The topic of the VII Polish-Russian Summer School of Law and Humanities, held between 2-12 July 2013, was: **Right to property - is it really inviolable?** It was organised under cooperation agreements of the Adam Mickiewicz University in Poznań with the Irkutsk State University, and Saint Petersburg State University. For the first time, the representatives of the Russian Presidential Academy of National Economy and Public Administration from Pskov participated in the event. The programme was divided into two parts. The 1st part of the School, as usual, was an academic conference, held between 2 and 8 July 2013. There were 43 papers presented during the conference (11 papers of researchers and 32 papers of under- and postgraduate students). The second part of the School (9-12 July 2013) was of a more socialising character.

2-12 июля 2013 г. состоялась VII летняя польско-российская гуманитарно-правовая школа на тему **Право собственности – святая святых. Так ли это?**, организованная в рамках договоров о сотрудничестве, подписанных Университетом им. Адама Мицкевича в Познани с Иркутским государственным университетом и с Санкт-Петербургским государственным университетом. В ней в первый раз приняли участие представители Российской академии народного хозяйства и государственной службы при Президенте Российской Федерации из Пскова. Программа школы состояла из двух частей. Первая часть школы носила характер научной конференции и прошла со 2 по 8 июля 2013 г. В ходе конференции было представлено 43 доклада (11 статей научных сотрудников и 32 статьи докторантов и студентов). Вторая часть школы (с 9 по 12 июля 2013 г.) имела, прежде всего, интеграционно-познавательный характер.

ISSN 2083-9782
ISBN 978-83-939656-0-1

Adam Mickiewicz University Law Review

RIGHT TO PROPERTY - IS IT REALLY INVIOLABLE?

Polish-Russian Summer School 2013

II

The object of property

Предмет права собственности

III

Acquisition and loss of the right to property

Приобретение и утрата права собственности

IV

Protection of the right to property

Защита права собственности

согласно ст. 43 Конституции Ирландии, принятой 29 декабря 1937 года, право на частную собственность определяется следующим образом: *Государство признает, что человек, в силу того, что он разумное существо, имеет естественное, предшествующее позитивному праву право частной собственности на внешние блага*[4]. Однако, существует негативное отношение к данной позиции, например, со стороны Ватикана. Папа Иоанн Павел II в своем труде Centesimus Annam говорил:

> Церковь учит, что собственность не является абсолютным правом, поскольку в ее природе как человеческого права содержится ее собственное ограничение. Частная собственность, по самой своей природе, обладает и социальным характером, основу которого составляет общее предназначение земных вещей[5].

В одной из своих энциклик 1997 года Sollicitudo Rei Sociales Папа Иоанн Павел II писал следующее:

> Необходимо еще раз напомнить этот необычный принцип христианской доктрины: вещи этого мира изначально предназначены для всех. Право на частную собственность имеет силу и необходимо, но оно не аннулирует значения этого принципа[6].

Тем не менее, законодатель склоняется к тому, что право на частную собственность является неотъемлемой частью современного мира и, следовательно, мы имеем все основания считать право собственности *святыней*.

Биографическая аннотация:
Екатерина Щербакова – Иркутский государственный университет, Юридический институт, отделение международного права. Научные интересы: международное публичное право, международное частное право, международное экологическое право, сравнительное правоведение, сравнительный анализ судебных систем стран Европы, в частности сравнение Конституционного правосудия судебных систем России и Германии.

4 Конституции Ирландии от 29.12.1937 [online]. The Constitutional Court of the Republic of Armenia [Доступ: 2013-10-16]. Доступны на: <http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/ireland/irelnd-r.htm>.

5 Цит. по: Т.П. Евдокимова, В.В. Титов, *Право собственности, в том числе государственной (по конституциям государств Европы)*, Труд и социальные отношения 2/2005, С. 135.

6 Цит. по: Т.П. Евдокимова, В.В. Титов, *Право собственности...*, С. 135.

Krzysztof Westfal

Servitude of Transmission - Restriction or Exercise of Ownership Right?

