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THE REAL ESTATE REGISTRATION IN EXERCISING THE DUTY OF SUPERVISION OF TAX COLLECTION

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INTRODUCTION

Discussions about housing and social rights intensify with human expansion. The vast legal system provides for different situations of protection over real estate titling. In view of this theme, the current land regularization legislation, Law number: 13,465 of July 11, 2017, object of Conversion Bill number: 12/2017, of Provisional Measure number: 759, of December 21, 2016.

The development of the work is justified because it deals with fundamental rights for a dignified life for human beings, the right to housing, provided for in Article 6 of the Constitution of the Federative Republic of Brazil/1988. The main objective of the work is to study the role of the real estate registrar in supervising tax collection, in the face of legal permits and exemptions. In a secondary way, positions in housing law in the European Union and in matters of real estate registration inspection in Chile are analyzed.

The point that is questioned from the approach is the effectiveness of isolated measures, considering the repercussions of the lack of coordinated negotiations between legislative and governmental entities in guaranteeing fundamental rights.

The determination of concepts and subjects is descriptive in nature, whose information will be collected mainly from current and repealed legislation, explanatory memorandum, legal documents of Direct Unconstitutionality Actions and scientific articles. The deductive approach method is used in the theoretical constructions to be carried out during the work. As a procedural method, research is developed by current legislation, jurisprudential and doctrinal research.

PUBLIC HOUSING POLICY WITH LAW NUMBER 13,465/2017

The Prof. Dr. Carlos Alexandre de Azevedo Campos, in his doctoral thesis "From unconstitutionality by omission to the 'Unconstitutional State of Affairs'", when dealing with public policies states:

> (...) there is a situation of deficiency in public policies, of distance between prediction and normative implementation, in a way that implies the incomplete implementation of what is foreseen in the Constitution. Here the notion of "structural failures" as causes of rights violations arises: despite the evident lack of coordination of measures, both legislators and administrators passively watch the situation of rights transgressions, revealing themselves to be incapable or prevented from transforming the situation. This thesis argues that both the restrictive view of the hypotheses of configuration of unconstitutional legislative omission, and this sealed and incommunicable way of understanding unconstitutional omission are unrealistic when an "unconstitutional state of affairs" is present. The issues raised above can be better understood through the opposition between cases of non-compliance with express constitutional orders to legislate and hypotheses of deficient protection of fundamental rights where express and specific orders are absent[1]

The author maintains that the lack of effectiveness of fundamental rights may result not only from legislative inertia, but also from the lack of coordination between public bodies and entities. These are structural flaws, and it is necessary to verify whether the legislator and government bodies have established the means to implement the rights in the best possible way. The author argues that there will be unconstitutional omissions when the lack of public policies results in deficient protection of fundamental rights, which can

1. CAMPOS, Carlos Alexandre de Azevedo. **From unconstitutionality by omission to the "unconstitutional state of affairs"**. 2015. 249 f. Thesis (Doctorate) - Faculty of Law Course, Center for Social Sciences, ``Universidade Estadual do Rio de Janeiro``, 2015. Available at: https://www.bdtd.uerj.br:8443/handle/1/9297.Accessed on: 05 Dec. 2022. p. 14

result in the so-called "unconstitutional state of affairs".[2].

Law number: 13,465, of July 11, 2017, edited by conversion of Provisional Measure number: 759, of December 22, 2016, brought several land regularization institutes into the legal system. The explanatory memorandum of the aforementioned Provisional Measure provides justification for the right to housing in article 6th, of the Constitution of the Federative Republic of Brazil/1988, and the common competence of the matter in article 23, item IX, CRFB/1988.

According to the Interministerial Explanatory Memorandum number: 00020/2016 MCidades MP CCPR, of December 21, 2016, for Provisional Measure number: 759/2016, when the property is not registered with the Property Registry, it is outside the economy, with rights that guarantee citizenship to its occupants being mitigated. For the authors of the aforementioned Explanatory Memorandum, making land regularization viable boosts the Brazilian economy, in addition to ensuring the social function of cities, security and dignity of housing, it is worth highlighting:

> Despite the lack of official data, the Ministry of Cities alone has received, in the last four years, requests for resources for the land regularization of more than four million real estate units throughout Brazil. Many of these occupations originate from legitimate hiring. It happens that their occupants, at most, only have unregistered deeds or even private documents that are not suitable for entry into real estate records. These are localities, neighborhoods and, eventually, entire municipalities in an informal condition; which disrupts cities, with a wide range of negative consequences for the well-being of the population and local development[3].

