

Review of a Monograph: *Das Grundbuch im Europa des XXI. Jahrhunderts*, Edited by Arkadiusz Wudarski*

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Das Grundbuch im Europa des XXI. Jahrhunderts

by Arkadiusz WUDARSKI (ed)

Berlin: Duncker & Humboldt, 2016 – pp. 783 € 145,69

The monograph *Das Grundbuch im Europa des XXI. Jahrhunderts* (English: *Land Register in Europe in the 21st Century*) edited by Arkadiusz Wudarski is an extensive study concerning contemporary land registers in European countries. The monograph has been prepared within the framework of the research project titled '*Functions of Land Registers in European Comparative Perspective*', which is a collaboration of three universities: European University Viadrina in Frankfurt (Oder), Jan Długosz University in Częstochowa, and University of Zielona Góra. The conducted research entails comparative studies under the direction of Arkadiusz Wudarski within the framework of a project funded by the National Science Center (Polish: *Narodowe Centrum Nauki*). Scholars from Poland, Germany, Czech Republic, Italy, Brazil, Croatia, Russia, Romania, Hungary, Austria, Switzerland, England, and Scotland, and also attorneys and court clerks have participated in the project.

I evaluate the chosen monograph's topic positively. The attempt at a comparative study in the field of the functioning of land registers in Europe takes an interesting comparative approach, which can encourage other European countries to improve their existing land registers (maintained traditionally or electronically). It is also worth recognizing that the scope of the comparative study is very wide, because the monograph considers matters concerning land registers in Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Czechia, England, France, Germany, Greece, Ireland, Italy, Poland, Romania, Scotland,

* The following publication is an outcome of project no 2015/17/B/HS5/00460, funded by *Narodowe Centrum Nauki* (English: National Science Centre).

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Spain, and Switzerland.

The territorial scope of the research presented in the monograph also deserves critical acclaim. The monograph's authors have considered in their research the majority of European countries. Furthermore, the authors include some examples of land registers' functioning in the common law system, which is particularly interesting from the viewpoint of civil law jurisdictions. The monograph includes an analysis of sources from the common law in this field (customary law, statutory law, judicial precedents, legislation), which shows how complex this system may be. The authors also point to mixed legal systems, especially with regard to sources of law. This concerns the example of Scotland, where influences of French law can be observed.

The study within the project consists of research works which constitute the chapters of the monograph. The authors of the research works focused on comparative studies of the land register systems in European countries. Particular attention was paid to the functions of the land register system: the law-making function (concerning the constitutive or declaratory effect of an entry in the land register), as well as the informative and protective functions. The authors emphasized a need for amendments and improvements to those systems in order to ensure security in conducting real estate sale transactions. The research results were often compared with European Union regulations. It is also worth stressing that the matter of conflict of interests regarding public access to land registers is touched on in the study. The authors identified the characteristics of this matter and tried to find a balance between the competing interests of entitled parties.

Other aspects of this publication include a historical view of the functioning of land registers in Europe, the classification of land registers *vis-a-vis* other types of registers, and basic terminology regarding land registers in different jurisdictions. The authors also present procedural and constitutional issues which are inherent in the functioning of land registers. Furthermore, the monograph also gives consideration to doctrinal matters. The authors deal with the matter of the exhaustive list (*numerus clausus*) of property rights and discuss the relation between the rights of third parties and the exhaustive character of property rights.

The editor of the monograph, Arkadiusz Wudarski, emphasizes that the aims of the project are to gain knowledge about the functioning of land registers in European countries and benefit from it by improving effectiveness and security in national and cross-border business trading. The research results could be used as a basis for the development of common directives and best practices – quality standards for land registers in Europe. This could be an important step to improve the quality, transparency, and functionality of land registers in Member States. The adoption of uniform standards may influence the direction of reforms, and as a consequence bring national legal systems closer. Thereby the free

movement of capital and competitiveness of the European internal market will be improved.

I have a positive opinion about the selection of the topics dealt with by particular authors. In particular, I approve of the division into primary subjects – that is, the land register as an integral part of the legal system, development of the content of land registers, the principle of public credibility of land registers, land register systems in times of change, and contemporary challenges facing land registers. In the case of Poland and Germany, Arkadiusz Wudarski presents these subjects in comparative perspective. Other authors present the current state of land registers functioning in their national jurisdictions by analyzing the legal regulations in those countries. They also carried out comparative studies performed to varying degrees. Particular authors also studied some of the practical aspects of land registers' functioning.

