainty for the owner of the immovable property that no one will infringe his property right (and other property rights), because the ex officio registrar takes care of protecting his rights (e.g. the real estate cadastre). On the other hand, the duty of land registers also matters to anyone who has a legal interest in the immovable property in question, through viewing and inspection, may obtain the necessary information about the owner and the liabilities that impose the immovable property. Immovable property rights can easily be technically registered, given that their number in any legal system is limited and expressly provided for in the relevant law. The existence of land registers relates to the past when immovable goods were of key importance to the production economy. Today, although the importance of movable goods is steadily increasing, it is still unreasonable to abandon the use of land registers, as the debate over their transformation, and their adaptation to the needs of time, remains relevant.¹⁶ Furthermore, the computerization of the cadastral system has led today to the management of land registers through an integrated electronic system that is united in one place for the entire territory of North Macedonia. Simply put, to describe immovable property as "registered" means that the title to it (the estate, a right of ownership) is recorded in a register maintained by real estate cadastre and accessed through a number of district land registries around the country or increasingly online. Each title is referenced by a unique title number. In addition to information about the title itself (e.g. quality of title, general description of land and identity of estate owner), other rights and interests affecting the title may be entered on the register against the title number. Thus, while it is convenient to talk of registration of "land", in fact the system is built on registration of title.¹⁷ The fact that our system depends on registration of title, also means that it is perfectly possible for one plot of land to have more than one type of title registered in respect of it. Where this occurs, it is clearly identified on the register and a suitable cross-reference made.

3. Law on Real Estate Cadastre

In 2013 the Republic of North Macedonia adopted the Law on Real Estate Cadastre which replaced the Law on Real Estate Cadastre from 2008. The rationale of the proponent of this Law for deciding to adopt a new law rather than amend and supplement the existing law was the inclusion of a relatively large number of institutes that did not exist in the former law, but also to amend the existing provisions on institutes and procedural activities that existed in the former law and which substantially altered the content of the law. The innovations and changes in question include:

- Establishment of cadastre of infrastructure objects (Chapter XI);
- Geodetic works for special purposes (Chapter VI);
- Surveying and maintainig the state border of the Republic of North Macedonia (Article 58);
- Mass valuatioon of the real properties (Articles 216-219);
- Graphic registry of streets and house numbers (Chapter XIV(2));
- Graphic registry of construction land (Chapter XIV(3)).

In addition, the Law provides for the transformation of the Chamber of certified surveyors into the Chamber of sole proprietors - authorized surveyors and trade companies for geodetic works (Articles 127-136) for the purpose of representing and integrating the mutual interests, protecting the public interests and protecting the interests of third parties.

¹⁶ Ibid.

¹⁷ Martin Dixon, *Modern Land Law* (8th edition), Oxon: Reoutledge, 2012, 28.

Given the fact that the main emphasis in the former law was on the establishment of the real estate cadastre through systematic registration, individual registration and conversion of land cadastre data into real estate cadastre, since the real estate cadastre is already established on the entire territory of the Republic of Macedonia, the provisions governing the establishment of the real estate cadastre are unimportant. At the same time, it was considered necessary to elaborate provisions that would create a legal framework that would precise and upgrade the procedure of maintaining the real estate cadastre and enable updating of the real estate cadastre data, it is stated in the material preceding the adoption of the law.¹⁸

The new Law is expected to increase the effectiveness, efficiency and accuracy of maintaining the real estate cadastre, modernizing the cadastral plans in terms of their digitalization and updating, establishing a cadastre of infrastructures that will enable them to recorded, as well as property rights registration aimed at developing the real estate and mortgages market, calculating real estate and rent values and expanding the existing competencies of Real Estate Cadastre Agency by introducing new registries (Graphic street registry and house numbers and graphic register of construction land). Indeed, consultations regarding the preparation of the Law have been carried out with the holders of infrastructure facilities, the Chamber of Authorized Surveyors, the Notary Chamber, as with the line ministries, it is stated in the material submitted to Parliament before the Law is adopted.