Although the aforementioned legislation is justified by the need to organize cities, Law number: 13,465/2017 is the target of three Direct Unconstitutional Actions, numbers5,787, 5,771It is5,883, all currently completed to the rapporteur. ADI number: 5,883 was proposed on 01/23/2018 by the Institute of Architects of Brazil and calls for the unconstitutionality of articles 9 to 82 of Law 13,465/2017 to be declared.

According to the Institute of Architects of Brazil (BRASIL, 2018, p. 07), the land legitimization of Law 13,465 violates the constitutional protection of property provided for in: article 5th, XXII (property right); article 5th, XXIII (social function of property); article 5th, XIV (expropriation through compensation); article 5th, LIV (due legal process); article 23, I (common competence for the conservation of public assets); article 170, II and III (private property and the social function of property as principles of the economic order); article 182, §4º, III (expropriation sanction through compensation); and article 183, §3º (prohibition of acquisition of public properties through adverse possession)[4].

The departure from urban planning rules can be seen in article 11,§1st, of Law number: 13,465/2017, by providing that "Municipalities may waive requirements relating to the percentage and dimensions of areas intended for public use or the size of regularized lots, as well as other urban and building parameters", and in article 70, of Law number: 13,465/2017, which provides that the

2. Idem 2, p. 229.

3. PADILHA, Eliseu; OLIVEIRA, Dyogo Henrique de; ARAÚJO, Bruno Cavalcanti de.**Interministerial Explanatory Memorandum number: 00020/2016.**MCidades MP CCPR, of December 21, 2016. Provisional Measure 759/2016. Available in:http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/Exm/Exm-MP%20759-16.pdf. Accessed on: 02 Dec. 2022. p. 10.

4. BRAZIL. Federal Court of Justice. **Declaratory Action of Unconstitutionality n. 5883**Initial Petition, National Board of the Institute of Architects of Brazil. Rapporteur: Rapporteur: MIN. TOFFOLI DAYS. Brasilia, DF 2018. 5883, 00649665320181000000. Brasilia, 23 Jan. 2018. Available at:https://portal.stf.jus.br/processos/detalhe.asp?incidente=5342200. Accessed on: 04 Dec. 2022.

provisions of Law number: 6,766/79, urban land subdivision law, do not apply to Urban Land Regularization (Reurb). Flexibility for infrastructure works is also included in article 36, § 3, of Law number: 13,465/2017, by which "the works to implement essential infrastructure, community equipment and housing improvements, as well as their maintenance, can be carried out before, during or after the completion of the Reurb".

Although the explanatory memorandum of MP number: 759/2016, converted into Law number: 13,465/2017, has as justification to order the cities, ADI number: 5,883 defines the aforementioned law as an attack on conservation units and urban ordering, as it allows mass privatization of public lands and the creation of "paper cities". According to the Institute of Architects of Brazil (BRAZIL, 2018, p. 27), Law number: 13,465/2017 violates the very teleological essence of urban policy, by directing its concerns and actions solely towards property titling, derogating the construction of cities as an element of citizenship and the realization of other urban, social and environmental rights.

The concepts of housing rights and the need for land regularization are demands faced in other countries. Learning also occurs by observing other experiences. The next topic is intended to explore issues on the topic on the European continent and in the country of Chile.

FOREIGN LEGISLATION ON HOUSING LAW AND LAND REGULARIZATION

Territorial advance, population expansion, state transformations and new democratic needs give rise to several conflicts over real estate ownership. Although the legislation of many countries recognizes the right to property, the social right to housing and its consequences, as a rule, the definition of concepts, the limits of uses and incidences are still open and undefined, which leads to the resolution and qualification of the matter to the jurisdictional power.

Considering the need for a better delimitation of the rights involved, the European Union's urban policy instrument is initially studied, including: Leipzig Charters, 2030 Agenda for Sustainable Development, Amsterdam Pact and Urban Agenda. Following the search for the jurisprudence of the Court of Justice of the European Union on the subject of housing law, a judgment of May 22, 2022 was found, which recognizes the situation of VAT reduction on the elevator repair service, by applying the concept of housing. The delimitation by the study with the European Union occurs due to the power of influence that its decisions have. No judgments on precarious infrastructure or institutes of irregular subdivisions were found in search of European Union jurisprudence.

With a factual reality closer to the Brazilian one, the decision of the Chilean Supreme Court is addressed, which privileges the behavior of the Real Estate Registrar in curbing irregular subdivisions, and affirms the requirement for infrastructure works prior to the registration of sales in subdivisions. The delimitation by studying the legal system in Chile occurs due to the similarities the institutes of civil law and registry and notarial law have with the Brazilian system.

