

The integration of the Cadastre and Public Registers in the Netherlands

1. Introduction

In 1832 when the Dutch Cadastre was established, there was a strict organisational separation between the recording of deeds in public registers, which are also jointly referred to as "land registry", and the Cadastre. The Cadastre recorded bounded plots with the name of a surmised titleholder. The two became increasingly integrated as time passed. This went hand in hand with a gradual change in the legal system into a sort of hybrid of deeds and titles systems. For a better understanding I will start with a description of the system that existed in the beginning.

2. Title systems

Originally we had a system of private conveyancing without registration of deeds or titleholders. In the beginning of the 19th century this system was replaced by a strict deed-based system as existed in France and other countries based on French law. Under such systems, deeds of transfer are recorded in public registers with a "registrar" using a unique document identifier. The "registrar" also records the time when the deed was received. This is important since in the event of conflicting deeds the earliest submission takes precedence. The collection of copied deeds forms the basis for judgements by the courts in the event of disputes. By consulting the deeds, experts can gain an insight into who would be assigned what rights by the court. Consulting those deeds can be simplified by the good recording of references.

Under a title-based system, the task of the "registrar" to whom the deeds are submitted involves more than just keeping the deeds. He records and identifies what titles exist and who the titleholders are. He thereby bases his judgment on the deeds submitted to him. The public can rely on the listing of rights. This system exists in many countries with legal systems based on German law. The registrars were originally judges, and still are in some countries such as Germany and Denmark. There is a move towards appointing legally trained specialists as in the Anglo-Saxon countries, and as I understand recently also in Norway and Sweden.

3. Separate public registers and cadastral register.

In 1832 a deeds system was introduced in the Netherlands under the influence of the French legal system. There were "registrars", who had the text of deeds copied and then kept these copies. They also had to ensure that those copied texts could be retrieved. To that end, they kept index registers. The "registrar" was not a public official. He could keep the fee for registration which was paid to him, but had to pay the staff who kept the index registers and copied deeds out of that money. This led to unusual consequences. The copyists were paid by the copied line, and started stretching out the letters so that they required more lines. The registrars tried to keep costs down by keeping a very modest index register. That is something that still gives us problems now during easement investigations. In order to determine who the titleholder was, one not only had to read the latest deed, but also the deeds which preceded it. After all, if a transfer had been made in the latest deed by a non-owner, the acquirer could thereby never have acquired title. The entire chain of deeds over a 30 year limitation period had to be read. That was usually done by notaries, who concluded on the basis of this who was the titleholder. The "registrar" merely had to ensure that the copied deeds could be retrieved. In addition, a cadastral register was kept, mainly for tax purposes. If a deed was available, the acquirer in the latest deed was recorded as the owner / tax payer. If no deed was available, the apparent possessor was recorded as the titleholder. The link between the Cadastre and public registers was created by two types of data which appeared in both the public registers and the cadastral register. The sections and numbers of copied deeds were recorded in an index register for the public registers by the "registrars", but also recorded in the cadastral register. The designations of cadastral plots had to be cited on the deeds which were copied in the public registers. The boundaries of cadastral plots were physical boundaries, as the neighbours had indicated them to the surveyor on the site. There was no investigation as to whether those were actually the legal boundaries. The courts decided what the legal boundaries were. The parties' intention in signing the agreement was thereby determinant. Objecting to a cadastral boundary was only possible for those who felt that they had to pay too much land tax because their plot was too large. Those who felt that they should have more land had to obtain a court ruling on the legal boundary.

4. Merger

The system had a number of disadvantages. The strong emphasis on taxation meant that the entry in the Cadastre often differed from the legal reality. The registrars who could increase their personal income by keeping modest index registers did not properly record easements. Those rights were recorded summarily or not at all in the index register. If a plot was renumbered, the reference to the easement was not transferred to the new numbers. As a result, all the deeds since the Cadastre was established had to be read in order to answer a question about easements. A number of changes were

made in 1927. The registrar became a public official who was responsible for both the Cadastre and the public registers. A separate easements register was created. The registrar's index to the public registers was abolished. The cadastral register became the index to the public registers. The cadastral register therefore also became the only register referring to the deeds in the public registers. It was the start of an ever closer integration of public registers and cadastral register and enhancement of the reliability of the cadastral register. An important stimulus to this was the rule that the transfer of real estate in the Netherlands must always take place by notarial deed. The notary had to:

- ensure that the transferred plot was adequately described in the deed;
- check the identity of the parties concerned;
- check that the seller was the owner.

This development meant that the cadastral register became ever more complete and more reliable. The social importance thereby also increased. Municipal councils and district water boards started using the cadastral register not just for levying taxes but also as the basis for compulsory purchases and for the imposition of obligations to decontaminate polluted soil, for the issuing of licences etc. In formal legal terms the cadastral register only contains surmises about the actual title position and the courts have to decide who the actual titleholder is. Dutch citizens, knowing that the chance of the courts disagreeing with the cadastral register is very small, rarely let it come to that.

5. Change to the legal system

New statutory provisions meant that these developments were given a statutory basis in the Civil Code in 1992. These provisions related to:

- an increase in the reliability of both public registers and cadastral register;
- the further integration of Cadastre and public registers.

