

THE INVOLVEMENT OF PUBLIC INSTITUTIONS IN REAL ESTATE FRAUD IN THE MUNICIPALITY OF BRASOV. A CASE STUDY

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Abstract: *The legal equality of citizens is one of the core principles in any state. As such it can only be achieved when all members of society are placed at an equal distance from the state. Real estate is one of the fields which is supposed to be controlled and regulated by public institutions. The current case study portrays the manner in which these very institutions are involved in generating real estate fraud, dancing to the tunes of some people, helping them gain properties, by stripping other citizens of their rights and eroding one of the state's core principles: equality.*

Key words: *public institutions, corruption, retrocession, rule of law.*

1. Introduction

Illicit retrocession in Romania is a subject which has had an echo in international media. The prestigious French publication *Le Monde diplomatique*, for instance, has published an article in February 2016 titled “*Bucharest's housing crisis*” (Beurq, 2016) written by a correspondent. The article states that “*in contrast to other Central-European countries, which have chosen financial compensation, Romania has opted for retrocession [as means of reverting property nationalization]*” while further elaborating: “*Poland and Hungary chose to compensate the previous owners, setting a threshold for the compensation which favored the tenants.*” The investigation goes on to show how these retrocessions lead to real estate fraud: “*Ruthless businessmen are using loopholes in the law concerning retrocession*” while quoting an evicted tenant: “*It's not the previous owners who are the real problem, it's the real estate mafia. The mayor's office is issuing fake ownership certificates and the judges and attorneys are working with the swindlers.*” This situation has led to numerous social problems. The Parisian publication mentions the thousands of evicted tenants living in Bucharest, and the conditions are no different in the rest of the country.

The current case study deals with a group of buildings in the historical city center of Brasov, a large city in Transylvania, which, unlike the other Romanian provinces had implemented a system of cadastral maps and land registries starting with the 19th century.

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2. Land Registries and Cadastral Numbers

In the mid-19th century, when Brasov was part of the Habsburg Empire, the city was parceled for the first time and cadastral numbers were assigned. The cadastral maps of the city were made in two different historical periods; the oldest ones, which only have historical value, are stored in the National Archives – County Service Brasov. The newer, utilitarian map (usable in courts of law) is now held by the Office for Land Registration Brasov. The parcels are grouped in land registries, which contain the cadastral numbers of individual parcels, the street numbers, the owners' names through history and various operations (i.e. sales-purchases). It is important to stress that, regardless of the changes occurring in time (which are notified in the land registry), the cadastral numbers have remained unchanged. The immutability of the cadastral numbers is an essential condition for the correct succession of the registered owners.

3. The Object of Analysis

We are discussing five buildings from the historical center of Brasov, standing on Castelului Street between numbers 42 to 50. These buildings have had their cadastral numbers altered and the corresponding land registries are either missing, damaged or have been altered. These illegal alterations have led to 1/3 of the building on 46 Castelului being returned to contested owners. According to the ownership files found in Land Registries No. 26 and 29, and the Landowner Index from 1913, 46 Castelului had a different owner from the one it was returned to (The building was originally included in Land Registry No. 29 under cadastral numbers 4490 and 4891).



Fig. 1. *Castelului Street*

4. The beginning

The fraudulent activities commence after the passing of Law No. 112 on November 25th 1995 concerning *"The regulation of the judicial situation of nationalized residential buildings"*. Between 1997 and 1998, multiple tenants at 46 Castelului Street managed to purchase the apartments where they lived. These acquisitions were fraudulent; according to the press of the time the measurements were done at night, in one case undue influence was exercised, one buyer had bribed civil servants...

The purchase and sale agreements for these acquisitions speak for themselves: in one case the purchase and sale agreement doesn't include land registry and cadastral numbers (RIAL Brasov – Sale and purchase agreement no. 23451 / January 20th 1998). S.C. RIAL S.R.L Brasov (A limited liability company whose objective is the administration, sale and maintenance of the real estate fund of the municipality) had in fact concluded a purchase and sale agreement with no legal value. The claimant had initially received the correct Land Registry number (No. 29) and cadastral numbers (4890) (RIAL Brasov – Sale and purchase agreement no. 23852 / July 14th 1998), only for them to be later invalidated, a fact relayed to the press by Eng. Mihai Comsa, Head of the Registrations' Office at RIAL Brasov (Ciuculescu, 2004).

