

## Considerations on the Re-Examination of Land Book Registration Resolutions

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**Abstract:** The adoption of the G.E.O. no. 64/2010 has substantially modified the manner of verification of the resolutions issued by the land book registrar in the field of cadastre and real publicity. One of the advantages of introducing the application for re-examination, is represented by the re-examination performed within the territorial office of cadastre and real publicity by the head registrar, a clerk to whom devolves the effective competence for the settlement of such applications, and who, under the law, is in charge with the real publicity activity within the directed territorial office of cadastre and real publicity. The re-examination as institution, guarantees to the petitioners the right to submit litigation with the territorial office of cadastre and real publicity and the guarantee of the performance of the resolution thus impugned by the head registrar, until the intimation sent to the court through complaint. Nevertheless, the exercise of this means of appeal, involves the cumulative compliance with specific requirements.

**Keywords:** litigation; Land Book Registration Resolution; cadastre

### 1. Introductory Considerations

Real publicity based on the general cadastre records system, has as an object the registration in the land book of juridical deeds and actions, and as finality, the real publicity cadastral registry on the entire country territory. The role of this system is the performance of real rights publicity by means of the two component entities: *the cadastre and the land book*.

By the Law of cadastre and of real publicity of 7/1996<sup>1</sup>, were laid the juridical bases of a unique real publicity system for the entire country, to the purpose of replacing the other existing systems. As it also results from its title, this law regulates within the same normative deed two distinct institutions, but which are conjuncturally interferent: *the technical institution of cadastre and the juridical institution of the new land books*. (Marian, 2006, p. 220)

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<sup>1</sup> Published in the Official Journal no. 61 of 26.03.1996.

The adoption of the R.G.D. no.1210/2004<sup>1</sup>, led to the establishment of the National Agency of Cadastre and Real Publicity, a public institution with juridical personality, and the sole authority in the field under the suborder of the Ministry of Administration and of Domestic Affairs.

The real publicity activity performed through the land book Offices which are under the suborder of the district courts, and the cadastre activity performed by means of the national offices of cadastre, geodesy and cartography of the Bucharest Municipium which are under the suborder of the Ministry of Administration and of Domestic Affairs has been unified, being performed through the territorial county offices of cadastre and real estate publicity of the Bucharest Municipium, under the suborder of which operate the territorial offices of cadastre and real publicity.

The applications for registration in the land book, were settled through resolution, issued by the delegated judge within the land book office and through the performance of the real publicity operations. Following the legislative variations adopted during the year 2004, the jurisdiction devolved to the land books registrar.

The High Court of Cassation and Justice retained in the motivation of the Decision no. 72/2007<sup>2</sup> regarding the examination of the lawful recourse, declared by the general prosecutor of the Prosecutor's Office at the High Court of Cassation and Justice, in terms of the passive capacity to stand trial of the Office of Cadastre and Real Publicity in the land book complaints grounded on the provisions of art. 50, comma 2 of Law no. 7/1996 republished, the fact that, the registrar's resolution, *"although an administrative deed, is not subjected to the control performed by the administrative courts, pursuant to Law no. 544/2004, but to the administrative contentious specially regulated by Law no. 7/1996, republished"*.

In the real publicity field, until the adoption of the G.E.O. no. 64/2010<sup>3</sup>, there were no procedural dispositions by means of which, the petitioners were entitled, though an internal means of appeal, exercised inside the territorial office, to impugn the resolution of the land book registrar, as it occurs, for instance, in the field of administrative law, the preliminary procedure regulated by art. 7 and by the subsequent articles of the Law of administrative contentious no. 554/2004<sup>4</sup>,

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<sup>1</sup> Published in the Official Journal no. 718 of 09.08.2004.

<sup>2</sup> Published in the Official Journal no. 685 of 07.10.2008.

<sup>3</sup> Published in the Official Journal no. 451 of July 02, 2010.

<sup>4</sup> Published in the Official Journal no. 1154 of December 07, 2004.

Chapter II, the Procedure for the settlement of the applications in administrative contentious, the Preliminary Procedure.

## **2. The Procedure for Land Book Resolutions Re-examination**

Taking into analysis the dispositions of the G.E.O. no. 64/2010 regarding the variation and the integration of the Law of cadastre and of real publicity no. 7/1996<sup>1</sup>, we ascertain that significant variations were made within the procedure for the settlement of the complaints against the resolutions issued by the land book registrar, in the field of cadastre and real publicity.

