

Evaluation of the results of research into the Investigation of land registry acts – take part in ELRA member states

The aim of the research was to find out whether individual states distinguish between the registration of rights to real estate property in proceedings on a proposal of entry and in proceedings on record, who decides on a proposal of entry (if the decision-making process takes place at all), whether it is the administrative authority in the field of land registry or the court, and who reviews the acts resulting from these proceedings - whether these acts are reviewed by a higher-level administrative authority or a court. The questions were asked in accordance with Slovak law, but in general terms so that as many respondents as possible could answer.

Eighteen institutions involved in the registration of property rights from 17 countries participated in the research, namely: Austria, Bulgaria, Croatia, Estonia, Finland, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Spain, and Sweden. Italy was represented by two institutions, namely Agenzia Delle Entrate and Italy Servizio Libro Fondiario e Catasto.

We can conclude that conducting the research was extremely challenging due to the completely different ways in which individual institutions dealing with the registration of real estate rights operate. In the research sample, we did not find more institutions dealing with the registration of real estate rights that would have the same procedures for registering these rights or any common basis for their functioning.

The first research question focused on obtaining information about whether the decision on a proposal for entry in each country is made by a court or an administrative authority. The answer was as follows:

COURT: Austria, Bulgaria, Croatia, Estonia, Italy (Libro Fondiario), Latvia, Poland, Romania,

ADMINISTRATIVE AUTHORITY: Finland, Hungary, Ireland, Lithuania, Netherlands, Portugal, Slovak Republic, Spain, Sweden.

By evaluating this research question, we concluded that the same number of respondents have the administrative system, and the same number of respondents have a judicial system for registering property rights. The Agenzia Delle Entrate responded to the question by stating that the Italian system does not recognize proceedings for a proposal for entry, since the basic

principles of civil law apply, according to which the transfer of ownership is the result of the legally granted consent of both contracting parties in accordance with Article 1376 of the Civil Code. Entry in the land register is only a form of publicity with a declaratory effect, and even if third parties object to the transfer agreement, this has no effect on the transfer of ownership itself.

This research question did not provide a clear answer to the question of which method of deciding on a proposal for entry is more widespread, whether administrative or judicial, because system in each country has own historical basis and consider the presence.

The second research question concerned the way decisions are made in proceedings concerning proposals for entry – whether a decision about the proposal for entry is issued or whether the decision is made in some other form. The answers were again very diverse, but were based on which authority makes the decision in the proceedings, so we divided them as follows:

COURT DECISION: Austria (full court decision), Croatia, Estonia (if permitted – no decision issued; if permitted in part – decision issued), Italy (Libro Fondiario), Latvia, Poland,

ADMINISTRATIVE AUTHORITY DECISION: Finland, Hungary, Lithuania, Netherlands, Portugal, Slovak Republic, Spain, Sweden,

CONFIRMATION OF REGISTRATION APPLICATION / REGISTRATION ORDER: Bulgaria, Italy (Agenzia Delle Entrate), Ireland, Romania.

We evaluated the second research question by concluding that, apart from four institutions that essentially only make entries in the land registry without issuing a decision, a decision about the proposal for entry is always issued in all other countries. Of course, this decision is issued by an administrative or judicial authority, depending on the system of land registry administration in the relevant country. In the past, contracts in Slovakia were also registered by state notaries, which we could compare to the last option in the evaluation of this question. However, we believe that the issuance of a decision in this matter is, after all, an expression of legal certainty for the parties to legal relationships, who can prove their ownership through the decision.

The third research question focused on the use of remedies and the review of decisions, whether on the approval of registration or on the discontinuation of proceedings or the rejection of a

registration application. Once again, we found out, that was extremely difficult to find any common ground on which to evaluate this question. We therefore divided the answers as follows:

An appeal (against a decision on the approval of the proposal): Croatia, Ireland, Italy (Libro Fondiario), Latvia, Lithuania, Poland, and Sweden.

