



## REAL ESTATE CADASTRE VERSUS LAND AND BUILDINGS REGISTER IN POLAND, WITH THE VIEW TO CONCEPTS' IDENTIFICATION

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### Summary

Currently in Poland, the problems associated with changes in the functioning of the institutions of the cadastre are becoming very topical. These include the problem of cadastre's location within the structures of the State, the definition of its role and significance in the context of the functions and tasks that it should perform. When introducing the legal concept of real estate cadastre into circulation, the legislator stipulated that until the transformation of the existing land and buildings register is completed, the term cadastre is to signify precisely these land and buildings register. Therefore, a problem arises, concerning the consequences of the parallel use, and the interchangeability of the two terms: 'land and buildings register', and 'cadastre', each of which have their historical, legal and technical references and implications. In this publication, we carry out an analysis of historical and current conditions for the functioning of the land and buildings register, and the real estate cadastre, in terms of the current legislation.

### Keywords

real estate cadastre • land and buildings register • geodesic and cartographic law

### 1. Introduction

In Poland, the issues associated with defining the real estate cadastre, the location thereof within the State structures, determining its role, importance and functions that it should play, remain very much topical and current [Hycner 2004, Wilkowski et al. 2013]. The subject of the real estate cadastre is constantly present in the professional discourse and in the public space, where it is commonly associated with plans to introduce the cadastral tax in the future [Polny 2014]. In the European Union, the concept of real estate cadastre is widely used; and the real estate cadastre itself is the foundation of spatial information [Zevenbergen 2004], and the means to verify ownership.

In Polish legislation and geodetic practice, the concept of cadastre is identified generally (though often incorrectly) with the concept of land and buildings register. Both of these concepts are anchored in the existing legislation and are closely related.

The legislator stipulated that until the transformation of the existing land and buildings register is completed, the term cadastre is to be understood precisely as the land and buildings register (according to the Law of 1989). Thus, the legislator indicates that both of these concepts at the moment are identical (synonymous with each other), while at the same time announcing an unspecified, but necessary transformation of the land and buildings register into the real estate cadastre. Therefore, a problem emerges, pertaining to the consequences of the parallel usage of two terms, which are often used interchangeably, although that is not always correct. It is an indisputable fact that both these concepts have their different and separate origins, as well as different historical, legal and technical references and implications [Felcenloben 2009].

When discussing the issues related to these very significant and important institutions, we need to raise the question of the expediency of replacing the term 'land and buildings register' with the term 'cadastre' as well as the scope and seriousness of the aforementioned modifications to the law and their indefinite timeline. It is necessary to take efficient legislative action, in order to correct any conceptual discrepancies and adjust the current, unfavourable legal situation in this area [Pietrzak et al. 2012].

## 2. Real estate cadastre from the ancient times to this day

The beginning of the real estate cadastre dates back to ancient times. Listing and description of land for the protection of property rights was already drawn up in the oldest civilizations. It has evolved over time into the register of lands and their owners, as a basis for calculating land tax. The very word 'cadastre' is derived from the Latin. *Caput iugum*, or unit tax, and *capitum registrum* or tax inventory, were introduced in ancient Rome by the Emperor Augustus. In later years, those terms were merged into one – *capitastrum* [Fedorowski 1974], which later gained the form of *catastrum*, closer to the contemporary 'cadastre', meaning in practice the type of inventory or register.

The first ordered arrangement of the subject content of cadastral systems in Europe was made in 1853 at the International Statistical Congress in Brussels. At the time, the requirements on the principles of measurement, maps' scales, rules of drafting borders, records of property and land use, and the general principles of the organization and conduct of cadastral systems have been defined [Brinker and Minnick 1995].

Today, the International Federation of Surveyors (FIG) broadly deals with the subject of real estate cadastre in international context. The Federation defines the cadastre as the current land information system, based on the plots of land, containing a register of property rights to the land, typically including the geometric description of the plots of land in conjunction with other records describing the nature of these rights, as well as, often, the value of the land and the changes thereof [FIG 1995, Kaufmann and Steudler 2000, Parzych and Radzio 2010]. It can be established for fiscal purposes (e.g. the valuation and objective taxation), for legal purposes (transfer of ownership), as an aid in spatial management (e.g. for planning and other administrative purposes), or for enabling the continuity of the development and protection of the environment.

In Europe, the modern real estate cadastre has been defined by the United Nations European Economic Convention in 1996, as an information system consisting of two parts:

1. Graphic – constitutes the counterpart of analogue or digital maps, depicting the size and location of all plots (that is, their geometry).
2. Descriptive – storing the attributes of geometric objects.

In Poland, the history of land cadastre was as stormy as the fate of the entire country. It had the greatest historical significance at the time of the partitions of Poland. That was the time of three different cadastral systems – Austrian, Prussian, and Russian land tax cadastre [Hycner 2004 Felcenloben 2009]. The influences of these systems continue to the present day, because the source materials derived from them are still used today.