Further topics relate to the main aim of the monograph, which is comparative research concerning the functioning of land registers in 21st century Europe. The authors offer perspectives for amendments of provisions and *de lege ferenda* conclusions which may be adopted in European countries to ensure that registers will perform their functions as much as possible. In particular, this concerns perspectives and challenges which the authors predict with regard to the development and modernization of land registers so that the land register system will meet current social needs. Those subjects are presented in the monograph by Gerald Kohl concerning the case of Austria, and by Tatiana-Eleni Synodinou concerning Cyprus. These authors indicate reasonably that it is necessary to develop modern solutions to meet current social needs.

It is worth mentioning that, with regard to the different parts of the monograph, the authors have taken into consideration various aspects of the functioning of land registers in chosen countries.

Arkadiusz Wudarski deals with the comparison between land registers in Poland and Germany in light of European law. First, the author generally discusses the concept of the register, its functions, contents of registers, and different models of register maintenance. Then he evaluates land registers in Poland and Germany in light of these research results. Nowadays, registers contain a variety of information and offer numerous possibilities for data classification. This also applies to land registers in which entries about not only property rights, but also concerning information and facts about owners and other entitled persons are made. The author emphasizes that the aim of the land registry is not the registration of a particular real property, but rather that the land register serves to identify the legal status relating to property rights. In the study it has been pointed out that the land registers in Poland and Germany are court registers. It is stressed that the transparency of a register is associated with the concept of an official register, and the concept of a transparent and official register have somewhat blended with each other. The author indicates with regard to land

registers' functions that not only is the effect of an entry in a land register important, but also that the land register system impacts the entire legal system and society. Thus, land registers in Poland and Germany perform organizing, informative, constitutive, and protective functions. In summarizing the conducted research, the author proposes the hypothesis that, despite the many differences, a uniform definition of 'land register' in Poland and Germany can be proposed.

Peter Manowski in his part of the monograph deals with issues regarding private international law and international civil proceedings related to real estate in cross-border transactions. The author points out that private law regarding real estate is not harmonized within European Union law and the adoption of a common regulation in this area is rather impossible. Despite this, all jurisdictions uniformly apply the *lex rei sitae* rule. However, application of this rule is convenient for the legal systems in which land registers are used, because in this case the applicable substantive and procedural law will be the same.

The author proposes to subdivide the institutions related to the functioning of land registers into those regulated by *lex rei sitae* and those which are included by the procedural rules. The aspects related to preliminary questions, including legal capacity, capacity to perform acts in law, power of attorney, and inheritance are also analyzed in the chapter. The author argues that preliminary questions are subject to their own legal regulation. The institution of the European Certificate of Succession and real estate sale contracts are also mentioned in the study. Provisions on the form of legal actions related to real estate according to the Rome I Regulation and provisions of German private international law are analyzed in the article. The author also discusses legal issues which may arise during proceedings on making an entry to the land register in light of international civil procedure. In spite of the scope of the presented aspects, the author presents a thorough analysis of issues regarding private international law and international civil proceedings related to real estate transactions and land registers.

Stefan Hügel discusses the impact of land registration procedure rules on property law, particularly considering the activities of a notary in order to protect the functions of the land register. The author begins with an overview of the general outlines of property law in Germany (including the abstraction principle, *numerus clausus* of property rights) and the specific role of a notary in taking legal actions concerning real estate. The chapter presents comparative studies concerning the French legal system, in which the rules for carrying out legal actions related to real estate are completely different from the German system (the abstraction principle does not exist in France and there are no form requirements for legal actions whose subject matter concerns a real property).

A considerable part of the piece is devoted to a presentation of the notary's duties, functions, and principles of his responsibility in the context of taking legal actions related to real estate. I find interesting the comparison of land registers' functions with the role of the notary in legal activities relating to real

estate. The author stresses that according to German regulations, the presence of a notary in the performance of such legal actions is obligatory, but regardless of that fact, the notary acts as a guarantor of the land register's proper functioning.

The author presents an interesting conclusion, pointing out that the harmonization of property rights within the European Union would be difficult because of the varied scope of protection in each European country. As a better solution, the author proposes developing best practices. He also indicates that, considering the high level of legal protection in this area in Germany, German regulations can provide a good example to follow in the adoption of such standards.

Peter Bydliński presents assumptions and regulations concerning the purchase of real property in Austria. In terms of transactions related to real estate, no particular form is provided; therefore this type of legal action can be concluded orally or by way of implied action. In Austria, the land registration procedure rules are much more complicated. The author discusses the most important principles of sales contract agreements with special reference to property sales contracts. He also explains in a very accessible manner what distinguishes Austria in this regard and provides legal justification for adopting regulations in this particular form. This matter is comprehensively presented. I evaluate very positively the fact that the author also discusses issues related to pursuing claims arising from a property sale contract, especially by judicial process and further by means of execution. Worthy of praise is the presentation of *de lege ferenda* conclusions concerning introduction into the Austrian legal system of the requirement of a notarial deed for property purchase agreements and the notary's obligation to instruct the parties of the most important elements of such agreement.

