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Original research paper

Registration of easements established for transmission companies – case study of Poland and Canada

Natalia Sajnóg[1]*, Katarzyna Sobolewska-Mikulska[2]

Warsaw University of Technology
Faculty of Geodesy and Cartography
Department of Cadastre and Land Management
Pl. Politechniki 1, 00-661 Warsaw, Poland
e-mails: n.sajnog@gik.pw.edu.pl, k.sobolewska@gik.pw.edu.pl

*Corresponding author: Natalia Sajnóg
ORCID[1]: https://orcid.org/0000-0001-8758-4122
ORCID[2]: https://orcid.org/0000-0003-1685-1486

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Abstract: The construction of transmission infrastructure and its functioning imposes the obligation on transmission companies to have a legal title to land. Both in Poland and in Canada, the title particularly results from the established easements subject to registration in public information systems. Due to different historical, social, and economic conditions, the specificity of legal regulations and technical solutions related to the registration of rights to land property is different in both countries. This results from the functioning and the substantive scope of particular systems of information on land property. Such systems are regulated by independent, internal rules of each of the countries. In Poland, easement is subject to registration in the land and mortgage register. In Canada, a federation country, it depends on legal regulations of particular provinces. The research objective of the article is the analysis of the way of registration of easements established for transmission companies in Poland and in Canada in the Ontario and Quebec provinces. The analysis covers the scope of registration of the said right in systems of information on land property. The evaluation of the applied solutions particularly involves pointing out those which to the greatest extent guarantee the safety of land property turnover. The best result is obtained in Canada in the Ontario province.

Keywords: easement, transmission devices, land property, property rights, information systems

1. Introduction

Transmission infrastructure already accompanied humanity in prehistoric times in the form of water supply devices. One of the oldest known aqueducts from the early 7th century BC is a 50 km long aqueduct supplying water from the Kurdistan Mountains to the Niniwa city in modern-day Iraq. The first aqueducts were structures transporting water

(water supply channels, on-ground and underground pipelines) from a higher-located mountain spring, using gravity. Water supplied to cities fed public fountains and baths where the community could receive it with no limits, or private residences of the wealthiest inhabitants. The beginnings of electrification date back to the 1880's, and are related to the launch of the first public purpose power plant by Thomas Edison, and distribution of electricity to recipients.

The basic commonly known legal title allowing for implementation of infrastructure investments is easement. Easements are the oldest property rights on property of others reaching back to the Roman times when the climate and land relief forced the use of the neighbour's land for efficient management of one's own land (Bojarski, 1999). The Roman law designated easements of rural land and personal easements. According to Bojarski (1999) and Lewandowski (2014), the former constituted the prototype of the legal title currently obtained by transmission companies – water-pipe law, i.e. the right of transmitting drinking water through land of others.

Under feudalism, the system of servitudes was greatly extended beyond its origin in Roman law. This can be seen as part of a general trend under feudal law whereby the notion of absolute ownership underwent a substantial change (Depoorter & Parisi, 2003). The legacy has been accepted with no reservations by science and European legislatures until today (Warciński, 2013).

In Poland, according to the Civil Code Act, next to land and personal easements, also transmission easement is designated (Act, 1964). In Canada, a federation country, the responsibility for right to land results from legal regulations of particular provinces. In the two analysed provinces, namely Ontario and Quebec, easement as a limited property right is not subject to designation in legal nomenclature. The entity for which the right is established determines the objective and scope of its establishment.

Easements are generally established based on the agreement of the parties, court ruling, or by usucaption (Trembecka, 2014; Sajnóg, 2015). They cease among others through the failure to execute, waiver, confusion, liquidation of the company, or as a result of expropriation of property (Gniewek, 2008; Gołba, 2011; Rakoczy, 2012). The establishment of easement basically aims at the provision of permanent structures ensuring permanent right of the transmission company to using the land property encumbered in accordance with the purpose of the device. Therefore, the duration of easement is usually determined as indefinite, whereas its establishment for a definite term is not excluded. The owner of land property is entitled to remuneration for the established easement, payable on a one-off basis or cyclically. The easement itself reduces the value of the encumbered property (Konieczny, 2012; Sajnóg, 2015; Šnajberg, 2015; Stopar and Šubic Kovač, 2016).

