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Law, the surveyor and property: which skills for which guarantees?

1. Introduction

The topic about impact of land-surveyor optimal readiness and his skill to perform activities to be made in application practice, as well as in science and research is a very rewarding and timeless discussion subject. It relates to:

- permanently changing social needs and continued public requests development for geodesy, cartography and cadastre department. These needs lead to interaction geodesy also with non-traditional partners,
- challenge to formulate public requests for education institutes which educate geodesy, cartography and cadastre experts,
- amazing technological development of geodesy and cartography in the last two centuries and it is still accelerating (distance meters, electronisation, geographic information systems, satellite geodesy, physical geodesy, global navigation satellite systems, geodesy as a complex science about space, geometric information theory),
- society globalization (economy globalization, business globalization) which is in conjunction with less acceptable occupational environment and high experts mobility,
- information society development (increasing amount of information, rapid information changes, huge amount and ageing of scientific information) and
- permanent character of this developing process.

2. Definition of land surveyor (geodetic surveyor)

Into this evaluation process of optimal land-surveyor's readiness, knowledge and skills for performance of functions that are waiting for this specialist in the 21st century

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application practice, a very important task enters of defining the land-surveyor profession. In the second half of 20th century we have registered numerous of land-surveyor profession definitions (many of them are correct). They are of course similar in many ways, but they have their own specific differential attributes, which often result from national characteristics and from national tradition of the understanding of land-surveyor profession, as well as from those aspects of land-surveyor profession functions which had been necessary to highlight in specific definition case. The biggest contrast of land-surveyor definitions has been made due to very different regional typical understanding of land-surveyor profession which depends on professional environment and differentiated models of this profession (Central Europe, west continental Europe, United Kingdom, United States, etc.)

Various scientific, terminological, pedagogical, educational and other national and international institutions, commissions, companies, federations and associations have dealt with the task to determine the definition of land-surveyors profession. Some of these institutions had returned to their definitions later on and have presented a new, updated and more modern definition of land-surveyor profession, more suitable for the needs of current time. As this definition become more detailed and exact, it is more suitable for that specific time. But on the other hand there is a greater probability that a huge increase of public needs will exceed the suitability and validity of this definition. If the common nature definition has been adopted, it could be supposed that it will be valid for a longer time, but on the other hand it will be especially difficult to find differential symptoms which differs this profession from the adjacent partner professions. There always will be a kind of compromise between the general and concrete – detailed. For purpose of our analysis we will use land-surveyor definition accepted by International Federation of Surveyors (FIG) – Definition of the Functions of the Surveyor approved by FIG General Assembly on 23 May 2004:

A surveyor is a professional person with the academic qualifications and technical expertise to conduct one, or more, of the following activities:

- to determine, measure and represent land, three-dimensional objects, point-fields and trajectories
- to assemble and interpret land and geographically related information
- to use that information for the planning and efficient administration of the land, the sea and any structures thereon, and
- to conduct research into the above practices and to develop them.

The surveyors professional tasks may involve one or more of the following activities which may occur either on, above or below the surface of the land or the sea and may be carried out in association with other professionals

1. The determination of the size and shape of the earth and the measurement of all data needed to define the size, position, shape and contour of any part of the earth and monitoring any change therein

2. The positioning of objects in space and time as well as the positioning and monitoring of physical features, structures and engineering works on, above or below the surface of the earth
3. The development, testing and calibration of sensors, instruments and systems for the above-mentioned purposes and for other surveying purposes.
4. The acquisition and use of spatial information from close range, aerial and satellite imagery and the automation of these processes.
5. The determination of the position of the boundaries of public or private land, including national and international boundaries, and the registration of those lands with the appropriate authorities.
6. The design, establishment and administration of geographic information systems (GIS) and the collection, storage, analysis, management, display and dissemination of data.
7. The analysis, interpretation and integration of spatial objects and phenomena in GIS, including the visualisation and communication of such data in maps, models and mobile digital devices.
8. The study of the natural and social environment, the measurement of land and marine resources and the use of such data in the planning of development in urban, rural and regional areas.
9. The planning, development and redevelopment of property, whether urban or rural and whether land or buildings.
10. The assessment of value and the management of property, whether urban or rural and whether land or buildings.
11. The planning, measurement and management of construction works, including the estimation of cost.

