

THE RIGHT OF SERVITUDE BETWEEN PUBLIC INTEREST AND UNDISTURBED USE OF PRIVATE PROPERTY

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For obtaining the land in order to build the magistral pipeline a specific form of land expropriation is applied, namely the Right of servitude. The Right of servitude can be realized on the basis of established public interest, which can be defined according to the spatial plan of the relevant area. The Right of servitude is analysed from the point of its influence on the respect of basic human rights of property owners to enjoy their property in safety and without disturbance. Current legal framework in Serbia that regulates procedures for acquiring land for the purpose of public interest allows for breach of private property rights. There is a mutual inconsistency between a number of decrees that regulate property rights for large infrastructural development projects. A specific, and possibly a greater problem, is the status of the local population, the land owner and other real estate. It concerns their awareness of their private and individual rights, as well as technical and other legal standards, which must be applied during the preparation, construction and working stages of an energy facility. Applying the Right of servitude as a way to acquire land for construction of the Pipeline, there is direct breach of the basic human right as stated in the first Protocol of the European Convention on Human Rights, namely that 'every natural or legal person is entitled to the peaceful enjoyment of his possessions' (Article 1, Protocol 1). The Right of servitude allows the investor to use 'public interest' as a way of gaining access to another's land, and under better financial conditions than if he were to apply permanent expropriation. While the owner retains his/her ownership of the land, inconvenienced by numerous limitations of its use, usability and market value of the land becomes substantially reduced.

Key words: magistral pipeline; right of servitude/easement; public interest; human rights.

INTRODUCTORY REMARKS

In the Republic of Serbia, development of infrastructure for a gas pipeline has gathered pace during the last decade, amongst other reasons, due to its environmental properties. In order to build the pipeline it was necessary to obtain land by purchasing it from the land owners, or by announcing public interests that the pipeline would bring. For the latter a specific form of expropriation is applied, namely the right of servitude. The right of servitude can be realised on the basis of established public interest, which can be defined according to the spatial plan for the relevant area. The subject of this article is the analysis of the right of servitude and its influence on the respect of basic human rights of property owners to enjoy their property in safety and without disturbance¹.

LAND OWNERSHIP AND LAND USE STATUS

Public interest is defined through notions such as common benefit, common wellbeing, general welfare and other. In the middle of the 20th century, at the beginning of the welfare state, this notion served as the key legitimate basis for planning in both political entities in European states (Petovar, Vujošević, 2008, p.24). Public interest was facilitated through various activities which had different forms of protection, such as financial subventions, tax reductions, legal support and other. Public interest was an umbrella, under which welfare states created and implemented social programs. As a consequence, some property rights were limited in order to allow more efficient and economical realisation of those programs. In former (real) socialist states public interest was an instrument for enabling various activities, and carriers of those rights were clearly defined – only actors from the

state/common sector could be the beneficiaries of public interest. Moreover, in some traditional democratic European states the concept of public interest had such a strong influence that it endangers the right to property as the basic human right, as defined by the European Convention on Human Rights in 1950 (Dimitrijević, Paunović, 1997, p. 298). This was the main reason why this right was established only in the First protocol of the ECHR, which states that 'every natural or legal person is entitled to the peaceful enjoyment of his possessions' (Article 1, Protocol 1). The same Article states that 'No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of

The paper was prepared within the research project "The role and implementation of the National spatial plan and regional development documents in renewal of strategic research, thinking and governance in Serbia", III 47014, financed by the Republic of Serbia Ministry of Education and Science in the period 2011-2014.

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international law'. For the future discussion of this analysis, it is crucial to consider the right to peaceful enjoyment of one's property while the land is in owner's possession².

At the beginning of the 1980s the self-explanatory concept of public interest has been seriously shaken in its contents, as well as in the view of those actors who use it and those who reap its benefits (Petovar, Vujošević, 2008). During the post transition period in Serbia this concept remained the basis for gathering property and acquitting the owner of other real estate, which greatly resembles the socialist period (Vujošević, 2004). The greatest difference from the past is that the responsible parties can proclaim public interest for state, private or cooperative property. This interpretation is derived from gaps in the legal framework, which omit to define property rights of the owner of the public interest. In addition, a wide spectrum of activities can be defined as public interest, from those that contain some aspects of public wellbeing and public good, to those that are exclusively commercial³.

Public interest is the basis for expropriation. Several types of ownership could be established through expropriation. For the purpose of this paper, the following are relevant:

Permanent expropriation is seizing of the land from the current owner with compensation as regulated by law. Residential and other facilities are also subject to expropriation. The owner of the property has the right to request expropriation on the remaining land, if that part has lowered value. Permanent expropriation deprives the owner of his/her property, in return for compensation in market value of the expropriated property.