2. The objective and scope of this paper

The construction of transmission infrastructure and its functioning in the space of the land property imposes the obligation for transmission companies to have legal title to

the land. Both in Poland and in Canada, the title particularly results from the established easements.

The research objective of the article is the analysis of the way of registration of easements established for transmission companies in Poland and in Canada in the Ontario and Quebec provinces. The analysis covers the scope of registration of the said right in systems of information on land property. The evaluation of the applied solutions particularly involves pointing out those which to the greatest degree guarantee the safety of land property turnover.

3. Materials and methods

In the article, data used for research in the scope of Polish solutions were based on:

- cadastral data bases obtained from governmental institutions dealing with storing cadastral data;
- electronic land and mortgage registers of land properties, particularly including the provisions of section III, where information on among others the established transmission easements is disclosed;
- other systems of information on land property.

In the scope of Canadian solutions the following was applied:

- information and materials obtained from Canadian entitled surveyors;
- materials obtained from land registers of the Ontario and Quebec provinces.

The study applied observation methods, surveys, and comparative analyses aimed at:

- the analysis of systems of information on land property for the purpose of evidencing which of them register established easements;
- determination of the type and scope of information on easements registered in particular information systems;
- comparison of the applied solutions in the scope of registration of easements in terms of more optimal guarantee of safety of land property turnover.

4. Analysis of the way of registration of easements established for transmission companies

Due to diverse historical, social, and economic conditions, the specificity of legal regulations and technical solutions related to the registration of rights to land properties is variable (Bełej et al., 2003; Trembecka, 2016). This results from the rules of functioning and substantive scope of particular systems of information on land property. They are regulated by independent internal arrangements of each country. Due to the above, also the way of registration of the easement right is not the same in the analysed countries.

4.1. Poland

In Poland, easement established for transmission companies is called transmission easement. The only public system of information on land property registering this limited property right are land and mortgage registers.

The preferred form of establishment of transmission easement is a civil law agreement. The agreement can concern both a situation where transmission devices will be constructed on land, and in the case of already constructed devices – regulation of so-called past circumstances. The latter situation concerns cases where transmission infrastructure was built by the transmission company without having legal title to the land. The agreement on the establishment of transmission easement does not require keeping the form of a notarial deed, although it is commonly applied. In the agreement, the parties should specify the encumbered land property by providing its designation according to data from the land property cadastre, and number of the land and mortgage register, collection of documents, or another document stipulating rights inherent in the easement. It should also be in the interest of both parties to precisely specify the type and parameters of transmission devices by specifying their purpose, course towards land surface (underground, on-ground, or overhead devices), and to specify their characteristic attributes, such as the voltage of an electricity line, diameter of an oil pipeline, pressure of a gas pipeline, etc.

The agreement concluded between the parties establishing transmission easement, provides the basis for the entry in section III of the land and mortgage register (if it is run for a given land property). It should be emphasised, however, that in Poland, no obligation exists to establish land and mortgage registers for private land. Therefore, the register is public, but it is not common. Moreover, the said entry has an exclusively declaratory character, i.e. it does not establish a right, but confirms its existence. Due to the above, lack of the entry does not protect the potential buyer from restrictions resulting from the content of the established transmission easement (art. 7 of the Act on land registers and the mortgage, 1982).

