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THE IMPORTANCE AND ACTUALITY OF REAL ESTATE EXPERTISE IN ROMANIA

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Abstract. The progress of modern science requires the evolution of research and investigation methods as well as of the clarification methods of technical expertise issues. In all European legislation, expertise is recognized as evidence.

In Romania, the expertise has become evidence that contributes to establish the truth and, therefore of the decisions taken in the expertise and judiciary activities. We can even say that we can not admit the conceiving of a judiciary file without expertise. However, to be given as evidence in court, the report of technical expertise should have a high quality level, to be able to contribute to the proper settlement of the case targeted by expertise.

Our approach has as purpose the analysis of the judiciary and extra judiciary technical estate expertise, through the main normative act into force – Government Ordinance no.2/2000 with further amendments in the Law 37/2009, Law no.178/2009, Law no.208/2010 and Government Ordinance no.13/2010 for the modification and completion of some normative acts in the field of justice in order to transpose the Directive 2006/123/ of the European Parliament and of the Council from December 2006 regarding the services within the internal market.

Key words: technical expertise; judiciary; extrajudiciary; rapport.

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1. Introduction

1989 was a decisive year for the return to Romania after a long period, at the two forms of ownership, such as public property and private property. The appearance of the two forms of ownership led to the elaboration of regulatory documents.

Acquisition of the right of private property should be a blessing for everyone, but practice has shown us the opposite, meaning that, once acquired property, began to appear many misunderstandings both between family members and the relationships between neighbors or other people, which led to many legal actions to settle litigations that had as a main object the dispute over land, a building or other real property, regained after 1989.

For proper resolution of these disputes, alongside with professionals in the legal field has become imperative the involvement of other specialists within technical field. We refer here to the economic expertise, as well as to the auto, constructions, installations, cadastral, topographic ones, etc.

It is necessary to mention the fact that the technical expertise has no absolute probative force, its value in solutioning a cause being equal with the one of any other means of evidence. We must say that the efficiency of the expertise as a means of evidence in solutioning a cause is given by the consistency of the technical expertise report as well as of the expertise conclusions. But, not always the expertise report leads to the solutioning of the cause. This is the reason why the criminal investigation body or the court that ordered the expertise may require, upon request or ex officio, either its completion by an expertise supplement or if applicable, the expertise restoration.

The large number of actions pending the courts has imposed and established a legal framework to regulate this area of expertise. Currently, the normative act regulating technical expertise is Government Ordinance no. 2/2000 on the organization of judiciary and extrajudiciary technical expertise, whose content provides the possibility of knowledge, understanding and deepening problems in this area of expertise, specialization that implies a twofold knowledge, both technical and legal.

There must be mentioned the fact that the disposals of this normative act are not applicable in the situation in which the expertise is going to be done by a forensic service, the Central Forensic Expertise Institute or any other forensic expertise laboratory as well as any other speciality institute.

In our analysis we'll approach the technical expertise, in general, and the judiciary expertise, in particular.

2. Notion. Types of Expertise

2.1. Notion

Expertise is an important legal test, which consists of making inquiries, papers, analysis, calculations, technical assessments and conclusions. Expertise activities are performed by a specialist in a particular area (in this case, real estate) and are made available to the criminal prosecution body or court in order to elucidate/clarification of facts or circumstances which are or would be subject to a lawsuit.

The defining role of judiciary technical expertise is even more powerful as the files of the causes are more complex and contain a larger amount of technical and financial data.

In general, the notion of expertise constitutes evidence, representing the report or opinion of an expert in a specific field of knowledge, in order to determine issues of fact submitted to the judiciary bodies and / or partners of an economic contract.

2.2. Types of Expertise

Technical expertise is of two kinds: judiciary and extra judiciary.

Judiciary Technical expertise is the technical expertise carried out by experts or specialists in the disposal of the prosecution bodies or of the courts to clarify the facts and circumstances leading to solving a case.

