


## Comparative analysis of the formal and legal principles of easements in Poland

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### Summary

This is a research-based publication. It compiles an up-to-date knowledge on the issues concerning easement law in Poland. The research framework for examining the principles of determining the easement right, as one of several limited property rights occurring in the Polish legal system, allowed the authors to develop the features of easement appurtenant, personal easement, and transmission line easement in a descriptive and graphical form. The authors pay particular attention to the differences in the formal and legal principles applicable to the establishment and enforcement of different types of easements in Poland. Therefore, this paper distinguishes and extensively discusses the two most common easement cases. The first one concerns the right-of-way easement, which according to formal and legal principles is a type of easement appurtenant. The second is an easement of habitation (which is a special type of personal easement). Furthermore, the paper analyses the formal and legal prerequisites for the creation of the easement appurtenant and personal easement. The aim of the research was to draw attention to the complexity of the easement law in Poland and to provide a thematic systematisation of related concepts. Methods based on the principles of descriptive-comparative analysis allowed to achieve the research objective. For a better understanding of the presented subject by the reader, the “introduction” section includes key definitions, formal and legal principles of establishing an easement, conditions of its termination, change in the content of the right, and transfer of rights to another entity. The study is based on the current state of knowledge, supported by extensive research of the subject literature on the presented research topic and the interpretation of the binding legal regulations.

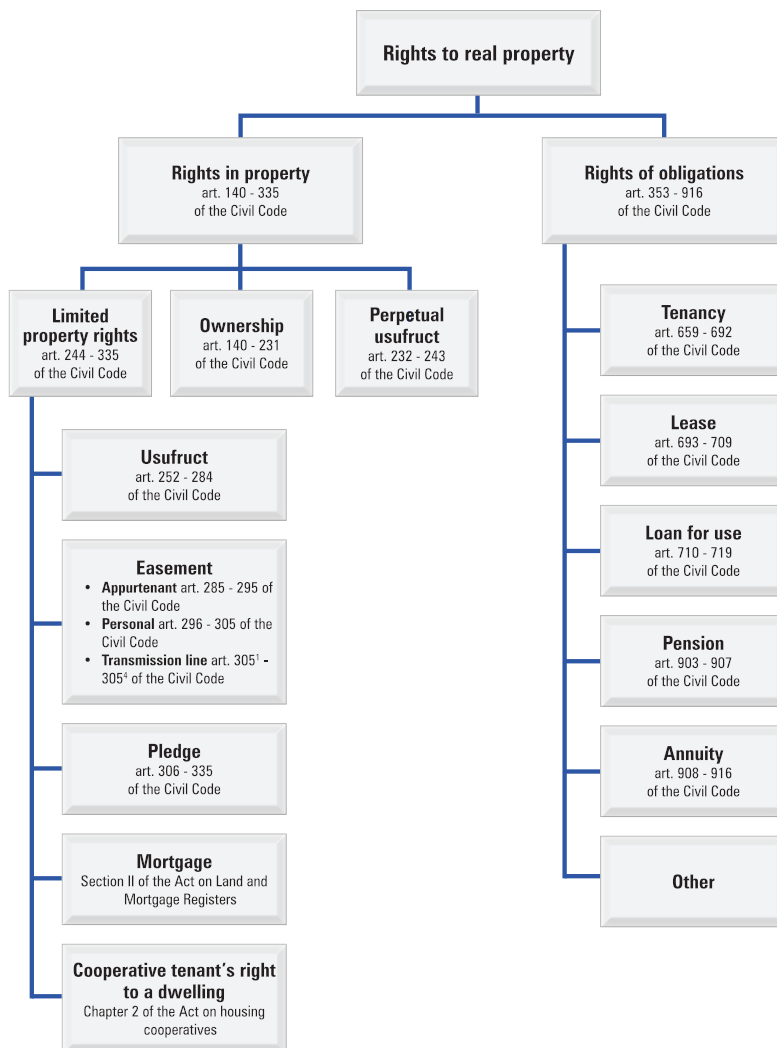
### Keywords

limited property rights • types of easements • legislation • property valuation

## 1. Introduction

The Civil Code Act [1964] lists three types of easements: easement appurtenant, personal easement, and transmission line easement. There are also two special forms of easements – right-of-way, which belongs to easement appurtenant, and easement of habitation, which is a special type of personal easement. Among those listed above, the easement appurtenant has the most extensive legal framework, and its provisions are also applied to model both the personal easement and the transmission line easement. However, this does not mean that distinguishing personal and transmission line easements is pointless, and the existence of only one type of easement in Polish law would suffice. Each of these types of easements has a purpose, mainly because they are established for the benefit of completely different entities and in completely different circumstances, but also the particular easements differ in terms of the possibility of their establishment, termination, abolition, transfer of rights, and others. Easement is an institution that allows persons who are not the owner or perpetual usufructuary of the property to use someone else's property to a certain (relatively narrow) extent. The establishment of an easement right on a property often involves restrictions that bind the owner or perpetual usufructuary of the property encumbered by that right. On the other hand, the establishment of an easement is related to additional rights that enable a specific entity entitled by the easement to use that property. This situation seems to be inequitable, as someone loses certain rights and someone gains them. In order to prevent the injustice created by the establishment of an easement, the remuneration for the establishment of the easement is agreed upon. The valuation of the remuneration, the valuation of the easement right or the valuation of the property encumbered by this right is carried out by a real estate appraiser, in accordance with defined rules, selecting an appropriate valuation methodology and analysing the individual circumstances of the valuation of this right. In the Polish system, rights to property are divided into rights in property and rights of obligation (Fig. 1). This paper focuses on the discussion of types, rules of enforcement, and valuation of easement rights. As shown in Figure 1, easements are divided, on the basis of their socio-economic function, into three types: easement appurtenant, personal easement, and transmission line easement.

