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THE REGISTRATOR'S DUTY TO SUBSTANCE: FOR A THEORY OF DECISION APPLICABLE TO REGISTRATION QUALIFICATION

O DEVER DE FUNDAMENTAR DO REGISTRADOR: POR UMA TEORIA DA DECISÃO APLICÁVEL À QUALIFICAÇÃO REGISTRAL

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RESUMO

A registrabilidade dos documentos apresentados perante o serviço de registro público deve ser aferida por aqueles que são delegados desse serviço público: os registradores públicos. O exame da registrabilidade é uma atividade denominada de qualificação registral. Trata-se de uma atividade eminentemente intelectual e jurídica. A análise dos títulos apresentados a registro deve obedecer às regras técnicas objetivas e a mais uma diversidade de aspectos que devem ser considerados diante da pretensão registral. A decisão do registrador público, além dos aspectos propriamente jurídico-formais do título, abrange aspectos normativos de ordem não registral, de origem econômica, ambiental ou mesmo de proteção dos bens de valor estético, artístico, paisagístico e histórico, e de observar regras de leis federais, estaduais e municipais, bem como atos das corregedorias dos tribunais. Assim, o ato registral é uma atividade que tem se tornado cada vez mais complexa. Este artigo visa refletir sobre o dever de

fundamentar do registrador, o qual tem a responsabilidade de controlar, por ocasião da qualificação registral, a presença e o cumprimento dos requisitos de registrabilidade dos títulos apresentados a cartório. A pergunta de pesquisa é: Os registradores têm o dever de fundamentar as suas decisões de qualificação registral? Pretende-se, portanto, apresentar algumas reflexões acerca da decisão registral, em busca de uma teoria jurídica da decisão aplicável aos registros públicos.

Palavras-Chave: Registros Públicos. Qualificação Registral. Teoria da Decisão. Decidibilidade. Fundamentação Jurídica.

ABSTRACT

The registrability of documents presented to the public registry service must be checked by those who are delegates of this public service: the public registrars. The registration examination is an eminently intellectual and legal activity called registration qualification. The analysis of titles submitted for registration must comply with objective technical rules and a variety of aspects that must be considered in view of the registration claim. The public registrar's decision, in addition to the properly legal-formal aspects of the title, covers non-registration normative aspects of economic or environmental origin, or even linked to the protection of assets of aesthetic, artistic, scenic and historical value, and to the observation of rules in federal, state and municipal laws, as well as acts of the courts' internal affairs bodies. Thus, seeing that the registration act is an activity that has become increasingly complex, this article aims to reflect on the registrar's duty to substantiate and to be responsible for controlling, at the time of registration, the presence and compliance with the registration requirements of the titles presented to the registry office. Given this, the research's question is: Do registrars have a duty to justify their registration qualification decisions? The aim, therefore, is to present some reflections on the registration decision, in search of a legal theory of the decision applicable to public records.

KEYWORDS: Public Records. Registration Qualification. Decision Theory. Decidability. Legal Basis.

1 INTRODUCTION

The registrability of documents is an important issue, due to the diversity of registration procedures and the increase in events that depend on it for their

validity and legal security. Increasingly, a series of activities are being transferred to the registrar which concern the formalization of acts, facts and legal business, transactions and business which will constitute, extinguish or modify rights. The complexity of modern life has also led to the complexity of acts of registration of titles and documents, whether private, public or judicial.

In this context, it is important to look at the decidability of registrars in order to understand how this extrajudicial universe of the legal activity of public registry offices has been constituted, in their decisions on whether or not to admit the titles presented to them for registration.

The examination of registrability is an activity known as registry qualification. It is an eminently decisive, intellectual and legal activity. The analysis of titles submitted for registration must comply with objective technical rules and a variety of aspects that must be taken into account when considering the registration claim. The public registrar's decision, in addition to the actual legal-formal aspects of the title, encompasses aspects of a non-registered nature, of an economic or environmental nature, or even the protection of goods of aesthetic, artistic, landscape and historical value. Thus, the act of registration is an activity that has become increasingly complex.