5. The Building Permit which Leads to a Change in Street Numbers on Castelului Street

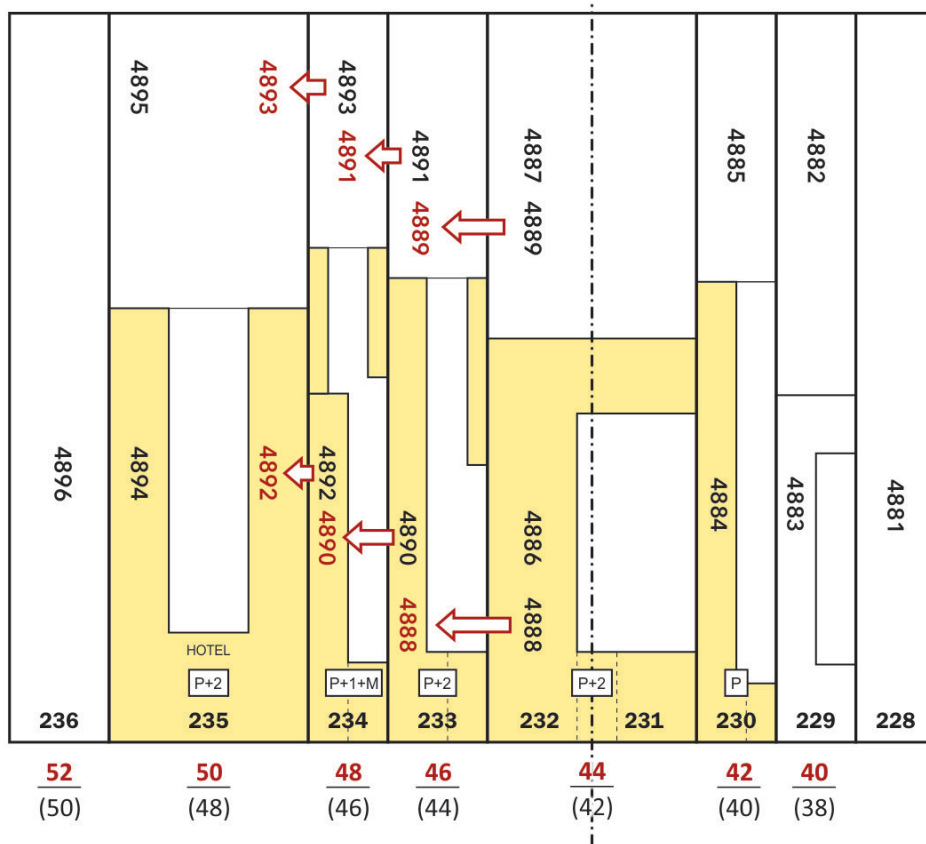
In 1997 the Brasov Mayor's Office released a document relating to the extension of the attic floor of a building on Castelului Street, i.e. 48 Castelului Street. The file contained the Technical Project (1997), the Building Permit no. 8106 from 1958 (City of Stalin People's Town Council – Building Permit No. 8106 / March 21st 1958) and The Urbanism Certificate for the final giving into use no. 79/1999 (Mayor's Office Brasov – Urbanism Certificate No. 79 / March 5th 1999). What is remarkable here is that the building permit used in the documentation had been released almost 40 years earlier (at a time when Brasov was still the 'City of Stalin') and it had expired a year later, in 1959.

The attic extension on 48 Castelului Street was supposedly built in 1997, while being authorized in 1958 and receiving an Urban Planning Certificate in 1999 (Mayor's Office Brasov – Urban Planning Certificate No. 79 / March 5th 1999)!

In 1997, the Brasov Mayor's Office also issued a certificate to RIAL (RIAL Brasov Office for Registration, certificate No. 22259 / 641 / November 23rd 2004.) in which it states that 48 Castelului Street (current street numbers) is 44 Castelului Street (old numbers). This certificate enabled a significant shift to occur in Land Registry No. 29: 48 Castelului Street replaces 46 Castelului Street and wrongly inherits its cadastral numbers: 4890-4891 (Mayor's Office Brasov, certificate no. 22427 / April 5th 2005).

How can an institution approve an *"attic floor extension"* based on a Building Permit which had expired over 35 years earlier and what purpose does the Urban Planning Certificate no. 79/1999 serve? What can be stated with certainty, following the documents, is that the Urban Planning Certificate no. 79/1999, which contains wrong information concerning the cadastral numbers, was used to register a building in the wrong land registry at the Office for Land Registration Brasov (Land Registry No. 29,

Ownership Index B, No. 26). This led to the absurdity that the same 4890-4891 cadastral numbers belonged to two buildings. Even the registrar working for the Office of Land Registration “cannot comprehend” how Land Registry No. 29 begins with the building from 46 Castelului Street (old 44) (Land Registry No 29 Estate Index A), which has two upper floors facing the street and – according to the registration of Urban Planning Certificate 79/1999 – ends with the neighboring building which has one upper floor and an attic floor facing the street! (Land Registry No. 29, Estate Index – dismantling of 48 Castelului Street)



Burggasse - Var utca - Castelului Street

STREET NUMBERS ON CASTELULUI STREET THROUGHOUT DIFFERENT ERAS

Habsburg Empire	235	234	233	231	232	230
Austro-Hungarian Empire Romania (old numbers)	48	46	44	42		40
Contemporary	50	48	46	44		42

Fig. 2. Sketch displaying cadastral changes on Castelului Street

Brasov Mayor's Office also issues contradictory certificates concerning the street numbers on Castelului Street. In 1997 it states that 48 Castelului Street (new numbers) is 44 Castelului Street (old numbers), a matter which led to alterations in Land Registry 29. In 2005, the Brasov Mayor's Office issues two certificates which claim that 46 Castelului Street (new numbers) is 44 Castelului Street (old numbers) (Mayor's Office Brasov, certificate no .22427 / April 5th 2005, Brasov Mayor's Office, Certificate No. 22641 / April 5th 2005). Two further certificates from 2015 state the same fact (Brasov Mayor's Office, Certificate S/102.678/December 9th/X-E, Brasov Mayor's Office, Certificate S/108.496/December 29th 2015/X-E).

