

Non-Compliance with the Principles of Real Estate Advertising, Violation of Public Administration Principles

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ABSTRACT

The present article highlights the importance of public administration principles, real estate advertising principles, respectively some aspects regarding non-compliance with these principles and the effects produced by them, based on the provisions of the Administrative Code, Law no. 7/1996 law cadastral and real estate advertising, Law no. 50/1991 regarding the authorization of the execution of construction works, as well as of the Civil Code. Therefore, the paper tries to carry out a study on the principles of real estate advertising and the principles of public administration, and through the examples from the case law, I tried to show what can be the influence, but also what can be the effects of the violation of these principles. One of the most eloquent examples is the legally uncertain situation of residential neighborhoods built by the National Housing Agency, with reference to the impossibility of registering these buildings in the Land Registry.

At the end of the paper, we will find the conclusions we reached, in the desire that we succeeded in terms of the hypothesis and the proposed topic, to highlight the problems facing the public administration, but also the citizen to protect and guarantee the right to property, a constitutional and fundamental human right.

KEYWORDS: *administration principles, real estate principles, advertising, non-compliance, land book.*



1.Introduction

Between state bodies and civil society, national institutions must fulfill - and fulfill - a function that some call “bridge” and others “articulation”, achieving through partnerships with both state and non-governmental entities a framework for dialogue. and to work together in the common interest of advancing the difficult but generous path of effective respect for human rights¹.

Promoting human rights more effectively, respecting them, education in respect for these rights, but also for human dignity, all together are in a direct relationship proportional to the violation of these rights, the need to protect them, and to repair damages, to carry out their activity based on the general principles provided in the Administrative Code², respectively the principles of real estate advertising. The right of property is that subjective right that gives the expression of the appropriation of a good, a right that allows the owner to own, use and dispose of it, in his own power and in his own interest, within and in compliance with existing legislation³.

By law, society always recognizes, protects and guarantees the legitimate interests of society itself, of communities and implicitly of the individual, thus ensuring compliance with the correlative obligations that are necessary for their fulfillment. Throughout the evolution of society, the constant concern for the protection of the property right of the individual but also of other fundamental rights and freedoms has been highlighted, by respecting the principles underlying the activities and regulated by the laws in force⁴.

2.General principles of public administration

The public administration carries out its activity according to the following general principles:

¹Moroianu Zlătescu, I., 2007, *Human rights: an evolution system*, Bucharest, Romania: I.R.D.O Publishing House, p. 96, accessed at http://irido.ro/irido/pdf/175_ro.pdf

²Administrative Code, published in M. Of. no. 555 of July 5, 2019 by O.U.G. no. 57/2019 regarding the Administrative Code.

³Bîrsan, C., 2008, *Civil law. The main real rights*, 3rd Edition, revised and added, Bucharest, Romania: Hamangiu Publishing House, p. 31.

⁴Vedinaș, V., 2019, *Codul administrativ adnotat. Noutăți. Examinare comparativă. Note explicative*, Bucharest, Romania: Ed. Universul Juridic, București, p. 21.



Art. 6. The principle of legality. Public administration authorities and institutions, as well as their staff, have the obligation to act in compliance with the legal provisions in force and the international treaties and conventions to which Romania is a party.

Art.7. The principle of equality. Beneficiaries of the activity of public administration authorities and institutions have the right to be treated equally, in a non-discriminatory manner, correlated with the obligation of public administration authorities and institutions to treat all beneficiaries equally without discrimination on the criteria provided by law.

Art. 8. The principle of transparency. (1) In the process of drafting normative acts, public authorities and institutions have the obligation to inform and submit to public consultation and debate the draft normative acts and to allow citizens access to the administrative decision-making process, as well as to data and information of public interest, within the limits of the law. (2) The beneficiaries of the public administration activities have the right to obtain information from the public administration authorities and institutions, and they have their correlative obligation to make available to the beneficiaries information ex officio or upon request, within the limits of the law.

Art. 9. The principle of proportionality. The forms of activity of public administration authorities must be appropriate to the satisfaction of a public interest, as well as balanced in terms of the effects on persons. The regulations or measures of the public administration authorities and institutions are initiated, adopted, issued, as the case may be, only after the assessment of the needs of public interest or of the problems, as the case may be, of the risks and impact of the proposed solutions.

Art.10. The principle of satisfying the public interest. Public administration authorities and institutions, as well as their staff, have the obligation to pursue the satisfaction of the public interest before the individual or group one. The national public interest takes precedence over the local public interest.

Art. 11. The principle of impartiality. Public administration staff has the obligation to exercise their legal duties, without subjectivism, regardless of their own beliefs and interests.

Art. 12. The principle of continuity. The activity of the administration of the public institution is exercised without interruptions, in compliance with the legal provisions.

Art. 13. The principle of adaptability. Public administration authorities and institutions have an obligation to meet the needs of society.

Violating only one of these principles, through the snowball effect, can lead to the violation of other principles underlying the activities carried out by various institutions of public administration, thus blatantly violating fundamental human rights.

Referring to the principle of transparency, we can say that it is a principle that once violated, other non-observances of other principles appear, regardless of the field of activity in the central and local public administration, the rank of the institution, its competence and services which they offer to citizens. Transparency - is what contributes to strengthening the principles of democracy, as well as respect for fundamental rights, as defined in Article 6 of the EU Treaty⁵ and in the Charter of Fundamental Rights of the European Union⁶.

Following the passage of the principles of public administration, we focus mainly on the principle of legality, which is the basic brick of all other principles.