5.1 Greater reliability of public registers

The reliability of public registers was improved by "rules for protecting third parties". It is a characteristic of a strict deeds system that the recording of a defective deed has no legal consequence. Afterwards the court can decide that the underlying contract was invalid and that no title was transferred. The New Civil Code added to this that this rule would not apply if third parties had, in the meanwhile, relied on the deed. If a seller's right is defective, true owner keeps the property (= deeds system). If a seller's right is defective and the buyer has sold to a third person who is in good faith, the third person keeps the property (can rely on public registers). True owner has contractual right against seller). In practice, with an exception for prescription, the information in the landregistry is decisive. So if B coerces owner A to transfer to B, B does not become the owner. If B transfers to C, who was not aware of A's ownership, C is protected. It was also stipulated that the Dutch registrar cannot adopt the passive approach associated with a deeds system. If the notary submits a deed which the registrar does not believe can lead to the legal consequence apparently intended, the registrar will inform the parties concerned in writing. The notary is warned before such a letter is sent. In practice, the notary will want to prevent his clients from receiving a warning letter, and will in practice retract his deed and make the modification sought by the registrar.

5.2 Greater reliability of cadastral information

Because a titleholder is derived from the deed, greater reliability of deeds in public registers means also greater reliability of the cadastral information. Furthermore the reliability of the Cadastre was improved because of the possibility of objection and appeal against entries in the cadastral register. Interested parties are sent a copy of every change to the register. They can submit an objection to this within 6 weeks, and if the registrar does not accept the objection, they can appeal to the courts and then submit a higher appeal to the Supreme Court. If no objection is submitted, it can be assumed that the parties agree with the change to the register. Another reason was the increasing importance of cadastral boundaries. In the Netherlands the path of a legal boundary is determined by the intentions of the parties as recorded in the deed. By having the intended new boundary made the cadastral boundary in advance, one can ensure that the cadastral boundary and the legal boundary coincide. However, this surveying in advance is not compulsory. As in Anglo-Saxon countries, so-called "general boundaries" can be included in the deed. Such a deed contains an outline description of the path of the boundary. In the event of a boundary dispute the courts will rule on the basis of reasonableness and fairness. The surveyor asks the parties to indicate the boundary on the site. An accurate boundary is then defined retrospectively. This can be done by collecting information on site and by submitting a drawing. The surveyor then attempts to define a cadastral boundary which coincides with the legal boundary. However, there is no guarantee that this can be done. In theory the parties could indicate a different boundary than was originally agreed. In practice this rarely happens. If a boundary dispute arises later, the court will - in the absence of proof to the contrary - assume that the indicated boundary is the boundary which was originally agreed. The party that disputes this will have to provide proof to the contrary. This is difficult and in practice the boundary defined by the Cadastre is therefore often decisive in boundary disputes. Also new under the Civil Code was the possibility of renewing cadastral

information. If the Cadastre surmises that cadastral information no longer corresponds to the legal reality, a so-called renewal process can be initiated. In practice this involves cases of a discrepancy between the physical and cadastral boundary. After 20 years the physical boundary then becomes the legal boundary through prescription. An investigation into such differences can ultimately result in the recording in the public registers of a "deed of renewal". The cadastral register is amended immediately on the basis of this deed. The deed of renewal becomes incontestable after 10 years. This is an other example of the integration of Cadastre and public registers.

6. Electronic legal transactions

A new stimulus to the integration of public registers and the cadastral register came from increasing automation. This was initially implemented separately for public registers and for the Cadastre. The cadastral register has been automated since 1986. New information is entered online daily in a register which can be consulted over the Internet. The public registers have been recorded on microfilm for the period from their creation in 1832 to 1999. Digital copies of these are made on request and sent electronically to those requesting information. Since 1999 the deeds in the public registers have been scanned as soon as they are received and can be consulted over the Internet at any time. Since September 1995 there has been the option of electronic submission. The documents to be recorded must bear an electronic signature. The electronic signatory thereby accepts liability for discrepancies between the original, which is often on paper, and the electronic copy. It was easy to introduce such a system since it only required one electronic signature of a member of a restricted group of officials. In the Netherlands that is the case because the original deed signed by the parties is still recorded on paper and kept by the notary. Signing by one person is appealing because the creation and verification of electronic signatures requires certain formalities. All this explains why some 80% of all documents are currently submitted electronically. This gave grounds for starting work on the next step: the submission of deeds which can be included in the register automatically. We have reached agreement with the notaries organisation about the use of "style sheets". These effectively divide the deeds into two parts. The first part is standardised and contains parts which can be incorporated in the register automatically. The second part is free text, but is preceded by a clause which excludes the possibility that this second part contains information which must be incorporated in the cadastral register. The registrar has stipulated in advance in his automated system that a deed with this style sheet meets all the requirements for registration. It can therefore be recorded in the public registers after being signed by a notary. In addition, the software stipulates how the variable data added to the style sheet should be recorded in the register. In fact the integration of public registers and Cadastre made it easy to implement this combined software for public registers and the cadastral register. This would have been much harder without organisational integration and assignment of responsibility to one person, the registrar.

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