URBAN POLICY INSTRUMENTS IN THE EUROPEAN UNION

On November 30, 2020, the Ministers responsible for urban development in the Member States of the European Union adopted the New Leipzig Charter. Like the previous Leipzig Charter of 2007, the instrument aims at the integrated, sustainable and resilient development of European cities.

It is observed that the Charter promotes

integrated urban policies for sustainable urban development, and works to strengthen national and regional community regulations. As practical measures, they establish the following:

> We, the Ministers, agree to promote - within our responsibilities and capabilities and with regard to regulations budgetary - the continuation and establishment of national or regional urban policies in order to:
>
> --**allow exchange** of experiences and knowledge between cities and other stakeholders at regional, national, transnational and EU levels to strengthen capacity to implement integrated and sustainable urban development strategies;
>
> --**act as platforms** of dialogue between urban partners and other partners to ensure multi-level governance through different means, including multi-level partnerships;
>
> --**support the development or redeployment of national or regional funding programs** to significant urban challenges and facilitate co-financing by European funds as important instruments to enable integrated and sustainable urban development strategies and projects.
>
> --**provide incentives for innovation** and experimental projects that address current and future challenges in the field of sustainable urban development[5].

Encouragement is observed for European institutions, Member States and partner States, regional and local authorities, so that community, regional and national regulations are developed in line with the 2030 Agenda for Sustainable Development, especially the Goal of Sustainable Development 11, dedicated to making cities inclusive, safe, resilient and sustainable.

With a similar purpose is the "Amsterdam Pact", agreed by European Union Ministers responsible for urban affairs on May 30, 2016, in work for the Urban Agenda for the EU. The action plan consists of promoting improved legislation, facilitate access to financing and reinforce knowledge sharing on issues relevant to cities.

The priority themes of the Urban Agenda were listed: inclusion of migrants and refugees; air quality; urban poverty; housing; circular economy; jobs and skills in the local economy; climate adaptation (including green infrastructure); energy transition; sustainable land use and nature-based solutions; urban mobility; digital transition; innovative and responsible public procurement[6].

The Amsterdam Pact, regarding housing, "it *aims to promote access to good quality and affordable accommodation. Emphasis will be placed on affordable public housing, state aid regulation and general housing policy*"[7].

The New Leipzig Charter highlights the positive impacts of the Amsterdam Pact:

> The Urban Agenda for the EU, launched in 2016 with the Amsterdam Pact, initiated a fundamental process of multi-level governance to improve the position of cities in legislation and policy-making. We recognize the work of Multi-Level Partnerships and the goals of Better Regulation, Better Financing and Better Knowledge. Its work has contributed to strengthening the EU's regulatory framework in the field of urban issues and improving the development of EU policies with an urban dimension. This initiative includes the improvement and adjustment of financing instruments, as well as strengthening the common knowledge base on urban issues in Europe. The Urban

5. EUROPEAN UNION. **The New Leipzig Charter**: The transformative power of cities for the common good, Draft of 16 November 2020. Available at:https://www.forumdascidades.pt/sites/default/files/nova_carta_de_leipzig_draft_16_nov_2020.pdf. Accessed on: 25 Nov. 2022. p. 15.

6. EUROPEAN UNION. **Urban Agenda for the EU:** Amsterdam Pact, May 30, 2016. Available at:https://ec.europa.eu/futurium/en/system/files/ged/pact-of-amsterdam_pt.pdf. Accessed on: 25 Nov. 2022. p. 9.

7. The same 7, p. 27.

> Agenda for the EU is an important support for European institutions, Member States, regional and local authorities and functional areas of all sizes to implement the strategic principles of the Leipzig Charter[8].

Stimulation of incentive programs for the organization of the urban environment is observed, whether with consultative support or financial instruments. The programs provided by European institutions play an important role for urban policy in European cities. Among them is the European Territorial Cooperation Program URBACT, which promotes the integration of cities so that together they can develop solutions to common challenges.

Although the instruments signed by the Ministers responsible for urban issues in the Member States of the European Union, both the New Leipzig Charter and the Amsterdam Pact, are announced as informal and do not consist of new legislation, they have positive impacts on community integration for development. of urban policies.

JUDGMENT OF THE COURT OF JUSTICE EUROPEAN UNION FOR THE SCOPE OF THE CONCEPT OF HOUSING

Directive number: 2006/112 of the Council of the European Union of November 28, 2006 establishes the common system of value added tax (VAT), which consists of applying to goods and services a general consumption tax proportional to the price of the goods and services, regardless of the number of operations for production or distribution. For this, VAT is calculated on the price of the good or service with deduction of the tax that has already been levied.