The latest normative definition of cadastre was included in the 1947 Decree on land and buildings cadastre, where it was defined as a map-based list and description of land and buildings, which may be separate subjects of property/ownership [Dz. U. 1947, Nr 61, poz. 344].

According to the aforementioned decree, the cadastre of land and buildings served:

- a) as the basis for descriptions and plans to designate the property when setting and conducting land registers,
- b) to establish and keep mining, water and other registers,
- c) to calculate levies, taxes and other public benefits,
- d) to provide data on the various fields of technology as well as different areas of social and economic life.

Rural district or municipality was the basic territorial unit of the cadastre. For each cadastral unit, the cadastral operate was prepared, which consisted of maps, registers and files. Cadastral operate included the following data:

- a) for the land – location, borders, area, usage, and class,
- b) for the buildings – location, purpose, the material from which the given building was made, date of issue and a detailed description,
- c) as to the person of the owner – name, parents' names, and place of residence.

Cadastral operates, official extracts from those operates, and copies or extracts of the maps were treated as public documents and therefore, they were openly accessed. Anyone could view them, as well as receive copies, extracts and maps for a fee. The surveying authorities had the task of maintaining the cadastre operates in compliance with the actual state of the land, and they would conduct constant, periodic revisions for that purpose. The cadastral operate was kept in constant compliance with the entries in the land registers, and the contents of the mining, water and others registries. Judicial authorities, mining, water and other administrative bodies on the one hand, and the surveying authorities on the other hand, were obliged *ex officio* to communicate, one to the other, within 30 days, any changes that occurred in the files and documents relating to the data. By law, these changes needed to be entered into the books and operates.

The owners (or users) of real estate or their representatives were under obligation to notify the district surveying authorities, within 6 weeks, of making or creating such changes in their properties, which were not disclosed in the land registers, but they were still subject to the inclusion in the cadastral operates. Who did not fulfil the said obligation, was subject to the payment of a fine. General county administration was appointed to rule in these cases. The same principle would also apply to government offices, local government authorities, and public institutions, in so far as a result of their actions, changes resulted in real estate other than their own.

Measurements on the ground were performed by specially appointed individuals, with relevant State-issued certificates, called the 'expert (or sworn) surveyors'. Cadastre of land and buildings was a public record. Not long after the release of the said decree of land and building cadastre, the concept of property, and private property in particular, has been reassessed. With the development of socialist thought, there emerged the concept of social (common) property, especially with regard to the means of production, as well as the concept of personal property, as the form of private property, however, honoured in limited scope. Due to lack of time, the authorities failed to realize the objectives of the decree, and it was repealed in 1955, giving way to the decree of the land and buildings register. Thus the term of 'real estate cadastre' returned to Polish legislation only through the geodesy and cartography Law, thereby co-existing with the term of 'land and buildings register'.

### 3. Land and buildings register from the era of socialism until present times

Land and buildings register were created for the needs of the Polish political system at the time, which was then a 'socialist' system; and it substituted the land and buildings cadastre, by adapting it for the implementation of the current political agenda. Cadastre could not exist in socialist reality, because it was an institution aimed at securing property rights. Land and buildings register were created by decree in 1955 on the land and buildings register.

The information contained in the register often differed from the actual legal status. This was caused by such practices as field measurements done by surveyors working for government entities, implementing official state policy – rather than by the independent 'sworn' experts, as had been done before. An indication of this was, among others, that the course of borders was determined on the basis of measurement of current use as indicated by the interested parties; and there was no need to present the relevant documents. Limits could also be established on the basis of photo-maps, while the accuracy and usefulness of such maps for the purpose has been the subject of numerous studies [Kwoczyńska and Noga 2001] and was often questioned because it failed to provide accurate boundaries – in this case, directly in the field. A large part of the borders disclosed in the Land and buildings register operate has no legal nature, also in the cases where the boundaries disclosed in the inventory operate results from a mere redrawing of the contents of the existing cadastral maps [Bieda et al. 2011]. Another phenomenon, which did not favour the protection of property

rights, consisted in restrictions as to the notification about the entries in the register to those persons, whose legitimate interests were involved. This procedure resulted in the formation of discrepancies between the actual situation and the condition as entered in the register. As a result, register of land and buildings did not constitute, and still do not constitute today a reliable source of information. From the very beginning of the register's existence, the term 'administering' received special significance. This term often caused difficulties of interpretation, because 'administering' was not defined clearly and precisely enough by any legal provision. This led to infringement on property rights, and opened the way for the appropriation of property.

