ГОДИШНИК НА УНИВЕРСИТЕТА ПО АРХИТЕКТУРА,СТРОИТЕЛСТВО И ГЕОДЕЗИЯ СОФИЯ

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LEGAL RELATIONSHIPS IN CONNECTION OF INTERNAL BOUNDARIES BETWEEN NEIGHBORING LAND PROPERTIES

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Key words: *Land, Ownership, Boundaries, Use*

SUMMARY

The study focuses on possible legal problems associated with the incorporation of piece of land to neighboring real estate or unlawful use of the land without the owner's consent. Various hypotheses have been considered regarding the ways boundaries between neighboring properties are determined - whether regulated or not, and the time when the dispute had arisen - before or after the adoption of the cadastral map. Land proprietor's legal options to oppose seizure or unauthorized property use are considered. The abolition of the cancelling effect of unimplemented land registry following certain period of time, and the option of acquiring ownership by prescription in such cases is discussed as well.

РЕЗЮМЕ

Изследването е фокусирано върху възможни правни проблеми, свързани с присъединяване на част от поземлен имот към съседен или с неправомерно въздействие без съгласие на собственика. Разгледани са различни хипотези относно определяне на границите между съседни поземлени имоти – в зависимост от това дали са регулирани или не, както и доколко спорът е възникнал преди или след приемане на кадастралната

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карта. Внимание е отделено на процесуалните възможности на собственика да се противопостави на завземането или непозволеното ползване на част от имота му, както и на актуалните въпроси за отпадане на отчуждителното действие на неприложените дворищнорегулационни планове и допустимостта за придобиване по давност на реални части от поземлени имоти.

1. Introduction.

The legal significance of real estate boundaries can be seen in various aspects, as pointed out by Stavru [1], however this article focuses on linking them to ownership rights in relation to neighboring pieces of land. The legal interest of the owner of the property can lead both to legal relationship with the owner of the neighboring property, and to interactions with local administrative authorities in connection with procedures for establishing or defining land boundaries. Essential for the recognition of ownership of the respective area of a particular real estate is to identify, on one hand, the current legal framework and, on the other, the concrete facts and evidence on which the rights to the property are based in their spatial dimension. The analysis is supported by the established case-law and references to opinions expressed in the legal theory doctrine.

2. The significance of property boundaries for property rights over it.

Property ownership entitles its owner to exercise influence over a single item of property in full (the triad of ownership known by the Roman law as: possession, use and disposal), as long as the property has no other rights recognized by law. The main characteristic of the objects, apart from the materiality, is their spatial deviation from the other objects. It is determined by the boundaries of the object/property. In this sense, the boundaries indicate where the legal rights of the proprietor extend to, and where from the rights of other legal entities begin.

2.1. Personalization of the object of ownership rights.

According to the legal definition of § 18 of § 1 of the Supplementary Provisions of the Cadastre and Property Register Act (CPRA), "boundary" is a line separating land properties and /or buildings, determined by consecutively ordered points, with coordinates. According to Art. 14, Paragraph (2) of Decree RD-02-20-5 of 15.12.2016 on the content, creation and maintenance of the cadastral map and the cadastral registers, the boundaries of the landed properties depending on their condition on the terrain are defined as Permanently materialized, infrequently materialized and non-materialized.

Borders are an individualizing mark, and the area of a property is a function of its boundaries. This is also accepted by the court practice, which is mandatory for the courts, for example Decision No. 253 of 18.05.2010 of the Supreme Court of Cassation of Bulgaria, Section II, on case No. 1114/2009.

2.2. Spatial determination of the scope of protection in the context of the right in rem

In seeking protection of its legitimate interests, the owner of a real estate is obliged to indicate the individualization of the object of his property rights, whether in administrative proceedings or in the general order of procedure under the Civil Procedure Code (CPC). The subject of the contested right is individualized by the plaintiff in the application, as in the case of immovable property, the individualization includes the indication of the location, boundaries, urban development status, area. Proof of the property boundaries can be based on existing written documents, use the conclusion of a court expert and, in some cases, be proved by testimony.

