

Ágnes JUHÁSZ* – Réka PUSZTAHELYI**
Registration of real estates from a civil law viewpoint – civil law effects in the
sieve of the official public register***

1. Introduction

Real estate register has salient importance among our official public registers. It is a public and authentic register, which contains rights and facts having civil law relevancy and which is kept by the public administration authority, i.e. the real estate supervisory authority. It is one of the registers, where the registration, the record of a given status or change (right or fact) has essential civil law effect. With regard to this strong linkage, the Hungarian legislator places the general substantial law rules of the real estate registration into the provisions of the Hungarian Civil Code (hereinafter HCC). Nevertheless, the majority of the provisions on the real estate registration outside the HCC has instrumental nature compared to the civil law rules, since they contain both substantial and procedural provisions, which promotes the change of civil law rights.

Thus, the operation of the real estate register is subordinated to the civil law regulations. However, as it is to be exposed below, the instruments, which serve the stability of the system and protect the reliance in the register's appropriate content, can sometimes cause inability of a certain kind.

We are also not allowed to forget the fact that the real estate register is an official public register, which is to be kept by the district land offices as real estate supervisory authority. Therefore, the proceeding of these authorities is subject to the rules of the general administrative procedure and the divergence from the GPAP¹ in the course of the real estate registration proceeding is only allowed by the legislator in the case of necessity and only in the justified extent.

Ágnes Juhász – Réka Pusztahelyi: Registration of real estates from a civil law viewpoint – civil law effects in the sieve of the official public register – Az ingatlanok nyilvántartása polgári jogi nézőpontból: polgári anyagi jogi hatások a közhitelű hatósági lajstrom rostájában, *Journal of Agricultural and Environmental Law* ISSN 1788-6171, 2018 Vol. XIII No. 24 pp. 61-98 doi: 10.21029/JAEL.2018.24.61

* dr. jur., PhD, assistant professor, University of Miskolc, Faculty of Law, Department of Civil Law, e-mail: civagnes@uni-miskolc.hu

** dr. jur., PhD, associate professor, University of Miskolc, Faculty of Law, Department of Civil Law

*** *This study has been written as part of the Ministry of Justice programme aiming to raise the standard of law education.*

¹ Act CL of 2016 on General Public Administration Procedures (hereinafter referred as to GPAP).

In the followings, we intend to examine such questions, which make clear the above mentioned duplicity. The keeping of the real estate register (cadastral register), which is vested with essential private law effects, is fundamentally falls under administrative law rules. These regulation frames can hardly be accepted by either the court having traditional civil law thinking or other implementation bodies.² It is true as well, if we the judicial resolution appropriate for real estate registration is considered as a special document, whereon the petition is based.

Furthermore, our examination also covers questions, where the interest to the stability of the register and the interest to the correctness and perfection of the register collide. It is a question, if the real estate supervisory authority is entitled to arrange this conflict or the existence of this collision requires judicial proceeding.

2. The basic private law functions of the Hungarian real estate register. The main characteristics of registers having “Grundbuch” nature

From private law aspect, the Hungarian real estate register is a register having “Grundbuch” nature.³ This feature also appears in its functions.

The registering function means the mere effect from the fact that rights, facts and data relating to the certain real estate are to be recorded in the real estate register. Thus, through the principle of publicity, the registration informs everybody about the existence of the right, even if the acquisition of the right occurs out of the register. The *justificative effect* of the register closely relates to this. At the same time, the registration makes the right justifiable and enforceable against everyone. Moreover, it ensures exclusive position for the recorded person according to the certain right or fact and the order of rank. The recording of certain facts being relevant in law ensures the effect *erga omnes* through the principles of *publicity* and *authenticity*.

In the case of real rights having absolute, exclusive nature, the disclosure has elementary importance. This function (i.e. the publicity) is supported by the real estate register. Over the registering function, other features of the real estate registry system have not been developed as a result of an arbitrary decision in any country, but have been determined by the provisions on the formation of real rights.

² Süliné Tózsér Erzsébet expressed also her sceptic opinion, nevertheless with bettering intention. See: Az ingatlan tulajdonjogával kapcsolatos kötelmi és dologi igények érvényesítése esetén az ingatlan-nyilvántartási eljárás szabta korlátok terjedelme, *Magyar Jog*, 2010/8, 479-487.

³ The comprehensive analysis of the rules on the real estate registration see Fenyő György (edit.): *Közhiteli nyilvántartás az ingatlanokról*, Budapest, Mezőgazda Kiadó, 2001; Fehérvári Jenő: *Magyar telekkönyvi jog vázlat*, Budapest, Grill Károly Könyvkiadóvállalata, 1941; Jójárt László: *Az ingatlanok nyilvántartásának szabályai*, Budapest, Perfekt Kiadó, 1994; Kampis György: *Telekkönyvi jog*, Budapest, Közgazdasági és Jogi Könyvkiadó, 1963; Kurucz Mihály: *Magyar ingatlan-nyilvántartási jog*, Budapest, ELTE-ÁJK, 2007; Petrik Ferenc: *Ingatlan-nyilvántartás – Kommentár a gyakorlat számára*, Budapest, HVG-ORAC Kiadó, 1995-2002; Sági János – Kéry János – Rojcsék Sándor: *Telekkönyvi jog, Telekkönyvi iratmintatár*, Budapest, Grill Kiadó, 1930; Sárffy Andor: *Telekkönyvi rendtartás*, Budapest, 1941; Szalma József: *Ingatlan-nyilvántartás. Telekkönyvi jog és eljárás*, Budapest, ELTE, 2005; Szladits Károly: *Magyar telekkönyvi anyagi jog*, in: Führer Imre (edit.): *Dr. Szladits Károly egyetemi tanár előadásainak jegyzete*, Budapest, 1921.

If the civil law requires the recording of the certain real right in a public register as a general condition of the formation of this right based on an agreement, the recording shall generate the right, i.e. it shall have constitutive effect.

This effect is much more important than the simple registration, since in most cases real rights established by legal act rise by their recording and terminate by their withdrawal. The compulsory recording as a condition of the rise of real right is a prerequisite of the integrity and the correctness, in a word the authenticity of the real estate register. Among the principles of the real estate register, principle of registration and its effect reflects this function. However, with regard to the fact that in the above mentioned cases the fact and the content of the register can be moved away, the priority of the registered content shall be assured, even against the defence of the entitled person's right.