In the application of the foregoing activities surveyors take into account the relevant legal economic, environmental and social aspects affecting each project.

3. Essential aspects of geodetic surveyor's activity

In order to discuss the topic concerning the level of geodetic surveyors - mainly specialist surveyor operating with real estates (it will be related to cadastre of real estate and a number of related areas), the knowledge and qualification necessary for him to take responsibility for the results of activity, we need to analyse main aspects of his activities. In accordance with geodetic surveyors definition (chapter 2) we can see that there are activities with direct relation to real estate area (items 1, 2, 5, 6, 9 and 11) as well as with indirect relation (items 3, 7 and 10). The surveyor's activity is connected with the determination of size and shape of the parts of Earth surface and with discovering many attributes of the parts of Earth surface. From this simple description it is obvious that land-surveyors profession is connected in a special way with law and with national legislation. We will review some aspects of this interconnection.

3.1 Land surveyor (geodetic surveyor) profession in the legal state and ownership right to real estate as basic human right.

Ownership rights belong to basic social relations. There has been large interest about it in every historical period. It is one of the society development aims in EU every member country on its way to democracy improvement to strengthen the country as a legally consistent state; within it also the strengthening and guarantee of all kinds of ownership, including real estate ownership. From this point of view the cadastre of real estate has an irreplaceable role in every EU country. Due to this position of the cadastre of real estate a professional person – surveyor assumes great responsibility. The weight of this responsibility has not been appreciated and morally awarded in most of EU countries so far.

The definitions and functions of cadastre of real estate are not absolutely identical in every EU country. In spite of this on the basis of their comparison we can say that functions of cadastre of real estate are oscillating about the following set of tasks:

cadastre serves as information system, mainly to protect an estate ownership
for tax and fee purposes
for estate valuation
to protect agricultural soil resources
to protect forest land resources
for environmental engineering
to protect mineral resources
to protect cultural sight
to protect conservation areas
to build other information systems about real estates.

From the above follows high priority of land surveyor's mission in the context of his job in the legally consistent state and of fulfillment of his tasks in the use and protection of real estate ownership.

3.1.1 Real estate ownership right and the right state

The Constitution of every EU country includes point of basic human rights and freedoms. With just a small modification every Constitution includes this: “Everyone has a right to own property. Ownership of all owners has the same content and protection. Inheritance is certain. Law determines its content and restrictions.”

Very important function in every EU member country has national information system of cadastre (in countries with dual system in connection with information system of registration real estate rights). Through this institute the state guarantee is realized. The land-surveyor profession in this position assumes a special function, which is very tightly connected with high level of his responsibility.

Information system of cadastre in every EU member country has double function: 1) a tool to perform national functions to protect rights and liberties related to estates and to use and protect them and 2) a national information system about estates and ownership and the other rights to estates. By this cadastre function is realized a managing-organizational function of the State (creating conditions for real estate market, business activities, protecting agricultural resources, protection of the environment and other). One of the main role of this information system is to increase peace (jural guarantee) for

person and corporation, what is necessary for legal state improvement, it is useful for evidence-information cadastre role at market mechanism development within assignment of estate owner rights, and to realize the other objective rights to estate.

3.1.2 Real estate ownership right and personal freedom.

Within Constitutional system of every EU member country there is an ownership, also real estate ownership (real estate is meant as a land or permanent construction firmly engaged to earth surface) part of a basic human rights and it has to be appropriate protected which has clear connection to private freedom.

Ownership guarantee should provide volume of freedom for person and corporation towards relation to ownership. It should provide possibility to take responsibility for own lifestyle. Ownership guarantee does not relative only to protect material base of freedom for every citizen, it means to protect possibility to organize own life. This ownership guarantee in right state as a right for freedom has right and social importance. The right for freedom is targeted against understanding ownership as a tool to control social development and to realize political aims. It means that ownership is assigned to limit state power against citizens. The position of ownership guarantee is not limited to protect person's ownership only, but it is important tool to protect public freedom. Within power partition in the right state between person and the unit represented by state, the person respects state, mainly legal restriction of realize ownerships rights and the state admits irretrievable function of private sector including make private profit. The state creates guarantee system to protect them. This real estate ownership guarantee means fundamental legal and social resolution of right state. It prevents that ownership as well as residential real estates can not be divided for political purposes.