2.3. Possibilities for partition in terms of the area of the property

The right to ask for a partition belongs to each of the co-owners and is not waived by prescription, but that does not mean that the desired effect - the acquisition of real parts of a real estate - can always be achieved. These parts as new land estates are subject to the Cadastre according to Art. 23 of the CPRA and should cover the area requirements (for the properties in regulation - for face as well), which ultimately relate to the boundaries of the properties. The minimum size of the land properties is determined by imperative legal norms, as follows: in Art. 19 of the Spatial Planning Act (SPA) for the regulated landed properties for low residential development, free or connected in two properties; in Art. 72 of the Inheritance Act - for the agricultural lands; In Art. 2 of the Law for Forestry - for forests.

An exception is provided for partitioning with the possibility to reduce the minimum sizes so set by up to 1/5. Apart from this hypothesis, according to Art. 19, para. (3) of the SPA, only the municipality, but not the court, has the power to reduce the size by up to one fifth depending on economic, technical or terrain conditions or in relation to the situation of the massive buildings being built.

A voluntary division contract where the procedure under Art. 201 of the SPA for preliminary agreement with the municipal (regional) administration on the possibilities for separation even if an entry in the land register is made, for example, would be void on the grounds of Art. 26, para. (1) of the Obligations and Contracts Act, in case of non-observance of the norms defined in Art. 19 of the Territorial Arrangements requirements for the minimum dimensions. This understanding is based on the fact that a partition is permissible only on a suitable site - the real parts of the landed properties within the boundaries of the settlements and the settlement formations that meet the minimum size requirements under Art. 19 of the SPA and are not among the exceptions of para. 2 of Art. 200 SPA. (Decision No. 269 of 16.04.2009 of the Supreme Court of Cassation,Section III rd, on case No. 673/2008; Decision No. 195 of 30.06.2014 of the Supreme Court of Cassation of Bulgaria, II Section, on case No. 1279 / 2013).

3. Issues around establishing unregulated neighboring properties' location and boundaries.

3.1. Establishment of the location and area in connection with the agricultural land restoration.

Ownership of agricultural land in Bulgaria has not been incorporated in the formation of the cooperative farms, and on the imported properties a right to cooperative land use has arisen. Therefore, the recovery process, carried out after the adoption of the Act on the Ownership and Use of Agricultural Land (AOUAL) and the Regulations for the implementation of the AOUAL in 1991, started with the establishment of the boundaries at the moment of the inclusion of the land in the cooperative farms. For this purpose, land division plans have been developed, on the basis of which by the decisions of the land commissions the properties to be restored were determined, with specification according to area, boundaries and category, after exhaustion of the possibilities for challenging the plan by administrative order - [3].

The boundaries of the restored agricultural lands shall be certified by the decision of the Municipal Service of Agriculture to which a sketch is attached. It has the force of a notarial deed and when the property is included in the urbanized territory defined by a detailed plan or with a polygonal area the restoration of the property ends With the PES decision. This is because the individualization of the agricultural property was made by issuing a sketch and a certificate under Art. 13, para. 5 and 6 of the Rules of implementation of AOUAL. (Interpretative Decision No 2 / 25.06.1996 of the General Assembly of the Council of the Civil College; Decision No. 30 / 17.02.2011 of the Supreme Court of Cassation , Section II, on case No 599/10).

3.2. Dispute over material right to recover farmland.

There is a special procedure under Art. 14, para. 4 of the OASA in case of a dispute over substantive law, in which each party should prove his right of ownership to a past moment (in this sense: Decision No. 256 of 17.06.2010 of the Supreme Court of Cassation, Section I, on case N 356/2009 under the procedure of Article 290 of theCivil Procedure Code).