Servitude of transmission is quite a new institution in the Polish legal system. On 30th May 2008 the Polish Parliament passed a law to change the Polish Civil Code (Hereinafter: PCC). Due to the mentioned act, on 3rd August 2008, servitude of transmission was implemented in the PCC in articles 305^1–305^4. The most important provision among the mentioned ones seems to be article 305^1 which defines what this institution actually is. Therefore, article 305^1 states that

> immovable property may be encumbered for the benefit of an entrepreneur who intends to erect installations referred to in article 49 § 1 or who owns such installations, with a right consisting of the entrepreneur being entitled to use the encumbered immovable property within a specified scope, in compliance with the purpose of these installations.

It might be unclear to some foreigners why such a regulation was needed in the first place. Apparently, the necessity was indicated by historical issues. After WW II , in the first years of the communism era in Poland, huge importance was placed on the process of mass electrification and access to other services (e.g. gas and water). In that matter, on 28th June 1950, the law on common electrification of villages and settlements was passed by the Parliament[1]. Nevertheless, despite the legal regulations, the process of electrification was quite disorganized, and very often violated the law of ownership. The transmission facilities were constructed on common people's grounds, even without their permission. Since the collapse of Communism and during the era of political and economic system transformation, the legal awareness of society has significantly increased. People became aware of the power of ownership and they wanted to get rid of those in-

1 Dz.U. 1950, No. 28, item 256; Dz.U. 1974, No. 10, item 64.

stallations. Though it is beyond any doubt that maintaining the integrity of the national supply system of any service (electricity, water, gas or any other) lay in the best interests of the public. To keep the supply system integral and to meet the rules of ownership, and therefore, the rights of citizens, the Polish legislator decided to create the institution of transmission servitude.

By way of reminder, according to the PCC article 305[1] the institution of transmission servitude is based on the following statement

> immovable property may be encumbered for the benefit of an entrepreneur who intends to erect installations referred to in article 49 § 1 or who owns such installations, with a right consisting of the entrepreneur being entitled to use the encumbered immovable property within a specified scope, in compliance with the purpose of these installations.

The most important issues that appear in accordance with the content of the discussed institution are the following: who the entrepreneur actually is in the context of the given institution, what does it mean that transmission installations belong to the entrepreneur, and finally what does it mean that the entrepreneur is entitled to use the encumbered immovable property within a specified scope and how does it limit the right of ownership to this estate.

The only entity which a servitude of transmission may be established for is the entrepreneur. According to Polish law, the entrepreneur can be any entity, either a legal person, natural person or an organizational unit without a legal personality, if it conducts business or professional activity on its own behalf. These activities, however, shall be related somehow to the use of, and in many cases to the owning of, installations mentioned in PCC article 49 §1 of. Even the capacity of being granted with servitude of transmission is related to the use of these installations which are substances by nature and only the entrepreneur, thus the entity, and not the enterprise (as an organized collective of things), can be granted with it[2].

Those installations defined in article 49 §1 of the PCC are the facilities that are involved in the delivering or removing of fluids, steam, gas, electricity, and so forth. According to article 49 §1 of the PCC, those installations shall not to be regarded as a component of an immovable property, if they are a part of an enterprise. This regulation is essential for the whole construction of servitude of transmission, because it excludes an old Roman rule *superficies solo cedit* (for everything which is placed upon and attached to the ground, the ground belongs to it). In fact, this Roman based rule became a rule in the Polish legal system and it is now stipulated in article 191 of the PCC. However,

2 G. Bieniek, *Urządzenia przesyłowe. Problematyka prawna*, Warszawa 2009, p. 11.

due to article 49 §1 of the PCC, transmission installations are exempt from the common rule, and those installations belong not to the owner of the immovable property they are built on, but to the owner of the enterprise which they are connected to, so, to the entrepreneur himself. This regulation gives the privilege to the public interest rather than the private one. Even if it is well known that the right of ownership is strong, from the wider point of view it would be very adverse if the national supply of water, electricity etc. were to be jeopardized because of its exercising.