In this way we arrive to the authenticity of the real estate register. With this central function, real estate register certifies the existence, perfection and accuracy of the data, facts and rights recorded in it. The register's justificative power creates a rebuttable presumption. Nevertheless, it ensures the defence of the right of such a person, who acquires a right entrusted in the register's content, in good faith and in return for a consideration, when it states that the status of the real estate register is conclusive in the direction of such person. The rules creating rebuttable and conclusive presumptions can uniformly be called as effects of presumption⁴

The real estate register can only be vested with the authenticity in this meaning, if the above mentioned functions completely prevail. Thus, from civil law approach, *authenticity* is the most significant principle of the real estate register. As László Jójárt wrote, the constitutive function and the presumptive effect requires a kind of constancy, which excludes the arbitrary change and amendment of the entry.⁵ “*The entry's constitutive effect coupled with the presumption of the correctness and perfection (completeness) of the entries existing on the title deed assume the constancy of the entries.*”⁶ This requirement has impact not only on the content and the arrangement of the applications for registration, but on the real estate register in itself, above all, on the immutability of the entries and the resolutions about the registration.

⁴ About the notion and the content of the authenticity see Anka Márton Tibor: Az ingatlan-nyilvántartási közhitelesség és a megismételt hagyatéki eljárás kapcsolata, *Magyar Jog*, 2014/3, 165-172; Jójárt László: Az ingatlan-nyilvántartási bejegyzések törvénybe foglalt bizonytalansága, *Közjegyzőké Közlönye*, 2010/2, 20-33 (hereinafter referred as to Jójárt 2010); Jójárt László: Az ingatlan-nyilvántartás közhitelessége, *Magyar Jog*, 2001/9, 513-526; Jójárt László: Az ingatlan-nyilvántartás bírósági garanciáinak megerősítéséről, *Magyar Jog*, 2003/5, 265-276 (hereinafter referred as to Jójárt 2003); Kisfaludi András: Mitől közhiteles a közhiteles nyilvántartás?, *Gazdaság és Jog*, 2003/7-8, 3-15; Kovács László: Új törvény az ingatlan-nyilvántartásról, *Közjegyzőké Közlönye*, 1998/10, 2-17; Kovács László: Jogalkalmazási problémák a jogok és tények ingatlan-nyilvántartási törlése körül, *Magyar Jog*, 2002/2, 98-99; Kurucz Mihály: Az ingatlan-nyilvántartás szervezeti-hatásköri aspektusa: bíróság vagy közigazgatási hatóság, *Gazdaság és Jog*, 2003/7-8, 15-28. (hereinafter referred as to Kurucz 2003); Petrik Ferenc: A telekkönyvi jog alapelvei, a közhitelesség elve, *Magyar Jog*, 2003/5, 257-264.

⁵ Jójárt 2010, 20.

⁶ Jójárt 2010, 23.

However, this requisition does not prevail in the case of the correction of decisions or entries (correction, supplementation) and the revision or withdrawal of the decision of the land office, in which it refuses the application for registration.

Such cases throw light on the fact that the effectiveness of the civil law impacts are influenced not only by the principle of the real estate register, but the procedural order, in which the register is kept. However, the idea according to which the cadastral register would be placed back among the non-litigious proceedings, was not generally supported. Therefore, we should examine those the procedural rules, which influence the operation of the cadastral register and can have detrimental effect on the invariability of the registration.

We also shall notion that we do not deal with those specialities of the real estate register, which originate exclusively from the special requirements of the registration of the land as a special real estate. Moreover, we do not concern ourselves with those questions, which relates to the linkage points between the real estate register and the other agricultural registers.⁷ Nevertheless, we intend to lay dits that most of the questions to be examined below are relevant in the relation to the agricultural lands as well.

3. The rules of the administrative proceedings and the register's private law effect

Since the public administration authority is obliged to keep the real estate register, the rules of the real estate registration proceeding are essentially determined by the GPAP. However, it should be added that the amended text of the Act CXLI of 1997 on Real Estate Registration (hereinafter referred as to RER) expressly states the application of the relating rules of the HCC because of the importance of the civil law effects. *“In the application of this Act, the provisions laid down in Part Four of Book Five of Act V of 2013 on the Civil Code on real estate registration and the provisions laid down in Act CL of 2016 on General Public Administration Procedures shall apply, in accordance with the procedural rules set out in this Act.”*⁸

In the followings we intend to review the most important moments of the real estate registration proceeding, which may have strong influence on the prevailing of the civil law effects arising from the keeping of the register. According to this, a debate started in the course of the codification process of the Hungarian Civil Code, in which it was discussed, if the keeping of the real estate register (cadastral register) should fall into the scope of authority of civil law court or public administration authority.⁹ Recognizing the important civil law effects of the real estate register, many authors urged on that the register should been restored to be led by civil law court. Drawing the attention to the principle of legal certainty, József Szalma emphasized that *“the public*

⁷ Olajos István: Mezőgazdasági nyilvántartások, in: Szilágyi János Ede (edit.): *Agrárjog: A magyar agrár- és vidékfejlesztési jogi szabályozás lehetőségei a globalizálódó Európai Unióban*, Miskolc, Miskolci Egyetemi Kiadó, 2017, 168-188.

⁸ RER, Article 1 (1a).

⁹ See in detail: Kurucz 2003 and Jójárt 2003.

administration proceedings are not appropriate for establishing the constitutive effect of the registry laid down by the Hungarian legislative act.” In accordance with his opinion, it is possible for the legislator to return to the former solution for regulation, which is prevalent in the Austrian law up to the present and which separates the real estate register (*Grundbuch*) from the cadastre.¹⁰ Tamás Prugberger took the similar point of view.¹¹

Coming back to the twofold nature, i.e. to the mixed civil and public law effects of the real estate register, but even before the evaluation of the new amendments related to GPAP, it is worth to review, which changes occurred in the relationship existing between the RER (and other relating acts, e.g. enforcement act) and the act on the general rules of administrative proceedings, since the RER entered into force.¹²

While the Act IV of 1957 on the General Rules of Administrative Proceedings had subsidiary nature and therefore it allowed for the real estate proceeding rules to diverge from it, the amendment after the entering into force of the Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (hereinafter referred as to GRAPS) basically rewrote this rule. Similarly, GPAP also intend to preserves its code nature and allows the prevailing of the sectoral rules, if the divergence is allowed. Removed and supplemental proceedings can be mentioned as exception of this rule.

It should be state that RER ensured the possibility to diverge from the general rules without the proper authorisation of the GRAPS. However, in the case of debate, courts supported the application of the provisions of the GRAPS against the RER and they emphasized the primacy of the GRAPS. (According to the preamble of the GRAPS, the act intends to put in a frame the rules of the specialised proceedings with the ensuring of the primacy of the general rules.)