In 2016, following the request of a concerned party, the Brasov Mayor's Office states officially that it doesn't have the document which led to the changes in street numbers (Brasov Mayor's Office, Certificate AR/no.70016/September 6th 2016/VI-B.6). These changes nevertheless resulted in important alterations of Land Registry no. 29.

In 2017, the Mayor's Office is asked for a copy of the certificate it had released in 1997, which stated that 48 Castelului Street (new) is 44 Castelului Street (old) (Brasov Mayor's Office, Application No. 64177 / August 17th 2017). It replied that this certificate was issued by and for public institutions and can only be shown to parties concerned or if requested in Court (Brasov Mayor's Office, Certificate No. 64177 from August 17th 2017 sent on August 23rd 2017). This refusal serves to conceal the signatories of the certificate which resulted in street numbers "*getting confused*".

The Mayor's Office is again notified in 2017, by a former plaintiff (Brasov Mayor's Office, Petition No. 32877/April 25th 2017) about the discrepancy between the official notice it had issued and a cadastral overlap carried out by the qualified land surveyor Radu Precup which lead to a different conclusion concerning the cadastral numbers of the buildings we have mentioned (Cadastral overlap, Precup Radu Daniel). According to the evidence, the Mayor's Office admits the anomaly, describing it as "*the complexity of the existing situation*" (Brasov Mayor's Office – AR/no.32887/April 25th 2017/VI-B.6) and asks the citizen who mentioned the discrepancy to detail his account. The Mayor's Office also summons him to "*present the commission with all the documents that you have concerning the addressed building*" (Brasov Mayor's Office – AR/no.32887/April 25th 2017/VI-B.6). This request, which bears the signature of Brasov's vice-mayor, is sent by certified mail on May 16th 2017, and the concerned party is summoned to appear before a special commission the very next day, May 17th 2017 at 9 a.m. The recipient only receives the letter 5 days later (a fact which is confirmed by the post stamp), on May 22nd 2017 (Romanian Post, envelope stamps May 16th 2017 and May 22nd 2017). As our citizen contacts the Romanian Post, the latter replies that it would have been impossible for the summons to reach him before next day's appointment (Romanian Post, Certificate no. 302/3654/June 20th 2017). To sum it up, the concerned party was summoned to a meeting (with all relating documents!) in such a way as not to be able to take part.

The workings of any institution are supposed to be based on trust and good faith. Where is the Mayor's Office good faith in this case?

Hence, 46 Castelului Street continues to have a confusing cadastral standing, thanks to the certificate emitted by the Mayor's Office and the absurd situation it has created in the Land Registry no. 29. (The cadastral numbers 4890-4891 which had remained

unchanged since the creation of the cadaster, describe two different buildings: first 46 Castelului Street with two upper floors facing the street, and later 48th Castelului Street, with one upper floor and an additional attic floor facing the street)

In order to consolidate this new 'definition' the Land Registry No. 29, the original registry for 48 Castelului Street held by the Land Registry Office Brasov was misappropriated in its entirety (or, as the Office for Land Registration Brasov would phrase it in 2016: "*missing inventory* Record from August 26th 2016. CF 9039). Furthermore, another neighboring land registry (the registry for 50 Castelului Street) has glued pages (Extract from Land Registry No. 30) – making it impossible to identify the corresponding cadastral numbers.

Didn't the registrar of the Office for Land Registry notice the alterations and the misappropriation of the registries it was supposed to be guarding?

6. Cadastral Maps and Cadastral Surveying

As we move from the irregularities concerning land registries which include the buildings on 42-50 Castelului Street (two of them were misappropriated, one of them was partially damaged and two were modified) to the cadastral maps which are held by the National Archives – the County Service of Brasov we notice further alterations.

To begin with, the cadastral numbers on this map don't match the corresponding cadastral numbers on the map which is held by the Office for Land Registration Brasov. Moreover, the cadastral numbers found on the map held by the National Archives don't match the corresponding cadastral numbers from the index of "Landowners, land registry and cadastral numbers" (*Die Hauseigentumer, Hausnummern und topographische Zahlen der Hauser in Kronstadt* (1913), held by the National Archives – County Service Brasov), even though this index is held by the same institution. To be more precise: whereas the Hungarian map has two cadastral numbers for street number 44, the German map only has one. Subsequent cadastral numbers are shifted to the next parcels, until they reach no. 50, where the opposite situation occurs: the Hungarian Map displays one cadastral number, the German Map two (Table 1).

