

# HISTORY OF DEVELOPMENT OF THE SYSTEM OF STATE REGISTRATION OF REAL ESTATE IN GERMANY (END OF XVII - THE BEGINNING OF XXI CENTURY).

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**Abstract:** The state system of registration of rights in Germany has a history of over 200 years. It has evolved from the the cadastre of land to the system of registration of rights. The basis of the modern system of state registration of rights in Germany is the Land Register. This is the official document showing the real situation of legal relations on a land plot. The state policy on registration of rights is within the competence of the Federal Ministry of Justice and consumer rights protection. Directly the registration of the rights is carried out by the Senior Judicial Officer. The registered to the Land Register data are in the mode of the presumption of legality of registered rights under § 891 of the German Civil Code. The Land Register itself enjoys the public trust under § 892 of the German Civil Code - bona fide purchaser of the land plot can be sure that the content of the Land Register reflects realistically the set of rights on a land plot. Public confidence solves the main issue of property turnover of real estate - provides the detailed legal information to the buyer on the rights and obligations on the land plot. Today the state system of registration of rights in Germany continues its evolution by introducing AFIS-ALKIS-ATKIS-Modell. Moreover, each federal state alone is responsible for the strategy and implementation schedule of the cadastre registration system.

**Keywords:** Land cadaster; Land register; Real estate; Registration system; Senior Judicial Officer

**Introduction.** The system of state registration of rights to real estate in Germany has come a long way of growth, continuing improvement process today. The rules governing the registration of rights to real estate are divided into two parts: the substantive law, rules of which are enshrined in the German Civil Code and the formal right – rules of which are enshrined in the Land Registration Code [1]. The state registration of rights to real estate is an element of public law regulation of private law and is intended to serve as ensuring the stability of property turnover in civil turnover of property. The system of state registration of rights to real estate in Germany refers to the cover system, and consists of automated land registry and automated registry of rights. Therefore, the development the system of state registration of rights to real estate in Germany should be viewed through the prism of Land Cadaster and the law of Land Registration Code in Germany.

The implementation of the state policy on registration of rights to real estate in Germany is the responsibility of the Federal Ministry of Justice and Consumer Protection [2]. The proof of this is the German Code on court constitution from 09.12.1950 [3]. This law defines the system of courts of general jurisdiction in Germany, where as a part of the local courts operates a separate unit - the Department of the Land Register, which is authorized by law to keep land books. Also, § 1 of the Land Registration Code provides the norm according to which the Land Register is in the exclusive jurisdiction of the local courts of law the structural subdivision of which is the Department (except of Baden-Wurttemberg where Land Register is in the competence of local communities according to § 2 of the Land Registration Code) [4]. Directly the function of state registration of rights regarding real estate to the Land Register is performed by the Senior Judicial Officer of the Department of the Land Register under § 3 para. 1 of the Act on Senior Judicial Officers. He is in public service and has a corresponding service rank [5].

**Historical review.** Development of the state registration of real estate is associated with the origin and formation in Prussia of the title system of registration of rights for real estate. Since 1693 Land Registers had been introduced, contents of which had information about real estate rights. Ownership of the real estate occurred only at entry to the Land Register of a registration record. Over time, there occurs the establishment of rules under which the registration record in the Land Register is a senior title with respect to other titles, it has right-establishing character to real estate, an entry in the Land Register testified to the right of person. Thus, the state took over the burden of legal protection of real estate of citizens.

Further development of the system of registration of real estate is associated with the Prussian Mortgage Articles of 1783 and Prussian Civil Code of 1794. These legislative acts introduced in legal practice two fundamental principles of registration: a) the acquisition of property rights regarding real estate may only be based on making proper recordation to the Land Register by an authorized person; b) the principle of public trust and transparency – registered in the Land Register right recognized valid for bona fide purchaser. If real estate passed from not bona fide owner to bona fide owner the lawsuit could be brought only against not bona fide owner. Thus the principle dealt with the question of transfer of rights to real estate from unfair alienator to a bona fide purchaser of rights. Title registration system is the development of German lawyers of eighteenth century. In each plot of land there was opened a new "sheet", where registration of a right took place. Hence the title of the book is "Land Register". Therefore the register record is more important for the emergence of rights than the legal action, on which the register record is based [6].

