

## CONTACT LOCATIONS OF THE PUBLIC-PRIVATE RELATIONSHIP IN THE GEODETIC AND CADASTRE FILDS

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### ABSTRACT

Geodetic activity in the Republic of Macedonia is covered in several normative acts, depending on the field of interest. The most important is the Law on Real Estate Cadastre, which, for the most part, regulates the geodetic activity in our country, that is, with the changes in the old law from the year 2005 and with two new laws from the years 2008 and 2013. These laws regulate, inter alia, the work of the private geodetic companies, acquiring the necessary licenses and authorizations, organizing and executing the works, functioning of the geodetic-cadastre activity as a whole, as well as association in the chamber. Such rapid changes and the implementation of the three laws, with many changes and additions, for a relatively short period of time, create legal uncertainty and inability to follow the rules of the "game". An aggravating circumstance is the tendency with every new law and with every change of law to reduce the credentials and the scope of work, for something that has previously been granted as a competence of the private geodetic activity. In order to overcome these conditions, a greater interaction between the Agency for Real Estate Cadastre and the Chamber of Private Geodetic Companies is needed in the future in order to establish long-term and sustainable mutual professional relations. All this is possible if a stable public-private partnership, expansion of competencies and authorizations is established with a clear, unambiguous and permanent division of competences and with establishment of an effective concept of professional association in a chamber.

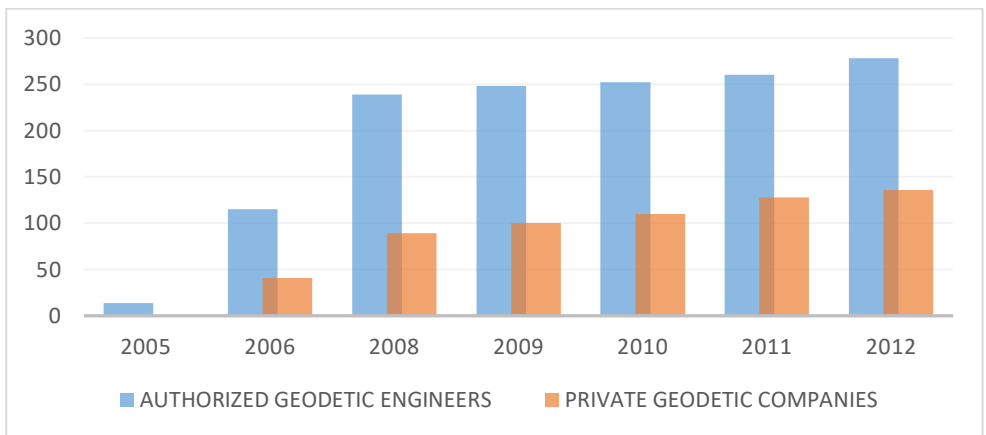
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## INTRODUCTION

Today the private geodetic business activity is a serious stakeholder in the overall economic life in the Republic of Macedonia, besides the challenges which has been following it from the beginning to the present days. The evident growth and positive trend can be illustrated (Zhivkovska at al., 2013, p. 184) with a graph per years in relation to the number of authorized geodetic engineers and registered geodetic companies(Figure 1).



**Figure 1:** Relation of authorized geodetic engineers and private geodetic companies per years (based on Zhivkovska at al., 2013)

At the end of the year 2005 there were 14 registered private geodetic companies and today, according to the directory of registered companies managed by the Chamber of sole proprietors and trade companies for geodetic activities, their number is 144.

All the above mentioned, represents an indication of the fact that this social activity has justified and even exceeded the expectations. There are 126 authorized geodetic engineers in total on the list of authorized geodetic engineers, available on the AREC web site. The biggest part of them have been employed in the private sector, part of them work in the AREC, state enterprises and the building & construction sector, while a small portion of them are still unemployed. The accurate number out of the total number of employed in the private geodetic companies is not known, however, if we take an average of three employees in every company, we get the number of about 350 employed persons, who have found their existence and the existence of their families within the frames of this business activity.

