

NEW ACT ON REAL ESTATE REGISTER IN HUNGARY, WITH SPECIAL REGARD TO THE PUBLIC AUTHENTICITY (FIDES PUBLICA)

Réka Pusztahelyi 

associate professor, University of Miskolc, Faculty of Law, Department of Civil Law
3515 Miskolc-Egyetemváros, e-mail: reka.pusztahelyi@uni-miskolc.hu

Abstract

The new Act C of 2021 on Real Estate Registration (hereinafter referred to as E-RER) stepping into force on 1st October 2024, will fundamentally reform the substantive rules on real estate register incorporated and expanded in Act V of 2013, the Hungarian Civil Code in force (hereinafter referred to as HCC). The amendment also addresses the erroneous provisions of HCC revealed by judicial practice, but in our view, it exceeds this by how it has significantly modified the work-sharing and the hierarchy between the HCC and the law on RER. To take an example, it has restructured the provisions relating to the principle of public authenticity. After a short introduction to Hungarian real estate register system and its legal implications to civil law, this paper aims to deal with the legal concept of public authenticity, both in civil law and public law domain, the changing relationship between HCC and RER, and their amended provisions relating to public authenticity.

Keywords: *real estate register, public authenticity, protection of bona fidei acquiritor, correction (adjustment and cancellation) of an entry*

1. Introduction

The new Act C of 2021 on Real Estate Register (For the sake of clarity, we should note here, that in the Hungarian land register system the base unit of the register is the plot of land, contrary to the Common Law system, where the base unit is the title, i.e. estate. However, according to the official terminology and common parlance, we use the expression ‘real estate register’ for the Hungarian system as well. Cf. <https://termin.im.gov.hu/>.) (hereinafter referred to as the E-RER) stepping into force on 1st October 2024, will fundamentally reform the substantive rules on real estate register incorporated and expanded in Act V of 2013, the Hungarian Civil Code in force (hereinafter referred to as HCC). One of the aims of the amendment was to rectify the erroneous provisions revealed by judicial practice, but in our view, it exceeds this since it has significantly modified the work-sharing and the hierarchy between the HCC and the law on RER. To take an example, it has restructured the provisions relating to the principle of public authenticity. In the following, we will examine whether the changes in question are changes that emphasise the true content of the principle of public authenticity.

2. The Hungarian registry system for real estate and the relevant rights and facts

In Hungary, the real estate register (We will also use the wording land register later on, to stress the importance of the civil law effects of the records of the register, since before the merge of the land register and the cadastre register in 1970's, the land register functioned as a public register for rights and fact of civil law relevancy.) has salient importance among the official public registers. It is a public and authentic register, which contains rights and facts having civil law relevancy. The entry of a given status or change (right or fact) has essential civil law effect, as the Hungarian jurisdiction follows the "title and modus" scheme. For example, for the acquisition of ownership of real estate by transfer, a valid contract on the transfer or another legal title shall be required together with the registration of the transfer of the ownership accordingly.

Taking into account this requirement, the Hungarian system is one of the so-called *Grundbuch* systems [For historical reasons, the development of land registration in almost all Central European countries was inspired and determined by Austrian legislation (von Bar, 2018: 433)]. and differs from the *Torrens-system* where the mere entry into the register constitutes the right. [Cf. in the United Kingdom, the Land Registration Act of 2002, especially Section 59 (von Bar, 2018: 417 ff)]. In short, that means, the reality and its appearance reflected in the register should be the same, and within limits, the law should provide legal means to correct the incorrect content of the register to comply with the actual legal situation. However, the main obstacle here is the principle of authenticity, the *fides publica*: when the *bona fidei* person acquired a right (and for consideration) relying on the real estate register, it is worth providing her the highest protection even if it is established later that the content of the records was incorrect or incomplete.

Due to its importance, the Hungarian legislator built the general substantial law rules (i.e. guiding principles) of the real estate register into the Hungarian Civil Code. Nevertheless, most of the provisions on the real estate register outside the HCC have an instrumental nature compared to the civil law rules, since they contain both substantial and procedural provisions, which underpin transfers and changes of civil law rights.

From this point of view, the operation of the real estate register is subordinated to substantial civil law regulations. However, a public administrative authority keeps the register, his role does not cover investigation or litigation, and the Act CL of 2016 on General Public Administration Procedures (hereinafter GAP) shall apply for the registration procedure.