Temporary occupation of the land is the right of the Beneficiary to use the land during the preparation work and construction of the Pipeline without change in ownership. According to regulations, during the construction of the Pipeline, the area used is 6 + 12m in width from the axis of the Pipeline. Temporary occupation of the land provides for adequate compensation for the land owner. This is where a serious problem appears, namely, devastation of the top layer of humus as a consequence of construction works of the Pipeline. This is due to lack of safety measures and re-cultivation of the top soil.

The partial expropriation or the right of servitude (also called right-of-easement or right-of-way) allows the Beneficiary permanent access to the facility (Pipeline) which is situated on the peace of land that remains in ownership

of another subject, with adequate compensation which is paid to the land owner by one-off payment (according to data gathered from JP Srbijagas, the amount of compensation is 30% of market value of land over which the route passes). The right of servitude could be established during the expropriation process in order to have the water pipes installed, electrical and telephone cables, including gas pipelines. The user of expropriation creates a type of credit over another's private ownership. According to current legislation the owner does not have the right to ask for permanent expropriation of the land where the right of servitude has been established.

Along the route of the main Pipeline, the following type of land use can be identified along the route: (1) Village borough agricultural land that will keep its use for agricultural production and will not be converted into land for construction (building land); (2) Agricultural land in villages near the city that may potentially be changed into land for construction; and (3) Agricultural land which has become informal building land where buildings have already been built (with no building permits, but which are in the process of legalisation), although it is still officially registered as agricultural land, and its value is determined as such for the purpose of expropriation. We should also add category (4) – namely, agricultural land that will not change purpose in accordance with the established proposition in the Spatial Plan of corridor Niš – Bulgarian border, which states that 'alongside belts that are meant for the construction of the Pipeline corridor there are no changes in the use of agricultural land' (Spatial Plan of the infrastructure corridor Niš – Bulgarian border, Official Gazette 86/2009, p.11).

LAND VALUE

Along the route of the Pipeline, as in other parts of Serbia, there are significant differences in value of agricultural compared to building land used for building where development is allowed. Value of the latter is several times higher, because land use is regulated and construction of residential, industrial and other facilities is permitted. A separate category consists of agricultural land near urban settlements, which has already been (illegally) built on, but is still formally registered as agricultural land. As such it is valued accordingly (as agricultural land) when assessing compensation for current owners.

Value of agricultural land, which is not suitable for urban development, along the highway and the Pipeline of Corridor X is extremely low. According to expropriations carried out along the Corridor X Highway, the price ranged from

4 to 6 euro per 1m². Such price exceeds a fair market price in the area. In an interview with an owner of expropriated land in Crvena Reka settlement, along Corridor X, the respondents could not recall the last time a plot of agricultural land has been sold on the market. According to thousands of completed acquisitions along Corridor X Highway, there were only a few complaints regarding the fee. In other words, most of owners are keen to accept the offered compensation for the expropriated land, as well as for expropriated residential and commercial buildings. Such findings indicate that the price given for the expropriation of the land is acceptable to owners.

The sale of agricultural land took place only in areas close to urban settlements, which is why this land was sold in fragments and for the purpose of building for housing. New owners used to build their houses without building permits and then settled with their families. The largest number of residential and commercial buildings in city peripheries in Serbia was built on agricultural land or pseudo-building land. Through expansion of planning of this zone (through the Master Plan) these land plots have been formally converted into construction sites. It has now become possible to legalise already built housing, commercial buildings and other built environment, or even get a building permit to build a new facility. By changing the use of agricultural land into land for construction, the price has been formally settled.

For example, the price of land meant for construction in the suburbs of Niš municipality reaches up to 200 000 euro per 1 hectare (see - The case of Trupale). Only villages in the peripheral zones of municipal centers can change land usage from agricultural to construction land, as set by the planning regulations that have included those areas into the Master Plan. Consequently, land use of a certain piece of land changes and becomes available for construction of housing and/or other objects (industrial zones, etc.). Changing land use from agricultural to construction results in significant increase in land prices on the market.

POSITION AND RIGHTS OF OWNERS WITHIN PROTECTED AREAS/SAFETY ZONES OF PIPELINE

Under current legislation that regulates the construction of the Main Pipeline, the scope of expropriation of land is significantly low, while most of the route is to be used for by right of servitude.

