

JUDICIAL EXPERTISE IN THE REGLEMENTATION OF CADASTRAL DELIMITATION

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Abstract: *Judicial expertise is a research activity within a civil, criminal or contravention process and is carried out in order to find out the truth in the case before the court. This is prepared by a judicial expert who has acquired this quality based on the legislative regulations in force and who will prepare an expert report in which he will mention the conclusions and findings of the research carried out. The conclusion reached in the expert report may represent a scientific truth, but after the administration of all the evidence a judicial truth is reached, the assessment of the evidence being done by the court.*

Keywords: *judicial expertise; cadastral delimitation; real estate; Land Registry; property boundary*

1. Introduction

Until 2004, real estate advertising cases were analyzed by land registry judges. With the reorganization of the National Office of Cadastre, Geodesy and Cartography and the organizational transformation achieved by establishing the National Agency for Cadastre and Land Registration (ANCPI) as an institution with legal personality and taking over the activity regarding real estate advertising from the Minister of Justice, the latter becomes the institution that manages the system of cadastre and land register from the entire territory of Romania.

In the context of this paper, among the ANCPI's attributions, it can be mentioned that of the technical approval of the expertises carried out by the judicial experts in the specialty of topography, geodesy and cadastre regarding the correctness of the topographical data.

Territorial offices technically approve the judicial expertise drawn up by judicial technical experts in the specialty of topography, geodesy and cadastre regarding the correctness of the topographic data used, at the request of the courts, in accordance with the provisions of the Regulation on the technical approval of judicial expertise carried out by judicial experts in the specialization topography, cadastre and geodesy.

2. Materials and Methods

According to the Civil Code „Private property is the right of the holder to possess, use and dispose of a good exclusively, absolutely and perpetually, within the limits established by law”. At the same time, it is stipulated that „The owners of the neighboring lands are obliged to contribute to the demarcation by reconstructing the boundary and fixing the appropriate signs, bearing, equally, the expenses caused by this”.

According to the mentioned provisions, the owner is responsible for knowing and preserving the boundaries of the building. In this context, situations arise in which various conflicts arise between neighbors, and if they are not mediated in a timely manner, the disputes are to be resolved through the court.

The reasons for these conflicts can be countless:

- a tree grows on the neighbor's border;
- the fence was not built on the border line;
- the annex intended for animals was not built at an legal distance;
- the parking place was not respected;
- noise, unpleasant smells, dust or smoke.

The legislator of the Civil Code prevents and resolves such divergences, explaining, in its contents, the specifics of relations between neighbors. Article 603 of the Civil Code stipulates that the right to property obliges to ensure good neighborliness, which means that each of the neighbors has the duty to respect the property of the other, which can be achieved by fencing the land over which the prerogatives of the right of ownership are exercised.

In order to draw up a forensic technical expertise report, it is necessary to correctly formulate the objectives of the technical expertise, so that the report leads to finding out the truth. Considering the provisions of the Code of Civil Procedure, the courts are obliged to formulate the objectives of the expertise so that they achieve their purpose.

In the case of cadastral demarcation between two real estates, it is important to formulate the following objectives:

- identification of the buildings in dispute;
- identification of all neighbors;
- analyzing the constructions located on the buildings in dispute;
- establishing the border according to the cadastral technical norms regarding the allowed tolerances;
- establishing the land areas affected by the proposed boundary line.

For the development of the case study, two real estates in litigation were analyzed, for which the establishment of the property boundary is required. They are administratively located in the Curciu locality, for which the analysis and interpretation of documents and maps is done according to the topographical plans and land records.

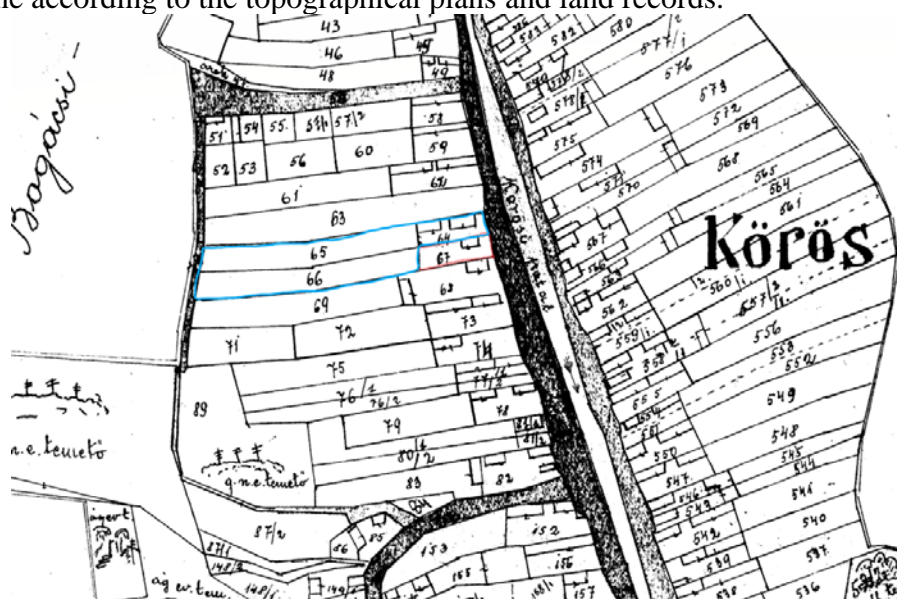


Fig 1. Curciu Land Registry Plan, Scale 1:1000, Office of Cadastre and Land Registration of Mediaș archive

Within the framework of the research that will be carried out, it was considered relevant to check the cadastral plans related to the Curciu locality and the analysis of the cadastral register, which give relevant information about the state of the owners in the period 1970-1980, the period in which the cadastral action took place.