3. General considerations about the E-RER

First of all, among the new features of the E-RER, we stress here its *codex nature*, i.e. exclusively this law is to determine uniformly the range of rights, relevant facts and sorts of data to be registered, not any sectoral regulation.

The next important change is the extension of the *Principle of Registration*: According to the new rules, in the case of rights, facts and data relating to immovable property which are subject to the land register, the right and the right or obligation based on the fact or data may be enforced if the right, fact or data have been entered in the land register. This feature may foreshadow a great change considering the effects of entries, nevertheless, it may conflict with the guiding principle of documentation and the actual meaning of the principle of registration.

The primacy of the land register: The main objective is to ensure that the land register provides the most comprehensive possible information on all rights and obligations in relation to a property. The specialised sectoral registers on real estate rights and facts would continue to operate, however the new

law declares the primacy of the real estate register data, and in this respect its public authenticity. It is worth mentioning here that the authenticity (credibility) of data and the authenticity of registered rights and facts are not the same, we call attention to the misuse of the expression.

The last and the most significant change is about *the automated decision-making*: With regard to the adoption of decisions by automated means, GAP establishes the procedural framework, but the way in which decisions are taken is determined by the Act on Electronic Administration. (Act CCXXII of 2015) The use of automated decision making in land registration procedures is provided for in RER (Act on real estate register no. CXLI of 1997, in force until 1st October 2024) and its conditions will be set out in the implementing legislation. [Cf. Governmental Decree no. 179/2023. (V. 15.) on implementing law on real estate register no. C of 2021] For special remedy, the GAP provides that within five days of the disclosure of the decision, the applicant may request the authority to re-examine the application in a new full procedure (cf. Czékmann et al., 2022).

4. About the public authenticity of the land register in terms of civil law

Today, there is still a perceptible problem that there is no uniform legal concept elaborated by the judicial practice or prescribed by the law for the concept “public faith or authenticity” of the land register.

András Kisfaludi examines in his article titled ‘What makes the public register publicly authentic or certified?’ the changes in the content of the principle of public authenticity and the scientific positions formulated in line with the current legal and socio-economic environment. We agree with the author that “the lack of a uniform concept is not only attributable to the uncertainties and the ambiguities of the specific legal provisions but also to the deeper phenomenon that the requirement of public authenticity in its pure and final form has never been realised”. (Kisfaludi, 2003)

At this point, it is worth comparing the 2021 report of the Curia (formerly the Supreme Court of Hungary) case-law analysis group on the ‘Public Authenticity of Public Records’. According to this report, it is not necessary to conduct a case-law proceeding, since the uncertainty in the rulings is due to the diversity of legal regulations and sector-specific rules on public records, but what is needed is to differentiate between the functions and the related evidentiary weight of public records that are solely intended to fulfil a state function and those that serve to improve the reliability of transferring property rights. (Kisfaludi, 2003)

In his opinion, the formulation of the principle of public authenticity is incompatible with certain specific legal restrictions and limitations to be embedded into the legal concept of the principle, therefore its content can and should be independent of them. In this regard, the core of public authenticity is formulated as follows: ‘The public authenticity of a register shall mean that the rights or facts recorded in the register are to be regarded as existing and correct from the point of view of a bona fide third party who, for consideration, has acquired a right on the basis of the information entered in the register, and that rights or facts not recorded in the register are not to be regarded as existing.’ (Kisfaludi, 2003) Any other rule is an exception that compromises the principle of public authenticity and ultimately leads to the public authenticity of the register in its proper sense being questioned.

Kisfaludi himself lists a number of views that evaluate the principle of public authenticity in the broader sense, covering not only the legal provisions guaranteeing the protection of trust in perceived and assumed facts (i.e. the appearance), but also the rules of correction of the content of the register, even against a person acting in good faith. Recognizing the inherent contradictions, he points out the conceptual inconsistency of understanding the principle of public authenticity as a mere construct of presumption which leaves the presumption open to rebuttable. Indeed, from his point of view, it can be

concluded that, whenever the content of the register differs from reality for some reason, the conceptual layers of public authenticity in the broad sense of the term also come to the fore, which aim at the correspondence of the content of the register (right or fact, or data) with reality.