The Law on Pipeline Transportation of Gaseous

and Liquid Hydrocarbons and Distribution of Gas Hydrocarbons (*Official Gazette of the Republic of Serbia, No. 104/09*) defines preconditions for constructing gas pipeline and includes norms related to projecting and construction, testing, use and serving, minimum of professional knowledge of employees, general protection conditions and addressing issues related to internal gas installations. Although this Law sets some basic standards, in order to understand the position of local citizens it is more relevant to consider the *Regulation on technical conditions and standards for safe transport of liquid and gas hydrocarbons, for major oil and gas pipelines, and gas pipelines for international transport – RTS* (Official Gazette of the SFRY, 26/85 from 24.05.1985).

RTS covers various technical questions, from the phase of defining route to the testing phase. This by-law defines the following safety zones of the pipelines.

Priority safety zone 5 meters from each side of the pipeline axis. It's forbidden to plant plants with roots longer than 1 meter, or plants that are cultivated by digging more than 0,5 meters

Protected area 30 meters from each side of the pipeline axis. It is forbidden to build housing objects in the future. Regulation doesn't mention situation when we have a building in a distance less than 30 meters from the axis. According to the interpretation of technical experts, the previously built structures are to be kept, but it is forbidden to build the new ones. In the case that the owner of the land wants to build some structures in this protected zone, he/she has to ask for permission from the Beneficiary who obtained the right of servitude. The right of servitude is imposed on the whole protected area of 30 m from each side of the pipeline axis.

Wider safety zone, i.e. protected area 200 meters from each side of the pipeline axis. Based on the level of population density, additional protection measures should be undertaken.

Provisions that are relevant for the position of the local population and land ownership are related to the mode of use of agricultural land in the protection area of 30 m. Article 20 of the Law on Pipeline Transportation of Gaseous and Liquid Hydrocarbons ... states that 'in the Protected Area of the Pipeline one must not carry out works and other activities other than agricultural work no deeper than 0.5 meters, unless there is written permission for the legal entity responsible for transport and for distribution along the pipelines'. Approval for works in the

protection zone of the pipeline, referred to in paragraph 1, must be issued by an energy authority carrying out transportation (i.e., the Beneficiary, a term used in the Law on Expropriation). Beneficiary may issue a permit which determines that the protection zone of the pipeline is technically feasible for work and other activities specified in paragraph 1 of this article. "Legal or natural subject who has obtained approval under paragraph 1 of this article must during construction or other activities in the protection area of pipeline implement protection measures under the instruction of the Energy Entity (Beneficiary) carrying out transport and distribution along the pipeline".

In the newly adopted (although similar to the previous one) *Law on Energy* (Official Gazette RS, 57/2011) states that Beneficiary has a right of servitude on a property of other owners for the purpose of undertaking works for maintenance, control of objects, installations and equipment and other works and use of those. Beneficiary is responsible for compensation in case of damage and the amount of compensation shall be determined mutually, if not, Court will intervene. Same Law defines limitation for the owners of the land that is subject of right of servitude. Anyone that has right to the real estates that are under, above or beside energy object is forbidden to commence works that could threat or endanger an energy object without previous approval of Beneficiary. Approval could be given on request by owner and contain technical conditions to be implemented.

ACQUISITION OF LAND BY THE RIGHT OF SERVITUDE

Acquisition of land by the right of servitude could impact the commercial and utility value of the land:

1. The right of servitude imposes certain limits with regard to the use of the land, especially the right to use his/her land without disturbance. This is the case in particular regarding the fact that 'in the safety zone one is not allowed to undertake any works except agricultural works up to 0.5m depth, without a permit from the energy authority in charge of transport and distribution along the Pipeline'. It is certain that such restrictions devalue one's land and prospects to sell it; especially due to the fact that once the right of servitude has been imposed, the property is put under mortgage. Therefore, the land owner is required to ask the Beneficiary for permission to build on his own property.

2. It is possible, for example, that the owner of a property where the right of servitude has

been established might ask for consent from the Beneficiary to lay a new passing road over the Pipeline route in order to access another part of his parcel/plot. However, it is also possible that the land owner will not get permission from the Beneficiary to pass through to the other piece of his/her plot of land.

3. The Beneficiary is required to compensate the land owner for the devaluation of the property. However, neither the amount, nor the way in which the amount is agreed upon, has been regulated, particularly having in mind fluctuations in value. Regarding human rights and the right of the owner to use his/her property safely and without disturbance, one can argue that the owner should be given an opportunity to choose the form of land acquisition (permanent expropriation of land or right of servitude).

4. A certain number of interviewed citizens, as well as a number of professionals, regard that offering permanent expropriation is more just and rational for the property owner than applying the right of servitude.