In 2008, the amendment of the GRAPS intended to go back to the starting point and stated that in the lack of any divergent provision incorporated in act, government decree or local government ordinance, the provisions of the GRAPS shall be applied. With this amendment, the formal requirement fulfilled, according to which the divergence from the rules of the GRAPS is possible only in the cases, which are fixed in the GRAPS. Nevertheless, the referred article remained silent in relation to the ministerial decrees, thought the majority of the real estate registration procedural rules were detailed in a decree, which was defectively supplemented by other government decrees.¹³ Thereafter, the real estate registration procedural rules were hardly influenced

¹⁰ Szalma József: *Ingatlan-nyilvántartás (Telekkönyvi jog és eljárás)*, Újvidék, Vajdasági Magyar Tudományos Társaság, 2002, 54-55; See Szalma József: *Ingatlan-nyilvántartás. Telekkönyvi jog és eljárás*, Budapest, ELTE Állam- és jogtudományi kar, 2005, 30.

¹¹ Prugberger Tamás: Szempontok az ingatlan-nyilvántartás EU-konform irányába ható újabb reformjához, *Gazdaság és Jog*, 2000/6; Prugberger Tamás: A földjogi szabályozás megújításának egyes kérdései, *Állam és Igazgatás*, 1989/7.

¹² An expert review of this question is given by Kurucz Mihály: Az ingatlan-nyilvántartás magánjogi közbizalmi rendszerének közigazgatási jogi átalakítása veszélyeiről, *Új Magyar Közigazgatás*, 2014/1, 50-61.

¹³ Government Decree 384/2016 (XII. 2.) on detailed issues of implementation of the RER – Inyvrh.

by the Act LXXXIV of 2013¹⁴, which amended the GRAPS and concerned with the public official registrations (hereinafter: POR). This act aimed at the creation of uniform and general rules on the public official registers, like the real estate register. It intended to distinguish the keeping of public official registers from the registers kept by other authorities. Moreover, it intends to explain how the authenticity of an official register should be interpreted.

In accordance with this, *Mihály Kurucz* called attention to the fact that the existing dichotomy, i.e. the authenticity in civil law sense and in public law meaning, result wrong interpretation and conclusions.¹⁵

Nevertheless, the amendment of the act has some positive impacts as well. It makes precise the notion of the client (elsewhere customer) and answered the question, if registration and cancellation shall be deemed as a resolution.

It also touched upon the question, if the ensuring of a remedy against any resolution awarded within the keeping of the real estate register is justified. As the justification of the Act LXXXIV of 2013 explains, in the course of the deliberation of authenticity it is justified to take not only the administrative procedure nature, but the keeping of public faith nature of the given register into consideration. It also shall be taken into regard, if the legal subjects can base their legal acts on the facts implied in the register or clients (customers) or other involved persons can get rights or obligations in virtue of the data known from the register. If so, these legal subjects shall be deemed as clients (customers) in accordance with the Article 15 (1) of the GRASP and the keeping of the register shall be deemed as administrative proceeding. It was the reason, why the codification work was needed. Nevertheless, it should be emphasized that the online publishing of a register in itself cannot establish the official (public authentic) nature of the register.

The same principle appears in Article 5 of the RER, which was meanwhile adjusted to the GPAP.¹⁶ The referred article states that “[t]he real estate register shall be construed as an official public register, excluding the particulars of real estate properties defined in this Act.” Nevertheless, the legislator did not stop at this point, but reflected to the private law effect of the real estate register. It stated that “[a]s regards the authenticity of the real estate register and the substantive legal effects thereof, in respect of the rights registered and facts recorded in the real estate register, the provisions of the Civil Code shall apply, unless this Act provides otherwise.” Relying upon these we can draw the conclusion that actions having civil law effect, so in particular the registration of rights and the recording of facts are primary settled in the civil law. The double, primary civil law nature of this official register results that the administrative procedural rules on the keeping of the register shall be submitted and adjusted to the private law nature.

¹⁴ Act LXXXIV of 2013 on the amendments of certain acts.

¹⁵ Kurucz Mihály: Az ingatlan-nyilvántartás magánjogi közbizalmi rendszerének közigazgatási jogi átalakítása veszélyeiről, *Új Magyar Közigazgatás*, 2014/1, 50-61.

¹⁶ RER was amended by the Article 15-42 of the Act CCV of 2017 on the amendment of certain acts.

3.1. The general review of the special procedural rules serving the stability of the real estate register

Among the factors impairing the stability and invariability of the register's content, *László Jójárt* determines those, which are to be ensured by necessity.¹⁷ The certain cases of the correction of the incorrect resolutions and entries, i.e. the correction and the supplementation, as well as the revision and the withdrawal of the resolution refusing the application for registration by the authority awarding the resolution. Beyond this delimitation, *Jójárt* also dealt with the rules, which break up the constancy of the entries. Therefore, he analysed the amendment of the RER, which extended the authority's possibility to revise or withdraw its resolution of acceptance within its own sphere of authority.¹⁸ However, according to *Jójárt*, the asymmetrical relationship existing between the provisions of the GRASP and the RER which did not change by the coming into force of the POR.¹⁹

According to the nature of resolution entertaining an application for registering, he states that not the resolution of the land office or public authority constitutes the right is to be registered on the title deed, but the registration. The resolution of the land office does not create a public law relationship. The substantial legal relationship forming the basis of the entry has not administrative law, but civil law nature and it is based not on the resolution about the registration, but on the document (e.g. agreement) upon which the entry is based.²⁰

The factors describing the resolution of the land office (e.g. the requirements of the form and the content of the documents, the principle of mandatory application, the detailed legal certainty of both the extent of the rights and the method of the entry) result that resolution will not determine the fate of the entry. Instead, the possibility of the revision or the withdrawing of the resolution entertaining an application depends on the entry's fate and on the fact, if the entry can be cancelled or not.²¹

Thereafter, we intend to introduce such concrete procedural rules, where the legislator shall strongly take into consideration that the register is not only a register having authenticity, but to which special private law effects relate.

Returning to the provision quoted above, let us see, which are those typical cases, where the principle of the real estate registration, which has substantial law nature and which is declared in the HCC, has impact on the procedural rules.

In the first place, because of the principle of documentation, in the course of the real estate registration proceeding, application can be submitted solely in written.²²

¹⁷ *Jójárt László*: Az ingatlan-nyilvántartási bejegyzések törvénybe foglalt bizonytalansága, *Közjegyzők Közlönye*, 2010/2, 26.