In this respect, the art. 2 of O.G. 2/2000 stipulates that “the technical expertise performed from prosecution, of the courts or other authorities having jurisdiction, the expert or experts appointed by them in order to explain the facts and circumstances of the case, is a judiciary technical expertise”.

From the interpretation of this article can be concluded that expertise is considered an act of scientific appreciation of evidence.

Among the characteristic features of a judiciary technical expertise we mention:

a) is a legal evidence in justice that occurs only when the judiciary authorities consider it necessary to clarify certain cases under investigation or trial;

b) is the activity of law enforcement bodies receive technical information in order to establish the truth necessary to thoroughly and legally resolve some cases investigated and prosecuted or judged;

c) is limited to the research of technical problems indicated by the judiciary bodies;

d) is performed by examining documents and technical evidence required to clarify the objectives set by the judiciary bodies;

e) Confirms or invalidates the control findings regarding the technical characteristics, whether it takes into account product quality or the characteristics of the project that formed the basis of product or technology that are the subject of the analysis;

f) occurs as evidence given by prosecution bodies and / or the courts;

g) it is an occasional activity because is performed only at the disposal of judiciary bodies when the situation requires.

The extra judiciary technical expertise is that technical expertise performed upon the request of individuals or legal persons.

The extrajudiciary technical expert can only perform extrajudiciary technical an expertise in the speciality for which has been certified at the request of individuals and legal persons.

The organization of the exam in order to achieve the quality of extrajudiciary technical expert and the release of the extra judiciary technical expert card is the responsibility of the ministries and other central institutions, each with its own specialty field. The exam of extrajudiciary technical expert is organized according to the regulations provided by the ministries and the central institutions authorized for this purpose.

It is important to mention the fact that while the judiciary technical expert can perform also extra judiciary technical expertises upon the request of the individuals or legal entities, the extrajudiciary technical expert can perform only extrajudiciary technical expertises for the speciality he was authorized, upon the request of individuals or legal entities.

Also, it should be noted that when in a particular area there is no judiciary technical expert and the determination of a case requires an exceptional expertise, the court or, where appropriate, the prosecution may order that the expertise to be done by an extrajudiciary technical expert.

3. Expertise Management

A technical judiciary expert may be any person who acquires this capacity under the Government Ordinance No. 2/2000 and is listed in the nominal table comprising judiciary technical experts, drawn on specialties and counties, respectively Bucharest.

The activity of judiciary technical expertise is coordinated administratively and methodologically, and it is controlled by the Central Office for Judicial technical expertise operating within the Ministry of Justice.

Besides courts, local offices for judiciary technical expertise and accounting expertise operate. The activity of technical expertise may be exercised by both individual technical experts and by those organized in companies incorporated under the law, companies that have as main activity the execution of technical expertises.

The quality of judiciary technical expert is acquired on the basis of an examination organized by the Ministry of Justice and is designed to verify the level of knowledge of future experts in the specialty for which they candidate, the degree of assimilation of normative acts related to the specialty of the provisions of the Criminal and Civil Code Procedure relating to the specific speciality, of other laws that govern judiciary technical expertise, as well as the rights and obligations of experts (art. 8 of Ordinance No. 2/2000).

For becoming a judiciary technical expert, the person aspiring to obtain this title must meet cumulatively the following conditions provided by law:

a) To be a romanian citizen or a citizen of a state member of the European Union, belonging to the European Economic Area, or a citizen of the Swiss Confederation;

a₁) to know the Romanian language;

b) to have full legal capacity;

c) to be a university graduate in the specialty for which he is presented for the expert examination;

d) to have a period of internship of at least three years in the specialty in which he earned the graduation diploma;

e) to be medically fit to fulfill the activity of expert;

f) not to have a criminal record and enjoy a good professional and social reputation;

g) to be declared passed in the exam organized to obtain the title of expert.