According to the Civil Code Act, in the case of lack of consent for the establishment of transmission easement based on an agreement, both the owner of the land property and the transmission company are entitled to apply for its establishment through a court ruling (Act, 1964). One of the issues decided by the court examining an application for the establishment of transmission easement is the refusal to conclude an agreement, and another is the necessity of its establishment for the purposes of proper functioning of transmission devices. Therefore, whereas the establishment of transmission easement based on an agreement can be related to certain freedom (not infringing legal provisions), the court should diligently examine any circumstances in favour of its establishment. Unlike an agreement, court-based establishment of transmission easement (the established easement can be subject to payment or free of charge) is always related to a remuneration. Its amount is determined based on the opinion of a qualified property appraiser appointed by the court. The task of the court is also to determine the duration of transmission easement. Indefinite term of transmission easement is preferred in order to ensure the transmission company's permanent right to the encumbered land property,

and at the same time not to create structures that might lead to further conflicts. The final judgement establishing transmission easement provides the basis for making an entry in the land property's land and mortgage register. The entry has a constitutive character, because *(. . .) it only develops the institution so far not existing towards a given land property* (Decision ref. No. II Cz 565/13, 2013).

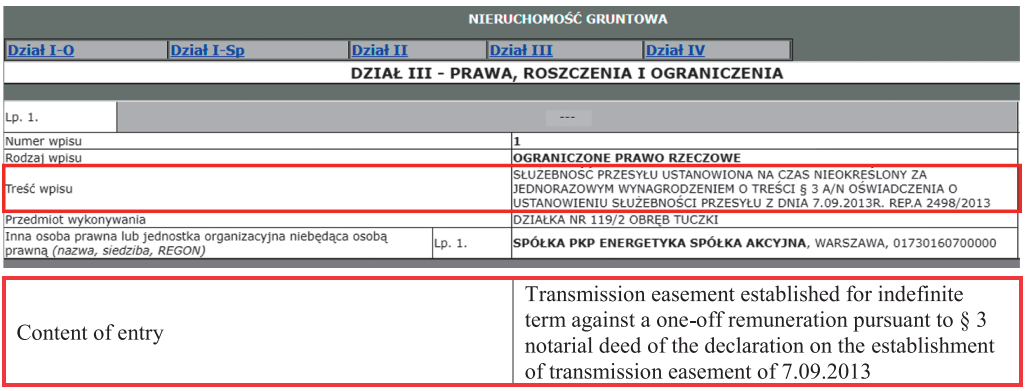
Transmission easement can also be obtained by the company by usucaption. The requirement is the use of a permanent and visible device, and actually having easement. In such a scope, the legislator stipulates two periods of time, twenty years in good will, or thirty years for bad will. The usucaption of easement is related to lack of incurring any payments to the land owner. Therefore, it is unpaid acquisition. The final ruling stating the acquisition of the right of easement by usucaption provides the basis for an entry to the land and mortgage register. The ruling has a declaratory character, because it only states a certain state of the matter (Decision ref. No. II Cz 565/13, 2013). Finally, notice that if the term of usucaption expired before 3 August 2008 (i.e. before coming into life of the act introducing transmission easement to the Polish legislature), based on usucaption, land easement with content equivalent to transmission easement will be acquired. If it expired after that date, the court will rule the usucaption of transmission easement.

According to the Act on real estate management, it is also possible to establish transmission easement by an administrative decision based on land property expropriation (Act, 1997). Pursuant to the provisions of Polish law, *land property expropriation is not only deprivation of rights to land property, but also their limiting.* Therefore, a given land property can be restricted by the establishment of transmission easement, under the condition that a given investment constitutes a public purpose investment, and it will occur against just compensation. Expropriation can be performed exclusively for the State Treasury or entities of the territorial self-government. The final administrative decision on expropriation provides the basis for the entry to the land and mortgage register.

In Poland, there is currently no requirement of determination of the range of transmission easement on the map prepared by the surveyor, or in any other graphic attachment. Sometimes such maps are prepared by surveyors, like maps for legal purposes. The scope of execution of the right of transmission easement is also sometimes disclosed on copies of basic maps. Sometimes, however, the determined range has only descriptive character (e.g. (. . .) *parallel to the northern boundary of the land property, at a distance of the axis of the device from the boundary amounting to 4 m*). Such a form is obviously not justified. In the case of division of the encumbered land property, or as a result of performing other surveying works (e.g. determination of the course of boundaries in delimitation proceedings), the previously determined provision is at variance with the new surveying-legal situation, indicating a range of use of the encumbered land property other than original one.