Table 1

Current street numbers	Hungarian Map (utilitarian) and Index from 1913	German Map (historical)
No. 42	4884	4884
No. 44	4886 and 4888	4886
No. 46	4890	4888
No. 48	4892	4890
No. 50	4894	4892 and 4894

There are two old cadastral maps of Brasov, the first one, dating from the mid-19th century, only has historical value (the information it contains has no juridical value) and is held by the National Archives – County Service of Brasov. As shown above, this map contains altered information.

The more recent map, which contains unaltered information, dates from the end of 19th century, is usable in courts of law (it is a utilitarian map), and is held by the Office for Land Registration Brasov. Speaking before the press in a public hearing on May 18th 2017, the institution's Registrar Director was asked which cadastral map is factual (i.e. the one from the Office for Land Registration Brasov or the one from the National Archives - County Service Brasov). He has stated unequivocally that the one from the Land Registry Office is correct. The same question was addressed to the Office for Land Registration Brasov on May 16th 2017 in writing (Office for Land Registration Brasov, Application No. 6911 / May 16th 2017), yet this time, the Office's management staff provided an unclear and evasive answer (Office for Land Registration Brasov, Certificate No. 6911 / June 19th 2017).

7. The Significance of Facts

- Altering fundamental documents creates confusion. Other institutions can profit from the confusion in order to reinforce the untruthful changes made.
- Multiple actors support each other, generating more contradictions and confusion.
- As the number of actors involved increases, so does their power.
- As the number of actors increases, the will to correct initial changes diminishes, and the actors' complicity in maintaining the new status-quo increases.

8. The Cadastral Surveys

The alterations presented above, both on the maps and in the land registry had judicial consequences. At 46 Castelului Street, two owners of a flat asked the Court for the right to be registered. During the subsequent trial, Brasov District Court requested a cadastral survey of 46 Castelului Street, in order to identify the corresponding cadastral numbers.

The designated cadastral land surveyor, Fazakas Grigore decided to make a collage using two maps (Expert Report No. 1119 / August 8th 2006 written by Cadastral Surveyor Fazekas Grigore: Cadastral map extracts no. 67 and 77 Brasov, scale 1:720): he took the header from the utilitarian map (held by the Office for Land Registration Brasov) and the body from the old (historical) map (held by the National Archive – County Service Brasov) which has modified cadastral numbers. This was necessary, since only extracts from the utilitarian map have legal value. The result was that the six cadastral numbers held in Land Registry No. 26 (4884, 4885, 4886, 4887, 4888, 4889) which, up until then had represented two buildings (correctly) had now expanded to include three (see Fig.2)

Among the documents the surveyor used to justify his appraisal, one finds the certificate no. 7646/2006 signed by engineer Comsa Mihai, Director of Registration at RIAL Brasov (RIAL Brasov, Office for Registration, Certificate no. 7646 / 617 / October 21st 206 signed by Eng. Mihai Comsa). In this address, Comsa Mihai makes identical claims: Land Registry No. 26 would comprise 3 buildings (no. 42, 44 and 46), and not the two (42 and 44) it had included historically.

Among the documents handed over to the Court by the cadastral land surveyor one can also find a copy of Land Registry no. 26 of Brasov, which contains two buildings: no. 42 and 44. In one and the same survey we find two documents which totally contradict themselves: the copy of the Land Registry and the certificate of the Director of Registration RIAL Brasov - Mihai Comsa.

The erroneous survey and the 'collage-map' were presented to the District Court in the civil lawsuit no. 705/197/2005 (5694/2005). Ruling No. 9768 was pronounced on November 9th 2007 (Brasov District Court. Civil trial No. 705/197/2005 (5694/2005). Decision No. 9768 / November 9th 2007).

In order to 'smooth out' the surveyor's contradictory assessments, the District Court decides to combine the expert's 'collage-map' with the address signed by the Eng. Mihai Comsa, the Director of Registration at RIAL Brasov, arguing that the Land Registry No. 26 contains two buildings (which is true) but those buildings are 42 and 46 Castelului Street, completely omitting the existence of 44 Castelului Street.

The decision describes 44 Castelului Street with all its components under a different number: 42 (which is an adjacent building). Since the Land Registry states that the building comprises '14 flats', and the actual building at 42 Castelului Street is a small medieval house, the judge rules that it comprises '14 rooms' instead. All of which lead to various changes made to various documents and various erroneous certificates being validated by a court of law.

Since none of the concerned parties had any interest in appealing the ruling (no. 9768 from November 9th 2007), preferring to be included in the Land Registry, regardless of the correctness of their cadastral numbers, the decision was not appealed.

The file containing the decision could not be accessed (and still cannot be accessed) by those directly affected (some have even lost their property). The District Court of Brasov quotes art. 93 from the Internal Regulations of the Judiciary (Brasov District Court. Certificate No. 1778 and 1755/23/A / July 27th 2017), thereby blocking access to the file and classifying a case whose ruling was handed out in an open session.

