

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

JLS/CJ/2007-1/08

The conclusions of this seminar have been drawn up on the basis of a questionnaire drafted with a view to gathering information about the essential principles of the various registration systems, a *sine qua non* to achieve a starting point for a European-wide conception of judicial co-operation systems and public notice through registers. The questionnaire was used as the basis for subsequent debates and has been complemented or clarified in the course of field visits made to the participating judges and registrars in each country.

In particular, this seminar has focused on the subjects that ultimately involved the registration systems, such as those referred to in the white paper on the integration of the mortgage market, the green papers on succession and wills (currently in the Proposal stage) and on conflict of legislation on matrimonial matters.

The present study has also included the matters debated in the course of the seminars held within the framework programme for judicial co-operation in civil matters on “*The Land Registry as a guarantee for the effectiveness of judgements in the European Union*” (Convenio JAI/2003/FPC031) with the participation of judges and land registrars from Germany, Denmark, England and Wales, Scotland, Poland, Portugal and Spain, and on “*The Land Registry as an instrument for judicial co-operation between the EU member states for the application of judgements in the scope of family matters and in successions and wills*” (Convenio JLS/2006/FPC/10) with the participation of judges and land registrars from Germany, Denmark, England and Wales, Scotland, Rumania, Portugal and Spain. We have started from the final conclusions of these seminars, based on consensus and shared knowledge, in order to provide positive proof of the possibility of extending these shared opinions to the new registration systems examined, at least to a large extent.

The essential conclusions of our study have been organized in the following 13-point report:

1. RIGHTS RELATING TO CIVIL RIGHTS
2. REGISTRY PRINCIPLES
3. CIRCULATION OF DOCUMENTS
4. JUDICIAL CO-OPERATION: MEASURES TO ENSURE DUE PROCESS
5. OWNERSHIP
6. MORTGAGES (FOR THE PURPOSES OF THE GREEN PAPER ON THE INTEGRATION OF THE MORTGAGE MARKET)
7. FAMILY: DISPOSAL OF PROPERTY BY MINORS OR DISQUALIFIED INDIVIDUALS
8. SUCCESSIONS
9. PUBLICITY THROUGH THE REGISTRY
10. AUTHENTIC ACT
11. CO-ORDINATION WITH THE CADASTRE
12. ORGANIZATION
13. EFFICIENCY

The examination of each of the registration systems examined has enabled certain conclusions to be obtained regarding these thirteen points, which will be set out below in the order in which the field trips were made to each of these countries, after the explanation of this approach as follows:

1. RIGHTS RELATING TO CIVIL RIGHTS

In this first section, we have analyzed the rights published by the Land Registry insofar as these form part of the scope of fundamental rights to access to justice and the right of hearing that every citizen has (with regard to Registry rights affecting them) in procedures in which they are involved.

The rights of access to justice and hearing form part of the common heritage of European civil rights and have been acknowledged by the Primary Statutes of the EU. Due to their importance, they deserve pride of place in this study. They are essentially related to the Land Registry with the following meaning: ownership and

in rem rights entered on the Land Registry are under the protection of the Courts and cannot be altered without the consent of the party concerned or pursuant to judicial proceedings in which the party referred to on the Registry has taken part.

These principles are maintained absolutely by the title registration systems of Slovenia, Croatia and Bosnia-Herzegovina, as well as by the systems of Romania and Bulgaria, to a large extent; their strength is only relative in Hungary's system and very scant in the cadastral system of Macedonia.

2. REGISTRY PRINCIPLES

The Land Registries share fundamental principles that are not mere ideas but basic rules for their operation. Among others, we have analyzed the following in each system:

- The general principles: priority and chained title or entitlement,
- Legality, on the one hand in the form of the authentic act rule to ensure the formalities for the inclusion of the document have been complied with, but particularly with regard to the aspects of qualification or legal scrutiny by the Registry of the document to be entered, as a recourse to ensure the “mirror”, “curtain” and “insurance” of the Registry. On this point we share the conclusions of section 121 of the Report by the ZERP on the real estate transactions market¹: [*Moving to the rationale to exercise a pre-control for the land register, this does not seem to render necessary the intervention of a professional. Indeed, one can simply expect the land registry, which is staffed all over Europe with legally qualified officials (be it civil servants, legal professionals or judges) to effect this control itself.*]
- The principles of so-called positive publicity such as the principles of legitimation or accuracy of the Registry or reliability (*bona fides, fides publica*).

Furthermore, we have had great regard for the report entitled “*Land Administration in the UNECE - Region development trends and main principles*”, II²: “An ideal system should reflect perfectly the legal position on the ground (the mirror principle), draw a curtain over all previous dealings so that only the present entries on the register need be consulted (the curtain principle) and guarantee the accuracy of what is shown on the registers (the insurance principle).”

As acknowledged in the report, these principles, the “mirror”, “curtain” and “insurance” effects, are implemented with difficulty in the systems for Deed

¹ Centre of European Law and Politics (ZERP) -University of Bremen- Study COMP/2006/D3/003 “Conveyancing Services Market”.

² Geneva, 2005.

registration and much better in the Title registration systems. Their practical application has inspired our conclusions.

In broad brushstrokes, it can be said that:

- Bosnia-Herzegovina, Slovenia and Croatia: title registration systems preserve all the fundamental registration principles of priority, enchained title, legality (qualification), including those of opposability, legitimation and *bona fides* of the Registry.
- Romania: the deed registration system maintains the principles of priority, enchained title and legality, but the effect of registration is limited to opposability.
- As for the mainly cadastre-based systems, the same can be said for Bulgaria, and even Hungary with the main exception of enchained title in this latter case.
- With respect to Macedonia, only the registration principle of priority seems entirely indisputable, as well as that of legality in its strict version of exclusivity for notarial acts.

3. CIRCULATION OF DOCUMENTS

From the perspective that the idea of a common legal space requires a fluid circulation of public documents and judgements among the Member States, and considering its beneficial effects on the single market, we have examined the possibilities for the enforcement or recognition of these with regard to their inclusion on the Land Registries of the Member States.

- With regard to judgements referring to real estate, this matter is presided over by the principle of the exclusive jurisdiction of the State in the territory of which the property lies. But a more flexible approach to this rule, which no State is certainly prepared to waive, is favoured in our opinion not only by the idea of mutual trust in the judges and courts of the Member states or the requirements of the principle of free circulation of goods and services, but also for practical reasons. On a positive note, we have seen a favourable trend, albeit *de lege ferenda*, to extend the mechanism regulated in Regulation 44/2001 to certain matters, such as, in particular, the judgements concerning divorce insofar as they establish a share-out of matrimonial property, providing that the divorce is undisputed. In other words, there are clear sympathies for the solution that might be called the “Amendment of the Brussels I Regulation”.

- As for the circulation of public documents formalizing the conveyance of property and to a large extent as a result of previous seminars, it is our opinion that this should be unrestricted and, if an authentic act from another Member State meets the (logical) threefold condition of being a) compliant with the legislation of the State where the real estate lies, b) duly translated and c) apostilled or legalized, we can find no reason to oppose the processing of this document in the same way as an act formalized in the State where the real estate lies: the foreign document would be subjected to legal scrutiny by the Land Registry of the State where the real estate lies in the same way as national authentic acts.

These guidelines, favourable to the greater flexibility of exclusive jurisdiction and the circulation of authentic acts, are mostly shared by the registration systems examined, although with these exceptions:

- With regard to court judgements, it is worth mentioning the reluctance of the Romanian system, as well as the Macedonian system, which seems not to accommodate any recourse other than *exequatur*.
- With regard to the circulation of public documents, the Bulgarian system, with notaries public subjected to rules of territorial competence, or the Macedonian system insofar as it seems to reserve the exclusivity of its Cadastre to documents from its own notaries public.

4. JUDICIAL CO-OPERATION: MEASURES TO ENSURE DUE PROCESS

In our opinion, there are certainly possibilities to increase co-operation by Land Registries with the judges and courts of the Member States, as was, we feel, reasonably well established in the conclusions of the two seminars mentioned at the beginning. Taking for granted the mutual trust in the judges and courts of the Member States, one of these possibilities lies in facilitating the inclusion on Land Registries of judgements affecting real estate.

The examination has mainly focused on three kinds of resolutions affecting real estate, depending on their purpose:

- a) attachment orders;
- b) real estate disputes;
- c) prohibitions of disposal.

The vocation of these judicial resolutions is to bring about an entry on the Land Registry for the property affected, respectively:

- a) an annotation of attachment;
- b) an annotation of dispute or a caveat or notice)
- c) an annotation of prohibition of disposal.

The first step was to verify that each of the registration systems examined is aware of and applies these measures.

The second was to compare the judicial measures and registration entries effected as a result. From this comparison, there are both analogies and differences with regard to procedures and effects, but the overall result was the confirmation of an equivalent purpose and similar or recognizable effects. This point was already reached in the course of the seminars.

The third step would be the publication (the most appropriate type of rule or format seems to be a Recommendation) of a list of these measures and their registry entries in the statutes of each of the Member States, as a tool to be able to recognize in the legal system of each State the measures equivalent to their own: thus, for example, a Spanish annotation of attachment would correspond to the Slovenian annotation as both share the same purpose (the publication of an order of attachment via the Registry), the differences lie in the fact that the Spanish annotation has a duration limited to four years but may be extended, while the Slovenian is noted for an indefinite period, but the purpose of both is for the attachment to become public vis-à-vis third parties; in both cases, there is no suggestion of any prohibition on disposal of the property.

Finally, in fourth place, it would be necessary to have regulations to allow the Judge of the State where the proceedings are under way to order, for example, an attachment in his or her own country and alternatively the equivalent order or measure according to the legislation of the State where the property lies, in order to achieve the same purpose of the proceedings, namely the attachment.

Well:

- In the current *status quo* (as with all judgements affecting real estate located in another State), this today requires either the duplication of the proceedings, once before the judges of the State where the case is being heard and again before those of the State where the property lies) or else a request for the execution of such a measure before the judges of the State where the property lies, which is usually inconvenient, or an attempt to get the judges of the State where the property lies to recognize the measure handed down by a judge or court in another State. For the sake of simplification, we can say,

grosso modo, that the *status quo* of the States, whether or not EU Members, is what we will call the *exequatur* response.

- On the other hand, in this and other seminars, we have defended the usefulness of extending the procedures regulated by Regulation 44/2001, in other words, the possibility of the route we will call the *Amendment of the Brussels I Regulation* to these circumstances of annotation of court orders on the registry. The feasibility of this solution could be enhanced as we have found in the registration systems examined in this seminar (and in other previous seminars) not only the expected differences, but also shared criteria, and not only regarding bare minimums.

5. OWNERSHIP

On this point we have consulted, in each system, basically:

- the restrictions on the acquisition of real estate by foreigners,
- the organization of condominiums, given the social importance of owning apartments and the relevance of publicity regarding the physical characteristics of each apartment, the participation in the joint property or condominium, the Articles of Association or regulations governing the same and their inclusion on the building's Registry sheet;
- tenancy rights;
- the extension of matriculated property. On this point, however, it is necessary to distinguish clearly between 1) matriculation and 2) mapping of the territory:
 1. One thing is to have all properties matriculated, i.e. the Land Registry includes all properties listed one by one and appropriately allocated to their respective owners (properties classified by specific owners and suitable for traffic): the registration systems of Slovenia and Croatia in particular and to a lesser extent Bosnia-Herzegovina;
 2. and quite another thing is to use mapping. i.e. the territory is reflected on maps with a greater or smaller scope: this does not imply that the unique property rights of the properties are either ordered or adequately assigned to owners but merely that drawings or photographs are available for the national territory (properties are not classified by specific owners and their eligibility for commercial traffic is pending further requirements or verifications): Bulgaria or Macedonia, Hungary and Romania.

On questions of ownership, there are other matters of great interest such as the problems for the organization of former public or collective ownership and the difficulty of the legal limitations on ownership, which far exceed the scope of this study.

We cannot however fail to reflect the suitability of drawing up a European Catalogue setting out all the legal limitations on each Member State or region, comprising the definition of each limitation, their legal basis and the regulations supporting them, as a means to ensure transparency of ownership.

6. MORTGAGES

Mortgages are a legal institution of great complexity and socio-economic importance. Our study has been limited to the points involving registration systems, in the light of the white paper on the integration of the mortgage markets, basically:

- The mortgage liability of each property as the limit of the claim by the mortgage creditor against the property and the absolute need for publicity through the registry to set this out unambiguously and broken down by concept (loan, interest, costs).
- The possibility of hidden charges. Honestly, and setting to one side the more confusing matter of legal limitations on ownership, the systems examined seem, on the whole, to be more consistent with the rule of opposability with regard to hidden charges than, for example, Spain and Portugal. In these latter systems, as a general rule, charges not entered on the register are not subject to opposition and (particularly in the Slovenian or Croatian systems) the very idea of hidden charges is repudiated. Thus, when tested with regard to two of the most frequent hidden charges affecting creditors when resorting to foreclosure, the unregistered lease of dwellings and tax privileges, the solution in all cases is that the same cannot be opposed if they are not registered and subject to the principle of priority ... unlike the situation in Spain, where the legislation protects the unregistered lessee for 5 years when the property is foreclosed, or Portugal, which applies certain unregistered tax privileges for preferential collection in the event of the foreclosure of a mortgage, thus diminishing the fruits of the sale in a public auction (during the seminar, Her Honour Judge Almeida from Portugal provided a collaborative note on this point).
- The problems associated with mortgage enforcement, as the importance and seriousness of the guarantee received by the creditor depend on the ease with which it can be executed.

7. FAMILY: DISPOSAL OF PROPERTY BY MINORS OR DISQUALIFIED INDIVIDUALS

On this point, we observed whether the mechanisms for legal scrutiny in a registration system managed to contrast the fulfilment of the requirements normally imposed by law in the cases of disposal of real estate belonging to minors and those declared incapable and in their interest.

8. SUCCESSIONS

On this matter of civil law, we have examined three subjects particularly:

1. *Certificate of Inheritance.* The Proposed Regulation on Succession and Wills was published in the midst of the seminars and field visits in this project. Even so, the questionnaire comprised some of the basic elements of the Green Paper disseminated in advance. The certificate of inheritance as a title a) accrediting the status of an heir and b) entitling the holder to carry out acts of administration and partition, is used (albeit unevenly) in the various systems. Nonetheless, the form of certificates of inheritance seems excessively long-winded in the light of article 41 of the Proposal, and the application of some of the effects that the Proposal seems to attribute to certificates of inheritance (e.g. article 42.2) would probably be problematic.
2. *Legal entitlements.* On this point, we observed whether or not the registration systems' mechanisms for legal scrutiny or verification are able to confirm the respect for inheritance rights guaranteed by law to certain heirs, offspring, descendants or surviving spouse.
3. *Probate Register.* We confirmed whether or not there is a centralized register reflecting the existence or archiving a copy of public wills and testaments and, instrumentally, may be used as the basis for a future European register of wills.

9. PUBLICITY THROUGH THE REGISTRY

On this point, we have examined the registration systems to identify, on the one hand, the characteristics for access to publicity and its restrictions: if it is totally open to the public, how the justification of interest and data protection operate and the conditions for access to information; on the other hand, the way publicity is given, with particular attention to notice given via electronic means.

Furthermore, we have confirmed that publicity through the registry is rarely free of charge.

