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**The scope of court cognizance in the land and mortgage register proceedings**

**Abstract**

Due to the importance of real estate for the proper functioning of the state organism the real estate transactions play an extremely important role in free market economy. The extent to which this role is duly completed depends on the security and safety of these transactions. We may say that the legal regulation of real estate transactions must take into account and protect the interests of the parties, authorized third parties as well as the state and society. The state plays the crucial role here, because its role is to create the right institutional and legal conditions to ensure transaction safety. The rights to property, including property ownership, are one of the most important values; hence the burden of ensuring its protection rests with state institutions. The means of implementing this protection include, on one hand, a properly established system for real estate registration and related activities. On the other hand, properly shaped court proceedings and a designated scope of court cognition in this proceeding guarantee efficient and quick disclosure of changes in the legal status of real estate, and proper care that the legal status disclosed in the land and mortgage register reflects the current legal status of the real estate in question.

In order to guarantee the security of real estate transactions, the legislator provided for the institution of land and mortgage registers, inherent in real estate, due to the principles of its organization and operation. The land and mortgage registers secure common access to knowledge about real estate, enabling transaction participants to execute transactions involving rights to it in a safe manner. The land and mortgage registers contain basic information about the property and its legal status, allowing for the identification of the owner and persons possessing rights to the property. The change in the legal status of the real estate is disclosed by the entry, which is made, as a rule, upon the application and solely on the basis of documents attached to such an application. In principle the land and mortgage register court can not refuse entering details in the land and mortgage register if the change in the legal status of the real estate follows from the content of the application submitted, the attached documents, and the contents of the land and mortgage register. Such a construction serves the purpose of simplifying the land and mortgage register proceedings to the greatest possible extent, while simultaneously ensuring maximum protection for participants of legal transactions involving real estate.

Even the best-constructed system of land and mortgage registers could not function properly without proper regulation of the rules governing making entries in the register. Attention should be paid to the special role of land and mortgage register proceedings that determine the appropriate construction of a process aimed at entering a change in the legal status of a real estate through an entry in the land and mortgage register. Land and mortgage register proceedings should take into account two seemingly irreconcilable interests. On the one hand, the efficiency and speed of disclosure of changes in the legal status of real estate, which are of major significance for securing legal transactions in real estate. On the other hand - it is the pursuit of a situation, in which the legal status disclosed in the land and mortgage register in the most faithful manner represents the actual legal status of the real estate. The construction of the land and mortgage registration proceedings must therefore strike a balance between the speed of proceedings and the care for the veracity of entries made in the land and mortgage registers, and the mechanisms that enable this balance and their construction are the subject of the study of the present doctoral dissertation.

Taking into account the objective of land and mortgage registers and land and mortgage register proceedings, which is to ensure the security of legal transactions in real estate, the key issue is the scope of cognizance of the land and mortgage register court. Indications of the limits of court cognizance in the entry procedure forms a significant problem, and at the same time a challenge for proper disclosure of land and mortgage registers and the proceedings themselves. The research objective of the present doctoral thesis is to present the impact of the scope of cognizance of the land and mortgage register court on ensuring the safety of legal transactions in real estate. Therefore, it is important to define the framework for the cognizance of the land and mortgage register court, and to demonstrate that its limitation affects the speed and efficiency of the process for entry in the land and mortgage register, which directly affects the rights of parties to real estate transactions.

The dissertation was divided into four chapters. The first chapter is devoted, first of all, to the issue of legal security and security of real estate transactions. The second chapter lists the basic institutions of land and mortgage registers as well as the constitutional and substantive law principles of land and mortgage registers, which are relevant from the point of view of the discussed issue. The third chapter presents the concept of cognizance of the land and mortgage register court and discusses the process of court's investigation to reveal a change in the legal status of real estate. In addition to examining the documents that form the basis for entry, the application and content of the land and mortgage register, the land and mortgage register court must also consider legal obstacles in the process of making the entry, including those known to the court officially. The fourth chapter is devoted to procedural aspects related to the cognizance of the land and mortgage register court, which determine the difference of this procedure and have a significant impact on its speed and efficiency.

Research demonstrates that the model adopted by the Polish legislature for the jurisdiction of the land and mortgage courts, including its final shape in the Supreme Court's jurisprudence, is optimal, and the legislative and technical solutions applied to keep land and mortgage registers support the legal real estate transactions and ensure the security of their participants. It should be emphasized that an important element of the land and mortgage register system is the suitably designed scope of cognizance of the land and mortgage court. This design is decisive in determining whether the land and mortgage court will operate efficiently and quickly, revealing changes in the legal status of real estate, or if its procedures are significantly extended, requiring thorough analysis of the legal status of real estate, at the expense of speed and efficiency of the proceedings. Limiting the cognizance of the land and mortgage register court means that in a relatively easy way, the applicant, based on the documents constituting the basis of the entry, may disclose the current legal status of the real estate in the land and mortgage register. Therefore the significant limitation of the scope of cognizance of the land and mortgage register court forms a guarantee of security of legal transactions in real estate, as it directly affects the speed of disclosure by means of an entry, in the land and mortgage register, of the legal status of real estate. Nevertheless, on the basis of the conducted research, it should be noted that its limitation is not unconditional and in certain situations it is subject to certain modifications.