There is a second approach which could potentially clarify the judicial situation of the building: cadastral rectification. Nevertheless, the stamp duty value requested (Brasov District Court. The certificate issued on January 11th 2017 in the Civil trial No. 31276/197/ 2016) is prohibitive compared to the median income.

Citizens who feel they have been wronged by the Courts' decision are thus faced with two significant obstacles: the case is classified thanks to the Internal Regulations of the institutions and the cost of cadastral rectification is prohibitively steep. In this context it's not hard to understand how civil servants working for the National Archives Brasov, the Mayor's Office Brasov, SC. RIAL SRL and the Office for Land Registration Brasov act with such impunity.

Decision no. 9768 from November 9th 2007 is classified, and hence inaccessible to the inhabitants who were not parties in the lawsuit but who are directly affected by the changes it dictates. Nevertheless, this ruling is used 7 years later (in 2014) by Brasov Tribunal in the evaluation of the apartments at 46 Castelului Street (Brasov Tribunal Office for Juridical Expertise. Reply to objections No. 592616/October 10th 2014 by cadastral surveyor Eng. Frunza Manuela in the Civil File No. 26190/197/2009). The

expert tasked with the appraisal simply reiterates the decisions written out by the aforementioned ruling (decision No. 9768 from November 9th 2007) without requesting a new cadastral survey.

Two years later, in 2016, Brasov Tribunal rejects a written request to carry out a new cadastral survey for 46 Castelului Street. It also refuses to address the Office for Land Registration Brasov in order to clarify the suspicious cadastral situation on 46 Castelului Street. The Court argues that *“the building has been identified in a scientific, objective manner on site”* (Brasov Tribunal. Civil Decision No. 379/Ap/February 2nd 2016, p. 19) without taking into account any of the numerous inconsistencies submitted to Court (for example, Tax Roll No. 59 emitted by the Mayor’s Office (Mayor’s Office Brasov DJAPL. Certificate no. S/102.678.09122015/X-), which states that 46 Castelului Street had a different owner when it was nationalized in 1950).

9. The Owners

The correct cadastral numbers for 42 and 44 Castelului Street are 4884, 4885, 4886, 4887, 4888 and 4889. The corresponding land registry is Land Registry No. 26, a fact which is confirmed by the city’s historical Landowners’ Index (edited in 1913). According to these two sources Fritz Jekelius is the owner of the two houses (and two houses only) on 42 and 44 Castelului Street.

46 Castelului Street had multiple owners over the years, first Kummer Franz and then, after a series of sales-purchases, Weinhold Henrich. Kummer Franz is mentioned in the Landowners’ Index (1913) Weinhold is mentioned in the Landowners’ Index (1927). In both cases, 46 Castelului Street is registered with cadastral numbers 4890-4891 in Land Registry No. 29.

The house was nationalized in 1950, according to Tax Roll No. 59 from the Mayor’s Office Archive (Mayor’s Office Brasov DJAPL. Certificate no. S/102.678.09122015/X-E), and the owner of 46 Castelului Street (old number 44) is the same Weinhold Henrich who had paid taxes on the property in 1948 and 1949 before the building was nationalized. Weinhold Henrich was deported along with his wife, daughter and two nephews from the same address in 1952 (MAI Archive, Bucharest. Extract conforming to MAI Decision no. 239/1R from May 3rd 1952).

A ruling handed out in November 2000 by the District Court of Brasov (Brasov District Court. Civil trial No. 17988 / 2000 – Decision No. 17108 / November 17th 2000) rules that Constantin Dora is the rightful owner of one third of the buildings found in Land Registry No. 26 with the cadastral numbers 4884, 4885, 4886, 4887, 4888 and 4889, without mentioning the street numbers of the corresponding buildings (!). The document which attempts to justify this claim is a copy (the original was never shown) of a forged purchase and sale agreement, according to which Consantin Dora’s mother, Roza Folker had bought 1/3 of the buildings mentioned above from the former owner, Jekelius Walter, in 1961.

In January 2001, Dora’s mother, Roza Folker who at that time had been deceased for some time (!) was registered in Land Registry No. 26 as owner of the buildings concerned (cadastral numbers 4884, 4885, 4886, 4887, 4888, 4889) (Brasov District

Court Office for Land Registration. Extract from Land Registry No. 26. issue No. 4482 / February 19th 2001).

The Brasov Police Department proves that between September 9th 1960 and December 10th 1963, Roza Folker had been imprisoned for embezzlement, forgery and negligence at work (Address 711786/December 16th 2005) (Brasov Police Department. Certificate No. 711786/December 12th 2005).