10. AUTHENTIC ACT

The kinds of document for which the Law reserves access to the Land Registry form part of the principle of legality and the handling of the basic principles of the registries. In addition, in this section, we have examined the possibilities shown by authentic acts in registration systems, confirming the existence of exclusivity for notaries public in some cases but also the flexibilization of the authentic act rule with such concepts as private documents with an authenticated signature or forms.

- Thus (always without prejudice to the registration of documents from the administration or judicial authorities) Romania, Bulgaria and Macedonia maintain exclusivity of access for notarial documents. The fact that the law has reserved the exclusive right to draft acts to be entered on the registry in favour of notaries public does not seem to have redounded in a greater reliability in the contents of the Land Registry, far from it. This is a constant in the oligonomy inherent to the nature of the intervention by the notary public: the notaries draft each document in the light of the interest of the parties to the contract, their clients but they do not conduct a full review of all the legal and registry aspects of the situation or holonomy.
- On the other hand, Bosnia-Herzegovina, Slovenia, Croatia or Hungary accept the eligibility for registration of private documents with an authenticated signature, either at the Court or by attorney. Croatia (the most flexible system from the standpoint of documents eligible for registration) has introduced the use of forms for several types of transaction at the Land Registry, e.g. the cancellation of mortgages.

In no case are pure private documents allowed, nor should they be allowed, to have access to the Land Registry without authentication.

11. CO-ORDINATION WITH THE CADASTRE

Bearing in mind the important task performed (or theoretically performed) by the Cadastre in the description of the physical aspects of the ownership reflected in the Land Registry (description, part A or part one of the registry sheet), we have examined the general features of the co-ordination between both institutions:

- by means of a cadastral ID code or number for each property noted on the description of the property (part A on several systems);

- whether the cadastral description is the same as the registry description, in whole or in part, that is to say with two variants: allowing the textual description or the titles as a complement, or not accepting any description other than that of the cadastre.

In this latter case, the cadastre review procedures do not usually require the consent of the party referred to on the Registry, which poses certain inconveniences and a certain tension with the right to ownership and access to justice and hearing rights when there is a modification in the object owned due to purely administrative procedures and without the consent of the owner or any judicial decision in this respect. What is more, with these systems there is potential for the following hypothesis to occur: the owner might be engaging in negotiations with a potential purchaser of the property at the same time as the Cadastre is proceeding to modify the object of the contract.

12. ORGANIZATION

- Under the supervision of judges in Bosnia-Herzegovina, Slovenia and Croatia, all systems of Austrian tradition that establish the judicial safeguarding of entries; in Romania, it is supervised by public servants with a degree of autonomy whose actions are subject to liability, although they are part of the Cadastre Agency (Law 7/96); in Hungary, the Land Registry belongs organically to the Ministry of Agriculture; in Macedonia it is the Cadastre.
- All the systems (including the Macedonian one in its own way) follow the technique of a sheet per property, and the historic records or property lists are organized by properties, each property on one sheet. A separate and peculiar problem is that of the legal organization of *condominiums* within the ownership of apartments.
- In addition, the registration systems examined store an archive copy of the act giving rise to the entry (collection of deeds).
- Organization of the sheet: all the systems, leaving aside the peculiarities of the *imoten list* used in Macedonia, follow a similar structure,
 - Part 1 or A: the description, with variations, depending on whether the cadastral description is complemented with the textual description or it is only the cadastral reference, or a textual description with the cadastral identification code or number.
 - Part 2 or B: Registered ownership;
 - Part 3 or C: Mortgages and Charges.

(The concordances between the organization of the registry sheet and the publicity provided through the registry are self-evident and should facilitate understanding between the different registration systems.)

- We have classified the systems depending on whether inclusion is voluntary or mandatory. It is obligatory in Hungary, Bulgaria and Macedonia but voluntary in Bosnia, Slovenia, Croatia and Romania.
- The contents for public notification, as mentioned above, run in parallel to the contents of the entry, as they are organized as Description / Registered Ownership / Mortgages and Charges. The structure of the registry pages should facilitate the publicity of the registry from one State to another.

13. EFFICIENCY

We have been told of reports or organizations that judge the quality of the registration systems basically having regard for three factors: a) the operating costs associated with the formalization and inclusion of mortgages on the Registry, b) the time or period taken to record mortgages and c) the time taken to enforce them (e.g. the Study on the Financial Integration of European Mortgage Markets, from 2003).

In our opinion, these are indicators of the efficiency required by only one of the aspects of the registration system, namely the conservation of mortgages, but the efficiency of the registration system in general requires attention to be paid to a few others. All the same, we have taken them into account and, as far as we are concerned, a) the conclusions of the economic cost analysis seem valid as set out in the survey of the “Conveyancing Services Market” carried out in 2007 by the *Zentrum Europäische Rechtspolitik* (ZERP, Centre for European Law and Politics) at the University of Bremen; b) we will deal below with the time taken for registration in general (and not just for mortgages); and c) the subject of enforcement time and the reasons for this (in summary the conception of mortgage foreclosure as a succession of acts each liable to review and individual appeal) has been dealt with in paragraph 6 for each of the registration systems.

In our opinion, these are not the only indicators that need to be assessed to classify the effectiveness of a registration system but rather those reflected in our study.

1. Possibility of electronic submission and processing of documents.
2. Time taken to dispatch documents.
3. Contents of the registration details, so as to establish a true *property statute* in the interests of both the owner (so that ownership becomes a true “formal

capital”³ in their favour) and interested third parties, notably including among these creditors aspiring to the conservation of their mortgage (an important purpose but not the only one).

4. Solution of flaws, errors, omissions or legal inaccuracies in the documents submitted for registration.
5. Deadlines within which registration information requested is provided to banks, creditors, private individuals and any interested parties.
6. Quality of the publicity and whether, once information is obtained from the Land Registry, it is necessary or appropriate to undertake a study or complementary investigation of the title to make sure of the registered ownership and status of the property with regard to charges.

In our opinion, the efficiency of a system is debateable if it proceeds to register a mortgage or any other right in a very short space of time, at the expense of renouncing the legal scrutiny of the act entered: the outcome is usually a low quality of publicity through the registry, neither reflecting the correct legal status of the property nor allowing the existence to be ruled out of preferential rights that might undermine the basis of the right entered, nor guarantee the accuracy of the details registered. In other words, there are no mirror, curtain or insurance effects for the right registered.

On registration systems where there is no legal scrutiny and the Land Registry does not provide the effects of so-called positive publicity (assumption of accuracy and maintenance of the party acquiring it for a consideration and the *bona fides* of the registered owner), the particulars on the registry will not be sufficient to enter into a contract with legal certainty, but will have to be followed a) inevitably by a phase of investigation of the title and b) potentially by the need to contract some form of insurance against this risk. In other words: more time and more cost.

- Thus, the systems in Slovenia or Croatia (which have a general guidance period of 30 days for registration and, in practice, may have cases that take longer) foresee a rigorous legal scrutiny of title and seem to provide information that conforms to the aforesaid principles of mirror, curtain and insurance. They are positive publicity systems that tend to guarantee the legal certainty of the party acquiring the property. The same system is followed by Bosnia but is less developed than the previous countries due to the country’s situation (although clearly better in terms of the results with regard to 2005, at least for the Sarajevo Land Registry).
- Bulgaria and Macedonia, on the other hand, respectively carry out minimal and practically non-existent legal scrutiny. The outcome is that,

³ In the well-known sense proposed by the economist Hernando de Soto Polar.

after obtaining the information on the registry prior to the transaction, the lender or other party to the contract will normally require additional legal certainty and will resort to additional investigations of the title, that is to say there will be an additional phase of indefinite duration between obtaining the information from the registry and formalizing the contract. This result makes the efficiency of publicity through the registry only relative and, by extension, the system itself.

To put it another way:

- In the first group of systems, legal scrutiny is carried out (and their challenge is to perform it in a reasonable time frame) with the result of a Registry with accurate content and effective publicity;
- In the second group of systems, the legal scrutiny is carried out superficially or not at all, and the time frame for dealing with documents, including mortgages, is extremely short, but the result is a Registry with frequent inaccuracies and less effective publicity through the Registry.

In our opinion, a Land Registry is only as reliable as the content of its entries and as efficient as the registration information it supplies.

REGISTRATION SYSTEMS

BOSNIAN REGISTRATION SYSTEM

1. RIGHTS RELATING TO CIVIL RIGHTS

In the Bosnian registration system, the party referred to on the Registry cannot be affected by any procedure in which he or she has not taken part (safeguarding of rights, enchained title).

Furthermore, it is not possible to alter the contents of the Registry by any means or incidentally other than by submission to the procedure legally foreseen.

2. REGISTRY PRINCIPLES

The Bosnian registration system retains certain principles of the Registries created under the Austrian model and, albeit a little imperfectly (for reasons that have more to do with the situation in this country than with criteria and that are more objective than legal), it can be classified as a Title Registry. It clearly maintains the following principles:

1. Principle of priority for the documents submitted, particularly with regard to mortgages;
2. Principle of legality; with regard to the authentic act rule, we find some flexibility, although not as much as in the Croatian system, as it accepts not only notarial acts for inclusion but also private documents with signatures authenticated before the officers of the Court; forms are not foreseen. In addition, similar to Slovenia or Croatia, qualification or legal scrutiny of the document is applied to avoid the inclusion on the Registry of documents with defects or unclear situations.
3. Principle of enchained title, which has a meaning shared by that used on Title Registries.
4. As for the principles ensuring the legal certainty of acquisitions, it is possible to speak not only of the principle of opposability of the Registry's content

versus rights not entered, but also of a presumption that the contents of the Land Registry is accurate and valid with a legislative preference in favour of acquirers for consideration acting in good faith or the principle of *bona fides* [q. 13].

3. CIRCULATION OF DOCUMENTS

1. With respect to judicial documents, the rule in Bosnia Herzegovina (and there are no exceptions) is for exclusive jurisdiction in property matters and, therefore, all judicial resolutions or judgements that are to be enforced in the country will require *exequatur*. There are no exceptions for divorce judgements in which there is a distribution of the jointly-owned marital assets. Nonetheless, the technique regulated by Regulation 44/2001 for the EU Member States would be considered adequate for this purpose and would be applied naturally if and when the time comes.
2. As for extrajudicial documents, the rule is for notarial deeds formalizing contracts involving real estate and coming from abroad are not recognized and cannot be entered on the Land Registry in Bosnia but must first be certified before the Bosnian courts, as well as being duly authenticated and translated into one of the official languages of Bosnia-Herzegovina by, in principle, a court interpreter. Documents coming from Croatia, Serbia and Montenegro are exempted as specific Agreements have been signed on this matter.

4. JUDICIAL CO-OPERATION: MEASURES TO ENSURE DUE PROCESS ON THE LAND REGISTRY

The Bosnian registration system deals with:

1. The registration of measures such as attachment orders in order to encumber a property with respect to an order imposing a charge or an enforceable debt. In any case, these measures are 1) judicial in nature, not adopted by administrative authorities; 2) indefinite in duration, until the Court decides to order their cancellation, and 3) their effects do not automatically imply any restrictions on the disposal of the property, unless the Court has specially established a temporary ban on disposal in accordance with article 2 of the regulatory statute; they also comprise the possibility of mandatory enforcement.
2. The registration of judicial measures such as *caveats* or notices to alert third parties to the existence of legal action affecting properties, notes of dispute, is included in its legislation. Similarly, these are 1) adopted by judicial authority, 2) for an indefinite period and 3) their natural effect is to give

notice to third parties, thus eliminating any protection they might have obtained from an appearance of *bonus fidei* in their favour on the registry; on the other hand, it does not imply any restrictions on disposability, unless the Court establishes this specifically at the request of the parties.

3. The registration of judicial measures such as prohibition of the alienation or encumbrance of real estate 1) if adopted by judicial authority; 2) without any pre-established time limit, by means of an annotation of indefinite duration; and 3) their effects include the closure of the Registry to any act executed by the Owner.

5. OWNERSHIP

Bosnia-Herzegovina suffers from institutional problems affecting ownership arising out of the privatization of buildings previously considered collectivized state property and the restitution of properties following its last war from 1992-1995; these must be resolved by means of *ad hoc* legislation and enforcement by the courts.

As for the ownership of apartment buildings, there is in practice a co-existence of tenancy rights and ownership rights, unsatisfactorily organized under a regime of condominium, since this gives rise to a certain lack of definition with regard to rights and obligations.

From an examination of the pages with entries for apartments on the Land Registry, it is seen that the existence of the condominium is sometimes reflected indirectly through references to their belonging to a building and descriptive information regarding access or certain associated usage rights that the apartment may have. We feel that legal certainty would be greater if the details of the registry description were more complete and if the entry for each apartment sufficiently reflected a reference to the Articles of Association regulating the condominium and the specification of each apartment's quota share in the same, as well as, of course, proper co-ordination between the two sections, so that the sheet for each apartment is expressly linked to the sheet for the building to which it belongs. By applying this registration technique, the title of the apartment's owner will probably be better determined.

A large part of the real estate in Bosnia is matriculated since (unlike Macedonia for instance and like Croatia or Slovenia) it has preserved the Land Registry previously available. The real problems are with updating the registry archives, although the economic activity in recent years has mobilized property and increased the pace at which the Registry is updated.

6. MORTGAGES

- Limitation on the mortgage liability entered in favour of a third party. The entry of a mortgage constitutes it.
- Hidden charges: not present. As for those detected during the seminars,
 1. Unregistered lessees are offered no protection by the registry and cannot oppose eviction.
 2. Tax debts are subject to the rules of priority on the registry and do not have any tacit privileges.
- Enforcement of mortgage: as with other systems, debtors are over-protected and able to challenge each and every one of the steps for enforcement. We have reached the conclusion that foreclosure is connected to the Land Registry through the annotation, at least, of the start of the foreclosure of the mortgage, despite the ambiguity of the response to q. 47, so that, through the information on the registry, it will be possible to identify the important detail that creditors are in the phase of realizing their credit.

7. FAMILY: DISPOSAL OF PROPERTY BY MINORS OR DISQUALIFIED INDIVIDUALS

The documents in which these are formalized must comply with the legal requirements, cautions or constraints and this circumstance is included within the qualification by the registry (q. 54 and q. 55).

8. SUCCESSIONS

Certificate of inheritance. Judges may issue a resolution whereby an interested party, after due hearing, may be indisputably accredited as holding the status of heir (q. 68, q. 69). It seems to have a considerably more schematic content than that used both at seminars held on this matter and, certainly, in the very comprehensive article 41 of the Proposed Regulations on Successions.

A certificate from the Birth Registry would be a preliminary step to obtaining this and may perhaps give certain entitlements. Although there does not seem to be any major obstacles in adopting a European certificate of inheritance for this purpose (accrediting the status of heirs), it is likely that some of the provisions foreseen in the Proposed Regulations on Successions and Wills, such as article 42.4 for example, may be difficult to enforce.

Legal entitlements. Qualification by the registry comprises the fulfilment of any rights existing in favour of those entitled to a mandatory or necessary portion of the estate (cf. q. 76).

Register of Wills. Bosnia has no centralized wills registry (q. 72).

9. PUBLICITY

The records are open to the public and anyone, without the need to show any legal interest in doing so, may request information about the properties (extracts), pursuant to article 2.1 of the Law on Land Registry Books in the B-H Federation. It should be pointed out that it is necessary to designate the details of the plot of interest; it is not possible to access information by the name of the owner.

