



# **CADASTRE AND LAND REGISTER**

## **Following up their relationship**

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# Principles of relationship cadastre-land register

**Description of properties (“A”):** huge interest

**Ownership (“B”):** not so clear

- ◉ Cadastral scope is often related to possession
- ◉ Ownership is a legal status

**Burdens and encumbrances (“C”):** exclusively legal matters

## Description of properties: boundaries

In the LR systems different guidelines can be found:

- ◉ Legal boundaries equal cadastral boundaries
- ◉ Legal boundaries different from cadastral boundaries
- ◉ Legal boundaries become cadastral boundaries (different but coordinated)

# PROPERTY BOUNDARIES

(E.L.R.N. REFERENCE INFORMATION, FACTSHEET ON DESCRIPTION OF SYSTEMS)

<http://network.elra.eu>

MS	Conclusive or General boundaries
<i>Belgium</i>	Not conclusive (not conclusive registration, deed system)
<i>Croatia</i>	Boundaries are not the subject of registration
<i>Estonia</i>	Information regarding physical information on plot (incl. boundaries) originates from land cadastre and is not considered to be an entry in the meaning of real right
<i>Finland</i>	Conclusive
<i>Greece</i>	Conclusive in the new cadastral system not yet totally in force
<i>Ireland</i>	The register is conclusive evidence of the title of the owner / LR Map is not conclusive as to boundaries or extent
<i>Latvia</i>	Not answered
<i>Italy</i>	Not conclusive, specified in the deeds;
<i>Lithuania</i>	Not answered
<i>Netherlands</i>	Not conclusive (Dutch Law distinguishes between cadastral and legal boundaries)
<i>Poland</i>	Not conclusive/ physical data are not protected by the land registry
<i>Portugal</i>	Not conclusive
<i>Spain</i>	Not conclusive
<i>Sweden</i>	Assumed conclusive (Not answered)
<i>United Kingdom</i>	
<i>England and Wales</i>	No cadastre. Boundaries shown on the plan are normally only <i>general</i> boundaries (section 60(1) LR Act 2002)
<i>Scotland</i>	No cadastre. Boundaries are not conclusive when land registered

## **Description of properties: parcel or properties**

So, in the LR systems are also different options:

- Parcels equal properties
- Parcel as basis for the agreement of the parties (doesn't equal property as far as parties decide boundaries in the deeds)
- Parcels different from properties
- Parcels different in principle from properties but might be coordinated (public mapping coincides with boundaries agreed by the parties)



Unexplored shared grounds?  
(Public restrictions, protection of public domain)

Being constructive, there might be interesting  
fields of mutual interaction between cadastres  
and land registers

## Fields of mutual interaction

Land information might enhance the description of properties as for

- Nature of the land where properties are located
- Land use
- Land cover (physical and biological cover of the earth's surface)
- Environment

Once geo-located a property, can be inserted on maps which provide land information

## Fields of mutual interaction

Graphic descriptions might be used to enhance description of properties

- Graphic basis for description
- Linking properties to public restrictions areas





## Fields of mutual interaction

Sometimes “parcel” might equal “property” (or “property” might equal “parcel”)

- It would result an additional attribute for to the property
- It's assumed some added value in the event that for public purposes and parties' agreement coincide



But actually land information and legal information don't share the same principles and aims

- Modification of land information is carried out by public initiative
- Changes in properties are a private matter decided by owners or judiciary resolutions



- Particularly, cadastral information is mainly relevant for fiscal purposes (States, public policy) or territorial planning
- Information on properties is mainly relevant for legal purposes with respect to contracts, sales, mortgages (Market, legal transactions) or legal proceedings e.g. judiciary mortgages, seizures or restrictions from judgments

## EXPERIENCES

Relationship between cadastre and land register are not always easy

In practice, public and private interests might collide

Registration might have different meanings for the State and the citizens

## Does INSPIRE oblige to anything?

- ⦿ The scope of INSPIRE is geographic, not legal. Spatial data are not legal data
- ⦿ INSPIRE does not refer to ownership information
- ⦿ INSPIRE includes not exclusively cadastral parcels but “other equivalent units”

We shouldn't mistake geographic units with units for legal traffic.

## Experiences researched by ELRA

Some consequences of some transitions of merging cadastre and land registries were studied in researches (European Framework of Civil Cooperation) in what ELRA has taken part, for example:

“Trans-boundary judicial co-operation and the Land Registry as a tool for its execution; problems and solutions with particular attention to the candidate countries”

(Seminars JLS/CJ/2007-1/08 between registrars and judges of Bosnia-Herzegovina, Slovenia, Romania, Croacia, Bulgaria, FYR of Macedonia and Hungary along with registrars and judges of Spain and Portugal and ELRA).

<http://www.elra.eu/downloads/>

## **CASE OF DEVECİOĞLU v. TURKEY**

European Court of Human Rights, judgment of 13th of November of 2008 on a conflict of interests between the state of Turkey and the citizen Deveciouglu, the applicant.

- ◉ The State of Turkey considered public part of the properties of Mr Devecioglu (forestall land), supported by Turkish cadastre.
- ◉ Mr Devecioglu considered he's the owner of these properties, registered in the Turkish Land Register in accordance with the Turkish legislation.

## CASE OF DEVECİOĞLU v. TURKEY

- ⊙ “32. The Court ... has to be ascertained whether the situation amounted to a de facto expropriation (see *Brumărescu v. Romania* [GC], no. 28342/95, § 76, ECHR 1999-VII; *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, pp. 24-28, § § 63 and 69-74; *Vasilescu v. Romania*, judgment of 22 May 1998, Reports of Judgments and Decisions 1998-III, pp. 1075-76, § § 39-41).”
- ⊙ “33. ... According to domestic law and practice, any limitation concerning such property must be entered into the land registry log book. The rights of those who acquire property relying on the records kept by the land registry office are protected ...).
- ⊙ “34. ... Having thus purchased the land in good faith and obtained a title deed, the applicants could legitimately claim to be the owner ...”

THE COURT UNANIMOUSLY held that there has been a violation of the right to ownership (arts. 1 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms)



## SYSTEM IN TRANSITION: GREECE

April 2014. Proposals of Hellenic Property Federation (POMIDA)

- ◎ “...According to the current legislation, the State can argue any private property right on real estate, declaring any property as “public”, without any justification. Moreover, when these cases are driven to the courtroom, the “burden of proof” of property titles’ validity, falls by the law, upon the shoulders of the citizens.”
- ◎ “... when the forestall authority characterizes a private piece of land as “forest”... the State has the right to consider the land as “public property”, unless the land-owner manages to prove in the courts, that he has been a legal owner at least since the year 1885!... This obligation which is a true descendant of the “probatio diabolica” of the Roman Law...”

These problems (citizens v. government) appear quite similar to the Case Devecioglu vs Turkey.

## MERGED OR SEPARATE BODIES?

- ◉ It's an issue on organisation of public administrations and deep down, sovereignty
- ◉ LR systems are usually founded in legal traditions
- ◉ Internationally there's no a model which prevails
- ◉ In Europe mostly cadastre and land register are independent institutions

## WHAT IS MORE REALISTIC?

To communicate spatial data to titles as they are part of transactions?

(From below, from the owners)

To subject titles to geographical changes?

(From above, usually from the governments)

## CONCLUSIONS

Regardless land register and cadastre are merged or not, differences on functions and aims underlie

A general debate as such is basically speculative

Rights of citizens to ownership should prevail



# THANK YOU!

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