The primary role of courts is to exercise justice. However, they were also entrusted with providing legal protection that does not constitute serving justice. Land and mortgage register proceedings are register procedures delegated to courts. They belong to the second group of cases in the court cognizance, namely cases in the field of legal protection. The land and mortgage register court does not settle legal conflicts, restricting itself to examination the existence of the right to be disclosed or stricken off from the land and mortgage register. Our research suggests that the land and mortgage court is not entitled to examine disputes over the rights to be disclosed in the land and mortgage register and there are no legal instruments provided for that end. Therefore, land and mortgage register proceedings, including the cognizance of a land and mortgage register court, were designed as an efficient construction for swift consideration of substantial number of cases of a similar nature, where, as a rule, no dispute arises, and there is no need to adjudicate on the rights and freedoms of individuals. This in turn means that from the point of view of legal protection of real estate transactions, apart from determining the legal status of real estate, it is extremely important to ensure that the legal status of the mortgage register can be quickly and easily disclosed in the land and mortgage register. The means for achieving the aforesaid goals is the appropriate design of the basis of the entry and the appropriate matching of the scope of cognizance of the land and mortgage register court.

Indications of the limits of court cognizance in the entry procedure forms a significant problem, and at the same time a challenge for proper disclosure of land and mortgage registers and the proceedings themselves. It turns out that the literal wording of art. 6268 § 2 of the Polish Code of Civil Procedure does not constitute a comprehensive definition of the scope of cognizance of the land and mortgage register court, but only a starting point for its determination. Stating that the court of land and mortgage register is limited only to the examination of the content and form of the application and the documents attached to it, and the contents of the land and mortgage register, does not respond to all questions asked by doctrine and judicature.

The land and mortgage register court is to perform certain tasks when determining the legal status of real estate and the speed of proceedings forms just one of the objectives of the land and mortgage register court proceedings. In accordance with the principle of legalism, it is also important that the entries in the land and mortgage register reflect the legal status of real estate, i.e. they reflect its actual legal status. Therefore, apart from a typical formal examination of documents that constitute the legal basis for an entry in the land and mortgage register, the land and mortgage register court, taking considering the specificity of the proceedings into account, also assesses the content of the document. This enables the land and mortgage register court, in addition to the typical registration and registration function, to actively participate in the assessment of the law-making effects of legal acts.

Correct determination of the scope of cognizance of the land and mortgage register court, in addition to the examination of substantive issues related to the legal grounds of entry, must also include an analysis of its procedural aspects. The land and mortgage register proceedings, thanks to their procedural differences, allow to fully realize their objectives. Therefore, the principle stating, that the actual condition on the date of application forms the basis for the entry, which is applied as a rule by the land and mortgage register court to consider the applications in the order of their entry, serves the speeding up of the procedure. At the same time, it gives the parties thereto a clear signal that if there is a basis for making the application at the time of its submission, and the court knows no obstacles to making the entry, the land and mortgage court will disclose the change in the legal status of the property.

The obligation of the land and mortgage register court to consider notorious facts as circumstances constituting the basis for dismissing the application for entry forms the supplementation of the two aforesaid principles. What follows is that the land and mortgage court also bears responsibility for the veracity and legality of entries made in the land and mortgage register, while maintaining a simultaneous limited examination of the basis of the entry, based on the means provided for in art. 6268 § 2 of the PCCP. However, limited court cognizance renders it impossible for the court of the land and mortgage register to make its own findings, and investigations in a positive sense, the basis for entry in the land and mortgage register. The court cannot make an entry in the land and mortgage register on the basis of knowledge acquired in a different way than examination of the content and form of the application, documents attached to it and the contents of the land and mortgage register. Such a narrowed cognizance of the land and mortgage register court makes the court disclose, in a quick and simple manner, changes in the legal status of the real estate in the land and mortgage register, or deny such a disclosure.

Conducted research on the scope and premises of the land and mortgage register institutions and the influence of the cognizance of the land and mortgage registry court on ensuring the safety of legal transactions in real estate allowed for the final stage of research work - evaluation of the currently applicable legal regulations in the field of jurisdiction of the land and mortgage register court and their impact on the speed and efficiency of land and mortgage register proceedings. They allow the conclusion that the scope of cognizance of land and mortgage register courts forms a compromise between ensuring the speed and efficiency of land and mortgage register proceedings - on one hand, and the veracity of entries in the land and mortgage register - on the other. This is a well balanced compromise, because the limited cognizance of the land and mortgage register court, in its shape adopted in Polish law, plays a key role for the stability and security of legal transactions in real estate in Poland. At the same time, and in the light of the conducted research, any proposals aimed at expanding should be considered harmful, and may have a negative impact on the speed and efficiency of the proceedings for entry in the land and mortgage register. Its statutory limitation is aimed at improving the land and mortgage register proceedings by enabling the court of the land and mortgage register to disclose the current legal status of the real estate in a relatively quick and easy way in the land and mortgage register. At the same time, the procedural differences in the land and mortgage register proceedings secure the participants of the legal transactions in real estate against possible consequences of erroneous entries in the land and mortgage register. It should be recognized that the land and mortgage register court has all the necessary legal instruments to determine whether, based on the evidence available in the land and mortgage register, there is a change in the legal status of the property, and whether there are any obstacles known to it to disclose it in the land and mortgage register. Therefore the thesis that the limited cognizance of the land and mortgage register court constitutes a real guarantee of the safety of legal transactions in real estate is justified.