In 1989, as a result of political changes that began to take place in Poland, the Geodesy and Cartography Law was passed, which abolished the decree on land and buildings register. The Law defined the register, as a uniform, countrywide, regularly updated collection of information on land, buildings, their owners and other natural or legal persons who administered the said land and buildings. Over the twenty-six years of the Law remaining operational, numerous amendments have been passed, and new regulations were issued for the implementation. Noticeable are many changes in the organization and principles of keeping the entries of the register. Work was undertaken on the modernization of the register. This institution has been subjected to digitization and unification. Record keeping was subjected to the competence of district governors.

Dynamic changes in Polish legislation also affected the definition of land and buildings' register. It changed into a system, which was uniform for the whole country – a regularly updated collection of information on land, buildings and premises, their owners and other administering persons. It began to be conducted using ICT systems, which were different in technical terms, but all implementing the same data model.

The latest amendment to the Geodesic and Cartographic Law introduced another definition of land and buildings register. Today, it is an information system that ensures the collection of information on land, buildings, premises, their owners and other entities administering or managing the land, buildings or premises. At the moment, the inventory operate consists of a number of databases and collections of documents, which provide the basis for the entries to these databases and their changes. The scope of recorded data was amended to include the information on the value of property. The newly introduced regulations provide the basis for carrying out modernization work. The thematic range of databases pertaining to the register of land and buildings is constantly expanding – although it might seem that maintaining a smaller number of attributes, that would be kept up to date, could be a better solution.

#### 4. An analysis of defining entries in the executory provisions between 1969–2015

The analysis concerns the changes that have occurred in the regulations implementing the Geodesic and Cartographic Law in the years 1969–2015. It pertains to the inventory entries or records, which are the basis for the functioning and organization of the

land and buildings register. The comparison of the content of the executive regulations (Table 1) shows that these changes are very substantial and significant. The amendments and modifications concern almost every item in the register. The analysis shows clearly that the laws on the land and buildings register have evolved significantly over the years, and their current status differs significantly from the original state.

**Table 1.** An analysis of the changes introduced in entries definitions, in the executive registry between 1969–2015

	Decree of 1969	Ordinance of 1996	Ordinance of 2001	Ordinance of 2013	Ordinance of 2015
Subject of the registry	–	changed	changed	no change	no change
Object of the registry	–	changed	changed	changed	no change
Plot of land	–	changed	changed	no change	no change
Exceptions from the definition of the plot of land	–	changed	changed	no change	no change
Registry unit	–	changed	changed	changed	no change
Attributes of the plot	–	changed	changed	changed	no change
Attributes of the building	not present	introduced	changed	changed	changed
Attributes of the property	not present	not present	introduced	changed	no change
Land properties	–	changed	changed	changed	no change
Contents of the operate	–	changed	changed	revoked	not present
Land Registry	–	changed	changed	changed	no change
Registry groups	–	changed	changed	changed	no change
Exchange of data	not present	introduced	changed	changed	changed

## 5. Land and buildings register versus real estate cadastre in the current legal regulations

Quoting verbatim from the Article 2 point 8, Geodetic and Cartographic Law [Dz. U. 2015, poz. 520], the land and buildings register were connected inseparably with the term ‘real estate cadastre’, namely – ‘whenever the Law refers to the register of land and buildings register (real estate cadastre) – this means the information system that ensures the collection, updating and sharing, in a uniform manner for the whole country, of the information on land, buildings and premises as well as their owners and other entities administering or managing the land, buildings or premises.’

The term ‘cadastre’ also appears in Article 53a, which reads: ‘Until the transformation of the land and buildings register into the real estate cadastre; the term ‘cadastre’ used in the present Law refers to these register.’ In no implementing act, however, is there a mention of any legal regulations concerning the mode, policies and procedures related to the transformation of the land and buildings register into the real estate

cadastre. In addition, no other Article of the Law in question, not even once, does the concept of cadastre appear.

In the Law on Real Estate Management [Dz. U. 2015, poz. 1774], the issues related to the register of land and buildings appear several times, in the context of land use information for different purposes of real estate management. It should be noted that that the law in question uses the term 'real estate cadastre'. Nowhere within it there appears the term of 'land and buildings register'. The Law in question refers to the administrative body that keeps the real estate cadastre register, to cadastral value, and to the entries in the real estate cadastre. This is most particularly apparent in Article 170.1. – 'The body conducting the cadastre shall, by the force of its decision, establish the cadastral value of the property and its entry into the real estate cadastre.' The Law also contains an Article, which reiterates the provision of Article 53a of the Geodetic and Cartographic Law. Namely, Article 224 states as follows: 'Until the transformation of the land and buildings register into the real estate cadastre; the term 'cadastre' used in the present Law refers to these records.' One of the objectives of the quoted Article was to establish the uniformity of terms within this scope, between the Geodetic and Cartographic Law (and its pertinent regulations) and other legal acts. Its content is also one of the reasons for the lack of action aimed at transforming the register into a fully-fledged real estate cadastre; as no timeline has been indicated for this process.