The principle of the common VAT system is similar to the system of non-cumulative taxes, existing in the Brazilian legal system, and applied, for example, to the Tax on Trade in Goods and Services (ICMS).

Directive number: 2022/542 of the Council of the European Union of April 5, 2022 amended Directives number: 2006/112/EC and (EU) 2020/285 with regard to value added tax rates.

Directive number: 2006/112/EC contains in its Annex III a list of deliveries of goods and services to which reduced rates may apply at the discretion of the Member States, in the manner established by Article 98, Directive number: 2006/112/CE. Among the items subject to reduction or exemption are food products, water supply, pharmaceutical products. Item 10 of the aforementioned Annex III deals with housing, in its original text it established "*10) Delivery, construction, renovation and modification of housing provided under social policies*"[9].

With the changes to Directive number: 2022/542/CE, now states:

> 10) Delivery and construction of housing under social policies, as defined by Member States; renovation and modification, including demolition and reconstruction, and repair of dwellings and private residences; rental of residential properties;
>
> 10-A) Construction and renovation of public buildings and others used for activities of public interest;
>
> 10-B) Window washing and cleaning of private houses;
>
> 10-C) Delivery and installation of solar panels in private residences, houses and in public buildings and in others used for activities of public interest, or in

8. The same 6, p. 15.

9. COUNCIL OF THE EUROPEAN UNION. **Directive 2006/112**of the Council of 28 November 2006 on the common system of value added tax. Available inhttps://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX%3A02006L0112-20220406#M28-24. Accessed on: 28 Nov. 2022.

> their proximity[10](COUNCIL OF THE EUROPEAN UNION, 2022)

Note the detail and expansion of housing events eligible by Member States for VAT reduction or exemption. The matter is a reason for questions, mainly involving individuals and the public administration, in researching the jurisprudence of judgments by the Court of Justice of the European Union, several judgments involving the matter are found.

Of note is the judgment handed down on May 5, 2022 in case C-218/21 by the Court of Justice of the European Union. This is a dispute between DSR — ``*Montagem e Manutenção de Ascensores e Escadas Rolantes S.A*``. and the Portuguese Government, involving a challenge to the rate of value added tax (VAT) applicable to elevator repair and maintenance services provided by this company, for interpretation of Annex IV, point 2, of Directive number: 2006/112/EC of the Council. The following statement was made:

> JUDGMENT OF THE COURT OF JUSTICE (Sixth Chamber), 5 May 2022 (*)
>
> «Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive2006/112/EC — Rate — Temporary provisions relating to certain labor-intensive services — Annex IV, point 2 — Repair and renovation in private residences — Application of a reduced rate of VAT to repair and maintenance services for elevators properties allocated to housing"[11].

It appears that DSR – Montagem e Manutenção de Lifts and Escalators, SA is a company that manufactures elevators, freight elevators and moving walkways, and provides elevator repair and maintenance services. In 2007, when VAT was launched, the company applied a reduced rate to elevator renovation and repair services provided. An inspection carried out by the competent administration of the Portuguese government in 2011 revealed that the DSR had incorrectly applied the reduced VAT rate to these services.

The additional assessments carried out by the tax inspection were the subject of a judicial challenge by the DSR at the Administrative and Fiscal Court of Porto (Portugal), which, by judgment of October 16, 2017, judged the said challenge to be valid. The court considered that elevators are an integral part of the buildings in which they are installed and therefore the reduced rate of VAT must be applied to repair services for such elevators.[12].

The Portuguese Tax Administration defends the non-application of the reduction and claims that this is the interpretation in accordance with European Union law, invoking the jurisprudence of the Court of Justice, the Judgment of 8 May 2003, Commission/France (C-384/01, EU:C:2003:264), that Member States have the possibility of limiting the application of a reduced rate of VAT to concrete and specific aspects of a supply of goods or a provision of services. They support this possibility based on the principle according to which exemptions or derogations must be interpreted restrictively[13].

The Portuguese Government further claims that the expression "private residence", on which the VAT reduction applies, in the form of Annex IV, point 2, of the Directive VAT, do not form part of the concept of "building"

10. COUNCIL OF THE EUROPEAN UNION. **Directive 2022/542**Council of 5 April 2022 amending Directives 2006/112/EC and (EU) 2020/285 with regard to value added tax rates. Available inhttps://eur-lex.europa.eu/legal-content/PT/TXT/?uri=celex%3A32022L0542Accessed on: 28 Nov. 2022.