Through this Law, the local legislator intends to legalize the modern conception of the needs and conduct of the survey of state territory according to the unique regulations that apply to the whole country. The standards set in this law have enabled the creation of a single register for the entire spatial content of the entire territory of the country, designed and optimally collected amount of land, surface and sub-surface data. This Law hereby stipulates and regulatesthe management of the geodetic-cadastre information system, the maintenance of the real estate cadastre, the establishment and maintenance of the cadastre of infrastructure objects as part of the real estate cadastre, the basic geodetic works, the geodetic works of special purposes, the real property survey performed in service of the real estate cadastre, the survey and the maintenance of the state borderline of Republic of North Macedonia, the topographic maps, the mass property valuation, the establishment and the management of the graphic registry of construction land, the administration of the spatial units registry, the administration of the graphic registry of streets and house numbers, the supervision over the performance of the sole proprietors - authorized surveyors and trade companies for geodetic works, as well as the status, the organization, the functioning and the authorizations of the Agency for real estate cadastre (hereinafter referred to as: the Agency).¹⁹

4. Agency for Real Estate Cadastre

The Agency has been established to perform the tasks of establishing and maintaining the real estate cadastre, managing the geodic and cadastral information system, as well as establishing, maintaining and public access to the National Spatial Data Infrastructure. In addition, the Agency is a legal entity with rights, obligations and responsibilities determined by the Law on real estate cadastre, and is accountable to the Government for its work. The headquarter of the Agency is in Skopje.²⁰ It operates on the principles of legality, expertise, efficiency, openness,

¹⁸<u>https://www.sobranie.mk/ext/materialdetails.aspx?Id=a8ca14d4-b036-471d-b445-264bd66dc2af&Id=a8ca14d4-b036-471d-b445-264bd66dc2af</u> [11.10.2019].

¹⁹Law on Real Estate Cadastre (Article 1).

²⁰Law on Real Estate Cadastre (Article 6).

service orientation, professionalism and responsibility for the work and results achieve.²¹The powers of the Agency are expressly provided in the Law:²²

- Establishment and management of geodetic-cadastre information system,
- Performance of basic geodetic works,
- Real estate survey,
- Registration of real estate rights,
- Establishment and maintenance of real estate cadastre,
- Geodetic works for special purposes of significance to Republic of North Macedonia as defined by the Government,
- Production of state topographic maps,
- Administration of a Spatial Units Register,
- Establishment, maintenance and public access to the National Spatial Data Infrastructure,
- Supervision over the work of the sole proprietors-authorized surveyors and trade companies for geodetic works.

The Agency is managed by a Steering Board, comprised of five members, each representing the Ministry of Finance, Ministry for Transport and Communication, the Ministry of Environment and Spatial Planning and the Ministry for Agriculture, Forestry and Water Supply.²³

5. Taken measures, mission and expected results

In order to improve the professional-geodetic service of the citizens, the Government of North Macedonia, at its session number 173 held on December 28, 2019, adopted the Strategic Plan of the Agency for Real Estate Cadastre. The Government's approval of this plan is based on the Law on Real Estate Cadastre (Article 4(2)) according to which: "The Strategic Plan [...] shall be adopted by the Government of Republic of Macedonia, at the motion of the Agency for real estate cadastre for a period of three years, and when needed can be amended or supplemented".

Strategic Plan of the Agency for the period 2020-2022 reflects the priorities and goals, as well as the planned reform processes in the areas under the competence of the Agency for a period of three years, in compliance with the programme of the Government of North Macedonia and its strategic priorities. The purpose of this document is to develop strategy for the Agency for the period 2020-2022 which will be focused on the users, creating an efficient, reliable and secure electronic geo-cadastral information system, as well as strengthening the institutional capacities.