The idea of transmission servitude is to reconcile conflicts of interest. Therefore, the right to ownership of the immovable property belongs to the right owner of this property, but at the same time the *entrepreneur remains entitled to use the encumbered immovable property within a specified scope, in compliance with the purpose of these installations.* The content of servitude of transmission is about the entrepreneur using someone else's property (the servient estate) to the extent necessary for the proper functioning of the transmission installations, thus ensuring that the proper operation of these installations will be relevant to the content of the servitude. On the one hand, the Landlord must agree and not interfere with the existence of transmission installations and with all the activities of the entrepreneur aimed at maintaining those installations. What may probably be the most problematic issue for landlords appears to be the fact that the landlord must not build anything close to the transmission installations – in the area which is called the *protection zone* (which is regulated by other branches of Polish law)[3]. On the other hand, the entrepreneur shall not make use of his right in a way that is burdensome to the landlord and may not do anything else other than enter the servient estate for purposes linked with the correct operation of transmission services, such as checking their technical condition or repairing them. In any case, the way of performing servitude of transmission should be defined in the proper deed that established the right itself. If it is not defined like that, it shall be determined by the *principles of conduct in the community*[4] and in accordance with local custom.

Transmission servitude appears to be a form of land servitude. This may be created in numerous ways, such as a contract between the owner of an immovable property or an entity granted with perpetual usufruct to this immovable property on one hand, and the entrepreneur on the other. Other ways to establish such servitude are: a constitutive judgment of the court, an administrative decision of the competent authority or acquisitive prescription (usucaption) of such a right[5].

3 As will be presented further in this work, zones of protection are usually regulated in regulations, so the legal acts are issued due to implementation of the laws devoted to a particular type of transmission.

4 *Pol. zasady współżycia społecznego*, general clause regulated in article 5 of PCC; Z. Radwański, *Prawo cywilne – część ogólna*, Warszawa 2004, p. 38–41.

5 A. Kidyba *et. al.*, *Kodeks cywilny. Komentarz*, Art 305[1], Warszawa 2012. Komentarz Lex.

Legal grounds for establishing servitude of transmission by concluding a contract or upon a constitutive judgment of the court are provided by article 305² of the PCC. Article 305² §1 states that

> if the owner of the immovable property refuses to enter into a contract on the establishment of transmission servitude, while the servitude is necessary for a proper use of the installations referred to in article 49 § 1, the entrepreneur may demand that the servitude be established for an adequate remuneration.

While article 305² §2 provides that

> If the entrepreneur refuses to enter into a contract on the establishment of transmission servitude, while the servitude is necessary for use of the installations referred to in article 49 § 1, the owner of the immovable property may demand an adequate remuneration for establishing the transmission servitude.

According to the given regulation, it is beyond any doubt that transmission of servitude could be established, in the first place, by the contract and only if one of the parties refuses to conclude such a contract, might the other party demand the establishment of such a right by the court. However, according to article 305², establishing servitude of transmission by concluding a contract shall be a rule. It is notable that a declaration of the will of a landlord should be given in the form of a notarial deed, though a declaration of an entrepreneur may be given in any form. In any case, servitude of transmission shall be published in the land and mortgage register. To make an entry in such a register, it is enough to submit to the court only the landlord's declaration of will[6].

As was mentioned above, only in a case where one party refuses to conduct a contract, may the other party have a legal claim to demand the establishment of servitude of transmission by the court. Such a claim may be submitted to the court either by a landlord or an entrepreneur. Though in both cases two conditions must be met. Firstly, the servitude must be established due to the use of *transmission installations*. The entrepreneur may demand the establishment of transmission servitude when it is needed for proper use of transmission installations (e.g. when repair is required). The landlord, on the other hand, may demand establishment of such servitude if his right of ownership is going to be violated due to any use of transmission installations and not only improper usage. The second condition that must be met is that establishment of transmission

6 Resolution of the Supreme Court of Poland 2011-02-17, IV CSK 303/10.

servitude shall include adequate compensation for the landlord. In any case, a case for establishing transmission servitude shall be heard in non-litigious procedure by the court, which is competent due to the location of the immovable property. According to the later added article 626 §3 of the Polish Code of Civil Procedure, the provisions regulating the establishment of the servitude of a necessary road shall apply *mutatis mutandis* to the establishment of the transmission servitude.