The private ownership guarantee is hand in hand with the others Constitutional rights like basic right to carry business of which is derived the right for free (market) economy. The private ownership guarantee also infers the Constitutional right to create corporations and also the right of free way choice. From this right-interfere results on the one side that ownership guarantee – which is the freedom right is completed only together with the others above listed freedoms and at the other side the further rights (freedoms) have to be complemented with ownership guarantee closer to real estate ownership. It is necessary for every land surveyor specialist working at field of cadastre of real estate to bear in mind this aspects and responsibility coupled with results of this profession.

3.1.3 Cadastre of real estate function in relation to restriction of ownership right acquirement.

The guarantee of estate ownership as a basic right will be accepted by public of right state only if next two conditions will be done:

- a/ if there is large number of person interested in occasion to obtain and keep ownership, by the other words if there is a large number real estates owners.
- b/ if the scale of ownership will be limited at bottom line of estate largeness by the concept that the limit will enable to realize ownership right with profit for owner and with profit for society, it means if the number of owners will be limited.

To all citizens of right state has to be enabled to really make use of basic right provided by state and try to how this right and implicit responsibility are working. Sophisticated political system in field of ownership could directly or indirectly help to wider segment of interested person become an estate owner (for example by supporting capital creation). At the other side the sophisticated political system in field of ownership could directly or indirectly avoid creating such real small estates, or such small co-ownership to estate, which prohibits economic and environmental rational execution of ownership right to estate.

By this policy large number of owners the state prevents from estate ownership concentration, in case it is against ownership guarantee. No only the concentration in hand of state, but in the hand of township – municipal office, concentration in hand of private owners as well (private real estate ownership monopolium).

The public interest is that some of real estates because of their special functions are in states ownership. In the condition of Slovak Republic in accordance with Constitution there are minerals, nature medicinal sources and aquatic source all in the ownership of Slovak Republic. Constitution of Slovak Republic refers: “Law determines which other estate apart from those listed in the Constitution is necessary to provide public requisites, development of national economy and public interest, can be only in exclusively ownership of state, township or assigned corporate.”

3.1.4 Cadastre of real estate function in relation to restriction of ownership right retining – expropriation of ownership right

Ownership estate guarantee as an owner subjective basic right includes mainly the right own and to retain concrete estate. Up to this point the ownership guarantee is status quo. The ownership expropriation against owner allowance in EU is legal only in cases listed in Constitution of every member country and in expropriation legislation. According of the Slovak law the expropriation or forced restriction of ownership right is legal in necessary scale and a public interest based in legislation only and for appropriate amendment. The similar regula is in the others EU countries as well. Amendment for expropriation is assigned by appropriate considering of public interest and interested people. In case of contradiction about amount of compensating which should be paid, there is a possibility to turn to law-court.

In this individual cases the expropriation in necessary to reach common good. Of course this process is unacceptable if the specific common good is reachable by other legal way. The estate expropriation is the very last alternative. In case of respect above listed conditions the status quo policy is replaced by estate expropriation to reach terms for common good in legal state and in social system which provides ownership guarantee.

3.1.5 Cadastre of real estate function in relation to restriction of ownership right execution

Possibilities of land ownership use (subset of real estate ownership) are subject to considerable restrictions. Land policy should not aim at reducing land ownership, but on

the contrary, it should look for solutions as part of public law which restricts ownership to the extent necessary for a relevant sector. Exercise of ownership must serve for public benefit at the same time. Legal consequences of this kind are not expropriation and in most cases they do not require compensation. In principle it is about seeking balance between the interests of society and those of an individual. Public benefit is a bench mark here, being at the same time a limiting factor of ownership restriction. This statement is based on the knowledge that land is not extended and its use cannot be let to the arbitrariness of an individual – lot owner – but on the contrary, a fair social system within the legally consistent state requires the public interest respected in much larger extent in case of land than when another kind of property – building or movable property – is concerned. Every EU member country has a text in its Constitution as follows: “Ownership obliges. Ownership cannot be abused at the expense of the rights of other persons or contrary to general interests protected by law. By exercising ownership no harm must be done to human health, nature, cultural monuments and the environment beyond the limits set by law”.