The legislation on data protection is strictly enforced.

Publicity is not free of charge and fees accrue for each consultation.

10. AUTHENTIC ACT

Notarial deeds co-exist with private documents authenticated before the Court.

To this we should add the generalization of private documents at the Companies' Register.

11. CO-ORDINATION WITH THE CADASTRE

Co-ordination without subordination. The descriptions of properties on the registry normally contain a reference to the cadastre and also a textual description.

The speakers from Bosnia consider it is appropriate to maintain co-ordination with the cadastre but they do not find it acceptable for the cadastre details to prevail over those on the registry title.

12. ORGANIZATION

- Under the supervision of Judges. The president of the Court of Sarajevo is firmly convinced of the suitability of judges, court officers and legal advisers carrying out registry functions doing so with total independence.
- Classic sheet per property system; historic records by property; to this we must add a collection of deeds submitted for registration.
- Organization of the sheet: A) description, including an indication of the cadastre plot where the property is located and a descriptive explication of

its situation and physical characteristics (no unique cadastral identification for each property); B) Registered Ownership; C) Mortgages and Charges. Recognizable and in general terms shared with other European registration systems, including those that are not of Austrian origin.

- Inclusion on the register: voluntary.
- Contents of the entry: succinct extract. No transcription. There is a collection with copies of the documents that have given rise to the entries. Articles 3, 4 and 5 of the Law regulate pre-inscription or conditional inscription, subject to additional requirements that, if not subsequently complied with, would imply the exclusion of the registration
- Contents of publicity: analogous to the entry contents (extracts).

13. EFFICIENCY

Indicators:

1. Electronic submission of documents: not at present. They consider an initial phase for the digital scanning of archives to be a pre-requisite.
2. Processing of documents: indicative term of 30 days.
3. Contents of the registry details: essential extract. Many of the details of the titles are in the archived collection of documents.
4. Resolving defects: apparently there are no rules establishing the liability of the notary public for any inaccuracies or legal defects that might arise in the drafting of a document nor any right to require their correction, but there is clearly good praxis in place and there is a noteworthy collaboration between notaries public and interested parties for this purpose.
5. Publicity, very short deadlines. In particular, where an extract was previously requested for publicity of the property, especially for mortgages. A certificate by the registry is a prior (and definitive) step for the purposes of granting a mortgage. Around 2004, issuing it took quite some time.
6. Quality of the publicity. There is an expectation of improvement as and when the Land Registry is updated in terms of registered owners and current charges of entered properties; it is recommendable to increase the content of the entry page, so as to correspond with the extracts. At the Land Registry in Sarajevo, we carried out a random

test of the reliability of the information supplied to the public; this gave a positive result, so (even allowing for the fact that the updating of the Land Registry contents in Bosnia is not at the same level as Sarajevo in all the other districts of the country due to the many difficulties of all kinds they have to endure) the registration system seems to be beginning to bear fruits with regard to the mirror principle.

SLOVENIAN REGISTRATION SYSTEM

1. RIGHTS RELATING TO CIVIL RIGHTS

In the Slovenian registration system, we can highlight that parties referred to on the Registry may be affected by proceedings to which they have not been a party, as the formulation of the enchainment is sufficient for the purpose, as indicated below.

Furthermore, it contains guarantees that the contents of the Land Registry cannot be altered to the detriment of the party referred to on the Registry by any proceeding other than that foreseen in law.

2. REGISTRY PRINCIPLES

The Slovenian system is Austro-Hungarian in origin and has all the features of a Title Registry:

- Priority. This is one of the most important principles of the Slovenian registration system, formulated in a totally recognizable way ([q. 95] *Priority is a principle of the Slovenian registration system that is established in Article 10 of the Land Registration Act and throughout all regulation on submission entries (the land registry court shall rule on entries and shall carry out entries according to a priority determined according to the moment when the land registry court received the proposal for entry or when the land registry court received the document based on which it rules on entry ex officio. The priority of the acquisition of a real right shall be determined according to the moment at which the entry of the right takes effect).*
- Enchainment in its pure sense. (*Entries shall be permitted against a person against whom the document that is the basis for entry has effect and who is entered in the land register as the holder of the right to which the entry refers (Article 9/2 of the Land Registration Act).* [q. 1].
- Legality, scrutiny by the Registry. In particular, qualification comprises the requirements of the act's validity, and scrutiny by the Registry extends to verifying whether the safeguards in place for the disposal of property owned by minors or disqualified individuals have been observed, whether the succession rights of compulsory heirs have been respected and, in general, all matters relating to the document's internal validity. Oversight by the registry seems to be essential if, as seems to be the case, the percentage of notarial deeds with legal flaws or inaccuracies is as high as estimated (40-50%) (q. 93).

- Legitimation, *fides publica*. The Slovenian system has a high level of legislative certainty in the acquisition of real estate [article 8 of the Slovenian law, q. 13]. In practice, registered rights are always more robust [q. 12].

These principles are formulated in such a way as to offer sufficient guarantees for registered owners and for third parties. Reaffirmed in 2008 by a legal amendment.

The mirror, curtain and insurance principles do not seem to be in any danger in Slovenia.

3. CIRCULATION OF DOCUMENTS

- Judicial documents: in the case of judgements regarding divorce and with regard to the distribution of jointly-owned real estate or the award of properties between the former spouses as a result of the divorce, the Slovenian opinion would probably be favourable to replacing *exequatur* by a system recognition such as that in Regulation 2,201/2003 or 44/2001, and particularly for uncontested divorces.
- Extra-judicial documents: in principle, the registration of documents executed before foreign notaries public may be admissible if they comply with the triple condition a) of conforming to the *lex rei sitae* (in other words, Slovenian law); b) legalization and c) translation of the document.

4. JUDICIAL CO-OPERATION: MEASURES TO GUARANTEE DUE PROCESS

- Registration of judicial measures such as orders of attachment to guarantee collection of debts.
 1. Slovenian law foresees (q. 23 and following) a prohibition on the disposal or encumbrance of property, adopted by judicial authority, as well as a decree for execution, both of which will give rise to the pertinent Registry entries (note of prohibition or note of execution). There are also (q. 25) administrative procedures for compelling the payment of taxes.
 2. These entries do not have any pre-established deadline but are of indefinite duration until a Court order their cancellation.
 3. Effects: a) the note of prohibition will imply the closure of the Registry but the note of execution does not seem to have this same

effect; b) execution may give rise to the auction of the property and the award of its ownership and cancellation of subsequent rights.

- Registration of judicial measures such as caveat or notice to alert third parties to the existence of legal action affecting properties, notes of dispute. Slovenian law foresees the use of notes of dispute.

1. Note of dispute as per article 79 of the Slovenian law; adopted by judicial authority.
2. No pre-established deadline, indefinite annotation.
3. Effects: warning to third parties and elimination of *fides publica*. For the registration of rights effected afterwards, notes of dispute have the effect of a condition precedent.

- Registration of judicial measures such as notes of prohibition of the alienation or encumbrance of real estate. As we have seen, Slovenian law foresees these with the following characteristics:

1. Adopted by judicial authority
2. No pre-established deadline, indefinite annotation.
3. Effects, closure of the Registry.

5. OWNERSHIP

The circulation of ownership does not seem to have any noteworthy restrictions.

The proportion of real estate matriculated in Slovenia is high. In the period following its independence, Slovenia has maintained and updated its Land Registry, instead of replacing it by another system.

6. MORTGAGES

- Limitation on the mortgage liability entered in favour of third party; the mortgage cannot guarantee amounts greater than that established when it is constituted. The registration of the mortgage is constitutive by nature and this is strictly applied.
- Hidden charges: the Slovenian system is totally against this concept and does not allow it. (*No hidden encumbrances are allowed. The principle of trust in land register states: whosoever in legal transactions acts in good faith and relies on the information on rights entered in the land register may not suffer any detrimental consequences for so doing, q. 101*). As for the common hidden charges detected at the seminars,

1. Unregistered lessees are offered no protection by the Registry and cannot oppose eviction.
 2. Tax debts are subject to the rules of priority on the registry and do not have any tacit privileges.
- With respect to the enforcement of mortgages: we were informed that mortgage foreclosures are regulated unsatisfactorily for the interests of the creditors. These cannot expect a speedy execution to achieve repayment of their credits. Reference is made to multiples (as many as 37) potential grounds for opposing enforcement. Debtors are able, if they wish, to dispute every stage, including the appraisal of the property in the event of a compulsory sale. There is a high probability of converting foreclosure enforcements into ordinary declaratory proceedings.

As for the connection of the Land Registry with the mortgage enforcement, it must be said that this exists and is notable and recognizable for other Title Registry systems: 1) The annotation of the enforcement order is foreseen at the start of the proceedings; 2) The order ultimately awarding ownership of the property will be entered once it is definitive and unappealable; and 3) The Registry will proceed to cancel any rights and charges of a lesser nature pursuant to another order, without this effect impacting on those with priority or assumed by the party acquiring the property (articles 167 and 170, 192 and 209 of the Slovenian Enforcement Act [q. 46]).

7. FAMILY: DISPOSAL OF PROPERTY BY MINORS OR DISQUALIFIED INDIVIDUALS

The documents in which these are formalized must comply with the legal requirements, cautions or constraints and this circumstance is included within the qualification by the registry.

8. SUCCESSIONS

Certificate of inheritance. Heirs are able to accredit their title by means of an extract from the Central Birth Register, which is an authentic public document. For the distribution of the estate, it will also be necessary to obtain a distribution order issued by a Court. In view of the general lines of the Slovenian regulations, as well as the clear distinction between the phases of acquiring the status as heir and the distribution of the estate, enforcement of article 42.4 of the Proposed Regulations on Successions as currently drafted might pose problems.

Legal entitlements. Qualification by the registry comprises the fulfilment of any rights existing in favour of those entitled to a mandatory portion of the estate (“no

title awarding assets from the estate can be registered unless all forced heirs receive their share of those assets”, q. 74 and q. 75).

Register of Wills. One is kept at the Association of Notaries Public.

9. PUBLICITY

Subordinated to two major conditions: justification of the interest of the party making the request and respect for the data protection legislation.

Electronic publicity is available following the assessment of the interest of the party making the request. In practices, this is confined to owners and banks. For example, journalists are excluded from consulting which properties are held in general terms by a particular individual.

Publicity through the Registry is subject to the payment of fees.

10. AUTHENTIC ACT

In Slovenia, public documents seem to be necessary for registration, although notarial deeds are complemented by others of judicial origin such as the distribution order (q. 70).

11. CO-ORDINATION WITH THE CADASTRE

Collaboration and independence.

Each property has its own cadastral location; the entry itself reflects the reference for the plot or grid on the cadastre where it is located. “... *real estate shall be entered in the land register with an identification sign (the identification sign of a land parcel is the code of the cadastral municipality in which it is located and the parcel number as entered in the cadastral register*” [q. 96].

The cadastral identification does not exclude the textual description of the properties nor any other descriptive elements shown on the Registry entry to complement it.

12. ORGANIZATION

- Under the supervision of Judges.

- Classic sheet per property system; historic records by property. There is also a collection of deeds which can only be accessed by interested parties and judges.
- Organization of the sheet: A) description, including an indication of the cadastre plot where the property is located and a descriptive explication of its situation and physical characteristics; B) Registered Ownership; C) Mortgages and Charges. In practice the contents of the extracts is more extensive than in other systems of Austrian origin. Formally, the structure of the registry sheet allows it to be understood and it is familiar even for those accustomed to consulting other systems.
- Inclusion on the register: voluntary although stimulated (*registration is voluntary under Slovenian law, although it is encouraged [q. 104]*).
- Contents of the entry: extracted; apparently (in the light of the field visit made to the Land Registries in Ljubljana and Černica) it offers more extensive information than other title registration systems, such as the Croatian and Bosnian ones.
- Contents of publicity: analogous to the entry contents.

13. EFFICIENCY

Indicators:

1. Electronic processing of documents: expected to be encouraged from May 1st, 2011.
2. Processing of documents: The general deadline for completing the inclusion of the entry is 30 days but this is an indicative guideline, not mandatory. In practice, the deadline may be extended, but it is necessary to point out the high percentage of defective notarial documents (q. 93) the Slovenian Land Registry has to cope with.
3. Contents of the registry details: essential extract. Many of the details of the titles are in the archived collection of documents.
4. Resolving defects: It is worth highlighting that, in the event of documents drafted with legal flaws, inaccuracies or inaccuracies, the notaries public are given a period in which to remedy the defects, assume liability for the inaccuracy of the document and not extend it further by inactivity (q. 109). Although notaries public access the information on the registry ABC, the questionnaire answers revealed, and the field visit confirmed, that around 40-50% of the notarial

documents contain legal errors, omissions or inaccuracies. This very realistic detail reveals the rigour of the Slovenian system and the predisposition that exists not to tolerate inaccuracies or illegalities that might affect the contents of the Registry, in view of the important effects Slovenian Law gives to publicity through the Registry.

5. Publicity, very short deadlines. Publicity provided electronically is practically instantaneous. Legal extracts or certifications can also be ready in a really short space of time (q. 124). It is normal for the rigorous review of the document's legality by the Land Registry to correspond to publicity given speedily and reliably.
6. Quality of the publicity: After consulting the historical record of a property on the Land Registry, is it necessary or appropriate to have a legal review for further investigation into the registered owner or the situation vis-à-vis charges? We feel that it is not. The monitoring of what is entered on the Registry together with the organization and resources make the consultation of the Registry sufficient to guarantee the properties' ownership status and burdens.

In our opinion, as we said at the beginning, the Slovenian system respects the mirror, curtain and insurance principles and complies with the functionalities expected of a title registration system.

ROMANIAN REGISTRATION SYSTEM

1. RIGHTS RELATING TO CIVIL RIGHTS

Parties referred to on the Registry cannot be affected by proceedings to which they have not been a party (enchained title, access to justice). Article 26 of Romanian Law 7/96.

The registered owner would have access to other procedural guarantees such as modification of the Registry only subject to the procedure stipulated in each case, without it being possible to alter the content of the Land Registry except through the procedure foreseen in law.

It is worth highlighting the procedure for the review or correction of the Registry which is regulated flexibly and extensively in Law 7/96 and represents a guarantee for users in view of the numerous lawsuits aimed at the correction of the Registry, including the handling of errors in the Registry's qualification.

2. REGISTRY PRINCIPLES

The Romanian registration system belongs to the category of deeds registration systems and not title registration systems, although it is familiar with and applies the following registry principles:

1. The enchained title principle stems from various articles in Law 7/96, particularly article 22 (as the rule whereby the registration of a right can only be effected when the person in detriment of whom the entry is requested already appears as he registered owner at the time); and article 26.3 (establishing that the registered holder of a right may only dispose of it if it has previously been recorded on the land book). However, there are notable exceptions, such as the cases of inheritance, accession, compulsory sale, adverse possession, expropriation and judicial decision, all of which may be registered without that requirement as soon as the registered party or owner proclaims them.
2. Priority is one of the main characteristics of the Romanian system. Article 25 of Law 7/96 establishes that the order of registration of the applications will determine the rank of the entries. One of the peculiarities of the Romanian system is a kind of reserve of rank, whereby the land book will be closed or blocked during the five days following the request for registration, with rejection of any documents relating to the property in the

application enjoying priority. On the other hand, we feel that the processing of priority is excessively expeditious in one of the matters, namely the collection of monetary debts charged against the debtor's assets, where it is decisive: an initial measure ordered for a maximum period of 2 months (notification of the intention to mortgage) is applied and recorded, thus complying with the function of anticipating the rank of the mortgage to be established; but if that short period elapses, the rank is lost.