The civil law agreement, final administrative decision on expropriation, final court decision, or final decision stating the acquisition of the easement right by usucaption provide the basis for the entry of the established limited property right in section III of the land and mortgage register. The registration of transmission easement in the land and

mortgage register, however, involves only an entry with descriptive character. Moreover, the entry is sometimes very minimalistic, and constitutes exclusively a reference for the designation of the document based on which the easement was established (Figure 1).



NIERUCHOMOŚĆ GRUNTOWA

Dział I-O | Dział I-Sp | Dział II | Dział III | Dział IV

DZIAŁ III - PRAWA, ROSZCZENIA I OGRANICZENIA

Lp. 1.		---
Numer wpisu		1
Rodzaj wpisu		OGRANICZONE PRAWO RZECZOWE
Treść wpisu		SŁUŻEBNOSC PRZESYŁU USTANOWIONA NA CZAS NIEOKREŚLONY ZA JEDNORAZOWYM WYNAGRODZENIEM O TREŚCI § 3 A/N OŚWIADCZENIA O USTANOWIENIU SŁUŻEBNOŚCI PRZESYŁU Z DNIA 7.09.2013R. REP.A 2498/2013
Przedmiot wykonywania		DZIAŁKA NR 119/2 OBRĘB TUCZKI
Inna osoba prawna lub jednostka organizacyjna niebędąca osobą prawną *(nazwa, siedziba, REGON)*	Lp. 1.	**SPÓŁKA PKP ENERGETYKA SPÓŁKA AKCYJNA**, WARSZAWA, 01730160700000

Content of entry	Transmission easement established for indefinite term against a one-off remuneration pursuant to § 3 notarial deed of the declaration on the establishment of transmission easement of 7.09.2013

Fig. 1. Scope of content of the entry on the established transmission easement
Source: https://ekw.ms.gov.pl/eukw_ogol/menu.do

4.2. Canada – Ontario province

In the Ontario province, easements established for transmission companies usually result from civil law acts through the preparation of an equivalent of the Polish notarial deed. It is obligatory to register the document in the local Land Registry Office. A right not disclosed in the register is not legally binding. It is also possible to establish easement through usucaption (prescriptive rights). In practice, this has been implemented in reference to older easements which were not established and disclosed in relevant legal documents. The Ontario law specified a term for disclosure of all non-registered easements until 31 December 1999.

Land properties (parcels) are currently described by the following data:
- information concerning the owner (first and last name);
- existing financial burdens (mortgage);
- existing rights of third parties (servitude, i.e. easement);
- existing restrictions concerning the land property (e.g. possibility of spatial management).

The register is public, open, and common, and data are disclosed against payment. The cost of printing of data from the register averages from 25 to 30 Canadian dollars.

In the Ontario province, the establishment of easement requires a geodetic map describing the boundaries of the proposed or existing rights of third parties to the land property. Until the early 1960's, they were maps prepared by entities requiring rights to transmission corridors (Trans Canada Pipeline, Bell Canada, Ontario Hydro). The entities employed entitled surveyors (Ontario Land Surveyor) and field/desk groups that prepared such documents. Geodesic maps were enclosed with notarial deeds (deed of land), and registered in Land Registry Offices. After 1960, a new type of land survey

plans, called “reference plan” (Figure 2), presenting the proposed boundaries of the future or existing transmission corridors, was introduced.