5. The public authenticity of the real estate register in private law and the publicly certified nature of a public register in public law: changing and developing interaction

The Summary of the Curia Report – mentioned in the previous point – clearly shows that public authenticity in the private law sense and the public authenticity of public records (hereafter referred to as public credibility) are not even equivalent concepts today. Consequently, we can stress it that this problem has been a key issue in both private and public law legislation for a long time, it has been debated for the last 20 years.

In Mihály Kurucz's opinion (Kurucz, 2014a), this problem was further exacerbated concerning the public registers by Act LXXXIV of 2013, which amended both the 2004 Act on administrative proceedings (hereinafter referred to as GRAPS) (Act CXL of 2004 on the General Rules of Administrative Proceedings and Services) and the 1997 Act on real estate property, which, in the context of the principle of public authenticity regulated by the RER at that time, stipulated that the land register shall be considered a public register (with certain exceptions) with regard to the data recorded in accordance with the provisions of this Act. [Cf. Art. 5 para. (1a) RER (in force between 1 July 2013 – 15 March 2014)] This section was repeatedly amended and clarified before 2014, that is, the entry into force of the HCC. (Because of the rightsholder personal data (Cf. Art. 5 para. (1a)–(1c) RER (in force between 1 March 2014 – 15 March 2014).)

According to Kurucz, in land register law, public authenticity, as a consequence of procedural legal effect, is a derivative legal effect in the sense that it cannot be interpreted without a substantive legal protection effect. He argues that the public credibility of the public registers under the GRAPS and the public authenticity of the real estate register (RER) are not interchangeable, because the criterion of public authenticity also encompasses the legal effect of the entry in the register (Kurucz 2014a, 53). (We only raise the attention to the special considerations about public credibility and authenticity emerging from the interaction between the real estate register and the land use register. Cf. Olajos and Juhász, 2018.)

In the case of facts which are recorded with informative effect, [Cf. Art. 17 paras. (1)–(2) RER (in force)]. the law itself deprives the record of its evidential value, since the failure to record them does not affect the legal effect attached to them. Kurucz warned that, in relation to the public credibility of records, the GRAPS did not clarify the question of whether public records of a different nature give rise to different legal effects. Consequently, the so-called protective effect of the land register, (For the legal protection of acquisitions of rights in good faith and accordingly, the limitation of property claims; cf. Art. 5:187 HCC.) which is primarily linked to registered rights and certain facts, cannot be ignored. [Just a small addition to the question of the far-reaching civil law effect of the public authenticity is on the registration of the road vehicle registration book: For the transfer of ownership of the vehicle, neither the registration in the register, nor for the transfer of the certificate on vehicle registration are not required by law. However, in my opinion, if the purchase and sale of a motor vehicle is surrounded by administrative rules and made dependent on the obligation to present the certificate, then in essence we have nullified the trust in the mere possession of the thing. Due to the public credibility of the register, the buyer cannot assume the risk of a possible failure to transfer of ownership. See László Leszkóven's excellent study on the retention of the vehicle registration book for security purposes – thoughts on the

margin of a legal unity decision on the question (Leszkoven, 2021)]. We see that Kisfaludi's conceptualisation quoted above and Kurucz's position converge in this respect.

Following the reasoning of László Jójárt (Jójárt, 2010), the constitutive function of the land register is much more important than the simple registration (as an *administrative function*), this function means that in most cases rights in rem based on a legal transaction are constituted by the entry in the land register (and extinguished by cancellation). In general, the obligation to notify and the obligation to register, which is a condition for the exercise of rights in rem, are essential preconditions for the *completeness and correctness* of the register, i.e. for public authenticity. Among the fundamental principles of the register, the principle of registration (and its effect) reflects this function. However, given that in the above-mentioned cases, there may be a divergence between reality and the content of the register, the preference for the content of the register must be ensured, even against the legal protection of the substantive right holder. This brings us to the *public authenticity* of the land register. This central function of the real estate register is to certify the existence, completeness and accuracy of the data, facts and rights recorded. However, the certifying power not only creates a rebuttable presumption, but also protects the rights of the person by rendering the state of the land register irrebuttable against him or her (subject to certain exceptions) who trusts in the content of the register, who is in good faith and who has acquired a right for a consideration. In Jójárt's view, therefore, this presumption is a fundamental element of public authenticity (Jójárt, 2010). Therefore, *from the perspective of civil law, the most important fundamental principle of the land register, is the principle of public authenticity, which can be attributed to a register only if the above-mentioned features are achieved.*