3. Legality. In its documentary dimension, this principle is rigidly applied, with exclusive access for notarial deeds. As for the legal scrutiny undertaken by the Registrar, this in theory is mandatory (under the liability of the Registrar before the Courts under article 18.7 of Law 7/96): the document submitted must be scrutinized to check whether they meet the legal requirements for their registration, in accordance with article 48 of Law 7/96; this review is usually limited, however, to a check of certain formalities and has less scope than the legal verification or scrutiny normal in Title Registries. The correction of registrations is widely regulated in articles 34 to 37.
4. Principle of opposability. The ceiling for the guarantees in favour of third parties established by Romanian law is opposability. Thus, the rule is that ownership and rights *in rem* cannot be opposed against third parties unless they have been entered on the land book (article 26). Nonetheless, there are notable exceptions and it does not apply in cases of inheritance, accession, compulsory sale, adverse possession, expropriation and judicial decisions. In addition, article 32 provides even more exceptions regarding neighbourhood relations, expropriation and environmental restrictions.

Thus, the Romanian registration system does not provide excessive guarantees for the protection of the rights of a registered acquirer. It is a system of mere opposability where the effect lies in dispensing parties referred to on the Registry from the *onus probandi*, which shifts to the party challenging their right.

As a result, it can be said that (unlike other registration systems) the Romanian Registry lacks the effects of *fides publica* and the maintenance of good-faith acquirers for consideration. There is a legal enunciation of the principle of legitimation and it is presumed that the right entered exists for the benefit of its registered holder if it has been obtained in good faith and providing it is not proved otherwise (article 30) but, in practice, it does not bring about the outcome favourable to legal certainty inherent to other registration systems.

The high number of lawsuits (at the moment of the field visit, these amounted to about 47,000 appeals just at the Court of Timisoara, the capital of the Timis region with about 700,000 inhabitants) includes a large percentage of cases challenging the registered owner and complaining about alterations to the Registry (probably around one half according to indications received, although there are no statistics

and a rough estimate was requested). This amount of real estate disputes may certainly affect the reliability of the Land Registry.

The conclusion of the UNECE report mentioned above seems to be applicable to the Romanian system: *An ideal system should reflect perfectly the legal position on the ground (the mirror principle), draw a curtain over all previous dealings so that only the present entries on the register need be consulted (the curtain principle) and guarantee the accuracy of what is shown on the registers (the insurance principle). It is difficult for a manual deeds registration system to be in conformity with all these principles.*"

Nonetheless, our assessment of Law 7/96 with regard to the Land Registry is positive and would allow the Land Registry to settle down if it were accompanied by a strict praxis of scrutinizing documents and the contents of the entry extended, so as to favour its evolution in the medium term towards a title registration system with the effects of positive publicity, which it currently lacks.

3. JUDICIAL CO-OPERATION: MEASURES TO ENSURE DUE PROCESS

- Registration of judicial measures such as attachment orders to guarantee debts (attachments or garnishments) or annotations of liens.

The measure applicable in the Romanian registration system would be an entry lasting for two months without the possibility of extension that is registered by the notification of the intention to mortgage (article 40). This entrepreneurial ensures the preferential rank of the mortgage eventually established to guarantee the payment of the owner's debts. Although two months is understood to be a long enough term to proceed to the mortgage of the property in question, if this is not the case, however, the loss of priority is certain as, and this is worth noting, there is no possible extension or any way to prolong the rank reserved to this mortgage.

Thus, the real estate guarantee is a two-stage process and the risk of losing priority requires to creditor to adopt fast reactions.

These measures don not seem to imply *per se* any restrictions on disposability.

- Registration of judicial measures such as caveat or notice to alert third parties to the existence of legal action affecting properties, notes of dispute.

These positively exist (q. 36 to q. 43); on the basis of a test that will be assessed by a Judge, the inclusion of a note or annotation may be ordered on the entry for the property referred to in the alert or warning to third parties and the weakening of their good faith. This annotation will not block or close the Registry, but the rights acquired after it will still be affected by a condition precedent.

- Registration of measures such as prohibition of disposal.

Similarly, the Romanian system is aware of these and applies them through a similar process (q. 38).

4. CIRCULATION OF DOCUMENTS

- Judicial documents: in the case of judgements regarding divorce and with regard to the distribution of jointly-owned real estate or the award of properties between the former spouses as a result of the divorce, and despite the numerous presence of Romanian nationals with residence and employment in many of the EU Member States, there is no particular desire for a reform of the Community regulations to alter the *exequatur* system to another type of recognition such as Regulation 2,201/2003 or 44/2001. Stress is placed on the competence (it is a fact but it is still stressed) of the Romanian judges and courts for all matters concerning real estate located in the country.
- Extrajudicial documents: only in theory would the registration of documents executed before foreign notaries public be admissible if they complied with the triple condition a) of conforming to the *lex rei sitae* (in other words, Romanian law); b) legalization and c) translation of the document. On this point, reference was made several times to the requirement of RECIPROCITY.

5. OWNERSHIP

Ownership in Romania is negatively constrained by the organization of collective ownership from the Communist period, to which it is necessary to add the problem of confiscations.

Tenancy rights constituting the title for occupancy of many dwellings are not candidates for transmission or mortgages. Tenancy rights granted for more than five years may be entered on the registry and must be registered to be opposable; if granted for less than this period they cannot be entered on the registry and are not opposable.

Foreigners, including EU nationals, are not allowed to buy land. They can buy dwellings.

The Land Registry is an institution that has had a certain legal tradition in part of Romania under Austrian influence; but not in the rest of the country, for example this is the case of Bucharest. On this point (as occurs everywhere when the index of matriculated properties is low) it would be recommendable for the Romanian Land Registry to stress the rigour in procedures for matriculation of properties, so that

those entering the Registry for the first time are clearly identified and verified ownership.

6. MORTGAGES

The features highlighted in the seminar on the mortgage market in Romania are as follows:

1. In practice, there is no difficulty in the award of long-term mortgages.
2. Clearance in advance is allowed with payment only of matured interest, not all the interest agreed, on payment of a commission of between 1% and 3% of the loan.
3. However, the exact determination of the interest rate applicable at any particular time in the currency of the loan does not seem simple when it is based on variable interest; the bank pays part of the price financed for the acquisition of the home and it is even difficult to know the exact price it has cost. The Romanian National Bank has legislated on this so that the effective interest rate can be identified.
4. No appraisal of the value of the real estate is carried out on the occasion a mortgage.
5. It seems that there is no possibility for a commercial mortgage to have the rank of a second mortgage.

HIDDEN CHARGES. In Romania, as declared, there are two types of hidden charges that are entered on the registry, those imposed by law and those established by administrative authorities. An example of the first case might be the restrictions on access to ownership imposed by Romanian Law 112/1995 for a term of 10 years; the second type might include those imposed for zoning reasons or for the protection of agriculture. To this we should add, in accordance with article 32 of Law 7/1996, those derived from the limitations caused by neighbourhood relations, expropriation and environmental restrictions.

It is worth mentioning that tenancy rights and leases will only be opposable if they have previously been entered. If not registered, they cannot be used for opposing.

Although taxes enjoy fiscal privileges, the exercise of these leads to the establishment of a legal mortgage (*ope legis*) which will be subject to the rule of registry priority. While a legal mortgage may be the second in rank behind a previous one, it seems however that it is not possible for a commercial mortgage to be ranked second.

MORTGAGE ENFORCEMENT. The foreclosure of a mortgage takes a considerable amount of time. Too many steps and too many possibilities for opposing enforcement.

First of all, there are various kinds of notifications to the debtor. Next, the regulation of the benefits of excussion and division gives debtors an excessively favourable situation and, in practice, they can challenge any of these actions and in general any other step in the enforcement proceedings.

Once the proceedings are under way, notification is given for fifteen days, with a period of 30 days to lodge a complaint before the Court, a possibility that is habitually used. Next, a lawyer must normally be appointed, sometimes through legal aid as this is available to anyone earning less than the legal minimum. It is also possible to appeal against the Court's decisions. In other words, in practice, the start of enforcement already requires a two stage process.

Then the bank will be authorized to begin the foreclosure; in practice, the debtor will also challenge the price set for the auction and will probably force subsequent eviction proceedings to vacate the dwelling.

It seems that, with very good lawyers, the proceedings could be shortened to 6 months. Banks use these lawyers. If the mortgage is not a bank mortgage, enforcement will be delayed considerably more.

7. FAMILY: DISPOSAL OF PROPERTY BY MINORS OR DISQUALIFIED INDIVIDUALS

The documents in which these are formalized must comply with the legal requirements, cautions or constraints and this circumstance is included within the qualification by the registry; if their absence is evident and there is a visible flaw, then, in theory, there is an awareness that they should be rejected despite the narrow limits of article 48 and the remission in Romanian law for their re-establishment by the courts (a plausible but anti-economic solution).

8. SUCCESSIONS

Certificate of inheritance. Heirs are able to accredit their title by means of inheritance certificates issued by a Notary Public or by the Court (q. 68). This may give rise to the registration of the estate community on the Land Registry, with indication of quotas for each heir, prior to the division or share-out of the inheritance.

Legal entitlements. In theory, a document invalidated by flaws would, in principle, be deemed ineffectual and could not be registered (q. 74). But this is not always the

case in practice. In fact we have found the Romanian registration system to have qualification *lacunae*, that is to say a much laxer concept of qualification or legal scrutiny of documents submitted for registration than is normal in Portugal, Spain or Germany, or in Slovenia or Bosnia-Herzegovina. Thus, although the Romanian Civil Code establishes the obligatory nature of reserving a portion of the estate to certain individuals (first-class heirs, children), in the event of a breach of these rights, the response from the Romanian registration system would not be to reject the document (we have already referred above to the fact that Law 7/96 explicitly applies a certain flexibility when regulating cases of improper registration or registration with errors) but rather the alleged breach would have to be corrected before a Court (q. 76). This solution does not help in the least to avoid probate cases and it seems timely to recall that there seem to be a lot of court cases in Romania.

9. PUBLICITY

Although the current Law declares that any citizen may access the information, there is a limiting clause that, unlike the most common constraints, is not data protection or the justification of a legitimate interest, but rather national security (article 41.1).

Publicity is not free of charge. Extracts, certificates and drawings will be supplied after presentation proof of the payment of the corresponding fees (article 41.2).

When considering the case of excussion or the search for a debtor's assets in order to enforce a civil liability against these, this seems to be restricted to officials specially designated for the purpose.

10. AUTHENTIC ACT

The Romanian registration system applies the principle of formal legality quite rigidly and it is only possible to enter authentic documents on the Land Registry, preferably those authorized by a notary public, as other forms of authenticated documents are not admissible.

The constant and obligatory intervention of notaries public, however, does not seem to contribute to a reduction in the large number of lawsuits regarding contracts in Romania, which can be explained if we consider the confrontation between the oligonomy of notaries and the holonomy of a registration system with the qualification principle.

11. ORGANIZATION

Organically connected under a National Agency after Law 7/96, with a functional separation, the basic purpose of the Cadastre is the identification and description of property and its representation on maps and plans (article 2.2); in addition to its clear fiscal goal (2.4), it must also identify the owners and registered holders of *in rem* rights in order to facilitate their registration on the Registry.

The purpose of the Land Registry is the registration of domain, ownership and burdens as a legal register. Registrars, who are subject to liability for their activity (article 18.7) are entrusted in article 18.1 with real estate publicity, which they provide through the land books. The Law regulates the organization of these books and the rectification procedures, including those caused by erroneous qualification of the registered right in article 36.

Co-ordination between the Land Registry and the Cadastre should be obtained through the reference in part I or A (description of the property) or cadastral number, as foreseen in article 20.

- The registry organization is included within the National Agency regulated by Law 7/96. Article 18 of this law establishes that Registrars are charged with the function of real estate publicity and the registration on land books. Registrars will head up the territorial offices, under the responsibility of a Chief Registrar designated by the Director-General of the National Agency. Article 18 requires qualifications for the function of registrars and subjects these (18.7) to liability for their acts under the law.
- Classic sheet per property system; historic records by property.
- Organization of the sheet (article 19 of Law 7/96): A) Part I. Description with the unique cadastral number of each property (we have observed however that the textual description tends to be summary); B) Part II. Registered Ownership; C) Mortgages and a wide range of *in rem* rights, including tenancy when the lease is for more than 3 years. Thus, the organization of the sheet is recognizable and in general lines shared with other European registration systems.
- Entry: owners intending to sell must first enter their right. There is a legal project under way to impose registration of constitutions. We do not feel that this is the quid of the question nor that it helps in the short or long term to solve the deficiencies of this registration system, particularly without substantially altering, in addition, the Civil Code, with is inspired in Roman law.
- Contents of the entry: very succinct extract.
- Contents of publicity: analogous to the entry contents.

12. CO-ORDINATION WITH THE CADASTRE

Co-ordination between the Land Registry and the Cadastre should be obtained through the reference in part I or A (description of the property) or cadastral number, as foreseen in article 20.

13. EFFICIENCY

Indicators:

1. Electronic submission of documents: not currently contemplated.
2. Processing of documents: theoretically short deadlines. In practice, dispatch can be speeded up at the expense of not performing rigorous verifications. It should be recalled that the rectification of the Registry is particularly regulated, that article 36 mentions rectification for erroneous qualification of the registered right and that there are many court cases not only to challenge ownership titles but also for correction of the Registry. The facilities for correcting registry entries encourage the early registration of the document submitted, but overall this praxis does not seem to favour the reliability of the Land Registry's contents.
3. Contents of the registry details: elementary and very short extract. Its extension should be increased (obviously on the basis of verified data) in order to strengthen the status of owners and enable the mirror principle of such usefulness for the interests of potential lenders and third parties in general.
4. Resolving defects: the recourse to lawsuits, apparently on the increase, relativizes the importance of effecting a correction to make the ownership or *in rem* right in question conform fully to Law, as would be desirable. In exchange, as has been mentioned, the regulation of registry errors in Law 7/96 is very flexible and realistic.
5. Publicity, very short deadlines.
6. Quality of the publicity. After consulting the historical record of a property on the Land Registry, is it necessary or appropriate to have a legal review for further investigation into the registered owner or the situation vis-à-vis charges? The answer is yes. The high number of lawsuits and the lack of definition of ownership in Romania does not allow people to act reasonably as if the registry extract or declaration warranted absolute trust and, in practice, it is common for Banks to have the owners' documents examined despite the registration of their rights.

CROATIAN REGISTRATION SYSTEM

1. RIGHTS RELATING TO CIVIL RIGHTS:

- Parties referred to on the Registry cannot be affected by proceedings to which they have not been a party (enchained title and access to justice).
- As for other procedural guarantees, as far as we have been able to discover on this point, the Land Registry is able to reject a judgement handed down from a court without jurisdiction.