The third way in which servitude of transmission may be established, is by issuing an administrative decision. The competent authority to do so is The District Head (pol. *Starosta*) on behalf of separated regulations[7]. The procedure by which this servitude may be established, is, in fact, one of the forms of expropriation. Because of that, such a right might be created only due to the importance of the public interest. It is beyond any doubt the public interest lies in ensuring local and/or national community access to water, electricity, etc. Moreover, such public interest shall be included in spatial plans or other administrative acts[8], or in accordance with a *decision to establish the location of a public investment*. What is essential in this matter though, is the fact that since the application of an administrative procedure is only a subsidiary means of establishing such servitude, it must be proceeded by the negotiation process with the landlord. However, if the creation of transmission installations and following that, the establishment of transmission servitude, makes the immovable property useless to the landlord or hinders the further and proper use of it, the landlord may demand from the Head of the District the buying out of the immovable property on behalf of the state. A decision issued by the Head of the District is sufficient to make an entry in the land and mortgage register.

The last, and definitely not least, way to establish transmission servitude is an acquisitive prescription of it. The acquisitive prescription of transmission servitude is probably the most problematic issue that occurs in accordance with the given subject. In reference to article 352 §1 of the PCC, *a person who effectively uses someone else's immovable property within the scope which corresponds to the content of servitude, shall be the possessor of the servitude*. In fact, if the entrepreneur uses a permanently visible transmission installation which is located on someone else's immovable property, he becomes a servitude holder. If this state lasts long enough, it may lead to an acquisitive prescription of such servitude. Usually, if the entrepreneur uses someone else's property he shall be recognized as an entity acting in bad faith. This means that the term needed for acquisitive prescription of transmission servitude is 30 years (article 292 in accordance with article 172 of the PCC).

7 Comp. art. 124 and others of The Law of August 21st 1997 on immovable property policy (pol. Ustawa o gospodarce nieruchomościami), Dz.U. 1997, No 115, item. 741.

8 Especially the decision to establish the location of a public investment and the decision on building conditions and area development, all of them regulated by The Law of March 27th 2003 on Spatial Planning and Development (pol. Ustawa o planowaniu i zagospodarowaniu przestrzennym), Dz.U. 2003, No 80, item 717.

The issue that causes the biggest number of doubts in both theoretical and practical considerations is how to calculate such terms. Prescriptive acquisition of transmission servitude in the Case Law of the Polish Supreme Court is regarded as a means of ensuring public order, as it removes the long-standing discrepancy between the actual state of ownership and the legal status of it. As was said before, the institution of transmission servitude was implemented in Polish law on 3rd August 2008. It does not mean that before that date no such institution as servitude in general existed. Beginning from June 17th 2003 and the Resolution of the Polish Supreme Court[9], common Polish courts started to establish the prescriptive acquisition of a right called *land servitude for the purpose of transmission installations*. It should be stipulated that *land servitude for the purpose of transmission installations* has a different legal character than servitude of transmission and is based on a slightly different constructional assumption. Here, some doubts and discussions appear. As the institution of transmission servitude was created in 2008, prescriptive acquisition of it may not happen before a 30 year long period, which is not until 2038. This restricted property right did not exist before, so it may not be acquired earlier. However, if this 30 year long period ends before 2008, the entrepreneur might have an acquisitive prescription of *land servitude for the purpose of transmission installations*. If the period for acquisitive prescription shall end between 3rd August 2008 and 3rd August 2038, only prescriptive acquisition of transmission servitude might be acquired, but in this case it may not happen before 3rd August 2038. This implies that the 30 year period shall be extended to 3rd August 2038 as the appropriate period.