In 1805, after creating the Confederation of the Rhine by Napoleon Bonaparte in the occupied areas of the left bank of the Rhine they began to cancel tax exemptions for clergy and nobility in land tenure and cadastral system was created with the purposes of imposing taxes on lands. From 1808 to 1814 there were carried out works to streamline land of about 9000 communities with a total area of approximately 120,000 square kilometers representing approximately 37 million of land plots. The Congress of Vienna in 1815 led to territorial changes of Prussia. In developing the current Cadastre there was formed a complete cadastre of small plots of land. This cadastre was used for the taxation of real estate. Later, in 1861, they adopted the "New Articles of increasing land tax for the eastern provinces of Prussia", which in fact was a legal basis for technical unification of land cadastres performing the tax function. In 1876 the cadastre in Prussia was fully formed. This idea of using maps and records for future operations of the government was implemented in the cadastral systems. Since 1872 they began the implementation in practice of the cadastre of Rights (Land Register) based on the land cadastre data. There was a range of measures aimed at leading of the instructions for cadastral works to the same system, special attention was paid to delimitation land [7].

The fundamental place in this system is held by the German Civil Code adopted and approved by the Reichstag in 1896. The German Civil Code is the result of preparatory work carried out by German experts on civil law, which lasted over 20 years. They managed to combine the traditional construction of civil and legal institutions, which is characteristic of the German law school, with the needs of capitalist development in the late XIX century. On January 1, 1900 the German Civil Code came into legal force throughout the empire. In this regard there was created the system of registration of land rights on the basis of the Land Registration Code (Grundbuchordnung). This system includes all ownership and other rights for land and buildings. Description of land plots (identification of plots and cadastral maps) became the official and legally significant fact. Further the cadastre developed from the system of land taxation to register of tenure rights guarantees [8].

The decision of the Supreme Court of the German Reich on February 12, 1910 should be noted. This decision finally cemented the rule under which the land register enjoys public confidence which also applies to the cadastral data except for the area. The Land Register in Germany, as a public book, officially certifies the actual juridical state of legal relations on land ownership. The main purpose of the Land Register is to create and provide a solid foundation for legal relationships as for turnover of real estate. Its purpose is to clearly and indisputably provide information about the material legal status of land plots. A person who seeks to participate in legal relations connected with the land has the right to get acquainted with the contents of the Land Register and get a reliable assessment of the property legal status of a land plot [9]. On October 16, 1934 they adopted the Law on the valuation of property subject to taxation. Results of formal assessment of the land began to be entered into the cadastre (eg, taxation of arable land is held under the ball of quality of soil). The goal is a fair distribution of the tax burden, depending on the soil quality. This was the first step towards multipurpose cadastre [10].

A few words must be said about the Senior Judicial Officer of real estate rights in local courts as he directly registers the rights to the Land Register. Senior Judicial Officer, as a public position, originated in Germany in the early nineteenth century and passed a long stage of development. In 1877 matters of non-contentious jurisdiction were transferred from legal secretaries to the judges: hereditary issues, registration of rights to real estate, partnerships, cooperatives, water vehicles and so on. This in turn led to the overburdened of court system – judges could not hear civil and criminal cases through a substantial number of non-claim legal proceedings. The current model of the Senior Judicial Officer was introduced in 1909 – in the city of Nuremberg there was created "The Union of German secretaries of justice." This event was caused by legislative changes to the Code of Civil Procedure in Germany – they passed from judges to the court clerks the authority of issuing the writs of execution, determining the cost of legal expenses and so on. Further powers of judges were passed administratively, later on the basis of the Act on Senior Judicial Officers as amended in 1957, 1969 and 1970 and subsequent legislative changes [11].

In 70-80 years of the twentieth century, the western federate lands began to create automated register of the property (ALB) and automated cadastral map (ALK). In 1971 a working group of representatives from federate lands gives suggestions for the automation of both registers. The first launched Project was automated cadastre (Automatisiertes Liegenschaftsbuch - ALB), which was intended as Standard database management system (DBMS - Database management standard). The second project was launched in 1976 – an automated cadastral map (Automatisierte Liegenschaftskarte - ALK).

These two projects were conducted separately and were connected with the fact that the data structure effectively linked attributes and geometric data, as in modern GIS (Geographic Information System) that were not available at that time. Today both systems together form a comprehensive LIS-system (LIS - Land Information System), which includes a whole set of procedures and administrative processes to obtain and update information on land resources in multi-user, inter-agency environment. This system is characterized by strict Average database management system via a standard interface or data format EDBS (Einheitliche Datenbankschnittstelle - single database interface). For three decades all analog maps and register records were digitized. Both digital cadastres are stored in separate computer systems (computer systems cadastre is conducted by 16 federal states) [12].