Accordingly, Roza Folker would have acquired (under the Communist regime which had nationalized private property) one third of three buildings (14 apartments, according to the press, according to Tirca, 2005) while in prison in 1961, hoping for the fall of the Communist regime which would enable her to actually own them. This outlandish scenario was considered plausible by the District Court, giving her the right to register (Brasov District Court. Civil trial No. 17988 / 2000 – Decision No. 17108 / November 17th 2000). In order to register the newly acquired 14 apartments, Constantin Dora had to pay a stamp duty (Brasov District Court. Civil trial No. 17988/2000. Decision issued on November 10th 2000) worth 30 de lei (current currency), the price of 15 pretzels.

The copy of a forged purchase and sale agreement was handed to the Brasov District Court on November 10th 2000. One week later (proof of extraordinary expediency; similar lawsuits lasting for months and even years) on November 17th 2000 the lawsuit had concluded that Constantin Dora was the rightful owner and would be able to register her part of the three buildings in Land Registry No. 26. (File no. 17988/2000, Brasov District Court).

RIAL, (the agency which represents the Romanian State as previous owner of the buildings) did not take part in the lawsuit (Stoica, 2006), arguing that it had not been summoned. RIAL consequently failed to inform the tenants who had no defense in Court.

No measures were taken against Constantin Dora when the copy of a forged purchase and sale agreement she had used was debunked. The Public Prosecutor's Office argues (December 28th 2005 file no. 5893/P/2004) she did not commit the forgery, instead, it is said it the forgery is the work of an 'unknown author' who cannot be prosecuted since the crime "*has already been prescribed*" (The Public Prosecutor's Office of the Brasov District Court. Civil trial no. 5893/P/2004 with a decision from December 28th 2005).

The Public Prosecutor's Office received the forensics report (Forensic Science Laboratory Cluj. Forensics Report no. 120/May 24th 2005) regarding this document on May 26th 2005. The limitation period for criminal matters is 5 years and the original decision dated from November 17th 2000 yet, although the Public Prosecutor's Office received the forensics report almost six months before the limitation period would end (November 17th 2005), instead of acting, it decided to wait, stating on December 28th 2005 that it no longer had any means for indictment.

No measures were taken against Dora's lawyer, who had used the forgery in Court. The only discernible consequence of the whole affair was the promotion of the judge who had ignored the inconsistencies described above. Despite the acrimony of the local and national media (Gazeta de Transilvania (2005), Monitorul Expres (2006), Gandul (2006), Curentul (2006)), he was promoted to a position within Brasov Tribunal (Brasov Tribunal. Judges Index (Art. 79 lit. d) Hot. CSM no. 387/2005).

Although the purchase and sale agreement had been deemed a forgery, since Constantin Dora had not been convicted, the lawsuit concerning the three buildings on Castelului Street would continue (!). The Court summoned Jekelius Walter (the signatory of the fake document, dating from 1961) and asked for a death certificate, were he to have died (Wilk, 2007). Although his birth certificate was handed to the Court, (Walter Jekelius was born in 1887, he would have been 120 years old at the time of the trial) it was deemed insufficient. The court again requested his death certificate, an almost impossible task, considering he had died in Germany.

One of the parties involved in the lawsuit contacted the German Community of Brasov, and succeeded in identifying the date and place of Walter Hans Jekelius' death. He had died in 1989, in Germany aged 102 (according to a letter written by Christoph Hanak). Jekelius's heirs came in court in April 2008 (RIAL Brasov Judicial Department. Report no. 76/January 29th 2016 for the Mayor's Office Judicial Directorate) and replaced Constantin Dora in the lawsuit.

The heirs nevertheless reiterated Constantin Dora's claims, arguing that the Jekelius family had historically owned three buildings (No. 42, 44, 46) instead of two (No. 42 and 44), and they proceeded in demanding 1/3 of each of these buildings (that is, the part which they had inherited directly). As we have mentioned before, 46 Castelului Street had never belonged to the Jekelius family.

In 2012 the Jekelius family won the right to register 1/3 of the three buildings in Land Registry No. 26, using the wrong cadastral numbers.

Certificate no. 7646/617/October 21st 2006 (issued by the Registration Office of S.C. RIAL SRL Brasov to the Juridical Department of the same institution and signed by ing. Mihai Comşa – Director of Registration Office states that according to Fazakas Grigore's cadastral survey (in which the building from no. 46 Castelului Street was identified as overlapping with the cadastral numbers 4888, 4889) and RIAL's own investigation, "*cadastral numbers 4885, 4886, 4887, 4888, 4889 represent three separate buildings: 42 - 44 - 46*". As we have mentioned before, these cadastral numbers actually represent two buildings (No. 42 and 44), yet, by using a 'collage-map' containing false information, they were expanded as to include three (No. 42, 44, 46).

Brasov District Court validates all of these flawed arguments, which are based on altered documents, through ruling No. 9768 from November 9th 2007, a decision which is final and irreversible.