Coming into force in 2014, the new Civil Code of Hungary has brought significant changes concerning the law on real estate register, not only in terms of public authenticity, but also in all the principles of land registration. Their inclusion in the Book on Right in Rem suggested that these special legal principles belonged to the field of property law, since one of the most important purposes of the land register [Grundbuch (During the Civil Code codification, the regulatory solution to re-establish the separation of the land register and the cadastral register came up. It should be noted here that although this goal was not achieved, the private law content of public authenticity is nevertheless built into the Civil Code, in relation to the real estate register, with the exception of registered property data. Cf. inter alia Menyhárd, 2008: 723)]. is to ensure the stability of the property transactions and to guarantee the civil substantive legal effects (Vékás, 2001). The provisions of the Civil Code, which are prominent from the point of view of the acquisition of civil law rights, but which were scattered in the Civil Code, were taken over by the Civil Code in such a way as to guarantee the principle of public authenticity and, in connection with it, the principle of public faith by the most comprehensive provisions possible. However, it has narrowed down the scope of public authenticity in the private law sense to rights and facts: 'The real estate register is an authentic public register containing rights in real estate properties and facts of significance for legal purposes.' (Art. 5:165 HCC) Simultaneously, the Art. 5 para. 1 RER was amended with the following content: 'The real estate register shall be construed as an official public register, excluding the particulars of real estate properties defined in this Act (hereinafter referred to as "real estate details"). As 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.' To sum up, we put that there is a kind of work sharing, and parallelly, a distinction between public authenticity and public credibility, in the different (substantive-procedural, private-public mixed legal) contexts of the two laws. [We must note here that Gábor Kiss also points to the problem that parallel regulation has not been entirely eliminated (Kiss, 2021)].

The Act on General Administrative Procedure (Art. 97 para. 2 GAP) responds to the same when it allows the specialities of sectoral public registers (such as the land register) to prevail with the “unless otherwise provided by law” wording. It should be noted here that this law has also clarified the category of public registers: only those public registers that are publicly certified are considered to be public registers, and therefore all public registers are necessarily publicly certified official register. (The Art. 97 GAP under the title ‘Rules on public registers’ refers to the following function: ‘the purpose of keeping the register is to verify or prove the data contained therein in a public authentic manner [publicly certified official register]’. [Art 92. para (1) point b) GAP]. That means the public register is equal to the public certified official register.)

6. Public authenticity reflected in Civil Code rules on the real estate (land) register, in force until October 2024

According to Art. 5:170 HCC, the public authenticity of the real estate register means: Real estate registration records shall be construed as authentic proof of registered rights and recorded facts. The Civil Code provides for the following issues under Title XI, Public authenticity of the land register: Extent of the authenticity of the real estate register (5:171 HCC), Bona fidei person acquiring a right relying on the real estate register (5:172), Completeness of the real estate register (5:173), Protection of rights acquired in good faith and for consideration (5:174), Legal status of persons acquiring non-registered rights or outside of register (5:175), Extension of the scope of entries made in the real estate register (5:176), Guiding nature of real estate register data (5:177).

The Art. 5:171 HCC contains only one rule, the so-called ‘cognitio’ principle: “If a right or a fact has been registered or recorded in the real estate register, lack of knowledge of such shall not constitute an excuse under any circumstances.” Since in my view the Art. 5:171 HCC does not cover even the limited content of the principle of public authenticity, therefore, all the above rules can be interpreted as part of the principle of public authenticity.

In his summary, Márton Anka (Anka, 2014) also refers to these statutory rules when, in addition to the declaration of the register as authentic and the authentic certification of the registered data, he lists the principle of cognition; the procedural effect (i.e. the registered right or fact must be presumed to exist and the registered right holder must be entitled to it); the presumption of the non-existence of the cancelled right or fact as the principle of negative completeness; the public trust (also known as *publica fide*, or the protective effect), which is the presumption of correctness and completeness in favour of the bona fide rightsholder; the presumption of good faith in favour of the acquisition of the right (interpreted by him as the presumption of positive completeness); and also includes the protection of the bona fidei acquiritor against a rightsholder outside the land register and the so-called acquisitive prescription (*bona fide usucapio*) in real estate register (Cf. also Vékás, 2007).