Looking at registry decidability, this article aims to reflect on the registrar's duty to give reasons, who has the responsibility to control, on the occasion of registry qualification, the presence and fulfillment of the registrability requirements of the titles presented to the registry office. The research question is: Do registrars have a duty to give reasons for their registration qualification decisions?

The aim is to present some reflections on the registry decision, in search of a legal theory of the decision applicable to public registries. The research methodology is eminently bibliographical by its very nature, as is the case with legal research of this kind.

Firstly, we looked at decidability as one of the main functions of legal dogmatics, as the science of law that studies legal norms and aims to guide decision-making. Secondly, we looked at the act of registration, in other words, registration qualification, explaining its concept and legal nature. Finally, the duty of the registrar to give reasons was analyzed, reflecting on the possibilities of a theory of the registry decision.

2 DECIDABILITY AS A CENTRAL PROBLEM IN THE SCIENCE OF LAW AND THE NEED TO GIVE REASONS FOR LEGAL DECISIONS

Decidability is not the exclusive prerogative of the judiciary; rather, it is a central aspect of the science of law and the activities of legal professionals. All legal professions deal to some extent with the issue of decidability. Every day, legal professionals make legal decisions based on the law in force. This is the starting point for the science of law as legal dogmatics: decisions will be legal.

Ferraz Júnior (1980) teaches that legal technique corresponds to jurisdictional activity in the broad sense, i.e. the work of Lawyers, Judges, Prosecutors, legislators, legal experts and others. The science of law, on the other hand, is the architectonics of models, in the Aristotelian sense of the term, i.e. as an activity that subordinates them to each other, with a view to the problem of decidability (and not a concrete decision).

Also according to Ferraz Júnior (1980), legal science is faced with a spectrum of theories, sometimes even incompatible, which keep their unity in the problematic point of their departure. As these theories have a social function and a technological nature, they are not mere explanations of phenomena, but become, in practice, doctrine, i.e. they teach and tell how things should be done.

Current legal thinking prioritizes the dimensions of concretization and practical realization. Post-modern legal thinking stresses the importance of realizing the practical ends of the law, implying the permanent practice of values and principles, by means of useful and necessary weighting for the concrete realization of the law. The interpretation and application of the law are intrinsically linked, so that interpreting the law is also, at the same time, applying it.

In this sense, Streck (2004, p. 161) states: "There is no pure hermeneutics. Hermeneutics is factuality; it is life; it is existence; it is reality. It is a condition of being in the world. Interpretation is not autonomous from application".

The issue of legal decidability - and it couldn't be otherwise - is also present in public registry offices. The act of admitting a title to the register, or drawing up an act, implies a decision by the registrar. In his daily activity, and in the face of a registration request, the registrar can decide to register or return the title, or to make demands, or to reject the request itself in special registration procedures, such as usucaption, as provided for in the article 17 of the Provision No. 65 of 2017.

Much is said about judicial decidability and little about extrajudicial decidability. The issue of de-judicialization is on the agenda, but little thought is given to the "how I decide" of the registrar or notary. As part of the de-judicialization movement, many procedures that were previously necessarily judicialized have been transferred to the attributions of extrajudicial registries, increasing the scope of their competences and technical capacities.

Although the regulatory framework that underpins the decisions of registrars is quite narrow compared to the breadth of the powers of the Judges, it is undeniable that their decisions are relevant to the law and have direct consequences for the lives and rights of users of registry services.

Judges and courts have the duty to give reasons for their decisions, as expressly provided for in the article 93, item IX, of the Federal Constitution (BRAZIL, 1988)[1]. On the other hand, the duty of the registrar to give reasons is not duly expressed and explicit in the legal system, but stems from several sparse provisions, including the Federal Constitution, which guarantees property as a fundamental right and establishes that no one shall be deprived of their liberty or property without due process of law. In addition, the rule is that "all decisions shall be reasoned", both judicial and administrative.

