

THE RIGHT OF EASEMENT ON GOODS FROM THE ENERGETICAL FIELD

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Abstract

The servitude right size on energy related goods domain presents an interest not only in terms of legal status and termination of the establishment , but also in terms of their objective reality . Acquiring the subjective right of servitude on a good, interests the acquirer , but not the mere possibility possessions and uses thereof.

Keywords: energy goods, right of easement, possessions, energetical field

The dimensions of the real rights on real energy goods represents a complex intersection of the undefined legal individualization wich makes it impossible to accurately own or set its limits and liability. Achieving economic aims of a particular field involves various goods that make the subject of legal relations. For the purposes of the provisions of Art.286 of the Civil Code of the Republic of Moldova¹ properties are likely closer everything individual and collective property rights. In this regard we must distinguish the goods like the object of the legal material civil possessions . Goods as material object are the things that are tangible objects that may exist in relation with civil rights and obligations.

Broadly the energy goods should be designed as all the tangible things and economic rights which are the subject of the legal power. In this respect we distinguish that the object of the legal goods are material object as subject and the legal actions or legal inactions. This concept emerges from O.S. Ioffe's legal relationship theory² showing that the legal relationship to be conceived not only as the behavior of the obligation. O.S. Ioffe indicates that the object of each action must be understood as something on which the action is directed. Depending on the object of the legal relationship it goes along to be considered something that it is directed to, civil rights and obligations of the subjects. The author specifies that if the rights and obligations should be directed to something that did not have its own subject, they would have lost any real meaning.

The examination in civil law of any matter relating to ownership issues directly involves the legal status of the property as a legal category objective .

Studying this issue requires determination, establishment, and where possible realization of the categories of energy goods. Because an exhaustive enumeration and

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¹ Civil code of The Republic of Moldova nr.1107 from 06.06.2002.

² Bordian Mariana. Ownership of energy related goods.// Integration through research and innovation. Scientific conference of 26-28 september 2013. CEP USM. Chisinau-2013, p.210.

classification is impossible, we consider it appropriate in this paper to specify the categories of energy goods, which according to the legal norms and the criterion subject category are: goods owned by the consumer, company (manufacturer, carrier, provider) of electricity, the state or municipalities.

According to the Law on Energy³ the property of the energy can be public or private. In the context, we mention that the state ownership can also be private property, considering the goods which the state can not alienate in any form, inalienable meaning⁴. There are state property and are not subject for privatization on power transmission grids and energy targets of strategic importance.

The legal system of property law rules is a subject to the state of the property. Although ownership is considered an absolute right, it is limited by other rights. Accordingly, the legal relationship as a key needs to be materialized according to its category. The legal regime of energy related goods in particular is regulated by the Law on Energy⁵. Here are reflected the real rights on real energy sector.

The legal analysis of energy related rights over the assets is necessary to determine how accurate are the extent of liability conditions. The real rights are of particular concern to researchers, but in the energy goods case, the interest to this subject is conditioned by the frequent disputes arising between landowners on the one hand and the owners or beneficiaries of the goods that deliver particularly natural gas and electricity on the other hand. The legal regime of property energy, unlike other categories of goods, is governed not only by the rules of the Civil Code,⁶ but by the following laws as well: Law on Energy of the Republic of Moldova, 1525 from 19.02.1998⁷ Moldovan Law on Electricity, No. 124 of 23.12.2009⁸ Moldovan Law on Natural Gas, No. 123 of 23.12.2009⁹, the judgment of the National Agency for Energy Regulation on the approval of the supply and use of electricity 393 of 15.12.2010¹⁰ Decision of the National Agency for Energy Regulation on the approval of the use of natural gas supply and 415 of 25.05.2011¹¹.

The moldovan legislation distinguishes as real rights: the right to property, the right of usufruct, superficies right, easement, right of use and habitation, the right of pledge.

