

# **THE DEVELOPMENT OF REGISTRY COOPERATION IN AGRICULTURAL LAW: CHALLENGES AND OPPORTUNITIES**

First of all, thanks to the organizers for let me participate in this mediterranean meeting, and expose the incidence that Registry may have in the field of Agrarian or Agricultural Law, with the goal, I hope to make known different aspects of the institution that may be useful and especially the possibility of knowing through registration advertising or publicity a huge variety of data of great interest for different matters related to Agrarian Law.

My presentation is divided into several sections: first, a brief introduction about the Registry and its constant adaptation to the new demands required by society and the legislator, to then briefly expose the registry function as a means of collaboration and cooperation when controlling, compliance with legal requirements, thus achieving, the aims or objectives pursued by the legislator. The third aspect or issue to be adressed will be the function of the Registry as a source of knowlegde, registration advertising (it is remarkable that publicity is available online any day at any time) –and this publicity- allows us to know quickly and certainty, some circumstances that affect the farm that are transcendent or essential at the time of considering their acquisition or the construction of agricultural buildings, plantations, etc.....

The fourth issue that I will develop is the implantation and incorporation of the graphic bases (graphic information), that facilitate the identification of the farm and

with it, the solution to problems about disputed boundaries or the invasion of other properties or the public domain or the possible limitations derived from the adjoining or proximity to that public domain.

Finally, we will address the protection of the agricultural environment in the face of phenomena such as urban subdivision, and at last we will make a brief reference to other routes for rural development such as sustainable rural tourism and certain uses that have arisen along with traditional or typical ones in rural areas.

Let's start approaching to the Registry: it is usual to define the Registry (I mean land registries) as an institution whose purpose is the protection of the real estate legal traffic, urban or rustic, an institution therefore of preventive legal security referred as a legal register in the Spanish Constitution itself, that in the beginning was configured or appeared as a protective instrument of private property that fought or eliminated the harmful effects caused by hidden encumbrances (easements, usufruct, etc..), but nowadays it has been expanding its scope of action, protecting, both the private domain and the public, and contemplating property as a right that is not unlimited, but delimited by its social function, that imposes an adequate use, and this use must be adapted to its nature; and it's how the Urban Soil and Rehabilitation Law contemplated it.

In matters of Agrarian Law, we can highlight the collaboration and registry cooperation in a series of subjects, collaboration of essential importance for the protection of the environment in general and the rural environment in particular.

Thus, and in order to avoid the existence of inefficient farms, that do not respond to criteria of social and economic efficiency, the legislator seeks the attainment of farms of a suitable surface for agricultural, livestock or forestry operation: we could mention here, the old Agrarian reform and development Law, which regulated the land consolidation, of obligatory constancy in the Registry, or the modernization of agricultural holdings Law, which forbides to fragment lands that arise farms of fewer surface than the minimum size of agricultural plot, that is to say, the extension or surface that is considered essential for the viability of a property agricultural operation, requiring for it to appear in the Registry the surface of the farm and if it is rainfed (dry) or irrigated land, and only admits the division or segregation in the cases admitted by the law itself.

On the other hand, and in order to facilitate access to property by those who cultivate it, the Rural Leases Law, gives tenants a pre-emption right if their owner wants to transmit them, having this right a scope of application greater than in the Urban Leases Law, since they include not only the case of sale, but also added others like the swap or the capital contribution to a enterprise, and to register these transmissions the notifications to the tenants must be accredited.

Similarly, and in order to achieve more efficient farms, it is recognized in the modernization of agricultural holdings Law the right of the owners of adjoining farms that are holders of a priority farm of acquiring the adjoining ones, if their owners sold them and the farm's surface is less than doubled the minimum size of agricultural plot, taking the day of registration of the sale in the Registry as the initial day in the computation of the period to exercise the right (60

days), unless that sale was previously communicated in a reliable manner. All these circumstances are controlled by the registrar at the time of qualifying and registering the sales of rural properties, thus collaborating in the fulfillment of the objectives pursued by these standards.

This tendency towards the efficiency of the farms, demanding that they have a minimum size can be seen in several recent initiatives, for example, in Aragon and Valencia, precisely in this Community it is emphasized that the abandonment of the agricultural environment and the continuous disappearance of agricultural holdings can prevent the obtaining of European aid when the requirements of the European Union are not met or fulfilled. In addition, the small size of many farms entails a higher cost of crops, hence the emphasis for grouping farms, land restructuring and common lands management.

On the other hand, it is equally remarkable the Registry's usefulness in the publicity of certain circumstances that affect the farms, such as, for example, the existence of contaminated soils that we are able to know thanks to the land registries, since the owner of farms where a potentially contaminating activity has been carried out is obliged to record such circumstance in the Registry.

When the soil is declared contaminated, cleaning and recovery work must be carried out, in the manner and with the deadlines and requirements determined by the administration, which will also be recorded in the Registry (these measures may include the stop of building works or other uses of the farm). Once it is decontaminated, and this is verified by the administration, all previous entries will be cancelled.

Recently, the elaboration of an inventory of radioactive contaminated soils is being developed, given that, although it sounds strange, formally there is no land declared as soil contaminated by radiation in Spain as the Nuclear Safety Council recently confirmed. Well, this kind of radioactively polluted soil can also be heard through the land Registry.

In the same vein, we can add the constancy of the environmental qualification of the farm, if this is duly accredited.

