

METHODS OF IDENTIFYING THE PROPERTY WITHIN THE JUDICIAL TECHNICAL EXPERTISE

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Abstract: *The identification of terrestrial surfaces has always been a problem for cadastral specialists, the identification methods differing in time, from one period to another and from one medium to another. The carrying out of the judicial technical expertise requires a correct identification of the disputed lands, which causes that the modalities of identification differ depending on the quality of the data used, the problem related to the respective case and the reality of the land regarding the buildings at the time of the topographic identification.*

The present paper intends to present the ways of identifying the buildings subject to the judicial technical expertise, taking as a particular case a guarding between two buildings located in the city.

Keywords: *identification, real estate, topographic measurements, cadastral plan, judicial expertise.*

1. Introduction

The identification of the real estates from the topo-cadastral point of view is a primary necessity both in the specialized works performed by specialists in the field of land measurements under the careful coordination of the National Agency for Cadastre and Real Estate from Romania, as well as in the specialized judicial technical expertise realized by the specialists of the related services within the Romanian Ministry of Justice.

It is known that the judicial technical expertise represents a technical-scientific research of certain facts or circumstances of a case, carried out by a specialist of the related field, in order to find the truth, in a legislative framework and in compliance with the legal provisions.

The identification of the buildings within the judicial technical expertise is carried out before the execution of the technical-judicial works and is divided as follows:

- for the real estates that are the object before the first registration in the cadastral system and land register integrated, the owner together with the specialist in the field of geodesic engineering proceeds to identify the location of the building on the natural and/or conventional limits, in order to carry out specialized measurements;
- for the real estates that are subject to legal acts and deeds subsequent to the first registration, the owner together with the specialist in the field of geodesic engineering verifies and validates the site according to the technical data. This verification is performed based on existing documents, respectively cadastral

documentation, land book extracts for information, location and delimitation plans, cadastral plans or maps, land book plans etc.

Within a judicial technical expertise, the specialist in the field of geodetic engineering, hereinafter referred to as the judicial technical expert, has the obligation to carry out a complete, detailed and fully exposed analysis of the situation found on the spot following the displacement performed on the ground, both from technically, economically and juridically, without thereby substituting the chairman of the trial court, even if, apparently, the objective or objectives of the judicial technical expertise were disposed of and appropriated by the trial court by the end of the hearing.

2. Materials and Methods

In the procedures of carrying out the judicial technical expertise, the identification of the location of the real estate is the operation which consists in analyzing them completely, having in this sense the following step order:

- a) choosing the working method;
- b) carrying out the measurements in order to realize the topographic networks and the lifting of the planimetric details necessary for the delimitation of the real estate and the interior details, as well as the collection of the cadastral data, their verification and validation;
- c) analysis of the real estates indicated by the owner and which are in dispute, in accordance with the documents of ownership and the data existing in the national database;
- d) determination by the judicial technical expert of all the elements existing on the ground, both inside and outside the building and their materialization on the plan of location and delimitation;
- e) data processing;
- f) drawing up and writing the report of judicial technical expertise.

The identification modalities of the real estate within the judicial technical expertise are varied according to the data sources, the technical means held and not least the complexity of the technical-legal case.

A correct identification always starts from the documents and documents of property of the interested person, these being: wealth sheets, property titles, land book extracts, court decisions and others, in which the topographic identifier (topographic number, cadastral number or electronic identifier), the existing location within the locality, whether it is in-town or out-of-town, the place name in which the building is located, the category of use of the building, the surface of the real estate and the neighborhoods of the real estate, all representing elements of identification of the real estate in the land.

Starting from the definition of the border guarding existing in the legal dictionary, namely: *„the guarding is the action that aims to determine, by judicial decision, the boundaries between two neighboring properties”*, a fair identification of the real estate has a special importance in the role of an action guarding, a fact for which the specialist appointed by the court, has the primary role of identifying, analyzing and proposing one or more variants regarding the establishment of the boundary line between two or more immovables.

Starting from the documents of property of the interested persons or of the parties within a legal act, the identification on plans and topo-cadastral maps is a very important factor in finding the true limit of ownership of a real estate, if it was correctly represented on these map supports.

Taking a particular case, a border between two buildings located in the town of Caransebeș, Caraș-Severin county, Romania, the sources of identifying the buildings that were the object of the work, were starting from the old cadastral plans published at scale 1:

2880 existing at the level of Caransebeş locality, up to the existing analog and digital database within the Cadastral and Advertising Office Caraş-Severin completed over time with specialized cadastral documentation.