11. COURT OF JUSTICE OF THE EUROPEAN UNION. **Judgment of January 27, 2022**. Case C-234/20. ECLI:EU:C2022:56. Sătini-S. Available in:https://curia.europa.eu/juris/document/document.jsf?text=propriedade%2Bpol%25C3%25ADtica%2Bp%25C3%25BAblica&docid=252825&pageIndex=0&doclang=pt&mode=lst&dir=&occ=first&part=1&cid=13443211#ctx1. Accessed on: 25 Nov. 2022.

12. The same - 12.

13. The same - 12.

or "housing building". Consider that "private residence" is limited to the "autonomous unit" existing in the building. For this reason, it removes the incidence of VAT reduction from common areas, where elevators are located.

And this argument did not succeed before the Court of Justice of the European Union, which states that in a property allocated to housing consisting of several apartments, shared facilities are, in general, important for the use of individual apartments, being in some cases indispensable. The decision concludes that these shared facilities are covered by the expression "private residences", with Annex IV, point 2, of directive VAT[14].

The decision also states that the provisions of a directive they must be applied with indisputable binding force and with the required specificity, precision and clarity. It points out that Member States cannot invoke simple administrative practices, at the sole discretion of the administration and devoid of adequate publicity regarding the matter. In this sense, it cites the Judgment of 4 June 2009, SALIX Grundstücks-Vermietungsgesellschaft, C-102/08, EU:C:2009:345, paragraphs 42 and 43.

The ruling aims to understand the repair and renovation services of elevators for properties used in the housing, with the VAT reduction in Annex IV, point 2, of D being applicable directive VAT. The Court of Justice of the European Union is identified as a sensitive body attentive to the new social and environmental order, in particular, with the development of the Urban Agenda for the European Union. The influence of this new scenario is seen, mainly, when the Court is called upon to define concepts and delimit incidences.

JUDGMENT OF THE SUPREME COURT OF CHILE ON REAL ESTATE REGISTRATION MATTERS IN COMPARISON WITH THE SUBJECT OF BRAZILIAN LAW

In Chile, there is also privilege for the community and the housing complex. Infrastructure works gain prominence in urban centers to meet the needs of the population, being an important instrument for implementing various public policies. There is greater rigor in the execution of works and infrastructure in Chilean legislation, compared to Brazilian legislation. In Chile, there is a requirement that the developer complete the infrastructure works before registering any sale of housing units. This rule is set out in article 134, of Decree 458, of April 13, 1976, Chilean General Urban Planning and Construction Law:

> Chilean Decree number: 458/1976, Article 134.To use a piece of land, the owner of the land must carry out, at his own expense, the paving of streets and passages, plantings and decorations, sanitary and energy installations, along with water supply and drainage works, sewage and rainwater, and defense works and land services (our translation)[15].

Said provision is applicable in practice as judged by the Chilean Supreme Court, of November 22, 2021, in case number: 76134-2021, in which Mr. José Miguel Molina Cea was protesting against the Temuco Property Registrar who denied registration of the purchase and sale of property in an irregular subdivision. The refusal to register was based on the requirement of article 134 of the Chilean General Urban Planning and Construction Law. The judgment rejected the propositions raised by the applicant, Mr. José

14. The same - 12.

15. "*To urbanize a piece of land, the owner of the land must build, on its coast, the pavement of the streets and streets, the plantings and ornamental works, the sanitary and energy installations, with their water supply works and drains of waste water and water floods, and defense and land service works*". CHILE. **Decree Number: 458, of April 13, 1976**. Approves the Chilean General Urban Planning and Construction Law. Available in: HTTPs. Accessed on: 02 Dec. 2022.

Miguel Molina Cea, on the basis that Chilean legislation requires urbanization (article 134, Chilean General Urbanism and Construction Law) for the alienation of properties in subdivisions, and the Property Registrar is prohibited from registering legal acts that violate this rule[16].

The Chilean Real Estate Registrar has an important role in not admitting registration in subdivision areas where infrastructure works have not been completed. This practice discourages behaviors that cause problems with urban mobility, basic sanitation and precarious public services.

In Brazil, there is greater flexibility in the execution of infrastructure works in subdivisions and land subdivisions. Law number: 6,766/1979, article 18, item V, initially provides for the need to present a term of verification of works on traffic routes, demarcation of lots and drainage works. Subsequently, the same provision allows this document to be replaced by a schedule that can be executed in up to eight (08) years.