To make this situation even more complicated, it should be stipulated that the right to submit a claim for establishing a servitude of transmission, as in the case of any other servitude, lapses after 10 years for the landlord and after 3 years for the entrepreneur, from the moment when this claim became enforceable[10]. In fact, it means that the claim for establishing the *land servitude for the purpose of transmission installations* may not be submitted to the court after 3rd August 2018 in the case of the landlord, and not after 3rd 2011 in the case of the entrepreneur .

Like every other right, servitude of transmission may also come to an end. Expiration of transmission servitude may happen due to a few facts. The first fact is liquidation of the enterprise that the transmission servitude belongs to. What shall be emphasized here, according to article 305^3 of the PCC, despite the fact that the one who is granted with transmission servitude is an entrepreneur, is that for the expiration of his right it is enough for the enterprise to be liquidated and not the entrepreneur[11]. Other facts that

9 Resolution of the Supreme Court of Poland 2003-01-17, III CZP 79/02.

10 S. Rudnicki, G. Rudnicki, *Komentarz do kodeksu cywilnego. Księga druga. Własność i inne prawa rzeczowe*, Warszawa, 2009, p. 572.

11 B. Rakoczy, *Służebność przesyłu w praktyce*, Warszawa 2009, p. 113–116.

cause expiration of transmission servitude are: a disclaimer of such servitude (article 246 of the PCC), confusion (article 247 of the PCC), not exercising rights within the term given by the law (article 293 of the PCC in accordance with article 305^4 of the PCC) and abolition of servitude by a constitutive judgment of the court (article 294 and 295 of the PCC)[12]. According to article 293 §1 of the PCC, *land servitude expires due to not exercising it for ten years*. The court may decide to abolish servitude in two cases. According to article 294 of the PCC,

> the owner of the encumbered immovable property may demand the land servitude to be abolished for remuneration, where, due to a change of circumstances the servitude has become particularly onerous for him and it is not necessary for the proper use of the dominant immovable property.

The other case, where the court may decide to abolish transmission servitude, is when the land servitude has lost all of its meaning to the dominant tenant. In that case, the owner of the servient estate may demand the abolition of servitude without paying a remuneration. In any case, after expiration of transmission servitude, the entrepreneur shall remove transmission installations from the servient property, or compensate damage caused by not removing these installations[13].

An issue of great importance is also the establishment of the already mentioned *zone of protection*. In the current state of law, this term is not regulated unanimously. Unfortunately, this institution is regulated in many different legal acts and is also named differently. In general, however, the idea of protection zones is always the same. *Zone of protection* or *controlled zone* is a designated area on both sides of the axis of the network of transmission installations, in which the operator of such a network takes steps to prevent activities which could have a negative impact on the sustainability and the proper use of these devices[14]. In *protection zones* there shall be no buildings of any kind set up, no regular stores or warehouses arranged, no trees planted, and no action which might endanger the sustainability of the transmission network during its operation shall be taken. Sometimes, with the consent of the network operator, certain uses may be arranged in such a zone, e.g. car parks.

12 A. Kidyba *et. al.*, *op. cit*, Art. 305^3 p.4.

13 *Ibidem*.

14 Regulation of the Minister of Economy of 30th of July 2001 on technical conditions to be met by gas networks (Rozporządzenie Ministra Gospodarki w sprawie warunków technicznych, jakim powinny odpowiadać sieci gazowe) Dz.U. 2001, No 97, item 1055, issued due to implementation of art. 7 par. 2 p. 2 of The Legal Act of July 7th 1994 the Building Law (Pol. Ustawa Prawo Budowalne) Dz.U. 2000, No 106, item 1126.

The areas of protection zones follow the axis of the network of transmission installations and their width depends on the transmission power of such a network. For example, according to gas transmission networks, if the diameter of the gas pipe is up to 150 cm the *protection zone* is 4 meters on both sides of an axis which gives 8 m in total, and if the gas pipe diameter is 500 cm, the *protection zone* is 12 meters on both sides of an axis which gives 24 meters in total. As an example, if a 100 meter long gas pipe with a diameter of 500 cm goes through someone's property, the area of the protection zone is 2.400 m. In this particularly big area, the landlord must not build anything, which in practice may mean that he can virtually not use his own immovable property at all.

