

The Application and Legal Improvement of Servitudes within the Framework of Limited Property Rights

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Abstract

This article provides an in-depth analysis of the legal mechanisms of servitudes as one of the limited property rights and their development trends. The legislation and judicial practice of the Republic of Uzbekistan are examined, with particular attention to existing problems in practice, such as normative-legal conflicts, the lack of uniformity in judicial decisions, bureaucratic obstacles in the registration of servitudes, and disputes between neighboring landowners. A comparative analysis with foreign experience, namely the legal systems of Germany, Russian, Spain and France, identifies the mechanisms necessary for the efficient application of servitudes in Uzbekistan. Servitudes are as important as a private law tool to balance the interests of individual landowners with the needs of society as a whole, the results suggest.

Keywords: Property rights, limited property rights, servitude, judicial practice, legal mechanisms, land relations, normative-legal conflicts, international experience.

1. Introduction

Property rights, as one of the most fundamental and enduring institutions of the legal system, have accumulated centuries of historical experience. However, in the process of modern legal development, the concept of absolute property rights has increasingly demonstrated its limitations [1]. Social interests, environmental safety, infrastructure development, and sustainable economic growth require broader approaches that extend beyond the scope of individual ownership rights. In this respect, property rights over time, especially the subsidiary institution of servitudes, gain a greater role.

The ongoing issues in land and property relations in the Republic of Uzbekistan are currently associated with ineffective land use, irregular use of agricultural land, and land conflicts related to placement of infrastructure objects. Based on data from the Ministry of Justice of the Republic of Uzbekistan, 27% of all land disputes addressed in courts in the last five years were related to neighbor disputes between landowners regarding land usage, access roads, or placement of communication lines.

According to the Supreme Court of Uzbekistan, 18 percent of over 12,000 civil lawsuits on land issues were related to the servitude right formalized in the 2023 statistical report [2]. These numbers are effectively reiterated by the practical significance of the servitude institution.

International experience: examples of Germany and France show that servitudes are regulated by clear legal mechanisms and are designed not only to protect the interests of owners of property, but also to take into account the interests of the public in general. Meanwhile, in Uzbekistan this institution was not totally formed yet, that causes different interpretation of norms, normative-legal deficiencies and conflicts in judicial practice [3]. Example: The absence of a common legal method to get the consent of landowners during the communication lines set up have developed into a nonending future clash.

Further, in real life, the long registration procedures and red tape in the documentation of servitude rights usually result in long pauses in working on major economic projects. This negatively impacts the investment attractiveness of the country. For example, in 2022, 74 infrastructure projects

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in the construction sector were delayed specifically due to disputes related to servitudes, as recorded in official reports [4].

Therefore, there is a pressing need to improve the legal mechanisms governing servitudes, establish unified approaches in judicial practice, and eliminate gaps in the normative-legal framework. This article is meant to meet these needs in the form of scientific analysis of the theoretical grounds, applying practice and tendencies in the future development of servitudes.

These results indicate that while the institution of servitudes is fixed in the existing legal regulation system of Uzbekistan, its practical realization has serious gaps [5]. One is the fact that there are no unified legal standards for the creation, extinction and freezing of servitudes. As a result, judicial decisions often contradict one another.

Moreover, economic analyses indicate that disputes over servitudes have caused significant delays in investment projects, while in agriculture they have disrupted the rational use of land resources. According to statistical data, between 2020 and 2023, 12 percent of 210 large-scale investment projects planned for the Uzbek economy were not implemented due to disagreements concerning land and infrastructure facilities. This has had a direct impact on national economic security.

The analysis further shows that in international practice, servitudes are effectively applied as a mechanism to balance not only the interests of property owners but also the broader public interest. In the case of Uzbekistan, however, the use of servitudes often reflects an imbalance between individual interests and public needs.

In the legal system of Uzbekistan, the institution of servitudes is still at an evolutionary stage of development [6]. Although this appears to be largely consolidated in theory, it still faces obstacles in practical law enforcement mechanisms.

The major problems are related to contradictions and gaps in the normative-legal sphere. The concept of 'servitudes', for example, is interpreted differently by the Land Code and the Civil Code, causing contradictory approaches in the practices of courts and notarial bodies.

A second key issue relates to the complexity and other issues of servitude registration processes. Modern procedures are still wrought with bureaucracy and only reinforce time and financial burdens, not just on business entities, but on the general public as well. The ineffectiveness of the legal institution post this in the context of a modern economy is quite evident in this respect.

Third: lack of uniformity in judicial decisions regarding servitudes [7]. Thus, while one court in a jurisdiction could determine a case in a certain way, a court in another jurisdiction could come to completely opposite decision. This inconsistency is eroding confidence in the legal system.