To establish the property right, when it is necessary to prove the identity between two properties existing at different periods of time with different individualization, it is sufficient for them to coincide by location and boundaries, the latter characteristic being associated with the spatial limits of ownership over a certain part of the land surface, reaching where the boundaries of the neighboring properties (as well astheir property right)begin. If at different times the neighbors (or their heirs) coincide, it can be concluded that the property locked between them is not altered. The area of the property and the signature of the plan, if any, are not inherent features as they depend on the mode of measurement or may change as the plan changes. (Decision No. 672 of 7.03.2011 of the Supreme Court of Cassation of the Republic of Bulgaria Section I, on case No. 1584/2009).

4. Establishing of properties'boundaries by administrative order in relation to the cadastral map.

The regulated land property acquires the legal status of a land property after application of the court regulation plan (§ 5 of the Transitional and final provisions of the CPRA. Regulation of landed property means the definition of boundaries (internal and external), specific purpose and specific mode of property arrangement [3]. When a detailed development plan is in place, the regulatory lines become property boundaries.

According to the CPRA, prom., SG, no. 34 of 25.04.2000, effective 1.01.2001, the cadastre related to the property register based on the identifier of the real estate is the set of basic data on the location, boundaries and dimensions of the real estates on the territory of the Republic of Bulgaria. It should be emphasized that the cadastral map is not an acquisition ground, and if there is a discrepancy between it and the real rights in the realm, they can not be considered altered by the data in the cadastre [5]. After the approval of a cadastral map and cadastral registers for each issue of acts related to the recognition, transfer or modification or termination of a real right on a land plot, the actual sketch of the Agency for Geodesy, Cartography and Cadastre is relevant with regard to the current data. According to Art. 43, para. (1), item 5 of the CPRA(amended, SG No. 57 of 2016) the boundaries of the landed properties in the urbanized territories shall be established after analyzing the data in accordance with the right of ownership; existing on-site materialized borders where they are not an on-site indication; plans and maps; the regulation plans under regulation in force.

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4.1. Amendment of the cadastral map project.

In case of regulation applied, the boundaries of the properties in the cadastral map should coincide with the regulatory ones, unless, after the approval of the regulation, there were grounds for change of ownership (Interpretative Decision No 8/2014 of theGeneral Assembly of the Civil College; Decision No. 7745 of 27.06.2016 ofthe Supreme Administrative Court, Section II, on case No 230/2016).

When drawing up the cadastral map, it is possible for the owners to indicate existing discrepancies. A 30-day deadline was established for submitting an objection to the Geodesy, Cartography and Cadastre Department after the approval of the cadastral map and the cadastral register. Thus, the owners concerned are given the right not only to become acquainted, but also, eventually, to disagree, by the order of administrative procedure under Art. 46 - 49a of the CPRA. A committee is envisaged to consider the objectionsq but with the amendment of Art. 49, para. (2) of the CPRA (promulgated in the State Gazette, issue 57 of 2016), the approved cadastral map and cadastral registers shall not be subject to appeal against the order for acceptance of the cadastre. Affected persons may:

- in cases of incompleteness and errors or obvious factual error, to use the administrative procedure under Art. 51 of CPRA;
- in case of discrepancy between the data in the cadastral register and the source certifying the data to use the order of art. 53 of the CPRA [6].

The normative requirement is to keep the cadastral map and cadastral registers up to date.

To the grounds for amendments thereto - changes in the data about the objects and incompleteness or errors, with the new item 3 of Art. 51, para. (1) of the CPRA is added the ground of "obvious factual error". It is defined in item 9 of § 1, item 16 of the Supplementary Provisions of the CPRA (new version in SG 57/1920) and refers to inconsistencies resulting

from the mapping of the maps and plans approved under the procedure of the Act on the Ownership and Use of Agricultural Landand the Act on the restoration of the property on forest and land in forest fund.

4.2. Correcting of obvious factual errors

To the grounds for alterations in the cadastral map and registers - changes in the data about the items of property and incompleteness or errors, with the new item 3 of Art. 51, para. (1) of the CPRA is added the ground of "obvious factual error". It is defined in item 9 of § 1, item 16 of the Supplementary Provisions of the CPRA (new version in SG 57/1920) and refers to inconsistencies resulting from the mapping of the maps and plans approved under the procedure of the Law of property and farmland use and the Law of restoration of property of forest and land in forest fund.