## LEGAL FRAME FOR THE PRIVATE GEODETIC PRACTICE

The existence of the private geodetic business remains on in the Law on Amending and Supplementing the Law on Survey, Cadastre and Registration of real estate rights, Official Gazette of the Republic of Macedonia No. 84/05 (October, 2005). With these amendments, creation of a private geodetic practice was provided and in this a way, the field activities became exceptionally an authorization of the registered legal subjects, with transferred public authorizations, for execution of the field geodetic activities, in which there is authorized geodetic engineer employed. These amendments enabled the prescription of conditions under which the geodetic engineers can acquire an authorization for an authorized geodetic engineer, as a physical person authorization. The legal entities, i.e. sole proprietors-authorized geodetic engineers or a trade company for geodetic activities were obliged to be registered in the directory of sole proprietors –geodetic engineers or trade companies for geodetic activities in the Chamber of authorized architects and engineers. The supervision over the activities of the registered legal entities was supposed to be executed by the AREC predecessor, the State Authority for geodetic activities. There was a prohibition for the employees in the State Authority, in whatever form, in the same time, to be included in the functioning of the private geodetic companies.

A time period of 2 (two) years was set as a transition period from the date of entering into force of these amendments in the Law, in which period the State Authority for geodetic activities could execute the operative field activities until certain preconditions for complete taking over of these activities by the private sector were fulfilled.

In accordance with the above established legal principles, one can easily conclude that with this division of competences, in a public-private relationship, legal and technical preconditions for the initial development of the private initiative were created, which was a good novelty after the social changes in the 90s of the last century.

Recognizing the newly created conditions, a large number of geodetic engineers acquired the authorizations, in accordance with the then positive legal provisions, and started registering the legal entities that established the private geodetic practice in the Republic of Macedonia.

### Laws for Real Estate Cadastre from the year 2008

The next conceptual step forward occurred in the year 2008 with the adoption of the Law on Real Estate Cadastre (Official Gazette of the Republic of Macedonia No. 40/08). First of all, we will note that this Law establishes the Agency for Real Estate Cadastre of the Republic of Macedonia (AREC), with

which the State Authority for Geodetic Works of the Republic of Macedonia ceased to exist. Within the framework of the law, the legislator created conditions for conducting real estate survey by AREC, prescribed by Article 8, paragraph 1, line 3.

With this provision, the process of undertaking a part of the works and competences that were previously assigned to the private geodetic companies is opened. This means that the activity that started under certain conditions has now changed, but in an opposite direction. The registered legal entities with private capital, which decided to deal with a private geodetic activity, with previously established criteria for division of works, now faced with changes that limited their field of activity. In the same Article, in line 6 of paragraph 1, the Agency for Real Estate Cadastre was assigned to perform the geodetic works for special purposes of importance for the Republic of Macedonia, determined by the Government of the Republic of Macedonia.

As novelties, which are related to this law and apply to private companies, it is that they are now registered in the trade register, with the main activity described as geodetic works, and they should have a license for work issued by AREC. The authorized geodetic engineer is defined as a person allowed to perform surveying, field geodetic works that refer to basic geodetic works and topographic maps, as well as geodetic works for special purposes.

Following the entering into force of the Law in the year 2008, in the period from the year 2010 to the year 2012, four amendments to the law were followed. These changes were, for the most part, related to the working conditions of sole proprietors and trade companies for geodetic works, for the obligations of the authorized geodetic engineers and the penal provisions.

### **Laws for Real Estate Cadastre from the year 2013**

In the year 2013, a new Law on Real Estate Cadastre was adopted (Official Gazette of the Republic of Macedonia No.55 / 13), after the existing law was amended several times. In this Law in Article 8, paragraph 1, line 3, the right was reserved for the Agency to conduct real estate surveying, while in line 5, AREC retained the right to perform the geodetic works for special purposes of importance for the Republic of Macedonia, determined by the Government of the Republic of Macedonia. With the amendments to the Law on Real Estate Cadastre (Official Gazette No. 115/14), the Agency shall extend the powers so that paragraph 2 of Article 8 is completely changed. This paragraph is completely redefined, where AREC is authorized to Register the rights to real estate owned by the Republic of Macedonia, update the real estate data ex officio, office geodetic works for special purposes, survey in the function of preparation of topographic maps, geodetic reports for special purposes for persons receiving social and permanent financial assistance, as well as other

tasks prescribed by other laws. In the year 2015, it was intervened in Article 8, paragraph 2 of the Law on Real Estate Cadastre once again (Official Gazette of the Republic of Macedonia No. 116/15). The same one is changed again and the Agency's competences are renewed again. With the amendments, the legislator awarded AREC with the development of updated geodetic platforms in the function of spatial planning, registration of the rights for the facilities that were built with the construction technical documentation issued before the entering into force of the Real Estate Cadastre for the specified municipality and office geodetic works for special purposes .