It is therefore important to investigate the duty to provide reasons for registry acts, especially devolutionary acts (such as notices of demand, return and rejection orders), as these are administrative acts that restrict rights. First, however, for a better understanding of the subject, we will look at registry qualification.

3 THE QUESTION OF THE REGISTRY QUALIFICATION

The registry qualification is the activity that consists of examining the registrability of the titles presented before the public registry service and is included among the attributions entrusted to the delegates of these services: the public registrars.

[1] O art. 93, IX, da CF, prescreve: “todos os julgamentos dos órgãos do Poder Judiciário serão públicos, e fundamentadas todas as decisões, sob pena de nulidade, podendo a lei limitar a presença, em determinados atos, às próprias partes e a seus advogados, ou somente a estes, em casos nos quais a preservação do direito à intimidade do interessado no sigilo não prejudique o interesse público à informação.” (BRASIL. [Constituição (1988)]. Constituição da República Federativa do Brasil. Brasília, DF: Senado Federal, 2016. 496 p. Disponível em: https://www2.senado.leg.br/bdsf/bitstream/handle/id/518231/CF88_Livro_EC91_2016.pdf. Acesso em: 24 maio 2021).

For Gómez Gálligo (2007):

> Qualificar, no Direito Hipotecário ou Registral, é determinar se o ato ou contrato (título tanto em sentido formal como em sentido material), apresentado ao Registro de Imóveis, reúne ou não os requisitos exigidos pelo ordenamento jurídico para sua validade e eficácia frente a terceiros, com a finalidade de que somente tenham acesso e, portanto, a proteção do sistema, os títulos válidos e perfeitos (GÓMEZ GÁLLIGO, 2007, p. 9).

The learned professor Ricardo Dip (1992, p. 186) conceptualizes real estate registry qualification as "the prudential judgment, positive or negative, of the power of a title in order for it to be registered in the land registry, implying that it must be registered or unregistered".

Thus, the real estate qualification of the registrar is the analysis of the admissibility of the title, resulting in the registrability, or not, of a title in the real estate folio, attributing it the legal effects.

The registry qualification is, par excellence, an intellectual and legal activity, implying the decision of the registrar, as Berthe (2005) states:

> Cuida-se de atividade intelectual por excelência. Embora a análise do título deva obedecer regras técnicas objetivas, o desempenho dessa função típica e indelegável, atribuída ao registrador, deve ser exercida com independência, exigindo do qualificador largo conhecimento jurídico, sobretudo diante da diversidade de aspectos que devem ser considerados quando se cogitar da pretensão de registrar, como a juridicidade, a adequação e, ainda, a apreciação da registrabilidade em face do preenchimento de requisitos extra-registrários, ou não registrários propriamente ditos (BERTHE, 2005, p. 461-475).

Through the act of qualification, combining knowledge from several areas of law, the registrar identifies, selects and applies the legal rule applicable to the specific case, as well as interpreting the rule.

On this point, we should remember the lessons of Maximiliano (2022, p. 95), when he points out that "the work of the interpreter is difficult and delicate; it presupposes tact, a happy intuition, criteria and the 'knowledge of experience'". The author also points out that one should avoid not only being too attached to the letter of the provisions, but also the opposite excess, that of forcing exegesis and thus fitting the written rule, thanks to the fantasy of the hermeneut, to the theses "with which he has fallen in love, so that he glimpses ideas in the text that only exist in his own brain, or in his individual feelings, driven mad by dislikes and inclinations, enthusiasms and prejudices".

Furthermore, with regard to the intellectual exercise carried out by notaries and registrars when interpreting the law, there are limits that must be observed when applying the law.

The registrar does not have as wide a margin of discretion as the Judges; on the contrary, the Judges (chiefs of justice) have the disciplinary yoke[2] and there is also a liability statute that guards against any excesses of language on the part of the registrar.

The registrar performs a state function of an administrative nature. The State delegates the function of controlling real estate traffic to private individuals, in this case the registrars, and the main thing is to make an admissibility decision on whether or not to create a right in rem.