5. One should not disregard psychological effects that can be caused by the proximity of the Pipeline to housing objects, which can, also, affect the value of the property. We can assume that for depopulated villages and those with low population where land is used mainly for agriculture, the effect would be minimal. However, in populated areas the above mentioned psychological effect could be more severe. Therefore, it is crucial to raise such questions during meetings with local citizens. During the discussion in Piroć, an interviewee was asked about her feelings about security if the Main Pipeline passed ten meters from her house. She replied with a question: 'Would you be happy if your children were to play close to a gas pipeline?'

6. Another problem was noted regarding an owner whose land has been given the right of servitude. Namely, in the case when agricultural land is changed to land where construction is permitted. At that point the owner of the later will have to seek a permit to build in PA 30m radius from the axis of the Pipeline. In practice this will prohibit construction on land which previously had a building permit.

7. It is of particular importance to precisely describe and interpret legal obligations in respect to the requirement to protect and maintain the quality of agricultural land on the stretch where construction and earth-moving works shall be executed during the construction of the Pipeline (12 + 6 m), i.e. of all agricultural land areas where works shall be

executed and which shall not be converted to other uses, i.e. shall remain agricultural land. The protection and preservation of the humus layer of arable areas and forest soil as a non-renewable resource has been laid down under several laws in the Republic of Serbia⁴. From the legal provisions the obligation of recultivation and topsoil protection exists irrespective of the ownership status of the land. Even if the land were to become the property of the Beneficiary, the obligation to abide by the foregoing and other regulations would stand. Strict compliance with these obligations is particularly important in respect to the use of land which shall continue to be the private property of another citizen/household, with the Beneficiary acquiring the right of servitude on the land in question according to the law. For many households along the Pipeline route, agricultural land is a major source of income (for their own needs and to a lesser extent for sale to neighbors or at the local market). That fact is yet another important argument in favor of preserving the fertility of agricultural land.

In order to better understand the possible impacts and rationale for the establishment of an adequate control framework and the preclusion of any undesirable and adverse impacts of the construction of the Pipeline on local communities, the following needs to be pointed out:

- In the course of field research we established that in practice there exist different assessments of the value of the land, both of agricultural and building land. There is an evident mismatch between judicial practice and land evaluation, both in terms of the expropriation price and of assessments of compensation for the right of servitude made by municipality tax administration. Several judges that we spoke to were of the view that tax administrators made blanket assessments of plot values and that previously established and harmonised criteria for assessing the value of individual plots were not being applied in the assessment process.

- A comparison of the institute of permanent expropriation to the right of servitude shows that the right of servitude *de facto* restricts the right of disposal of property to a greater extent than the institute of permanent expropriation. In circumstances when the price of agricultural land is low, the expropriation price for agricultural land is as a rule higher than the actual price (an exceptionally low one, as already underlined), so that the owner of expropriated land can buy new agricultural land with the proceeds of the permanent expropriation. The newly purchased land shall not be mortgaged in contrast to the plot on which the right of servitude has been

established. Owners of agricultural land in the peripheral zones which might be converted to building land in the near future will be particularly affected because they will have to apply to the Beneficiary for approval/permits for any construction within the 30 m PA.

- Similarly, there is no solution for the problem created when agricultural land is converted to be used as building land, or already *de facto* has the status of building land making it certain that in the near future it will indeed be declared building land. In view of the marked differences in the market prices of agricultural vs. building land, on the one hand, and the restrictions imposed by the right of servitude on future construction on a plot which has become a building site, we feel it justified to make it possible for the owners of plots which are in the building zone, or shall become building lots, to demand permanent expropriation at the actual market price. During field research and talks in municipal land registry services, courts and other institutions, our collocutors were overwhelmingly in agreement that it was justified to offer the possibility of permanent expropriation as an alternative to the establishment of the right of servitude if so requested by the owner of the plot.

INFORMING CITIZENS OF THEIR RIGHTS

According to propositions in the Environmental and Social Policy Performance Requirements by European bank for Reconstruction and Development (ESP PR EBRD), as well as other International Financial Institutions, the client will consult with affected persons and communities and facilitate their early and informed participation in decision-making processes related to resettlement. Affected persons shall be given the opportunity to participate in the negotiation of the compensation packages, eligibility requirements, resettlements assistance, suitability of proposed resettlement sites and proposed timing, and special provisions shall apply to consultations which involve individuals belonging to vulnerable groups, that should be identified through the process of environmental and social appraisal.