There is an administrative procedure described in the new Art. 53b of the CPRA: the draft for the alteration of the cadastral map shall be coordinated with the regional directorate "Agriculture", after which it shall be applied on the basis of an order of the chief of the services of geodesy, cartography and Cadastre, respectively - to the executive director of the Agency for Geodesy, Cartography and Cadastre when the change will affect more than 50 landed properties.

In paragraph 8 of § 1 of the Additional Provisions of the new Ordinance No RD-02-20-5 of 15.12.2016 on the content, creation and maintenance of the cadastral map and the cadastral registers, the term "contact area" is defined as a section of the map,in which the merger of data from the sources referred to in Article 41 (1) of the CPRA finds a manifest factual error and provides for an administrative procedure for its removal [7]. It is explicitly written in Article 20, paragraph (3) of the this Ordinance that disputes regarding the location of the boundaries of the landed properties are solved by a Court Order.

5. Correction of incompleteness and errors in the cadastral map (cadastral plan) in a substantive law dispute.

Within the meaning of § 1, item 16 of the Supplementary Provisions of the SPA (new version in SG 57 of 2016), "incompleteness or errors" in the cadastral map are discrepancies in the boundaries and outlines of the real estate in the cadastral map for Urbanized territory compared to their actual state.

These are inconsistencies in the data on the boundaries between two neighboring landed properties and their area when they are placed in an approved cadastral map relating to the documents and to an operating plan and they did not exist at the moment of approval of the cadastral map and the cadastral register and occurred after their entry into force. In this sense is the practice of the Supreme Court of Cassation, Section I, Decision No. 867 / 20.11.2009 on case No 5397/2000. If the technical characteristics of the property are properly reflected in the cadastral map and the cadastral registers, the dispute over whom the property belongs to should be resolved by making a property claim at the present time.

In Art. 53, para. 2 of the CPRA, an administrative procedure for correction of incompleteness and errors in the cadastral map has been settled (the same procedure applies to the correction of incompleteness and errors in the cadastral plan).

According to Decision No. 9 of 05.02.2015 of the Supreme Court of Cassation, Section

II, on case No. 4105/2014 under Art. 290 of the Civil Procedure Code, a dispute over material right within the meaning of Art. 53, para. 2 of the SPA in the version before the amendments and supplements published in State Gazette No. 49 / 13.06.2014, may exist and be resolved in court only in respect of basic data in the cadastral map and the cadastral registers, and these are the data of a technical nature, referred to in Article 27 of the SPA. A legitimate interest in bringing an action for property right now exists only in respect of that person who claims himself or herself the same right in rem, which the applicant claims to belong to him, which is why the administration can not determine to whom property rights belong to and to reflect relevant data in the cadastral register.

In the new version of Art. 54, para. (2) of the SPA (SG 57/1916) the text has been clarified and it is stated that the enforced court decision, accompanied by a draft amendment prepared by a cadastre person, justifies the amendment of the cadastral map according to art. 53a, item 1.

6. Legal effect of the regulatory plan for the assignment and connection of parts of neighboring properties

6.1. Legal effect of the regulatory plan before the entry into force of the Spatial Development Act.

Under the Act on Planned Settlement of Urban Settings (promulgated, SG No. 227, dated 1.10.1949, in force from 01.01.1950, rev., Rev., No. 29 of 10.04.1973, in force as of 1.06.1973) the expropriation or assignment of parts of plots to adjacent ones occurs under the regulation itself. Under the Act on Territorial and Urban Structure (promulgated, State Gazette No. 29 of 10.04.1973, in force as of 1.06.1973, revoked, SG, issue 1 from 2.01.2001, in force from 31.03.2001) according to art. 110, para. (1) the ownership of the assigned parts of a plot passes by virtue of the enacted plan, but by the application of the plan of regulation (by buying up of adjoining properties attached to the plot or by aligning the shares in a common regulated plot) the properties for which the parcels are assigned, preserve their legal personality and may be the subject of a new town-planning decision [8]. The zoning plan has a alienating effect on adjoining properties but this action is conditional and only transfers the “bare” property. When the plan is created on a cadastral basis error when there is a clear factual error or it is validated in the event of a material breach (Art. 33, para. (1), the application is present when the attributable parts are occupied in accordance with the law and the possession on them by the new owner lasts for more than 10 years. In other cases (Art. 33, para. (2) The plan is considered to be applied in the fulfillment of the legal conditions for occupying the portable parts of the new owner - when the procedure for indemnification of the owner of the expropriated part is executed; in the voluntary and surrender; or in the case of procurement with an enforcement license in the event of repayment of damages (Order No. 336 of 13.07.2017 of the Supreme Court of Cassation, Section II, on case No. 4746/2016).