An easement is established to guarantee an entity a determined use of a property owned by third parties. There are three main types of easements: easement appurtenant, personal easement, and transmission line easement. There is also a right-of-way easement, which is not a separate category of easement, but is instead a special type of easement, and an easement of habitation, which in turn is a special type of personal easement. Depending on the established easement, the entity that gains certain powers over the encumbered property may be any owner of the real property in question, a designated natural person, or a transmission operator. Pursuant to the definition of easement, real property may be encumbered if the owner of the dominant estate with a right that gives the owner of this property the right to use it to a certain extent, or if the owner of the servient property is restricted in the ability to perform certain actions in relation to it, or if the owner of the servient property is prohibited from exercising



Source: Authors' own study based on Nowakowska [2020]

**Fig. 1.** Property rights and their legal regulation

certain powers (Act of 23 April 1964 - Civil Code [consolidated text Journal of Laws 2020, item 1740]). The encumbered (servient) property is the property on which the easement is established, i.e. it is used to a certain degree and extent by an entity that is not the owner or perpetual usufructuary of that property. The dominant estate is a property for which an easement is established. The concept of the dominant estate refers only to an easement, which gives any owner of the dominant estate the right to use the servient estate to a certain degree and extent. A personal easement is a right with a content equivalent to an easement appurtenant, with the difference that a personal ease-

ment is established in favour of a designated natural person (Act of 23 April 1964 - Civil Code [consolidated text Journal of Laws 2020, item 1740]). Meanwhile, the definition of a transmission line easement indicates that property may be encumbered for the benefit of an entrepreneur who owns or plans to build transmission facilities (indicated in Art. 49. § 1. of the Civil Code) with a right that gives the entrepreneur the possibility to use, to a certain extent and in accordance with the purpose of the facilities, the servient property (Act of 23 April 1964 - Civil Code [consolidated text, Journal of Laws 2020, item 1740]). The possession of an easement from the property owner's side means holding possession of someone else's property within the framework of the established easement. The easement holder is the person who actually uses the property within the scope of the easement right, regardless of whether he or she has a legal title to do so. The easement possession differs from the typical possession of a physical thing insofar as the owner of the property or the perpetual usufructuary is entitled to it. The owner or perpetual usufructuary has *de facto* ownership over the entire property, whereas the easement holder uses the property to a specific, relatively narrow extent. As indicated in Art. 35<sup>2</sup>. § 1. of the Civil Code - 'whoever actually uses another person's property to the extent corresponding to the content of the easement is the easement holder', where, not without reason, the phrase 'actually uses' is used instead of 'actually wields', indicating that the authority over another person's property is limited and uncertain (Act of 23 April 1964 - Civil Code [consolidated text Journal of Laws 2020, item 1740]; [Warciański 2013]).

The law of easement appurtenant, personal, or transmission is often a subject of many authors of books, scientific, and popular studies, however, all of them focus on different aspects of this law and come to their own, sometimes slightly different conclusions. One of the earliest reflections on easement appurtenant and personal easement put down on paper is undoubtedly a study by Czarnecki [1969], which shortly after the first edition of the Civil Code was published, describes how the right of easement appurtenant arises, remains in force and expires. Although the study is over 50 years old, it still captures the essence of these rights. Dąbek [2020] bases his work on the provisions of the Civil Code and sets out the basic principles for encumbering real property with an easement appurtenant in favour of the owner. He points out that an easement can be acquired by contract, court judgment, administrative decision, or acquisitive prescription.

According to the author, the most common type of easement appurtenant is the right-of-way easement, which is established in a situation where the neighbouring property does not have adequate access to a public road. Szczechowicz [2011] presents an issue related to the determination of remuneration for the establishment of a right-of-way easement - how the amount of remuneration is determined, methods of determining remuneration, the scope and forms of remuneration and components affecting remuneration for the establishment of a right-of-way easement. His work is based on legislation, including the Civil Code, the Code of Civil Procedure, and Supreme Court decisions on the determination of remuneration for the establishment of a right-of-way easement. When examining the provisions of the Civil Code, one may encounter the phrase 'adequate access to a public road'. As Adamczyk and Bieda [2011] point out, this formulation is vague and leaves room for interpretation of the above article. They

seek clarification for the phrase 'adequate access to a public road' in the decisions of the Supreme Court, but it is still interpreted by the courts in different ways. In what follows, they highlight the situations (in addition to those specified in the Act) when a right-of-way easement is established, as well as outline the scope and course of the easement.

Krotoski [2012] presents the way of establishing a personal easement, and the fact that a personal easement, in connection with the legislator's claim that the content of a personal easement corresponds to the content of an easement appurtenant with the difference that a personal easement is established for the benefit of a specific individual, and therefore a personal easement can be established in a situation where there are prerequisites for the establishment of an easement appurtenant. Both Nowakowska [2020] and Krotoski [2012] indicate that the most common type of personal easement is the easement of habitation. They also mention similar rights that can be set up in favour of a designated natural person, but which cannot be confused with the easement of habitation. The characteristics of the easement of habitation and personal easement, based on an analysis of the rights, are presented in the work of Szafrńska and Szyszka [2011]. They point out the basic legal aspects in the application of an easement of habitation, such as: the parties to the proceedings, the content and form of the agreement, and the conditions to be met by the parties when establishing the right. An analysis of the rights related to the transmission line easement, including complications in the establishment of the easement right is provided by Zrałek and Kurowski [2011]. They question and attempt to provide a clarification of certain formulations contained in the legislation regulating the transmission line easement so as to make it more accessible. They outline the specific conditions for the establishment of a transmission line easement. Trembecka [2014] explains in her study the concepts used by the legislator in the definition of transmission line easement, such as 'facilities' or 'transmission facilities'. She discusses which facilities are components of the land and, consequently, which facilities can be used to establish a transmission line easement. A description of the conditions and methods for establishing transmission line easements has been made by: Butryn and Preweda [2016], Zrałek and Kurowski [2011], Czerwińska-Koral [2020] and Trembecka [2014]. They also present an approach (through an administrative decision) whereby a transmission entrepreneur can obtain rights to use someone else's property to an extent very similar to a transmission line easement, albeit from the point of view of Polish law not constituting a transmission line easement. The establishment of a transmission line easement involves the right to construct transmission facilities on the property, but also the right for the entrepreneur to enter the property to carry out repairs, maintenance, renovations, etc. The location of the equipment is also connected with establishing the zones where the equipment is effective and defining the easement strip and the exploitation strip. These are defined by Czarnecki [2014]. The method of valuation of easements - appurtenant, personal, and transmission - is described in detail by Nowakowska [2020]. She identifies the approaches, formulae, and their explanations on the basis of which the valuer determines the value of the easement right. She also draws attention to the need for a case-by-case approach to each easement, as each easement may generate different valuation circumstances. The principles for the valuation of limited property rights,

including the principles for the valuation of easement *à* appurtenant and personal easement relevant to the work, are contained in the 2014 National Standard for Specialist Valuation, entitled 'Determination of the value of limited property rights' drawn up by the Polish Federation of Valuers' Associations. The characteristics of the valuation of a transmission line easement can be found in the National Standard for Specialist Valuation created by the Polish Federation of Valuers' Associations [2016]. It provides all information relevant to valuers from the point of view of valuing a transmission line easement or valuing a property encumbered by a transmission line easement.

