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Abstract:

The article concerns the admissibility of usucaption of a transmission easement or land easement with the content corresponding to a transmission easement in the case of a transmission of entrepreneur's possession of real estate on the basis of an order issued in accordance with Art. 1 Section 1 of the Act of June 28, 1950 on the general electrification of villages and estates (hereinafter referred to as the Act). The analysis conducted led to the following conclusions.

Cases in which it came into possession of someone else's real estate pursuant to Art. 4 of the Act in connection with the issuance of administrative acts pursuant to Art. 1 Section 1 of the Act (issued before April 5, 1958), in the context of the grounds (admissibility) of usucaption of a transmission easement or land easement with a content corresponding to a transmission easement, deserve treatment similar to situations in which administrative decisions were issued pursuant to Art. 35 Section 1 of Act of 1958 on rules and procedures of real estate expropriation (hereinafter referred to as u.z.t.w.n); Art. 70 Section. 1 of Act from 1985 on land management and real estate expropriation (hereinafter referred to as u.g.g.w.n.) and Art. 124 Section. 2 of Act of Management of Real Property hereinafter referred to as u.g.n.). Arguments are put forward that in such factual circumstances, there exists an administrative title to perform on someone else's soil activities necessary for the proper operation of the transmission (electricity) network, i.e. related to servicing and repair of devices installed in connection with the widespread electrification of villages and estates. The exclusion of the possibility of usucaption of a transmission easement or land easement with a content corresponding to a transmission easement is a natural consequence of exercising of the powers of administrative origin by a transmission providing entrepreneur.

When rejecting the thesis on the existence of an administrative right to use someone else's real estate, to the extent referred to in Art. 35 Section 1 u.z.t.w.n. (Art. 70 Section. 1 u.g.g.w.n. i Art. 124 Section. 2 u.g.n.), it should be stated that in many (but not all) cases there will be a civil law title (usually obligatory) covering the right to perform the activities indicated in the provisions cited in this paragraph. Therefore, also then it will not be allowed to acquire a transmission easement or land easement by acquisitive prescription with the content corresponding to the transmission easement, because the transmission entrepreneur operates within the scope of his bundle of rights.

Finally, an appeal was made for caution and reflection when resolving cases for the ascertainment of usucaption of transmission easement or land easements with the content corresponding to the transmission easement. As presented in the article, a standard approach to this type of cases resulted in the situation that for many years the acquisition of easement by usucaption was adjudicated, despite the existence of a legal title adequate to the bundle of rights exercised by the transmission entrepreneur. This remark concerns not only the situations problematic until this day related to the foundation of the transmission infrastructure in the regime of the Act, but also those factual situations in which decisions were issued pursuant to Art. 35 Section 1 u.z.t.w.n. (Art. 70 Section. 1 u.g.g.w.n. and Art. 124 Section 2 u.g.n.). In the second, seemingly uncontroversial case, the approach of common courts is gradually normalizing under the influence of the resolution (7) of the Supreme Court of April 8, 2014.