Today the legal relations on registration to the Land Register are based on the rules of substantive and formal (procedural) law. The Substantive Law regulates the creation, change and termination of rights to land. This range of issues is regulated by §§873-1203 of the German Civil Code and additional laws. The Formal Law regulates the activity of the registration authority and the registration procedure. This range of issues is settled by the Land Registration Code and the German Land Register Regulations. The substantive and formal laws harmoniously complement each other. Thus, § 873 of the German Civil Code for real change in the proprietary legal status requires consensus between the parties on the real deal and putting the appropriate information into the Land Register. Thus, registration in the Land Register is seen as an essential condition for the validity of the transfer of rights.

The evidence of interaction of systems is the definition of "Land allotment". In German law two legal definitions of the land allotment are known: a) Land plot in cadastral technical sense is a limited portion of the earth's surface, separated from neighboring plots by boundary markers, which in due order by the state cadastral agency is assigned a unique number (cadastre number); b) land, in the legal sense, is recognized as a separate land allotment that is registered as such in the land register.

The Land Register in Germany is in paper and electronic form for each land plot. The primary form of the Land Register is an electronic form created by the software by the Senior Judicial Officer of the Department of the Land Register. This version of the the Land Register is stored in an automated registry of property (ALB). The paper form of the Land Register is

necessarily put on the sheet on the size of 210 x 297 mm (format A4) and is kept in the Department of the Land Register at the local courts.

To make an account the authorized officials should hold a series of mandatory legal procedures. One of the most important requirements of the Land Register is the accuracy (reliability) of the content of a registration record provided by the mandatory check of authenticity of legal basis when entering. In Germany, this is the function of a notary who checks the form and content of the binding agreement between the parties and the management agreement. The employee of the Department checks the presence of only the immediate basis of transfer of rights – the management agreement. At the same time any change in the Land Register is sanctioned by the will of the person whose right to be brought is bound to change or transition. Entered in the Land Register registration records are in the mode of the presumption of legality of registered rights under § 891 of the German Civil Code. § 892 of the German Civil Code defines the content of public trust in the Land Register - bona fide purchaser of land can be sure that the content of the Land Register reflects realistically the set of rights on land. Public confidence solves the main issue of property turnover of real estate - it provides detailed legal information to the buyer on the rights and obligations on the land plot [13].

Since 1997, the Working Group of topographical departments of Lands of the Federal Republic of Germany (der Arbeitsgemeinschaft der Vermessungsverwaltungen der Länder der Bundesrepublik Deutschland) is working on developing of the official information system of cadastre of real estate ALKIS®. This system should replace the automated register of real estate (ALB) and automated cadastral map (ALK), uniting them into a single information system. The data structure ALKIS® is determined by using data exchange format XML, based on data exchange interface NAS, which serves as an interface for data AFIS-ALKIS-ATKIS-Modell. Also this format is standardized for the whole of Germany and is using UTM coordinate system based on ETRS89 (European Terrestrial Reference System 1989) instead of the coordinate system of Gauss-Kruger. It should be noted that each federal state alone is responsible for the strategy and calendar plan of implementation of ALKIS® [14].

**Conclusions.** Hence, automated cadastre registration system of registration of land rights in Germany has a high technological level, the degree of process automation, unified data standards. This system is highly technological and provides security of land tenure. Therefore land plots in Germany are documented and are described in the automated register of real estate as public records that are managed by public bodies of federal lands. Information about land plots provides an opportunity for society to plan the development of areas of environmental protection, economic planning; information on the owners of land plots is the basis for calculating tax payments and so on.

The system of state registration of rights in Germany refers to the title registration system and consists of two main elements – Land Register and Cadastre. These systems are closely intertwined and interact. Registration of Rights to Land Register is carried out only by employees of the court. In Germany, the functions of the Senior Judicial Officer and the judge are clearly defined and mutually balanced. As a consequence there is no overload of judges, and as a result – the judiciary by the routine work on registration of real property.

Land Register in Germany is in the competence of the Federal Ministry of Justice and Consumer Protection of Germany. Adding of the registration records to the Land Register on real rights to land plots is carried out by the Senior Judicial Officer who is in public service and has a corresponding service rank.

To the Land Register they enter the information on the technical characteristics of the land plot, owners, users and third parties related by legal relationship with a land plot. The Registered Land Register records are in the mode of the presumption of legality of registered rights under § 891 of the German Civil Code and enjoy the mode of public trust under § 892 of the German Civil Code.

The Land Register is held in paper and electronic form. The electronic version of the Land Register is stored in an automated registry of property (ALB). The paper form of the Land Register is held on the sheets of A 4 format and is stored in the Land Register at the local courts.

To the Land Register only types of rights provided by law are entered. Rules of keeping the Land Register are aimed at ensuring the reliability of records of rights. This requirement is dictated by the purpose of publicity and transparency of the content of the Land Register as the sole and unique source of information about legal relations on the land plot.

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