The new cadastral surveyor who is assigned to the case in 2014 (Brasov Tribunal Office for Juridical Expertise. Reply at objections No. 592616/October 10th 2014, cadastral surveyor Eng. Frunza Manuela in the Civil File No. 26190/197/2009) bases her evaluation on the ruling handed out by the District Court (No. 9768 from November 11th 2007, which had validated unfounded evidence) without carrying out another cadastral survey (!) of the building on no. 46 Castelului Street. It concludes that the German heirs are the rightful owners of 1/3 of 46 Castelului Street. i.e. 548.242 lei (3 apartments and the payment of a difference). Both the Brasov Tribunal and the Brasov Court of Appeal reject the requests to carry out a new cadastral survey.

The Courts' repeated refusal to approve the carrying out of a renewed cadastral survey (bearing in mind the obvious discrepancies presented) makes it impossible to expose the unfounded changes which had been made to the Land Registry.

The Brasov Court of Appeal bases its decision on a ten year old cadastral survey which had led to the District Court's ruling. The critical piece of evidence for this first and only cadastral survey made being a 'collage map' (header from the correct map, body from a modified map).

The Brasov Court of Appeal states in decision 413/R/October 19th 2016 that *"Arguments concerning the building registered in the Land Registry no. 29 Brasov under cadastral numbers 4890 and 4891 representing a building with one upper floor facing the street and two upper floors facing the courtyard lack probative value since they are not part of the current lawsuit"* (Brasov Court of Appeal. Decision no. 413/R/October 19th 2016, p. 8).

The Brasov Court of Appeal argues that the cadastral numbers 4890 and 4891 belong to 48 Castelului Street (registered in Land Registry No. 29), which was not part of the litigation. Yet the evidence presented strongly contests this very distribution of cadastral numbers. A simple comparison of Land Registry No. 29 and the ruling handed out by the Court of Appeal invalidates the court's statement: the Land Registry comprises a building with two upper floors facing the street and not one, as the Court of Appeal argues in its ruling (!).

This misrepresentation of reality was probably made in order to justify the errors and frauds dating from 1999, when 48 Castelului Street was included in Land Registry No. 29 under cadastral numbers 4890-4891 using the Certificate for Urbanism we have discussed in the first part (the building permit used dated from 1958 and had expired in 1959, yet the five civil servants who signed the document didn't notice this absurdity).

In 2015 one of the parties involved submits the tax roll concerning 46 Castelului Street (Mayor's Office Brasov DJAPL. Certificate no. S/102.678.09122015/X-E). The tax roll states that Weinhold Heinrich and not Walter Jekelius was the landowner when the building was nationalized in 1950, a fact which questions the standing of Mr. Jekelius in the lawsuit concerning 46 Castelului Street. Brasov Tribunal was asked to *"allow the verification of the land registries since it concerns the legal standing of the plaintiffs (i.e. the Jekelius family) given the fact that their predecessors were not the owners of the building."* (Brasov Tribunal. Civil trial No. 26190/197/2009, December 16th 2015 session).

The Court was also asked for *"a copy of the original land registry"* from the Office of Land Registration Brasov. Following these two requests, the Court of Appeal interrupted the proceedings *"in order to deliberate on the necessity of the requested evidence"* Upon resuming the session the Court stated: *"concerning the request to address the Office of Land Registration, the Court deems it purposeless and rejects it, bearing in mind that the necessary cadastral surveys have established the identity of the building in both land registry and on site."*

The Court of Appeal accepts the tax roll which states that the owner was Weinhold Heinrich, deeming it *"useful, pertinent and relevant"* for the case (Brasov Tribunal. Civil trial No. 26190/197/2009. Closing arguments on January 8th 2016), yet once again

refuses to demand any examination of the contradicting cadastral survey and the ensuing registration of 46 Castelului Street.

The request for a retrial which would establish the legal standing of the Jekelius family was reiterated in the Written Conclusions submitted to Brasov Tribunal in 2016 (Brasov Tribunal. Civil trial No. 26190/197/2009. Written submissions for February 12th 2016). The Court argued that *“The building was identified using scientific and objective methods on site (...) which certify the fact that the building situated on 46 Castelului Street is the same with the one included in Land Registry No. 26 (...). The expert surveyor has identified the building through topographical measurement, the survey plan being overlapped with the building’s placement plan and no inconsistencies were noted.”* The Court argues *“there is no reason to discard neither the land registry which states the author’s ownership rights nor the cadastral survey which identifies the building described in the land registry with the building on site, as documentary evidence.”* Hence, *“there is no reason”* to carry out a new cadastral survey for 46 Castelului Street. But the placement plan which was mentioned is based on the ‘collage map’ we have already referred to!

An appeal was requested in 2016 since Brasov Tribunal had upheld the legal standing of the Jekelius family, *“because the Court had not accepted new evidence [...] basing its ruling on repeated references to the incorrect registration in the Land Registry [...] The court should have requested a new cadastral survey by default [...] instead of refusing to accept evidence necessary for establishing the truth.”* (Brasov Tribunal. Civil trial No. 26190/197/2009. Appeal against Brasov Tribunal decision no. 379/Ap/February 26th 2016).

