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PROPERTY REGISTRATION OFFICE: PROPERTY ACTS REGISTRATION IN PUBLIC REGISTERS AND PROBLEMS CONSIDERED WHILE AUDITING THEM

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ABSTRACT

Based on executive board decision and chief-registrant Albanian Republic territory is divided in registration zones. Every registration zones operates as a Regional Office of Property Registration and has its residency, account number and stamp. Based on chief-registrant decision every registration zone is divided in local areas without territorial borders, each of them having a unic,unrepeatable number. Registration zone border and local area borders are clearly defined in registration map (HTR). Registration of a property within a local area consists in defining its boundaries and position in registration map and then register property information in a registration card (KPP). What matches a property in the registration map with registration card is property number, unic and unrepeatable within a local area. In every Registration Office property register is produced manually and electronically including national database divided in primary and secondary information both managed by the Registration Office.Public registers of Registration Office handle information divided in five sections as shown in the registration card where are included: information about the property, its owner, rights and obligations in third persons about this property and limitations from institutions based on law. According to article 3 of Law number 33 of 21.03.2012 Property Registration Office activity consists in registering all real properties within Albanian Republic territory based on property acts and real rights to them according to the requests from people. Based on this definition the Office has the legal charge to develop and publish national database handled in public registers. The purpose of this paper is styding Property Registration Office activity and procedure while registering a proprietary document/act. If we see literature,law and their amendments, court practice and auditing process of this offices we can raise a question whether office activity aims to publish and declare to third persons proprietary documents and their holders rights or has to verify legality and validity of these documents. Also how does process of controlling Property Registration Office transform it in a “investigative institution”.

Keywords: registration zone, property document, property register, validity verification, law responsibility

ACTIVITY OF REAL PROPERTY REGISTRATION OFFICE

Activity of real property registration office is based in terms of law reliability, transparency, legality, priority in registration and establishment of property register by matching proprietary documents with its geographical position. So the Registration office in its activity doesn't have the obligation to analyse legality and validity of proprietary documents. Article 38 of Law number 33 of 21.03.2013 “About real properties registration” defines the obligation of the Office to registrate every act that brings changes or rights of proprietary. Every holder of these acts or rights on it has to go to the Registration Office to ask for registration within 30 days from acts creation in accordance with fees approved in Minister Council decision. Also law predicts sanctions for proprietary rights holders thar bring theses acts after 30 days of their creation. According to article 39 of law 33/2012 if a registration

demand is presented after 30 days from its creation the demander has to pay an extra fee of 10 % of the registration fee every day of delay.

While analysing these facts it doesn't result that Registration Office has to control legality and validity of proprietary documents before registering them. According to article 38 point 3 of law 33/2012“ About real properties registration”and article 196 of Civil Code proprietary documents and acts are forwarded to the Registration Office from institutions that have the according to law authority to create, change or remove rights and obligations that affect these acts:

Courts,Attorney 's offices and every other public institution have to forward to the Registration Office copy of decision,act that holds rights in a real property or that declare invalid an act made before.

According to above reasoning and definitons of article 23 of law 33/2012, staff of Saranda Registration Office don't have any legal responsibility for the way acts and documents are created from other institutions: *Chief-Registrant,Registrant and any other staff member of the Property Registration Office don't have any legal responsibility for documents or acts of third subjects,when their actions or non-actions are in their authority.*

Property Registration Office ins't responsible of the way acts and documents are created from authorised institutions forwarded for registration to the office. Also Property Registration Office doesn't have the legal right to consider an act invalid or to analyse invalidity of a juridical act created from another institution authorised from law to create these acts ,so the Office can't be responsible as long as it doesn't have the right to initialize a procedure to object an act. Only the supreme institution or the court can judge validity of these acts.

Problems considered while auditing Property Registration Office

While auditing Property Registration Office, Supreme State Control doesn't consider it as an institution that handles legal documents that prove proprietary, create and manage public registers and maps, so managing all the system of registering real properties. In this auditings are found irregular procedures of registering decisions of Real Properties Restitution and Compensation Office because they were based on court sentences before 01.11.1994. This sentences had on focus definition of property bounders and position and not giving proprietary document. This reasoning is in objection with registration system because the auditor doesn't separate the procedure of creating the act from authorised institution from forwarding this act for registration.

Property Registration Office doesn't have any responsibility for the way this acts are created in this case decisions of Real Properties Restitution and Compensation Office that are ultimate and obligatory for registration when forwarded to Registration Office. Also auditor has misunderstood the fact that Registration Office has not registered Court sentence but decisions of Real Properties Restitution and Compensation Office that according to law is proprietary document. So these properties aren't registered based on court sentences but on proprietary documents and acts obligatory to be registered.