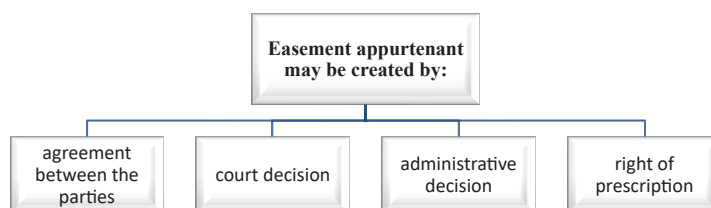
## **2. Research materials and methods**

All information included in this work is consistent with the current provisions of Polish law on easement as a limited property right. The analysis of the rights was based on the compiled literature - scientific and popular studies, books, and websites, but also own analysis of the rights concerning easement *à* appurtenant, right-of-way easement, personal easement, easement of habitation, and transmission line easement. The definition of an easement, as well as its main assumptions and conditions (including the manner of establishment of an easement, termination, and transfer of rights), are taken from the Act of 23 April 1964 - Civil Code [consolidated text, Journal of Laws 2020, item 1740]. The manner of creating the easement *à* appurtenant and personal easement by administrative means, as well as the administrative restrictions on the authority over the property in relation to the transmission entrepreneur, are derived from the Act of 21 August 1997 on Real Estate Management [consolidated text, Journal of Laws 2020, item 1990, as amended]. The provisions constituting the warranty of public faith of land and mortgage registers are contained in the Act of 6 July 1982 on Land and Mortgage Registers [consolidated text, Journal of Laws 2019 item 2204]. Figures presenting the overview course of the right-of-way easement, as well as the overview course of the transmission line easement with the designation of the service strip, the easement strip, and the zone of influence of the transmission device, were developed in AutoCAD 2021. Figures created as a result of the review of geoportals or spatial information systems were also added to the study. These figures show the layout of the right-of-way easement - the properties that do not have direct access to a public road have been identified, with the roads leading to these properties via a neighbouring properties clearly noticeable. In this situation, an established right-of-way easement can be presumed. Similar figures have been created for the transmission line easement. The research method was applied in the form of a descriptive and comparative analysis of the issue in question.

## **3. Characteristics of easement *à* appurtenant**

The concept of easement *à* appurtenant is regulated under Polish law - the definition is contained in art. 285. § 1. of the Act of 23 April 1964 - which specifies that 'real estate may be encumbered for the benefit of the owner of another real estate (the dominant

estate) with a right which consists in either allowing the owner of the dominant estate to use the servient estate to a specified extent, or restricting the owner of the servient estate subject to the encumbrance in the ability to perform specific activities with respect to this property, or restricting the owner of the servient estate subject to the encumbrance from exercising specific rights which the owner is entitled to with respect to the dominant estate subject to the regulations on the content and exercise of ownership (easement appurtenant)' (Act of 23 April 1964 – Civil Code [consolidated text Journal of Laws 2020 item 1740]). Easement appurtenant is established solely for the purpose of increasing the utility of the dominant estate and should be exercised in such a way as to impede the use of the servient estate as little as possible (Act of 23 April 1964 – Civil Code [consolidated text Journal of Laws 2020 item 1740]). There are two types of easement appurtenant: active and passive. Affirmative (positive) easement – the owner of the dominant estate may use the servient (encumbered) estate to a certain extent, e.g. may use the right of way, passage, cattle drive, or the right to harvest fruit or fish, which constitute a part of the estate. Passive (negative) easement – the owner of the burdened property is restricted in the ability to carry out certain activities on the property, e.g. restrictions on the height or size of development, a ban on felling trees, a ban on planting tall vegetation, or where the owner of the burdened property is not allowed to exercise the indicated rights to which he or she is entitled on the basis of the content and exercise of ownership with respect to the dominant property [Nowakowska 2020]. The easement appurtenant can be established in various ways, which include the creation of an easement appurtenant by agreement between the parties, a court decision, an administrative decision, or by the right of prescription (Fig. 2).



Source: Authors' own study

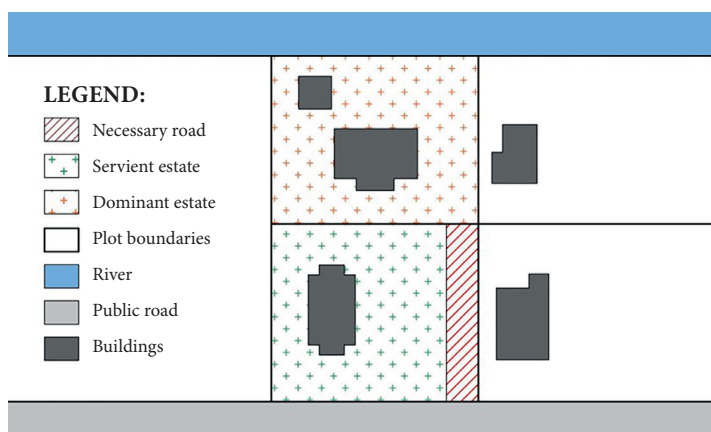
**Fig. 2.** Possible ways of establishing an easement appurtenant