¹⁸ RER Article 54 and GRAP Article 103 (in effect till 01.01.2018).

¹⁹ RER Article 54 and GRAP Article 103 (in effect till 01.01.2018).

²⁰ *Jójárt* 2010, 28.

²¹ *Jójárt* 2010, 30.

²² RER, Art 25 (5).

Furthermore, as a main rule, documents cannot be presented only in copy with stating that the copy is guaranteed to be the same as the original. Because of the principle of ranking and the occurrence of indexation, it is important that application can be submitted only at the real estate supervisory authority. The submitting of the application at the physical points of single contact (PSCs) called Government Windows are not allowed.²³

With regard to the principle of ranking, it is also important that RER determined those cases, in which the application shall be refused because of the irreparable deficiency of the application or document. Thus, the provision of additional information is not possible in these cases. If the application is originally unable to establish a ranking because of its irregularities, it is unable to establish a ranking for the original date of the application with an application for bettering these irregularities.

However, the principle of documentation and the principle of ranking is deteriorated by the procedural rule, according to which the application retains its original ranking, even if it has been rejected and the document's deficiencies described in the resolution are corrected in the appeal, if the resolution can be contested by an appeal.²⁴

Jójárt also examined, how the procedural rules are affected by the principle of registration and its effect. Such examination is also justified with regard to the GPAP. In accordance to this, the application for registration cannot be unilaterally amended or withdrawn, since according to the principle of registration, not the judgement of the application, but the time of the application's registration redeems the effect of the real estate registration. Thus, the amendment or the withdrawing of the application for registration depends on the consent of all the parties involved in the transaction. Furthermore, the consent of other persons becoming entitled by the registration is also needed.

“An application may be withdrawn or amended upon mutual consent of the contracting parties made out in a private document and countersigned by an attorney or in a public document until the real estate supervisory authority has adopted a resolution on the case. If registration involves a third party as a potential right-holder, the consent of such third party made out in a private document and countersigned by an attorney or in a public document shall also be required for the withdrawal or amendment of the application.”²⁵

3.2. The amendment and the withdrawal of the resolution about the registration

In his work, Jójárt also examined the conditions of the amendment and withdrawal. It is also worth examining these legal institutions with regard to the relationship existing between the GPAP and HCC.²⁶

²³ RER, Article 26 (1).

²⁴ RER, Article 56 (2).

²⁵ RER, Article 26 (9).

²⁶ About the relationship of the new Hungarian civil code and the administrative procedural rules see Kurucz Mihály – Lovász Csaba: *Az ingatlan-nyilvántartás az új Ptk-ban, kontra a*

The first thing which comes into sight that the number of the relating provisions of the RER has decreased because of the rules of the GRASP and GPAP. It means that the previously prevailing tendency did not changed: the regulation ensuring the stability of the entry becomes diluted, as Jójárt said.²⁷

In the lack of the express provision of the RER the general rules of the GPAP prevail. The provisions of the GPAP touches the amendment and withdrawal of the decision in three cases. Two of them, i.e. the launching of administrative action²⁸ and the appeal²⁹, relate to the remedy against the decision, while in the third case the acting authority is entitled to revise (amend or withdraw) the decision without conducting a legal remedy proceeding.³⁰ The ground upon with the decision is to be amended or withdrawn has basic importance. However, in all three cases, it is justified by the fact that the decision infringed the law. Nevertheless, not only the resolution denying the application, but also the resolution entertaining the application can be amended or withdrawn according to a general limiting rule, which ensures this possibility only for one occasion at most. In accordance with the justification of the act, this limitation serves the legal certainty. In the lack of administrative action or appeal, the authority can amend or withdraw its decision in its own scope of authority within one year from the date when it was delivered.

In the case of such decision, which can be appealed, the authority can amend or withdraw its decision even if it did not infringe the law, provided that there is no adverse party. Taking regard the viewpoints of the real estate registration, we agree with the legislator's standing point, which considered the interest to avoid the infringement of law stranger, than the interest to the stability of the register. However, in those cases, when the decision of the authority does not infringe the law, but the authority has right to amend or withdraw it, the register's stability obviously suffers damage. At this time, the notion of the 'adverse party' shall be hardly taken into account, since upon the authorisation of the GPAP³¹, this notion shall be determined by the utmost wide interpretation of the notion of the client (customer) declared by the RER.³² In the case of review process, GPAP also ensures the possibility to amend or withdraw the decision. However, it also states that this revision must not harm any right that the client has acquired and exercised in good faith.³³ It should be added the decision on the amendment or the withdrawal of the order can be made by the land office in the sequence of records, the incorrect entry will be cancelled, corrected or supplemented at this ranking.³⁴

közgazgatási jogszabályokban. Harmincötödik Jogász Vándorgyűlés, Lillafüred, 8-10 May 2014., 2014, 119-157.

²⁷ Jójárt 2010, 25.

²⁸ GPAP, Article 115.

²⁹ GPAP, Article 119.

³⁰ GPAP, Article 120.

³¹ GPAP, Article 10 (2).

³² RER, Article 25 (2).

³³ GPAP, Article 121 (3) Point c.

³⁴ RER, Article 54 (4).

3.3. The correction of the real estate entry

The cases of the correction of the resolution and the real estate entry are summarised in Article 5:182 of the HCC: “*If an entry in the real estate register does not coincide with what is contained in the document on the basis of which it was registered or recorded, that entry shall be corrected. Correction shall be carried out either by deleting the incorrect entry or record, or by revising the incorrect entry or record in the real estate register.*” However, it is a basic problem that HCC does not make clear the relationship amongst the certain tools of the restoring of the incorrect content of the real estate register, i.e. correction, cancellation, adjustment, supplementation, revision. As a result of this deficiency, a question arises: is the execution of the correction by the land office is impeded, if meanwhile a person acting in good faith and relying upon the content of the register and for consideration acquired certain right and he does not consent to the correction.