The Brazilian legislator changed the provision twice (section V, article 18, Law number: 6,766/1979) and successively extended the deadline for completing infrastructure works. The original text established a maximum duration of two (02) years for the completion of such works, Law number: 9,785/1999 extended this period to four (04) years, finally, the current wording in force, given by Law 14,118/2021, establishes a maximum period of four years, extendable for another four years, totaling eight (08) years.

The flexibility is even greater when it comes to Urban Land Regularization, from Law number: 13,465/2017, nor does it establish a deadline for the infrastructure works to be carried out. The article 38,3rd, of Law number: 13,465/2017, is limited to establishing that "The works to implement essential infrastructure, community equipment and housing improvements, as well as their maintenance, can be carried out before, during or after the completion of the Reurb". The institute covers urban planning measures aimed at incorporating informal urban centers into urban territorial planning, with territorial ordering being one of the principles of Land Regularization, according to article 9th, of Law number: 13,465/2017.

In Chile, Law number: 21,450, on Social Integration in Urban Planning, Land Management and Housing Emergency Plan, which changes provisions of Law number: 16,391, of December 14, 1965, which created the Ministry of Housing and Urban Planning. Among the innovations is chapter VIII, the rehabilitation of neighborhoods or housing complexes of highly segregated or deteriorated social housing, whose articles87 and 90 prescribe:

> Law number: 21.450/2022, Article 87.- The Ministry of Housing and Urban Planning, faced with the need to carry out a **full renovation of sectors affected by a high housing deficit** quantitative or qualitative and strong urban segregation, you can make use of the special provisions contained in the following articles, when promoting processes of **regeneration of neighborhoods or social housing complexes.**
>
> (...)
>
> Article 90.- As part of the preparation or execution of the Regeneration Master Plan, the Regional Housing and Urbanization Services may request the respective Municipal Works Directorate to jointly evaluate, in a single file, some or all of the authorizations or permits necessary to configure the new urban form contemplated

16. CHILE. Supreme Court. **Terminative Decision Number: 76134-2021**. José Miguel Molina Cea against Property Registrar of Temuco. Rapporteur: Ministers Blanco H., Mario Carroza, Jorge Zepeda A. Santiago, Chile, November 22, 2021. Judiciary of Chile. Santiago/Chile, 22 November. 2021. Available at:https://juris.pjud.cl/busqueda/pagina_detalle_sentencia?k=R1ZtaXNBNEV0akhrN0lmZWhKQm1rQT09. Accessed on: 02 Dec. 2022.

in the aforementioned Master Plan. Thus, it may be decided, in a single act, to exit the real estate co-ownership regime of existing condominiums, the merger and/or subdivision of properties, the granting of the corresponding licenses for the **execution of construction and/or urbanization and any other administrative act necessary to facilitate the renewal of the sector.**

In accordance with the above, the registrations, endorsements and plan files that appear on the exit from the real estate co-ownership regime, the merger and/or subdivision of properties or any other act prior to the granting of the respective construction permit(s).

Therefore, for the granting of construction and/or urbanization licenses for the works provided for in the Master Plan, proof that the respective registrations, endorsements and plan files have been made with the Property Registry, the Federal Revenue Service or another competent body in the matter, without prejudice to the fact that the beginning of the works will require the entry of the aforementioned requests before the aforementioned entities, and that the definitive reception of these works will be conditioned on the accreditation that the aforementioned procedure has been carried out (CHILE, 2022, translation and our emphasis)[17].

The Chilean Institute for the Regeneration of Neighborhoods and Housing Complexes has similarities with Urban Land Regularization in Brazil. Both recognize the great precariousness of public services in informal urban centers, highlight the lack of infrastructure, seek territorial ordering and aim to guarantee basic rights to the population.

However, Brazilian legislation expressly allows infrastructure works to be carried out in the future, without establishing any deadline for such works. The Chilean regulations do not apply to this exemption, on the contrary, they authorize the granting of licenses for the aforementioned works to be initiated without prior Real Estate Registration, to be subsequently forwarded.

Although registration principles and property regulations are similar in these countries, the role of the Real Estate Registrar is significantly different. In Chile, although there are numerous housing problems, the legislator rigidly addresses the necessary infrastructure works. In Brazil, constant legal permissiveness, even in dissonance with fundamental rights, perpetuates the problems of urbanization.