The importance of real rights on real energy goods manifested by the variety acts regulate these relations. According to the principles, the special rules must not contradict with the general rules.

³ Law on Energy of the Republic of Moldova, no.1525 of 1998.// Official Monitor no.50-51 of 04.06.1998.

⁴ Bîrsan Corneliu, Stătescu Constantin. Civil law. General Theory of obligations. Edition ALL București. 1996. 414 p.

⁵ Law on Energy of the Republic of Moldova, no.1525 of 1998.// Official Monitor no.50-51 of 04.06.1998.

⁶ Civil code of The Republic of Moldova nr.1107 from 06.06.2002.

⁷ Law on Energy of the Republic of Moldova, no.1525 of 1998.// Official Monitor no.50-51 of 04.06.1998.

⁸ Law on electricity, of the Republic of Moldova, no.124 of 23.12.2009 // Official Monitor no. 23-24 of 12.02.2010.

⁹ Law on natural gaz, of the Republic of Moldova, no.123 of 23.12.2009 // Official Monitor no. 23-24 of 12.02.2010.

¹⁰ Decision of the National Agency for Energy Regulation of the Republic of Moldova, on the approval rules for supply and use of electricity no.393 of 15.12.2010, // Official Monitor no. 59-62 of 15.04.2011.

¹¹ Decision of the National Agency for Energy Regulation of the Republic of Moldova, on the approval rules for supply and use of natural gaz no.415 of 25.05.2011, // Official Monitor nr. 131-133 of 12.08.2011.

The establishment, exercise and termination of real rights over property are governed by the Civil Code¹². A special interest is the easement right, because the energy related goods in most cases are the specific objects of the legal easement.

Starting from this idea we specify that the article 431 of the Civil Code stipulates in a exhaustive way the modes of establishing servitude. So according to the law there are three established modes: the destination set by the owner, by acquisitive prescription or by legal acts.

But law No. 123 on gas and Law No. 124 on electricity, establishes the right of easement mentioning that over the land and other private assets, the transmission system operator, distribution system operators with the owners, the the law, the duration of the construction works, rehabilitation, refurbishment, respectively, operating and maintenance of gas networks and power grids have the right of the underground way, surface or overhead for the execution of the land at location of natural gas networks for intervention during retrofitting, repair, overhaul and eliminate the consequences of failure , and to access their place of location.

Ownership demarcation energy decisions are made by public administration, namely the National Agency for Energy Regulation. The property boundary point is set at a physical element (switching device, clamps, terminals, bushings, boxes, terminals, etc.). This allows effective separation of electrical network operator's electrical system (gas) to the final consumer. For industrial consumers the point of demarcation shall be determined by the agreement between the customer and the network operator and is recorded in the act of separation that is attached to the electricity supply contract. For domestic consumers is not mandatory drafting and signing of the boundary act. We specify that although it's the consumers property, he is not entitled to refuse the equipment to be installed on the property, therefore, most of the time they are on the property of another person, or entity. Moreover , the domestic consumer is responsible for the integrity of the equipment, but in reality it is impossible actually to achieve this requirement.

From the above we conclude that the ownership relations in the energy sector are regulated by laws issued not only by the legislature, and other public institutions, and according to the delimitation of states power, they do not belong in this category. However, the public administration also has legislative power.

From this it follows that the energy domain property, every time is on the personal property and whenever it is necessary to intervene for certain works, the owner's request has to be asked that in the event of unjustified refusal to bear the legal consequences.

We ask ourselves what is the legal relationship of servitude where electricity networks in the energy sector as the goods are located on a subservient land after acquiring its ownership of the land.

Consequences of causing any damage to the energy domain goods were predictedly regulated energy field predicted by Government Decision 514 of 23.04.2002 on approval of the Regulation on the protection of electrical networks. Thus the mentioned regulations ensure the integrity rules of the electricity networks, creating their normal operating conditions and accident prevention. The Regulation shall apply to the design, construction and operation of power grids, and the working performed near power grids.