Article 236 of the Federal Constitution clearly states that the function is exercised privately by delegation from the public authorities. Delegating consists of assigning an administrative activity to a private or public entity. Thus, notarial and registration activities are public par excellence. The function is administrative, considered to be part of the Public Administration. Thus, the private individual (registrar) must obey the rules of public law and act on behalf of the State.

Furthermore, this same article states that "notarial and registration services are exercised privately, by delegation from the Public Authorities". Article 3 of the Law No. 8.935, of 1994, which regulated this constitutional provision, in turn defines: "Notaries, or notary publics, and registration officers, or registrars, are legal professionals, endowed with public faith, to whom the exercise of notarial and registration activities is delegated" (BRAZIL, 1994).

The Federal Constitution also established that notarial and registration services are supervised by the Judiciary. Entry to the notary and registry profession depends on a public examination of tests and titles, conducted by the courts of justice. For all these reasons, and also considering the enormous repercussions (legal, social and patrimonial) of the acts of the professional to whom the delegation has been granted, the registrar is responsible for the administrative management of the services, mainly for carrying out the registration qualification, in order to meet the expectations of legality, zeal and correctness that are expected due to the high degree of their responsibilities.

[2] Sem prejuízo da competência disciplinar e correcional dos tribunais, os registradores também estão sujeitos à fiscalização do Conselho Nacional de Justiça (CNJ), conforme prevê o art. 103-B, § 4º, inciso III, da Constituição Federal, por desempenharem função que se assemelha à do Poder Judiciário.

With regard to the importance of the registrar in registry qualification, Bottega (2021) summarizes the examination he must carry out in order to make his decision on the registrability of the title:

> Ao proceder à qualificação, o delegatário deve examinar se os títulos que lhe são apresentados foram pactuados em conformidade com o ordenamento jurídico, para, com base nesse exame, decidir se o registro postulado deve ser deferido ou negado. Verifica-se, portanto, que a decisão jurídica a ser proferida pelo oficial de registro de imóveis irá definir se direitos relativos à propriedade imobiliária – elencada no artigo 5º da Constituição Federal como direito fundamental – podem ser constitutivos, declaratórios ou extintos, bem como poderá impedir que tais direitos sejam usados de forma abusiva, com desrespeito à ordem social (e.g. transmissão de unidades habitacionais oriundas de projetos sociais para pessoas que não se enquadram nos requisitos legais), urbanística (e.g. registro de parcelamento do solo sem atender às destinações mínimas de áreas públicas previstas em lei) e ambiental (e.g. constituição de direitos de uso em áreas de preservação) (BOTTEGA, 2021, p. 10).

So there is no doubt that the registrar makes legal decisions. Registrars and notaries are legal professionals who perform a relevant public service. Some authors go so far as to say that registrars' decisions are equivalent to court rulings, as is the case, for example, of Marcelo Augusto Santana de Melo, who makes this comparison, explaining that the qualifying function is not merely a chancellor and transcriber of titles:

> Não é nenhum absurdo jurídico dizer que a qualificação registral, cotejando-se com outros sistemas registrários, equivale a uma sentença de mérito de primeira instância anômala, já que não gera coisa julgada. É claro que a qualificação registral pode ser discutida, administrativamente, através do procedimento de dúvida (art. 198 da Lei 6.015/73) ou, judicialmente, através de ação própria. Não podemos olvidar – e isso ocorre com frequência – de uma leitura despretensiosa do art. 1º da Lei de Registros Públicos que traz como fundamentos dos Registros Públicos a autenticidade, segurança e eficácia dos atos jurídicos. Dentre essas finalidades, encontramos a qualificação registral, mais especialmente referida nos artigos nºs 198 e seguidos do diploma legal. A primeira parte do referido artigo 198 da LRP declara que "havendo exigência a ser satisfeita, o oficial indicá-la-á por escrito", confirmando a função qualificadora do Registro de Imóveis, e não meramente chanceladora e transcritiva de títulos (MELO, 2015).

Over the last few years, various attributions, previously the responsibility of the courts, have been assigned to extrajudicial registries in a growing wave of

de-judicialization, such as divorces, inventories and usucaption, in the cases established by the legal system.