Influence of public interest is realized within land ownership in a series of social regulations concerning land use planning, building act, legal rules regulating agricultural soil resources and forest land resources use, land consolidation, establishment of the municipality built-up area, possibilities and conditions of using of lot (changes requiring permission and changes not requiring permission), protection of nature and landscape, protections of waters and water management system and other fields of environmental protection. It is important that the system of the social regulations concerned should not be changed to the public law of the higher ownership right of the State.

3.2 Land surveyor (geodetic surveyor) profession and world globalisation

Process of world globalisation has not omitted the profession of land surveyor either. Nowadays it is quite usual for a specialists-surveyors to obtain their qualification in one country, start work in another one and, a few years later, go on to work in the third country where they can make the best of their qualification and present experience.

These days such mobility is already possible and partially realized also within the framework of university studies. It cannot be said that at present time all universities which are preparing geodetic surveyors within their curricula, make sufficient use of possibilities and create sufficient conditions for more intensive process of the inter-campus mobility of their students-future land surveyors. It has been proven that it is useful, even inevitable to increase inter-university communication and inter-university collaboration also by means of higher awareness and coordination of e.g. a defined theoretical and specialized profile of the field of study of geodesy and cartography (and related fields) and the learning profile of a graduate of this study. Higher extent of mutual coordination could bring benefit in the increased level of the graduates towards a certain ideal level, required by the application practice in the actual perspective. This level is not constant on time axis. In each particular time a particular changing level is required by society and ideally the university should be able to reflect these changing demands.

3.3 Land surveyor (geodetic surveyor) profession and information systems

A special characteristic of land surveyor profession is a permanent work with a considerable quantity of information systems, among which an important position belongs to geographic information systems, especially the information system of the cadastre of real estate. In general, by work with information systems should be understood work with a set of information, mathematical, programming, technical and organization resources, which is designed to administer data. Data administration is to be understood as data collection, storage, documentation, archiving, updates and provision to users in terms of multi-purpose use. Every information system has properties of its own. Selected properties of information systems determine work with them in a specific way. This feature of information systems should be taken in account also in considering the knowledge and qualification of a surveyor.

It is especially the information system of the cadastre of real estate which complies with a characteristic feature of work with real estate. It is because the cadastre of real estate is in essence an information system serving for a wide range of subjects. It is the most complete source of information about the geometric parameters of real estate and on ownership to real estate. Nevertheless, the problems in question should not be reduced only to the information system of the cadastre of real estate.

3.3.1 Public character of information system data

Every information system is defined by a certain level of its publicity character, or possibly by the confidentiality of its database or its selected parts. The public character of information system means a general principle of unlimited access to single (or to most of) components in the information system of the database administered (e.g. in case of the information system of the cadastre of real estate it is the access to the cadastral documentation) and rights of every person to consult it and make from it copies, extracts or sketches or require their execution (manual, photomechanical, electronic form, ...).

In the Slovak Republic, one of the main principles of a former land cadastre and land registers, as well as present legal regulation of the cadastre of real estate is the public character of its documentation. It is natural that in democratic society the activities of public authorities must be under public control and therefore it is right to observe the principle of publicity also for the information system of the cadastre of real estate. The public character of the information system of the cadastre of real estate in conditions of Slovakia is guaranteed by the Cadastral Act; exceptions to the general principle of public character of the cadastral documentation are provided by law as well. The public character of the cadastral documentation in conditions of Slovakia is restricted only in a special section of personal data protection in the information system (collection of set of documents) and in case of information on real estate that is important in respect of national defence, order and security.

3.3.2 Trustworthiness of information system data

By trustworthiness of data in information system is understood a general principle of the data reliability of the database administered in the information system, which is considered valid unless proven otherwise.

The trustworthiness of data of the Slovak information system of the cadastre of real estate means that everyone can believe that data contained in the cadastre comply with law and reality and that everyone can rely on this data except for the one who knows that data record was done in the cadastre incorrectly. The Cadastral Act [2] provides in detail which data is trustworthy (unless proven otherwise).