In my opinion, the above-mentioned certifying effect incorporated in Art. 5:170 HCC (Real estate registration records shall be construed as authentic proof of registered rights and recorded facts.) constitutes the link between the principle of publicity (formal publicity) and the principle of public authenticity (or: material publicity, publicity in the land register). This provision sets out the objective of ensuring a proper correspondence between the actual situation and the content of the land register. The elements of public authenticity are: (a) the principle of cognitio (presumption of knowledge), (b) the presumption of completeness and correctness (positive and negative presumption), (c) the protection of authors of rights in good faith and for consideration (principle of apparent trust), (d) the status of the author of rights outside the land register (Pusztahelyi, 2019: 229).

To sum up, the principle of public authenticity has been settled in the most detailed legal regulation possible in HCC, nevertheless, in the interpretation of the rules, the developing case law of the courts has not proved to be without problems in balancing the conflict of interests between the substantive right holder and the right holder who trusts in the content of the register, especially in cases where the legal concepts of the HCC and the RER were not mutually compatible.

Gábor Kiss and Péter Puskás called the attention on the wording deficiencies of the HCC in 2015, and reported in detail on the cases of original or subsequent incorrectness of registration and the issues related to its remedy (Kiss and Puskás, 2015). The authors called for an urgent reconsideration of the rules of the Civil Code on the public authenticity of the land register and its rectification: ‘The current wording of the law poses serious risks and is not in line with the case law of the Curia in this area.’ (Kiss and Puskás, 2015: 717) This broader understanding of the content of the principle of public authenticity has therefore already generated and re-emerged as a source of considerable debates on interpretation. For example, the relationship between the concept of correction under HCC and the claim for adjustment under HCC and RER was not sufficiently clear, and the HCC did not provide the bona fide acquirer with legal protection even if he brought an action for correction, because his consent to the adjustment of the registration was not required there, unlike in administrative proceedings.

Gábor Kiss and Attila Mocsár note that, interestingly, the earlier theory and practice did not corrode this flawed provision of the RER (Kiss and Mocsár, 2019). The authors also highlighted the judicial decision through that it was clearly shown that the rule on correction in the Civil Code was not harmonised with the conceptual system of adjustment and cancellation (For my opinion cf. Juhász and Pusztahelyi, 2018).

According to the decision published under the No. KGD 2017.41, if the subject of the correction (addition) is a right or a recorded fact included in the deed on which the registration is based, the real estate authority corrects the deed through procedure of adjustment, moreover, the correction pursuant to Section 5:182(1) HCC does not require the consent of the subsequent bona fide acquirer. The authors also pointed out, inter alia, the fundamental error in the decision that the rules of the Civil Code on rectification should also be applied in administrative proceedings, and criticised the interpretation that the rules on rectification (correction of entry) contained in § 5:186 of the Civil Code were not found applicable by the court (Kiss and Mocsár 2019: 10). The same problem with the interpretation was also pointed out by Edit Varga in her article (Varga, 2020).

It is worth noting here that the relationship between the action for adjustment and the action for cancellation was not sufficiently clarified, as indicated in the decision published under No. BH2017.340: “The position in the land register concerning the rights acquired by registration may be changed, including for the third party who has made the registration in good faith, only under the conditions governing the action for cancellation, and the action for adjustment is not suitable for triggering such legal effect.”

7. Public authenticity reflected in the rules of the HCC and the E-RER in force as of October 2024

As of 1 October 2024, Part Four of Book Fifth on rights in rem of HCC will significantly change. There will be a substantial reduction of the rules that remain in the Civil Code. The debate, which had apparently been settled during the civil codification process, as to whether the rules of the real estate register (and not the land register, i.e. Grundbuch) are of paramount importance for the acquisition of civil law rights, which are the substantive part of the law on the real estate register, should be

incorporated into the Civil Code, has been reopened. According to the explanatory memorandum of Act C of 2021 on the new Real Estate Registry, these should be placed among the provisions of this separate Act, due to the codex character of the Act.