Starting from this point, we set out to identify the boundary line between real estate no. top. 4967/2/1/1 and the real estate no.top. 4967/2/2, immovables that are located in the town of Caransebeş, Caraş-Severin county, Romania. For this, we start from the cadastral plan edited at scale 1: 2880 existing at the level of Caransebeş locality that can be observed in figure 1, where the location of the real estate no.top 4967 can be observed before the dismantling process carried out over time.

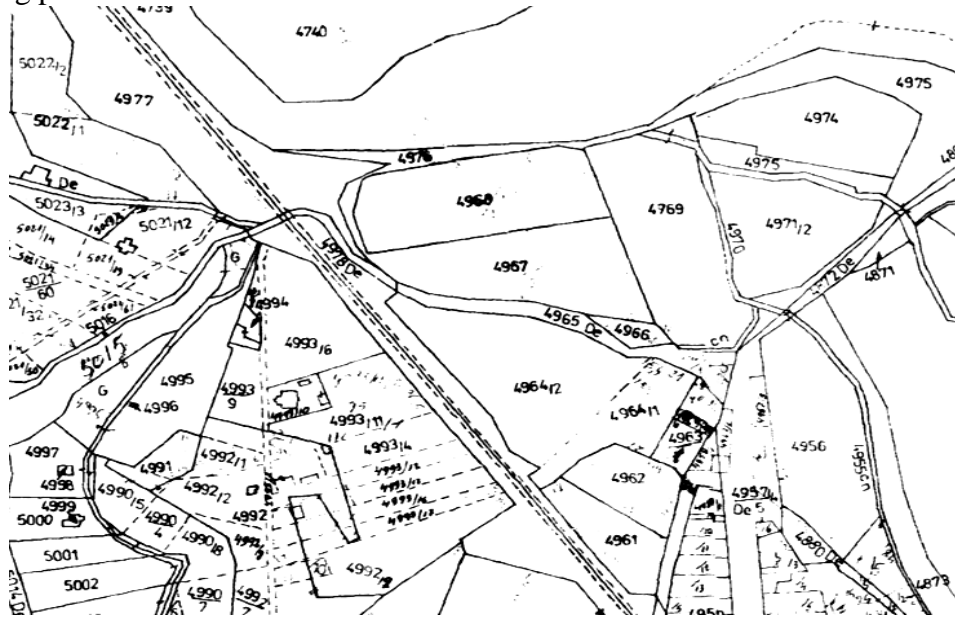


Fig. 1. Excerpt from the cadastral plan published on scale 1: 2880 of Caransebeş

In order to consult the situation existing in the documents of ownership with the situation existing in the field, prior to the trip to the land in order to recognize the land and to carry out the topographic measurements, a series of data sets has been studied further, in order to identify it, such as:

- the photogrammetric image of the studied area to observe the technical differences over the building made over time as can be seen in figure 2;



Fig. 2. Excerpt from the orthophotoplan existing at the level of Caransebeş

- ANCPPI's eTerra online geoportal where it was found that the building no.top. 4967/2/2 assigned an electronic identifier following a cadastral documentation;
- a geometry received by the Cadastral and Advertising Office Caraș-Severin in the database of the National Agency for Cadastre and Real Estate Advertising in Romania, a fact that can be observed in figure 3, information that led to the first stage, upon entering the online platform eTerra 3 of ANCPPI (figure 4), in order to extract the contour coordinates of the respective building.