The principle of legality

Observance of the principle of legality characteristic of administrative procedure codes and not only, is the most important of the principles and is usually stated by all specialists, it presupposes first of all the requirement that administrative acts, especially individual ones, be issued by law or of a provision based on law, and their content to correspond to the purpose pursued by the legislator through the normative act in the execution of which the respective administrative act is issued. The principle of legality also involves obliging the administration to comply with the provisions of the general rules of administrative procedure⁷.

⁵Treaty on European Union, Consolidated text: Consolidated version of the Treaty on European Union, accessed at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A02016M%2FTXT-20200301>

⁶Charter of Fundamental Rights of the European Union, Official Journal of the European Union, (2012 / C 326/02), accessed at <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX : 12012P / TXT & from = PT>

⁷E. Bălan, Administrative Procedure, University Publishing House, Bucharest, 2005, p. 46.



According to the principle of legality, all citizens' rights and freedoms enshrined and recognized by the organic law, namely by the Constitution, must be exercised only in good faith, as the exercise of such rights is guaranteed by the state. Therefore, according to this principle, contracts that have provisions that are contrary to the law are null and void.

The principle of legality is the essential rule that requires the observance of the fundamental law and other existing normative acts by all state bodies, by all legal persons of public or private law and by all citizens; in the civil process, this principle presupposes that, both regarding the organization of justice and its administration, the fundamental law and the other normative acts subordinated to it must be strictly observed by all those interested⁸.

The principle of legality of administration is an “essential pillar of the rule of law (a fundamental principle)”⁹ on which the entire administrative system of a rule of law is based and built. Thus, the action of the public administration is not free, but is subject to a set of rules deriving from the law, which establish the procedures to be followed, set the substantive conditions of the administrative action and, in particular, define the rights of those administered¹⁰.

The principle of legality is the foundation of the state activity, which reflects the will of the people in their efforts to defend their interests. Failure to comply with this principle in carrying out the activity of social life brings a state of arbitrariness and social disorder. The provisions of art. 51 of the Constitution establishes the obligation to respect it, its supremacy and the laws, becoming a fundamental duty, precisely because “no one is above the law” according to the provisions of art. 16 of the Constitution.

Thus, the public administration must take decisions in accordance with the prescriptions of the law, to fall within the limits imposed by the provisions of the law, without being bound and conditioned, so as to be deprived of the freedom to correctly assess a situation, or not to have

⁸The principle of legality, Dictionar.juridic (dex) accessed at <https://legeaz.net/dictionar-juridic/principiul-legalitatii>

⁹Costachi, Gh., 2011, *Through science to a rule of law. Homage volume*. Chisinau, Moldova: Institute of History, State and Law ASM, accessed at [www.legeasiviata.in.ua / arhive / 2012/5-md / 8.pdf](http://www.legeasiviata.in.ua/arhive/2012/5-md/8.pdf), p. 43.

¹⁰Neagu., N., 2007-2008, *Administrative law III. Administrative control. Course notes*. Constața, Romania, accessed at <http://www.scribd.com/doc/40764539/Drept-Administrativ-III-Controlul-Administrativ>.



initiative on finding or imposing a solution, related to the administrative reality¹¹. In doctrine, this freedom to choose possible solutions is known as the discretionary power of the administration, necessary in actions to fulfill its purpose and that name to implement laws and ensure the satisfaction of the public interest, national or local, by the possibility of adoption the best solution. Therefore, in order to be able to satisfy the public interest, in order to guarantee and protect the property right of natural persons and / or legal persons, the administration must, through the rules of law, ensure the legal security of the patrimonial rights.

Legal security of property rights

The purpose of any rule of law is prevention, and in order to be able to prevent and ensure the legal security of property rights, every natural and legal person has both a real interest in protecting their rights at a given time, the rights that it will acquire them, possibly, in the future, but also for the objective law and its norms¹². In order to achieve legal certainty, it is necessary to ensure the legal protection of property rights from a static point of view, and to ensure future legal operations through which property rights can be acquired through dynamic legal security.

In other words, if statics refers to the validly acquired patrimonial rights, as active elements of a person's patrimony, the dynamics refers to the becoming or circulation of these rights, from their birth to their extinction, in other words, the patrimonial legal circuit. Thus, a double legal protection is ensured, respectively static legal security, but also, dynamic legal security. By realizing the means of achieving the legal security of the patrimonial rights, we understand the totality of the mechanisms, acts or procedures by which the protection of these rights is ensured¹³.

Depending on their nature, we distinguish between preventive and repressive means. The main preventive means are: the form of legal acts and the publicity of legal operations regarding the patrimonial rights. Regarding the repressive means, we distinguish: civil legal sanctions

¹¹Manda C., 2008, *The science of administration*, 3rd edition. Bucharest Romania: Universul Juridic.

¹²See, in this sense, Albu, I., *Real estate advertising in Romanian law. The new land books*, in Law no. 11/1996, pp. 3-4; Albu, I., *The New Land Books*, pp. 3-6.

¹³Sztranyiczki, S., 2013, *Real estate advertising according to the New Civil Code*, Bucharest, Romania: C.H. Beck Publishing House, p. 41.

(nullity, non-enforceability, payment of damages, etc.), criminal, administrative. etc., provided by law for the violation or disregard of subjective civil rights or, as the case may be, for non-compliance with the duties of officials and employees who carry out real estate or furniture advertising operations. Definitely, these sanctions have in themselves a preventive function, because most cases exert an inhibitory action, which determines the observance of the rule of law by those to whom they are addressed¹⁴.