2. REGISTRY PRINCIPLES

The Croatian registration system shares the fundamental principles of Title Registries:

1. The principle of priority is of great importance [q. 95] and is applied in its pure form in common with other registration systems. The first title to be submitted to the Land Registry has priority and will be entered, which will not prevent actions by other purchasers based on good faith.
2. The principle of enchained title is also formulated in its pure sense: it is not possible to register any document relating to a property where the party referred to on the Registry has not given consent, except in the case of a judgement handed down in proceedings where the party has been involved.
3. It is worth noting the Croatian guidelines on the principle of legality; in its formal title version, as we shall highlight later, the Croatian system has a practical and interesting flexibilization of the document form; in its version for qualification or legal verification of the documents submitted for registration, it should be said that it is rigorously applied. The contents of the Land Registry were considered quite complete but outdated in 1996 but the policy has been to recover it instead of changing the system. To this end, a determined legal cleansing of the titles has been undertaken. One of the achievements has been to reduce the time taken to dispatch deeds, in general, from about 900 days to an average of 78 (the legal deadline is 30 days but merely for guidance. The reduction in these timings is an imposition of the World Bank, which makes a considerable economic contribution to ensure the security of the transactions based on the Registry, but does not wish to endanger the reliability of the Registry's contents; the percentage of defective documents (q. 93) is considered to amount to at least 15%. Furthermore (q. 54), the organization of the registry and the judicial system in Croatia will ensure that the documents with a foreign element will

comply with both the substantive law and the provisions of International Private Law, and that admission to the registry will be refused to public documents formalizing disposals of real estate belonging to minors and disqualified individuals unless they comply with the requirements of legal protection, or the distributions of inheritances that do not respect the rights of mandatory heirs [q. 55 and q. 76].

Naturally, interested parties can exercise appeals before the Courts against unfavourable qualifications by the Registry [q. 107].

4. The protection of acquirers (q. 13) is very noteworthy, with the maintenance of good-faith acquirers for a consideration if they have the rights they acquire from the registered holder duly registered in their turn. The principles of the Croatian Registry clearly favour business certainty and overall we believe that it is an adequate system to develop the mirror, curtain and insurance principles or effects.

3. CIRCULATION OF DOCUMENTS

- Judicial documents: despite the insistence on the principle of exclusive jurisdiction for the Croatian Courts for everything to do with real estate, it would seem acceptable, by means of a recognition system such as Regulation 2,201/2003 or Regulation 44/2001, to enter judgements on the distribution of assets in uncontested divorces. It is obvious that this will not be possible while Croatia remains outside the EU, due to the principle of exclusive jurisdiction for real estate mentioned above.
- Extrajudicial documents: the Croatian system is receptive to the registration of documents executed before foreign notaries public if they comply with the triple condition a) of conforming to the *lex rei sitae* (in other words, Croatian law); b) legalization and c) translation of the document [q. 52 and reiterated during the field visit].

4. JUDICIAL CO-OPERATION: MEASURES TO ENSURE DUE PROCESS

- Registration of judicial measures to claim debts (orders of attachment).
 1. Adopted by judicial authority (q. 26).
 2. Term of 10 years. Extension possible.
 3. Effects: no restrictions on disposability. There is a possibility for enforcement
- Registration of judicial measures such as caveat or notice to alert third parties to the existence of legal action affecting properties, notes of dispute. The local legislation includes notes of dispute.

1. Adopted by judicial authority.
 2. Term of 10 years.
 3. Effects: alerts to third parties, disable *fides publica*. No restrictions on disposability.
- Registration of judicial injunctions prohibiting alienation or encumbrance of real estate.
1. Adopted by judicial authority, in civil or enforcement proceedings.
 2. The measure in question must be temporary.
 3. Effects: closure of the Registry and even inefficacy of the acquisition. No-one can ignore the judicial ban.

5. OWNERSHIP

The circulation of ownership appears not to have any noteworthy restrictions. However, as everywhere in Europe, there are legal limitations on ownership for reasons of the environment, national security and similar motives.

An apparent problem for formal ownership in Croatia derives from the duplication that historically has existed on the Land Registry due to having two separate sections, one for apartments and the other for buildings and land in general. The result has been that the historical records of apartments intended for sale became disconnected from the historical records of the buildings they were in, with different owners. This is a problem shared by Bosnia-Herzegovina and, it seems, Serbia and it is aggravated by the lack of regulation of condominiums.

We would see it as useful for the Croatian Registry to add a sufficient reference to the Articles of Association regulating the condominium and the specification of the quota attributed to each apartment to the contents of the entry, as well as, of course, good co-ordination between the two sections so that the sheet for each apartment can be expressly linked to the sheet for the building it belongs to. In any case, during the field visit to the Court and Land Registry in Varazdin, we have been assured that the pathological situation described above is now under control or close to it.

Most of the real estate in Croatia was already matriculated in 2004.

6. MORTGAGES

- The registration of a mortgage is constitutive in nature. There is a rule to cap the mortgage liability entered in favour of a third party. The mortgage will guarantee the amounts stipulated and entered and any possible excess

claimed by the mortgage creditor must be dealt with in a separate enforcement with a priority different from that of the mortgage [q. 48].

- Hidden charges: there are none. As for those detected at the seminars,
 1. Unregistered lessees are offered no protection by the Registry and cannot oppose eviction.
 2. Tax debts are subject to the rules of priority on the registry and do not have any tacit privileges.
- Enforcement of mortgage: as occurs in other systems, debtors are very protected and can challenge each of the steps in the enforcement. At this point, it should be said that the debtors' possibilities seem to be more reduced when the mortgage has been effected by transfer of the fiduciary ownership to the bank.

On the other hand, enforcement is clearly connected to the Land Registry and the historical record reflects the different judgements leading to mortgage foreclosure, very similarly to the Slovenian system. When foreclosure begins, an annotation of enforcement will be recorded and when the auction is held, the ownership will be recorded in favour of the new owner and the mortgage executed will be purged or cancelled along with any charges of a lesser condition.

7. FAMILY: DISPOSAL OF PROPERTY BY MINORS OR DISQUALIFIED INDIVIDUALS

Within its functions, the Croatian Land Registry exercises the protection of the rights of minors or disqualified individuals, as any documents formalizing disposals of property belonging to the same are subject to legal scrutiny to ensure they meet the requirements, cautions or constraints stipulated by law for their defence.

8. SUCCESSIONS

Certificate of inheritance. Heirs are able to accredit their title by means of an extract from the Birth Register, which is an authentic public document. For the distribution of the estate, it will also be necessary to obtain a distribution order issued by a Court. To justify fully the status of an heir, e.g. in a foreign country, the title to be used would probably be a notarial declaration of heirs.

In view of the characteristics and contents of this kind of document, it does not seem difficult to include it in the system foreseen in the Proposed Regulations on Successions and Wills, particularly for the purposes of its intended articles 42.1

and 42.5, as titles accrediting the capacity of heirs and legitimating them to perform acts of administration and disposal of assets. The very exhaustive regulation of the certificate made in article 41 of the proposed regulation and effects such as that of article 42.4 might, however, be less comfortable to apply.

Legal entitlements. Qualification by the registry comprises the fulfilment of any rights existing in favour of those entitled to a mandatory portion of the estate [q. 76].

Register of Wills. As in Slovenia, a register is kept at the Association of Notaries Public.

9. PUBLICITY

The Land Registry is public although publicity is subordinated to the justification of the applicant's interest and respect for data protection legislation.

Publicity is not free of charge and fees are payable. Requests for information are subject to monitoring and applicants are identified and stored on a list to safeguard privacy [q. 120].

Electronic publicity is available after evaluation of the applicant's interest. The general public is able to consult any property on the Internet by indicating the number of the cadastral plot or the Registry property number. For the reasons of privacy indicated, no publicity is provided through the Registry on the basis of the names of owners.

This kind of information by electronic consultation is very successful among users with millions of requests submitted since it first came on line [q. 112]. However, these consultations, albeit useful as information, do not accredit the ownership status and charges: the only document that can be used as evidence of the content of the Land Registry is a Registry Certificate obtained in the traditional manner. Each extract must be certified and notarized as a public document if its is to be used in Court.

The maximum deadline for supplying publicity would be 7 days [q. 124] although it seems that, in the cases of mortgages, it is possible to provide the information on the registry within an even shorter term, since it has previously been necessary to clarify the property (or register it if appropriate) and the information on the registry has been obtained to accredit it and show it to the bank or financial institution granting the loan.

10. AUTHENTIC ACT

On the Croatian system, three types of document co-exist for the purposes of the Registry:

- i. notarial documents, which may in turn comprise a complete notarial deed or a compilation of all the contents of the business as in a declaration of a preceding written document solemnized by a notarial certification, which accrues lower fees;
- ii. the documents agreed by the parties before officers of the Courts and legalized by the latter; and
- iii. for several common standard types of business (for example the cancellation of a mortgage), a standard form supplied by the Land Registry for the interested party to complete and bring about the corresponding entry.

We acknowledge this mixed documentation system has pragmatism and flexibility.

11. CO-ORDINATION WITH THE CADASTRE

It is a premise that (with regard to section A, the possessory sheet or descriptive part of the property record) the Land Registries should base this point on cadastral data starting with the physical description provided by the Cadastre in terms of the number, shape, surface area, name of the property, so that the cadastral plot is identical to that on the Registry [q. 96]. But the fact is that there are certain maladjustments between the cadastral description of the property and that in the documents submitted for registration. The Croatian Land Registry has not excluded the textual description, which appears alongside the cadastral information in section A.

The Land Registry has been reformed at the same time as the Cadastre following the plans of the Croatian State and applies the system currently under development (the Real Property Registration and Cadastre Joint Information System) to provide what we understand to be comprehensive real estate information.

- The Cadastre and the Registry will continue to be separate institutions. The Cadastre is an administrative body and the Land Registries are supervised by the Courts.
- The Cadastre will focus its information on part A, that is to say the description of the property. In principle, this will not exclude the textual description of the property or complementary information.
- The Land Registry will provide the information for parts B and C), that is to say the registered ownership of the property and the burdens and limitations

affecting it. It will also provide the Cadastre with the details of part B in order to avoid any divergence between the registered owners of the property but not details on part C.

12. ORGANIZATION

- Under the supervision of Judges.
- Classic sheet per property system; historic records by property. There is a collection of deeds.
- Organization of the sheet: A) description, including indication of the cadastre plot where the property is located and a textual description of its situation and physical characteristics; B) Registered Ownership; C) Mortgages and Charges. Recognizable and, in general terms, shared with other European registration systems.
- Inclusion on the register: voluntary.
- Contents of the entry: succinct extract. No transcription.
- Contents of publicity: extracts, which must be certified to be able to be used as evidence.

13. EFFICIENCY

Indicators:

1. Electronic submission of documents: not at the present time.
2. Processing of documents: indicative term of 30 days. As remarked above, the contents of the Land Registry in 1996 was considered quite complete but outdated. The policy followed (as in Slovenia or Bosnia) has been to recover and update the existing Registry instead of changing the system, and we feel that this has been the right decision (in comparison with another system that opted for a radical change but whose results we feel are debatable). One of the achievements of the Croatian registration system in general has been to reduce the time taken to dispatch papers from about 900 days to an average of 78, already much closer to the legal indicative term. The reduction in these time frames is an imposition of the World Bank, which has made a considerable economic contribution to guarantee the security of the transactions based on the Registry, but it gives the impression that the Croatian attitude is not to endanger the reliability

of the Registry's contents, coping not only with their lack of updating resulting from abandonment for a long time (which in any case is partial because there is also a high percentage of properties that have been updated and revalued), but also the percentage of defective documents arising in the ordinary course of business (q. 93), amounting to at least 15%.

3. Contents of the registry details: essential extract. Many of the details of the titles are in the archived collection of documents. It would be useful to expand the contents of the extract by increasing the amount of information, particularly in section C. In fact, this is always recommendable.
4. Resolving defects: around 15% of notarial deeds contain errors, omissions or legal inaccuracies. Croatian law gives the interested parties in these documents [q. 109] the right to demand that the notary public correct the defects or legal inaccuracies that may have occurred, which is a laudable guarantee. The hypothesis of a Registry without legal scrutiny of documents is always bad news, but we feel that this is precisely not the case of Croatia.
5. Publicity, short periods (no more than 7 days). In particular, this is shorter in some cases (mortgages) where the purchaser or transmissor have already recently requested a previous publicity extract about the property.
6. Quality of the publicity: The Croatian registration system seems to have a laudable vocation to filter and check documents so the inaccuracies in publicity are logically fewer than when the entry is registered in a rush or there is a mere transcription or archiving of the document with a superficial or acritical review, or simply without any check. In particular, the Croatian system seems to provide reliable information and quality for the certainty of mortgages. In conclusion, we have found grounds to hope that the mirror, curtain and insurance principles are developing very satisfactorily in the Croatian registration system, particularly after the achievement of the full updating of the Land Registry, and considering the solidity of its legal tradition and principles.

BULGARIAN REGISTRATION SYSTEM

1. RIGHTS RELATING TO CIVIL RIGHTS:

- In the Bulgarian system, parties referred to on the Registry cannot be affected by proceedings to which they have not been a party [q. 1]. From this perspective, the Bulgarian system shares the idea that registered ownership and the rights of the parties referred to on the Registry form part of access to justice and the right of hearing.
- Nonetheless, judgements affecting parties referred to on the Registry will be entered without consideration for whether or not the legally determined procedure has been followed [q. 2], providing that they comply with the necessary formalities [q. 4]. The Land Registry will not question them at all.

2. REGISTRY PRINCIPLES

The Bulgarian system is basically cadastral with some Land Registry functions; however, the registry function is not, as in the Macedonian system, limited to the conservation of mortgages and little more.

As a Registry, it could be classified among the deed registration systems and it is far from the title registration Registries. Although it really seems to share some of the main registry principles, it does not give definitive protection to the parties referred to on the Registry nor, therefore, to acquisitions deriving from their title even when these are conducted in good faith and for a consideration. In summary, these principles are applied as follows:

1. Priority. Each document presented to the Registry is assigned a number, we understand this to be a control mechanism, and the document submitted first of all has priority on the registry [q. 95]. These general lines are shared by many registration systems. In the field visit made to the Land Registry in Sofia we were shown how things are done in practice as well as the immediacy of title dispatch (although this point, as we will see, requires certain clarifications).
2. Enchained title. The Bulgarian system apparently maintains the rule of enchained title. This means that the inclusion of documents presented on the Registry will be refused if the party referred to on the Registry does not coincide with the party executing the new deed pursuant to the contract. The deed or memorandum, as will be explained below, is not

the contract itself but a formality added to the document in order to simply its processing. The true meaning of enchainment is that only acts executed by the party referred to on the Registry can be entered on the Registry. We wonder what would happen if there were divergence (total, partial or one-off) between the party referred to on the Registry, the registered owner according to the memorandum and the registered owner according to the document. (In theory, such things *should* not occur but in our experience they do indeed occur: different people whose full names coincide, companies that have changed their corporate style or have undergone a transformation, etc.).