The main way to create an easement appurtenant is by means of a contract between the owner of the dominant estate and the owner of the encumbered property. Under pain of invalidity, it must be concluded in the form of a notarial deed, but only for the declaration of the owner of the servient estate, while the declaration of the owner of the dominant estate may be submitted in any form. An easement by virtue of a court decision may be established in several characteristic cases, such as, e.g. establishment of a right-of-way easement or division of real property – the court may encumber individual plots of land with an easement at the moment when the divided plots, without the

easement established, are not fit for independent use (e.g. in a situation where as a result of division the real property has no access to a public road or facilities or structures necessary for its use). Another case where a court decision on the establishment of an easement may be necessary is the case of trespassing on the border of the neighbouring plot during the construction of a building - pursuant to Art. 151. of the Civil Code (the Act of 23 April 1964 - Civil Code [consolidated text Journal of Laws of 2020, item 1740]). The establishment of an easement appurtenant by means of an administrative decision should be regarded as an exception. An easement may be established in this manner pursuant to Art. 112, paragraph 2 of the Act on real estate management, under which the ownership right, the right of perpetual usufruct, or other rights in rem may be deprived of or restricted on the property which, in accordance with local plans, is to be allocated for public purposes or a decision has been issued regarding the location of a public investment project on the property [consolidated text Journal of Laws 2020, item 1990, as amended]. An easement appurtenant may also be established pursuant to Art. 120 of the Real Estate Management Act, which specifies that where there is a situation of preventing danger, inconvenience or damage that may occur by way of expropriation or change of development of the expropriated real estate for the owners (or perpetual usufructuaries) of neighbouring properties, the expropriation decision may establish the necessary easements and the obligation to construct and maintain facilities preventing such events or circumstances. These provisions give the right to establish an easement appurtenant on the property only if the above-mentioned public purposes cannot be fulfilled without limiting the rights to the property, and these rights cannot be acquired through an agreement between the parties. It should also be noted that such an easement may be established only for the benefit of the State Treasury or local government units, and the competent authority issuing the decision is the head of the district authority, performing the tasks of government administration (the Act of 21 August 1997 on real estate management [consolidated text: Journal of Laws of 2020, item 1990, as amended]). Establishment of an easement by way of acquisitive prescription, pursuant to Art. 292. of the Civil Code, may only take place if it consists in the use of a fixed and visible device permanently connected to the land. A prerequisite for the acquisition of an easement appurtenant is the spontaneous possession of the easement and there must be a link to the use of a fixed and visible facility, which must be created in order to use the easement and not as a side effect of the use of the easement. Examples of this include the construction of an asphalt road or bridge by the spontaneous holder of the easement, but not the ruts created as a result of frequent passing through the property. A necessary precondition for the acquisition of an easement appurtenant is the lapse of time, which is twenty years for an autonomous possessor in good faith and thirty years for an autonomous possessor in bad faith, pursuant to Art. 172. of the Civil Code. The emergence of an easement by way of acquisitive prescription applies only to easement appurtenant that is affirmative in nature (Act of 23 April 1964 - Civil Code [consolidated text Journal of Laws 2020, item 1740]; [Dąbek 2020]). An easement is established over the entire property, it cannot be established over a share or part of a share of a co-owner holding rights in rem over the property,



or over a co-heir, in particular encumbering another co-owner or co-heir. The consent of all of the co-owners is required to establish an easement on a property [Czarnecki 1969]. The easement is extinguished by non-use of the easement for ten years, and in a situation where the content of the easement consists of an obligation not to do things, the easement shall be extinguished when there has been a contradictory condition on the encumbered property for ten years, as recorded in the content of the easement (Act of 23 April 1964 – Civil Code [consolidated text Journal of Laws 2020 item 1740]). The owner of the property encumbered by the easement, due to the emergence of an important economic need, may demand a change in the content or manner of execution of the established easement for compensation, but only if the requested change would not cause disproportionate damage to the dominant estate (Act of 23 April 1964 – Civil Code [consolidated text Journal of Laws 2020 item 1740]). The removal of an easement by the owner of the servient estate is possible in two cases. The first is where, as a result of changes in relations, the easement has become very onerous and is not necessary for the proper use of the dominant estate, the owner of the servient estate may request the removal of this right for compensation. The second case occurs when the existence of the easement appurtenant has lost its significance for the dominant estate, the owner of the servient estate may demand the removal of the easement right without compensation (Act of 23 April 1964 – Civil Code [consolidated text Journal of Laws 2020, item 1740]). The most common type of easement appurtenant found in Poland [Dąbek 2020] is the right-of-way easement. The concept of the right-of-way is defined in the Art. 145. § 1. of the Civil Code as follows: ‘If a property does not have adequate access to a public road or to the farm buildings belonging to that property, the owner may demand that the owners of the neighbouring plot establish a right-of-way easement (a necessary road) against payment of compensation’ (Fig. 3) (Act of 23 April 1964 – Civil Code [consolidated text Journal of Laws 2020, item 1740]).



Source: Authors' own study

**Fig. 3.** Example of the right-of-way easement

Figure 3 shows a layout of an example of a right-of-way easement. The dominant estate (marked in orange) does not have direct access to a public road, as it is located in the second building line and it is not possible to run a public road from the other side of the plot due to a river. For this reason, a right-of-way easement is granted along the right boundary of the property encumbered by the easement (in green). The easement runs in such a way that it fulfils its function while impeding as little as possible the use of the encumbered property. Figure 4 shows an actual example of a right-of-way easement.



Source: Authors' own study based on [www.msip.krakow.pl](http://www.msip.krakow.pl)

**Fig. 4.** Example of the route of a right-of-way easement to a property

Considering the definition of a right-of-way easement, some issues need to be addressed. Firstly, it is important to pay attention to the notation 'public road', as not every road shown in the land and property register as a 'road' is a public road. The requirements that public roads must meet are set out in the Act of 21 March 1985 on Public Roads [consolidated text, Journal of Laws 2020, item 470, as amended] [Nowakowska 2020]. Secondly, the expression 'access' or 'adequate access' provided by the legislator in Art. 145. § 1. of the Civil Code may seem ambiguous. Citing court rulings, Adamczyk and Bieda [2011] point out that 'access' should be understood as the possibility of access, passage, and cattle drive, and a right-of-way easement should enable each of these, counteracting the natural isolation of the property. Access to property largely depends on the individual needs of the owner of the dominant estate and the use of the property to ensure the full enjoyment of its socio-economic functions. The identification of accessibility needs when establishing a right-of-way easement is