The trustworthy data of Slovak information system of the cadastre of real estate is all binding data of the cadastre of real estate and other selected data of the cadastre of real estate. Among other selected data of the cadastre of real estate, which has been included in the trustworthy data of the cadastre of real estate are: planimetric determination of real estate and cadastral districts, areas of lots, house registry numbers, data on belonging of the lots to the built-up area of a municipality, data on the kinds of protected real estate, on the prices of agricultural and forest lands, data on real estate use, selected data for incorporation of the lots into agricultural soil or forest land fund, data on estimated pedologic-ecological units, selected data for the creation and protection of the environment, selected data to other information systems on real estates, data on real estate owners and others entitled to the rights in real estates, in case of a natural person their first name, surname, maiden surname, date of birth, personal identity number and place of permanent residence and in case of legal entity their name, head office and registration number as well as the data on the facts related to the rights to real estate, residential and non-residential geographical names.

3.3.3 Binding character of information system data

By binding character of information system data is understood obligation to use the information system data classified as binding. The binding character of information system data means that everyone can believe that data contained in the system comply with law and reality and that everyone can rely on this data and as well as use it in real-estate related legal acts.

In case of the Slovak information system of the cadastre of real estate the obligation to use its binding data is validated by law and aimed especially at the protection of rights to real estates. The binding character of the data of Slovak cadastre of real estate is related also to the copies in writing of public records and other documents, to the tax and fee administration, to the agricultural soil protection, to the forest land fund protection, to environmental engineering, economic activities and information systems on real estate.

The binding data of Slovak information system of the cadastre of real estate is in the Cadastral Act stated in detail: data on the right in real estate, parcel identification number, geometrical determination of real estate, area of parcel, nature of land use, geometrical determination and area of cadastral district, name of cadastral district, area of agricultural unit or forest management unit, or organizational unit, data on basic control and detailed minor control, data on minor control and standardized geographical names.

3.3.4 Copyright for database and outputs from information system

Information is knowledge on a particular fact and as such it has its value; this means that information by its nature is subject to ownership. Since information has economic also nature, it has legal nature as well.

Information system database in most cases results from collective work. Geographic information system is very frequently prepared and set up and the information system of the cadastre of real estate is almost without exception prepared and set up by the national mapping agency or possibly by a cadastral authority. It is also made accessible by this authority. Therefore the information system database is protected by copyright, the owner of which is a defined legal entity (only exceptionally it is natural person).

Every user of the information system has to take all measures necessary for the protection of intellectual property of this information system. Every information system contains protective formula with a protection symbol, publisher's name and year of issue/imprint date.

Unless specified otherwise no information system nor part thereof may be reproduced, recorded or distributed in any form or by any means, electronic or mechanic, including photocopies and microfilm, without written consent of an appropriate holder of copyright on the database administered in the information system.

3.3.5 Copyright to software through which the information system is administered

Similarly, the above condition applies also to the protection of software through which the relevant information system is administered, irrespective of the way in which the software has been generated (whether as supply of the software developed per order or as supply of the software developed for unknown user multiuse offered to the wide range of clients after its generation).

These days there is no serious discussion held on the subject-matter as to whether software as independent intellectual creative work should be subject to legal protection. The degree of software protection depends also on precise formulation of subjects that in single stages of program creation, updating, distribution and use are authorized to handle software and on specification of legal conditions under which the authorized subject can exercise their rights. The solution of relations among all the subjects concerned is based on the specification of the status of a subject from whom software commences its movement in society - a programmer. Not only the skills and creativity of programmers, but also considerable capital investment is put in the development and creation of software. Return of this investment is necessary to be provided by the users who receive these results and thus save their own means for development and creation of the software; users should pay an appropriate equivalent. Software legal protection is aimed at avoiding unlawful software disposal. Therefore, the determination of conditions under which software can be used (software modification, copy-making, software release, giving approval of software use etc.) is of great importance for deciding about the basic question: when unlawful use of software takes place.