A little more attention should be paid here to the regulations that refer to *protection zones*. As the author has already mentioned, there is a lack of one complex legal act which would deal with the described matter. Provisions that regulate an institution of *zones of protection* are placed in many different legal acts on different hierarchies, and usually they are included in the acts of ranks of regulations. These regulations are legal acts issued due to implementation of the laws devoted to a particular type of transmission (respectively: gas, water, petroleum etc.). Among these acts, worthy of mention are the following: Regulation of the Minister of Economy of 30th July 2001 on technical conditions to be met by gas networks, issued due to the implementation of the Legal Act of 7th July 1994 – the Building Law, Regulation of the Minister of Economy of 21st November 2005 on technical conditions to be met by bases and stations of liquid fuels, pipelines for the long distance transport of crude oil and petroleum products and their location[15]. In the case of the most frequently appearing problem in practice, which are definitely electrical transmission installations, there is no such regulation at all. Very often though, provisions regulating the matter of *protection zones* may be found in spatial plans due to separate provisions[16]. Though this is not the common rule.

The last, but definitely not least, issue that shall be discussed in this paper, is remuneration for establishing a transmission servitude. As for the rule, such remuneration shall be paid to the landlord by an entrepreneur as a substitute for compensation for the damages suffered by the landlord[17]. It is beyond any doubt that if an entrepreneur sets up transmission installations on someone else's property, in consequence, the ability of the landlord to use his property is seriously limited. This results in substantial damage

15 Regulation of the Minister of Economy of November 21th 2005 on technical conditions to be met by bases and stations of liquid fuels, pipelines for the long distance transport of crude oil and petroleum products and their location (Pol. Rozporządzenie Ministra Gospodarki w sprawie warunków technicznych, jakim powinny odpowiadać bazy i stacje paliw płynnych, rurociągi przesyłowe dalekosiężne służące do transportu ropy naftowej i produktów naftowych i ich usytuowanie) Dz.U. 2005, No 243, item 2063, issued due to implementation of art. 7 par. 2 p. 2 of The Legal Act of July 7th 1994 the Building Law.

16 Dz. U. 2003, No 80, item 717.

17 A. Kidyba *et. al.*, *op. cit,* Art. 305^3.

to the landlord's assets. By establishing a transmission servitude, the entrepreneur gains a lot of rights, which at the same time obliges the landlord not to interfere with actions that lead to the entrepreneur exercising his rights. Where the rights of the landlord are seriously restricted, the awarding of remuneration to the landlord shall be considered wholly legitimate.

As previously stated, awarding remuneration to the landlord is a rule, but it doesn't have to happen in all cases. For example, the landlord may disclaim the remuneration. Also, no gratuity is paid in the case of the entrepreneur acquiring servitude of transmission by acquisitive prescription. Usually, the remuneration is a one off payment. It may, however, take the form of a periodic allowance[18].

Unfortunately, according to the law there are no direct indicators given that could help to define the amount of such an allowance. According to some opinions from the doctrine, provisions about remuneration payable to the owner of the servient estate due to the establishment of servitude of passage shall be applicable *per analogiam*.

In general, to define the amount of remuneration for the establishment of a transmission servitude, a few things shall be taken into a consideration. In the opinion of the author, the most important ones are the following: reduction in the value of a servient property, damages suffered by the landlord because of lost profits, the scope in which the landlord's ownership rights are restricted and the intended use of the property (e.g. building or agriculture)[19]. It has been already mentioned that because of transmission installations' location on a land parcel, some *protection zones* are to be established. Usually, in this *protection zone*, no building can be built. If, for example, an entrepreneur had set up a line of transmission installations that go directly through the middle of someone else's immovable property, it means that, in fact, the landlord must not build anything on his own property at all. As a result, the property loses all of its meaning and value to the landlord. In this case, remuneration for transmission servitude shall be much higher than for analogous transmission installations set up on a farm, where the farmer may in some cases still plants his crops and earn income. Nevertheless, in accordance with the doctrine of Polish Law, the indicator that shall be considered first is the increase in the enterprise's value thanks to the gained transmission servitude, which equals the profit that the entrepreneur gains[20]. In the opinion of the author, criteria that are featured by the doctrine are really difficult to determine and in essence are irrelevant to the remuneration to be paid to the landlord and the servitude of transmission itself.