6.2. Legal effect of the regulation under the Spatial Planning Act.

The principle adopted with the enforcement of the SPA is the lack of direct legal effect (alienation effect) of the regulationplans. The only exception is provided for the change of the boundaries of the landed properties in relation to the provided streets according to Art. 16 of the

SPA. There are specifics about the implementation of the regulatory plan depending on the legal basis for its approval - [9].

6.3. "Entered into force" and "attached plan".

The term "enacted" plan should be understood as a plan whose administrative acceptance procedure has been completed and all possibilities for objections and appeals against it have been exhausted.

"Implementation of the plan" means that all legal requirements have been met and the boundaries established with it have to be considered to be the property boundaries. The stabilization of the regulation as a process ends with the payment and the assumption of the assigned places in the appropriate order.

This difference between the adopted and the applied regulation plan is also taken into account when the regulatory lines of the plots are taken into account as property boundaries only after the regulation has been implemented. According to the current version of § 5, para. (1) of the Supplementary Provisions of the CPRA(amended, SG No. 49 of 2014) "a regulated landed property in respect of which the plan of regulation is applied shall be reflected in the cadastral map in accordance with its regulatory lines as a land property".

Interpretative decision No. 3 of 1993 of the General Assembly of the Civil College was issued under the Act on Planned Settlement of Urban Settings (Rev.) and accepted that the court regulation is considered annexed at the moment when the regulatory borders are transformed into property under the circumstances of Art. 33, para. The concept of annexed plan is relevant not to the occupation of the assigned property but to the coincidence of the regulatory lines with the property boundaries after the conquest of the assigned parts and their domination lasting more than ten years, It is permissible to amend the plan on that basis. In the same sense are the authorizations in Decision 1419 of 14.12.1971of the Supreme Cassation Court, III Section, on case N 898/71. Decision No 1 dated 26.02.2009 of the Supreme Cassation Court, IV Section, on case4227/2007states that in the absence of cumulative compliance with the payment and seizure requirements in case of a future amendment of the plan the ownership of the property to be leased should be restored to the previous owner.

6.4. Dropping of an unsupported plan.

The parcels that were set up under the regulation of the blueprint, when this plan was applied until the SPA entered into force, became regulated land plots and the plan retained its effect [10].

With § 6, para. 2 and 4 of the Supplementary Provisions of the SPA is set a 6-month period for application of the regulation plans established by theAct on Planned Settlement of Urban Settings (Rev.) . If this timeframe is not met, the alienation effect on the equalization of the parts of the parcels formed with the plan and for lending of the available properties or parts of properties is automatically eliminated - by virtue of the law. With the expiry of the terms under §6, para. 2 and 4 of theSupplementary Provisions of the SPA, the right of ownership of the plot is transformed into ownership of the property for which the parcel was assigned and the attributable parts are returned to the patrimony of the owner of the property from which they were alienated, respectively the power of the unenforceable plan for co-ownership of a plot formed by two small-sized properties is terminated. The stipulated in §8, para. 2 of the Supplementary Provisions of the SPA administrative procedure is not a condition for terminating the alienation effect of the unapplied regulation plans, but a possible and optional

consequence of this termination, aiming at bringing the internal regulatory lines in line with the ownership boundaries of the properties (against which it has been dropped through the alienation effect of unapplied land regulation). This is demonstrated by a case law: Interpretative decision No. 3 of of 28.03.2011 of the General Assembly of the Civil College on case N 3/2010; Decision No 780 of 13.11.2009 on of the Supreme Court of Cassation of the Republic of Bulgaria, Section III, on case No 3024/2008; Decision No. 341 of 12.07.2010 of the Supreme Court of Cassation of the Republic of Bulgaria, Section II, on case No. 263/2010.