3.4 Land surveyor (geodetic surveyor) profession and key representatives of application practice

Every university is legally authorized to make free decisions on a concrete form of programmes of studies or curricula (content and extent of lectures and training) and on concrete form of the profile of a university studies graduate. At present time it is evident that this demanding task of specifying graduate's profile and its changes is much easier to solve for the university which constructively collaborates with key representatives of application practice. This role of representatives can be carried out especially by a mapping authority in a country, cadastral authority, professional interest group – chamber of surveyors, professional associations, professional communities etc. Every university needs a suitable system of periodical responses on the side of application practice, the responses concerning to which extent or with which limitations are university graduates ready to fulfil the demanding tasks of practice and in which way the training profile of the study in the field of geodesy and cartography (or related fields) should be revised. The key partners should share responsibility also in connection with formulating requirements and long-term goals of the application practice of these fields covered by their competence. From this point of view fruitful results can be reached of the collaboration of university or another educational institution and application practice.

As stated above, it is necessary to be aware of essential necessity of mutual communication and permanent collaboration between university educational system and key representatives of the application practice of geodesy, especially a mapping authority, cadastral authority and professional geodetic surveyor organizations (chamber of surveyors, surveyors society etc.). Outcomes of this constructive collaboration will certainly be reflected in the positive results of the activities of both partners.

4. What kind of professional education and what kind of professional practice does need the land surveyor (geodetic surveyor) in united Europe in 21st century?

Together with the developing needs of society in 19th and 20th centuries and society's developing requirements for the field of geodesy, cartography and cadastre, also demands have been gradually growing on theoretical and professional profile of the fields of study which were and are preparing specialists for geodesy and cartography. It is my belief that this is a continuous development process and, consequently, these needs will grow and be modified. It will depend also on the application practice to formulate its needs and on the flexibility and circumspection of every university, to which extent the school will be able to foresee the development of application practice needs in question in order to be able to appropriately modify the learning profile of its graduates and thus increase their readiness to fulfil the tasks they will face in application practice. At present time on no account we shall manage with understanding the university study of the field geodesy and cartography (and related fields) as a static system. It is necessary to become aware of the fact that the above-mentioned study is a multi-phase dynamic system with the educational and training process resulting in the profile of a geodesy and cartography graduate with high degree of acquired moral and ethical qualities and theoretical and expert knowledge, qualifications and skills to be applied in application practice.

Also in future the graduates of the field of study of geodesy and cartography and related fields will be educated for scientific and technical, technological, design, organizational, management and pedagogic tasks in the branches of geodesy, cartography and cadastre. Considerable part of these graduates will be absorbed by the practice in the field of the public administration of geodesy, cartography and cadastre and in those commercial and pedagogic fields which are directly connected with the above-mentioned activities. University executives have to endeavour to achieve the expert profile of the graduates from this field to provide these graduates with a wide range of asserting and adapting themselves both to the present and the expected future requirements of application practice, science and research. This effort should result in acceptable outcomes of school activities aiming at the graduate's complex knowledge of the problems of geodesy, cartography and cadastre. After finishing one's bachelor degree studies or, appropriately in larger extent, after finishing one's master-engineering degree studies, the graduate should be able to find wide use of their knowledge in practice.

5. Conclusion

Guarantee of a well-trained geodetic surveyor ready to fulfil the tasks he/she will face in the 21st century society is guaranteed is based only on combination of many aspects of professional work and personal qualities of both student and professional expert:

- Professional environment with long-term conception of education, not only standard one, but also continual, lifelong, which is permanently analysed, reassessed and updated in accordance with current needs and demands,
- Readiness of a surveyor for his/her own lifelong adaptation to the new condition of labour,
- Work with knowledge with long-term effect, which support communication also with non-traditional partners and reduce some negative sides of information age (technologies that do not require thinking skills),
- Work in the environment with information overload that is rapidly becoming obsolete, connected with information assessment and selection support,
- Support and increase of analyses importance,
- Support of activities that arouse motivation of specialists and help creating positive and proud relationship to the profession,
- Support of thought development directed towards essential theoretical and technological conception at the expense of detail which dwindles in importance,
- Support of mental stability and robustness of an individual,
- Support of the communication of an individual within and without his/her profession,
- Support of the activities of an individual directed/driving at their own personal lifelong qualification growth.

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