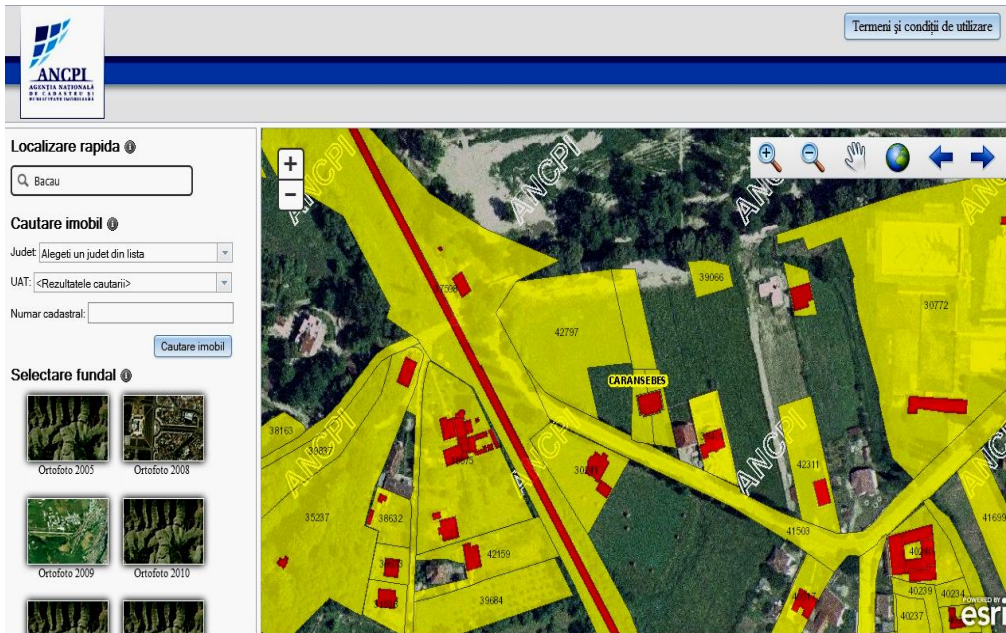


Fig. 3. View from ANCPPI's Real Estate eTerra online geoportal regarding the studied area

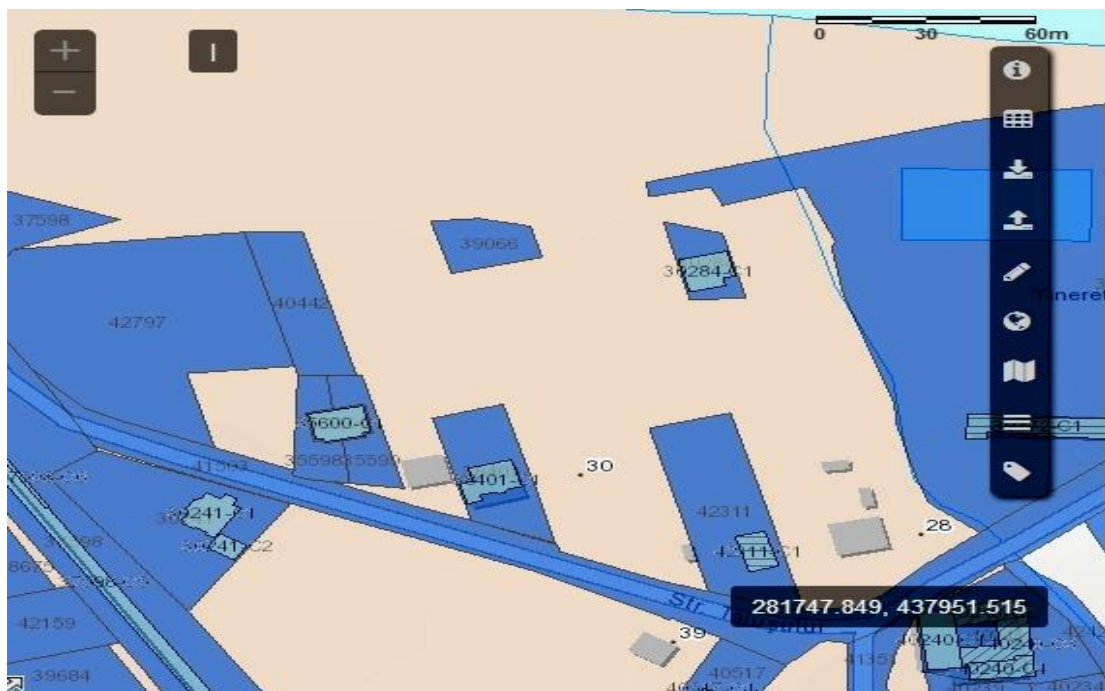


Fig. 4. Excerpt from ANCPPI's eTerra 3 online platform regarding the studied area

Given that, the building with no. top. 4967 was subjected to a decommissioning operation over time but also to the fact that the objective of the study carried out is to identify the boundary line between the real estate with the no. 4967/2/1/1 and the real estate with no.top. 4967/2/2, proceeded to study and analyze the old analogical database within the Cadastral and Advertising Office Caraş-Severin, respectively of the Office of Cadastre and Real Estate Advertising Caransebeş, from where the evolution of the dismantling of the building no. top. 4967 to this day and its representation on detailed cadastral planes, which are shown below in Figures 5, 6 and 7.