It should be emphasized that the issue of applying the provisions of Art. 182a of the Act on Planned Settlement of Urban Settings (repealed) and § 8, para. 1 in the sentence with § 6, para. 2 and 4 of the SPA, refer to the termination of the alienation effect of the unapplied court-regulation plans for occupation of assigned land plots; there is an effective plan in force which envisages regulation, but not implementation, and not the assignment, which was envisaged. On a canceled plan, and not on the current and at the time of the next / current plan, the regulation was not implemented and land borders were shot improperly. Since this is not an enforceable part of the regulation plan, the provisions of § 6 and § 8 of the Transitional and Final Provisions of the SPA are not relevant and should not be discussed (Decision No. 186 of 11.06.2010 of the Supreme Court of Cassation, Section I, on case No. 795/2009).

7. Acquisition of real parts oflanded properties.

In the period 1986 to 01.01.2001 there is a prohibition under Art. 59 of Act on Planned Settlement of Urban Settings (revoked) for acquisition of real parts of court-regulated plots, by transaction or by prescription. Since the beginning of 2001, following the amendment of Art. 59 of thePlanned Settlement of Urban Settings Act (rev.) provides for the possibility of acquiring real parts of regulated properties, but this is only possible in certain cases, which are specified in Art. 28. The abolition of the total prohibition pursuant to Article 59 has no retroactive effect - ie. from 1973 to 2000, prescription has not been prolonged. Where the real estate area is below the minimum size, pre-emption is allowed if a pre-contract has been concluded between the owners in connection with a change in the boundaries between the neighboring properties and the ten-year limitation period has expired, since the Preliminary Contract is not a ground of good faith property possession.

Under Art. 200 of SPA in connection of acquisition of real parts of regulated landed properties to a neighboring property, if these parts do not meet the requirements of Article 19 of the SPA, this may be carried out only under the procedure of Article 15 of the same Act. When the real part joined and the remaining part of the neighboring property have an area sufficient for the formation of a separate land property, it is necessary for the expiration of the stipulated period of the limitation period at the request of the person exercising the administrative power to approve the change of the detailed development plan Differentiation of the real part in a separate Regulated Area according to the requirements of Article 19 of the SPA, after which, on the basis of a proper reference to the expired acquittal, a notary act under Art.587, para 3 CPC.

A real part of a property that does not meet the requirements may be joined to an adjacent one by acquiring the right to property through a legal transaction or by statute of limitation under Art. 17 of the SPA, only if both properties are not regulated (Decision No 102 / 30.05.2016 of the Supreme Court of Cassation, Section I, on case N 5728/2015 under the procedure of Article 290 of the CPC). Where reference is made to acquiring prescription, it is important to note Interpretative decision No. 4 of 17.12.2012of the General Assembly of the Civil College, which assumes the expiration of the term, the possession automatically

transforms into ownership. Required by Art. Article 120 in the order with Art. 84 of the Obligations and Contracts Act, the reference to the expired acquittal is not an element of the factual composition of the limitation period (see more in [11]).

Frequent changes to the legal framework and sometimes non-distinctive and vague legal formulations inevitably create problems in practice, especially before mandatory case law has been established on controversial issues regarding the acquisition of real estate land and the description in notarial acts [12].

8. Civil-law protection of property rights in inter-neighbor relations.

Such legal action will be necessary for the owner in all cases where there is a dispute over substantive law or when the time limits for objections and complaints have expired in connection with the establishment of boundaries between neighboring properties by administrative order.