In this sense, registry offices have performed important services, becoming relevant to the justice system in a broad sense. On the other hand, registry law is becoming increasingly relevant in the world of law, becoming a fundamental area for thinking about the legal system. The relevance of the decisions of the registrars is therefore a subject that deserves the attention of researchers. It is necessary to build a theory of registry decisions, because the duties of registrars involve legal decisions that must be guided by the requirements of the democratic rule of law and shielded from automatism and discretion. This is why it is necessary to study the duty to substantiate the registration qualification and to understand how registrars decide.

4 AFTER ALL, (WHY) DOES THE REGISTRAR HAVE A DUTY TO GIVE REASONS?

The aim of this part of the article is to answer these two questions: Is there a duty for the registrar to give reasons? Why should registry decisions be substantiated?

Initially, it should be remembered that the research question of this article is: Do registrars have a duty to give reasons for their registration qualification decisions? Therefore, the questions in this topic are contained in this larger research and are an important part of the inquiry and reasoning necessary for the answer. Thought needs linguistic organization in order to properly express the discourse it sets out to enunciate and, with legal science, reasoning must follow the same sequence.

Jurists must submit their language to a careful analysis of the meaning of the terminology they use, especially "recognizing that the production, objectivity and effectiveness of norms depend on a rigorous interpretative process, and that the Law and its norms do not have infallible positivization" (ANDRADE, 2010, p. 5.964).

In this sense, it is possible to see that the rule in force and incident in the specific case requires human interpretative intervention, embodied in language, communication and semiotics, to outline the understanding of the law and determine its effective applicability. Thus, in this topic, we have developed three important aspects for the development of the answer we are looking for, as can be seen below.

4.1 Is there a registry semiology?

The term semiology, in its etymology, originated from the Greek sema, or from the Latin sine, meaning "sign, mark, meaning". These are words contained both in the rules governing the registration system and in the titles and applications submitted to the Registry Officer.

After reading the text that includes the acts mentioned above, the legal professional (who is the registering officer, clerk or other qualified person) analyzes the documents presented, identifies the legal act and, if he concludes that it is an act that can be registered, recorded, returned or demands made, according to his interpretative exercise (which, in addition to being a legal technician, also masters the art of words), affixes his "stamp" or not."[3]. It's worth remembering, however, that the activities of registry offices are much more complex and increasingly distant from the days when stamping represented the decision of the registrars. That time no longer exists.

There is a registry terminology peculiar to registry law and real estate registries, which justifies their autonomy as a branch of law. There seems to be no doubt about this. The theory of Hare can be used - with regard to the meaning of the words contained in both titles and regulations - remembering that, in order to obtain the "meaning" of words, reference to some object must be considered.

We used the lessons of Freitas Filho (2009, p. 151) regarding the classification of words, noting that, "in addition to the two possible meanings of language, one descriptive and the other evaluative, there are also two types of words, taking into account the description of their object: functional words and non-functional words. Words include in their description a reference to a function they possess".

He goes on to define function words, since he exposes the problem of using a word (such as automobile) in a context where the speaker is not trying to mean that word in the lexical sense, but rather the use of how the word is used by a particular speaker.

Freitas Filho (2009) also reminds us that:

[3] O carimbo é uma ferramenta que vem sendo cada vez menos utilizado nas serventias, dada a informatização, a digitalização do acervo, o uso de plataformas nato digitais, bem como ferramentas como o Operador Nacional de Registro (ONR) e o E-Notariado.

> Não é essa classificação de palavras que ocupa destaque no Prescritivismo Universal, mas aquelas cujo significado é dado pela função de avaliação, ainda que seu uso pressuponha que aquilo que é o objeto descrito possa o ser por meio de uma palavra funcional. Em outras palavras, se digo que um automóvel é bom, há uma pressuposição de que se saiba a finalidade do objeto descrito para que se faça uma afirmação de valor como essa (FREITAS FILHO, 2009, p. 152).