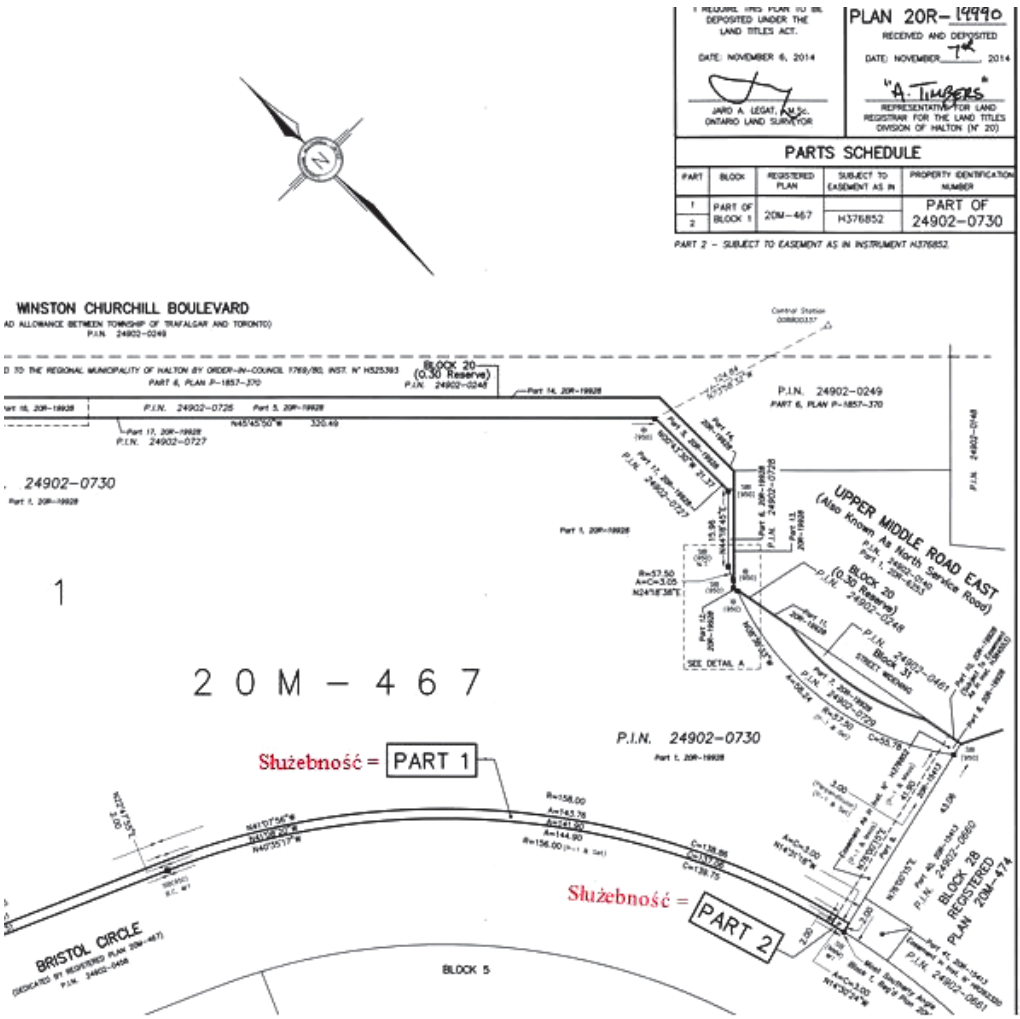


Fig. 2. Fragment of a reference plan with indication of the range of execution of the easement right
Source: Materials obtained from a surveyor working in Canada in the Ontario province

Registration of a plan in a Land Registry Office is required before registration of notarial deeds transferring easement rights. The plan receives a subsequent number plus letter R (number of the Land Registry Office). Registration of the plan itself does not change the legal situation of the land property. Restrictions resulting from the established easement are only induced by a reference to the number and description of the plan in a legal document. The plans are currently prepared by private surveying offices.

It is also possible to establish a temporary easement belt required for the period of construction (temporary easement). It is registered for a definite term (sunset clause),

and its removal from the register requires a separate legal document cancelling the right to the land property of third parties. The right of access to the transmission easement belt from the public road is provided through the establishment of an access road belt for an indefinite term.

Owners of land property are entitled to compensation for the establishment of easement. The compensation amounts are specified by property appraisers based on market data.

In the case of public purpose investments and lack of consent of land property owners, obtaining rights to land occurs based on expropriation of the required width of land belt (the expropriation act). The expropriation act is the basis for the registration of the expropriation plan at the Land Registry Office. The plan requires signatures and certificates of an entitled surveyor (Surveyor's Certificate) and expropriation authority (The Expropriation Authority Certificate) with specification of the legal act based on which expropriation occurs. The registration of the plan in the Land Registry Office and ascribing a number to it automatically establishes easement. The expropriated party is entitled to financial compensation to the amount estimated by property appraisers based on market data. Moreover, when the established easement negatively affects the provided business activity, the amount of the compensation can be increased, or the land property can be purchased as a whole by the expropriation authority.