3.The notion of real estate advertising in Romanian civil law. Generalities

From the point of view of legal analysis, the notion of advertising has two meanings: a broad meaning and a narrow meaning. So¹⁵: a) In the broadest sense, publicity designates those ways in which certain acts or legal operations are brought to the public's attention or performed in public places, with or without public participation, but in order to be known and to assume their effects (Laws is published in the Official Gazette of Romania, administrative documents are published in the local press, displayed at specific places, some documents are concluded in public places to ensure access and intervention of those interested: auctions, marriage celebrations, stock exchange transactions; legal transactions are transcribed or highlighted in public registers: trade register, port register, land registries). b) In a narrow sense, real estate advertising designates all the legal means provided by law which highlights the material and legal situation of the building, in public, to give full protection to the static and dynamic security of the civil circuit, regarding the building.

Real estate advertising in Romanian law is based on Law no. 7/1996 and on the Civil Code, which regulated the general structure of two distinct but interfering institutions: the technical institution of the cadastre and the legal institution of the land registries. The cadastre institution is responsible for carrying out the technical cadastral, topographic and geodetic works, which should achieve a general cadastre of the country, and the institution of land registries is aimed at drawing

¹⁴*Ibidem*, p. 41.

¹⁵*Ibidem*, p. 44.

up a real and unique system of real estate advertising for the whole country, the desideratum of so many generations of lawyers, that through a single system all the existing advertising systems in the current Romanian law should be replaced¹⁶.

The motivation for the introduction of real estate advertising - consists also in the interest - both of natural and legal persons and of the company - in the safe legal circulation of real estate, which has high value and special importance¹⁷. The particularly important role of real estate in people's lives and the need to protect their rights have led to the establishment of the rule that whoever buys a non-domino property buys it at his own risk, being forced to return it to the true owner, as a result of the claim action brought by him¹⁸.

The purpose of advertising, through which the true owner is made known to all, is to give full security to legal operations, both statically and dynamically¹⁹. The means by which security is achieved in legal operations regarding real estate are: publicity and formalism imposed on certain alienations²⁰. In order to give maximum security and effectiveness to legal acts on real property rights and in order to make them enforceable against third parties, the publicity of legal operations for the transfer of property rights and the establishment of real rights has been created²¹.

According to Gr. Porumb, the objectives of real estate advertising, are²²: a) to give as much security as possible to the existing real rights, as well as to the real estate transmissions, by bringing the legal situation of these goods to the knowledge of the interested third parties; b) to constitute a

¹⁶Sztranyiczki, S. *Op. cit.*, p. 44.

¹⁷*Ibidem*, p. 38. See Tabbah, B., 1950, *Private Property and Land Registry*, Paris, France, p. 83 "The owner who feels constantly threatened will not make the goods that he exploits, and whose products are destined for everyone, the expenses necessary for this exploitation. No creditor, moreover, will consent, on the mortgage, to a loan to which the first claim having as object the mortgaged property itself would be entitled. Who, after all, would suffer from this insecurity overnight? Is it not the community to which the fruits of the good must normally return by selling them? Due to this connection, we said that the property right, a subjective right, also has a social function. Security is, therefore, established for the social good!"

¹⁸*Ibidem*.

¹⁹Miclea, M., 1995, *Cadastre and land book*, Bucharest, Romania: All Publishing House, Bucharest, p. 282.

²⁰Sztranyiczki, S. *Op. cit.*, p. 39; See Monition, T., 1989, *Le cadastre vaudois au XIX-e siècle*, p. 180.

²¹*Ibidem*, p. 39; See Porumb, Gr., 1962, *Code of Civil Procedure, commented and annotated*, Bucharest, Romania: Scientific Publishing House, p. 476.

²²*Ibidem*, p. 39; See Ionașcu, Tr., Brădeanu, S., 1978, *The main real rights in R.S.R.*, Bucharest, Romania: ed. Academy, p. 206.



clear and comprehensive record of all real estate for the purpose of their use and exploitation as efficiently as possible, in accordance with the law and the interests of the whole society; c) to allow the competent state bodies to exercise a rigorous and permanent control regarding the changes that occur in the material situation (divisions, land changes, changes of destination, transformations, etc.) and in the legal situation of the buildings (transmissions, encumbrances).

In relation to the objectives of real estate advertising, listed above, it can be concluded that “real estate advertising is a technical, efficient and adequate means of achieving legal certainty, by certifying the existence of real estate rights of individuals and legal entities, as well as dynamic security by informing those interested about the real legal situation of real estate²³.

Real estate advertising is not and cannot be integral, because “some of the ways of acquiring property, such as usufruct, accession, as they are legal facts *stricto sensu*, are not susceptible, during their realization, of advertising, and the succession transmission operates on the date of opening the succession, but the operations are done later²⁴.

As regards the role of real estate advertising, it differs depending on the advertising system adopted by the legislation in force. Thus, in some systems, they have a limited role in making the rights acquired between the parties opposable to all, as is the case with legislation based on the principle of consensualism inspired by Napoleon's French Civil Code. In this situation, the rights are acquired at the date of completion of the translational or constitutive act of real rights, but only the effect of the transcription in the public registers is consolidated.

According to the laws based on the principle of consensualism such as Napoleon's French Civil Code, the role of real estate advertising is limited to making the rights acquired between the parties opposable to all, the rights are acquired only after the completion of the translational or constitutive act of real rights, but it is consolidated only as an effect of transcription in public registers. In the system of our country, the role of registration is to produce translational or

²³Sztranyiczki, S., op. cit., p. 42.

²⁴*Ibidem*, p. 43.

constitutive effects of real rights, between the parties, but also towards third parties, the convention only creating obligations²⁵.

4.The principles of real estate advertising in the light of the Civil Code²⁶ and Law no. 7/1996

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The legal regime of real estate advertising - based on the new land registries regulated by Law no. 7/1996 - is based on these principles and on the Civil Code. Thus, according to one opinion²⁷, the following principles underlie the land registry advertising system: full publicity, the constitutive or attributive effect of real registration, the principle of legality, the principle of officiality, the principle of neutrality, the principle of relativity and the material publicity of land registries - the principle the probative force of the registration.