This classification of words is important[4], after all, there is a terminology specific to real estate registry law, for example, in the use of words such as "registration", "registration", "title", "doubt", "requirement", "rectification", "closure", "cancellation", among other important terms, which are found in the registry normative estuary.

Considering that law is language, registry law is an autonomous branch because, in addition to its own object of study (registry legal rules), it has its own language through which it mobilizes its own concepts, knowledge and reasoning that constitute its peculiarities, so that the registry decision is not merely a stamp. On the contrary, the decision of the registrar, even if expressed in a few words, has a whole complex of contents, meanings and legal consequences. It is this significant content that constitutes the decision of the registrar (and not the mere movement of affixing a stamp, as an automatic gesture).

4.2 De-judicialization and the need for a contradictory process in the real estate registry

De-judicialization or "extra-judicialization" is an undeniable and irreversible process. However, Silva (2023, p. 100) reminds us, with the support of the doctrine of Capeletti and Garth, that the greatest danger of opening up the legal system to new "mechanisms" lies in the risk of these new procedures emphasizing efficiency and disregarding the fundamental guarantees of Civil Procedure, especially the adversarial process and the specialty of the judge. The same author points out that the risks are accentuated by the optional nature of the administrative channels and the consensual nature of the claim, as well as the nature of the dispute and the quality of the agents involved, such as when it involves the interests of incapacitated persons.

[4] Um exemplo seria o ato de penhora, o qual, segundo o art. 791 do Código de Processo Civil (CPC), diz-se que se procede a uma "averbação", enquanto o art. 167, I, da Lei de Registros Públicos (Lei nº 6.015, de 1973) define ser ato de "registro".

These risks can be mitigated by duly substantiating the registration qualification, as it allows, albeit in a timid and proto-structured way, a contradictory process within the Real Estate Registry. Torres (...), in his article "the contradictory entry in the Land Registry", reminds us that there is a contradictory process, even if it is "weak" in the context of public registries:

> A possibilidade do contraditório no processo de registro na Serventia imobiliária, embora para alguns possa parecer novidade, não é. É preciso deixar claro que o contraditório não é "privilégio" dos processos judiciais. Não importa se jurisdicional ou não, existindo a possibilidade de uma decisão afetar negativamente a esfera jurídica de uma pessoa, é imprescindível a observância do contraditório. Analisando especialmente as disposições da Lei dos Registros Públicos, é possível verificar que já há determinadas situações nas quais deve ser observado o contraditório, em que pese na sua concepção tradicional (contraditório fraco) (TORRES, 2014, p. 2015-238).

From this perspective, there are already elements of "strong contradictory proceedings" such as those that exist in reasoned objections[5] of extrajudicial adverse possession - in this case, as occurs in the rectification procedure. In the court and in the analysis of the real estate registrar, if he or she considers it to be well-founded, there will be the configuration of a resisted claim, that is, a dispute to be settled by the competent court and, from then on, the registry jurisdiction in the specific case is exhausted.

Furthermore, despite the legal atypicality, the request for reconsideration can also be considered to be part of the legal system[6] of manifestations/decisions issued by the notary/registrar, since, according to Oliani (2007, p. 85) in his monographic work " The contradictory process in appeals and requests for reconsideration ", he explains that, "[in] the request for reconsideration, the pronouncement is attacked for being 'unfair' or implying procedural turmoil from the point of view of the one who handles it, that is, the judge is asked to think

[5] Código de Normas e Procedimentos Extrajudiciais do Estado de Goiás, art. 1225: "[...] § 4º Considera-se infundada a impugnação já examinada e refutada em casos iguais pelo juízo competente; a que o interessado se limita a dizer que a usucapião causará avanço na sua propriedade sem indicar, de forma plausível, onde e de que forma isso ocorrerá; a que não contém exposição, ainda que sumária, dos motivos da discordância manifestada; a que ventila matéria absolutamente estranha a usucapião".