17. "W*CHAPTER VIII From the regeneration of highly segregated or deteriorated neighborhoods or housing complexes of social housing. Article 87.- 'The Ministry of Housing and Urbanism, having met the need to carry out an integral renovation of sectors affected by a high quantitative or qualitative housing deficit and strong urban segregation, may resort to the special provisions contained in the following articles, when boost processes of regeneration of neighborhoods or social housing complexes. (…) Article 90.- 'As part of the elaboration or execution of the Master Regenerative Plan, the Regional Housing and Urbanization Services may request the management of municipal works for the joint evaluation, on an expedient basis, of some or all authorizations or permissions necessary to configure the new urban form that includes the aforementioned Plan Maestro. Consequently, it will be possible to resolve, in a single act, the dismantling of the real estate co-ownership regime of existing condominiums, the merger and/or subdivision of properties, the authorization of it or the corresponding permits for the execution of construction works and/or of urbanization and any other administrative act necessary to make the renewal of the sector viable. In line with the previous one, the inscriptions, notes and archives of plans to ensure the consistency of the decommissioning of the real estate co-ownership regime, of the merger and/or subdivision of properties or of any other prior act to grant the corresponding building permits or urbanization, it can be carried out, in a successive manner and in the order that corresponds, once all requests submitted to the municipal works department are approved. Therefore, for the granting of building and urbanization permissions for works that include the Plan Maestro, it will not be necessary to believe that the corresponding registrations, annotations and plan files have been carried out before the Real Estate Conservator, Internal Tax Service or another body with competences in this matter, without prejudice to the fact that the beginning of the works will require the entry of the aforementioned requests before other bodies, and that the definitive reception of such works will be conditioned on the accreditation of the said processes have been carried out*'". CHILE. **Law number: 21,450, of May 12, 2022**. Approves Law of Social Integration in Urban Planning, Land Management and Housing Emergency Plan. Available in: HTTPs. Accessed on: 02 Dec. 2022.

REAL ESTATE REGISTRATION AND TAX INSPECTION

Real Estate Registrars have the duty to monitor the collection of taxes levied on the acts they carry out, as determined in section XI of article 30, of Law number: 8,935/1994, which regulates notary and registration services. The absence of such supervision may make professionals responsible for collecting the taxes due, as set out in article 134, item VI, of Law number: 5,173/1966, which establishes the National Tax Code. This responsibility occurs in a subsidiary manner, being required if the taxpayer is unable to fulfill the main obligation.

However, proof of tax regularity is sometimes waived. As occurs when presenting a certificate of fiscal regularity during construction registration. There is an understanding that the debt certificate is unenforceable, based on the position of the STF, in ADI n. 394-1, in which he concludes that the State cannot use the requirement for negative debt certificates as an oblique way to collect tax credits, under penalty of configuring political sanctions. In the opposite direction, the unconstitutionality declared in ADI 394-1 would not reach article 47 of Law 8,212/1991.

The legislator in the project that originated Law number: 13,382/2022, of June 27, 2022, subject to conversion of Provisional Measure number: 1,085/2021, provided for the revocation of items I and II of article 47, of Law 8,212/1991. The mentioned revocation was subject to a presidential veto, for the following reasons:

> (...) despite the good intentions of the legislator, the legislative proposal goes against the public interest by dispensing with proof of fiscal regularity for the exercise of certain activities by taxpayers, which reduces the guarantees attributed to tax credit, under the terms of the article 205 of Law number: 5,172, of October 25, 1966 - National Tax Code.
>
> It must be noted that the control of taxpayers' fiscal regularity, on the one hand, indirectly imposes demands on the debtor by imposing reservations on carrying out various transactions and, on the other hand, seeks to prevent the carrying out of ineffective transactions between the debtor and a third party that compromise the assets subject to satisfaction of the treasury credit.
>
> Therefore, the legislative proposal is out of step with the necessary protection of the third party in good faith, which would result in the third party being unaware of the existence of any debt owed by the debtor to the Public Treasury, subjecting those who, in good faith, to a loss. were induced to enter into a presumably fraudulent transaction, in accordance with the provisions of article 185 of Law number: 5,172, of 1966 - National Tax Code[18].

Even with the presidential veto on the repeal that would affect article 47, of Law 8,212/1991, the matter is still divergent. The General Inspectorate of Justice of Santa Catarina issued an understanding on August 11, 2022, after the publication of Law number: 13,382/2022, in process number: 0025727-53.2022.8.24.0710, in which it maintains the position on the non-requirement of proof of tax regularity, as long as it is published in the property registration[19].

As for Land Regularization, the legislator not only dispensed with proof of fiscal

18. BRAZIL. Explanation of reasons for Provisional Measure number: 759, of December 22, 2016.**Land regularization.** Available in:http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/Exm/Exm-MP%20759-16.pdf. Accessed on: 01 Dec. 2022.