Registration of these decisions fullfill law standards according to article 193 point h of Civil Code quoting: *Court decisions or other institution decisions that contain earning or recognition of real properties have to be registered in real porperties register.*

In this case Real Properties Restitution and Compensation Office decisions are decisions from authorised institution that contain earning property because they are created for this purpose, to reconstitute properties taken from Communist dictatorship and regulate illegal situation on these properties created from dictatorship. According to article 23 of law 33/2012 Registration Office staff isn't responsible for the way acts and documents are created in other institutions. For this reason the office isn't responsible for the documents and the way used for creating the act from authorised institutions that forward these acts to the Office. Also according to article 25 of law 33/2012 "Initial Registration Procedure" the Office has to verify that properties and their confines have to be registered based on below criterias: *Proprietary and confines of properties are defined from proprietary documents according to article 193 of Civil Code*"

In this case while analysing the documents proprietary and confines are defined in the Real Properties Restitution and Compensation Office decision and its associated documents: property map and the formular of handing in the property. The formular emphasizes the fact that the property is handled in to the owner from the institution that handled it. The owner has all the rights on this property and registration or not in the Office doesn't violate his rights.

Property Registration Office doesn't have the right to judge the validity of a document created from Properties Restitution and Compensation Office or any other institution authorised in law to do so. Only the supreme institution or the court can judge the validity of these acts according to law number 9325 of 29.07.2004 "About restitution and compensation" obligatory to be registered. So its Office's obligation to register these acts according to law 33 of 21.03.2012 "About real properties registration" article 38.

Not registering these acts would bring violation of juridical reliability because proprietary right is a constitutional right. Article 41 of Albanian Republic Constitution quotes "The right of a real property is guaranteed. *"The property is earned with donation, heritage, buying or any other classic way predicted in Civil Code"*. Also this right is sanctioned in article 1 of European Convention of Human Rights quoting: "Any person has the right to make glad of his property". According to the above reasoning not registering property documents in an abusive way would threaten basic human rights defined in Albanian Republic Constitution and European Convention of Human Rights. According to article 4 of law 33/2012 Registration Office activity is based on terms of juridical reliability, transparency, legality, priority in registration and establishment of properties register. For this reason not registering these acts would bring lack of transparency and violation of juridical reliability in discordance with law. This attitude is maintained in sentence number 17/2010 of Constitutional Court. According to the reasoning of Constitutional Court Registration Office is responsible of managing public register where proprietary is registered and then changed. When changing proprietary documents signed at the attorney's office and registering are asked.

So registration in public registers is necessary to change the ownership and not to confirm act's validity. According to article 195 of Civil Code property can not pass to another person if its not registered his name. Every public institution in his constitutional and lawful activity has to respect democratic standards of regular process defined in Constitution (sentence number 75 of 19.04.2002). The court reasons that constitution-maker predicts in article 42/1: Freedom, property and other rights known in Constitution and law can't be violated without a regular legal process, excluding here administrative procedures. Also the court reasons that the property right earned from a public act or ultimate court sentence can't be

violated from administrative procedures rather than from court procedure. According to this reasoning property right, earned from the moment of the act creation from authorised institution can't be violated from another institution like Office's activity (by not registering it) except from a court process, because this would bring lack of transparency, violation of juridical reliability and human rights defined in Constitution and European Convention of Human Rights.

Registration Office doesn't create property acts or documents, its role is limited in publishing and declaring according to Unified Sentence of Supreme Court number 1 of 06.01.2009 and is characterised from two principles:

-Declaring principle meaning registration has declaring effects and not creating ones. This doesn't guarantee legality or validity of property documents but only the fact that seller is owner according to registration database. Registration system is a system of declarative publication and of creating rights.

-Priority principle meaning that the first registered in public register is prevalent

According to Unified Sentence of Supreme Court number 1 of 06.01.2009, registration in Registration Office has declarative and publishing effects only. This system guarantees only the fact that seller is owner according to registration database but doesn't guarantee absolute validity of acts. This sentence reasons that basic acts of changing property are more important rather than their registration in public registers. Proprietary passes in the moment of signing the act in attorney's office and buyer becomes legal owner the moment act becomes executive earning all rights and obligations to it and this fact isn't violated from registering or not this act. Registration doesn't have creative role meaning it doesn't confirm documents' validity and doesn't limit the rights to a property. Also registration doesn't affect or guarantee validity or legality of property documents. When property is registered in the Office but court declares property documents absolutely invalid this court can decide to erase registration and resolve negative consequences. The fact property documents can be unregistered proves the fact that registration can't guarantee validity and legality of acts as long as they can be canceled from court. Registration Office's manual of work number 184 of 08.04.1999, capture 4, point 9 doesn't require documents validity analysis from the Office but specifies documents needed to be deposited as below :

1. Restitution and Compensation of Properties Office decision
2. Map of property
3. Inheritance documents
4. Delivery form of property

Conclusively in all law instances analysed we can't find Office's obligation to verify property documents validity but only verification of documents mentioned in Office's manual of activity. According to court practice, Unified Supreme Court sentence number 24 of 13.03.2002 property is earned based on law number 7693 of 15.04.1993 "About restitution and compensation of former owners" changed not as new way of owning property but correction of a previous situation in discordance with human rights. For this reason all previous acts are canceled.