3. Legality.

- In its formal dimension (the authentic act rule), the Bulgarian system is rigid since it only accepts notarial deeds (together with court judgements and documents drafted by government authorities) and, in addition, the notaries public are subject to territorial jurisdiction rules. The exclusivity reserved under Bulgarian law for notarial deeds has certainly not been sufficient to ensure the reliability of Land Registry's contents. Rarely do intermediary legal operators, characterized by oligonomy and their ties with the parties to the contract, provide the complete control over legality (holonomy) typical of title registration systems.
- With regard to its legal scrutiny or qualification dimension regarding documents submitted for registration, we cannot speak here of non-existent or almost non-existent verification by the Registry as is the case in Macedonia, as the scrutiny carried out by the so-called *inscription judges* extends to jurisdiction, formalities and, in principle, the enchainment title, but this is not complete: it does not comprise any examination of the document itself but only of the memorandum of the contract, a kind of succinct form or summary attached to the document itself, with a content as laconic or more than a Spanish or Portuguese submission entry. Nonetheless, it is not possible to say that the Bulgarian system is predisposed to tolerate the registration of deeds with legal inaccuracies without further ado. The Bulgarian speaker at the seminar highlighted that, nonetheless, "no defective documents could be entered" [q. 74], which begs the question of whether, more than a legal restriction on the scrutiny performed by the inscription judges, what happens is that there is a dominant praxis whereby documents are processed and dispatched quickly before their legal examination or verification. Definitely, limiting ourselves to what has been seen, we are of the opinion that the consequence of not subjecting titles to legal scrutiny in the way commonly used in Title Registries (Austrian, German, Portuguese, Slovenian or Spanish systems) is a greater probability of entering documents containing defects (inaccuracies, legal inaccuracies) and a subsequent increase in real estate lawsuits.

4. There are no legal principles strengthening the legal certainty of acquisitions:
 1. The maximum effect arising in benefit of registered owners under the Bulgarian Land Registry is, in our opinion, limited to opposability as, in the event of a challenge against their title, the burden of proof is inverted in the registered owners' favour [q. 12]. On the other hand, parties referred to on the Registry must defend their position in court using ordinary forms of evidence as there is no legislative preference for the right entered on the Registry [q. 12].
 2. There is no effect of *fides publica*, since a registered owner who has acquired an item in good faith and for a consideration is not necessarily maintained by Bulgarian law against an earlier right [q. 14]. For the Bulgarian system, probably, the so-called curtain principle or curtain effect does not constitute priority (Cf. *Land Administration in the UNECE Region: Development Trends and Main Principles*, II).

3. CIRCULATION OF DOCUMENTS

- Judicial documents: despite the insistence on the principle of exclusive jurisdiction for Bulgarian Courts for all matters relating to real estate, the registration of judgements on the distribution of assets in uncontested divorces would seem acceptable by means of a recognition system such as in Regulation 2,201/2003 or Regulation 44/2001. At the present moment, Bulgarian inscription judges have already had experience of cases in which foreign judgements affecting Bulgarian real estate, even from US courts, have been entered on the Registry, albeit through *exequatur*.
- Extrajudicial documents: since it is necessary to execute a public deed before a Bulgarian notary public and, in addition, subject to the rules on territorial jurisdiction, as it cannot be a notary public other than that indicated by these rules, the Bulgarian system makes it impossible to register documents executed before foreign notaries public even if they comply with the triple condition of conforming to the *lex rei sitae* (in other words, Bulgarian law), legalization and translation of the document.

4. JUDICIAL CO-OPERATION: MEASURES TO ENSURE DUE PROCESS ON THE LAND REGISTRY

- Registration of judicial measures such as orders of attachment.

1. Ordered by judicial authority (q. 26), which must be the Judge of the place where the property lies (pursuant to article 109 of the Bulgarian Civil Procedure Act) [q. 17], who will hand down a resolution pursuant to which a marginal note will be inserted.
 2. As for its duration, regard will be had for the judge's resolution.
 3. Effects: it implies a prohibition on disposal and also the possibility of enforcement.
- Registration of judicial measures such as caveat or notice to alert third parties that a real estate lawsuit is pending (note of dispute).
1. Ordered by the competent judicial authority (on the same terms as above).
 2. As for its duration, regard will be had for the judge's resolution.
 3. Effects, alert for third parties, disappearance of *fides publica* and restrictions on disposability as established in the judgement, including a prohibition on disposal; in addition, it should be pointed out that, in the event that the lawsuit noted prospers, the entries made for subsequent rights will be cancelled [q. 39].
- Registration of judicial measures such as prohibition of disposal of real estate.
1. Adopted by judicial authority, particularly in cases of lien. In the case of mortgage foreclosures, the prohibition on disposal is also one of the natural effects of the procedure.
 2. Without any predefined duration, indefinite annotation.
 3. Effects, closure of the Registry. The prohibition on disposal is an effect commonly accompanying mortgage enforcements.

5. OWNERSHIP

The circulation of property seems not to have any noteworthy restrictions and any EU citizen is able to acquire property in Bulgaria.

The concept of condominium that arises from the ownership of apartments may be considered a still unresolved problem, despite the legislation enacted to remedy the situation. Each apartment sale entails the opening of a new page and the assignation of a specific lot or number.

Apartments can be sold outright or be governed by tenancy rights that cannot be mortgaged.

The Bulgarian system is making a great effort to matriculate all properties. First of all it will map the entire country. Be that as it may, assigning the owners of record for the different properties with legal certainty is quite another matter.

6. MORTGAGES

- Limitation to the mortgage liability registered in favour of a third party. Entering a mortgage is constitutive in nature.
- Hidden charges: some problems cannot be ignored. Some thought should be given to the answer to this point in the questionnaire [q. 101]: “Bulgarian legislation includes the concept of a hidden owner and a hidden transaction. This may arise when the parties agree that a specific individual is going to appear in the deed (and may even sign it), whereas in practice the owner of the property is somebody else. On the other hand, the parties can hide the true transaction they have decided to carry out behind another, that appearing in the deed. For example, there is a sales deed signed by the parties and by the notary public and obligatorily entered on the Registry, but the purpose of the parties was a donation. In this case, according to the Obligations and Contracts Act, the rules regulating the hidden transaction must be applied, if this is legally established in a court of law”. Until such time as these clandestine situations are not avoided by suitable legal measures, we feel that the curtain, mirror and insurance principles of the Registry will be seriously compromised.
- As for the charges generally detected at the seminars,
 1. Unregistered lessees are offered no protection by the Registry and cannot oppose eviction in the event of enforcement.
 2. Tax debts are subject to the rules of priority on the registry and do not have any tacit privileges.
- Enforcement of mortgage: A) Foreclosures offer debtors possibilities to delay the proceedings by means of a number of appeals. B) On the other hand [q. 46], enforcement is absolutely tied to the Land Registry: the proceedings cannot continue until a note is recorded of the start of the foreclosure; secondly, a prohibition on disposing of the mortgaged property will be entered; and, of course, in the event of an auction an entry will be recorded in favour of the new owner and, where appropriate, the mortgage executed and any subsequent rights will be cancelled.

7. FAMILY: DISPOSAL OF PROPERTY BY MINORS OR DISQUALIFIED INDIVIDUALS

The so-called *inscription judges* do not enter contracts but the memoranda summarizing the contracts and therefore it is difficult to examine whether or not they have complied with all of the legal requirements of the disposal.

The answer of the speaker to q. 55 is that the possible defects should be highlighted by the notary public and if not by the inscription judge. But the fact of the matter is that a) the notaries public sometimes do not detect the defect or incur in legal inaccuracies when drafting the document and b) in the case of Bulgaria, in view of the Registry praxis that focuses almost exclusively on the memorandum of the document without a true examination of its contents, it is not possible to be certain that the Land Registry is intercepting the documents in which the legal requirements have been omitted or where these have been adopted insufficiently or incompletely.

In this sense (unlike Title registration systems), we cannot expect the Bulgarian registration system to assume the additional public activity of protecting the legal interests of minors and disqualified individuals, in this case with regard to the documents disposing of their assets.

8. SUCCESSIONS

Certificate of inheritance. The document used in Bulgaria to accredit the status of an heir is a certificate issued by the Town Council of the last known residence of the deceased. In view of the characteristics of the certificate of inheritance foreseen in the Proposed Regulation (assuming the current draft is maintained), we assume that there will be difficulties to apply it in Bulgaria.

Legal entitlements. In view of the *modus operandi* of the Bulgarian Land Registry, where there is a very short time window for registering entries and it is impossible to examine the document to be registered and the fact that, for registration purposes, interest is only paid to the brief contents of the memorandum of the contract and not the contract itself, it is not reasonable to expect this to be an efficient filter or check on the possible illegalities or legal inaccuracies in the matter, although, in theory, if these defects were detected by the inscription judges despite these limitations, they would return the document for correction as, according to the Bulgarian representative, “defective documents cannot be entered on the Registry” [q. 74]. In practice, the remedy will be judicial [q. 76]. With the current Registry praxis, it is not reasonable to expect that the title will be examined and returned for preventive correction but rather the imperfect title could be registered and lead to potential lawsuits.

Register of Wills. There is a centralized Register of Wills [q. 72].

9. PUBLICITY

With respect for data protection legislation, public access is provided to the properties on the Registry as well as to the cadastral maps through the Agency's web site.

Information can be given electronically on the properties that have undergone electronic processing, after evaluation of the applicant's interest. Nonetheless, it must be stressed that the incorporation of properties to electronic procedures is very uneven depending on the regions and it is not always possible to supply information about properties using this route.

Publicity is also provided in the conventional manner using the details in the old land books or entry registers on record in the Court's archives.

As with other systems, consultations for publicity need to indicate the plot or property number, not the name of the party referred to on the Registry.

In 2009, notaries public lodged more than double the number of registry information requests than individual clients (580,134 versus 225,806 certificates issued at the request of a party).

Publicity is not free of charge. It is necessary to pay a fee which is more expensive in the case of information given more quickly.

10. AUTHENTIC ACT

A public title rule is applied and only the act of the transaction is valid for the registration of a notarial document.

As indicated above, and as a striking peculiarity (actually unheard-of for us), notaries public in Bulgaria are subject to territorial jurisdiction rules, with the direct effect of posing a barrier for foreign deeds.

The only exception to the monopoly over access to the Registry by notaries public is that documents issued by the government are also eligible for registration.

11. CO-ORDINATION WITH THE CADASTRE

A situation deemed unsatisfactory by the Bulgarians authorities and characterized, according to what we were told, by different practices or variations depending on the Court involved (not, they stress, different systems), duplication of data, duplicate properties, errors, poor descriptions, paper in poor condition and even different software options. This has given rise to a project to integrate the registry

data with cadastral details, specifically combining the Registry properties on the cadastral maps and unifying the lists of items in an attempt to describe the properties in accordance with the same items or parameters: an identification number, the place (region-community), land plot, building or part of the building.

In this way, the Bulgarian cadastral system is expected to achieve the unification of descriptive criteria for plots or properties; however, the Bulgarian system is not rigid on this point and maintains the textual description of the property. This is to respect the frequent reality that contracts or transactions often describe the property owned with greater precision than the Cadastre.

Although it is possible to speak of integration with the Cadastre:

- With respect to the description (part A), the textual description of the properties is maintained so that it corresponds with that of the titles, in an attempt to locate the properties and identify them by providing a series of descriptive parameters from the cadastre (sole identification number, place, distinction between land and buildings, reference to whether it forms part of a larger structure – each apartment sale entails the opening of a new sheet and the allocation of a specific lot number). A textual description is added to these parameters. The goal of this classification system is to make the property entries conform as closely as possible to the physical reality, a laudable intention. However, it must be remembered that, in practice, there are often divergences between the physical reality and that of the cadastral drawings or that the digital scanning of the paper records is not yet complete and a large part of the properties registered remain in the old land books deposited at the Courts. As has been said, an alteration in the cadastral data does not necessarily imply a modification in the textual description of the properties reflected in part A in accordance with the ownership titles already registered.
- As for the registered owners (part B), this information is determined by the memoranda of transactions entered on the Land Registry. The fact that there is an alteration in the cadastral contents does not imply a modification in the registered owners.
- With regard to mortgages and other charges, whether judicial or extrajudicial (part C), the legal treatment received is clearly on the Registry, although very scant.

In short, the integration of registry and cadastral data carried out by the Bulgarian Agency aims at having the Cadastre determine the description and physical identification of the property while the Land Registry specifies the ownership and burdens.

Although a long-term task, we consider that it is very interesting for section A to ensure the identification and description of the properties as perfectly as possible. On the other hand, we feel that the treatment of charges in part C is excessively scant, basically reduced to a checklist: we would see an increase in the content of this section to be useful, so that any parties interested in entering into a contract can have the maximum information available on the legal status of the property.

12. ORGANIZATION

- Under the supervision of the so-called *Inscription Judges* (who have no jurisdiction), who are in charge of dispatching documents, as well as rejecting those that are not legally valid for inclusion on the Registry, in which case an appeal is available through the Court. Many of the historical records on ownership are archived at the Court awaiting electronic processing.
- Sheet per property system; historical records by property. Copies are kept of the documents submitted for registration.
- Organization of the sheet: A) description, including in particular the cadastral identification and description as well as its location and a descriptive explanation of its situation and physical characteristics; it should be noted that a modification in the cadastral situation does not automatically entail a change in the textual description, which practice considers more suitable for the interests of the parties; B) Registered Ownership; C) Mortgages and other burdens including judicial charges.
- Inclusion on the register: mandatory.
- Contents of the entry: a checklist. No transcription. The entry contains the act of the transaction written by the notary public, not the contract. As a result, it is not a Title Registry but something very different.
- Contents of publicity: analogous to the entry contents. As consequence of its laconic character, the information will necessarily be not very extensive.

13. EFFICIENCY

Indicators:

1. Electronic submission of documents: not at the present time.
2. Processing of documents: within the term of 1 day; but in fact there is no registration of titles or contracts, simply a note is taken of the brief

indications in the memorandum of the contract appearing in the public document as a summary of its contents.

3. Contents of the registry details: in part A, exhaustively technical (although many of the details are not relevant for the legal protection of rights); on the other hand, part C (Mortgages and other charges) has a succinct, almost schematic content. If the mortgage is constitutive by nature, it would be logical for the mortgage entry to be somewhat more extensive so that it can at least cover all the essential circumstances of the mortgage: liability of the property for each of the concepts guaranteed by the mortgage, nature of the credit guaranteed and its fundamental elements and its duration or maturity. Since publicity is usually given through extracts of the entries, we find it advisable to extend the contents of the entry in part C, which would imply extending the information. Logically, this would presuppose a praxis of greater examination or scrutiny of the document's contents and in particular to ensure the absence of errors in the fundamental details of the mortgage registered.
4. Resolving defects in documents: although reference is made to the notary public having a term of one week to remedy the defects or legal inaccuracies that may have occurred [q. 109], it seems that this deadline, on the one hand, could be extended (so it should be considered merely informative) and, on the other hand, there are very worrying references to the parties having to bear the costs in the event of the correction of errors or legal inexactitudes [q. 94].
5. Publicity is provided, according to the questionnaire, in short spaces of time [q. 124]. The deadline for obtaining information on the registry seems reasonable, as the indication given is that the maximum is one week and this can be shortened, to even one day, by paying an additional fee.
6. Quality of the publicity. We wondered whether, after consulting the historical record of a property on the Bulgarian Land Registry, it would be appropriate to carry out any additional legal investigation in order to confirm the reality of the ownership status and burdens of the property and, at the present time, we are inclined to answer in the affirmative. A Registry certificate in Bulgaria will not always be enough to accredit the ownership status of a property, its registered owner and the situation of any charges to the satisfaction of a party interested in acquiring it or in granting a credit with a mortgage guarantee and the reality is that any parties interested in the transaction or the banks will demand an examination of the titles. As was explicitly stated, current practice shows that there are usually discrepancies between the reality, the titles and the contents of the

real estate sheets and that the Banks are not satisfied with the information on the registry but will demand and study the owner's titles in order to grant the mortgage. Therefore, it seems that the Bulgarian system cannot yet be expected to provide a fully effective mirror principle through public access to the registry information.