8.1. Establish boundaries of real estate properties that are not regulated and not covered by the cadastral map.

There is a special claim under Art. 109a of the Ownership Act, which is applicable to settlements for which no cadastral plan has been drawn up and the boundaries between the properties are not materialized (Decision No. 237 of 30.12.2016 of the Supreme Court of Cassation, Section I. on case No. 2322/2016). Both written documents and testimonies can be used to determine the exact location of the borders.

The procedure is stipulated under Art. 109a of the Ownership Act, and is applicable when there is no dispute over property rights. In the latter case at the disposal of the owner is either the general settlement claim under Art. 124 of the Civil Procedure Code, or the revocation claim under Art. 108 of the Ownership Act, if the part of the property is not owned by the plaintiff and it is claimed in addition to determining whom the disputed part of the property belongs to, also the conviction of the defendant to surrender the possession of the property to the owner [4].

The practical application of this claim is very limited, as it is neither a claim about rights of rem nor a declarative one; It has no translational effect and is most often used in connection with the installation of permanent border signs on the disputed boundary line [5].

Inadmissible is a claim under Art. 109 a of the Ownership Act about regulated landed properties because the outlines of the properties are determined by administrative procedure with the adoption of the plan and after its entry into force there can be no dispute over the exact location of the border. As far as the property dispute in a regulated units is related to a property dispute, there is at the disposal of the interested parties another claim - the one under Art. 53, para. 2 of theCPRA, which has as its object the establishment of a right of ownership, but at a past time, i.e. the entry into force of the regulation plan. The boundaries of the properties on the plan of the newly formed properties are also established by administrative order, as those of the regulated landed properties, which is why an action for establishing boundaries between such properties is also inadmissible (in this sense is the settled case law - see Decision No 346 from 7.07.2010 of the Supreme Court of Cassation of the Republic of Bulgariaa Section II, on case No. 286/2010, pursuant to Article 290 of the CPC).

8.2. Property claim under Art. 108 of the Ownership Act.

By its legal nature, the claim under Art. 108 of the Ownership Act is property claim and has possessory action. In short, its content may be formulated as a claim of the unconquerable owner against the holder of the property to restore possession over it. [4].

In case that the owner of a neighboring property has obtained a notary deed or a notarial deed on a circumstantial check of the conquered part of the foreign property, the concerned owner has a legal interest in bringing an action under Art. 108 of the Ownership Act. In this sense, the consistent case law is as follows: - Interpretative Decision No. 11/2011 of the General Assembly of the Civil College; Interpretative Decision No. 3/2012 of theof the General Assembly of the Civil College; Decision No 685 of 03.11.2010 of the Supreme Court of Cassation of Bulgaria, Section III, on case N1201/2009..

A mandatory condition for the enforcement of the claim under Art. 108 of the Act on the subject of the disputed part of the landed property is the complete individualization, so that a definite conclusion can be drawn about the location, boundaries and area of the real part (Decision No. 74 from 22.03.2013 of the Supreme Court of Cassation of the Republic of Bulgaria, Section I, on case No. 757/2012).

Interesting from the point of view of practice is the legal issue concerning the limits of the power of res judicata of a decision in force which rejects the claim for ownership of a real part of a property located along the common border between two neighboring properties. The answer is given in Decision № 20 of 20.02.2017 of the Supreme Court of Cassation, Section I, on caseNo. 6179/2015, issued by the order of art. 290 CPC. According to it where the object of the case is the right of ownership of a controversial area situated on the border between two neighboring properties without, however, representing a separate property of a third party, the force of res judicata in rejecting an action for the affiliation of that area to the applicant's property extends to the legal position that the area is part of the defendant's property and therefore is his property.

Under Section 4 of Interpretative Decision No. 8/2014 of the General Assembly of the Civil Collegeit was accepted that the claim for re-indemnity is admissible and can be accepted even if the disputed part has been filmed incorrectly and it is not necessary to carry out a preliminary administrative procedure for correction of errors in the cadastral map or an action under Art. 54, para. 2 of the CPCA - it is admissible in the proceedings for the property claim to examine the presence of an incompleteness or an error in the approved cadastral map.