As stated in the ministerial justification of the 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 estate register 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 another single legal act. For the sake of uniform real estate registration regulations, the introduction of the E-RER made it necessary that the Civil Code should only include the most fundamental civil law rules relating to real estate register. Only and exclusively those rules which are closely linked to the civil law implications of the land register (including cancellation and rectification of the registration, as well).

Accordingly, in Part Four of the Fifth Book of the Civil Code, only the most necessary rules of land registration for the application of civil law shall have been incorporated, and the major part of the provisions of the Civil Code will thus be included in the E-RER in accordance with the new legislation to be developed, thus assisting its interpretation and application by the administrative authorities.

This amendment may also be assessed as merely a setback compared with the ambitious ideas of the Codifiers of the new Hungarian Civil Code, that is to expand its scope to the relevant special fields of civil law such as company law, family law and among them, the substantial civil law provisions on the real estate register.

In this respect, Title X of the Civil Code, under the title “The content of the real estate register and the legal effects thereto”, provides briefly for the content of the real estate register (Art. 5:165), the entry in the real estate register (Art. 5:166), the legal effect of the public authenticity of the real estate register (Art. 5:167), the protection of the acquirors who have obtained rights in good faith and for consideration (Art. 5:168), the status of the holder of rights outside the real estate register (Art. 5:169) and the extension of the scope of the entry in the real estate register (Art. 5:170). Title XI contains the rules on the action for cancellation and adjustment, the obligation to register and the effect of the protection of rights.

At the same time, it is worth taking a closer look at the new E-RER. The chapter IV is dedicated to the basic principles of the land register: following the classic six-tier system, it deals with the principle of publicity (public access to register) the principle of documentation, the principle of authenticity, the principle of mandatory application, and the principle of ranking and priority. The sixth principle, the principle of registration, will remain in the Civil Code, where, curiously, it is expressly not regulated as a principle.

As mentioned above, one can only speak of the public authenticity of the land register if, in addition to its simple administrative function, the obligation to register is imposed by law as the most general requirement, referred to as the principle of completeness in the explanatory memorandum of the new E-RER, and in the case of rights in rem it is a criterion for the legal establishment of the right, while in the case of rights and facts not in rem (but in personam) it is a criterion for their enforceability against third parties. This compulsory registration is supported by the amended provisions of the HCC, according to which, on the one hand, rights in rem relating to immovable property are established, modified and extinguished by registration in the real estate register, unless otherwise provided for in the HCC, and, on the other hand, rights and facts not in rem become effective against third parties by registration in the real estate register. [Cf. Art. 5:166 para. (2) HCC (in effect from the date 1 October 2024)].

According to Art. 16(1) E-RER, the real estate register is a public official register, and the correctness of the information contained therein must be presumed. The rule applies both to the correctness of the rights and facts and to the correctness of the real estate data specified in the legislation. The new E-RER then refers to the application of the rules of the Civil Code relating to public authenticity (the substantive legal effects of public authenticity) of rights and facts [Cf. Art 16 para. (3) E-RER.] and provides that this presumption may be rebutted only in correction proceedings or in actions for cancellation or adjustment. Instead of E-RER, the Civil Code, its new Art. 5:167, still contains the so-called principle of *cognitio*, under the section title “The legal effect of the public authenticity of the land register”, and as a rule, covering the data (i.e. the entire content of the register): ‘If a right, fact or data has been entered in the land register or deleted from the land register, no one may claim that he or she was unaware of its existence or cancellation.’

The aforementioned registration obligation strengthens the public credibility of the register in relation to real estate data. The Civil Code provides that a right or a fact that is established by virtue of a statute shall be effective against third parties even without registration provided that the property is undoubtedly subject to the law establishing the right or fact on the basis of another right, fact or data, not including the land register number, which is recorded in the land register. [Cf. Art. 5:166 para. (3) HCC (in effect from the date 1 October 2024)]. For example, the property’s legal status, which under the new rules will be recorded as real property data [Cf. Art. 2, para (1) of Governmental Decree no. 179/2023. (V. 15.)]. rather than as a fact, will have a fundamental impact on whether the right arising from that legal status will be enforceable against third parties (Dálnoki, 2021).

