

CHANGING THE GREEK LR SYSTEM TO UNDERMINE LEGAL CERTAINTY

THE CASE OF THE GREEK CADASTRE

INTRODUCTORY REMARKS

- Land Registries operate in Greece since the formation of the Greek State.
- According to all the Greek Constitutions from 1911 to date, LR form part of the judiciary.
- The LR system is a person-based deed system, but more “enhanced” than most deed systems since registration is constitutive for the acquisition of the right.
- The mandatory nature of registration leads to a very high number of registered deeds and a diachronic mentality of registration among citizens.

- Main disadvantage of the LR system; the difficulty to understand the legal status of a property at a glance.
- In order to assure the good standing of the titles, a research is necessary performed by either a lawyer or by the registrar upon request of certified information.
- The research in the LR is possible only through the names of transferors and transferees either in alphabetical order, in the past, or through electronic databases today.
- Registries never lacked in reliability, but such reliability had as collateral a prior thorough research.
- <https://www.internationalpropertyrightsindex.org/country/greece> A score of 9,3/10 in registering property.



- The disadvantages of the LR system could easily be resolved through the creation of **cadastral maps** and of a supplement in the infrastructure of Land Registries enabling **land-based directories**.
- In this way, research of legal status would become much easier and the loopholes of the existing system (i.e. parallel lines of titles), though mainly theoretical, would have been removed.
- The last deed(s), as registered on each piece of property, would name the current owner(s). In this way, the already pre-existing legal certainty about property rights would obtain a more formal shape, a factor which would increase, as such, legal certainty in itself.

THE CADASTRAL PROJECT

- Greece started creating a Cadastre only in 1995 and implementing it in 1998.
- To date only 8,6% of the country's surface is covered by the Cadastre.
- The project has been practically stagnated during the Greek financial crisis despite the fact that it constitutes a key tool for economic growth and its completion was been included in all MoUs with Greece's creditors.
- The reasons for the extremely slow progress are not mere problems of implementation, but primarily problems of design and of underlying concepts.

Main problem; the purpose of the project

- Major mistake committed in 1995 and 1998:, the LR system in force was considered *en bloc* as “archaistic” and non-reliable.
- The concept of 1995/1998 disregarded that the system had as necessary collateral the legal research that was performed as a quasi-obligatory part of every transaction, under which legal certainty was achieved in practice *de facto* in all transactions.
- Thus, it was decided without due consideration that the current land registration system should be completely removed and **replaced by a new one.**

The cadastral concept of 1995/1998 went far beyond the creation of cadastral maps and put in place:

- complete re-registration of all property rights,
- an obligation for all property owners to trigger such re-registration within specific, months-long deadlines by means of a declaration of rights,
- a procedure of collection of the above declarations by cadastral survey offices (contractors of Cadastre Agency), but without any legality control of the deed accompanying the declaration.
- completely new infrastructure for registration of rights and directories,
- an assumption that the re-registered property rights would be deemed infallible (“*non-rebuttable presumption*”) after a transition period,
- a substantial change of the land registration system from “enhanced” deed system to semi-title system.

In this way, a cadastre project that was by its nature just requiring creation of cadastral maps and creation of land-based directories, **since the legal information already existed in LR across the territory**, became a faraonic project not only to replace the entire land registration infrastructure, not only to re-register all property rights, but also to change the substantial concept of the entire registration system - something far beyond just replacing the infrastructure.

Main problem of the re-registration: How would people be obliged to re-declare and re-register their property, if they knew that their property was effectively registered under the Land Registries system?

The solution found was consistent with the concept of “infallible” system: if property rights were not declared on time, then ownership on the property in question would be finally lost and pass, after the transition period, to the Greek government. Thus, all owners were, in practice, “blackmailed”, that they would eventually lose their property, if they did not participate in the re-registration process.

Main consequences of the re-registration procedure:

- The public never embraced the cadastre project. It was regarded as an unnecessary burden, as a source of bureaucracy and expenses, as an obstacle to land transactions and often as a threat to their property rights.
- The “infallible” system relies on the underlying idea that everything behind the final result has been done correctly. This was far from being true. The cadastral data is full of mistakes that require correction based on the information kept in the Land Registries.
- As no reliability was truly gained through the cadastral system of 1995/1998 the transition period never ended until today: the Parliament votes constantly new law provisions extending the initial 5 years transition period and, thus, preventing the – anyway vulnerable – “public faith” elements from entering into force.
- Alone the possibility for frauds to be committed through false registration of inexistent property rights, especially on property of non-residents etc., has always been a source of major concern for property-owners.

And while the first and most important mistake was that the current concept disregarded completely the existing legal infrastructure, the second mistake was that **not enough resources were devoted to the technical infrastructure**, i.e. the depiction in the cadastral maps of forest land and coastal zones.

This was a consequence of the cadastral project focusing on the re-registration of property rights and not on mapping various types of Greek land. As a result, the Supreme Administrative Court of Greece (“Council of State”) recently ruled (judgments Nos. 805-808/2016) that no cadastral process can be considered as closed, unless all forestry areas have been mapped as such. This judgment was based on grounds of environmental protection.

Recent developments

Instead of taking a step back and reversing the situation of a never-ending Cadastre by re-orienting it to what it should be, a recent Law has transferred the initial mistake made in the very substance of the project to the organizational level of Land Registration.

By law 4512/2018 of the Ministry of Environment, all LR, as judiciary services, have been abolished and a new public Cadastral Agency has been established to absorb LR and take over land registration in the entire territory, despite the very slim coverage of cadastral maps and despite an explicit stipulation in the Greek Constitution protecting the institution of LR as part of the judiciary

ELRA Statement on Reorganisation and Restructuring of Land Registries

1. In every country, the Land Registrars are the experts in their field. We therefore believe that their views should be invited at an early stage in the process.
2. It is good practice that interested parties, including landowners, lenders, notaries and registrars, be consulted before proposals are finalised.
3. Any proposed reorganisation or restructuring should be mindful of the fact that, in order to give legal certainty and maintain the confidence of the market, land registries must perform, and be seen to perform, their functions independently. There must be no actual or perceived political or commercial influence or conflicts of interest.
4. Any proposal to move from a deeds system to a title or cadastral system must ensure the continuity of landowners' existing property rights.

In the Greek case, none of the fundamental principles contained in ELRA Statement has been respected.

Result:

- Legal certainty is severely jeopardised
- The Greek State demonstrates an unprecedented disrespect of property rights.

Thank you!

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