Other authors²⁸ deal with the following fundamental principles of land registries: the principle of consensualism, the principle of opposability of real rights inscribed in the land registry, the principle of publicity, the principle of legality, the principle of specialty, the principle of priority or serial rank and the principle of officiality. In another opinion²⁹, land registries are governed by the following guiding ideas: the principle of publicity, the principle of priority, the principle of probative force of registration, the principle of relativity, the principle of legality and the principle of officiality. Other authors³⁰ retain the following principles: full advertising, the absolute principle of publicity, the principle of legality, the principle of neutrality, the principle of officiality, the principle of relativity and the principle of probative force of registration.

²⁵*Ibidem*, p. 43.

²⁶Civil Code, 2009, Published Text republished in the Official Gazette, Part I no. 505 of July 15, 2011, in force since October 1, 2011.

²⁷See Brădeanu, S., *Op. cit.*, pp. 82-95.

²⁸See, for developments, Motica, I.R., Trăilescu, A., 2001, *Handbook of land law and real estate advertising. The new land books*, Bucharest, Romania: Ed. All Beck, pp. 81-88.

²⁹See Lazarus, I., *Op. cit.*, pp. 35-59.

³⁰Luțescu, G. *Op. cit.*, pp. 810-812. In the same sense, see Stănescu, C., Bârsan, C., *op. cit.*, pp. 292-293; Filipescu, I. P., *Drept civil Op. cit.*, pp. 329-331 (in the latter works the principle of neutrality is replaced by the principle of priority).



In 1957 I. Albu, not retaining the principle of neutrality, considered as compatible with the principles of popular democratic law the following principles of land registries: the principle of the constitutive effect of real right of registration in the land registry (inscriptions), the principle of relativity, the principle of publicity, the principle of legality, the principle of officiality, the principle of specialty and the principle of priority³¹.

According to other authors³², the legal regime of land registries is based on the following fundamental rules: the principle of the effect of constituting real rights of registration in the land registry, the principle of full publicity, the principle of legality, the principle of officiality, the principle of priority, the principle of relativity and the principle of probative force³³.

Compared to all the clarifications made above and taking into account the content of the provisions of the Civil Code, but also of Law no. 7/1996, the following principles can be retained:

The principle of full publicity of land registries

It is defined by the literature as “that rule according to which all real estate rights, also called tabular rights, as well as, in the specific cases provided by law, the rights to claim facts or other legal relations that have connection with the buildings registered in the land registry³⁴.”

³¹Sztranyiczki, S. *Op.cit.*, p. 57; See Albu, I., *The New Books*, *Op. cit.*, p. 390 ff.

³²*Ibidem.*, P.57; See Pop, L., *op. cit.*, pp. 301-304; Safta-Romano, E., *Op. cit.*, pp. 369-370; Romoșan, I., 1996, *Civil law. Real rights*, Oradea, Romania: Ed. Imprimeriei de Vest, pp. 349-350, Adam, I., *op. cit.*, pp. 458-463.

³³Sometimes a distinction is made between "fundamental principles in the field of land books" and "principles that dominate the matter of documents in land books". Thus, it is considered that three general principles underlie the composition of the land book system, namely: a) to the contracting parties the entry in the land book is unenforceable, because either party can rely on causes of invalidity or ineffectiveness, which affect the mandatory relationship and obtain the annulment of the legal act under which the registration was made as long as the acquirer appears in the final land register vis-à-vis third-party acquirers; c) the principle of protection of third parties acquiring good faith. Regarding the principles that govern the registration of land books, the following are considered to be: 1. The principle of publicity; 2. The principle of neutrality; 3. The principle of consensualism; 4The principle of convalescence; 5. The principle of legality; 6. The principle of officiality; 7. The principle of specialty; 8. The principle of priority (see Plastra, G., *op. cit.*, pp. 478-492).

At other times, it is considered that only the principle of inscription, the principle of publicity and the principle of serial rank constitute exclusive land book principles, the others being more civil law provisions. However, the following principles are analyzed: 1. The principle of consensus; 2. The principle of inscription; 3. The principle of publicity; 4. The principle of serial rank; 5. The principle of legality; 6. The principle of specialty (Demeny, P., *op. cit.*, pp. 6-8).

³⁴See Nicolae, M., *Op. cit.* vol. II, p. 183.

According to the provisions of Law no. 7/1966³⁵, the principle of full publicity is described by the following elements³⁶: a) according to art. 19, in the second and third part of the land registry the following items are entered: the name of the owner and the legal facts that constitute the title of the property right, the mention of the document on which this right is based, as well as the transfers of property, the easements constituted for the benefit of property, legal facts, personal rights or other legal relations, actions relating to property, dismemberment of property, seizure, etc.; b) the provisions of art. 20 stipulate that the property right and the other real rights over a building will be registered in the land registry based on the deed by which they were constituted or were validly transmitted, and according to art. 21, the modification of the content of a right encumbering a real estate right shall be registered, unless the law provides otherwise, according to the applicable rules regarding the acquisition and extinguishment of real rights; c) art. 26 stipulates that the right of ownership and other rights are opposable to third parties, without registration in the land registry, when they result from succession, accession, coercive sale or usufruct, but they will be registered in advance, if the holder agrees to exercise the attribute of the disposition on them; under the same conditions, the real rights acquired by the state through expropriation, respectively by the state and by any person, by the effect of the law or by a court decision, are opposable to third parties; d) But the law provides according to art. 38 the possibility to register, upon request, the documents and persons which are related to the real estates registered in the land registry, “with the effect of opposability towards third parties”.