In the same time, with this Law, the Agency for Real Estate Cadastre acquired the exclusive right in the preparation of geodetic reports for special purposes - numerical data for the realization of urban plans and urban planning documentation, given in the amendments to Article 88 of the Law on Real Estate Cadastre (Official Gazette of the Republic of Macedonia No.55 / 13).

As a novelty, related to the work of sole proprietors and trade companies for geodetic works, the obligation is to have a license for work issued to a legal entity, described in Article 104, paragraph 1, line 4 of the Law on Real Estate Cadastre (Official Gazette of the Republic of Macedonia No. 55 / 13). Also, with this law, the licensing of legal entities is conditioned by the basic demographic standards of the statistical regions. According to the nomenclature of the territorial units for statistics (NTES), the standard for one license is 10,000 inhabitants.

Regarding the competencies of AREC-Chamber, the new Law on Real Estate Cadastre from the year 2013 conceptually changed the roles. With the Law, instead of the Chamber, the acquisition and the withdrawal of authorization for a licensed geodetic engineer are transferred to the Agency for Real Estate Cadastre, while the issuance and revocation of the license for the work of the legal entities is taken over by the Management Board of the Chamber.

## **ASSOCIATION IN A CHAMBER**

From the very beginning of the private geodetic practice in the Republic of Macedonia, attempts were made to establish a certain form of professional association, which would connect the participants in this business. A qualitative step was made with the establishment of the Association of Certified Geodetic Engineers of the Republic of Macedonia, on 01/02/2007 in Skopje (Monograph, 2017, Real Estate Cadastre Agency, Skopje). This association was, in a way, a precursor for creating a higher level of organization - association in a chamber. The Law on Real Estate Cadastre (Official Gazette of the Republic of Macedonia No. 40/08), enabled the establishment of a Chamber of authorized geodetic engineers, which enabled

the authorized geodetic engineers to obtain an appropriate status within the scope of the activity and the profession, and, of course, in the society as a whole. Following the newly created legal preconditions, after the organized Initiative Assembly on 10<sup>th</sup> and 11<sup>th</sup> of May 2008, conditions for founding Assembly were created and the Chamber of authorized geodetic engineers was established on 20/06/2008.

Analyzing the legal solutions in the part of the chamber association, it is impossible not to be noted, that the legislator, in this case, did not fail to impose control over the work of the Chamber. This conclusion is reflected in the fact that in the Management Board of the Chamber, which has a total of seven members, together with the President, there are two members proposed by the director of AREC from among the employees in the agency. Among other competencies, the chamber had the authority to conduct the exams for authorized geodetic engineers and to keep a register of authorized geodetic engineers, as well as to organize the compulsory educational training intended for the authorized geodetic engineers. The new Law on Real Estate Cadastre from the year 2013 conceptually changed the placement of the Chamber. First, it granted a new non-functional title: Chamber of sole proprietors-authorized geodetic engineers and trade companies for geodetic works. Apart from the change in the name, the membership structure changed, with the members of the Chamber becoming business owners. By doing so, the authorized geodetic engineers remained outside the system, without any institutional protection. Conceptually, a change of competences was made, whereby the operating licenses of the companies have now been transferred to the Chamber, while the taking and running of the register of authorized geodetic engineers, as well as the implementation of the obligatory educational training intended for the authorized geodetic engineers, has passed into the hands of the agency. Following the tendency for maximum control and influence on private business, the legislator in the new code increased the number of members in the Management Board delegated by the director of AREC. This means that now there are three members of AREC, out of seven, including the president of the Chamber, in the Management Board.

Such a procedure is completely vague and illogical if one takes into account that the Chamber is an association of holders of capital. The change imposes the dilemma: How members of the Management Board of AREC would take care of the development and promotion of the private initiative?

This is especially true when considering the fact that the activities, goals and tasks of the Chamber include, inter alia, the promotion of a free business initiative and competitiveness. This arrangement is not a practice in other professional associations of the same or related character.

