08_Errors and Omissions in the Registration of Properties in the Cadastral Map_ME[english]

The existence of omissions and errors on the cadastral map has become a common problem over the recent years, which is resolved through an administrative procedure or court proceedings if there is a dispute on a material right. Generally, there is a case of omission in the cadastral map, where a property has not been recorded as a separate land unit on the cadastral map, whereas there is an error, where a certain real part of a land unit has been misstated within the boundaries of another land unit. Other cases of omissions and errors are also possible.

In accordance with the legal definition set out in the Cadastre and Land Registry Act, as amended in The State Gazette, No 57 of 22 July 2016, omissions or errors are inaccuracies in the boundaries and limits of immovable properties on the cadastral map of an urban area in comparison to their actual condition. In accordance with the Cadastre and Land Registry Act (CLRA), as amended in The State Gazette, No 57 of 2016, the approved cadastral map and cadastral registers are not subject to appeal. They may be subject to rectification in any of the following cases: (i) established changes in the data of the cadastral unit which have occurred since the entry into force of the cadastral map and cadastral registers; (ii) omissions or errors; and (iii) manifest errors in fact (new).

The Cadastre and Land Registry Act defines the cadaster as a comprehensive record of basic data on the position, boundaries and size of immovable properties, as well as on the ownership right and the other rights in rem to the immovable properties and their holders. Data is documented through cadastral maps and cadastral registers. Approved cadastral maps and cadastral registers have declaratory effects. They do not cause changes in the ownership status of land properties. A misstatement of the ownership right does not lead to the emergence, change or cancellation of this right. The existence or absence of entries in the cadastral register may not have the effect of evidence or legitimation greater than title deeds (Interpretative Decision No 8 of 23 February 2016 in Interpretative Case No 8/2014 of the General Assembly of the Civil Law College of the Supreme Court of Cassation). Thus a wrong representation of the boundaries of an immovable property does not alter the ownership right to the misstated part of the property.

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In accordance with the existing Article 54(2) CLRA (ex Article 53(2), second sentence, original wording of the CLRA), where the omission or error is related to a dispute on a material right, it is rectified in court proceedings. Interpretative Decision No 8 of 23 February 2016 in Interpretative Case No 8/2014 of the General Assembly of the Civil Law College of the Supreme Court of Cassation gives the answer to the question whether it is admissible to file a claim under Article 54(2) CLRA without prior administrative procedure to establish the omission or error with the Agency for Geodesy, Cartography and Cadastre. The decision states that the existing dispute on a material right as a prerequisite for the admissibility of the claim is an objective fact and its existence, when related to an alleged omission or error on the cadastral map, determines the legal interest in filing the claim. The provisions of Article 53(2), second sentence of the Cadastre and Land Registry Act (original wording), currently Article 54(2) CLRA, do not require an administrative procedure to establish omissions or errors on the cadastral map or a refusal to make a rectification on part of the administration as a prerequisite for filing a claim in court.

If a real part of a land property has been misstated as a part of a neighbouring property or has not been recorded as a separate land unit on the cadastral map, it is possible to file a claim also under the Ownership Act. This claim will be admissible: (i) even if no administrative procedure to rectify omissions or errors on the approved cadastral map and registers has been carried out; and (ii) even no special claim has been filed under Article 54(2) (new) CLRA. The Supreme Court of Cassation has ruled that in ownership claim proceedings the court has to examine the existence of an omission or error on the approved cadastral map.

When the Interpretative Decision was made, the legal definition of omissions and errors, which is referred to in the beginning of this article, was worded differently and therefore the amendment of 22 July 2016 was not reflected in the court decision. Anyway, the decision makes it clear that in the case of omissions or errors on the cadastral map it is not obligatory to follow the path of the administrative procedure with the Agency for Geodesy, Cartography and Cadastre to establish them and it is possible to file a claim in accordance with the Cadastre and Land Registry Act or the Ownership Act. Thus the owners of properties which are affected by omissions or errors are able to undertake direct action to protect their

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property rather than wait for a preliminary procedure to be completed.

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