4.3. Canada – Quebec province

In the Quebec province, all rights to land property are registered in the land register of Quebec based on the cadastre of Quebec (Cadastre de Quebec). The cadastre is run uniformly for the entire province, and is fully digitalised. Land properties (parcels) in the register are described by the following data:

- Information concerning the owner (first and last name), previous owners, date of purchase-sale transaction, and transaction price;
- Existing financial burden (hypothèque, i.e. equivalent or mortgage);
- Existing rights of third parties (servitude, i.e. easement).

Easements in the Quebec province must be established based on a civil law act through preparing a Deed of Servitude – the equivalent of the Polish notarial deed. The deed requires registering in the land register through the specification of the number of deed and date of its concluding (the number constitutes reference data). Unlike in the case of the Ontario province, a reference plan is not prepared (such a document does not exist). In the graphic part of the cadastre of Quebec, there is currently no obligation to present boundaries of easement in a certificate (plan) of location. Such a practice was binding before, therefore the range is disclosed in some plans. On parcels with irregular shapes, easement boundaries and area were disclosed until the moment of introduction of the new cadastre (Cadastre de Quebec). The new cadastre is characterised by a regular pattern of boundaries, where it is sufficient to specify only the width of the "Easement belt" (Figure 3).

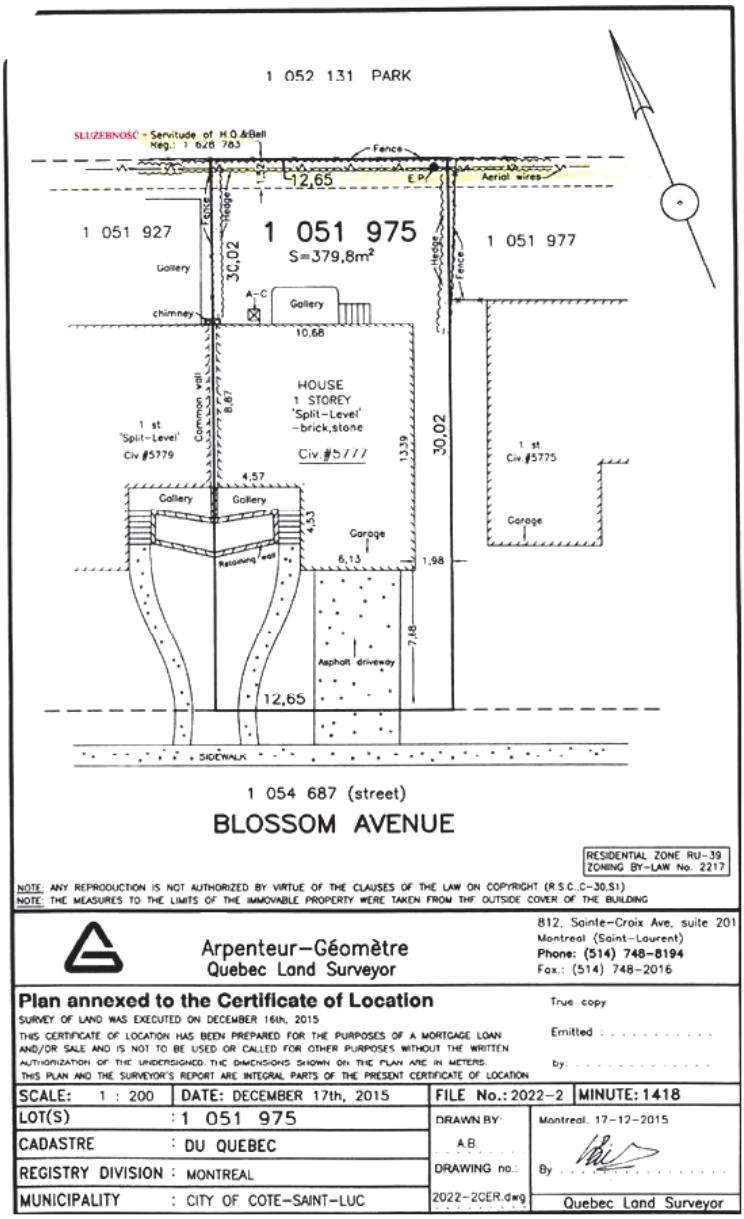


Fig. 3. Plan of location of a parcel with specification of the range of execution of easement right
Source: Materials obtained from a surveyor working in Canada in the Quebec province

Prepared obligatory deeds currently have to include the technical description of the established easement and the related restrictions, data of the transmission company for which the easement is established, and the compensation amount. Moreover, based on data from the cadastre, transmission companies prepare graphic documentation presenting the course of the established easements. They make sure that transmission devices

run along the boundaries of properties, encumbering neighbouring land property owners with easement in an equal scope.

5. Results

The analyses provided the basis for a synthetic comparison of attributes of easements established for transmission companies and way of their registration in systems of information on land property in Poland and Canada in the Ontario and Quebec provinces (Table 1).

Table 1. Synthetic comparison of attributes of established easement and way of its registration

Attributes of established easement and way of its registration	POLAND	CANADA – Ontario	CANADA – Quebec
Easement can be established based on a civil law agreement	+	+	+
Easement can be established by usucaption	+	+	+
In the case of lack of consent of the owner of land property, easement can be established by expropriation	+	+	+
The establishment of easement requires a map/graphic attachment presenting the range of the executed right	−	+	−
The establishment of easement requires its technical description	~	~	+
The land property owner is entitled to compensation for the established easement	+	+	+