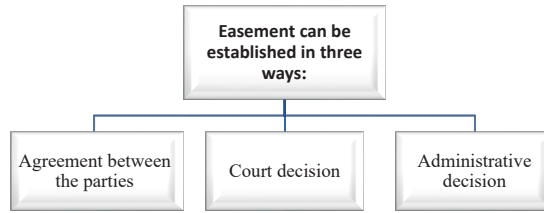
most often determined in court procedure by an expert who inspects the property and prepares an opinion. According to § 2. of Art. 145. of the Civil Code, the execution of this type of easement takes into account the needs of the dominant estate while imposing the least possible burden on the servient estate. The legislator further indicates that in a situation where the need to establish a right-of-way easement resulted from the aftermath of a land sale or other legal transaction, and no agreement is reached between the owners of the property, the court shall order that the easement be carried out through the land that was the subject of the legal transaction (if possible). Pursuant to Art. 145. § 3. the conduct of this easement should take into account the socio-economic interest. The easement should take the shortest and least onerous route connecting the property with the public road (Act of 23 April 1964 – Civil Code [consolidated text, Journal of Laws 2020, item 1740]; [Gołba 2020, Dąbek 2020]). The Civil Code states that a suitable servitude of passage may be established for remuneration, however, under the freedom of contract, the parties can establish the servitude free of charge or indicate any amount. Whereas the establishment of a servitude of passage by a court decision always takes place against remuneration. The court is required to determine the amount of remuneration and how it is to be paid, unless the holder has waived its right to remuneration. The owner of the property encumbered by the easement may disagree with the court's decision and the remuneration specified therein and appeal against the decision. Remuneration is due on the grounds of the establishment of the easement itself, regardless of the damage to the owner of the servient estate. The remuneration for the establishment of a right-of-way easement is not compensation to the owner of the property encumbered by the easement, but is instead an equivalent benefit for the establishment of the easement, which may be a one-off benefit or take the form of periodic payments. Remuneration may also be established in a non-monetary form. In determining the amount of remuneration, the losses suffered by the owner of the property encumbered by the easement are taken into account. The valuation of a right-of-way easement is performed in analogy to the valuation of an easement appurtenant [Adamczyk and Bieda 2011, Dąbek 2020, Szczechowicz 2020]. The warranty of public trust of land and mortgage registers does not apply to the right-of-way easement, i.e. the right-of-way easement persists even if it is not disclosed in the land and mortgage register (Act of 6 July 1982 on Land and Mortgage Registers and Mortgages [unified text, Journal of Laws 2019, item 2204]).

#### **4. Characteristic of personal easement**

Legal regulations concerning personal easement are contained in the Civil Code, where, according to Art. 269, 'real estate may be encumbered for the benefit of a designated natural person with a right the content of which corresponds to the content of the easement appurtenant (personal easement)'. It follows from the above that the purchaser of the easement right can only be a natural person, while the owner of the encumbered property can be a natural person, a legal person, as well as a so-called imperfect legal person, i.e. an organisational unit without legal person-

ality. The relevant provisions concerning easements appurtenant apply to personal easements, with the regulations contained in Chapter II of the Civil Code concerning strictly personal easements. The concept of easement appurtenant is defined in Art. 285. § 1. of the Civil Code, which states that ‘real property may be encumbered for the benefit of the owner of another real property (the dominant estate) with a right whose content consists either in the owner of the dominant estate being allowed to use the encumbered real property to a specified extent, or in the owner of the encumbered real property being restricted in the ability to perform certain actions with respect to it, or in the owner of the encumbered real property not being allowed to exercise certain powers which the owner is entitled to exercise with respect to the dominant estate under the provisions on the content and exercise of ownership (easement appurtenant)’. Furthermore, § 2. states that ‘an easement appurtenant may only have the purpose of increasing the utility of the dominant estate or a designated part thereof’ (Act of 23 April 1964 - Civil Code [consolidated text Journal of Laws 2020, item 1740]). As it has already been noted, an easement appurtenant is a limited property right established on the servient estate for the benefit of each contemporary owner of the dominant estate in order to increase its usefulness. Whereas a personal easement is established on the burdened property for the same purpose, however, for the benefit of a designated natural person, which may be the owner of the neighbouring property. The main difference between an easement appurtenant and a personal easement is that an established easement appurtenant is assigned to each owner of the dominant estate, including future inheritors of the property and new owners of the property at the time of its sale, whereas a personal easement is granted to a designated individual, and upon his or her death, the right expires. Given that the content of a personal easement is determined on the basis of the content of an easement appurtenant, a personal easement may be established only if, according to the legal provisions, it is possible to establish an analogous easement appurtenant. Establishing a personal easement in accordance with the above statement may become problematic to a certain extent, e.g. when establishing an easement of habitation, which is a special type of personal easement. Then the easement of habitation will not find its counterpart in the easement appurtenant [Krotoski 2012].

Easements (including the personal easement) only authorise the use of an item within a specified scope, which is why it is very important to precisely define the content and scope of the easement on the property. The scope of the easement and the manner of its exercise may be determined according to the personal needs of the authorised person, taking into account the principles of social co-existence and local customs, in case there is no such information in the concluded agreement or if such details are written in an unclear manner (Act of 23 April 1964 - Civil Code [consolidated text Journal of Laws 2020 item 1740]; [Szafrńska and Szyszka 2011, Krotoski 2012]). Personal easement may be established for remuneration or free of charge, as declared by the parties to the agreement [Krotoski 2012]. An easement can be established in three ways: by agreement between the parties, by court decision, or by administrative decision (Fig. 5).



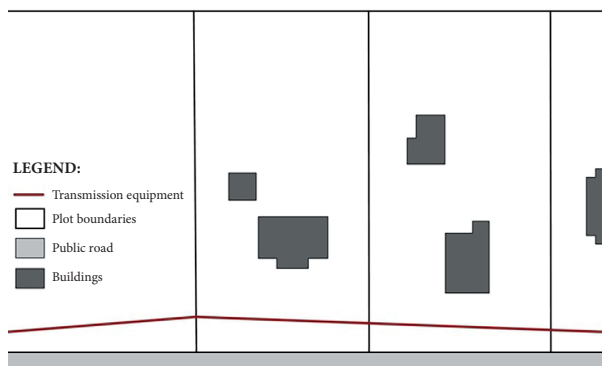
Source: Authors' own study

**Fig. 5.** Possible ways of establishing a personal easement

Personal servitude is a non-transferable right, which means the power to exercise it cannot be passed on. An authorised person cannot enter into a bond agreement that would give third parties the possibility to use the property. Such an agreement is considered to be absolutely invalid [Krotoski 2012]. The right of easement may be established for a specific period of time indicated by the parties in the agreement on the establishment of the easement, and the right of easement expires at the latest upon the death of the person entitled to the right (Act of 23 April 1964 – Civil Code [consolidated text Journal of Laws 2020, item 1740]; [Krotoski 2012]). According to Nowakowska [2020] and Krotoski [2012], an easement of habitation is the most common personal easement.