MACEDONIAN REGISTRATION SYSTEM

1. RIGHTS RELATING TO CIVIL RIGHTS

- The fact that parties referred to on the Registry (or rather on the Cadastre) have not been party to proceedings affecting their property rights, whether before a Court of law or even an administrative procedure for the updating of the cadastre, does not prevent their entered rights from being detrimentally altered.

In this sense, inclusion as the registered owner and the rights of parties referred to on the Registry are totally separated from the concept of access to justice and right of hearing, unlike Title registration systems, which comprise these concepts within the scope of their protection.

- Secondly, a court judgement must always be entered on the Macedonian Cadastre, regardless of whether or not it has been handed down in the proceedings legally stipulated for the purpose. What matters is the fact that there is a judgement and it must be complied with. Thus the registered owner of the property lacks any additional procedural guarantees and, in fact, as we shall see, the fact that consent or participation of the party appearing as the owner is not present is not an impediment on the Macedonian system for effecting changes in the item recorded, including its ownership. Nor is it necessary to have a court judgement for such changes: Macedonian law attributes to the Cadastre, that is to say the Public Administration, enormous powers to carry out such acts [q. 99.].

When the Land Registry and the Cadastre co-exist on the same system with a clear distinction between their functions, guarantees for owners tend to increase: if the Cadastre alters the property, it does so for its own purposes, attending to its tax purpose and the effects of possession. But it does not affect formal ownership. When the Land Registry is subsumed within the Cadastre and most of its functionalities disappear, normally difficulties arise for the legal status of ownership and for the interests of owners referred to on the Registries.

2. REGISTRY PRINCIPLES

The Macedonian system is a CADASTRAL system. Nominally, it is also the registry but the specific characteristics of this function are very blurred, to the point where we dare not state that there is a true Land Registry function. Our opinion is that it is a Cadastre with elementary attributions for the conservation of mortgages, to which we must add the possibility of linking (rather incidentally) some *in rem*

charges or rights, as well as other facts that might have an impact on ownership, and that would form part of what is known as temporary registration.

To some extent, it might also be classified among Deed registration systems but, in any case, its principles are quite far from those of Title Registries. It does not share the registry principles except in a minimal degree and without the same significance.

1. The principle of priority is applied, particularly among mortgages.
2. It is not possible to speak of the principle of chained title. Owners may see their rights modified or perhaps extinguished through the actions of the Cadastre's inspectors. The consent of the registered owner is not required to alter registry entries nor is any court judgement demanded. The Cadastre can modify these without further requirement than a generic prior public announcement so that interested parties can submit their considerations. We insist that the powers of the Cadastre seem exorbitant to the same extent as the rights of parties referred to on the Registry are relativized.
3. As for the principle of legality, this is rigid in its version relating to public documents or authentic acts, as only notarial deeds have access to the Registry. The principle of legality's other dimension of legal scrutiny or review of the document is practically non-existent in Macedonia. The public servants on the Cadastre will enter the document without performing any legal verification other than that foreseen in articles 170 and 171 of the regulating law, i.e. checking whether registration applications contain all the necessary details, issuing a rejection notice if they have not been completed properly [q. 109], which does not in any way constitute legal scrutiny of the document. Another report from 2006 regarding the Macedonian system also highlighted this shortcoming⁴. In practice, if documents considered complete in terms of the legally required details are entered on the Registry with errors or flaws, these will be corrected when notified. In general, the registration systems assume the existence of the possibility of errors or legal inaccuracies in the documents submitted for registration and the need for legal scrutiny or verification to remedy these in advance of their registration. The Macedonian system, on the other hand, starts from the basis that documents submitted for registration rarely contain errors ("*not a high percentage*", q. 93) and therefore do not warrant any prior legal scrutiny. The reality accepted by Title registration systems is that the reliability of the registry's contents depends to a large degree on the quality of the preventive checking of contents coming into the Registry.
4. There is a principle of presumption of accuracy for the Cadastre entries, highly distorted by the exceptions introduced by law. In our opinion, the

⁴ *Secure transactions in South East Europe? The Global Law Collection. Editorial Aranzadi S.A.*

principles of security in the rights or the principles protecting the acquisition of the ownership right entered are of relative efficacy as, in addition to the exceptions indicated, there is always the right of the other party to challenge it before the Courts. In fact, there is a legal principle whereby, within the term of three years from registration, the entry may be corrected at the request of those persons whose interests have been harmed. This characteristic by itself imbues the system with great instability.

The curtain, mirror and insurance principles⁵ (cf. *Land Administration in the UNECE Region: Development Trends and Main Principles*, II) do not play any role in the Macedonian system. Their application does not appear to be a priority.

It seems obvious that the Macedonian Cadastre (regulated by Law 40/2008 on Real Estate Cadastre, Law 34/72 and Law 13/78 on Survey and Real Cadastre) does not provide owners with the ordinary guarantees of a Land Registry: it does not constitute a solid ownership title nor give an ownership status that facilitates the signing of contracts. In exchange, the authorization given by the legislation to the Cadastre for it to carry out all manner of legal modifications is unusual in scope, virtually absolute [q. 99.].

3. CIRCULATION OF DOCUMENTS

- Judicial documents: *exequatur* is necessary. No nuances offered.
- Extrajudicial documents: even if they comply with the three-fold condition of conforming to Macedonian law and are duly translated and legalized, further authentication before the Courts of Macedonia will be required.

4. JUDICIAL CO-OPERATION: MEASURES TO ENSURE DUE PROCESS

In principle, the Macedonian Cadastre receives and notes, in the section on charges, those court judgements tending to ensure processes, without any special classification of the measures. It considers these as “facts” influencing ownership of the property.

Generically, temporary registration is possible on the Cadastre for any information of significance for acquisition, change, rescission or assignment of rights over real estate, whenever such temporary registration is legally allowed [q. 36].

⁵ *Land Administration in the UNECE Region: Development Trends and Main Principles*, II: An ideal system should reflect perfectly the legal position on the ground (the mirror principle), draw a curtain over all previous dealings so that only the present entries on the register need be consulted (the curtain principle) and guarantee the accuracy of what is shown on the registers (the insurance principle).

5. OWNERSHIP

Foreigners are allowed to buy property in Macedonia under conditions of reciprocity. They are not allowed to acquire certain categories of property indicated in the legislation, for reasons of security or certain interests valued by the Republic of Macedonia.

Apart from these general indications, the circulation of ownership seems, in general, not to have any more noteworthy restrictions than those arising out of the insecurity of the registered property on which transactions are planned.

Tenancy rights other than ownership are excluded from the Cadastre.

We have not succeeded in dispelling the doubts about whether or not there are historical records or titles registered in the Archives of the Courts preserving ownership rights and that have not yet been included on the Cadastre, nor about the possibility that they may be entered twice, on the one hand through the old archives of the Courts, and on the other hand, *ex novo* on the Cadastre. The law obliges those drafting a document, as well as notaries public and authorities, to consult with the Cadastre in advance [q. 104].

Logically, we are also unable to advance what the judicial decision might be in the case of a conflict between these two ownership titles, namely that reflected on the old archives and that on the Cadastre, although we believe that, unless there is a rule ranking on a par with the legislation that could invalidate the old records, it could happen that these would prevail in a court of law.

In the presentations on the Macedonian cadastral system provided in MS PowerPoint format, reference is made to having “cadastrated” or mapped most of Macedonia’s territory. However, this is very different from having established the registered ownership of the rights on the properties included in the maps.

6. MORTGAGES

- The registration of a mortgage is constitutive in nature.
- Mortgage contracts have obligatory contents determined by legislation and the maximum mortgage liability must be specified by type of liability and the interest and duration of the mortgage. Optionally, we can add enforcement pacts. With an imperative regulation of this type it is certainly a question of ensuring the conservation and currency of the mortgage. The problem, however, arises earlier: the ownership on which the mortgage is constituted does not seem totally stable. It should be

recalled that the law does not require the owner's consent, nor that of the Bank, or any court judgement handed down in a process in which the owner has been a party in order to modify the property; in fact it is enough to have an administrative procedure conducted by Cadastre inspectors, not to mention the potential for modification or cancellation on the basis of requests by individuals whose interest has been harmed. In this sense, it cannot be said that there is any curtain or insurance effect as a result of having the registry.

- The rule governing the impossibility of opposing measures with anything that is not registered would seem to rule out hidden charges, but owners not entered on the Registry in fact always have the possibility of taking the matter to Court. We feel that hidden charges are likely.
- The process of mortgage enforcement is connected with the Cadastre, and entries are made to indicate mortgage foreclosures.
- The total number of mortgages according to their statistics is: 6,261 in 2009, 8,573 in 2008 and 8,148 in 2007.
- It is legally possible to establish a mortgage on future properties, with a view to financing the construction of homes. The mortgage would be left without any effect if the planned building were never built, so the construction of the building would be the condition precedent for the mortgage.

7. FAMILY: DISPOSAL OF PROPERTY BY MINORS OR DISQUALIFIED INDIVIDUALS

Macedonia's Cadastre does not take part in the verification of the cautions or constraints imposed by law on the disposal of real estate owned by minors or disqualified individuals.

Any document, whether judicial or notarial, will be entered acritically and even despite any defects it may have, under the responsibility of the person who issued it, and the Cadastre will publish the new registered holder, who will enjoy official status.

8. SUCCESSIONS

There is no typical title for the declaration of heirs. No explications were offered. No information has been provided on this point in the responses to the questionnaire nor in the course of the interview held at the offices of the cadastre in Skopje.

9. PUBLICITY

The right to receive publicity is acquired by registration on the real estate cadastre, the details of which are public in principle and may be used by interested parties [q. 116].

Applications must include the cadastral identification on the plot. Consultations by the name of the party referred to on the Registry are not allowed.

Electronic publicity is available for those properties incorporated into the computer processing tools, but it basically seems reserved for the administration and for judges. It is accessed through the following URL: www.katastar.gov.mk

Publicity is not free of charge and certain fees accrue [q. 125].

10. AUTHENTIC ACT

Within the scope of contracting, documentation exclusivity is attributed to notaries public who have certain duties such as the need to consult the Cadastre in advance in order to confirm the status of the property or adjust to the legal content of the transactions.

Other titles that could be entered on the Registry are Court judgements and documents issued by the government.

11. CO-ORDINATION WITH THE CADASTRE

As we have already said, we do not recognize a Land Registry worthy of the name in the Macedonian Cadastre. In other words: there is a Cadastre that carries out some specific functions of a Land Registry such as the conservation of mortgages.

On the Cadastre's "*imoten list*", the essential point is the property, and its physical aspects are exhaustively detailed; elsewhere there is a list of mortgages and other charges, both judicial and extra-judicial, in a predetermined checklist with very scant content.

The Macedonian system has excluded the textual description of the property and the possibility that the parties to the contract may spontaneously add descriptive circumstances considered noteworthy in the contracts. The only description allowed is that of the cadastral plot, which can be altered by the cadastre's inspectors without the need for consent from the registered holder or a judicial mandate.

It should be noted that there is an option to allow the registration of ownership rights for apartments when the construction of the building is not yet complete. This conditional registration is intended to protect the rights of those who have acquired the same.

12. ORGANIZATION

- Supervised by public servants at the Cadastre.
- The “imoten list” shares with Registries the use of the classic sheet per property model and historical records per property. There is also an archived deed collection.
- Organization of the sheet. It is divided into three parts: the first declares the details of the property. The second has the description of the property, which does not allow textual descriptions or those contained in the titles but only cadastral details (just like the Hungarian system and unlike all the other systems referred to in this report). In the part of the *imoten list* devoted to the property, there is a special section for those cases where the property is an apartment. The third part contains information about the mortgage and all kinds of judicial and extra-judicial charges, drafted in a very terse style.

A special mention is warranted for the fiduciary mortgage as, while the right of the *mortgagor* or debtor is located on the ownership part of the property, that of the *mortgagee* or creditor is listed in the part dealing with the property’s limitations or charges [q. 31], which seems consistent with the legislations allowing this kind of *in rem* guarantee.

- Inclusion on the register: mandatory. Although it is sometimes considered so, it is not constitutive, as any interested parties considered harmed is able to appeal to the Courts to recover their rights by modifying the Cadastre and thus cancelling the registered ownership of anyone who had entered rights subsequently; and there is full acceptance of the existence and validity of rights and titles outside the Cadastre.
- Contents of the entry: checklist.
- Contents of publicity: extract very analogous to the entry contents.

13. EFFICIENCY

Indicators:

1. Electronic submission of documents: at the present time, according to what we have been categorically informed, this does not exist [q. 87]. In Skopje, it was indicated that this is planned for 2013.
2. Processing of documents: legally, the deadlines are expected to be very short. In fact, as it is a system of obligatory declaration to the Cadastre, owners have the legal duty to communicate any alteration in the ownership of the property within the term of 30 days counted from the moment of the said alteration [q. 5]. The Cadastre has the legal deadline of one day to take note of the alteration unless it implies a new geodesic report and three days if this is not necessary. As for the registration of *in rem* rights, the term is one day to enter or cancel mortgages and from two to ten days for all other cases [q. 89]. Documents are drafted in accordance with legal indications and, after submission to the Cadastre, no legal scrutiny or verification takes place, as is the case in Title Registries. On this point, the system is similar to that of Bulgaria, but apparently the legal verification does not even extend to formal aspects of the document. Possible errors are not corrected prior to registration but, as and when the Cadastre becomes aware of the same, notice is given to the pertinent party. The questionnaire states that there is no large percentage of errors [q. 93], an opinion that should be checked against the reliability of the publicity given to users.
3. Contents of the registry details: checklist system. The cadastral description of the physical aspects of the property is exhaustive if all of the boxes and sections foreseen are effectively completed. In fact, as already highlighted in another report on the Macedonian system⁶, the physical aspects of the property so minutely detailed are not particularly significant for the protection of ownership. On the other hand, the section on mortgages and charges has only basic and limited content. In the case of a mortgage, it must contain “*the data referring to the real estate right holder, data on the mortgagee, the ceiling of the mortgage loan and the legal basis for the mortgage*” [q. 39, 45]. As the registry entry is the constitutive element of the mortgage, we understand that it would be advisable for other items of interest to be reflected (schedule for payments, variable interest rate chosen if any, rules for its settlement, etc.).

Thus, the exhaustiveness of the physical aspects of the property is not accompanied by a complete and meticulous section on mortgages and charges but rather by a checkbox of laconic content. From the standpoint of a registration system, there is a clear imbalance between one section and the other, yet (in this case from a different

⁶ Op cit. page 125.

standpoint) it seems obvious that the prolixity of the property's physical aspects (a point that is very positive) is not for the protection of rights as important as a clear and detailed presentation of the property's charges in accordance with the hierarchized principle of speciality of rights.

On the other hand, the very design of the cadastral entry, with its reduction to a checklist, makes it difficult to list acts eligible for entry that the progress of the mortgage movement ends up causing, such as agreements on the mortgage range or the novations of mortgage loans and credits arranged between the bank and the borrower in the latter's interest.

