

**Author:** Julita Zawadzka

**Title:** Zasiedzenie służebności przesyłu a posiadanie służebności przed uwłaszczeniem państwowych osób prawnych / Acquisition of a transmission servitude by way of usucaption and possession of a servitude before the enfranchisement of state legal persons

**Source:** Kwartalnik Prawa Prywatnego („Quarterly of Private Law”)

Year: 2024, vol.: XXXIII, number 3 pages: 407-464

**Keywords:** transmission servitude, usucaption, possession of a servitude, transfer of possession, substitution in possession

**Discipline:** Law (Civil Law)

**Language:** Polish

**Document type:** Article

**Publication order reference:** Jagiellonian University Cracow [[julita.zawadzka@uj.edu.pl](mailto:julita.zawadzka@uj.edu.pl)]

**Abstract:**

The transmission servitude was not introduced into the Polish legal system until 3 August 2008. The time limit for acquiring the transmission servitude by way of usucaption can undoubtedly run from that date. Prior to that date, it was at best possible to possess and to acquire a predial servitude whereby, in order to increase the utility of a specific dominant immovable property, the transmission entrepreneur used someone else's immovable property on which transmission facilities were located. The study assumes that after 3 August 2008, it is still possible to continue to possess such a predial servitude, and thus it is possible for the transmission entrepreneur to acquire it by way of usucaption. The possession of predial servitudes by transmission entrepreneurs raises the issue whether it is admissible to add the period of possession of the servitude by them and the period of possession of such servitude before the systemic transformation of 1989-1990. At that time the principle of unified state ownership was in force, transmission facilities were state property and their operation was carried out by state-owned enterprises. There is no doubt that transmission entrepreneurs can, in principle, add to the period of their possession of the servitude the period of possession of the servitude exercised by state-owned enterprises before the transformation. However, apart from the mere conclusion on the admissibility of such an addition, all other related issues are unclear and divergently assessed. Equally unclear is the impact of the enfranchisement of state and municipal legal persons on the possession of servitudes (1990). Thus, the principles according to which the period of possession prior to enfranchisement can be taken into account when calculating the time limit for the acquisition of a servitude by way of usucaption are unspecified as well. The study aims to shed light on these issues. The analysis shows that the issues of the possession of a predial

servitude by state and municipal legal entities are too often assessed through the prism of the subjective rights vested in these entities to the potentially dominant immovable property. Meanwhile, the realms of possession and entitlement to hold things should not be confused. When examining the time limit for the acquisition of an easement by way of usucaption, greater attention should be given to factual relationships.