In Serbia public consultation is marginalized both as a legal requirement, and even more so during the planning, development and implementation of spatial and urban planning documents. The Law on Planning and Construction (Official Gazette RS, 72/2009) requires that a Draft plan be submitted for so-called Public insight (Article 50). The Public insight takes place ex-post, when almost all

basic propositions and planning solutions have been defined. The role of the public insight is to allow the civil society to make suggestions and comment on the proposed plan, which a special Commission later adopts or refuses. Information on public insight in the Draft plan shall be published in daily and local newspaper and advertised for 30 days. Government Agency for Spatial Planning and the local government authority in charge of spatial and urban planning are responsible to present the planning document for public approval. The Planning Commission shall prepare a report that contains data gathered during public insight and must include all comments and any decisions taken. The law does not oblige the developer of the Plan to cooperate with the local community and civil society who live in the vicinity, not even in projects which demand expropriation of land or pose other forms of restrictions on property, as is the case of the Pipeline.

Informing citizens and the accessibility of information are at a very low point, in particular in rural settlements far away from urban centers. On the one hand, a large percentage of the citizens in the settlements along the Pipeline route have not completed elementary school or only have a compulsory elementary education background. Among the older segments of population the share of this group is frequently as high as 60–70%, especially in rural areas. On the other hand, information provided to citizens on important issues affecting their interests is not adapted to the target group. As evident from the example of informing citizens of the plan charting the MG-11 gas pipeline route in the village of Trupale, the existing practice of informing citizens is not even appropriate for urban communities having a better educational structure and more efficient mutual communication modalities. For that reason it is necessary to prepare a detailed brochure about all relevant information on the planned activities. A separate chapter in the brochure should deal with the technical standards which must be observed during the preliminary works and construction, such as: the permissible noise and dust levels, the working hours, the regimen of local roads use, the boundaries of the work corridor (12m + 6m), the regulations for the construction of temporary access roads and structures and their obligatory removal, i.e. restoration of these areas to their original state following the completion of construction, a mining management plan requiring the mandatory inspection of buildings and other built-up structures which might be affected by mining, community security measures – route

enclosure, secure passes across the route, heavy vehicle traffic hours, the functioning and control of activities at temporary construction yards and other. It is of particular importance to ensure the functioning of settlements in cases where the Pipeline route intersects them, especially to ensure accessibility to public services.

A particularly important aspect of cooperation with local communities is **providing advice, legal and other assistance to property owners and other interested citizens.** Civil society in Serbia, particularly in rural settlements is poorly informed about their rights and relevant legal frameworks. An additional difficulty in the information sector is the poor organisation of the citizens, the low social capital, and the poor network and quality of civil society organisations. Social capital reflects the capacity of citizens to associate in pursuit of common, and, *ipso facto*, individual welfare. Among the indicators of the level of social capital in a community are organisations of the civil society. Independent and autonomous civil society organisations have developed in Serbia only over the past two decades, principally in larger urban settlements. Searching the Internet we found just one village through whose territory the Pipeline route passes in which there were some forms of civic association. That is the village of Krupac, which has adopted an Action Plan of this local community/settlement. Therefore, organizing this type of assistance for citizen along the Pipeline route is of crucial importance. Citizens in these settlements are poorly educated, with a large number of elderly, disabled and poor households which cannot afford to pay a lawyer or another professional to ensure they receive adequate and relevant information. They do not have access to any type of independent and professional legal assistance, while their interests are often not protected even by the responsible officials at the local government. Rural settlements are situated far away from the local power structures. Considering the above described circumstances those inhabitants will not receive adequate, reliable and independent legal assistance about their rights and ways to protect themselves and their property. It is therefore crucial to oblige all parties involved in the construction of the Pipeline to provide relevant and timely information about the project, expropriation of land, application of the right of servitude and all other legal information, to all affected stakeholders and the civil society. This should be compulsory with regard to all projects that entail changes in the use of land.

In order to have an efficient and effective communication with the civil society and adequately inform them of all relevant questions, it is necessary to form an **independent body** (a Committee, a Board...) **that will regulate all activities during the preconstruction, construction, operation and maintenance, to ensure implementation of all commitments and protect the rights of citizens.** The Committee should be formed of community representatives (elected by the community), representatives of independent bodies (protector of civil rights/ombudsman, human rights non-governmental organisations and other), local government representatives and representatives of the Beneficiary. The inefficient functioning of institutions and the poor coordination between the citizens, local administrations and their services, is yet another argument in favor of setting up an independent body that citizens can turn to and which will wield sufficient influence and authority to ensure that the set conditions and terms are satisfied. Municipalities in Serbia have legal assistance services with jurists on the staff offering free legal advice. Given the complexity of the activities in the construction of the Pipeline and the specific nature of the legal regulations governing this subject matter, additional training needs to be organised for the staff of free legal assistance services, which the citizens can apply to for advice. Such additional training can be implemented as part of community-based programs for promoting the quality of life in local communities.