[6] O art. 17, § 5º, do Provimento nº 65, de 2017, possui essa previsão: "[...] § 5º A rejeição do requerimento poderá ser impugnada pelo requerente no prazo de quinze dias, perante o oficial de registro de imóveis, que poderá reanalisar o pedido e reconsiderar a nota de rejeição no mesmo prazo ou suscitará dúvida registral nos moldes dos art. 198 e seguintes da LRP". (CNJ – Conselho Nacional de Justiça. Provimento n. 65, de 14 de dezembro de 2017. Estabelece diretrizes para o procedimento de usucapião extrajudicial nos serviços notariais de registro de imóveis. Disponível em: https://atos.cnj.jus.br/files/provimento/provimento_65_14122017_19032018152531.pdf. Acesso em: 27 set. 2023).

again and modify the pronouncement attacked". As much as it is an "atypical means of challenge", it aims to reform a decision in the broadest sense. In fact, allowing this means of contradiction allows both the user of the registration service and the registrar himself to form a better decision from a dialectical point of view, and may even prevent the doubt procedure from being brought before the competent court.

Art. 50, I of the Law No. 9.784 of 1999 is applicable, as it requires an indication of the facts and legal grounds (including the law, principles and other normative acts that support the decision), when the decision denies, affects or limits rights or interests (BRAZIL, 1999).

Fagundes (1967), in his book "The control of administrative acts" (O controle dos actos administrativos), states that

> Para a prática de alguns atos, a competência da Administração é estritamente determinada na lei, quanto aos motivos e modo de agir. A lei lhe determina que, existentes determinadas circunstâncias, proceda dentro de um prazo e de certo modo. É essa competência vincolata dos italianos e lieé dos franceses. A Administração não é livre em resolver sobre a conveniência do ato, nem seu conteúdo. Só lhe cabe constatar a ocorrência dos motivos, e, com base neles, praticar o ato. Escusando-se a praticá-lo, no tempo e com o objeto determinado, viola a lei.
>
> Noutros casos, a lei deixa a autoridade administrativa livre na apreciação do motivo ou do objeto do ato, ou de ambos ao mesmo tempo [...] (FAGUNDES, 1967, p. 82).

The Code of Regulations of the Federal District (DF), for example, in the article 161, states that: "I- all the requirements that must be met for registration shall be indicated in one go, using the letterhead of the servant, mention and signature of the officer or clerk; II- the formulation of the requirements must be based on the legislation, in a clear and objective manner, with the simple allusion to an article of law being prohibited" (TJDFT, 2014).

The existence of an adequate reasoning confers legitimacy to the negative registry decision, and also allows the act to be challenged, since when the elements of fact and law are not in conformity with the legal system, they can be annulled by the Judiciary.

Since it is a voluntary decision, the decision to refuse registration never becomes final, so it is always possible, in the process of challenging the refusal, to discuss the correctness, or not, of the reasons for these doubts, even those

that were not the subject of the complaint previously filed against the order of doubts[7].

4.3 Finally, must the registration qualification be substantiated?

For all that has been seen so far, it must be acknowledged that the decision on registration, whether positive or negative, must always be substantiated, and not just the decision that denies the registrability of the title. It is true that the latter, with more reason, when denying a subjective right to registration, must be so; however, the positive decision of registration qualification, due to its legal consequences in relation to third parties, must also be substantiated.

Several arguments support the view that registry decisions must be substantiated. Firstly, because it is a constitutional principle that "all decisions shall be reasoned", and registrars, as delegates of the public registry function, are performing acts that were once the responsibility of the Judiciary, replacing them in various attributions. The registrars are exercising a state function and, therefore, their decisions, which constitute, modify or extinguish rights, must be substantiated, since the State cannot intervene in private life except on the basis of the legal system. The legality of the act must be made explicit so that any interested party can challenge it.

In this sense, the discretionary nature of registration acts is not in line with the model of the Democratic Rule of Law, nor can the act of registration be reduced to a mechanical act. The complexity of registration law and the several aspects that registration acts entail require the necessary reasoning, even if brief, in order to guarantee legality, access to justice and legal certainty.

