

In the discussed ruling, the Supreme Court has determined on the appeal in cassation and breach of procedure which considers the jurisprudential doctrine applicable to the case of double registration of one same property as a result of the entry of a good faith third party buyer (article 34 of the Mortgage Law – LH).

The Supreme Court established that *“the neutralisation of the registry principles which arise from the case of double registration of properties is not applicable in the cases involving one single buyer as set forth in article 34 LH, with protection of his purchase in accordance with the principle of public faith of registration”*.

In addition, the Court also stressed the principle of public faith of registration recognised in article 34 LH, which protects the good faith buyer who trusts the Register and enters his right in accordance with the legal requirements set forth in that same article. The Supreme Court explained the importance of good faith in this regard, as it justifies the protection of the third party buyer insofar as he has trusted the accuracy of the Register and this trust has led him to acquire a given property. Consequently, the Court continued that, if there is no good faith on the part of the third party buyer, who is aware of the inaccuracy of the Register in regard to the legal reality, the special registry protection lacks any justification.

In connection therewith, the doubt arises as to when it may be considered that there has been good faith on the part of the third party buyer. The Supreme Court considered that, in this context, the subjective appreciation or the buyer's belief that the seller was the authentic owner of the right in rem and entitled to sell the property is not sufficient; an objective and objectifiable appreciation is required in order to prove that the third party truly bought in good faith.

In this regard, the Court referred to its ruling of 12 January 2015 (465/2014) which states the following: *“given the situation, and in light of the presumption of good faith declared by article 34 LH in its implementing regulations, the issue of the ethical burden of diligence to be applied by the third party purchaser is centred, mainly, on the negative sense of the conceptual extension of good faith, in the extent or degree of diligence required that would have enabled the error or unawareness of the situation to be avoided and to ascertain the existent discordance between the registry information and the ownership reality in question”*.

In this way, once the condition of good faith third party purchaser is recognised in accordance with article 34 LH, the purchase can only be threatened when, in accordance article 36 of that same law, the consummated or consumable purchase provision should prevail within the year following acquisition when:

1. It can be proven that the third party purchaser was aware that the property belonged to a person other than the purchaser.
2. Having been prevented from learning the ownership situation of the property, the registered buyer should consent, expressly or tacitly, during the entire year following the acquisition.

In conclusion, the Court establishes as jurisprudential doctrine that the neutralisation of the registration principles arising from the case of double registration of properties is not applicable in the cases when there is one sole good faith buyer, whose purchase must be protected in accordance with the principle of public faith of registration”.