In the concrete case, in 2002, the Hungarian State acquired three real estates from an individual by a sales contract substituting expropriation. The acquired real estates were created with the share of a previously single real estate of outskirts. Although the Hungarian State bought all the three real estates, the ownership right of the Hungarian State and the asset management right of the State Motorway Management Company Ltd. (hereinafter referred as to SMMC)³⁵ were registered only on the title deed of one of the real estates, while the entry of the mentioned rights were missed in the case of the other two real estates. On the title deeds of this two real estates, the ownership right of the individual owner of the original (single) real estate was registered. As the legal representative of the SMMC recognised that the changing of ownership was not carried over by the land office in accordance with the sales contract, he made an application for the correction of the decision considering the two real estates. Meanwhile, the individual owner of the original real estate (seller) was died and the real estates were inherited by her successor, who concluded a sales contract with a third person and sold the real estates. The ownership right of the third person was registered on the title deeds of the two real estates. However, posteriorly, the ownership right of the third person was cancelled and the ownership right of the Hungarian State and the asset management right of the SMMC were registered on the title deeds of the two real estates in question. According to the standing point of the authority of first instance, taking into consideration the principle of ranking declared in Article 7 (1) of the RER, the application for registration of the Hungarian State anticipates both the successor’s acquisition on legal title of succession and the third person’s acquisition on the legal title of sale. This was the reason, why the authority decided to correct its decision and registered the rights of the Hungarian State and the SMMC. The third person (buyer) appealed against the decision of the authority of first instance, but the authority of second instance sustained the decision.

³⁵ From 1 November 2013, the scope of the activities and the name of the State Motorway Management Company Ltd. (SMMC) (Állami Autópályakezelő Zrt., ÁKK) changed. At present, the company continued its operation as National Toll Payment Services PLC.

Then, the third person (buyer) initiated the judicial review of the administrative order. In the review process it was disputed, which legal provision formed the basis of the decision of the land office (authority of first instance). The acting court stated that the act of the land office shall not be deemed nor as the correction, neither as the supplementation of the resolution, therefore the Article 5:186 (1) and (2) of the HCC cannot be applied. The court also stated that the application of the principle of ranking was correct in the given case. Considering that the above mentioned paragraphs of the HCC do not require the consent of the acquirer in order to correct the content of the real estate register, the proceeding of the real estate supervisory authority was lawful, when it corrected the real estate register without asking for the third person's consent. The Curia agreed with the court of first instance.

In our point of view, the argumentation of the decision, in which the principle of ranking was taken into consideration, was correct. However, a question arises: why the land office registered the third person's ownership right based upon an application registered afterwards, if the correction of the decision was already in process?

Nevertheless, we sustain the objection that there is a basic controversy between the HCC's provision on the correction and the rules of the RER, which defend the stability and the authenticity of the real estate register. Thus, in accordance with the decision of the Curia, the incorrect content of the real estate register can be disarranged, even if a person acting in good faith and in trust of the content of the real estate register and for consideration acquired a right meanwhile. Moreover, the right can be registered in the real estate register purely by the resolution of the land office, without initiating a lawsuit for the correction or cancellation.

Summing up, in our point of view, the court did not correctly interpret the expression 'correction' with regard to the statement of facts published in the judgement. Therefore, such an argumentation, upon which the person acquiring right meanwhile in good faith and in trust of the content of the real estate register and for a consideration has no right for legal defence and upon which the authority can proceed ex officio and disregard to any other requirement, can also be wrong.

In our point of view, the known statements of fact could rather lead to the withdrawal or amendment of the decision, if the above mentioned temporal and procedural conditions would have fulfilled.

4. The collision of the interest to the correctness and interest to reliability. The correct interpretation of the private law rules

4.1. Invalid or incorrect registration and the defence of the *bona fide* acquirer

The above detailed case also casts light upon the question that beyond the stability of the authentic register the interest to the correctness and perfection of the real estate register also appears as an important requirement.³⁶ It is a rightful

³⁶ About the relationship between the content of the real estate register and the substantial legal reality see Kurucz Mihály: A telekkönyv, illetőleg az ingatlan-nyilvántartás valósággal egyezősége és viszonya a közhitelesség joghatásához, *Közjegyzőke Közlönye*, 2004/1, 3-12.

expectation from the entitled person to take steps in order to register both the rights in rem and rights in personam not registered in the real estate register as soon as possible. This expectation is also rightful in the case of the cancellation of such rights.

Moreover, the possibility to adjust or cancel the entry, which is originally (or posteriorly) incorrect, should be given for the injured party.³⁷ However, the claim for cancellation or adjustment is essentially restricted by the faith in the content of the real estate register and the defence of the acquisition of right based on that faith. “*Rights registered in the real estate register to the benefit of a party acting in good faith and for consideration shall be deemed as true even if it deviates from the actual substantive legal status. On that basis, the acquiring party shall enjoy protection afforded under this Act.*”³⁸

Returning to the terminology examined in the previous division, we refer to László Fürst, who wrote the followings about the ‘correction’: “*The subject matter of the claim for correction is an exhibitiv service, i.e. the delivery of the asset-symbol creates such a situation in the cadastral register, which is conformity with the real facts.*”³⁹

Among the claims for cancellation, Fürst distinguishes between the claims based on original invalidity and the claims based on the posteriorly occurred incorrectness of the register. At the same time, he reminds us of the fact that several other situations exist, in which controversy brings up between the real facts and the status according to the cadastral register because of the internal faults of the cadastral register.⁴⁰ Such cases are classified by Gábor Kiss and Péter Puszkás into four groups:

(a) In the cases of the first group, the ownership right or other transferable rights in rem does not transfer to the entitled person registered in the real estate register. Cases, in which the transaction transferring the ownership or establishing a right is invalid or not-existing, are also placed into this group, such as those cases, where the entry’s invalidity arises either as a result of the error relating to the entry or the omission relating to form of the real estate supervisory authority, or the deficiency of the statement of authorization, or the extraordinary remedy submitted against the decision of the court, which keeps the base of the entry.

(b) The second group covers those cases, in which the acquired right is posteriorly terminated or has lapsed.

(c) Those cases are ranked by the above-mentioned authors among the third group, where the right transferred as a result of some legal fact, i.e. a change occurred in the position of the entitled person, but such a person became entitled, who is not registered in the real estate register (e.g. marital community of property).

³⁷ HCC, Article 5:183. § “[*Deletion of an entry*] *An entry or record in the real estate register shall be deleted if the transaction on which the entry or record is based has been abolished or if the entry or record subsequently becomes inappropriate.*”

³⁸ HCC, Article 5:174 (1).

³⁹ Fürst László: Telekkönyvi szolgáltatás I. Fejezet. in: Almási et al. (edit.): *Glossza Grosschmid Béni: Fejezetek Kötelmi jogunk köréből c. munkájához*, Budapest, Grill Kiadó, 1932, 22.

⁴⁰ Fürst 1932, 25.

