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## The Issue Concerning the Valuation of Property Encumbered with Technical Infrastructure Equipment

### 1. Introduction

The issues concerning the influence of technical infrastructure equipment on real estate and its value constitute the subject of numerous essays and publications in the area of real estate management nowadays. Above all, it results from an amendment to the *Civil Code*, which was adopted in August 2008, consisting in defining a new form of easement, namely, the transmission easement. Simultaneously, attention was drawn to the type of law that is vested in an enterprise with reference to this equipment. The regulations of the mentioned act, which constitute the basis for deliberation, define constituents of the item as all that cannot be separated from it without damage or significant change of the whole or without damage or significant change of the separated item.

Additionally, an existing record stating that a constituent cannot be a separated subject of the ownership and of other property laws, may lead to the conclusion that all sorts of underground, ground and overhead cables as well as devices connected with the cables should constitute the subject of ownership rights of the same entity real estate rights are related to. Further explanation can be found in the same act, since Art. 49 indicates that transmission devices do not constitute the components of real estate if they are a part of a given enterprise.

However, the way in which an enterprise will utilize these devices is not always based on the ownership rights but results from the content of the contract concluded with the owner of a real estate and it can include other forms of property such as tenancy, leasing or usufruct (The Supreme Court resolution dated February 26, 2003, Supreme Court Resolution was adopted by the bench of Seven Justices in March 8, 2006; Ref. No. III CZP 105/05). Technical infrastructure

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equipment includes [11] devices which are used for supplying and draining liquids, steam, gas, and electric energy as well as suchlike equipment. A similar definition, in terms of the meaning, is found in the *Real Estate Management Act* [10], stipulating that the building and the maintenance of devices are one of the public aims. Thanks to that, the implementation of an enterprise's planned investment is facilitated considerably by means of limiting the exercise of property rights by the owner. It results from the regulation, on the basis of which, the Starost may grant a permit for the installation of all types of transmission cables, transmission equipment, and the indispensable off-site facilities on the property even without the owner's consent.

The condition, which was imposed by the act, concerns the correspondence between these activities and the local plan designation or the decision on the location of the public aim investment.

## 2. Compensation and Damages

As the influence of infrastructure devices on property is analysed with reference to a particular property, it would be a very difficult task to create uniform procedures for the compensation and indemnity valuation which are connected with this subject in reference to the generality of properties.

A variety of transmission devices, their character, technical specifications, and the lack of a precisely defined width for the exploitation zone make it essential to treat every type of property, which is encumbered with such devices, individually.

During the assessment of charges connected with the occurrence of various types of grids, we deal with two notions:

- damages,
- compensation.

Damages include losses suffered by the owner of a property, which result from the implementation of regulations of the Art. 124 of the *Real Estate Management Act*, connected with the installation of infrastructure devices. Here, damages include a destruction of such components of property as pavement, fences, buildings but also felled trees, destruction of plants or the loss of natural emblems. For damages, which arose as the result of the above mentioned activities, the owner is entitled to compensation in the amount of losses suffered by him. The losses, which include also the deterioration of the way in which the property is used, are enhanced by a possible decrease of property value if it results from thereof. The decrease in the property value results from the fact that transmission

devices, which are located on the property, negatively influence the potential purchasers' perception of the attractiveness of the \ property as well as they determine the increase of the risk of not obtaining a requested price for the particular property in the future.

Issues concerning damages for technical infrastructure equipment that is located on property are regulated by the *Act in the Civil Code* in which Art. 363 states that in the case of the impossibility of restoring the property to the condition prior to damage, the owner is entitled to claim compensation paid in cash.

Apart from the possibility of receiving the indemnity, the regulations state that in the situation when the owner of the property does not have the possibility of using it to the same extent as he used the property before the construction of the equipment, the owner is entitled to a claim to the property's buyout by the entity that implements public aim investments. The above mentioned regulations also refer to perpetual usufruct.

Compensation constitutes the second form of recompense to the property's owner. The concept of compensation concerns, above all, the transmission easement. The essence of compensation is formulated in Art. 305 of the *Act in the Civil Code* stating that "property can be encumbered on an entrepreneur's behalf, who is going to build or who is the owner of the equipment that was mentioned in Art 49 section 1, by the law in which the entrepreneur may use an encumbered property in a specific scope and in accordance with the use of the equipment". The way in which this law will be exercised is regulated by the contract that is concluded between the property's owner and the entrepreneur. The agreement defines, among others, the scope of interference in ownership rights, the way of accessing particular devices for the need of repair or maintenance, the amount of compensation or the form of payment.