Easement is subject to registration in the public system of information on land property	+	+	+
The establishment of easement requires its registration in the system of information on land property	−	+	+
Easement is subject to registration in the common system of information on land property	−	+	+
The system of information on land property in which easement is registered provides its visualisation in the graphic form	−	+	~
Registration of easement in the system of information on land property should guarantee safety of land property turnover	+	+	+
LEGEND: "+" YES; "−" NO; "~" CAN OCCUR			

Source: Own study

6. Conclusions

Polish and Canadian legal structures regulating the issue of registration in public systems of information of easements established for transmission companies aim at guaranteeing safety of land property turnover.

The most optimum solution proved to be the Ontario system, where established easement is subject to obligatory registration in the public and common Land Registry Office.

A right not disclosed in the register has no legal effect (is invalid). The establishment of easement requires a geodesic map, so-called "reference plan", presenting the range of execution of the established right. The registration of the plan in the Land Registry Office itself does not change the legal situation of the land property. Restrictions resulting from the established easement are only induced by a reference to the number and description of the plan in a legal document. This way, a potential purchaser controlling provisions in the Land Registry Office is certain that the included content is binding. Moreover, by analysing the provisions of the register, they can determine the range and boundaries of the established restriction.

Meanwhile, Polish solutions show the highest number of defects. They include: (1) lack of the common character of land and mortgage registers for private properties, (2) lack of possibility of spatial visualisation of the established restriction, (3) exclusion of land and mortgage registers from the transparency rule, (4) exclusion of transmission easement from the principle of public credibility. Due to the occurrence of the first situation (lack of the land and mortgage register), the established easement is not subject to registration in any public register. The second and third situation involve circumstances in which the potential purchaser of land property has no possibility to learn the range of execution of the established restriction. The existence of the fourth condition, i.e. exclusion of transmission easement from the principle of public credibility, results in lack of protection of the potential purchaser against restrictions resulting from the content of the established transmission easement.

A public and common system on information on land property, constituting a solution to the aforementioned drawbacks, could be the land cadastre. The concept of registration of transmission easement in the land cadastre in Poland was first proposed by Sajnóg (2016), also pointing to the obligatory character of preparation of geodetic maps presenting the range of execution of the established right.

Acknowledgments

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