The amount of remuneration that is to be fixed corresponds to market values. Usually, these prices are indicated in relevance to prices for land leases in the nearest local area.

18 G. Jędrejek, *Roszczenia związane z budową urządzeń przesyłowych na cudzym gruncie,* Monitor Prawniczy, No. 1, 2009, p. 28.

19 E. Gniewek *et. al*, *Kodeks cywilny. Komentarz*, Warszawa 2008, p. 475.

20 A. Kidyba *et. al.*, *op. cit,* Art. 305^2.

As was stipulated, remuneration for establishing a servitude of transmission shall be paid in all cases, except when acquired by acquisitive prescription. This opinion is based on the nature of the given institution[21]. Although some new opinions appear. According to one of them, in the case of acquisitive prescription of transmission servitude, claims for paying remuneration for the use of such property in the time period before the acquisitive prescription of transmission servitude was even granted, has not lost it basis, and such remuneration shall be granted[22]. For example, if the term needed for acquisitive prescription lasted 30 years, and this term ended in 2010, from this time on an entrepreneur has its servitude for free. But even so, an entrepreneur had been using someone's property for 30 years with no legal basis for it. In that case, the landlord could have a claim for remuneration for the stated period. However, there is a 10 year term for statute of limitation. Taking this into account, if transmission servitude was granted on the basis of acquisitive prescription in 2010, and the landlord wants to submit his claim in 2013, that 10 year lasting statute of limitation shall be considered, and he may demand remuneration only for seven years from 2003 to 2010.

In respect of many *de lege ferenda* postulates, there are ongoing works aimed at passing one, complex law concerning issues of: building new transmission installations, remuneration and damages that shall be paid to landlords, issues regarding the establishment of protection zones, establishing acquisitive prescription of servitude of transmission and others[23].

As has been stressed a few times in the pages of this work, the institution of transmission servitude was implemented into the Polish legal system due to the need for reconciliation of a huge conflict of interests that seemed to have been increasing for years. Prima facie it may look like servitude of transmission was introduced only in favor of the public and big companies' interests, which lie in keeping the integrity of the national service supply system - an issue of great importance for the whole nation. It would be a very unfortunate situation if all the infrastructure operating in the framework of the service supply system were totally reconstructed at one moment nationwide. This could lead to paralysis of the state and that is why servitude of transmission was developed in the first place. It is beyond any doubt that transmission servitude limits the right of ownership in its purest form. However, when contrasting the legal status of landlords from the times before transmission servitude were even implemented and the vast range of pow-

21 E. Janeczko, *Zasiedzenie*, Zielona Góra 2002, p. 10.

22 P. Zamoch, Zasiedzenie służebności przesyłu i służebności gruntowej – uwagi praktyczne, p. 8-9 [online]. Przesył energii [access: 2013-10-28]. Available at: http://przesył-energii.pl/pobierz.php?opcja=2.

23 Governmental (Cabinet) project of The Law on tranmission corridors [online]. Official website of Cabinet of Republic of Poland [access: 2013-10-28]. Available at: http://bip.kprm.gov.pl/kpr/form/r354,dok.html.

ers they have today, servitude of transmission may be considered as, at least, a favorable adjustment.

Biographical reference:
Krzysztof Marcin Westfal - Alumnus of Adam Mickiewicz University's Law Faculty and Estern-Knowledge Faculty, member of Solicitors Bar in Poznan. Employee of Solicitor's firm in Poznan, concerned with work on foreign investments in Russia and other countries of the former Soviet Union.