**5. Characteristics of transmission line easement**

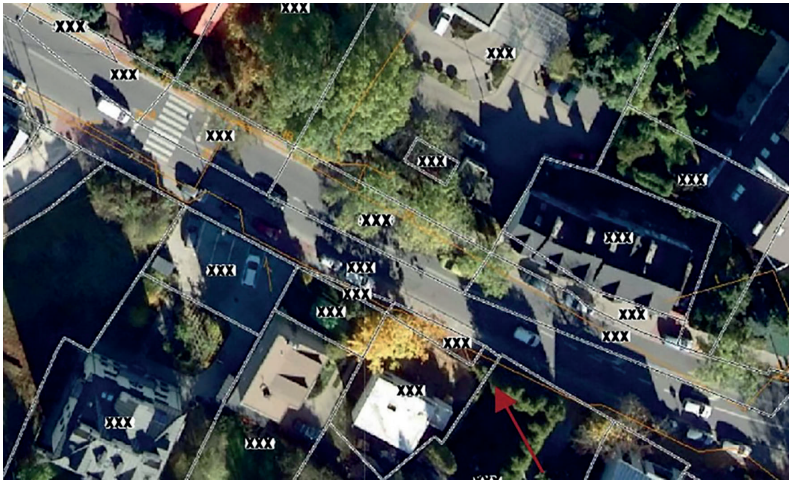
The institution of the transmission line easement is indicated in Chapter III of the Civil Code – ‘Transmission line easement’, where, according to Art. 305<sup>1</sup>, ‘real estate may be encumbered for the benefit of an entrepreneur who intends to build or owns equipment referred to in Art. 49. § 1., with the right to make use, to a certain extent, of the encumbered real estate in accordance with the purpose of such equipment (transmission line easement)’ (Fig. 6) (Act of 23 April 1964 – Civil Code [consolidated text Journal of Laws 2020, item 1740]).



Source: Authors' own study

**Fig. 6.** Example of the route of a transmission facility through real property

Figure 6 shows the course of the transmission facility through neighbouring properties. Such a course may form the basis for the establishment of a transmission line easement on these properties. The existence of a network or transmission facilities on real property may entail the need for an entrepreneur to encroach on the property in order to carry out necessary repairs or renovations. The establishment of an easement right of an appropriate scope will grant the entrepreneur this right, while at the same time compensating the property owners for any loss or damage. Figure 7 shows an example of the course of a transmission facility.

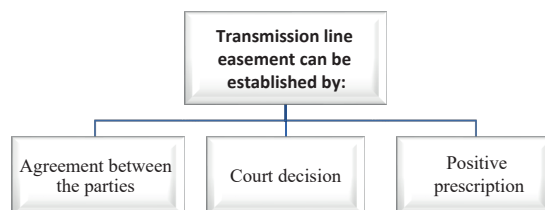


Source: Authors' own study based on [www.msip.krakow.pl](http://www.msip.krakow.pl)

**Fig. 7.** Course of telecommunications network through properties

Art. 49. § 1. according to which 'equipment for the supply or discharge of liquids, steam, gas, electricity and other similar equipment does not constitute part of the real property if it is part of an enterprise'. This statement is very important when establishing a transmission line easement, as it can only be established if the equipment indicated above, which is owned by an enterprise, is planted on the property. The term 'enterprise' should be understood as an organised property complex as defined by Art. 55<sup>1</sup>. of the Civil Code (in the material sense). The transmission line easement does not apply to installed facilities that are owned by the landowner, thus are components of the land. A facility as defined in Art. 49. § 1. cannot be called a connection, which is a conduit connecting the infrastructure network belonging to the enterprise with the customer's internal installation supplying utilities. The utility connections are owned by the individual who bore the costs of their installation, as they are a separate movable item forming part of the technical infrastructure network. The transmission company may operate these networks, however, this does not imply a transfer of ownership or acquisition of any other right to them by the company (Act of 23 April 1964 – Civil Code [consolidated text Journal of Laws 2020, item 1740]; [Trembecka

2014]). Pursuant to Art. 49. § 2. of the Civil Code, an individual who bears the costs of the construction of the facilities referred to in § 1. (and owns them) may demand the acquisition of their ownership for remuneration by the enterprise that has connected the facilities to its network, unless otherwise stipulated in the contract. The entrepreneur may also demand the transfer of the ownership of these facilities (Act of 23 April 1964 – Civil Code [consolidated text Journal of Laws 2020, item 1740]; [Trembecka 2014]). A transmission line easement can be granted over land, buildings, and also premises [Trembecka 2014]. The methods of establishing a transmission line easement are shown in Figure 8.



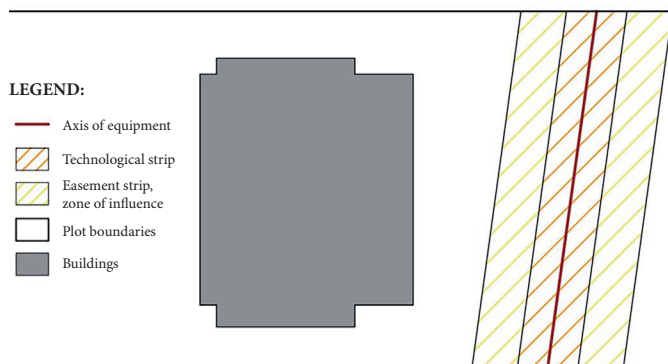
Source: Authors' own study

**Fig. 8.** Ways of establishing a transmission line easement

The main way in which an easement, including a transmission line easement, may be established is through an agreement concluded between the owner of the encumbered property and an entrepreneur who owns the facilities referred to in Art. 48 § 1. located on the property or who plans to install such facilities on the property. The entity that may establish a transmission line easement is the owner or perpetual usufructuary of the encumbered real property, i.e. the property on which the transmission facilities are located or are to be located. If the property is owned by more than one party – the easement may be established only with the consent of all co-owners. This right can only be established in favour of an entrepreneur who owns facilities for the supply or discharge of liquids, steam, gas, electricity or other similar devices, or an entrepreneur who intends to construct such facilities on the property. The creation of an easement may thus be a way to regularise the legal status of the property. The establishment of a transmission line easement may also follow from a court decision. Under Art. 305<sup>2</sup>. § 1. the establishment of a transmission line easement may take place against the will of the owner of the property on which the facilities are to be installed.