During a public hearing at the Brasov Court of Appeal one of the parties in the trial states that *“the land registry has been modified and does not correspond to the real situation. Mr. Jekelius is not the rightful owner of 46 Castelului Street, Mr Jekelius only owns 2 adjacent buildings but not this one. In order to be recognized as the owner of this building, two land registries were misappropriated (...) Mr. Fazekas - the land surveyor - mistakenly assigned the wrong cadastral numbers (4888 and 4889 instead of 4890 and 4891) (...). According to the witness an error had been made”* (Brasov Court of Appeal. Civil trial No. 26190/197/2009. Public hearing on September 28th 2016, pp. 5, 6). With no regard for these objections, the Brasov Court of Appeal hands out a ruling which flagrantly misrepresents reality, stating that *“The building registered in Land Registry No. 29, under the cadastral numbers 4890 and 4891, representing a building with two upper floors in the back and one upper floor facing the street is not part of the current litigation”* (!).

One of the parties argues in a request for review (Brasov Court of Appeal. Civil trial No. 620/64/2016. Statement of defense submitted on November 10th 2016 for the appeal against Decision No. 413/R/October 19th 2016): *“The evidence submitted would indeed lack probative value if the underlying documents were truthful. The evidence states “44 Castelului Street [currently 46 Castelului Street]: 2 upper floors facing the street; 1 upper floor in the back; courtyard. [...] Two upper floors facing the street and one upper floor in the back is different from one upper floor facing the street and two upper floors in the back. A photograph is attached to the case file which shows that 46 Castelului Street (the old No. 44) has two upper floors facing the street. This shift could explain why an entire floor disappears from Land Registry No. 29 from one page to the next.”*

Let us quote the ruling further: *“The fact that in the annex to the nationalization decree No. 92/1950 Heinrich Weinhold is the owner of 44 Pavlov Street [currently 46 Castelului Street] does not prove he is the owner of the building discussed in the current litigation”*. To which one of the parties replies in writing: *“Then let us be allowed to ask: which document can prove he is the owner, if not a document stating this very fact ?”* (Brasov Court of Appeal. Civil trial No. 620/64/2016. Statement of defense submitted on November 10th 2016 for the appeal against Decision No. 413/R/October 19th 2016)

Furthermore, the Civil Decision N. 413/R (handed out by the Court of Appeal Brasov on October 19th 2016) claims that *“a quota of 1/3 is to stay in the ownership of Jekelius Walter who has paid property taxes for land and building and whose successors continue to do so”* (55 Brasov Court of Appeal. Decision no. 413/R/October 19th 2016, p. 8)

Yet certificate No. 711581/November 11th 2005 issued by the Brasov Police Department states that Jekelius Walter Hans had illegally remained in West Germany, in 1973 and his departure was regarded as permanent by 1975. The same address shows that *“by decree no. 187/ September 6th 1975, Jekelius Walter Hans had given up his Romanian citizenship indefinitely”* (Brasov Police Department. Certificate No. 711581/November 11th 2005).

Why and how would Jekelius Walter, who had fled the country illegally, and who had given up Romanian citizenship, continue to carry out his duties as a Romanian taxpayer while living in West Germany (where he duly paid his taxes up until his death in 1989)?

Multiple official documents issued by institutions such as Brasov Mayor’s Office, SC RIAL SRL Braşov, the Office for Land Registration Brasov, the Office of Expert Witnesses , the National Archives- County Service Brasov and the various Courts, lead to one third of a building in the historical center of Brasov being misappropriated. This fact raises the legitimate question as to whether these institutions had acted independently and whether this sequence of mistakes had been arbitrary.

How is it possible for the Judicial Director and the Head of the Judicial Service of S.C. RIAL S.R.L. Brasov to declare that their institution *“won’t oppose any initiative which would clear up or change the juridical situation of 46 Castelului Street, Brasov”* (RIAL Brasov. Certificate No. 5273/September 19th 2017 issued by the Judicial Director and the Director of the Judicial Service) and not initiate the process themselves, when the institution’s own Internal Regulation states that S.C. RIAL S.R.L. Brasov *“pursues the evolution of the juridical status of the real estate it administers”*, thereby transferring an institutional obligation to the wronged private individuals?

Land registries and cadastral maps which had remained unchanged during multiple eras, witnessing the fall of the Habsburg Empire, the fall of the Austro-Hungarian Empire, two World Wars, the Soviet occupation and Ceausescu’s communist regime were swiftly altered after the fall of communism, by a group of clerks, cadastral surveyors, and officers of the law.

10. Consequences

Retrocessions or illicit successions of buildings lead to tenants losing their right of ownership or having their rents increased (social problems, human problems).

The state's lack of credibility is caused by the fact that instead of combatting corruption, it enables it.

The current case study aims to draw attention to the pervasive lack of professional ethics in Romanian public institutions and the implicit frailty of these very institutions in providing any real sense of rule of law. It goes without saying that this state of affairs leads to major social problems and greatly impacts the lives of those who seek justice.

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