We have seen up to this point, on the one hand, the cooperation of the Registry in controlling, compliance with the requirements demanded by the legislator to avoid the creation of deficient agribusiness operation or to ease or improve the access of tenants to the property of rustic estates, as well as their advertising function, making known certain situations of the farm (environmental qualification, if the crop is dry or irrigated, the indivisible nature of the farm if the minimum unit of cultivation or the existence of contaminated soils is not respected) but the Registry is also an important tool for protection, for example, of forest heritage; thus, in the case of forest fires and in order to avoid real estate speculation, it is imperative that these lands continue to be used for forest use for the next 50 years (with certain exceptions permitted by Law); the Administration will inform the Registry of this circumstance, and will send a map of the affected lands, thus ensuring that they cannot be used for other purposes such as the construction of residential developments, as it has been unfortunately happening on previous times.

We must continue our presentation with one of the most important advances for the correct identification or

location of rural properties, the so-called registration of graphic bases, which allows us to place in the ground in an undoubted way a plot or land.

By means of a series of procedures, the georeferenced coordinates of each farm can be incorporated into the Registry; the registrar will check that the adjoining farms or properties are not invaded, nor the public domain (for example, national parks, livestock trails, etc).

This registration of the graphic base allows to place the farm on the map without any doubt about its exact situation, establishing in addition an adequate coordination and the exchange of data with the Cadastre because we both use the geographic information systems. Precisely this matter have been the source of problems related to the control of the Common Agricultural Policy aids, but now we are progressing towards the convergence of the geographic information systems of the CAP and the Cadastre in order to eliminate all discrepancies and mistakes.

This incorporation of the graphic information also allows to solve the doubts about the description, surface and boundaries of the farm, so we don't need adding the economic and time costs involved in any trial, to register the exact surface, the rectification of the description of a farm or its delimitation by means of the demarcation.

The graphic base not only helps the holders of rural properties, but also servers the registrars to verify that the public domain is not affected (for example, sites included in the natura 2000 network or livestock trails); to achieve this objective, the Administration provides the registrars with the so-called "associated information", thus, by means of layers

of graphic information that can be consulted through the Web Map Service, we will check whether the property or which the registration of the graphic base is requested invades or not the public domain, or whether or not it is affected by some limitation because it is adjacent to it (it can happen with the hydraulic public domain, for example).

The coordination between the Registry and the Cadastre, together with the convergence between the geographic informations systems of the Cadastre and PAC both, will facilitate the solution of the problems that so far caused the deficient identification and location of rural properties.

Next, I will refer to one of the biggest problems that arise in rural areas: the urban subdivision, the segregation of rustic farms not to give rise to agrarian, forestry or livestock farms, but to create a multitude of lands destined to build houses or residential real estates, violating the agrarian destiny that characterizes the rural land and causing an inadequate use of natural resources.

This problem (in Valencia is estimated about 400.000 affected houses, and this number is higher in Andalucía), has been addressed in different ways by our legislators: in Extremadura there is an initiative to allow the regularization and even the creation of settlements on rustic land to promote rural development, the green and circular economy; in Valencia the regularization will be allowed provided that certain requirements of environmental and landscape impact are met, while in Andalucía the reform that aimed to limit the possibility of regularizing or legalizing these illegal or allegal constructions is paralyzed.

I will try to briefly explain this problem: those constructions can not access the Registry because they are built on rustic land that has previously been divided or segregated against the Law, being this infringement imprescriptible (for example, in Andalucía) , so that their owners can not mortgage them (the mortgage in Spain always requires registration) seeing how the Administration does not order their expropriation or demolition, creating a growing stock market of alegal or illegal dwellings that need infrastructures, schools, water supply, etc.

The legislators have tried diverse ways or alternatives: an endpoint law, regularizing existing ones and prohibiting future ones, or admitting the legalization of those that met certain requirements (in Andalucía, only if the construction has been completed for more than 6 years and as long as it is not floodplain or under special protection), although it might be convenient for the legislator himself to distinguish or differentiate between those who have built under a license that has been later annulled, those who have had a construction linked to a farm, and those who have built without authorization, license or control, who can not ignore the illegality of their actions.

Finally, I would like to mention some assumptions about the use of rustic properties that go beyond traditional schemes and have access to the Registry: the granting of rights for the installation of windmills, perfectly compatible with a livestock use and that does not involve a division or segregation of land, which allows the owner of these lands to reconcile their agricultural use with the obtaining of economic resources with this use related to this clean or green energy, and the same possibility is allowed in relation to solar energy, perfectly compatible with the traditional



agrarian or livestock use of those lands, or the proliferation of so-called rural tourism, seeking a balance between conservation, maintenance and improvement of the rural environment and the possibility of take advantage of the economic benefits of tourism.

All of these measures are aimed at boosting the economy of the rural world, and if they are applied with the restraint, they can halt some of the biggest problems that the European Union is warning about; the depopulation, the disappearance of many farms and the desertification, corresponding to the registrars the control of the requirements that the legislator imposes to preserve the rural environment and achieve the objectives that the Law pursues, besides serving as a channel to obtain information on each one of the aspects that I have highlighted in this conference.

To conclude, not only the land Registry has a direct relationship with agricultural activity, but also the personal property register with certain forms of guarantee such as the non-displacement pledge (on livestock, farm agricultural implements and farm equipment).

Thank you very much for your patience and attention.