The principle of the translational or constitutive effect of real rights of the land registration.

The Civil Code established the constitutive effect of real rights of the entries in the land registry, according to Law no. 7/1996 which enshrined only the effect of opposability to third parties. In the doctrine it was stated that by the introduction in the land registry, this was an unnecessary revenge of the adherents to the principles of consensualism and contractual freedom

³⁵Law 7/1996 on real estate cadastre and advertising, published in the Official Gazette, Part I, no. 61 of March 26, 1996, as subsequently amended and supplemented.

³⁶*Ibidem.*

against the partisans of the rigorous principle of absolute publicity in the matter of transmission and establishment of real estate rights.

This effect is provided by art. 885 para. (1) - (4) of the Civil Code, according to which: in the land registry, based on the act or fact that justified the registration. (2) The real rights shall be lost or extinguished only by their deletion from the land registry with the consent of the holder given by a notarial deed. This consent is not required if the right is extinguished by the fulfillment of the term indicated in the registration or by the death or, as the case may be, by the cessation of the legal existence of the holder, if the said holder was a legal person. (3) If the right to be canceled is encumbered in favor of a third person, the cancellation shall be made with the preservation of the right of this person, except for the specific cases provided by the law. (4) The final court decision or, in the cases provided by the law, the act of the administrative authority will replace the agreement of will or, as the case may be, the consent of the holder.

Real property rights may be constituted, modified or extinguished only by their registration in the land registry, it being understood that the registration gives rise to, modifies or extinguishes real rights and makes them opposable to third parties, the real rights being constituted or transferred only after they have been entered in the land registry. The extinction of the real rights takes place only if their deregistration has been registered in the land registry with the consent and against the holder.

The principle of legality of entries in the land registry

According to this principle, real estate advertising has the right to ensure the accuracy, correctness and certainty of the registrations made in these technical-legal instruments of cadastral records. In the specialized legal literature, a distinction is made between formal legality and material legality. When we refer to the formal legality, we refer to the fact that the land registrar approves the registration only of the legal acts and facts provided by the law as being subject to this legal operation, as the case may be, and the registration can only be based on the request by the interested person, complemented by accompanying documents. In the situation of material legality, which means the requirement for the registrar to investigate, on the one hand, whether the



document on the basis of which registration is requested meets the substantive and formal conditions imposed by the law for the registration of his right, and on the other hand, whether there is no obstacle to the registration of the land registry³⁷.

The principle of specialty

According to the provisions of art. 876-880 of the Civil Code, this principle derives from the fact that the entries in the land registry must be precise and complete, so as to remove the doubts that would arise in connection with their type, object or meaning. Only by respecting this way of making the registrations is it possible to clearly configure the formal legality and the material legality regarding the registered buildings.

The principle of priority

This principle finds its expression in the matter of the land registry through the adage *qui prior tempore potior jure*. The order in which applications are registered determines the rank of the entries³⁸.

Pursuant to the provisions of art. 890 of the Civil Code, the order of registration in the land registry takes effect from the date of their registration in all cases where the application was submitted in person, by proxy or notary public or, as appropriate, communicated by fax, e-mail or other means which ensures the transmission of the text and the confirmation of the receipt of the application with all the supporting documents. In the case of mortgage rights, the order in which the applications are registered will also determine their rank. If several applications were received on the same day by post or courier, the mortgage rights will have equal rank, following that a court will decide, at the request of any interested person, on the rank and, if necessary, on the cancellation of the registration. If two or more rights have provisionally received equal rank, preference will be given, regardless of the certain date of the insolvent holders, to the one who was placed in possession of the property or, as the case may be, the one against whom the debtor executed first the obligations incumbent on him, except for the mortgage rights which will have

³⁸ Sztranyiczki, S., *Op. cit.*, p. 61.

the same rank. In the event that none of the acquirers has been placed in possession of the property or, as the case may be, the debtor has not fulfilled his obligations towards any of them, the one who first notified the court will be preferred.

The principle of priority is the one that also operates in the case of conflict between third parties acquiring from a common author, when two or more persons have been entitled to acquire, by acts concluded with the same author, rights over the same building request are mutually exclusive. As a result, the one who registered his first right will be considered the holder of the tabular right, regardless of the date of the title on the basis of which the entry in the land registry was made.

In the case of a third party acquiring in good faith, the person who has been entitled, by a valid legal act concluded, to register a real right in his favor may request the deletion from the land registry of a competing right or, as the case may be, the granting of preferential rank. compared to the registration made by another person, but only meeting the following three conditions: a) the legal act by virtue of which the deregistration or granting of the preferential rank is requested to be prior to the one on the basis of which the third party registered his right; b) the right of the claimant and that of the acquiring third party to come from a common author; c) the registration of the right for the benefit of the plaintiff has been prevented by the acquiring third party through violence or cunning, as the case may be. Tabular rank means the effect of an entry in relation with other entries in the same land registry, in this sense having importance only the date, time and minute of registration of the application³⁹.

The principle of enrollment relativity

Under the principle of relativity, the registration of a right in the land registry can be made only against the person who, at the time of registration of the application, is registered or, as the case may be, is to be registered in the land registry as the holder of the right on which the entry will be made⁴⁰. The provisions of art. 22 of the law stipulate the conditions under which a right

³⁹Sztranyiczki, S., *Op. cit.*, p. 63.