The settlement of the *complaint against the land book resolution* is regulated by art. 50, comma 2, 1<sup>st</sup> thesis of the L.C.R.P. The relevant article was modified pursuant to point 28 and to point 29 of the G.E.O. no. 64/2010 through its reformulation and through the introduction of two new commas, that is, comma 2<sup>1</sup> and comma 2<sup>2</sup> which have the following content:

*Art. 50 - (2) The persons concerned may formulate an application for the re-examination of the resolution of admission or of rejection, within 15 days from the communication, which shall be settled through resolution by the head registrar of the territorial office in the area of which the real estate is located.*

*Art. 50 - (2<sup>1</sup>) Against the resolution of the head registration, issued pursuant to comma (2) may be formulated a complaint within 15 days from the communication. The application for re-examination and the complaint against the resolution shall be deposited with the territorial office and shall be registered in the land book ex officio. The territorial office is bound to submit the complaint to the district court in the territorial area of competence of which is located the real estate, accompanied by the resolution file and by the land book copy.*

*Art. 50. - (2<sup>2</sup>) The complaint against the resolution may be deposited directly with the district court in the territorial area of competence of which is located the real estate, case in which the court shall apply ex officio with the territorial office for the communication of the resolution file and of the land book copy, as well as for the registration of the complaint in the land book.*

The legislative modification brought to art. 50 of the L.C.R.P. introduces a new institution in the field of cadastre and real publicity, there being the possibility that,

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<sup>1</sup> Published in the Official Journal no. 201 of March 03, 2006.

within the territorial office of cadastre and real publicity, against the decision of admission or of rejection issued by the territorial office registrar, be declared *the re-examination means of appeal*, as a procedure preliminary to the intimation of the relevant court by *complaint*. Thus, the persons concerned<sup>1</sup>, the ones to which the law admits the right to formulate a land book registration application, are entitled to request *the re-examination of the conclusion issued by the territorial office registrar*.

The application shall be settled by the head registrar through a resolution by means of which, the “primary” resolution issued by the registrar is re-examined. In our opinion, in such cases, the head registrar may adopt one of the following solutions:

- prescribes through resolution, the admission or the partial admission of the application for re-examination, and
- rejects the application for re-examination<sup>2</sup>.

In case of adoption of a solution of partial admission, in the resolution shall be mentioned the part of application which was admitted, as well as the one which was rejected, providing the reasons for such a decision<sup>3</sup>.

Further to the communication of the resolution of re-examination, the parties may declare complaint in front of the court, within 15 days from the communication, pursuant to art. 50, comma 2<sup>1</sup> of the law.

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<sup>1</sup> Art. 50, comma 1 of the L.C.R. P. – *The resolution shall be communicated to the person requesting the registration or the deletion of a juridical deed or action, as well as to the other persons concerned, according to the land book mentions, with regard to the relevant real estate, within 15 days from the issuance of the resolution, but not later than 30 days from the date of registration of the application.*

<sup>2</sup> Art. 26 of the Regulation for the organization and operation of the offices of cadastre and real publicity approved by the Order no. 633/2006 by the National Agency of Cadastre and Real Publicity – the land book registrar has the following tasks:

a) *disposes through resolution the admission or the partial admission, as the case may be, of the applications for registration in the land book, based on the cadastral documents and on the other documents-in-proof;*

b) *disposes the rejection, through motivated resolution, of the applications for registration in the land book, did such applications not comply with the legal requirements or were they not received by the inspector, based on the note elaborated by the same.*

<sup>3</sup> Art.64 of the Regulation for the organization and operation of the offices of cadastre and real publicity, approved the Order no. 633/2006 by the General Director of the National Agency of Cadastre and Real Publicity, comma 4 – *In the case of the applications which may not be settled but partially, the registrar shall issue a resolution of partial admission, indicating the part of the application which was admitted, and the one which was rejected based on justification.*

Following such modifications, we consider that no complaint may be submitted at the court *against the registrar's resolution*, without the *prior re-examination* of the resolution by the head registrar of the territorial office. The submittal of the complaint against the registrar's resolution would equate with the premature intimation of the court, case when, the complaint would be rejected pursuant to art. 109, comma 2 of the Civ. Pr. C.<sup>1</sup> Moreover, we consider that a re-examination application and a complaint against the registrar's resolution may not be submitted simultaneously, because of the fact that, as it results from the formulation of art. 50, comma 2<sup>1</sup>, the complaint may be submitted exclusively against the resolution issued by the head registrar. Therefore, the reasons why the complaint is submitted, shall take into account the considerations retained by the head registrar in the issued resolution.