19. JUDICIAL POWER OF THE STATE OF SANTA CATARINA. Office of the General Inspector of the Extrajudicial Forum. Request for Revision of Article 677-A nº 0025727-53.2022.8.24.0710. Applicant: interim of the Capivari de Baixo Property Registry Office. Rapporteur: Judge Rubens Schulz. Judge- Rafael Maas dos Anjos. Florianópolis, SC, August 12, 2022.**Electronic Justice Gazette Number: 3837**. August 15, 2022, number: 3837, p. 4-5. Available in:http://busca.tjsc.jus.br/dje-consulta/rest/diario/caderno?edicao=3837&cdCaderno=4. Accessed on: 05 Dec. 2022.

regularity, but also imposed a ban on the duty to supervise Real Estate Registrars, as per § 2 of article 13, of Law number: 13,465/2017:

> Article 13. Reurb comprises two types:
>
> I - Reurb of Social Interest (Reurb-S) - land regularization applicable to informal urban centers predominantly occupied by low-income populations, as declared in an act of the municipal Executive Branch; It is
>
> II - Reurb of Specific Interest (Reurb-E) - land regularization applicable to informal urban centers occupied by an unskilled population in the hypothesis referred to in section I of this article.
>
> § 1 The following registration acts related to Reurb-S will be exempt from costs and fees: (...)
>
> § 2 The acts referred to in this article do not depend on proof of payment of taxes or tax penalties, **the property registry officer is prohibited from demanding proof.**
>
> § 3 The provisions of §§ 1 and 2 of this article also apply to Reurb-S whose purpose is housing complexes or condominiums of social interest built by the public authorities, directly or through indirect public administration, which are already implemented on December 22, 2016.

Said provision is reinforced in article 44, of Law number: 13,465/2017, when dealing with the registration phase of Reurb, in its § 3, adding the need for regularity in the registration of rural properties with Incra, in § 4:

> Law number: 13,465/2017. Article 44. Once the CRF is received, the real estate registry office's official will be responsible for prenoting it, notating it, initiating the registration procedure and, within fifteen days, issuing the respective note of requirement or carrying out the acts leading to registration.
>
> (…)
>
> § 3º **The registration of the CRF does not require proof of payment of taxes or tax penalties for which those entitled are responsible.**
>
> § 4 The approved CRF registration does not depend on prior approval of the cancellation of the rural property registration at the National Institute of Colonization and Agrarian Reform (Incra).

The duty of inspection of real estate registrars in the collection of taxes in Reurb was eliminated by the aforementioned legal provisions. In other matters there is no consensus on the duty of supervision of real estate registrars. The divergence of understanding is clear, for example, regarding the presentation of the certificate of regularity of work issued for real estate construction. The matter was subject to extrajudicial standardization by the CNJ, due to the unnecessary need for the certificate, this understanding would be consolidated on the occasion of Law number: 13,382/2022, however, was the subject of a presidential veto. Although the position of the Executive Branch was announced, with the veto, the applicability of the matter is not peaceful.

The lack of coordination between the different powers, bodies and entities, subjects that apply legislation and public policies, increases conflicts. The scenario portrays structural flaws, which in the opportunity to be resolved are, on the contrary, startled and intensified.

FINAL CONSIDERATIONS

The deficiency and disorder in the prediction and application of public policies points to severe tax consequences. The lack of coordination between legislative and governmental entities occurs due to potential structural flaws that give rise to conflicts. Tax-generating facts are ignored without due legal procedure. The real estate registrar, with the

duty and responsibility for the collection of taxes incurred in acts carried out under his authority, sometimes encounters difficulties in carrying out this task.

Other countries are also going through discussions involving property, housing and registration inspection rights. The trend is towards the collective characterization of these rights, with social and environmental interpretations, through the exercise of the social function of property in different population groups.

In Brazil, Law number: 13,465/2017 brought several changes to the legal system, many of them questioned via Direct Actions of Unconstitutionality numbers5,787, 5,771It is5,883. The facilitators and simplifiers of Law number: 13,465/2017 imposes non-compliance with obligations regularly and previously provided for in the legal system, such as: infrastructure works, tax regularity and inspection duties.

The imposition of isolated measures, dissonant with the legal system, generates insecurity, which may even result in losses greater than the benefit granted, if the due rules of the reflex matter are applied. Effective and coordinated protection to guarantee fundamental rights demands joint actions between the different sectors.

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