(d) In the fourth group, right in rem and the certain cases of the transfer or establishment of the ownership right are mentioned, in which the transfer or establishment of the ownership right occurred without the entry into real estate register.⁴¹

The referred authors criticized the terminology of the HCC on the claim for cancellation and adjustment and confirms that the invalidity of entry can also arise from the authority's irremediable fault, because which the action for cancellation shall be brought.⁴²

Beyond the cancellation and adjustment, HCC contains other correction possibilities (correction and supplementation) as well. (Here we do not deal with the amendment and the withdrawal of the decision, since they have no indirect effect on the content of the real estate register.) Land office is allowed to correct the content of the real estate register (and at the same time the decision) in its own sphere of authority only in those cases, if the party who acquired his right in good faith gives his consent to the correction. Thus, in order to the defence of the acquisition in good faith, the correction shall be occurred upon a lawsuit. If the injured party intends to enforce an ownership right, this claim appears as civil law claim for registration in the real estate register at the same time. Therefore, these requests (application for registration, application for adjustment or cancellation) do not fall into the scope of the provisions on prescription.⁴³ As Fürst declares, such rules of the relationship existing between the litigious and non-litigious proceedings shall be deduced from the general principles. In our law, particular rules of the cadastral register determining both types of the legal defence do not exist. Therefore, it is not clearly circumscribed, when the application of non-litigious proceeding will success.⁴⁴ According to Fürst, it is a decisive aspect, if the fact-finding of the statements of fact needs for at least a minimal proof. Since in such cases the statements cannot be ascertained without the deliberation of proof, correction shall be made upon a lawsuit. This establishment is in conformity with the popular approach of the present judicial practice, according to which the sphere of authority of the land office has only registering, recording nature.⁴⁵

In the application of the cadastral register regulated by the Government Decree 54/1960, *György Kampis* declared that those legal actions can be called as '*cadastral lawsuit*', which aim at the correction of the incorrect or false content of the cadastral register.

⁴¹ Kiss Gábor – Puskás Péter: Az ingatlan-nyilvántartás közhitelességének dogmatikai alapjaihoz, *Magyar Jog*, 2015/12, 711-717, 711. (Hereinafter referred as to Kiss – Puskás).

⁴² Kiss – Puskás 2015, 716-717.

⁴³ Cf. HCC Art. 5:184 (1).

⁴⁴ Fürst 1932, 29.

⁴⁵ Curia: "The courts' jurisprudence in land registration cases (summary report published on 3 October 2016) http://www.lb.hu/sites/default/files/joggyak/az_ingatlan-nyilvانتartasi_joggyakorlat-elemzo_csoport_osszefoglalo_velemenye_1.pdf 13.

Within the actions for cancellation in narrower sense, he marks off the lawsuits, which are based on invalidity, prescription or termination, from those, which serve the correction or substitution of the content of the cadastral register (action for adjustment).⁴⁶

Mihály Kurucz suggested to use the expression ‘incorrectness of entry’ instead of the expression ‘invalidity of entry’. Taking the work of *Béni Grosschmid*⁴⁷ as his starting point, he distinguished among the cases listed below: (a) Cases, where there is no judicial decision (executive order) beyond the registration in the cadastral register. (b) A person other than in the court’s order was registered in the register. (c) The right was registered on the title deed of the real estate other than designed by the court’s order. (d) The executive resolution for the registration order more or less than what the application contains. (e) The content of the document and the entry is the same, but the application is not based on the document. (f) The content of the application, documentation and entry is the same, but the former registered entitled person differs from the contracting party or whom granted the entry, therefore the legal transaction is invalid.⁴⁸

He states that the *ex officio* proceeding shall cover the amendment, supplementation and correction of the resolution about the registration. However, it is restrained, if at the time of the starting of the proceeding a further registered application has been indexed, i.e. a new acquisition is in process.⁴⁹

4.2. The borders of the enforcing of the claim for adjustment. The relationship between the action for adjustment and action for cancellation

Returning to the question of the incorrect content of the real estate registration, we intend to reveal the relationship existing between the action for adjustment and the action for cancellation. Previously, we ascertained that the conducting of the action for adjustment is justified by the fact that in the lack of the bona fide acquirer’s consent the land office cannot entertain the claim for adjustment.

However, the reports summarizing the jurisprudence of the real estate actions presents a completely different approach of the provision, which defends the bona fide acquirer.

Both the action for adjustment and action for cancellation aims at the correction of the real estate register. It is worth mentioning that the action for adjustment can aim either at the correction or the supplementation of the register, but the substantial law validity of an entry must never be the subject matter of such an action.⁵⁰

⁴⁶ Kampis György: *Telekkönyvi Jog*, Budapest, KJK, 1963, 407.

⁴⁷ Grosschmid Béni: *Fejezetek kötelmi jogunk köréből*, Budapest, Grill Kiadó, 1932, I. *Telekkönyvi szolgáltatás*, 1-554.

⁴⁸ Kurucz Mihály: *Magyar ingatlan-nyilvántartási jog, A bizalomvédelmi joghatások tükrében, Közjegyzői Füzetek Studia Notarialia Hungarica tom. IX.*, Budapest, MOKK, 2009, 117.

⁴⁹ Kurucz 2009, 127.

⁵⁰ BH 2017.189.

Accordingly, in the uniform judicial practice the action for adjustment has two different types, the action for correction and the action for supplementation. According to the jurisprudence, the failure of the real estate supervisory authority, made in the course of the registration, is the base of the action in both cases. A correction lawsuit can be commenced, if the resolution of the real estate supervisory authority was even followed by an entry, but it is incorrect, because it is not complying with the content of the resolution. A supplementation lawsuit can be commenced in such cases, where there was no registration upon the resolution of the real estate supervisory authority or the registration was deficient. Incorrectness also can occur in the case of the incorrect failure of the registration. According to the summary report of the Curia's jurisprudence-analysing working group on land registration cases states that an action for adjustment shall be commenced, when the entry cannot be cancelled by the real estate supervisory authority during its proceeding or the injury is nor remediable. Furthermore, it states that the initial incorrectness, i.e. when the content of the real estate register is considered as incorrect from the time of the entry, shall be adjusted in the original ranking of the incorrect entry. According to the summary report, rights and facts registered after the incorrect entry (incorrect cancellation) do not impede the correction, even the person acquired them in good faith.⁵¹

Upon the above mentioned facts, it seems that good faith of the person trusting in the entry or not registration, which is otherwise incorrect, should not be taken into regard in the course of the adjustment lawsuit and there is no legal defence, if his previously registered right is to be cancelled correlating with the adjustment. Nevertheless, this is not true.

As it was mentioned in the previous capital, the withdrawal, amendment, correction and supplement of the decision within the authority's own sphere of authority depend on the consent of the bona fide acquirer, except the acquirer is not entitled to have such defence (yet).