¹² Civil code of The Republic of Moldova nr.1107 of 06.06.2002.

In fact general principles and conditions for compensation shall be governed by the Civil Code, but thanks to the specific property of energy goods they are legally protected including through the normative act issued by the executive organ. None of normative acts mentioned do not establish specific category on the realization of the legal power over the assets of another, when we have real material object as energy goods. If we admit that the protection of electrical networks is ensured by the executive decision, we have to recognize that the protection of land and property that are located or incorporated in the energy sector assets are protected by the provisions of the Civil Code. Accordingly, if the landowner did not know of the existence of underground electrical networks, that was not a legally established, it should not bear responsibility for the damage caused to the owner of power grids because, as previously mentioned, the destination set by the owner it is the right of easement. Consequently, if the landowner did not know, so it was not previously established, a servitude will not be liable for any damage to the operation of his land. In judicial practice, however, the court finds the essence constitute only servitude and arguments that confirm the existence of injury without legal finding of servitude. For example, in the civil case, file nr.2-695/2010 District Court Ciocani, Chisinau¹³, at the electrical grid enterprise against V.V.. the court held in the grounds of obligation to repair the damage. V.V. recognized that he held sewage works on the neighbourhood territory, which is owned by N.G., but didn't know of the existence of the networks. The court found that neither N.G. was not in the legal relations of servitude in Electric Networks. It follows that the damage was caused by an agent, but even this could not have been aware of the existence grids buried on land. The court made reference to legal norms that, according p.17 Regulation to protect power lines 514 from 23.04.2002, all works are carried out in radius protection zone are the prior written consent of the organization providing energy and electricity, and according to p.18 d) of the Regulation, the request is made 12 days before beginning work. The court thus found that none of the mandatory requirements have not been met by the defendant, the circumstances which had the effect of prejudicing the supplier. It would have been appropriate for the court to ascertain the origin of the legal relationship occurred because of the provider, under civilian rule establishing servitude to verify whether there was such a report.

Moreover, the Regulation provides that local government bodies or other legal persons, by authorization of the construction of houses, buildings and structures are required to coordinate in advance with the enterprise grids the possible places to locate these targets and materials on the actual placement of grids prepared in the established and businesses must keep the power grids that are required to provide local public authorities and landowners interested in the information about the actual location on the ground grids.

In the context, the Regulation also provides that effective placement must be drawn on the maps grids landowners that keeps the cadastral engineer from the local government or land surveying organizations. If the boundaries of the land use will change, the local government will inform the electricity networks businesses. But is the legislator never specified that the land owner must be informed and required to read the scheme location grids and give consent for the establishment of servitude, this would be

¹³ www.Jci.justice.md

legalized. So, the provider or the local public authorities should be required to ask the owner of land the agreement to the constitution servitude, or it follows to modify the rule that establishes servitude and by law, as the right of superficies. It follows that the land owner has to know a scheme location, or request information from the enterprise or Institute concerned. In this situation it seems illegal the use of land for siting electrictricity without a legally constitute reportl. In the case referred the court had to check some inventory that was conducted and whether the institution responsible with the grids notified the owner of the land under private signature on existing easement at the time of acquisition of the right of private ownership of land.

The regulation regulates the procedural including establishing conditions before work, or, respectively, anticipated recovery easements would stipulate mandatory information and procedural rules and the adjustment of the legal situation at the time.

These regulations were to be confirmed by the rules defined by the procedure to bring the owners energy goods wich are under /or on his land and the rights over them. Thus, due to the fact that the legal status of energy related goods is governed by special laws they were to be read in conjunction with the regulations governing the powers of the local and central public administration authorities.

In conclusion, the servitude right size on energy goods is of interest not only in terms of legal status and termination of the establishment, but also in terms of their objective reality. The acquiring subjective right of servitude on a good presents interest for the acquirer, but not the mere possibility possessions and uses thereof.

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