THE CASE OF TRUPALE

The case of Trupale can be useful for understanding the position of the local population and the consequences of a practice where local communities have been marginalised as a factor in space planning and development activities. Trupale is a settlement in the peripheral area of the city of Niš. In the 1948/2002 period, the population growth index was 126.5, and in the 1991/2002 period, 94.9. At the same time, the growth index of the number of households was 189.3 and 102.0 respectively. At the last census, there were 2.109 inhabitants in 625 households in Trupale. Under the 2011 Master Plan of the city of Niš, the land use in Trupale was converted to construction.

According to information **received from the Town Planning Office in Niš**, the Assembly of the city of Niš adopted in 1993, "Conditions for Area Configuration for the Construction of the MG-11 Gas Pipeline and Optical Cable for PTT Traffic on the Territory of the City of Niš".

The MG-11 Pipeline route was confirmed by every municipality through the territory on which the route has been planned. The project investor was Energo-gas. The right of servitude was established and decisions were issued to the landowners for the right of servitude in an area 30 m wide on both sides of the Pipeline axis. The total width of the work corridor was established at 18 m. The ban on construction on a thus defined route was mainly respected. When the Yugoros-gas company was set up, it took over the complete documentation and decisions on the right of servitude were issued to the landowners. Yugoros-gas was granted a building permit.

According to the former (previous) Master Plan, Trupale was within the agricultural land category. When the Pipeline Detailed Regulation Plan was adopted, the citizens did not react. A few years ago a buyer appeared interested in buying land in Trupale. He concluded contracts with the locals in which it was stated that the land was unencumbered (not mortgaged). When the buyer found out that the plots he had bought and had made down payments for were mortgaged, he terminated the contracts and is demanding that the owners give him back the advance payments they received.

In the meanwhile, a new Master Plan of the city of Niš (2011) was brought, and the land in Trupale was categorized as building land, namely some of the areas were converted from agricultural to building land, intended for a business/ industrial zone. As a result of the changed purpose of the land, its price increased, as building was permitted. Regardless of the fact that the land has been categorized as building land, it is still on the books as agricultural land. Landowners in Trupale are now counting on a price of 200,000 €/ha, for such is the price featuring in sales/transactions agreements on the free market, but on condition that the land is not encumbered/mortgaged. Yugoros-gas is offering and in the relevant decisions paying compensation for the right of servitude on account of decreased value (temporary expropriation) in an amount corresponding to the building land category, but not according to land value of 200,000 €/ha.

Along the MG-11 route, there were no structures within the 30 m PA. In the interpretation of our interlocutor from the Town Planning Office, the owner is entitled to demand that a structure be expropriated with the plot, if the structure is within the 30m PA band, and if it has been built on the basis of a building permit. If the plot is in a building zone

and the protective belt passes through the major part of the plot, the owner is entitled to seek the expropriation of the entire plot. If the structure is in the 30 m PA, and has no building permit, enhanced Pipeline protection measures are applied, and the Investor usually pays compensation for the part of the structure which is in the protected area or pays for it in full. The right of servitude is a one-off payment. Once paid, the compensation cannot be revised, regardless of any changes (increases) in land prices.

According to information obtained **while talking with the citizens of Trupale**, the MG-11 Pipeline route was charted in 2007. Contracts on the right of servitude were concluded with the owners of land in the 30 m PA. The contracts were signed with Yugoros-gas. The amount of compensation for the right of servitude was not publicly communicated but was fixed in the individual contracts. In 2010, they were offered new contracts to sign in order to extend the old ones, as the works had not started in the three years since the signing of the previous contracts. A number of villagers signed the new contracts, while others refused to do so. There is a discrepancy between the dates when the contracts on the right of servitude were signed with the landowners (2007) and the date when the Government of the Republic of Serbia established the existence of public interest (pursuant to a Certificate of the Property Administration of the City of Niš, No. 463-113-08-04 of 5 June 2008).

The MG-11 Pipeline route in the borough of the settlement of Trupale was changed in 2010. The new route is about 1.5 km longer and requires the establishment of the right of servitude on a much larger area relative to the 2007 route. The new route has entered a complex of about 33 hectares. The owners of land within that complex sold their land to a buyer from Belgrade in 2008. Reportedly IKEA was planned to be erected on that complex. The owners received 3% of the agreed sum as earnest-money. The sales contracts stipulated that the land was not mortgaged. Because the Pipeline route was changed, the buyer abandoned the purchase and the owners are under the obligation to pay back the down payment.