This is the reason, why such an interpretation of the adjustment lawsuit does not comply with the provisions declared in Article 30 of the RER, which have safeguard function. Paragraph (2a) of the referred article of the RER contains the exhaustive list of the cases, when the cancellation of the ownership right is possible. According to this rule, an entry may be cancelled under the HCC, (a) upon request, if the transaction on which the entry is based has been abolished or if the entry subsequently becomes inappropriate, (b) upon request, if the regulatory decision required for the acquisition of title or underlying registration is withdrawn by the issuing authority under its own initiative⁵² or upon prosecutor's intervention, or (c) if so requested jointly by the parties

⁵¹ Cf. Summary opinion on the courts' jurisprudence in land registration cases (summary report published on 3 October 2016). See in: http://www.lb.hu/sites/default/files/joggyak/az_ingatlan-nyilvantartasi_joggyakorlat-elemzo_csoport_osszefoglalo_velemenye_1.pdf, 82-83.

⁵² Hereby we would like to mention briefly to the other problems caused by the special proceedings to the acquisition of ownership of an arable land and its protection in the viewpoint of the authenticity of land register. Olajos István – Andréka Tamás: A földforgalmi jogalkotás és

to the contract based on which the entry was made, upon the termination of their agreement.⁵³

The above-mentioned provisions have double guarantee function. On the one hand, it declares for the authority the limitations of the keeping of the authentic register as an activity having registering function. However, according to the principle of legality, the authority can proceed only upon request or other authority's claim and it shall act within the framework of the decisional limitations and relating legal provisions. Beyond the case, when the invalidity is obvious, the land office cannot reject the application for registration, if it is formally and contently appropriate. Similarly, the *in officio* modification of the register's content, i.e. acting without certain request, is also exceptional. The cases, in which the real estate registration proceeding aiming at the registration or cancellation of a right can be conducted in the lack of request are listed in the RER.⁵⁴ All of these cases are based on the consideration that the land office shall proceed and adjust the content of the real estate register to the reality, if upon the circumstance it is obvious that a certain right arose or ceased outside the real estate register.

On the other hand, the guarantee declared in the Article 30 of the RER serves for the defence of the ownership right. In most cases, the cancellation of an entry results the cease of the ownership right. But, even the ownership right would not cease with the cancellation of an entry, being entitled without real estate registration is not favourable a position. Therefore, such derogation of rights based on the acting authority's resolution is exceptional or the legal debate shall be judged in a litigious proceeding. According to this article, in the lack of judicial decision, the authority can only cancel the ownership right registered in the real estate register, if the conditions of the withdrawal of the administrative decision upon which the entry based fulfil. The consideration of the request for adjustment can mean the cancelation of the registered ownership right of the bona fide acquirer as well.

In our point of view, Article 5:182 of HCC on the adjustment does not and shall not create such a new case for the cancellation of the ownership right, which could be applied beyond the provisions on the withdrawal, amendment or other supervision of the decision or beyond the requests for adjustment or cancellation.

Accordingly, we refer to the case BH 2017. 340 of the Curia. Although this decision was made upon the provisions of the RER, which were effective before the coming into force of the new HCC, it drafts a new aspect both for the delimitation of the request for adjustment and cancellation, and the judging of the bona fide acquirer.

According to the statement of facts, the right to maintenance was not registered during the contract conclusion in favour of the person to whom maintenance was owed, while the ownership right was registered by the land office for the person owing maintenance. A few years later, a mortgage was registered on the real estate. Thereafter, the person to whom maintenance was owed commenced an action for

jogalkalmazás végrehajtása kapcsán felmerült jogi problémák elemzése, *Magyar Jog*, 2017/7-8, 410-424.

⁵³ RER Article 30 (2a).

⁵⁴ RER, Article 30. (3) and Article 50.

adjustment because of the lack of the registration of the right to maintenance. The court in action stated that the bona fide acquirer has no legal defence in the adjustment lawsuit and the right to maintenance should be registered in the original ranking of the incorrect entry. During the revision, the Curia perceived the conflict of interests existing between the substantial law truth and the defence of the trust in the appearance and changed the starting point. As the Curia stated, the possibility to enforcing a right is limited by deadlines, therefore it is applicable for all those positions in the real estate register, to which the establishment of a legal effect is bounded. *“In the case, when the injury based on the incorrect content of the real estate register is due to the proceeding of the land office, the remedy of the land office shall be exhausted by the claimant, since the adjustment of the incorrect content can be requested in a litigious proceeding only in case of failure of the above mentioned remedy. Moreover, the proceeding of the court can only be commenced, when the incorrectness of the real estate register can not be remedied by the land office’s instruments, therefore the judicial contradictory proceeding is needed to remedy the injury occurred. Furthermore, compared to the proceeding of the land office, the court can take a step further, since the parties’ relationship, the real content and the correctness or incorrectness of the real estate register are evaluated by the court upon the evidences in the litigation and in accordance with the substantial rules of the civil law.”*

However, the court can not make such a decision, which practically deprives the land office of its scope of authority and creates the content of the real estate register arbitrarily. The above mentioned decision also shows that even the adjustment in the original proceeding would not infringe the rights of the third person in good faith, arranging a new request (for adjustment) after years met with difficulties. If the court, in spite of this fact, would give place for this action, the bona fide acquirer would be moved from his due place in the ranking. Such changing can occur only in the cancellation lawsuit, since the more permissive rules of the adjustment lawsuit shall not result the evasion of the strict provisions of the cancellation lawsuit.

The legal status in the real estate register concerning the rights to be established by entry can be changed only on the conditions of the cancellation lawsuit in defence of the bona fide third person, the adjustment lawsuit is not appropriate for having the same legal effect.⁵⁵

The Curia’s approach deviates from our opinion, as to which the defence of the bona fide acquirer also prevails during the judgement of a request for adjustment by an administrative remedy. Facing our opinion, the Curia stated that *“if the interested party fails to claim for a local remedy against the deficient entry decision, his application for entry can only be exercised without the harm of the rights of a third party acquiring in good faith and in return for a consideration.”* This statement can also be interpreted so, that in the case of summing a claim for a local remedy the bona fide acquirer shall not be taken into regard. Contrary to this, we are of the opinion that the defence of the bona fide acquirer is also built into the system of the administrative legal remedies, primarily by public law phrases.⁵⁶

As we previously stated, in the lack of the infringement of law, the amendment in the authority’s own sphere of authority or the withdrawal of the decision is only possible, there is no adverse party in the proceeding. This statement is supported by the

⁵⁵ Case BH 2017. 340.