In the case when one party does not agree to conclude a contract, the other party has the right to demand granting an easement agreement for suitable compensation. The right to apply for granting an easement agreement by both a property owner and an entrepreneur enables its application in reference to devices which already exist and those which would be constructed in the future. In the form of compensation, a recompense for using a property on non-contract basis is exercised that is described in Art. 224, 225 and 230 of the *Civil Code* which states that a property's owner is entitled to a claim for compensation for the usufruct, the return of the proceeds or the payment in the amount of their value and repair of damage due to deterioration of a thing. The limitation period for a claim is 10 years and, in case of claims connected with the running a business, 3 years. For such a period, compensation resulting from using the property on a non-contract basis may be claimed.

### 3. Valuation

The ways of defining the amount of compensation for suffering damages on properties are partially described in the regulations of the law, for instance, in the *Real Estate Management Act* [10] within the scope referring to the implementation of regulations of Art. 124. Directions can also be found in the interim interpretative note V.8 "The principles of defining the value of damages due to the construction of the overground and underground infrastructure" where damages caused by the construction of the infrastructure equipment include the loss of proceeds from a property, deterioration in terms of its use and reduction in the property's value.

In the case of estimating the amount of compensation resulting from granting an easement agreement, there are no precise principles of the procedure of defining it in the law. One of the court sentences indicates only that "the amount of compensation should be proportional to a degree of an owner's interference in the content of the property right. It should also take into account a property's value and, in such a context, the prospective advantages of reduction of property rights should be valued. The amount of compensation should be lower than a property's value" (Reasons for the judgment of the Supreme Court dated June, 17, 2005. Ref. No. III CZP 29/2005). The choice of an approach, a method and a technique, which are used in estimating the compensation resulting from the establishment of the transmission easement, depends on the object of the valuation as it is in case in every appraisal. Currently, work is underway to prepare KSW 4 *Line investments – transmission easement and non-contractual use of a property* [7]. They indicate the possibility of defining the amount of compensation resulting from transmission line easement with the use of market data or, in the case of their lack, in an indirect way. A planned standard comprises numerous formulas which lead to an appraisal of the compensation amount resulting from the establishment of the transmission easement and the use of a property on a non-contract basis. However, every valuation referring to a specific property demands a profound analysis and the choice of a technique which will indicate the most probable value of the sought variable.

In the estimation of compensation amount for the establishment of transmission easement, it is necessary to analyse difficulties of property's use, the influence the infrastructure on the usufruct of the property and its value. Depending on the type of industrial devices and their location within the area of a given property, the degree of encumbrance of a property will differ. In valuation, the appraisal of a property's attractiveness with the infrastructure equipment is of great significance for potential buyers. The appraisal includes defining on what lower level a transaction price can be negotiated as compared to properties free of these types of encumbrances as well as defining how much longer the exposition of a property should last on the market.

Depending on the type of the property and its purpose in the local plan, the influence of the infrastructure equipment can be estimated variously. In the case of agricultural properties, if the situation concerns the route of the overhead power lines, their influence on the plot will be much smaller than in case of the same land that is used for residential development. In the case of agricultural lands, their further cultivation and the usufruct are permissible. When it comes to residential areas, the loss of the value would be connected with the possible reduction of the building line or even with the lack of possibility of situating buildings on property. Transmission devices not only have a negative influence on properties they are situated on, but also on neighbouring properties by influencing the character of surrounding area.