According to our collocutors from the settlement of Trupale, it was common knowledge long ago that the complex through which the new route from 2010 was planned would be converted from agricultural to building land, which indeed was done by the new 2011 Master Plan of Niš.

Our collocutors are invoking a decision of the Appellate Court in Niš ruling that a lady owner

of a plot on which the right of servitude was established be paid 30% of the value of the plot on account of its decreased value due to the Pipeline route. That refers not only to the plot area which is within the 30m PA, but to the total area of the plot.

As regards the manner of determining the market value of the land, our collocutors indicated that the prices defined by the Tax Administration of the City of Niš were below those achieved in relevant individual contracts for plots in the immediate vicinity sold on the open market.

The present method of establishing the right of servitude and assessing the market value of land is particularly detrimental to owners whose plots are in the peripheral zones and which have been categorised as agricultural land, with practically certain prospects of conversion to building land, as well as owners of land that has already been declared building land.

According to our collocutors from Trupale, the public insight is organised in such a way that the owners are actually denied basic information about planned intentions. To illustrate their claim, they gave us the document: "Rationale for the Plan of Detailed Regulation of the MG-11 Niš-Leskovac-Vranje Gas Pipeline, on the territory of the City of Niš", which says: "Specialist control of the Draft Plan was undertaken at a session of the Planning Commission of the City of Niš on 23 January 2008. Notice of invitation for public insight was published in the 'Narodne novine' on 31 January 2008, and it was open for public insight from 1 February 2008 to 20 February 2008. During the public insight there were no objections to the Plan, and the Planning Commission, at their session of 27 February 2008, endorsed the Draft Plan and referred it to the Assembly of the City of Niš for adoption".

In June 2011, Yugoros-gas submitted an offer for the establishment of the right of servitude for the purpose of the construction of the MG-11 gas pipeline on a plot of an **area of 1,170 m²** in the village of Trupale (we recall that, according to the provisions of the Master Plan of the city of Niš, the land has the status of building land): "as compensation we offer as follows:

- for decreased land value, compensation amounting to 585,000.00 RSD (around 5800 euros);
- for lost maize crop profit, compensation amounting to 9,009.00 RSD (around 90 euros);
- for land recultivation, compensation amounting to 6,224.00 RSD" (around 62 euros).

The reply to our question what paragraph 3 – land cultivation referred to, was that during the

construction of the MG-11, the humus stripping carried out in the village of Trupale had not been selective and that it was compensation for the destroyed humus layer.

Without going into the details of the technical solutions and criteria applied when the MG-11 Pipeline route was charted and changed, from talks with the local community we learned the following:

- None of the citizens of Trupale is against the construction of MG-11. The groups of citizens who have organised themselves and are demanding different conditions for the construction of the Pipeline, primarily a reversion to the old route through the settlement of Trupale, are opposing the manner in which this job was done. They are of the view that there exist variants of the route which would affect the fields, the forest soil and the green belt to a lesser extent and which would not cut across the village borough in the way the 2010 route does.
- Not a single meeting was held in the local community on this topic, not even an initial meeting to inform the citizens of the start of the construction of the Pipeline.
- Public consultations in respect to the MG-11 project, namely of the town planning scheme which defines the route and the conditions of construction, were carried out more to satisfy formal regulations than to inform citizens in an objective and timely manner of planned intentions.
- When signing the contracts in 2007 and in 2010, the villagers were not given even basic information about the conditions of the taking the land for the purpose of the construction of the pipeline, the price that would be offered, the institute of the right of servitude, nor of the status of their property after they signed contracts on the right of servitude.
- No contacts or cooperation whatsoever were established with the local authorities in Niš.
- The Law on Expropriation at the time did not contain a provision providing for the obligation of the municipal administration to schedule and hold without delay a discussion for the negotiated determination of compensation for expropriated real estate (Article 56 of The Law on Expropriation in force). According to the present Law, the expropriation Beneficiary is to submit to the relevant municipal administration body a written offer specifying the form and amount of compensation, and the municipal administration body is to submit a copy of the offer to the (former) proprietor of the real estate. According to our collocutors, the contracts were signed at individual meetings between landowners and a Yugoros-gas lawyer, without

any public notice about the amount of compensation for expropriated land having been given in advance.