It is important to mention that the person who has acquired the status of judiciary technical expert or specialist, in terms of this ordinance, may carry out judiciary technical expertises only in the specialty in which he/she has been authorized (Article 14 of Ordinance 2/2000).

4. Liabilities and Penalties Applied within the Expertise Activity

As in any other field, even for this there is liability and penalties. Thus, the lack of technical expertise due to causes attributable to expert's performance or performing it not taking into account the legal provisions entails, the disciplinary, administrative, civil or, where appropriate, criminal responsibility of the judiciary technical expert or of the extrajudiciary technical expert found guilty (art. 34 parr. (1) O.G. 2/2000). The judiciary technical experts responsible for violations committed in pursuit of the expert in relation to the offense committed can bear the following sanctions:

- a) written warning;
- b) suspension of the right to make legal technical expertise for a period of between three months and one year;
- c) withdrawal of judiciary technical expert quality.

5. Conclusions

Judiciary technical expertise is a mean of evidence that is very often used to solve the causes that have as object real estates, whether they are lands, buildings or buildings with different destinations (schools, hospitals, research institutes etc. claimed or lands where these are built).

Resolving these causes imposed the achievement of expertises whose purpose can be: determining the seniority of buildings or their market value, disputes arising from improper performance of buildings / constructions, buildings that are the subject of some financial guarantees, clarifying the issues related to succession that have as main object immovable properties, etc.

The large number of expertises carried out in recent years, leading to confirmation that this activity has its importance and its timeliness comes from the fact that although since 1990 has been gone almost a quarter century, the files/the legal cases related to disputes that have as object properties are equally present. This can be motivated by the slowness with which the files are judged in Romania, the processes stretching over years, although the European Union pulls the alarm signal not to delay processes.

Given the large number of files which are pending in the courts of Romania, which have as their object issues related to land and other properties, it is estimated to be around 2 million today, the real estate technical expertise is and remains as important and still so actual, contributing as means of evidence to the resolution of cases.

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- * * * Ordonanța Guvernului nr. 2/2000 privind organizarea activității de expertiză tehnică judiciară și extrajudiciară.
- * * * O.G. nr. 13/2010 pentru modificarea și completarea unor acte normative în domeniul justiției în vederea transpunerii Directivei 2006/123/CE a Parlamentului European și a Consiliului din decembrie 2006 privind serviciile în cadrul pieței interne.

IMPORTANȚA ȘI ACTUALITATEA EXPERTIZEI IMOBILIARE ÎN ROMÂNIA

(Rezumat)

Progresul științei contemporane impune și evoluția metodelor de cercetare și investigare, precum și a metodelor de clarificare a problematicii expertizelor de natură tehnică. În toate legislațiile europene, expertiza este recunoscută ca mijloc de probă.

În România, expertiza a devenit un mijloc de probă care contribuie la stabilirea adevărului și, implicit, a deciziilor luate în activitățile procesuale și de expertiză. Putem spune chiar că nu se mai poate concepe alcătuirea unui dosar juridiciar fără a se efectua o expertiză. Însă, pentru a putea fi administrat ca probă în justiție, raportul de expertiză tehnică trebuie să aibă un nivel calitativ ridicat, spre a putea contribui eficient la soluționarea corectă a cauzei vizată de expertiză.

Abordarea noastră are drept scop analiza importanței și actualității expertizei tehnice imobiliare judiciare și extrajudiciare, prin prisma principalului act normativ în vigoare – Ordonanța Guvernului nr. 2/2000, modificată și completată ulterior prin Legea nr. 37/2009, Legea nr.178 /2009, Legea nr. 208/2010 și O.G.nr.13/2010 pentru modificarea și completarea unor acte normative în domeniul justiției în vederea transpunerii Directivei 2006/123/CE a Parlamentului European și a Consiliului din decembrie 2006 privind serviciile în cadrul pieței interne.