⁴⁰See Nicolae, M., *Op. cit.*, vol. II, p. 188.

may be registered, as follows: a) against the one who, at the registration of his application, was registered as the holder of the right for which the registration is to be made; b) against the one who, before being registered, guaranteed his right, if both registrations are made at the same time. According to the provisions of art. 23, if the real right over a real estate has been alienated successively to several persons, but the registrations have not been made, the latter entitled may request the registration of successive acquisitions at the same time as his right, but only if he proves by the original documents the history of the legal acts on which the registrations are based. But, according to art. 24 of the law, the registrations based on the obligations of the deceased, will be able to be made, in principle, even after the registration of the heir's right⁴¹.

The principle of probative force of the registration of land book

It is the absolute principle, it results from the provisions of art. 900 C.civ. and refers to the presumption of the existence or non-existence of a tabular right, which consists in that rule according to which if a real right in favor of a person has been entered in the land registry, it is presumed that the right exists in favor of him. Conversely, if a real right has been removed from the land registry, it is presumed that right does not exist. Proof can be made only to the contrary and only in the case of the acquisition of real rights without registration, as well as by way of action for rectification. In its materiality, land registry advertising entails both a positive effect (when what the land registry contains is considered exactly for the benefit of the person who acquired the property) and a negative one (according to which no real right can exist or may be opposed as soon as it has not been entered in the land registry).

All this principle, according to art. 901 para. (1) - (2) of the Civil Code It is also enshrined in the case of acquiring a tabular right in good faith, according to which “subject to contrary legal provisions, anyone who has acquired in good faith any real right registered in the land registry , on the basis of a legal act for consideration, will be considered the holder of the right registered in his favor, even if, at the request of the real holder, the right of its author is deleted from the land

⁴¹Regarding the detailed analysis of the content of the norms subsumed to this principle, see Nicolae, M., *Op. cit.* vol. II, p. 189 ff.

registry. The acquiring third party is considered in good faith only if, at the date of registration of the application for registration of the right in his favor, the following conditions are met: a) no action has been registered which establishes the contents of the land registry; b) the content of the land registry does not provide for any cause that would justify its rectification in favor of another person; c) did not know, in another way, the contents of the land registry". All these provisions are also applicable to the third party who has acquired in good faith a mortgage right under the legal act concluded with the holder of the land registry or with his successor in rights, as the case may be. However, these provisions may not be opposed by one Contracting Party to the other or by their universal successors as the case may be.

The principle of availability

According to this principle, the entries in the land registry are made only at the request of the entitled person, the legal representative, or, by way of oblique action, at the request of creditors, as well as in cases provided by the law, at the request of the competent authorities⁴².

5.Failure to comply with the principles in the light of the case-law

Analyzing each principle and the jurisprudence, we could make the following list of cases in which some of the stated principles were not observed, as follows⁴³:

Failure to comply with the principle of legality - illegality.

In the present case⁴⁴, the plaintiff filed a complaint against the conclusion of the land registry issued by BCPI within OCPI Olt, ordering the cancellation of the mortgage registration and the payment order and showing that the mortgage was instituted on the property of DI guarantors, to

⁴²Sztranyiczki, S. *Op. cit.*, p. 65; Certain public authorities - notaries, courts, etc. - are obliged by law, in some cases, to communicate to the cadastre and land registry office the prepared documents or the pronounced court decisions, so that this principle finds its justification. For details, see Pop, L., *op. cit.*, p.298; Nicolae, M., 2006, *Treatise on Advertising... Op. cit.*, pp. 198-201; Ungureanu, O., Munteanu, C., 2008, *Civil Law Treaty. The goods. The main real rights*, Bucharest, Romania: Hamangiu Publishing House, pp. 685-686.

⁴³Tăbăraș, M., Constantin, M., 2009, *Cadastre and real estate advertising, Collection of judicial practice*, Bucharest, Romania: C.H. Beck, p.129.

⁴⁴THAT. Craiova, Civil Decision no. 292 of February 2, 2007 (porta.just.ro).



guarantee the realization of the claim against the debtor. The plaintiff addressed the bailiff, in order to find a remedy, in the patrimony of which no traceable assets or sums of money were identified, therefore the real estate foreclosure was initiated on the real estate brought as collateral. Following the finding of the absolute nullity of the title deed of the guarantees, by court decision, the Land Registry Office proceeded to write off the mortgage and the summons issued in the foreclosure procedure. It was also shown that the cancellation of the mortgage was made on the basis of a decision which is not opposable to him.

According to the provisions of Law no. 7/1996, art. 33 para. (4), art. 22, para. (2), art. 51 para. (1):

“The rectification of the entries in the land registry can be done either amicably, by authentic declaration of the right holder to be rectified, or by irrevocable court decision, which replaces the agreement of the parties if they do not agree. The interested party has at its disposal, in the absence of the express agreement of the right holder, the possibility to promote an action in the rectification of the land registry, in order to achieve concordance between its content and the real legal situation of the building, whether or not the mortgage was registered validly”. Illegally, the land registry office accepted the request made, in the absence of the consent of the holder of the real right, or of an irrevocable court decision ordering the rectification of the land registry in this respect. Rejecting the complaint made by the plaintiff, against the above-mentioned conclusion, both courts of first instance ruled on the misapplication of the provisions of art. 33 and art. 51 of Law no. 7/1996, aspect that makes incident the reason for modification regulated by art. 304 pt. 9 Code of Civil Procedure. The court decided the following: absolute nullity of the sale-purchase contract, the return of the parties to the previous situation and the cancellation of the mortgage registration.

Failure to comply with the principle of priority.

According to the provisions of art. 20, art. 30 of Law no. 7/1996: “If by a court decision obtained after the tabulation of the property right in favor of the buyers it was found that the seller was the owner, it is mainly necessary to rectify the land registry under the conditions of art. 33 of

Law no. 7/1996, and in the subsidiary the registration of the pre-existing property right to the alienation in favor of the holders may be requested”.