No appeal is allowed: Austria, Estonia, Finland, Italy (Agenzia Delle Entrate), Slovak Republic, Spain.

An administrative action, ex officio correction, and protest by the public prosecutor are admissible **against a decision on the approval of the proposal:** Hungary, Italy (Agenzia Delle Entrate), Portugal, Slovak Republic (administrative action and protest by the public prosecutor), Sweden (administrative action),

An appeal is admissible against a decision to discontinue proceedings on a proposal for registration or to reject a proposal for registration: Austria, Bulgaria, Croatia, Estonia, Romania, Finland, Ireland, Italy (Libro Fondiario), Latvia, Lithuania, Poland, Portugal, Slovak Republic, Spain,

An administrative action, ex officio remedy, and protest by the prosecutor are admissible against a decision to discontinue proceedings or reject a proposal for registration: Hungary, Netherlands (only action).

We found a special review procedure in Lithuania. Documents confirming the creation of the real rights must be submitted to the processor of the Real Property Register. A request to register a real right also must be submitted. Regarding the right of ownership, the request must be submitted by the owner, regarding other real rights – any interested person. The processor of the Real Property Register, after examining the application, decides either to register the real right or to reject the application. The processor of the Real Property Register itself is administrative, but not a court, authority.

Decisions can be appealed (the person who made the request submits the appeal) first to the Disputes Review Commission established by the processor of Real Property Register. Commission decisions can be appealed to the administrative court. Lithuania has two instances of administrative courts – the first instance is the Regional administrative court, and the instance

of appeals is the Highest administrative court of Lithuania. It is important to note that the ownership right in Lithuania arises independently of its registration in the Real Property Register. Occurs from the transfer of immovable property.

The procedure in The Netherlands is also somewhat unusual. The final decision to register any document in the Dutch Land Register is made by the registrar of the Dutch Land Register. It does not matter whether it concerns a purchase contract, a certificate of inheritance or any other type of deed or judicial decision. The registrar must decide if the document will be accepted or refused immediately. If the registrar decides to refuse the registration of the document (because it does not meet the registration requirements), the registrar will send a notification of the refusal. The applicant in return can withdraw the application in such a case. In case the applicant refuses to withdraw the application, the registrar will register the document in a provisional register (article 20, book 3 Dutch Civil Code (DCC)). The refusal can be challenged before court. The court can condemn the registrar to accept the document for registration. The problem in such a case would be the priority principle; if the registration has been ordered by the Court, the before mentioned article (3:20 DCC) stipulates that the registration shall be deemed to be registered at the time of the original application for registration.

In Portugal, if registration is refused, the administrative authority responsible for the land registry must publish a notice of refusal of registration. An appeal may be lodged directly with the Institute of Registers and Notaries or directly with the court. If the administrative authority considers the appeal to be unfounded, the party concerned may refer the matter to the court. However, if an appeal is lodged directly with the court, it is not possible to lodge an appeal with the administrative authority.

In Romania, it is possible to request a review of a registration application, and if this is not granted, an appeal may be lodged.

In conclusion to this research question, we can state that in each country, a review of the decision on the approval of the registration of a right, as well as the decision to suspend the proceedings or reject the application for registration, is guaranteed, whether within the framework of an appeal procedure by a higher-level administrative authority or by a court.

The last question concerning the proceedings about the proposal for entry concerned who decides on the appeal lodged – whether it is the court or the nearest higher-level administrative authority. The answers were as follows:

(SUPERIOR) ADMINISTRATIVE AUTHORITY: Slovak Republic, Spain,

COURT: Austria, Bulgaria, Croatia, Estonia, Finland, Hungary, Ireland, Italy (Libro Fondiario), Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Spain, Sweden,

MINISTRY: Hungary (Ministry of Public Administration and Regional Development, but only in cases of supervision).