Art. 292. of the Civil Code specifies that an easement may be acquired by way of acquisitive prescription, but only in the case of use of a permanent and visible facility. A prerequisite for the acquisition of a transmission line easement is the possession of the easement as defined in Art. 35<sup>2</sup>. § 1 of the Civil Code – ‘whoever actually uses another party’s property to the extent corresponding to the content of the easement is the holder of the easement’. Possession of an easement must consist of the use of a facility permanently connected to the land, i.e. the facility must not be temporary. Possession lead-

ing to the acquisition of a transmission line easement by way of prescription cannot be equated with possession leading to the acquisition of ownership of real property by way of prescription. The acquisitive prescription of a transmission line easement is granted after twenty years for a self-owner in good faith and after thirty years for a self-owner in bad faith, pursuant to Art. 172. of the Civil Code (Act of 23 April 1964 – Civil Code [consolidated text Journal of Laws 2020, item 1740]; [Czerwińska-Koral 2020, Zralek and Kurowski 2011b]). Pursuant to Art. 305<sup>3</sup>. § 1. of the Civil Code, a transmission line easement, as a component of an enterprise (pursuant to Art. 55<sup>1</sup>. of the Civil Code), passes to the purchaser of the enterprise or the purchaser of the facilities indicated in Art. 49. § 1. (Act of 23 April 1964 – Civil Code [consolidated text Journal of Laws 2020 item 1740]). Pursuant to Art. 305<sup>3</sup>. § 2. and § 3. of the Civil Code, the right of transmission line easement expires at the latest with the completion of the liquidation of the enterprise, and after its expiration, the entrepreneur is obliged to remove the devices, indicated in Art. 49. § 1., which impede the use of the property. If the removal of these devices would cause excessive difficulties or costs, the entrepreneur is obliged to repair the resulting damage (Act of 23 April 1964 – Civil Code [consolidated text Journal of Laws 2020 item 1740]). An important issue is the impact of the installed transmission facilities on the property and the determination of the so-called equipment impact zone. The equipment impact zone is understood as the area of the part of the real property where the ownership right is restricted due to the need to ensure the proper functioning of the equipment and to guarantee the safety of persons and property (Fig. 9). When specifying its width, one should take into account, in particular, the strips of land along the linear object or around the cubic object, which are established at the legal stage of the location of the device, but also the strips indicated in generally applicable laws, norms or technical guidelines [Czarnecki 2014]. The easement strip is often equated with the equipment impact zone. The area of the easement strip may also include other parts of the property where the ownership right is restricted, in particular the parts isolated by the equipment (Fig. 9). In justified cases, the area of the easement strip may be taken as the area of the entire property [Czarnecki



Source: Authors' own study

**Fig. 9.** Example of the course of the technology strip, transmission line easement strip and equipment impact zone



2014]. The technological strip of the equipment is the area of the part of the property that is necessary for the proper and effective exercise of the rights under the established transmission line easement by the entrepreneur (Fig. 9). In particular, these activities include the operation of the equipment, maintenance, repairing failures, modernisation, extension, reconstruction, renovation or replacement of the equipment. The area of the technological strip should be determined by the transmission entrepreneur according to the actual needs in the aforementioned scope [Czarnecki 2014].

## 6. Discussion

The concepts of easement appurtenant, personal easement and transmission line easement are regulated by law – the Civil Code defines easement appurtenant in Art. 285. § 1., personal easement in Art. 296. and transmission line easement in Art. 305<sup>1</sup>. The authors of the studies mentioned in this paper, e.g. Dąbek [2020], Czarnecki [1969], Krotoski [2012], Trembecka [2014], Zrałek and Kurowski [2011], refer to these definitions of easements, which are also included here and are not a debatable issue of the easement right being established. The matters related to the establishment, expiry, transfer, and cancellation of the easement right in this study are mainly based on the provisions of the Civil Code and the Real Estate Management Act, as well as on the analysis carried out by [www.edukacjaprawnicza.pl](http://www.edukacjaprawnicza.pl) (accessed on 29.04.2021), according to which an easement appurtenant may be created by an agreement of the parties, a court decision, an administrative decision or by way of acquisitive prescription. These issues – indicated by the website – comply with the provisions of the law, however, our analysis found that [www.edukacjaprawnicza.pl](http://www.edukacjaprawnicza.pl) omitted the possibility of the establishment of an easement by way of an administrative decision pursuant to Art. 120. of the Real Estate Management Act, which explicitly mentions the possibility of establishing an appropriate easement in order to prevent danger, damage or inconvenience arising for owners or perpetual usufructuaries of neighbouring properties. The characteristics of the right-of-way easement were developed on the basis of the subject literature and the provisions of the Civil Code. The concerns raised by Nowakowska [2020] to the wording ‘public road’ are referred to in the Act of 21 March 1985 on public roads [consolidated text of the Journal of Laws 2020, item 470, as amended] and are consistent with its provisions. The issues related to transmission line easement indicated by Dąbek [2020], Adamczyk and Bieda [2011] are consistent with the legal provisions on the right-of-way as a special type of easement in the Civil Code. Krotoski’s [2012] statement that a personal easement can be established only if there is a possibility to establish an analogous easement appurtenant is true and based on the provisions of the Civil Code, more specifically on Art. 297. The Art. specifies that barring the provisions on strictly personal easements the provisions on easement appurtenant apply to this right accordingly. The characteristics of the right of easement of habitation indicated by Nowakowska [2020], Krotoski [2012], Szafranska and Szyszka [2011] are based on the Civil Code and are consistent with it. The establishment of a transmission line easement can occur in three ways: by agreement between the parties, by court decision

or by acquisitive prescription. The transmission line easement is the only one of the discussed easements that cannot be created by means of an administrative decision. By means of an administrative decision, the district governor exercising the functions of government administration may restrict the use of the property by granting permission to run transmission facilities through the property. This right may resemble a transmission line easement in scope, however, from a formal point of view it does not constitute a transmission line easement. This is stated by Zrałek and Kurowski [2011] and Trembecka [2014], who we follow here on this topic. Analysing Art. 124, in particular paragraph 1, it can be concluded that the right specified above cannot be confused with a transmission line easement. However, such a mistake was made by Butryn and Preweda [2016], who stated that a transmission line easement can be established on the basis of an administrative decision.