In this case it is about acquiring a property from the non-owner, the reason for the request was to rectify the entries made in the land registry due to invalidity of the title that was the basis for registration and tabulation in the name of the real owner⁴⁵.

Failure to comply with the principle of formal legality

In this case, it is about the registration of a division in the land registry, which did not meet the conditions of legality, so the request had to be rejected, namely the fact that the transfer of a property, with subsequent payment of a price rest, requires tabulation of the right and the ex officio notation, without paying any fee, of the transmitter's privilege for the remaining price, this being the practice of the cadastre offices. According to the provisions of law no. 7/1966, art. 50 - art.51 and of the Order no. 2371 / C / 1997, art. 111: “As there was no proof of payment of the balance stipulated in the division contract for the building assigned to exclusive ownership which was subsequently the subject of the donation contract required to be tabulated and the fees necessary for the registration of the co-partner's privilege were not paid, it was appreciated that the conditions for the registration of the real estate donated by the debtor co-shareholder in the land registry in favor of the donee are not fulfilled”⁴⁶. The court ruled: the rejection of the application for tabulation due to the lack of proof of payment of the sum, for sharing, the assignment in kind of the property of one of the co-shareholders with the obligation to pay the sum to the other and the lack of proof of payment of the sum and the donation of the property.

Scoring operations in the land registry of the Application submitted to the European Court of Human Rights

⁴⁵THAT. Bucharest, civil section IV, civil decision no. 717/2004 (Civil judicial practice, 2003-2004, case no. 22, p. 86; in addition, Nicolae, M., op. cit., P. 648).

⁴⁶THAT. Constanța, Civil Decision no. 1402 of December 13, 2004 (BJ 2004, Ed. Lumina Lex, 2005, p. 176.).



The court decided that it is an unfounded request according to the provisions of Law no. 7/1996, art. 49-50: “Only the actions regarding the property and other real rights registered on the buildings can be noted in the land registry. The decisions pronounced by the ECHR are given against the Romanian State and concern violations of fundamental human rights assumed by Romania through international treaties. The ECHR does not resolve disputes the object of which is property owned by natural or legal persons and does not dispose of them, therefore the request to mark such an application is unfounded⁴⁷.

In the Land Book Sheet only the civil actions can be noted that have as object the property right over the real estates registered there and as the appellant's request addressed to the ECHR was not of such a nature, the courts correctly ordered the deregistration from the land register.

Failure to comply with the principle of legality by issuing the certificate / certificate attesting the construction of the building, by the local public administration

On January 11, 2020 by Law no. 7/2020 for the amendment and completion of Law no. 10/1995 regarding the quality in constructions and for the modification and completion of Law no. 50/1991 regarding the authorization of the execution of constructions, important changes were also made regarding the legal procedures of registration in the land registry and implicitly of the acquisition of the property right over the built constructions without a construction authorization. The provisions of art. 37 para. (6) of Law no. 50/1991, were amended, regarding the property right over the constructions that can be registered in the Land Registry based on a certificate attesting the construction of the construction, with predilection regarding the constructions for which the execution of works was carried out without a building permit, but for which the limitation period of 3 (three) years has expired, as regards the right to establish the contraventions and to impose the fines.

Following these changes, through the certificate attesting the stage of construction of the building, “the local authority is called to ascertain a state of affairs, not to establish the property right or to decide on the aspects related to the administrative contentious proceedings. If the local

⁴⁷THAT. Oradea, civil decision no. 1370 of December 4, 2007 (C. H. Beck - Database).



authority finds that the verified building does not comply with the provisions of the building permit, the certificate attesting the stage of construction may concern the stages of execution that comply with the building permit, may or may not mention non-compliance. There is nothing to prevent the local authority from certifying only the stages of construction which comply with the building permit, and it may be mentioned, for clarity, which works have been carried out without complying with the building permit. Any mentions contained in the certificate attesting the stage of construction or in the report of the status of the works may be known by third parties who will study the land registry of the building, according to art. 883 in the Civil Code”⁴⁸.

According to the provisions of Law no. 7/2020 art. 37, para. (6): “The ownership of the buildings shall be entered in the land registry on the basis of a certificate attesting that the construction of the buildings was carried out in accordance with the building permit and that there are minutes of acceptance at the completion of the works, or as appropriate, of a certificate attesting the construction of the building. In the case of constructions for which the execution of the works was carried out without a building permit, and the fulfillment of the limitation term provided in art. 31 no longer allows the imposition of sanctions, the attestation certificate / certificate regarding the construction will be issued based on a technical expertise on compliance with the applicable basic requirements on quality in construction, including compliance with approved urban planning regulations, confirming the current situation of constructions and compliance with the relevant provisions and cadastral documentation. In the situation where the technical expertise finds the non-fulfillment of all the fundamental requirements and those related to the compliance with the urban planning regulations, the attestation certificate / certificate regarding the construction is not issued”.

⁴⁸High Court of Cassation and Justice, Decision no. 10/2016 regarding the examination of the notification formulated by the Cluj Court of Appeal - Section III administrative and fiscal contentious in File no. 796/117/2015 * for the pronouncement of a preliminary decision regarding the interpretation of the provisions of art. 36 para. (3) lit. a) of the law on cadastre and real estate advertising no. 7/1996, republishing 2, the form in force on July 15, 2014, published in www.scj.ro no. 1 of April 4, 2016.



According to art. 36 paragraph (3) of the Law on cadastre and real estate advertising no. 7/1996, states: “The property right over the constructions can be registered in the land registry and on execution stages, based on the following documents: a) The certificate attesting the construction stage, issued by the mayor of the administrative-territorial unit; b) the report on the stage of construction; c) cadastral documentation”.