Restitution and Compensation of Properties Office decisions don't create a new situation but restate legality and justice. Cancellation of above acts aim to reset previous situations correcting in the possible way illegal situation of property rights. According to these acts what is done from communist system is considered unfair predicting restitution of property right to

former owners about properties owned before nationalization and sequestration. In many cases Restitution and Compensation of Properties Office decisions are repeatedly audited from Supreme State Control while in their procedures is predicted controlling registration once. So irregularities found from auditing are in discordance with law About Restitution and Compensation of Properties because their decisions are executive documents obligatory to be registered while verification of their legality and validity isn't obligatory for the Registration Office. In these cases Registration Office registers property documents and not acts used to create these documents (court decisions). Also court decisions that have annulled registration refusals are found irregular from auditing. The only legal obligation for the Office about documents forwarded for registration is verification of terms of form and content of these documents according to Manual number 1 of 31.01.2007 About definition of registration procedures in Registration Office, changed with Manual number 2 of 12.09.2012 of Minister Council About acts and elements to be verified from Registration Office. When Registration Office finds out that forwarded documents don't satisfy terms defined in Manual number two they refuse registration but not because of legality of acts, only because of verification of form and content of these elements. According to Manual, Registration Office refuses the property documents only when:

- Legal dates of administrative and judicial appeals aren't done
- Terms of form according to Manual number 2 of 12.09.2012 aren't fulfilled
- Property documents already registered for third persons that aren't part of administrative or judicial act of earning the property.
- According to point 3 of article 37 of law 33/2012 property documents create superposition with before registered acts.

After verification of form and content according to Manual number 2 documents are refused and refusal is approved in Central Office of Properties Registration. If the court decides absolutely invalid act of refusal then the Office proceeds with registration according to article 451 of Civil Procedure Code because court sentence is obligatory to be registered act. In these cases court sentence is being analysed from auditors and registration is considered violation when court sentence can't be judged as illegal or invalid. According to Constitutional Court sentence number 24 of 12.11.2008 ultimate court sentence is supposed to be a judged issue. In accordance with juridical safety principle civil procedure law has sanctioned principle of judged issues that prevents from giving a new sentence about what is judged. According to article 451/a of Civil Code Procedure no court can judge the same accuse with the same participants. Constitutional Court reasons that ultimate court sentence as a judged issue has its purpose to give to the juridical relation not only clarity but also safety. Violation of judged issue principle would bring violation of human rights and freedom and constitutional interests guarantees in article 42 of Constitution, which means juridical safety itself. A juridical relation based on ultimate court sentence can not be violated from administrative procedure or other court decision because juridical safety would be violated and participants would never be sure of their rights. This right based on ultimate court sentences are executive acts obligatory to be registered and judged issues so they can not be violated from auditing. Registration Office procedures for a court sentence are based on Constitution of Albanian Republic, law and unified procedures of Supreme Court and Constitutional Court about registering ultimate court sentence and negative causes in case of not registering. In sentence number 13 of 22.04.2011 about "violation of the right for a fair legal process as a result of not executing ultimate court sentence" is noticed violation of constitutional right for fair legal process as a result of not executing ultimate court sentence. According to Constitutional Court executing a court sentence is crucial for a state of fair

principles and notions of fair judgement. No other institution can judge fairness of ultimate court decisions. All of them have to make possible their execution. Principle of state of fairness as a primary principle of a democratic society involves the obligation of public authorities to execute ultimate court sentences. Their complete and effective execution is very important because it develops a respectable judicial system. In these cases restituting a violated right is not only a matter of courts but also of responsible authorities that execute the ultimate sentence (according to decision number 2 of 01.02.2011 of Constitutional Court). In these circumstances activity of Registration Office, authority obliged to execute court sentences according to law, can not violate these sentences. In any case ultimate court sentences have to be registered. In some other cases registration of court sentences is found violation from auditors because not all participants were present in the process while registration of these sentences can not be canceled because of participation or not of all parts. In judging process of invalidity of refusal procedure all facts are mentioned. Not registering an ultimate court decision would violate juridical safety. According to Civil Code and law court decisions are objected in upper courts so all levels of process are done and according to article 451 of Civil Code ultimate court sentence is executive act obligatory to be registered.

CONCLUSIONS

Properties Registration Office is as an institution obliged from law to register real properties within territory of Albanian Republic based on property documents or restitution of rights on properties according to demands deposited from holders of these rights. Property documents and acts are forwarded to Registration Office from authorities that create them. Registration Office manages property documents registered in registers and maps. Registration has on purpose publishing and declaring, when owner proves that has legitimate interests in a property he has the right to take information and copy of documents deposited in Registration Office. This Office doesn't create acts and doesn't guarantee absolute validity of them as long as property documents can be violated from supreme administrative authority or the court. Registration system is a system of publishing and declaring, that makes interested people know rights and obligations in real properties registered in public registers.

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