

09_What Easement Rights Can Persons Building Energy Facilities Rely on_october_2013_ME

Under the Bulgarian laws the land easement is the burden imposed on a property referred to as “the serving property” in favour of another property referred to as “the master property” which belongs to another owner. Two properties should be in place for easement rights to emerge: a property encumbered with the easement and the other one, the master property for the sake of which the easement right is granted (e.g. the right of way through a neighbour’s property or the right pertaining to water supply). However, the situation is different when easement rights occur for the construction or extension of energy facilities such as an overhead power line, a gas pipeline, an oil pipeline, etc. In this particular case, it is the type of facility to be built or extended that matters. If it is energy facility, then easement rights will emerge ex lege.

“Energy facility” means an installation or a set of installations intended to generate or support the generation of electric and/or heating power of certain capacity, to drill or store oil or natural gas, to transmit or transform the parameters or type of electric and heating energy and natural gas, oil or oil products through grids, as well as their auxiliary grids and equipment, to distribute electric or heating energy or natural gas through grids, as well as their auxiliary grids and equipment, with the exception of clients’ installations.

The Energy Act envisages the following easement rights of persons building or operating energy facilities:

1. the right to install overhead and underground power lines, heating pipelines, gas pipelines, oil and oil product pipelines;
2. the right of their representatives to enter and cross the serving properties and to carry out activities thereon in connection with the construction and/or operation of the energy facilities, including the right to haul equipment or drive vehicles across the serving properties in connection with the construction and servicing of overhead and underground lines and surface installations;
3. the right to prune and cut trees in the easement strips of the power lines and the water facilities for the purposes of handling accidents, while notifying the managing bodies of forest ranges and national parks.

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Still, the existence of energy facilities is not sufficient per se for the easement rights to emerge ex lege. The law creates the necessary conditions but in order for the easement rights to occur two requirements should be met: (i) to have an enforceable detailed development plan which identifies the location of the relevant properties; and (ii) the easement right holder should have paid a one-off compensation to the owner of the property on which the easement rights are granted and to the holders of other rights in rem thereon.

The extent, location and special arrangements for easements are strictly individual for the various types of energy facilities and defined in accordance with the provisions of Ordinance No. 16 of 9 June 2004 on the Easement Rights of Energy Facilities issued jointly by the Minister of Energy and Energy Resources, the Minister of Agriculture and Forests and the Minister of Regional Development and Public Works and published in The State Gazette, No. 88 of 8 October 2004.

The amendment to the Energy Act, which entered into force on 17 July 2012, contains an explicit requirement for easements together with the requisite documents to be entered into the Properties Registry. The entry in the Registry indicates the enforceable act on the approval of the detailed development plan with a transcript from the graphic and textual materials related to the serving property, the holder of the easement right and the owner of the property, as well as a document certifying that the one-off compensation has been paid or deposited with a commercial bank at the disposal of the owners of the serving property, which constitutes the easement right price. The registration is filed by the easement right holder, i.e. the person building and operating the energy facilities.

The Energy Act lays down certain benefits to persons building and operating energy facilities by providing them the right to gratuitously use bridges, roads, streets, sidewalks and other public properties. These properties may be used for free to perform the following activities: construction, connection, passage and maintenance of overhead and underground power lines, gas pipelines, heating pipelines, water mains for power generation purposes, oil and oil product pipelines. The persons have the obligation to ensure the technical safety and to prevent any damage to the properties.