Considering the fact that the Methodological Norms for the application of Law no. 50/1991 were not updated after the amendments to the law, and the law does not explicitly describe the procedure for issuing the act (in all its stages) it is necessary to create a procedure specific to each local public administration, which indirectly denotes how many procedures there are and how they are implemented at national level, regarding the issuance of the certificate of attestation of the construction, moreover, how many ways to violate the principle of legality.

Following the research, we found that the interpretation of the law and the application of its provisions are not unitary, and I refer explicitly to the situation of buildings built through the ANL program. The local public administration is in a real stalemate in terms of solving some requests, and there are not few of them, regarding the issuance of Certificates attesting the construction of buildings built through the ANL⁴⁹ program. The legislation in force in the field of cadastre and urbanism are not correlated, the methodological norms for their application contradict the norm itself. Moreover, there is an outdated, bureaucratic practice that does not come up with solutions to these problems. The non-unitary practice, with large gaps from the interpretation of the law to its application, seriously violates the principle of legality, the foundation of a democratic society, in which the right to property is protected and guaranteed by law.

The situation of these properties is the exception to the rule, because they cannot be registered in the land registry. The registration of the property right over a construction can be done on the

⁴⁹The National Agency for Housing - was established based on Law no. 152/1998 for the development of housing construction at national level and carries out its activity under the authority of the Ministry of Development, Public Works and Administration, as an institution of public interest with legal personality. ANL carries out at national level four main housing construction programs: 1) The Housing program through mortgage credit; 2) Housing program for young people, intended for rent; 3) The rebirth of the Romanian village and 4) Social housing for Roma communities.

basis of a certificate attesting the construction and a report at the end of the works. Compared to the study conducted for a residential neighborhood with 522 buildings built through the A.N.L. program, in which A.N.L. has a mandate right, the citizens have a right of use being beneficiaries based on a construction contract, the lending bank has a mortgage right for the loans granted, and the property right over the land belongs to the Romanian State, respectively to the Local Council, for these buildings can make the reception at the end of the works only after all the buildings have been completed, being an ensemble. Therefore, a vicious circle has been created, citizens are walked from one institution to another, without having a real but also legal solution. For all these buildings, “mother” building permits were issued for A.N.L. and the Romanian State, but later they were “broken” with Building Permits, for other types of works, on behalf of the citizens, partial minutes were concluded by A.N.L. or minutes at the completion of the works for some buildings that have been completed, but no receptions have been made with the participation of the public administration, no minutes have been concluded at the end of the works, but works have been carried out without compliance with a building permit, or without a building permit. The law did not provide for such situations, exceptions to the rule, therefore Certificates were issued attesting the status of the works, with the help of which some buildings were registered in the land registry, thus violating the law. By issuing the Certificates of attestation of the construction stage and their registration in the Land Registry, the principle of legality was violated, a principle that underlies the activity of the public administration and also the basis of real estate advertising.

For some properties, the future owners (beneficiaries of these properties, based on the construction contract), have concluded in authentic form, promises of hire-purchase, others execute the succession as heirs for a property located in this neighborhood, some find it impossible to repay the amounts due for the mortgage right established in favor of the creditor bank, others are in court for that property for other reasons, but none of them have the status of owner of the property registered or not in the land registry. The diversity of problems regarding the legal regime of these buildings, but also the difficulties it poses to the local public administration in finding legal solutions for registration in the land registry is very large and not inventoried at this time.

Thus, the premises are created to violate several principles of public administration and real estate advertising, which are conditioned by each other and are directly influenced proportionally, violating the principle of legality, which ensures and protects the right to property.

6. Conclusions

The importance, both theoretical and practical, in terms of respecting the principles underlying the activity in the service to the citizen, in the local and central public administration, in the institutions that serve his interests is major. Failure to comply with a single principle underlying the activity produces a chain of violations of other principles, thus leading to the violation of one or more rights for one / several natural person / persons and / or legal person / persons, producing precedents in jurisprudence, and leading to an increase in the workload of the courts. Property is one of the fundamental institutions of law, which goes beyond the scope of civil law and administrative law, but retains its essence and position as a constitutional institution.

Each state, in order to be able to fulfill its desires, must ensure the legal framework on property, rights over it, their recognition, protection of the rights and obligations of natural and / or legal persons, in a framework of stability within its borders, by instruments represented by land laws, which support and boost trade relations, exchanges and real estate transactions. Therefore, the observance of fundamental human rights, the right to property being one of them, translates into the observance and recognition of the right of ownership over the land and the buildings built on it, through its good administration, respecting and protecting all the underlying principles, carrying out the activity of the administration.

Good administration means that the system works efficiently, that there is a good land organization, that the laws are applied uniformly and produce their effects, being compatible and adequate, in providing protection against a legal regime that can be precarious, non-transparent and uncertain. The law is the foundation, and respect for the principles established and regulated by it means respect for fundamental human rights, respect for his right to a happy life and an



environment conducive to development. The public administration is in the sights of the citizen, of the one in whose service it acts and for whom it must submit all the diligences, to use all the tools it has, in order to solve his requests, thus fulfilling its mission.

The public administration, within the administrative actions, in the exercise of the normative authority, must take into account the principle of legality, which requires the observance of the limits imposed by the law, but also the fact that in exercising this right, it is an obligation that can engage responsibility in case of abstention. The implementation of the principle of legality within the administrative action presupposes the existence of a democratic regime that must be based on law, on the rule of law, as a guarantee of accomplishing the tasks regarding the general development of society, of achieving the common good⁵⁰.

All this leads to a final conclusion, namely that respect for the principles of public administration and the principles of real estate advertising is the key to prosperity, stability and the maintenance of the quality of life, democracy and the rule of law.

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