4. As has been said several times, the Cadastre's public servants do not conduct any legal scrutiny of the documents. With regard to mortgages, the mortgage contract has obligatory content determined by law and they merely verify that the mandatory indications are present; these include the requirement that both the capital and the interest be indicated (a measure that tends to ensure the clarity and conservation of the mortgage). However: it is a fact that errors of calculation or determination of one with respect to the other are not infrequent, nor errors in these with regard to the bases of the mortgage contract, for example when variable interest has been agreed. From what has been said, however, the Cadastre cannot be expected to exercise any preventive control over the error. Errors of this type usually complicate or prolong in time the mortgage's foreclosure.
5. Publicity. There are no clear specifications as to the delivery times for providing this, but we are told that they are very short.
6. Quality of the publicity. After consulting the historical record of a property on the Land Registry is it necessary or appropriate to have a legal review for further investigation into the registered owner or the situation vis-à-vis the property's charges? Although it has been said that the extract from the *imoten list* represents absolute evidence, we feel that, in all probability, such investigation is necessary. A consultation of the *imoten list* will probably not be enough to establish for certain the legal regime of the property in terms of its registered owner and charges.

According to the report cited⁷, notaries public must make sure that the mortgage contract complies with the obligatory contents imposed by the law and that the property to be mortgaged belongs to the borrower. Despite this

⁷ *Secure transactions in South East Europe?* Page 147. Cit. supra.

verification by the notary public, however, the fact of the matter is that the borrower will want to make sure that the property is no encumbered with another mortgage or with burdens other than those registered. This seems to lead to another phase we must add on top of that for cadastral information, namely for the study or investigation of title, an intermediate phase of indefinite duration between the supply of the information on the registry and the formalization of the contract. Such a legal investigation is not necessary, nor even appropriate, in a system where the quality the publicity guarantees the mirror principle with regard to the ownership and charge status of the property. In fact, reference is made in the said report to the existence of cases in which, despite the precautions taken by the lender, there turned out to be several mortgages on the same property, thus impairing the lender's interest.

To sum up, in general:

- The Macedonian Cadastre fulfils a partial or one-off registry function, virtually reduced to the role of mortgage conservation, in an attempt to ensure it by means of the establishment of obligatory content in the mortgage contract and the speed of its registration. This goal of mortgage conservation may be affected by the instability of the protection afforded to the property entered, for the reasons set out above, and due to the absence of preventive legal scrutiny by the Cadastre, which will not prevent potential errors that might even affect the foreclosure of the mortgage or extend it over time.
- The Macedonian Cadastre does not seem to have achieved the protection and maintenance of parties referred to on the Registry due to the ease with which their situation can be reviewed and the possible existence of contradictory titles in the old court archives or even elsewhere. Cadastres have an essentially fiscal function and also, normally as a result of the first, the function of mapping the territory. But they lack the vocation to provide owners with the legal status of their ownership, a true legal title.
- The publicity provided on the ownership status and charges provided by the Cadastre in Macedonia, in the light of the foregoing, is of relative efficiency, since the situation often makes it advisable, despite the cadastral information provided, to conduct a study or investigation of the owner's title, thus delaying the moment of the formalization of the contract and, presumably, increasing costs.

Unlike other former Yugoslavian republics (Bosnia-Herzegovina, Croatia or Slovenia), the option seems to have been to ignore all pre-existing property

registry information and organize an *ex novo* system, rather than updated and correct the traditional Land Registry. We are doubtful that, at the present time, the mirror, curtain and insurance principles are being successfully developed in the current model of the Macedonian cadastral system and we are sure that the fundamental registry principles shared by Title registration systems do not have the same meaning in this case.

HUNGARIAN REGISTRATION SYSTEM

1. RIGHTS RELATING TO CIVIL RIGHTS.

- In the light of the characteristics of the Hungarian system, we have particularly wondered whether it might give rise to parties referred to on the Registry being affected by proceedings to which they have not been party, and the answer is that they can be [q. 1, confirmed specifically during the interview]. The property whose ownership is in question may be altered as a result of administrative proceedings without any requirement for the consent of the party referred to on the Registry nor the need for a final judgement. In fact, even if the registered owner were not notified that the public servants on the cadastre have re-defined the boundaries of the property in question, such a lack of notification to the owner in those administrative proceedings resulting in the modification of the property would not constitute an impediment for the consummation of the official modification of the property right referred to in the Registry. On the other hand, the logical consequence of the Hungarian system is that its markedly cadastral character does not allow any description of the property other than that determined by the Cadastre and excludes any textual description or that resulting from contracts, so the stability of the object owned will depend on the reviews made by the public servants on the cadastre, that is to say on administrative decisions.
- As might be expected after the preceding conclusion, the right entered on the Registry can also be modified by means of a judgement regardless of whether or not the legally mandated procedure has been followed [q. 2]. The Hungarian system does not provide any procedural guarantee that parties referred to on the Registry may only have their entries altered in their favour if specific proceedings stipulated by law in advance have been followed. In any legal process culminating in a judgement, this would be eligible for inclusion on the registry without further ado.

2. REGISTRY PRINCIPLES

The Hungarian system is, basically, a cadastral system for deed registration. It is not a Title registration system. Although we can discern some common registry principles in it, their efficiency is quite attenuated.

1. Priority: the Hungarian system established the exclusion of rights that are incompatible with the one first registered and a hierarchization of all compatible rights. Priority on the registry is organized by a list of documents

kept without any special formalities. As a result, we can say that its concept of priority seems no different from that of Title registration systems.

2. Enchained title: the principle of enchained title, whereby no registered right may be altered without the consent of the parties referred to on the Registry or a judgement handed down in proceedings to which they have been a party, is however full of exceptions due to the constraints listed in the first paragraph.
3. Principle of legality:
 - With regard to the authentic act rule, the Hungarian system is flexible and there is no kind of exclusivity for entry of only notarial documents, as will be indicated below.
 - With regard to the principle of qualification or legal scrutiny of documents, this is performed by District Land Offices (DLO). The examination carried out in the District Land Office of each region is basically formal and reviews the legality of the documental formalities without usually descending into the contents, although if this examination identifies any breach of a legal precept, the document will be returned for correction or else the interested party may lodge an appeal before the Courts. At least this is the praxis indicated. However [q. 54]: if the document shows an evident cause of invalidity, it must be rejected without continuing the examination of the documents submitted.
4. Principles of security in the acquisition of rights. Although there seems to be a presumption that the contents of the Land Registry are known by everyone [q. 39] and is correct and complete, as well as a principle favourable to third parties acting in good faith, the latter's right may cease to exist if it is defeated in a declarative hearing or by another owner holding a previous right or document [q. 13, q. 14]. It seems that this system cannot ensure the so-called curtain principle (Cf. *Land Administration in the UNECE Region: Development Trends and Main Principles*, II).

3. CIRCULATION OF DOCUMENTS

- Judicial documents: despite the fact that (as is typical) this matter of *lege data* is governed by the principle of exclusive jurisdiction for the Hungarian Courts for all matters relating to real estate, the Hungarian system seems receptive to a modification or *lege ferenda* within the European framework or by adequate regulation, such as a recognition system like Regulation 2,201/2003 or Regulation 44/2001, and might admit the registration of judgements from other Member States ordering the distribution of assets in uncontested divorces. There is a predisposition (the same as, for example, in

Bulgaria) to register these even without that Community regulation, providing that there is no doubt as to the authenticity of the document and its proper translation and, of course, only for uncontested divorces.

- Extrajudicial documents: probably due to the flexibility of authentic acts in the Hungarian system, even today there does not seem to be any special difficulty preventing the registration of documents executed before foreign notaries public if they comply with the triple condition a) of conforming to the *lex rei sitae*; b) legalization and c) translation of the document. It should be remembered that in Hungary the registration system is open to the entry of private documents with a signature authenticated by an attorney. However, it must be noted that this conclusion, reached during the interview, is later than and different from the answer given in the questionnaire [q. 56] which stated categorically that “*only Hungarian documents can be registered*”.

4. JUDICIAL CO-OPERATION: REGISTRATION OF MEASURES TO ENSURE DUE PROCESS

- Registration of judicial measures such as orders of attachment. In order to claim debts by enforcement proceedings recourse is had to a judicial mortgage, implying restrictions on disposability and the possibility of compulsory enforcement, thus giving rise to the annotation of a note of execution pursuant to a writ or notification by a Judge.
- Registration of judicial measures such as caveat or notice to alert third parties to the existence of legal action affecting properties (notes of dispute): the legislation includes notes of dispute
 1. Adopted by judicial authority
 2. Of indefinite duration.
 3. Effects: alert to third parties, elimination of *fides publica*. But there are no restrictions on disposability.
- Registration of judicial measures such as prohibitions of the alienation or encumbrance of real estate.
 1. Adopted by judicial authority
 2. Duration and currency as determined in the judgement.
 3. Effects: closure of the Registry.

5. OWNERSHIP

The circulation of ownership has certain notable restrictions: the ownership of rural properties cannot be acquired by foreigners although it is foreseen that this limitation may be lifted shortly.

Notwithstanding, foreigners can acquire apartments.

The Hungarian system has technically resolved the organization of condominiums by clearly linking the document to the plot of the condominium, together with its drawings and the units in the condominium.

However we have no news of any entries or the legal provision for the registration of modules, quotas or systems to distribute the shared expenses among the owners of the apartments or premises in the condominium, nor the Articles of Association or rules governing the same, which would, in our opinion, be useful to improve the status or title of the owners.

6. MORTGAGES

- Limitation to the mortgage liability entered in favour of third parties. The mortgage entry is constitutive in nature.
- Hidden charges: we were categorically informed that the Hungarian system has no hidden charges. On the other hand, we understand that the legal limitations on ownership are another matter. As for those commonly detected at the seminars, the Hungarian system is among those opting for transparency as:
 1. Unregistered lessees are offered no protection by the Registry and cannot oppose eviction.
 2. Tax debts are subject to the rules of priority on the registry and do not have any tacit privileges.
- Enforcement of mortgage: the law requires the verification of the same on the Registry; we have not achieved any evaluation of the complication or delay in judicial proceedings, nor is there any estimate of the possible consequences of the cancellation of lower-ranking rights caused by the foreclosure of mortgages, quite widespread among the other registration systems examined and of course among Title Registries.

7. FAMILY: DISPOSAL OF PROPERTY BY MINORS OR DISQUALIFIED INDIVIDUALS

The documents in which these are formalized must comply with the legal requirements, cautions or constraints; although the qualification by the Registry does not usually extend to the legal contents, if the examination by the DLO (District Land Office) confirms the lack of any legal requirement, registration will be denied.

8. SUCCESSIONS

Certificate of inheritance. This certificate accredits the status of heirs, their quota share in the estate and also any conditions there may be. Notaries public may even issues such certificates in cases of intestacy. The procedure for hereditary acquisition seems highly regulated [q. 68 and following].

With regard to the rights of compulsory heirs, in the event of submission to the Land Registry of a document formalizing a hereditary acquisition with a formal defect or null and void, it will be returned for correction and not registered [q. 74].

Public testaments may be deposited with notaries public or at Court. No reference is made to the existence or otherwise of a centralized register of wills and testaments.

9. PUBLICITY

There is public access to the registry sheets. Anyone applying can receive information about the property, its ownership and its burdens. On the other hand, access to the documents that were used as the basis for the registration and are held on record is not available, rather the consent of the registered owner will be necessary for this, or else a written rationale justifying the consultation of the said documents is required for the exercise of a right or to act in accordance with a legal duty [q. 116].

There is a certain degree of electronic publicity available to the public administrations and notaries public depending on the level of the database and the information of each DLO.

Consultations must be made by properties or plots, or else, depending on the status of the database and archive of the DLO in question, it could be consulted by the name of the registered holders or owners.

10. AUTHENTIC ACT

Alternatively, the acts eligible for inclusion on the Registry [q. 38] are both public deeds by notaries public and private documents authenticated before an attorney.

This latter option is in greater demand among the population because it is cheaper.

Hungarian law prescribes the contents and format of the documents, especially in cases of property sales, mortgages and their cancellation, charges and restrictions or condominium.

11. CO-ORDINATION WITH THE CADASTRE

The Hungarian system is one of Land Registry/Cadastral integration and functional duality, as conceptually it clearly distinguishes between the processing of the identification and description of each property or plot and the legal processing of the property and its charges.

The so-called Unified Land Registry System comprises two systems or databases: the mapping of the properties (of a clearly cadastral nature) and the legal part (property sheets) with a registry function.

Each property has its own unique cadastral identification number.

Apartments or premises in condominium also have their own unique cadastral identification number that is linked back to the plot on which the building stands.

The registration system does not recognize any description of properties other than the cadastral description and does not admit textual descriptions of the properties.

12. ORGANIZATION

- Supervised by the DLOs in the regions reporting to the Ministry of Agriculture. It has an administrative structure. Nonetheless, refusals to enter a document give rise to appeals before the Courts. Judges have to decide on the appeal having regard for the terms of the registry's qualification and without admitting any further documents as it is not a plenary hearing. In at least a quarter of these appeals are upheld.
- Sheet per property, reflecting the brief contents of the historical records and an archive collection of copies of the documents.
- Organization of the sheet: *I RESZ* or PART 1) *Description Data*, basically the unique cadastral identification for each property and the postal direction, without any textual description or title, together with characteristics such as the land use, the land type if applicable; in the case of condominiums the descriptive details will be the identification of the apartment, its size, the number of bedrooms and it even seems to show the existence of kitchens and bathrooms. *II RESZ* or PART 2 *Ownership/Registered Ownership*,

with the identification details of the owners, including their names, dates of birth and address; *III RESZ* or PART 3 Mortgages and Charges, as well as circumstances ordered by law to be entered such as mortgage foreclosure. The structure of the registry page or sheet is recognizable and, in general terms, shared with other European registration systems.

- Inclusion: OBLIGATORY. Owners, trustees or rightsholders are legally obliged to report any changes occurring in the ownership to the competent DLO
- Contents of the entry: checklist.
- Contents of publicity: in extracts, very succinct.
- An interesting peculiarity of this system is that it does not require the prior settlement of tax liabilities for the documents as a necessary requirement for their inclusion; rather, after inclusion of the documents, their entry is notified to the tax authorities, as opposed to the rigid impositions of other registration systems, which subordinate registration to the prior fulfilment of tax-related requirements.

13. EFFICIENCY

Indicators:

1. Electronic submission or processing of documents: not at the moment.
2. Processing of documents: no indication has been given of any kind of time frame, whether informative or average.
3. Contents of the registry details: checklist. Archived copies of the documents.
4. Resolving defects: co-operation with interested parties with a view to facilitating inclusion on the Registry is noteworthy. Apparently, this is done naturally and is intended to resolve the problems for the benefit of both the operation of the registry office and that of the interested parties themselves (Hungarian law imposes certain co-operation obligations on interested parties vis-à-vis the Cadastre, such as the notification of changes in ownership). This collaboration takes place without prejudice to the rights of the interested parties to appeal to the Courts.

5. Publicity. No record of any informative or average time frame. Its computer system is particularly open to the Public Administrations.
 6. Quality of the publicity. After consulting the historical record of a property on the Land Registry, is it necessary or appropriate to have a legal review for further investigation into the registered owner or the situation vis-à-vis charges? In their opinion, the certificates issued by the registry give lenders sufficient trust for them to grant credits only on the basis of this evidence of ownership.
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