Concretely, the owner C sold to the current owner A the real estate located in the urban area of the Curciu locality, Dârlos Administrative Territory, no. 12, Sibiu county, the building identified in Land Registry CF 122222 Dârlos. On this occasion, topographical measurements were carried out in the field and the existence of a surface difference was found.

In the legal expert report requested in the demarcation process, for the analyzed real estates, reference was made to the former tabular owner, namely C, who had the obligation to know, indicate and preserve the boundaries of the building.

In order to resolve the expertise, the following stages are completed:

- studying the file and identifying the legal situation of the real estates;
- identification of real estates with Land Registry data and cadastral data;
- performing and processing topographic measurements;
- drawing up the Situation Plan and those for topographical and cadastral identification.

3. Results and Discussion

Legal status of real estates

The property owned by C is located in the locality of Curciu no. 12. From a cadastral point of view, the real estate is identified with the cadastral numbers: cad. F113, A114 and Cc115 having a total area of 2350 sqm., the owner in the Cadastral Register being mentioned as the owner C. This real estate corresponds to the topographical numbers 64, 65, 66 of the Land Registry CF 122222 Dârlos, the mentioned owner being C.

The property owned by B is located in the locality of Curciu no. 14. From a cadastral point of view, the real estate is identified with cadastral numbers Cc116, A117 and F118, with an area in the cadastral register of 2414 sqm., the owner in the cadastral register being mentioned as B. This real estate is identified with topographical number 67 and is registered in CF 100877 Dârlos being mentioned as owner B.

Current land use

The real estate used by the owner C is located in the locality of Curciu no. 12. From a cadastral point of view, the building is identified with cadastral numbers F113, A 114 and Cc115, with a measured area of 2350 sqm, the plots are registered in Property Title 551/29, the owner being C, also mentioned in the Cadastral Register. This real estate corresponds to topographical numbers 64, 65 and is registered in Land Registry CF 122222 Dârlos with C as the owner.

The real estate used by the owner B is located in the locality of Curciu village no. 14. From a cadastral point of view, the real estate is identified with cadastral numbers Cc116, A117 and F118, with a measured area of 2414 sqm. No Property Title was issued for this real estate, the same owner B being mentioned in the Cadastral Register. This real estate correspond to no. topographical 67, registered in CF 100877 Dârlos with B. as owner of the Land Deed.

The building in dispute is identified with topographical number 66, from CF 122222 Dârlos. From a topographical point of view, it is part of the building with no. top 64, 65, 66 of CF 122222 Dârlos, the property of the plaintiff C. From the point of view of use, it is part of the building located at no. 14 Curciu, having as owners the defendants B.



Fig. 2 Real estate boundaries in litigation over time - year 2005



Fig. 3 Real estate boundaries in litigation during the year 2009

Making measurements

During the field measurements, old boundary marks were identified: posts from the former separation fences between the owners (old wooden posts on which sections of barbed wire can be seen mounted), alignments of trees and vines, both on the alignment that separates the buildings in dispute, but also on the alignments that separate the buildings of the parties from the neighbors located in the North and South respectively of the buildings. Their existence in the land and the fact that the property line was indicated on their alignments indicates that the parties have no property boundary disputes with other neighbors, the only dispute is related to the alignment that separates the parties' property.