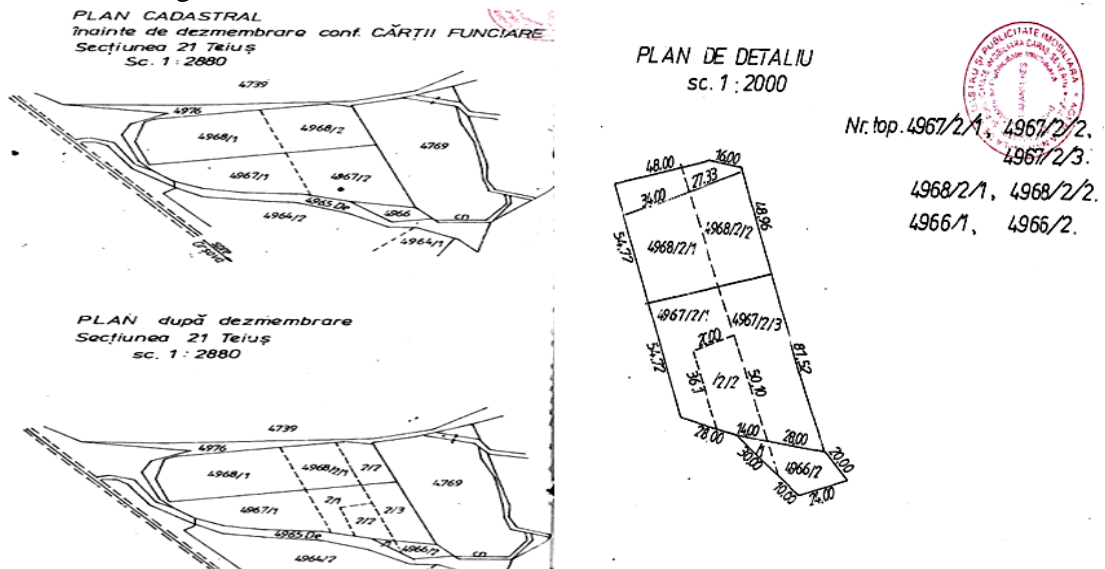


Fig. 5. Extract from the cadastral plan for the dismantling of the real estate no.top. 4967 in 2 lots with the creation of real estates: no.top. 4967/1 and 4967/2, respectively the dismantling of the building no.top. 4967/2 in 3 lots with the creation of buildings: no.top. 4967/2/1, nr.top. 4967/2/2 and no.top. 4967/2/3

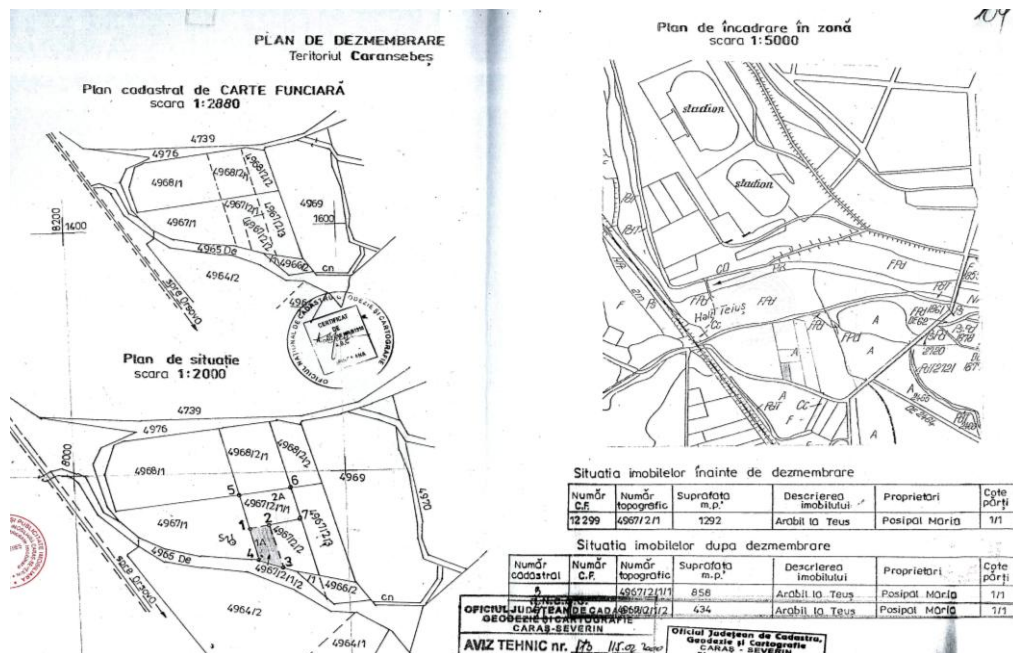


Fig. 6. Extract from the cadastral plan for the dismantling of the real estate no.top. 4967/2/1 in 2 lots with the creation of real estates: no.top. 4967/2/1/1 and no.top. 4967/2/1/2