The public authenticity provisions of the E-RER specify the positive presumptions for the existence of registered data and the negative presumptions for the non-existence of deleted data in relation to real estate data (including map boundaries). [Cf. Art 16 paras. (5)–(9) E-RER.] The possibility of rebutting the presumptions is also limited by certain provisions: this may be done *ex officio*, on the basis of the discovery of the authority, or in the procedure for correction of the registration provided for in this Act, or in cancellation and adjustment proceedings. [Cf. Art 16 para. (10) E-RER.] However, it is notable that the new rules of the Civil Code do not include positive and negative presumptions of facts and rights in the context of the principle of public authenticity. [Cf. Art. 5:173. HCC (in effect before the date 1 October 2024)].

In the light of above, it is therefore questionable whether the aforementioned Section 16(1) of the new e-RER includes them, i.e. whether the presumption of correctness can be understood as the presumption of completeness, since in that case, the Art. 16(5) of the new e-RER would be pointless, and parallelly, the new Art. 5:168 HCC would not refer separately to correctness and completeness. If we assume that the amendment has been well reasoned, we can conclude that Kisfaludi already put in his article: from the point of view of the effects of civil law, public authenticity cannot be reduced to a mere system of presumptions, and these rules should therefore be dropped (Kisfaludi, 2003). Kurucz also criticized the inseparability of the presumption of completeness from the presumption of correctness, as well as its formulation as a rebuttable presumption (Kurucz, 2014b).

In my view, the omission of this rule changes the nature of the rules governing the relationship between a *bona fide* acquirer who relies on the contents of the real estate register and the substantive law rightsholder. There is no longer an irrebuttable (either immediately or after a critical time limit has elapsed) presumption in favour of the *bona fide* acquirer against this first rebuttable presumption. Instead of the overriding positive and negative presumptions, the focus is shifting to a lesser extent to the correction procedure, and in particular to the adjustment and cancellation procedure. In addition, we

agree with Gábor Kiss, according to whom the separate selection of material and procedural rules was not consistent, and the scope of correcting the registration is still unclear (Kiss, 2021).

In this multi-factor system, the general rule of protection of the bona fide acquirer for consideration becomes declaratory, by its nature, since in cases of discrepancy from the actual legal status, it will become relevant in the correction of the registration status (including here the registration claim of the non-registered rightsholder) whether the property has in the meantime been acquired in good faith and for consideration by someone who must be granted unconditional legal protection immediately [Cf. the legal status of persons acquiring non-registered rights, Art. 5:169 HCC (in effect from the date 1 October 2024)] or after a certain period of time [Cf. Art. 5:174. HCC (in effect from the date 1 October 2024)]. The exception which is embedded in the new Art. 5:168 para (2) HCC also serves this purpose.

It needs to be added that the rules on public authenticity of the e-RER should again be complemented by the rules on official records of the GAP. Thus, the presumption of good faith of the rightsholder relying on the register is also established by this law.

8. Closing remarks

In summary, the new Act no. C of 2021 on Real Estate Register has achieved the conceptual vision of a coherent and code-like sectoral regulation. However, one of the outcomes that can be assessed as uncertain for this moment, is the proper interpretation and application of the substantive legal principles of the real estate register, in particular the principle of public authenticity, and all the private law rules derived from it. Until now, neither the core of the principle of public authenticity nor the related principles and rules has clearly and successfully been determined yet, especially if one has to take into account the official and public nature of the register and its keeping, on the one hand, and the developing judicial practice, on the other.

However, we are witnesses to the continuous clarification and refinement of the content of public authenticity concerning certain official registers. The enhancement of the public authenticity of the land register in the private law sense has gained momentum with the introduction of the new Civil Code in 2013, and some loose ends may be resolved with the entry into force of the new E-RER.