The research has once again revealed some interesting facts, for example, in Finland, where appeals are decided by the Land Court, which is a division of the general district court, and the judges of this court are highly specialized in land law. In Italy, appeals are also decided by a judge who specializes in land law. In Portugal, appeals may also be decided by the Institute of Registers and Notaries, as we mentioned in more detail in the previous question.

In Spain, we also found one peculiarity regarding decisions on remedies, which is that if a party to the proceedings disagrees with the decision, they have the option of appealing to the General Direction of Public Faith and Legal Security (DGSJFP) as a kind of administrative authority, whose decision is then binding on the land registry authority. The second option is direct review by the court, and the third option, which we have not found in any other country, is a type of appeal called “calificación sustitutoria,” which essentially means that if another (locally incompetent) authority in the field of land registry decides to allow the entry, it will be responsible for this decision. However, if this authority also rejects the application for registration, the party concerned may lodge an appeal either with the DGSJFP or directly with the court. It is very easy to assess this issue, since, apart from the Slovak Republic and Spain (in some cases), the review of a decision based on an appeal is always carried out by a court.

In the proceedings of the record, the research focused on answering three questions, the first of which was: “**Which authority register deeds in the land registry ?**”, namely:

COURT: Austria, Croatia, Estonia, Italy (Libro Fondiario), Latvia, Poland, Sweden,

ADMINISTRATIVE AUTHORITY: Hungary, Ireland, Italy (Agenzia Delle Entrate), Netherlands, Romania, Slovak Republic,

REGISTRATION AND RECORDING TAKE PLACE WITHIN THE SAME PROCEDURE (there is no strict distinction as in the Slovak Republic, also regarding the effects of individual registrations of documents according to the type of procedure): Bulgaria, Finland, Lithuania, Portugal, Spain.

Through our research into the area of registration, we have found that some countries do not distinguish between proceedings on a proposal for entry, with the decision having a constitutive effect, and the registration itself, which has only a declaratory effect. Five respondents do not distinguish between rights based on the effects of their registration and therefore proceed as we evaluated the answers in the first question, which concerned proceedings on a proposal for entry.

The second question regarding the execution of the record focused on whether an appeal against the execution or non-execution of the record is admissible. The answers were therefore divided as follows:

An appeal against the entry is admissible: Croatia, Ireland, Italy (Libro Fondiario), Latvia, Poland,

An appeal against the entry is not admissible: Austria, Estonia,

Appeals against failure to register are admissible in: Austria, Croatia, Estonia, Ireland, Italy (Libro Fondiario), Poland, Romania, Sweden.

An administrative action, self-remedy of the decision, or protest by the public prosecutor is admissible: Hungary, the Netherlands (action), Slovak Republic.

Our research into this issue has led us to conclude that several countries have the same remedies as in proceedings for a proposal for entry, with minor exceptions, such as in the case of Austria.

The last question concerning the record proceedings was: “Which authority reviews decisions based on appeals / remedies lodged?” in the countries examined, namely:

COURT: Austria, Croatia, Estonia, Hungary, Ireland, Italy (Libro Fondiario), Latvia, Netherlands, Poland, Romania, Slovak Republic, Sweden,

ADMINISTRATIVE AUTHORITY: Romania (decides on requests for review of non-execution of registration),

MINISTRY: Hungary (Ministry of Public Administration and Regional Development – responsible for proceedings concerning real estate registration and supervision).

By evaluating the answers to the last question, we found that most countries have a review of documents registered in court proceedings; surprisingly, only one country has a review carried out by an administrative authority, and even then, only in a minimum number of cases involving the re-examination of an application whose registration has been rejected. Only one country has the review carried out by the relevant ministry, but even then, only in specific cases.

CONCLUSION:

The research in question highlighted the diversity of legal systems and systems for registering rights to real estate in terms of their historical roots and the present day. At the same time, however, it can be concluded that despite the different effects of real estate rights, there is always the possibility of reviewing the decision in question/the registration made or the non-registration of a real estate right either by the nearest higher administrative authority or by a court.

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