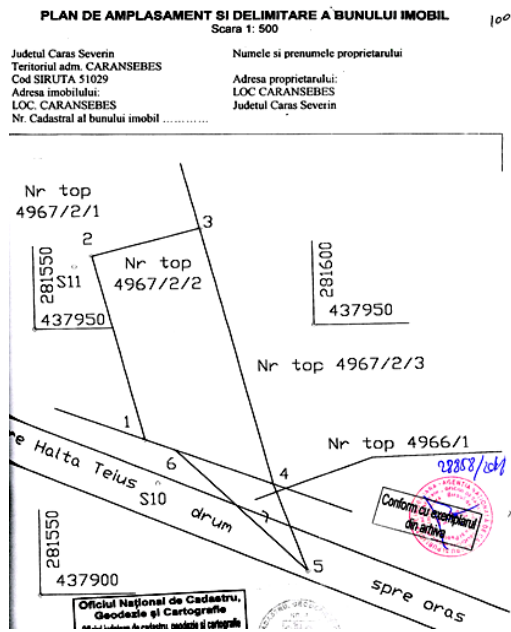


Fig. 7. Excerpt from the cadastral plan for identifying the real estate no.top. 4967/2/2 with the related neighborhoods

3. Results and Discussions

Observing the analyzed cadastral data sets, we can observe a number of differences regarding the identification of the property limits and their reception by the institution authorized in the field in our country. After the topographic survey carried out in the field, as well as the study and analysis performed on the two real estates, the following were deduced:

- the old cadastral plans published on scale 1: 2880 respect the geometric configuration of the real estate with the reality of the land;
- the old analogue database existing within the Caraş-Severin Cadastre and Advertising Office, respectively of the Caransebeş Cadastre and Real Estate Bureau, up to the X period, respects the reality on the ground;
- the position received in the database of the eTerra 3 online platform of ANCPI of the real estate no.top. 4967/2/2 is erroneously positioned, it overlapping the real estate no.top. 4967/2/1/1, this overlap being seen in figure 8.



Fig. 8. Overlay over the photogrammetric image of the study taking into account the database of the Caraş-Severin Cadastre and Advertising Office, respectively of the Caransebeş Cadastre and Real Estate Advertising Office

Regarding the identification of the real estate, the working methods and the means used for this procedure, over time there have been, are and will be a series of approved and disapproved discussions. Regardless of the method, the technical means or the data sets had, the real estates were, are and will always be located on the ground surface in a determined position as accurately as possible, with small differences regarding the determination, materialization and representation on planes and maps of them, but they will never accept gross errors of measurement, positioning and representation, because the technical and legal effects produced can sometimes cause a series of moral, ethical, professional and most often personal damages.

4. Conclusions

The present paper attempts to solve a particularly frequent problem both in the works of cadastre and real estate advertising, as well as in the judicial technical expertise, namely that the identifying real estates with all existing analog and digital resources.

Given the fact that today's specialists do not use or use to a limited extent the old data base existing in the specialized institutions for the works they perform, we recommend that it is necessary and essential to use it, and moreover the return to the old regulations of the Order no. 700 / 07.09.2014 regarding the approval of the regulation of approval, reception and registration in the cadastral and land book records with the subsequent completions and modifications of the National Agency for Cadastre and Real Estate Advertising. We also realised that it is very important to verify, to study, to analyze and to submit for identification the existing cadastral plans and drawings regarding the real estate subject to the reception of the cadastral documentation.

Given the legal value of some topo-cadastre plans and sketches, we consider it necessary to use them, not only in cadastral and real estate works and judicial technical expertise, but also in the realization of the national Cadastre and land book program, because it exists at the level in the territory of our country a lot of court decisions to which specialized works are annexed and which have not yet been implemented or have been erroneously applied for reasons independent of the specialist.

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