⁵⁶ GPAP Article 120.

provision of the HCC on the adjustment: *‘If there is information in the real estate register to conclude that a bona fide third party has obtained some right for consideration during the proceedings concerning the real estate property, and that a correction or revision would infringe the right of such third party, a correction or revision concerning a right or fact may only be executed with the consent of the third party concerned.’*⁵⁷

Case BH 2017. 189. of the Curia adds another aspect to this problem. According to the statement of facts, the plaintiff, a share company, who was a successor of an agricultural producing organisation which terminated in 2000 by account of settlement, commenced an action for adjustment as primary claim, an action for cancellation as secondary claim and an action based on the Article 5:184 and 6:88 of the HCC as tertiary claim. The actions based on the fact that the leasehold right of the former producing organisation on certain real estate belonging to the area of a national park was cancelled in 2010, upon the request of the Hungarian State.

The Curia stated that harms of the real estate register, which are remediable by the adjustment, are resulted by the incorrect or deficient entry. In these cases, not the invalidity of the legal transaction aiming at the acquisition of a right or the invalidity of the registration proceeding, but a clerical error, incorrect calculation or incidental deficiency of the content is the subject matter of the action for adjustment. Nevertheless, the action for adjustment can only be applied, if the injury occurred could not be remedied within the framework of the real estate register. On the contrary, the plaintiff of the above mentioned case submitted his claim with reference to the incorrect application of the substantial law provisions, therefore an action for cancellation shall be applied.

A further statement of the Curia’s decision also shall be mentioned. In accordance with the opinion of the Curia, Article 5:184 (1) and (2) of the HCC contain provisions on the prescription of the cancellation and adjustment claims and on the commencing of a cancellation lawsuit, they do not substantiate on their own nor the action for cancellation, neither the action for adjustment. These actions are based on the cases listed in Article 62 of RER. However, a question arises, if Article 5:182 and 5:183 of HCC are well-worded enough to be the basis of the claim enforced by an action and if so, which relation they have to the Article 62 of RER.

In our point of view, such articles do not meet these criteria, particularly considering the fact that these provisions should be applied in the real estate registration proceeding by the land office, which is submitted to the provisions of the GPAP. It follows from the foregoing that a claim for the adjustment of the real estate register is not exist on its own, since the Party’s action can not be directly based on the Article 5:182 of HCC.

⁵⁷ HCC, Article 5:186 (2).

In this place, we shall briefly notice that the cases of the cancellation lawsuit listed in Article 62 of the RER are not homogenous. As we mentioned before, not only the invalidity of an entry or a legal transaction is controversial, but the interests existing behind the request for in integrum restitution and the request for cancellation upon a bankruptcy proceeding are also different. An approach, in accordance with the cancellation lawsuit shall be deemed as an instrument of a civil law claim, is acceptable only in the case of civil law proceeding. In compliance with this, such an approach is not correct, when we take the whole real estate register into regard. It is primarily because of the fact that this authentic register has not only private law functions.

Then, we return to the original problem. During the creation of the text of the provisions on the real estate register, participants of the recodification process of the HCC took the real estate register and its functions and the judicial organization as the operator of this register into consideration. As it is stated in the justification of HCC, the placing of the real estate registration rules in the HCC had three main aims. In the first place, the legislator intended to make the authenticity of the real estate register stronger. Secondly, the placing of the substantial law rules of the real estates in the new civil code appeared as a basic requirement. Thirdly, the legislator intended to submit the real estate register to indirect judicial control. Nevertheless, this last one is a question, which does not affect the substantial law rules defined in the HCC, therefore arranging this problem is not the task of the HCC, but other single legal act. As Gábor Kiss and Péter Puskás point it out, the third aim, i.e. the indirect judicial control of the real estate register did not come true, since the keeping of the real estate register is still the duty of the administrative body. The above referred authors also emphasize that taking the private law proposal of 1928 for a basis during the codification also lead to further problems⁵⁸, since the creating of a real estate register, which has cadastral nature and serves only private law interests, is anachronistic.

5. Closing thoughts

Before the entering into force of the new HCC, it was troublesome that the RER mostly contained rules having private law nature (e.g. principles having substantial law nature, basic provisions on lawsuits for cancellation and adjustment), while nowadays the procedural law nature of the real state register provisions of the HCC is striking. This is particularly true regarding the fact that these provisions originating the new administrative procedural code (GPAP). This is the reason, why the keeping of the separate legal regulation next to the HCC is justified.

The dichotomy of the public and private law regulation also appears in the procedural rules of the real estate register, although the legislator's decision about the separation of the real estate registration substantial law rules and their placing into the HCC was well-received. In our study we examined such special rules, within this dichotomy could be perceptible.

⁵⁸ Kiss – Puskás 2015, 716.

In the first place, we paid attention to the revision and the withdrawal of the resolution about registration with special regard on the provisions of the GPAP, which came into force on 1st January 2018. As a relating problem, we examined the decision published as KGD 2017. 41, in which the court interpreted the renewed real estate registration provisions of the HCC. In accordance to this, we criticized the using of the ‘correction’ as remedial tool, interpreted by the court in its decision.

According to our point of view, the expression of ‘correction’ is not a new procedural form ensuring the possibility for the real estate supervisory authority to correct the obviously false content of the real estate register. However, in the course of our examination, we realized that the provisions on the correction contained by both the HCC and the RER do not cover all cases, when the content of the real estate register does not meet with the fact or it is improper or incorrect.

Furthermore, even it is the choice of the legislator to place the correction of the real estate register’s content either into the courts’ or a certain administrative authority’s sphere of authority, we think that the defence of those acquirers, who meanwhile acquired right in good faith and in trust of the content of the real estate register, shall be necessarily taken into regard in every case.

As the aspects of the delimitation of the adjustment lawsuit and cancellation lawsuit were evolved in the jurisprudence, the function of these lawsuits and their placing into the sphere of authority of courts instead of administrative authority becomes even clearer. As it can be seen from the above mentioned cases and standing points appearing in the literature, the provisions on the adjustment and cancellation lawsuits cannot be interpreted disregarding the special features of the functioning of the real estate register. Additionally, it can also be stated that the HCC is not able to adopt the rules determining all peculiarities of the authentic register, although it is a code for the private law. The reason of this situation that these rules functions under the omnipotence of the GPAP. That is why we intended to review the main points from two aspects. One of the aspects is the co-functioning of the private law and public law rules. The other aspect closely relates to the other; it put focus on the conflicts of the positive content of the real estate register, the correction of this content and the interest to the defence of the trust in the content of the real estate register, with special regard to the private law effect of the real estate registration.