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Summary of the doctoral dissertation

Limited expropriation for transmission purposes and transmission easement in Polish law - the comparative law study

Following thesis is focused on the issue of comparison of two legal methods of limitation rights on real estates: limited expropriation on the ground of public law and transmission easement on the ground of private law. In the current legal state, both legal measures may be used simultaneously or interchangeably, and they constitute an exception to the constitutional and international law of property protection.

Expropriation, as a public-law measure serving not only to deprive property rights to real estate, but also to limit them in connection with the implementation of transmission investments, classified by the legislator as a public purpose, has been applicable in Polish law for almost a hundred years. On the other hand, the limited property law concerning transmission, which is the transmission easement, which has its source in civil law regulations, was introduced into the legal system only on August 3, 2008. For many years, the administrative expropriation was the only way to create a legal title enabling the placement and maintenance of facilities for the transmission of electricity, gas, water and other media distributed in network systems on real estate not belonging to transmission companies. This situation gave rise to a number of problems requiring solutions at the level of making and applying the law.

On the one hand, they led to the escalation of claims of entities with a legal title to use real estate encumbered by placing transmission facilities on them, and on the other hand, to the emergence of transmission entrepreneurs at the risk of disturbing the stability of transmission activities due to the lack of permanent regulation of the rights to use the property in accordance with the intended use of the facilities for transmitting the appropriate media. As a result, in the period before the entry into force of the provisions of transmission easement, tendencies, based on the jurisprudence and the achievements of the doctrine, developed in the practice of applying the law, to ascribe to limited expropriation for transmission purposes

functions and content corresponding in essence to the function and content of the transmission easement.

The main issue that requires clarification in this dissertation is to determine whether the limited expropriation for transmission purposes, carried out by an administrative decision, excludes the subsequent possibility of establishing or acquisitive transmission easement? If it does not, does it affect, and possibly to what extent, the conditions for establishing a transmission easement?

The work also attempts to find answers to the following questions, which are a detailed specification of the main research thesis:

- Is the coexistence in the system of expropriation for transmission purposes and transmission easement as a limited property right justified in the conditions of a market economy and a democratic state of law?
- Do limited expropriation for transmission purposes and transmission easement share the identity of the functions for which both institutions were introduced into the legal system and are maintained?
- Do limited expropriation for transmission purposes and transmission easement have the same or similar content and should they be treated as equivalent measures in the regulation of the legal status of transmission facilities on real estate?
- Are limited expropriation for transmission purposes and transmission easement a competing legal measure in the sense that the application of one of them excludes or limits the possibility or the need to apply the other?
- What are the economic conditions of limited expropriation for transmission purposes and transmission easement in terms of compensation of losses incurred by the owner or perpetual usufructuary of the real estate on which the transmission infrastructure is located?
- Does the determination or the possibility of establishing compensation for expropriation affect the award or the amount of the appropriate remuneration for the establishment of the transmission easement and to what extent?

The problem issues presented above remain valid and deserve an in-depth analysis aimed at determining whether the content, function and effects of limited expropriation and transmission easement are the same or different in the light of the completeness paradigm of the legal system. If there are significant similarities between the two institutions, it would be questionable to keep both in the legal order. On the other hand, establishing significant differences will have to be considered as an argument for keeping them in the legal system.

The issues that need to be resolved in order to find answers to the questions presented, both in relation to the main research problem and the formulated complementary problems, have not been unequivocally or exhaustively explained in the science of law so far. Trigger for analysis of those phenomena was lack of comprehensive scientific work on the issue in comparative approach in Polish literature.

In order to verify hypothesis three points of view have been considered: constitutional law, administrative law and civil law. While conducting research related to this study, mainly dogmatic-legal, historical-legal and comparative methods were used.

The successive stages of the research are described in four chapters, preceded by an introduction in which the problems analyzed, the scope of the work and the adopted research methods and terminological assumptions are presented. The ending, on the other hand, will include a recapitulation of the findings and formulating theses, which the author intends to answer to the questions describing the research problems formulated in the introduction.