8.3. Settlement claim for ownership under Art. 124, para 1 of the Civil Procedure Code.

The procedural prerequisite for the bringing of any legal action is the legal interest. Interpretative Decision No 8 of 27.11.2013 ofthe General Assembly of the Civil College on case No 8/2012 expressly emphasizes that the possibility of bringing a damages action is not an obstacle to bringing an declarative action. Depending on the interest of the claimant, both positive and negative claims for property may be brought. A legitimate interest in bringing a negative settlement claim for property and other property rights occurs when: the claimant has an independent right that is being challenged; refers to a factual situation or has the opportunity to acquire rights if he denies the defendant's rights. A legitimate interest in bringing an action for property and other property rights is also available where the claimant has the option of bringing an action for restoration of possession in respect of the same right. In the conviction and positive settlement claim, the burden of proving the right of ownership is for the plaintiff, and in the case of the negative claim it is for the defendant. Settling a claim for property forms

a force of res judicata regarding the existence of the applicant's right of ownership on the ground which he claims, whereas the force of res judicata of the judgment on the negative determination has much broader objective boundaries and another subject - covers all grounds for acquiring of the property right of the defendant (Interpretative Decision No No 4 of 14 March 2016ofthe General Assembly of the Civil College on case No 4/2014)

8.4. An action against a restriction of the right of propertyunder Art. 109 of the Ownership Act

In case of necessity of procedural protection against obstruction of the full exercise of the right of ownership on a land property, at the disposal of the owner is the claim under Art. 109 of the Ownership Act. Behind the general wording of the rule of law - "the termination of any unjustified act that prevents the owner from exercising his right" - different life hypotheses can be observed. It is important to note that the merit of the claim is related to the court's judgment that there is no minor breach or restriction of the applicant's right to property (see Decision No 23 of 9.04.2014 of the Supreme Court of Cassation of the Republic of Bulgaria, SectionII rd, on case N 5465/2013; Decision No. 74 of 13 June 2011 of the Supreme Court of Cassation Section I, on case No. 237/2010; Decision No 421 of 14.01 2011 of the Supreme Court of Cassation Section II rd, on case No. 928/2009, ordered under Article 290 of the CPC).

In some cases, a building or part of it built in a neighboring property has entered the boundaries of the land owned by other entity. It would be questionable whether the existence of a tolerable construction constitutes an unconditional basis for its preservation, which leads to the proof of both the tolerance findings and the possible contestation of the certificate and of the limitation on the exercise of the property rights of the affected neighbor (Decision No 238 of 17.05.2012 of the Supreme Court of Cassation Section I, on case under No. 1081/2011, GC, by the order of Article 290 of the CPC).

9. Conclusion.

The various assumptions mentioned above, in which the legal interest of the real estate owner may be affected in relation to the definition of boundaries between adjoining properties or the misappropriation / use of parts of them, indicate the need to distinguish the applicable judicial and extrajudicial proceedings - administrative or general actions, as well as the specification of the legal basis. At the disposal of the owner there are many legal instruments: participation in the administrative procedure when issuing administrative acts in connection with the preparation and adoption of plans and maps; A claim for setting limits under Art. 109a of the Insurance Act; re-claim for property under Art. 108 of the Act; a positive or a negative settlement claim under Art. 124, para. 1 of the Civil Procedure Code; claim against a restriction of the right of property under Art. 109 of the Act.

Only decisions on the so-called Substantive claims - settling claim under Art. 124, para. 1 of the Civil Procedure Code or the indictments under Art. 108 and Art. 109 of the Act of Accession, enjoy a power of adjudication on the ownership of the property.

It is important to know that: "No administrative procedure can exclude the possibility of challenging it under the civil law in court, because the comprehensiveness of the judicial power of the court in civil and criminal matters is guaranteed by Art. 119 of the Constitution. The legislator regulates the possibility of protection of civil rights by the administrative regulations as well, but this does not excludethe right to challenge in court."(Decision No. 9 dated 5

February 2015 of the Supreme Court of Cassation, Section II, on case No. 4105/2014, , under the procedure of Article 290 of the CPC).

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