Loureiro (2017) explains the complexity of the activity of notaries as follows:

> Com efeito, ainda que as regras e normas que formam o direito notarial possam ser de natureza civil, administrativa e processual, concorrem todas para um mesmo objeto, conferindo-lhe um caráter de unicidade e autonomia didática, expositiva e mesmo científica. Tais normas formam um conjunto sistemático de conceitos e preceitos que regulam a forma notarial, vale dizer, o instrumento público e a atividade documental do notário. Esse conjunto ordenado e autônomo de regras jurídicas que tratam da forma jurídica, do instrumento público e da atividade do notário não se confunde com as normas relativas aos atos e negócios

[7] Nesse sentido é também o entendimento de LOPES, Joaquim S. Direito dos Registos e do Notariado. Portugal: Grupo Almedina, 2020. Disponível em: https://integrada.minhabiblioteca.com.br/#/books/9789724084473/. Acesso em: 18 mar. 2023.

> jurídicos realizados sob a intervenção desse jurista, que pertencem ao direito civil e ao direito empresarial. Uma coisa é o documento notarial – o continente; outra diversa é o seu conteúdo – o negócio jurídico. (LOUREIRO, 2017, p. 28-29)

In order to reinforce and adapt the registry offices to the new reality of the duty to substantiate the registry qualification, it is important to reinforce the Brazilian registry system by making some changes to the legal system and the underlying administration of justice, such as the following suggestions: i) the insertion of the subject of the Notarial and Registration Law in law degrees; ii) inserting, in the Public Tender for Admission/Outtake of Notary and/or Registration Offices, along the same lines as the Resolution No. 423, of 2021 (CNJ, 2021), which amended the the Resolution No. 75, of 2009, the subjects of Humanistic Training and Theory of Law - inserted in the Competitions of Magistrates - after all, the process of "de-judicialization" demands a judicial mindset on the part of the notary and registrar; iii) action by the Brazilian Bar Association (OAB), qualifying lawyers to work in the "extrajudicial forum", since they are essential to the function of justice, either through courses at the Superior Law Schools, or by covering notarial and registry law in the Bar Exam; iv) suggesting substantial changes to current legislation, including the creation of a National Notarial and Public Records Code (CNNRP); v) rethinking the responsibility of the registrar/notary in the new de-judicialized procedures, in which the registrar exercises a decision-making technique similar to that of judges, guaranteeing their decision-making autonomy; vi) discussing the insertion of a "stronger" contradictory procedure in extrajudicial services, which will be discussed from now on, with the possibility of giving the notary/registrar a request for reconsideration, among other measures.

5 CONCLUSION

Since the reform of the Judiciary, a "de-judicialization" or "extra-judicialization" has been proposed and developed, conferring instructional and decision-making powers on the Registry Officers, so that it is necessary to think of a new theoretical framework regarding the act of deciding by the registrar, something that was not thought of during the period of the "option" to create attributions for the Registry Officers.

Considering law as praxis and action in the face of concrete cases, the real estate registrar, based on the legal system, is the professional who has been

delegated, by the Public Power, the task of "registering" and, consequently, "creating" the right (over immovable property) by means of a concrete case, by means of an administrative decision, which can be inspected by the Judiciary, which has correctional and disciplinary powers.

The general theory of procedure, the theory of administrative law and decision theory itself have dealt a great deal with judicial decisions. It is urgent, however, to turn our attention to extra-judicial legal decisions, in the context of notarial and registry law. This is a relevant topic, considering the importance of notarial and registry activities for the lives of citizens.

The purpose of this text was to investigate whether registrars have a duty to give reasons for decisions on registration qualifications. In the context of this investigation, we sought to observe the "how I decide" of the legal professional par excellence, who is the registrar.

In view of the expansion of extrajudicial activities delegated to registry offices, the study of the decidability of notaries and registrars is a relevant and urgent topic. We must recognize the decisiveness of registrars as legal professionals, delegated by the public authorities. As such, their decisions must necessarily be "legal", based on the law in force and, in order to achieve this, they need to be reasoned.

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