The first chapter discusses the legal regulations regarding the location of network devices on real estate against a historical background. The second chapter examines the structural foundations and the effects of limited expropriation for transmission purposes. The findings made in this part of the paper are decisive for further considerations concerning the comparison of the features, content, conditions of application and the effects of limited expropriation for transmission purposes and transmission easement. The choice of the discussed issues is not accidental, but results from the assumptions of the comparative methodology. The structure of limited expropriation is presented as synthetically as possible, broken down into objective, subjective and functional aspects. Then, the principles of necessity and subsidiarity, which are crucial for the essence of expropriation, are discussed, along with their constitutional and statutory sources. Separate considerations in the second chapter concern the subject of the implementation of a public goal within the framework of limited expropriation. This chapter also examines the problem of the durability of limited expropriation for transmission purposes and the issue of compensation for expropriation for transmission purposes.

The third chapter of the dissertation concerns the considerations on the construction basics and the effects of the emergence of transmission easement in the context of the comparison to limited expropriation for transmission purposes. The analysis carried out in this part, in order to reveal the separateness and similarities of both institutions, is carried out from the research perspective, consisting in the selection of the analyzed issues, partly identical, and partly similar to the one adopted in the description of the structure of limited

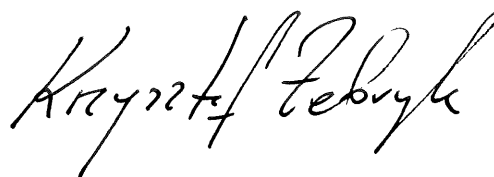
expropriation. In the third chapter, the presentation of the aspect of durability of the property load with transmission easement corresponds to the discussion of the issues related to the durability of the limited expropriation. This chapter discusses the issue of appropriate compensation for the establishment of transmission easement, which, together with the conclusions from the analysis of compensation for expropriation and planning compensation, will be the starting point for assessing the mutual impact of all these forms of economic compensation.

The fourth chapter is the culmination of the discussion of this work. The issues raised in it refer directly to the topic of the dissertation. The conducted analyzes are based on the findings made in the previous chapters and the conclusions drawn from them. The scope of transmission easement and the scope of limited expropriation for transmission purposes are compared. Then, an analysis of the possibility of creating a limited property right with the content of transmission easement by the expropriation decision is carried out. Finally, the issue of the impact of limited expropriation on transmission purposes on the possibility of establishing or usucapturing transmission easement is discussed. The evolution and the current state of the jurisprudence in this area, as well as the doctrine positions relating to it, are presented. Further findings made in chapter four refer to the economic aspect of the analyzed problem, i.e. the relation between the appropriate remuneration for the establishment of transmission easement and fair compensation for limited expropriation. The last subsection of this part of the work deals with procedural issues related to the competitiveness of limited expropriation and transmission easement.

In the summary of the scientific discoveries made in this dissertation, the assumptions of which were the comparison of limited expropriation for transmission purposes and transmission easement, and in particular the need to assess the impact of limited expropriation on transmission purposes and transmission easement, on the basis of analyzes aimed at resolving the research problems formulated in the introduction, it should be indicated, that prior limited expropriation for transmission purposes carried out by an administrative decision does not affect the admissibility of the subsequent establishment of a transmission easement and affects the possibility of usucaption of transmission easement in such a way that the transmission entrepreneur who began to possess easement as a result of the execution of the expropriation decision should be considered the holder who may acquire the right by prescription after the expiry of the period of good faith required by the law. It was also established that limited expropriation for transmission purposes and transmission easement do not share the identity of functions in the legal system. The research revealed that

expropriation does not exclude or limit the possibility or the need to establish or usucaption of a transmission easement; on the other hand, the emergence of transmission easement excludes the possibility of limited expropriation of real estate. It was also proved that the granting of expropriation compensation, including an element of the decrease in the value of the property by an administrative decision, as well as the granting of planning compensation, excludes the possibility of compensation for the damage consisting in the reduction of the property value as part of the appropriate compensation for the establishment of transmission easement.

Keywords: limited expropriation for transmission purposes, transmission easement, acquisition of property rights for transmission purposes

A handwritten signature in black ink, appearing to read "Krzysztof Tebnyk". The signature is written in a cursive style with some stylized flourishes.