I warmly welcome the study of Vincent Sagaerton on the positive and negative nature of land registers in the context of the principle of public credibility of land registers. The author presents the mechanism of land registers' functioning based on regulations in Belgium. Although it would appear that the Belgian regulations are in step with contemporary developments and civilizational changes, it is interesting that the author emphasizes that, in fact, in Belgium some amendments to provisions regarding land registers could be made by harmonization at the European level. This could ensure the appropriate balance between the rights of third parties and the exhaustive nature of property rights disclosed in the land register. The author indicates that in the current state of Belgian law, parties which have a legal interest in a particular property cannot confine themselves to the presumption of public credibility of the land register. Therefore, the land register in Belgium does not perform a protective function with regards to the parties to a transaction. The land register system in Belgium is still based on principles developed in the 19th century, which at the current stage of social development is a historical relic and does not work in practice.

That is an important issue in the Belgian law system. As practice shows, amendments to provisions in this field are necessary to match 21st century reality.

An interesting insight into the chief issue of the monograph is offered by Luz M. Martinez Valencoso, who presents the principles of the land register's functioning in Spain and draws the reader's attention to the issue of personal data protection in the context of a disclosed mortgage in the land register. The author poses the question of whether the right to public information and the right to the protection of personal data and privacy are in conflict with each other.

Considerations relating to the functioning of land register records in common law systems through the example of the United Kingdom are also very interesting. The authors, Emma Lees and Kenneth G.C. Reid, focus their attention on the informative and protective functions of the land register. Regarding the information disclosed in the land register, these functions should be a guarantee for parties that have a legitimate interest in certainty as well as compliance with legal and factual circumstances. The authors emphasize the differences which exist in practice on the basis of the common law system, which may cause difficulties in undertaking attempts to harmonize land registers within the European Union.

I am very pleased that the monograph also includes a discussion on the need for the modernization of land registry records in the context of the introduction of electronic files. The authors focus their attention on the topic of electronic land registers, and further on the large number of challenges and other aspects which new electronic land registers bring with them.

An interesting approach to the subject is presented by Harald Wilsche. He focuses on the functioning of electronic land registers in Germany and presents both the evolution of ideas and regulations in this area as well as further planned initiatives in this field. However, the author emphasizes the important role of general principles applicable to land registers and their informative function. In addition, the author draws attention to the issue of the database which is implemented in the electronic version of the land register. He also confronts modern solutions of electronic land registers with the traditional informative role that is attributed to land registers. The study is divided into three main sections: electronic land registers in Germany, electronic documents flow regarding the land register, and the German Land Register Database Act. This division perfectly shows the evolution of legal provisions at various stages of development of the electronic land register. The study comprehensively presents aspects of the electronic land register in Germany and covers issues related to the structure of the land register, principles of maintaining the land register, rules of making entries into the land register, and making the land register accessible. In addition, the article also describes provisions concerning the form

of electronic documents which are filed as the basis for an entry, the rules of converting such documents, and issues around issuing electronic court rulings. A very interesting solution is a practical description of the proceedings from the moment of drawing up a notarial deed to the entry in the land register. These proceedings are described both as German legislation currently stands and under planned legislation, which gives the study a more practical nature. Special attention should be paid to the comparative legal analysis regarding the electronic land register in the United Kingdom, and that the author took into consideration aspects of conflict of laws.

Riccardo Omodei Salé presents an interesting viewpoint on the entry of a preliminary agreement into the Italian property register (*registro immobiliare*). He indicates grounds for introduction of a preliminary agreement into the Italian law system and he particularly stresses the need for protection of the future buyer. The author describes the premises for an entry of a preliminary agreement into the property register, because not every preliminary agreement will be able to be registered. Only preliminary agreements whose aim is to transfer a property or a property right could be the subject matter of entries in the register. The limitation in the scope of a registered preliminary agreement was strongly criticized, but is also welcomed by some researchers in the legal scholarship. The author rightly touches on some details in this area – for example, if a preliminary agreement on a future (as yet non-existing) object or an option agreement could be also entered into the register.