## 7. Conclusions

Table 1 summarises the main characteristics and distinctive features of appurtenant, personal and transmission line easements.

**Table 1.** Comparison of the features of appurtenant, personal, and transmission line easements

| Easement features                        | Easement                                 |                           |   |
|--|--|---------------------------|---|
|  | appurtenant                              | personal                  | transmission line                                     |
| Legal basis:                             | art. 285.–295. Civil Code                | art. 296.–305. Civil Code | art. 305 <sup>1</sup> .–305 <sup>4</sup> . Civil Code |
| Established by agreement of the parties: | yes                                      | yes                       | yes   |
| Established by a court decision:         | yes                                      | yes                       | yes   |
| Established by administrative decision:  | yes                                      | yes                       | no  |
| Established by acquisitive prescription: | yes                                      | no                        | yes   |
| A right is established in favour of:     | any present owner of the dominant estate | designated natural person | transmission operator                                 |

|  |   |  |  |
|--|---|--|--|
| Removal of easement rights:                  | yes (in two cases: <ul style="list-style-type: none"> <li>• when the easement has become very onerous and is not necessary for the proper use of the dominant estate,</li> <li>• in a situation where the existence of the easement has lost its significance for the dominant estate)</li> </ul> | no   | yes (in two cases: <ul style="list-style-type: none"> <li>• when the easement has become very onerous and is not necessary for the proper use of the equipment,</li> <li>• in a situation where the existence of an easement has lost its significance)</li> </ul> |
| Transfer of rights:                          | yes (the easement is transferred to any owner of the dominant estate)   | no   | yes (the easement is transferred to the purchaser of the enterprise or of the transmission facilities)   |
| Amendments to the content of the law:        | yes (in a situation of major economic need, provided that the change does not cause serious detriment to the dominant estate)   | yes (changing an easement into a pension occurs when the holder commits gross misconduct in exercising that right) | yes (in a situation of major economic need, provided that the change does not cause serious detriment to the dominant estate)  |
| Expiry of easement rights:                   | yes (when the easement is not used for 10 years)  | yes (the right lapses at the latest on the death of the beneficiary)   | yes (at the latest on completion of the liquidation of the transmission company)   |
| Public trust in land and mortgage registers: | yes (with the exception of a right-of-way easement or an easement established as a result of the crossing of a boundary for the construction of a building or other facility)   | yes  | no   |

Source: Authors' own study

Each of the easements can be established by agreement between the parties or by court decision. Of the easements discussed in the study, only the transmission line easement cannot be established by an administrative decision, although it is possible to restrict the use of the property by administrative decision in order to allow an entrepreneur to carry out technical infrastructure networks and facilities. From a practical point of view, this restriction is almost identical to the establishment of a transmission line easement, but under the law, this cannot be called an easement. The next distinctive feature of easement is the manner of its establishment by way of acquisitive prescription, which is possible through easement appurtenant and transmission line easement, but not in the case of personal easement, as indicated by Art. 304. of the Civil

Code. For both the easement appurtenant and transmission line easement, acquisitive prescription takes place after twenty years for an easement holder in good faith or after thirty years for an easement holder in bad faith, pursuant to Art. 172. § 1. and § 2. of the Civil Code. A very clear difference between appurtenant, personal, and transmission line easements, and the whole point of there being three types of easement rights in Polish law, is the differentiation of the subject who acquires the limited property rights understood as easement rights. An easement is established in favour of the owner of the dominant estate (usually a neighbouring property). A change in the owner of the dominant or servient estate does not change the fact that there is an easement right on the property, which is why the phrase 'any current owner of the property' is often used. A personal easement, on the other hand, is established in favour of a designated individual, while a transmission line easement is established on behalf of a transmission company. One of the features that distinguishes appurtenant and transmission line easements from a personal easement is that they can be abolished. While it is not possible to abolish a personal easement, both appurtenant and transmission line easements can be cancelled in two situations. The first is when the easement has become very onerous, and is not necessary for the proper use of the dominant estate or transmission facilities. The second case concerns a situation in which the existence of the easement has lost its meaning. Another feature that distinguishes appurtenant and transmission line easements from a personal easement is the question of the modification of this right. A personal easement can be converted into an annuity when the holder of the easement commits gross misconduct in the exercise of the right. The content of the right of easement appurtenant and transmission line easement or the manner in which the easement is exercised may be changed for remuneration, but only in a situation of compelling economic need, provided that the change does not cause great harm to the dominant estate. The third feature that demonstrates the similarity between the easement appurtenant and the transmission line easement, and also distinguishes the personal easement, is the transferability of its powers. A personal easement is not transferable, whereas the transfer in the case of an easement appurtenant is made to any owner of the dominant estate, whereas a transmission line easement is transferred to the purchaser of the enterprise or the purchaser of the transmission facilities. All these easements can expire. In the case of the easement appurtenant, the right expires unused for 10 years. A personal easement expires on the date specified in the easement agreement or (at the latest) on the death of the holder. The transmission line easement, on the other hand, expires with the completion of the liquidation of the enterprise. The warranty of public faith of land and mortgage registers is referred to in the Act on Land and Mortgage Registers [consolidated text Journal of Laws 2019 item 2204]. Pursuant to its provisions (Art. 7.), the warranty of public credibility of land and mortgage registers does not operate against the transmission line easement, the right-of-way easement, and easements established upon crossing the land boundary when constructing a building or installing equipment. Therefore, the warranty of public credibility of land and mortgage registers covers the easement appurtenant (except for those indicated above) and the personal easement. Analysing all the information contained in

this study allows us to draw the conclusion that the easement appurtenant is the basis for the transmission line easement and the personal easement, thus being the most important of all types of easements. Even at the present time, having a specification of three types of easements in the Civil Code, in the provisions on transmission line and personal easement there is a reference to the provisions on easement appurtenant (Art. 297. for personal easement and Art. 305<sup>4</sup>. for transmission line easement). However, there are noticeable differences between the different easement rights, which is why they exist in Polish law. The most important of the differences is the entity for the benefit of which the right is established. This is the reason why each of the easements has to be distinguished and why these rights continue to function and be established on real property.

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