



## **Doctrinal considerations regarding administrative easement definition**

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The Public Administration, in its function of satisfying the interests of the collective, and taking into account the principle of legality and the corresponding legal guarantees, often requires things of personal property for reasons of public utility or social interest. These cases include: compulsory expropriation, temporary occupation, limitations and administrative easements; all them legal institutions regulated by Administrative Law.

Administrative easements arise to respond to the needs of social existence. They have evolved from civil servitudes to an institution of Administrative Law. How many times it has become necessary to provide electrical or water services that the poles, towers or pipes are located on lands that are not public property? It is of public utility to receive an adequate electrical service and aqueduct service, and for this, administrative easements are indispensable. These easements allow to obtain advantages, for the benefit of the collective.

Several aspects of this legal institution have not yet achieved a uniform approach between the branches of Civil and Administrative Law. Those aspects include: conceptual delimitation, legal nature, fundamental characteristics of the institution, and its distinction with other related institutions, diversity of classification approaches, or the adequate manner of compensation. This situation creates confusion regarding the institution, which affects its theoretical, legislative and jurisprudential treatment and, as a consequence, affects legal certainty. This article discusses the approaches to the controversial definition of administrative easements."<sup>1</sup>. According to ALBALADEJO, the servitude consists of the real power over the property of others to make partial use of it. He adds that it is not possible a better delimitation of the concept because the power, object and content of these institution can include very different situations<sup>2</sup>. It is also recurrent to find that servitude is considered as a real, perpetual or temporary right of one or more persons over the property of others, with a certain right over its usefulness<sup>3</sup>.

Previous definitions constitute a minimum reference of the long list of approaches about this institution from the Civil Law doctrinal perspective. Nonetheless, common elements can be appreciated. It is not possible to determine with complete precision a definition of easements, which allows us to identify them convincingly in relation to other legal institutions that also have an impact on property rights.

There is no identity between civil and administrative easements. Although servitudes of public utility come from civil servitudes, the individuality of each is undeniable, especially because administrative easements have their cause in public utility or social interest, which permeates the characters and the legal regime Administrative procedures.

JOUSSELIN is one of the first authors to note that easements of public utility are modifications to real property made in favor of public utility, as determined by laws and regulations. In such a case, the institution of public easements would contain the whole legal system of property,

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<sup>1</sup> DIEZ PICAZO, L. Y GULLÓN, A. *Sistema de Derecho Civil*. Volumen III. Derecho de cosas y Derecho Inmobiliario Registral. Sexta Edición. Editorial Tecnos. SA. Madrid. 1997. Pág. 434.

<sup>2</sup> ALBALADEJO, M. *Derecho Civil. Tomo III. Volumen segundo*. Quinta edición. Editorial Bosch. Barcelona. 1983. Pág. 94.

<sup>3</sup> Véase GATTI, E – ALTERIN, J.H *El derecho real. Elementos para una teoría general*. Reimpresión. Abeledo-Perrot. Buenos Aires. 1998. Pág. 99.

without recognizing distinctions between limitations, charges, obligations, temporary occupation or expropriation.<sup>4</sup>

For OTTO MAYER the definition is more restricted. It refers to the fact that public law easement is a partial legal power constituted on property in favor of a public company.<sup>5</sup>

In contrast, BIELSA considers administrative easement a real right, constituted by a public entity (state, county or commune) on a private land, with the objective of serving the public use as an extension or dependence of the public domain. This conception finds several followers in the administrative doctrine, because they recognize in the administrative easements a real right over the other's thing in order to serve the public interests, real right that ends up being part of the public domain.

An almost unanimous element in doctrine is the reference to the general interest as the cause for establishing administrative servitude. GARCINI recognizes this element expressly. Although it limits the conception of administrative easements to the burdens that can fall on properties originated not by the necessity of another private thing that is adjacent to her, but by the closeness of public things..<sup>6</sup>

For GARRIDO FALLA, closeness is not an essential element of administrative easements, but the partial subjection of the immovable to a use by the collective.<sup>7</sup>

The above definitions show the diversity of approaches to administrative easements, which confirms the difficulty of uniformity. The elements that often converge are: they are recognized as a real right, are constituted on the property of others, and respond to public interests.

These common elements are not enough to identify administrative easements in the juridical traffic. Its complexity is given by the lack of delimitation of its contours and to achieve a more suitable definition.

The administrative easement is the real right whose content includes the use or improvement of the thing property of other, for reasons of public utility or social interest, without it is indispensable reciprocity, or vicinity. For example, there is an administrative easement when the Public Administration in other people's property requires establishing pipes, posts or electric cables; or establishment the sign that identify the name of the streets. However, do not

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<sup>4</sup> Citado por GASCÓN Y MARÍN, J. *Limitaciones del derecho de propiedad por interés público*. Establecimiento tipográfico de Jaime Ratés. Madrid. 1906. Pág. 33.

<sup>5</sup> MAYER, O. *Derecho administrativo alemán*. Editorial De Palma. Buenos Aires. 1951. Pág. 272.

<sup>6</sup> GARCINI, H. *Derecho Administrativo*. Editorial Pueblo y Educación. La Habana. 1986. Pág. 184.

<sup>7</sup> GARRIDO FALLA, F. *Tratado de Derecho administrativo*, Vol. II, Thirteenth edition. Madrid. 2012. Pág. 284.

constitute servitudes, some figures historically conceived as such, for example: the prohibition to build beyond a certain height, or to build on the strip of roads and railways.

In summary, in order to qualify an easement as an administrative one, real use of the private property of other persons for reasons of public utility or social interest is required.