References

- [1] Anka M. T. (2014). Az ingatlan-nyilvántartási közhitelesség és a megismételt hagyatéki eljárás kapcsolata. *Magyar Jog*, 61 (3), 165–172.
- [2] Czékmann Zs., Cseh-Zelina G., Czibrik E. (2022). A szigetszerűségtől a homogenitásig, avagy az új ingatlan-nyilvántartási rendelkezések jellemzői. *Ingatlanjog*, 2 (2). <https://doi.org/10.55413/564.A2200202.IJO>
- [3] Dálnoki R. (2021). A megújuló ingatlan-nyilvántartási rendszer szabályozási koncepciója és az ahhoz kapcsolódó jogalkotás I. rész. *Ingatlanjog*, 1 (1). <https://www.wolterskluwer.com/hu-hu/know/ingatlanjog-online-szakfolyoirat>.
- [4] Jójárt L. (2010). Az ingatlan-nyilvántartási bejegyzések törvénybe foglalt bizonytalansága. *Közjegyzők Közlönye*, 57 (2), pp. 20–33.
- [5] Juhász, Á., Pusztahelyi, R. (2018). 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*, 13 (24), pp. 61–98.
<https://doi.org/10.21029/JAEL.2018.24.61>
- [6] Kisfaludi A. (2003). Mitől közhiteles a közhiteles nyilvántartás? *Gazdaság és Jog*, 11 (7–8), pp. 3–15.
- [7] Kiss G. (2021). Az ingatlan-nyilvántartás joga a Polgári Törvénykönyvben. *Ingatlanjog*, 1 (1), <https://www.wolterskluwer.com/hu-hu/know/ingatlanjog-online-szakfolyoirat>.
- [8] Kiss G., Mocsár A. (2019). Az ingatlan-nyilvántartás kiigazítása és a közhitelesség. *Közjegyzők Közlönye*, 66 (3), pp. 5–12.
- [9] Kiss G., Puskás P. (2015). Az ingatlan-nyilvántartás közhitelességének dogmatikai alapjaihoz. *Magyar Jog*, 62 (12), pp. 711–717.
- [10] Kurucz, M. (2014a). Az ingatlan-nyilvántartás magánjogi közbizalmi rendszerének közigazgatási jogi átalakítása veszélyeiről: A közbizalom aláásása párhuzamos szabályozással; kritikai gondolatok a közhitelesség tartalmának közigazgatási jogi kiegészítéséhez. *Új Magyar Közigazgatás*, 7 (1), pp. 50–61.
- [11] Kurucz M. (2014b). Ingatlan-nyilvántartás az anyagi, illetve alaki joghatásainak újrakodifikálása után két törvény ellentmondásai fogságában, különös tekintettel a nyilvántartás közhitelességére. In: Benisné Györffy I. (szerk.). *Harmincötödik Jogász Vándorgyűlés*. Lillafüred, 2014. május 8–10. 1. kiadás, Magyar Jogász Egylet, pp. 119–152.
- [12] Leszkoven L. (2021). A gépjárműtörzskönyv biztosítéki célú birtokban tartásáról – gondolatok egy jogegységi határozat margójára. *Gazdaság és Jog*, 29 (4), pp. 1–7.
- [13] Menyhárd A. (2008). A telekkönyv. In: Vékás L. (szerk.). *Szakértői javaslat az új Polgári Törvénykönyv tervezetéhez*. 1. kiadás, Budapest: Complex, pp. 723–734.
- [14] Olajos, I., Juhász, Á. (2018). The relation between the land use register and the real estate registration proceeding, with regard to the justification of the lawful land use – A mező- és erdőgazdasági földekre vonatkozó földhasználati nyilvántartás és az ingatlan-nyilvántartási eljárás viszonya a jogszerű földhasználat igazolása kérdésében. *Journal of Agricultural and Environmental Law*, 13 (24), pp. 164–193. <https://doi.org/10.21029/JAEL.2018.24.164>
- [15] Pusztahelyi R. (2019). Az ingatlan-nyilvántartás. In: Barzó T., Papp T. (szerk.). *Civilisztika II. Dologi jog, Felelősségtan*. 1. kiadás, Budapest: Dialóg Campus, pp. 215–236.
- [16] Varga E. (2020). Az ingatlan-nyilvántartási perek gyakorlatához. *Magyar Jog*, 67 (3), pp. 179–187.
- [17] Vékás L. (2001). Az ingatlan-nyilvántartás közhitelességének megerősítéséért. *Magyar Jog*, 48 (3), pp. 129–136.
- [18] Vékás L. (2007). Hová lettél, hová levél, oh telekkönyv(i elbirtoklás)???. *Magyar Jog*, 54 (10), pp. 590–592.
- [19] von Bar, Ch. (2018). *Gemeineuropäisches Sachenrecht*. Band II, C.H. Beck.