## **ANALYSIS OF THE CONDITION IN THE CORRELATION PUBLIC - PRIVATE**

Analyzing the chronological review of the legislation in the period from the year 2005 to the present, it can be easily concluded that it has undergone many changes, additions, and completely new solutions. Certainly, the occurrence of certain changes is an inevitable process in the development of a certain activity. However, it should be kept in mind that, in this short period, from the beginning of the private practice to the present day, we are working according to three laws that regulate the field of the cadastre. All of these laws together had a total of 14 amendments, decrees and decisions by the Constitutional Court. This undoubtedly points to the conclusion that permanent monitoring and adaptation to the changes is an aggravating circumstance for the proper functioning of the business. Such a rapid change in the rules of "play" creates uncertainty, and sends a negative signal to all who are currently dealing with private geodetic practice, as well as those who intend to start entrepreneurship in this sphere.

Initially, the concept of establishing a public-private partnership was conceived with a clear distinction between competencies between the private geodetic sector, on the one hand, and SAGW (today AREC) on the other. However, over time, this concept began to evolve retrograde, with the withdrawal of previously granted authorizations and the competence of the private sector, and their return to the "homeowner", i.e. AREC. This is another location in which the notions of business conceptions are collided, publicly vs. privately, which violates the concept of healthy competition.

A third segment, which can generally be characterized as a low-pass location, is a competition that is imposed in the public-private relationship. I consider that private practice, as a service activity for citizens, in terms of resolving issues related to the cadastre, should be a complement to the service offered by AREC. This system of services should be based on the principle of synergy, and not on the principle of competition. This means that it is of great interest for AREC to have a well-developed, stable, reliable and advanced private service, which can, at any moment, respond quickly, professionally, with quality and under market conditions to the citizens' requests. This implies that some mutual misunderstandings that occur during the operation between the private sector and AREC need to be overcome together. On the other hand, this means continuous need to improve the services delivered to the end users, which are: the citizens, the legal entities, the private sector, the local self-government and the public institutions.

## **AREC CONTRIBUTION IN THE DEVELOPMENT OF THE PRIVATE GEODETIC PRACTICE**

From the present perspective, the contribution and the role of the Agency for Real Estate Cadastre of the Republic of Macedonia is undisputable in the development and affirmation of the private geodetic business. Namely, AREC in the past period, with a series of reforms and implementation of new and modern technical, software and IT solutions, contributed to stable and high quality business relations that need to be upgraded and promoted. There are significant benefits from the establishment of the real estate cadastre and infrastructure objects, the adaptation of the analogue plans to the guiding format and the alignment of the alphanumeric bases of the cadastre system, the introduction of the MAKPOS system, which enables precise geospatial location in real time, the improvement of the counter operation through the system E-cat counter and electronic connection of private geodetic engineers, notaries, enforcement agents, municipalities, etc., the OSSP portal, as well as the introduction of several types of registers and other innovations that facilitate daily activities. Since the new time brings new challenges, it is expected that AREC will continue to improve its services in the future, monitoring the modern trends in this area and, of course, building a mutual and fair relationship with the private geodetic practice.

## **CONCLUSION**

Such a conceived concept for private geodetic activity can respond to certain activities and contemporary social challenges, but in general, in certain way, it limits the development component. The idea that is in the announcement, which refers to essential changes and the adoption of a new set of laws that will affect the geodetic activity, construction and construction land, may, in large part, improve the situation in this area. I think that it is necessary first to create assumptions for permanent establishment of mutual partnership relationship between AREC and the private geodetic sector, which will create conditions for two-way interaction, in order to improve the services, which will bring benefits for the end users. This implies, once and for all, separation and division, of competencies between AREC and the private sector. This should be mostly reflected in the domain of adoption of the legal and by-law regulations, whereby the practical experience of the authorized geodetic engineers should be used to establish professional and legal assumptions that are sustainable in the long run. When adopting laws and by-laws, it is natural for the legislator to insist on maintaining certain degree of indirect and direct



control over the operation and functioning of the geodetic companies. This should only refer to the part of the activity related to geodetic-cadastral activities, which have expressive public character. For this reason, the profession should be raised to a higher level and in the performance of certain tasks, the authorized geodetic engineers should be given a "higher degree" of public authorizations.

On the contrary, certain areas of private sector operation, which are mostly related to construction, urbanism and engineering as a whole, should be liberalized and the principles of a market economy and healthy competition, without side effects in operation, should be applied.

In this context, it is necessary to mention the Chamber, to find a more efficient and effective way of association in order to unite the parties and protect the interests of all participants in this sphere.

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