The Law amending the Law on real estate cadastre ("Official Gazette of Republic of North Macedonia" No.124/2019), is expected to improve data quality entered in the real estate cadastre, facilitate the procedures and simplify the procedures for registering real estate with unregistered rights, thus increasing the interest of Agency's service users. 75% of the activities have been realized upon the prepared and adopted Action Plan for registration of property rights to cadastral parcels in cadastral areas of North Macedonia with previously surveyed cadastre in 2019. Pursuant to the legal amendments in the forthcoming period, Action Plan will be prepared for registration of property rights to cadastral parcels in North Macedonia based

²¹Law on Real Estate Cadastre (Article 7).

²²Law on Real Estate Cadastre (Article 8(1)).

²³Law on Real Estate Cadastre (Article 9).

on the existing cadastral records –land cadastre, which have unregistered rights for cadastral areas with the previous census cadastre.²⁴

The proposed amendments derive from the Information on Proposed Measures to Improve the Business Environment in line with the recommendations of the World Bank "Doing Business 2018 Report", adopted by the Government of North Macedonia, in order to improve the ranking of the country in the "Property Registration" indicator, which recommends the Agency to amend the Law on real estate cadastre in order to improve the quality of the data recorded in the real estate cadastre, including the Agency's error correction mechanism; and the reduction in the percentage of unregistered rights in the real estate cadastre, which is why most of the proposed provisions regulate this matter.²⁵ This also for the fact that it is considered that the existence of an efficient and reliable system for recording, managing and storing immovable rights data is a guarantee for easier transfer of immovable property, increased investment (not only by domestic but also by foreign investor) and the generation of money, respectively the increase of wealth.

Finally, the Agency, for the purpose of realization of the strategic priorities and goals of the Government of North Macedonia, determined three priorities for the period 2020-2022:²⁶

- Strengthening the service-oriented institution character of the Agency;
- Establishing efficient, secure and safe digital Geodetic Cadastre Information System (GCIS);
- Strenghtening Agency's institutional capacities and cooperation on national and international level.

In such a period, the Agency will realize strategic programs for the purpose of realization of aforementioned priorities. The programs contain measures and activities deriving from our mission and their implementation should be considered as one step closer to achieving Agency's vision and the key Performance Indicators (KPI).

6. Conclusion

The importance of the real estate registration system is a consequence of the data included in the register. Thus, the register of immovable property includes all information related to the immovable property identity of its owner, the boundaries of the property, the date of registration and the relative deed of ownership acquisition and plans that show the location of property. In addition, any mortgage, easement, usufruct, right to use or any other right connected to or deriving from the immovable property that is transferred to any third party, should be recorded in the register. The seriousness of North Macedonia in terms of improving and further developing the real estate registration system is argued by the approval by the Government of the Strategic Plan of the Agency for real estate cadastre and the concrete steps taken by both the Government and the Agency and other competent bodies, in terms of engaging and materialization of this Strategic Plan. The real challenge of the cadastral system in North Macedonia remains the establishment and implementation of the 3D Cadastre as a global trend and a new approach to how to register real estate and rights to those real estate. Moreover, the purpose of the recent amendments to the legal provisions is to improve the business climate in the country by improving the quality of data registered in the real estate

²⁴*Strategic Plan of the Agency for Real Estate Cadastre (for the period 2020-2022)*, 6, http://www.katastar.gov.mk/wp-

content/uploads/2019/03/zakon za katastar zakon post tekst.pdf[6.1.2020].

content/uploads/dokumenti/strateski_planovi/Strateski_plan_AKN_2020.pdf[6.1.2020].

²⁵Proposal Law amending the Law on Real Estate Cadastre, <u>https://www.pravdiko.mk/wp-</u>

²⁶ For more see *Strategic Plan of the Agency for Real Estate Cadastre (for the period 2020-2022)*, 18-19.

cadastre, increasing the percentage of rights registered in the real estate cadastre that is expected to result in strengthening trust in public registers, as well as increasing the transparency of institutions as a public service to citizens.

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