- Compensations for the right of servitude were neither standardized nor publicly announced. According to our collocutor, the compensation amount varied from 20 to over 100 Euros/1 a.
- No committee or any other forum was set up in the village to negotiate with Yugoros-gas.
- The villagers agreed to sign the contracts without any opposition or requests for additional information. Our collocutors from Trupale say that the citizens still perceive expropriation (permanent and/or right of servitude) as the right of the state to seize their property in the public interest, analogously to the practice of 30 or more years ago when land was expropriated for a highway route passing through this settlement.
- The collocutors say that there existed an informal pressure group, namely several villagers who sought to persuade the landowners to accept and sign the offered contracts.
- Our collocutors assess that other owners whose plots are not on the Pipeline route and whose property is unaffected by the Pipeline exhibit no solidarity with those who are affected.

CONCLUSION

Current legal framework in Serbia that regulates procedures for acquiring land for the purpose of public interest allows for breach of private property rights. There is a mutual inconsistency among a number of decrees that regulate property rights for large infrastructural development projects. A specific, and possibly greater problem, is the status of the local population, the land owner and other real estate. It concerns their awareness about their private and individual rights, as well as regarding technical and other legal standards, which must be applied during the preparation, construction and working stages of an energy facility. Applying the Right of servitude as a way to acquire land for construction of the Pipeline, there is direct breach of the basic human right as stated in the first Protocol of the European Convention on Human Rights, namely that 'every natural or legal person is entitled to the peaceful enjoyment of his possessions' (Article 1, Protocol 1). The Right of servitude allows the investor to use 'public interest' as a way of gaining access to another's land, and under better financial conditions than if he was to apply permanent expropriation. While the owner retains his/her ownership of the land, inconveniently by numerous limitations for its use, usability and market value of the land becomes substantially reduced.

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1) Route MG is set in spatial plans used as references (*Spatial Plan of the Republic of Serbia 2010 -2020* (Belgrade, Official Gazette, 2011); *Spatial Plan of the infrastructure corridor Niš - Bulgarian border* (Official Gazette, 86/2009); *Spatial Plan of the administrative area of Niš 2021*, The Plan outline (J.P. Zavod za urbanizam Niš, 2011); *Spatial Plan of Bela Palanka municipality 2009 – 2024.* Concept (J.P. Zavod za urbanizam, Niš, 2011); *Regional Spatial Plan for Niš, Toplice and Pirot County.* The Plan outline (J.P. Zavod za urbanizam, Niš, 2010); *Spatial Plan of Pirot municipality 2011-2021* (Zavod za urbanizam, Pirot, 2011); *Spatial Plan of Dimitrovgrad municipality.* The Plan outline (JP Zavod za urbanizam Niš, 2011). Strategic projects for the development of the economy of natural gas in the Spatial Plan of the Republic of Serbia (SPRS) are based on the National action plan for gasification on the territory of Serbia, adopted by the Serbian Government in 2007. Magistral Pipeline Niš – Dimitrovgrad has been listed under the 1st category of strategic projects of the gas supply up until 2014 (p.219). *The Spatial Plan of the corridor Niš -Bulgarian border* identifies infrastructure systems including the Magistral Pipeline.

2) Decision of the European Court in the case Sporning i Lonroth v. Sweden, confirmed that in circumstances where 'the property wasn't confiscated' the right of the owner to 'use the property' was limited. It can be concluded that Swedish legal practice limits the right of the owner, and in that way breaks the right to peaceful enjoyment of one's property. The court underlined that the European Convention on the whole requires a fair balance to be kept between the interests of the property owner and the general interest of society as a whole. Having in mind the 'complexity and difficulty of development of cities', as well as the fact that state contracts 'enjoy a wider meaning than just land and property interests', the court cannot allow the use of property to be left unsupervised, and must determine whether the balance has been achieved with regard to the applicant's right to peacefully enjoy his/her property (court case of 23rd September 1982, cited from V.Dimitrijević i M.Paunović (1997), Human Rights, Belgrade: Belgrade centre for human rights, p. 289-302).

3) Protection of property rights is an open question in the similar projects which include conversion of land use such as planning of the water storage reservoirs (Đorđević, Dašić, 2011; Krishne, Ravishankar, 2011).

4) The **Law on the Protection of Nature** ("Official Gazette of the RS", Nos. 36/2009, 88/2010, 91/2010) stipulates the preservation of the humus topsoil as obligatory. The **Law on Agricultural Land**, (Official Gazette 41/2009); Chapter 4.2 Recultivation of Agricultural Land Used for the Exploitation of Mineral Resources and Other Materials. The **Law on Environmental Protection** (Official Gazette, 43/2001).

Received December 2011; accepted in revised form December 2011