Also, the Law on Land and Mortgage Register [Dz. U. 2013, poz. 707], which is one of the most important normative acts related to the protection of property rights, is closely connected with the issue of land and buildings register. The current wording of Article 26.1 states that 'the basis for the determination and entry of real estate in the land registers is the data from the real estate cadastre,' although in the form originally adopted, it was the data from land and buildings register that were indicated as the aforementioned basis. Further, in the Article 27.1, it is stated as follows: 'in the event of inconsistencies between the data of real estate cadastre and the designation of real estate in the land register, the district court shall – at the request of the property owner or perpetual user – rectify the designation of properties based on the real estate cadastre.' Both cited regulations indicate the great importance of the data contained in the land and buildings register for the content of entries in land registers. Land registers are conducted in order to determine the legal status of the property, and they constitute a guarantee of public faith, which testifies to the weight and significance of the data contained in the land and buildings register.

When analysing the provisions of the law in question, we immediately notice that the term of 'land and buildings register' does not appear herein; but that the term 'real estate cadastre' is used instead. Furthermore, a footnote in the contents of the Law refers us to the Law of 14 February 2003 On the transfer of land and mortgage register contents to the structure of the land and mortgage register kept in a digitized (computer) system [Dz. U. Nr 42, poz. 363], the Article 25 of which Law states that 'Until the transformation of the land and buildings register into the real estate cadastre; the term 'cadastre' used in Articles 23 and 24 of the present Law, and the amended Laws, refers to these register.' The said Article 24 refers to the Law, already quoted in this paper, on

Land and Mortgage Register, while Article 23 is contained in the Law of 17 November 1964 of the Civil Code [Dz. U. 2014, poz. 101]. In the latter Law, the concept of 'real estate cadastre' also appears, rather than the 'land and buildings register, as in Article 6288 § 4. 'When considering the application to change the designation of the property in the land register kept in a computer system, the court shall ex officio verify the data indicated in the application, and the designation of the property as disclosed in the land register, against the data of real estate cadastre, unless there are obstacles preventing the actual carrying out of such check.'

## 6. Conclusions

It seems reasonable to ask the question whether the 'land and buildings register' is a term synonymous with the concept of 'real estate cadastre'? Is there a real estate cadastre in Poland, currently? Is it feasible, and is it justified to rename the land and buildings register into the real estate cadastre?

The concept and the institution of real estate cadastre had been shaped over centuries, and it accompanied people from the beginnings of civilization. Furthermore, the term has international significance. The word cadastre had its legal significance in Poland after World War II. The cadastre identified the owner, the property holder, and the user of the property. The boundaries of the property were determined by measurements on the ground, carried out by 'sworn' measurement experts, and the information contained in the cadastre could be considered reliable and holding the guarantee of public faith.

The qualities of cadastre as listed above meet the general requirements of modern cadastre institutions internationally. We might add at this point that the cadastre, being the register and the map, is the foundation of spatial information, upon which basis any public registers may be created – namely such registers, which are used for the implementation of public tasks.

The land and buildings register were a creation of the state socialist system at the time, and they have been subordinated to its purposes, which also means, that the records then kept were not credible. The information contained in the records differed from the actual facts. The boundaries of the plots were identified in a way that does not meet modern standards of precision, while the owner(s) and the person(s) administering the property were often reported without any legal verification.

The data contained in the land and buildings register are constantly updated on the basis of documents admitted to the national geodetic and cartographic resources. Unfortunately, the modern land and buildings register still contain a lot of defects. The data is characterized by poor quality; there are still discrepancies between the data contained in the records and in the system of land registers. A lot of relevant data on buildings, premises and property values remain missing.

Actions undertaken in Poland since the entry into force of the Geodetic and Cartographic Law, the regulations of 1996 and 2001, and the amendments to the aforementioned regulations, adopted in 2013 and 2015, indeed strive to actually implement the

uniformity of concepts: of 'land and buildings register' and 'real estate cadastre'. Currently, the status of existing land and buildings register in Poland does not differ radically from the technical and legal state of the cadastre carried out in the countries of the European Union. However, in order to achieve a true uniformity of the concepts within the principles of recording real estate in the European Union, it would be advisable to change the denomination of 'land and buildings register' into that of the 'real estate cadastre', which two concepts, in the current Geodetic and Cartographic Law, are treated as synonymous. This should be combined with a fundamental change in the data model, in which property would become the basic unit, rather than, as it is in the present situation, where the register includes plots of land, buildings and premises, summarized in the appropriate category of record units. Unfortunately, in the existing legislation, there is no proposed scope of transformations leading to that conversion of 'land and buildings register' into the 'real estate cadastre', nor is there a timeline given for instituting such conversion.

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