Noteworthy is the detailed description of the legal effects of an entry of a preliminary agreement (priority notice) into the land register. Especially interesting is that Mr Salé briefly compares the legal effects of a priority notice in Italian and German law. It should be noted that the author not only analyzes the effects of a priority notice concerning a preliminary agreement in the area of civil law, but also discusses its effects in enforcement and insolvency proceedings. In the chapter, different cases (for example, change of the subject matter from the preliminary to final agreement, conclusion of a preliminary agreement on behalf of a non-existing subject) are analyzed in terms of establishing norms as to when the effect of a priority notice would be applicable. The author also discusses the aspects of priority rights arising from damages claims and points out the problem of a conflict between that right and a mortgage. In general, priority rights are ranked higher than mortgages which were entered into the register after a preliminary agreement was registered, but there are some exceptions in the court's decision-making practice.

An interesting aspect is also the impact of a particular regulation on an entry on a preliminary agreement for a yet non-existent building. In this chapter, the requirements for making this kind of entry and its effects are examined. In addition, the author takes a closer look at regulations on the expiration of effects on a preliminary agreement's entry and on entry cancellation.

The author concludes with an evaluation of the legal institution of the preliminary agreement and also indicates some practical issues which could cause problems and discourage people from taking advantage of the entry of preliminary agreements. He also tries to suggest some solutions in order to increase the use of preliminary agreement entries, which should be evaluated positively. Attention should be paid to comments about problems observed in the area of enforcement and insolvency proceedings, which could possibly entail changes in those regulations.

A definite strength of the publication is the wide range of discussed countries. Eugen Chelaru examines the evolution of the Romanian land register, including the fragmentary nature of the land register system in this country. The author clearly explains the complicated system in Romania and subsequent regulations adopted for its unification. The study describes the most important regulations concerning the structure of the land register, and the effects and types of entries in the land register. The problems that Romania faces concerning unification of the land register law can be compared to plans for unification of the law in this field at the European level. The author fairly points out that the adoption of unification regulations does not mean there is no need for further reforms.

The monograph also makes reference to the principles of the functioning of the land register in Switzerland. Stephan Wolf and Jonas Mangisch present the entire process of development of the functioning of the Swiss land register with reference to formal and substantive aspects of land registry law. The study also explains that the land register system in Switzerland takes into consideration the federal system in this country. In particular, differences across cantons in the functioning of the land registry may appear, but they cannot violate the principle of unity of land registers and legal security of the system as a whole. The author very interestingly depicts the principles of responsibility for maintaining land registers and recourse claims of cantons in regards to employees, officials, or indirect supervision authorities dealing with land registers. The study is particularly important for the reason that Switzerland does not belong to the European Union, but alongside Germany, Austria, and Lichtenstein the Swiss system of land register is one of the best-developed. In their conclusions the authors refer to amendments on provisions concerning the letter of debt (German: *Register-Schuldbrief*) that exists only in Switzerland and present some critical remarks about these amendments.

Ioannis Papadimopoulos presents an analysis covering the establishment and functioning of the new land register system in Greece. The author emphasizes that Greece is the only country among European Union Member States that does not have a unified land register system, despite the fact that work on the creation of such a register has been ongoing for years.

Ioannis Papadimopoulos presents both the assumptions of the functioning of the old register and new Greek regulations on the land register. It is also

worth mentioning that the author describes the electronic land register developed in the framework of the new land register system. Migration of data and land register digitalization is currently taking place in Greece. It should be noted that this process has not yet been completed. The new land register has already been coordinated with the real estate cadaster. In the future it is planned to establish a land register database. I take a very positive view of the presentation of the subject in the context of European Union law, particularly the evaluation of Greek legislation on the land register with regard to the rules concerning the content and principles of registers in the European Union.

The monograph is also drafted well in formal terms. The structure is correct, and in every study the authors refer to general issues and take into consideration essential aspects. It also provides an analysis of particular issues of land registers and their functioning in particular countries. The authors also use rich sources of bibliographical references gathered from many countries and court judgments. The last mentioned source is particularly valuable because of the nature of sources of law in the common law system, which are mentioned repeatedly by the British authors.

Finally, it is worth emphasizing that the editor, Arkadiusz Wudarski, set for himself the goal of an extensive presentation of the functioning of land registers in the 21st century. Undoubtedly, the benefits from comparative studies presented in the monograph should be emphasized. The monograph contains a wide cross-section of legislation and in-depth discussion of practical aspects of land registers in Europe. This work can provide support and encouragement to attempts at harmonization of land registers in Europe. We cannot forget that the authors present the functioning of land registers not only in the Member States, but also outside the European Union, which shows the importance of the monograph's subject at the pan-European level. In each of the presented countries amendments have been proposed that would certainly improve the functioning and conducting of international property sale transactions.

Overall, I look very positively on all of the papers in the monograph, and the demands of scientific and academic rigor with regard to the articles contained therein are deemed to be met. They are documented properly and contain clear argumentation corresponding with both individual topics and the entire monograph.