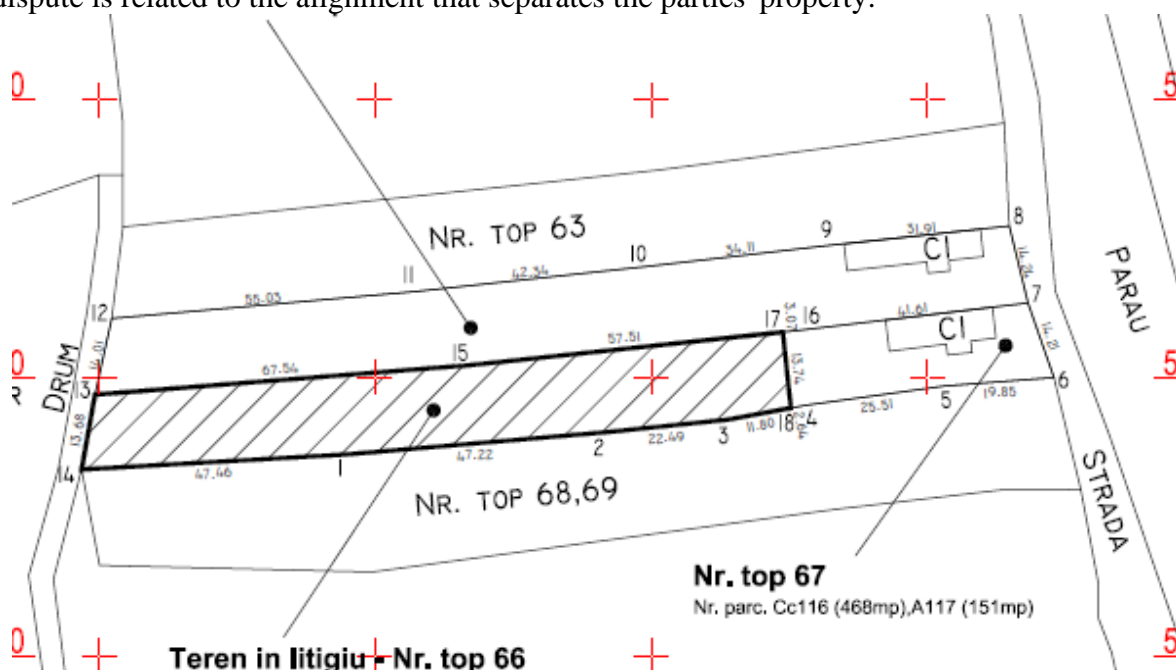


Fig. 4 Cadastral plan resulting from measurements

Cadastral documents

By overlap the situation plan resulting from the measurements carried out as part of the legal expertise with cadastral plan of locality Curciu, a plan in the archive of the Office of Cadastre and Land Registration of Sibiu (OCPI Sibiu), it is found that the real estate belonging to owner A corresponds to the cadastral numbers:

- cadastral number 113, hayfields with an area of 1401 sqm.;
- cadastral number 114, arable land with an area of 380 sqm.;
- cadastral number 115, construction yards with an area of 569 sqm.
- the total area in the Cadastral Register is 2350 sqm.

The measured area of the real estate currently in use by the plaintiff is 2350 square meters.

In the cadastral register taken from OCPI Sibiu, cadastral number F113, A114 and Cc115 are owned by C, domiciled in the locality of Curciu no. 126.



Fig. 5 Extract from Curciu cadastral plan, overlap with the cadastral plan resulting from measurements and with the related orthophoto plan of the area

Establishing the boundary line between the two real estates

The property in dispute is identified with topographical number 66, from CF 122222 Dârlos and belongs according to the situation in the Land Registry documents to the plaintiff C. Thus, the boundary line between the plaintiff's building and the defendant's is given by the points: 7-16-17-18, according to the cadastral plan resulting from the measurements. They constitute the northern and western alignments of the building with no. top 67 registered in CF 100877 Dârlos in favor of defendants B.

The arguments underlying this support are:

- the real estate in dispute, identified with topographical number 66, is part of the building identified with topographical numbers 64, 65, 66 registered in CF 122222 Dârlos since the opening of the original Land Registry 119 Curciu. The oldest entry in this land book dates from 02.09.1907, the building has always belonged to the C family, it being passed down from generation to generation through successive inheritances;
- in CF 122222 Curciu resulting from the reconversion of CF 119 Curciu, no subdivision work was registered that would dismantle the entire topographical number 66 of the real estate belonging to the applicant C. Also, no entries were made in the land register regarding the surface rectification of the building belonging to the plaintiff C, in the sense of reducing the area;
- the area resulting from the documents of the plaintiff's building is 4236 square meters, and the measured one is 4145 square meters, the difference being in the measurement tolerance, a sign of the stability of the boundaries;
- the defendants' building originates from the same old CF 119 Curciu, passes through CF 846 Curciu and through CF 2122 II Curciu, becoming, over time, the

object of two inheritances and 4 sales. In none of the mentioned Land Deeds does there appear any reference related to the modification, in addition, of the surface of the building, in all 6 land deed closings, the surface from the property deed being accepted.

4. Conclusions

In order to register in the integrated system of cadastre and land register the building that was the subject of a dispute in which the judicial expertise was ordered, approved by the territorial office, the location and delimitation plan of the building for which the reception was admitted takes the place of the documentation cadastral after the pronouncement of the final court decision. The assignment of the cadastral number is made by the territorial offices, after the pronouncement of the court decision, at the request of the interested persons, after checking the correspondence with the reality on the ground, if the technical-legal situation of the building has not been changed by registrations subsequent to the technical approval of the judicial expertise.

It is worth noting that the courts request, by appointing the expert, the approval of the expert report, part of which according to the joint Order 1882/2011 and the Order of the General Director of the ANCPI no. 600/2023, is not mandatory for the file, which is why it is required that all the data entered in the expert report be entered in the technical memorandum submitted to the Cadastre Office for the approval of the location and delimitation plan that is the subject of the expertise.

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