

Conclusions of the summary report on the public authenticity of statutory public registers

Registers are an integral part of today's modern society, as neither state agencies nor the State itself can function without adequate information. A register is a database containing information collected systematically for a specific purpose. A register or certain data in it are presumed by the law to have public authenticity.

The jurisprudence-analysing working group examined 259 cases, including 36 registers which covered almost the entire range of statutory public registers used in adjudication practice. The main findings of the working group are the following:

There is no general uniform definition of the notion of 'public authenticity', given that the Acts declaring the various registers to be authentic provide partly different definitions or no definition of the notion at issue. Filling the same notion with different meanings in the same field of law may cause uncertainty in the application of the law, may lead to divergent interpretations of the law and may, ultimately, result in diverging jurisprudence.

The adjudicative practice is unanimous in that, unless proven otherwise, the data in the statutory public registers are to be regarded as authentic and true, attesting to the existence and change of the data, rights and facts stated therein. The accuracy of the data in a statutory public register is presumed by the law, hence such data are to be accepted as accurate and true. According to the judicial practice, the entering, modification, and deletion of data become effective once they have been entered, modified, or deleted. Judicial practice is also consistent in that in proceedings in which data from a statutory public register is used, the fact-finding obligation of the agency (authority) proceeding in the case does not extend to checking *ex officio* the accuracy of the data obtained from a register. There is also agreement on the point that, if the law stipulates that only certain data in a register are to be regarded as having public authenticity, other data – for example data relating to the persons or real estates registered in the land register – shall not have this quality. According to the adjudicative practice, a party cannot well-foundedly argue that he was not aware of the information recorded in a statutory public register.

The jurisprudence-analysing working group has established that counterproving and legal remedies are, mainly for reasons of regulatory deficiencies, the weak points of statutory public registers, as the relevant laws often merely state that everyone is obliged to accept the data recorded in a statutory public register unless proven otherwise but fail to specify the concrete rules applicable to counterproving. This deficiency causes difficulties in jurisprudence, creates

uncertainties in adjudication, and prevents the enforcement of the requirement of legal uniformity.

The jurisprudence-analysing working group has further established that none of the statutory public registers can be regarded as fully authentic, given that data are recorded in it *ex post facto*, hence there is always a time lag. Moreover, it cannot be ignored that despite the development of information technology, mechanization, and automatic data transmission, data input still involves human intervention, consequently the possibility of error. And the various *ex officio* procedures (compliance with the laws, supervision) offer only *ex-post* control and do not eliminate infringements of the law retroactively – conclusions can only be inferred from them for the future. Moreover, in cases when registration is not compulsory, the data in the register shall be authentic, but the register itself shall not be complete. The jurisprudence-analysing working group has also observed that the recording of a piece of data in a statutory public register is not necessarily preceded by verification (due to automatic decision-making, automatic registration); consequently, the recorded piece of data may be inaccurate even at the time of its recording. The persons concerned are not always notified of the entering, modification, or deletion of certain data, and subsequent counterproving can be difficult, among others, because of the time limits. To use the data recorded in registers other than statutory public registers may give rise to difficulties.

In sum, the jurisprudence-analysing working group has established that the analysis revealed occasional uncertainties and interpretation-related problems in the adjudicative practice, mainly due to the lack of a consistent definition of the notion of ‘public authenticity’, and especially due to deficiencies related to counterproving a piece of data in a statutory public register, and due to the regulation of remedies. It can be stated that statutory public registers have, ‘in general’ and ‘broadly speaking’ public authenticity, but reliance on that authenticity in judicial proceedings is not entirely free of problems.