The appraisal of property's depreciation and of the influence of transmission devices is based on a market analysis because there is no data from property buyers that enable their objective assessment. The research conducted in the United States [6] consisted in completing a questionnaire by property buyers whose property is encumbered with industrial equipment. The questions concerned their opinions about the following issues: the influence of the mentioned equipment on a property and its value, if a grid constitutes an obstacle in the use of a property and, in the case of an agricultural property, what part of it is excluded from production. The results showed that 56% of agricultural property buyers think that a grid does not have the influence on their properties. In the case of properties on which residential buildings are situated, the owners paid attention mainly to the deterioration of aesthetic qualities of the surrounding area and restrictions concerning further development. In the case of the power grid, three quarters of the buyers claimed that when they purchased the property, they realized that devices would have a negative influence on their health, the attractiveness of the property will be lower and there would be the risk of obtaining a lower price for the property in the future. However, 67-80% of these people claimed that the decision of buying properties as well as their prices were not influenced by the presence of the power grid. The majority of the conducted researches [2] show that a negative influence of overhead power lines on property value is lower than 10% and it usually occurs between 3% and 6%. The influence of the overhead power lines on property value decreases alongside with the increase of the distance between the property and power lines and it disappears over 60–90 m.

#### **4. The Property's Purpose in the Local Plan and Compensation**

The compensation for the decrease in property's value that is caused by the presence of technical infrastructure equipment concerns also the property's purpose in the local plan, study of land use conditions and directions of spatial

development or land development conditions decision. This issue is defined by regulations about spatial development planning, according to which:

"If, in connection with the enactment of the local plan or its change, it is impossible or considerably restricted to use property or its part the same way as it has been heretofore or the way that has been consistent with its hitherto purpose, the owner or perpetual lessee may demand of the commune:

- 1) the compensation for an incurred actual loss or
- 2) the buy-out of property or its part.

If, in connection with the enactment of the local plan or its change, property's value decreases and the owner or perpetual lessee sells the property and he did not exercise the rights referred to in Act 1 and 2, he may demand compensation of the commune that is equal to the reduced value of the property".

The issue concerning the impairment of a property's value as a result of the change in the property's purpose to an area that is used for the construction of technical infrastructure equipment and the issue of defining the compensation are clearly explained in the mentioned article. However, the analysed compensation does not include losses connected with the optimum use of property. It would be possible physically but, from the legal standpoint, it is unacceptable and results from the unfavourable regulations in local plans which are connected with a technical infrastructure that already exists or is likely to be constructed. It concerns the situation in which the property's value, resulting from the present purpose of the property, is lower than the value of the property which could have been achieved if during the elaboration of the local plan the route of the technical infrastructure equipment was not taken into consideration.

In the situation when a given enterprise plans the development of its grid and hands investment plans over to be taken into consideration in the local plan, properties which could be potentially used for residential or commercial development serve as areas on which technical infrastructure devices are present.

Agricultural properties, which are surrounded by lands on which buildings with residential use are constructed with access to a public road and, whose size enable the construction of the residential buildings, constitute such an example. With regard to the overhead power lines, these properties have never constituted and will never constitute residential areas but they will remain agricultural. In the case of the change in their purpose to areas which are occupied with technical infrastructure devices, two values would be taken into consideration when defining the amount of compensation:

- the value of the property before the change of the plan, that is, the value of the agricultural land;
- the value of the property after the change of the plan, that is, the value of the areas occupied by the technical infrastructure devices.

The above mentioned compensation does not include an optimal way of using property in the case when it is not encumbered with high voltage electric transmission lines. In such a case, these properties could be used as residential in the local plan and, in the case of planned installation of electric grid and a change of plan, compensation would be defined on the basis of:

- the value of the property before the change, that is, the value of the residential areas;
- the value of the property after the change of the plan, that is, the value of the areas occupied with technical infrastructure equipment.

In the second case, the difference in value will be much higher while in the first case the difference can be slight.

The issue concerns also the determination of damages or compensation due to the presence of transmission devices, in which estimations are based on the individual market values or rental rates referring to the current and not to hypothetically possible purposes of the area. On the other hand, the question arises as to whether the proper acceptance of the assumptions is possible, in the case of every property, when it comes to an optimal purpose of the area without encumbrances that are connected with technical infrastructure.

## 5. Summary

The appraisal of the amount of compensation and damages, which is connected with the presence of technical infrastructure devices or with their planned construction, requires a detailed analysis of the following issues: the restrictions in the use of the property, incurred losses due to these activities and the appraisal of the loss of the property's value. In some cases, a slight influence of transmission devices on a property's value can be taken into consideration whereas in other cases it is difficult to take into account all potentially lost benefits of the property which would have been possible to obtain if it has been free of encumbrances.

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