As a conclusion, the verification performed hierarchically within the territorial office by a specialist in the field of cadastre and real publicity, respectively by the head registrar, represents a guarantee for the claimant interested in the modification of the initial resolution. The solution of the head registrar, superseeds, in our opinion, the resolution issued by the relevant court of law as first instance.

In terms of the complaint, art. 50, comma 2<sup>1</sup> of the L.C.R.P. stipulates that this may be deposited at the territorial office which has settled the impugned resolution or, pursuant to art. 50, comma 2<sup>2</sup>, directly at the court of law in the territorial area of competence is located the real estate. In such later case, the court is bound to request, *ex officio*, to the territorial office, the communication of the resolution file and of the land book copy, and the registration of the complaint in the land book.

The previous modification was adopted following the Decision no. 467/2008<sup>2</sup> issued by the Constitutional Court by means of which, it was admitted the constitutional challenge of the provisions of art. 50 comma 2, thesis II, of the Law of cadastre and real publicity no. 7/1996, being ascertained that these are unconstitutional to the extent in which, they do not allow the claimant's direct access also to the relevant court of law. Through the introduction of art. 50, comma 2<sup>2</sup> in the L.C.R.P. pursuant to point 29 of the G.E.O. no. 64/2010, the legal provisions were harmonized with the decision of the Constitutional Court.

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<sup>1</sup> **Art. 109, comma. 2 Civ. pr. C.** – *In the cases especially foreseen by law, the intimation of the relevant court may be only done following the performance or a preliminary procedure, under the conditions established by the relevant law. The proof for the performance of the preliminary procedure shall be enclosed to the writ of summons.*

<sup>2</sup> Published in the Official Journal no. 422 of June, 05 2008.

The modification of art. 50 comma 2 and the introduction of comma 2<sup>1</sup> and of comma 2<sup>2</sup> in the L.C.R.P., assigns to the head registrar, apart from the current duties, *the competence for the re-examination of the resolutions issued by registrars* within the territorial offices of cadastre and real publicity. Starting from the solutions issued to the re-examination applications, the registrar may unify inside the territorial office under his direction, the practice in the field of cadastre and real publicity, making thus a verification of the issued resolutions.

In our opinion, it is absolutely necessary the modification of art. 50 comma 3<sup>1</sup> of the L.C.R.P. because, in the current form, against the decision issued by the court of law, may be formulated the appeal as remedy at law.

Within the system of the means of appeal, under the form in which the same is regulated by effective Civil procedure code, a recourse may be nevertheless formulated against the decision of the court of law. The writing up of art. 50 comma 3 of the L.C.R.I. under the current form, presents several disadvantages, among which:

- the extension of the term for the resolution of the trials regarding the complaints submitted against the land book resolutions, through the exercitation of all the existent remedies at law, that is: *re-examination, complaint, appeal and recourse*;
- the high volume of files dealt with by the court of law;
- the lack of panels of judges specialized in the field of cadastre and real publicity;
- insufficient staff with the settlement within an optimal term of the existent trials.

Another argument in favour of the modification would be that, pursuant to art. 477, comma 2, thesis II of the New civil procedure Code<sup>2</sup>, the decisions issued by the courts of appeal are not subjected to recourse in the cases when *the law* stipulates that the decisions of first instance are only subjected to appeal. Under this circumstance, the reformulation of art. 50, comma 3, in the sense that, the decision of the trial court, should be impugned *exclusively through appeal*, would be, in our opinion, fully in agreement with art. 477, comma 2, thesis II of the New Civil Procedure Code and would lead to the settlement within an optimal term of such a trial, since, against the registrar's resolution would be possible *to perform the re-*

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<sup>1</sup> Art. 50 comma 3 of the L.C.R. P. – *The Decision issued by the district court may be impugned through appeal.*

<sup>2</sup> Published in the Official Journalno. 485 of July 15, 2010.

*examination within the territorial office, of the complaint and of the appeal, eliminating the recourse means of appeal.*

### **3. Conclusions**

The modifications made to art. 50 of the L.C.R.P. through the G.E.O. no. 64/2010, are important within the context of the active role assigned by the legislator to the head registrar, a clerk to the responsibility of whom devolves the real publicity activity within the territorial office of cadastre and real publicity. Moreover, they are useful to the system of cadastre and real publicity, but also to the legal system, since, by means of a new, modern institution, an internal control upon the resolutions issued in the field of cadastre and real publicity is established, control performed under the head registrar's control and authority.

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