

What is an e-charging station under Austrian property law? Is it an impermanent structure on third party land (Superädifikat), and who owns it?

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The following considerations are less relevant for homeowners who install a wallbox on their own property (they own the installation); but what about commercial charging station operators who install charging stations (including extensive system components such as transformers, refrigeration systems, etc.) in hotel garages, shopping centres or similar?

These e-charging stations are often installed on third-party land on the basis of an agreement between the landowner and the system operator. Under civil law, it is conceivable that these systems could be categorised either as

- dependent property components
- independent components
- impermanent structures (Superädifikate)

1 Dependent property components

A building erected on a property is generally a dependent part of the property and therefore not subject to special legal rights, which means that it necessarily shares the property law fate of the property. Ownership of the building erected on third-party land is therefore vested in the landowner (§ 297 ABGB). It follows from this principle that certain "houses and other buildings" become dependent (and therefore not subject to special rights) parts of the property for the duration. In other words, the owner of the property is also the owner of the building if it is listed with the intention that it should always remain on the property.¹

2 Superädifikate

An exception to this "identity of ownership", however, is the Superädifikat (impermanent structures § 435 ABGB). This is the case when a building is erected on third-party land with the intention that it should not

¹ In contrast, Superädifikate are buildings that are erected on third-party land with the intention that they should not always remain on it (§ 435 ABGB).

always remain there. The absence of the intention to leave the land must be externally recognisable. If the conditions are met, these structures do not become part of the property but remain the property of the developer. This results in a "division of ownership".

In contrast, independent components can be separated from the property by economically reasonable means, for example an oil furnace, remain capable of being separated anyway.²

The distinction between the legal institutions is problematic and difficult to apply. Case law on this complex issue is not only extensive, but also extremely case-specific and sometimes contradictory. Accordingly, no generalised answer can be given for e-charging stations either. Depending on the existence of a structure/building³, the external impact of the intention to leave the property, ground anchoring, economic viability of the separation costs⁴ in the individual case, both interpretations (i.e. Superädifikat or dependent part of the property) are conceivable and in any case require a precise legal examination.

If the legal examination concludes that the e-charging station (including structural installations) is a permanent structure (and is therefore not a Superädifikat), then the landowner also becomes the owner of the charging station. This circumstance is mandatory under property law and therefore not disposable.

Conversely, if there is a Superädifikat, this has an influence on the contract between the landowner (or the authorised user) and the system operator (e.g. with regard to demolition obligations, investment compensation) in addition to questions relating to transfer of ownership or the creation of liens. However, this is a catch-22 because depending on the contract design (e.g. reversion of the building to the landowner), there may or may not be an intention to encumber - and thus an indication for the assessment as a dependent property component or Superädifikat.

By the way: the (lack of) intention to occupy must manifest itself at the latest at the start of construction; the Superädifikat cannot be created retrospectively. And even the mere designation as a "Superädifikat" or the agreement that a structure is to have special legal status is not sufficient to bring about such a legal classification.⁵

It remains to be seen how the courts will judge these structures; until then, prudence is recommended for contract drafters.

² SZ 57/192.

³ Affirmative in the case of transformer houses, power line masts set in concrete or permanent flagpoles (OGH 16.4.1987, 7 Ob 513/87); discussed in the case of wind turbines (see Pierer/Wilfling, Die Unterscheidung zwischen Superädifikaten und selbständigen Bestandteilen am Beispiel von Windkraftanlagen, immolex 2018, 10 with the argument that wind turbines, which can be separated from the property by economically reasonable means, do not fulfil the definition of a building and are therefore already components with special legal capacity and not Superädifikat; see also Wimpissinger, Windkraftanlagen: sie rotieren nicht nur, sie sind auch beweglich, ÖStZ 2013/521 for consideration for the purposes of real estate transfer tax law). Most recently, the Supreme Court conceded that product dispensers and petrol pumps could be assessed as structures within the meaning of § 435 (OGH 6.4.2022, 5 Ob 167/21a).

⁴ Case law applies these criteria differently and also weights them differently..

⁵ RS0012258.

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