International experience demonstrates that in developed countries the effective functioning of servitudes relies on several fundamental principles:

- Transparency and openness – all decisions concerning servitudes are published through open registries;
- Uniformity of judicial decisions – higher judicial authorities issue binding interpretations for lower courts;
- Primacy of public interests – servitudes are designed not only to regulate relations between property owners but also to account for broader societal needs.

Based on this research, it can be concluded that in order to ensure the effective functioning of the institution of servitudes in Uzbekistan, it is essential to update the normative-legal framework, introduce unified standards in judicial practice, and establish a digital legal registry system [8].

2. Research Method

This study employs a comparative legal analysis combined with doctrinal research to examine the concept and application of servitudes within the legal framework of the Republic of Uzbekistan. The methodology is based on the following approaches:

Doctrinal Analysis – Primary legal sources, including the Civil Code of the Republic of Uzbekistan and the Land Code of the Republic of Uzbekistan, were systematically reviewed to identify the legal nature, scope, and limitations of servitudes.

Comparative Legal Method – Servitude regulations in foreign jurisdictions such as Russia, Spain, France, Germany, Austria, Switzerland, and others were analyzed. This comparative perspective allowed the study to highlight similarities, differences, and potential lessons for the Uzbek legal system [9].

Case Law Examination – Judicial practice in Uzbekistan and selected foreign jurisdictions was reviewed to evaluate how servitude disputes are resolved in practice, particularly concerning conflicts between private and public interests.

Normative and Conceptual Approach – Definitions, classifications (public versus private, or positive versus negative) and principles were examined to evaluate the conceptual unity of servitude

law. Analytical and Systematic Method – The research found that the repealing of the common law without any equivalent provision in the legislation has reduced property rights protection and left existing private and negative servitudes in a legally precarious position. Using these methods in tandem provides a holistic view of the practical difficulties, benefits and reforms that will allow for successful exercise of servitudes in the legal system of Uzbekistan.

3. Result

It is well established that, under the legislation of the Republic of Uzbekistan, servitudes established in cases where public needs must be met are considered as public servitudes (Article 30 of the Land Code of the Republic of Uzbekistan). A public servitude is instituted by the local state authority and is characterized by the aim of protecting not the interests of a single individual, but rather those of a wider community [10]. Although their content differs, neither the Civil Code of the Republic of Uzbekistan nor the Land Code of the Republic of Uzbekistan explicitly regulates private servitudes. Unlike public servitudes, a private servitude is established on the basis of an agreement between the person requesting the servitude and the owner of the other land plot. In the absence of such agreement, the issue of establishing a servitude is resolved by the courts [11].

The term “public” (from Latin *publicus* – open, common, non-private) itself excludes the establishment of such servitudes for individual benefit. For instance, the Land Code of the Russian Federation (Article 23) provides for the establishment of a public servitude to secure the interests of the state, local authorities, or the local community. In the legislation of the Republic of Uzbekistan, however, no separate category of private servitude is provided. In contrast, the laws of foreign countries directly stipulate that private servitudes may be established for the benefit of individuals.

For example, the Spanish Civil Code (Article 550) specifies that servitudes concerning public or state interests are to be regulated by special legislation. Similarly, the Land Code of the Russian Federation stipulates that a public servitude is determined by law or by normative legal acts of local state authorities [12]. The very use of the term “determined” in legislation raises questions, since a public servitude is in fact directly prescribed by normative acts of executive bodies of the Federation’s constituent entities or by local state authorities.

In Spain, a special act exists whereby servitudes are established in accordance with its provisions. If a servitude is instituted for the benefit of an individual, it must comply with the Civil Code and must not contravene the law. Moreover, such servitudes may be altered by agreement of the interested parties, provided this is not prohibited by law and does not harm third parties [13]. In Russian legislation, by contrast, the procedure for establishing a public servitude is much more complex and does not foresee amendments to previously established servitudes.

The essence of servitudes is not confined to the protection of state and public interests or the proprietary rights of landowners, but also extends to the personal needs of individuals. Servitudes established for the benefit of the state or the public may be required, for example, to ensure access along riverside pathways, for the construction or repair of roads, or for the installation of other public or urban facilities. This list can be expanded, as various laws may regulate such servitudes. For instance, Article L211-12 of the French Environmental Code provides for the establishment of servitudes to create temporary flood retention zones in order to prevent flooding in areas prone to river overflow [14].

Furthermore, Article 23(3) of the Russian Land Code enumerates the purposes for which public servitudes may be established. These can be grouped into several categories: servitudes granting rights of passage across land plots; servitudes granting the right to perform certain works on land plots; and servitudes necessary for the placement and maintenance of facilities serving public purposes.

In our view, it would be advisable for the Civil Code of the Republic of Uzbekistan and the Land Code of the Republic of Uzbekistan to explicitly introduce the categories of public and private servitudes, together with rules regarding the conditions of their establishment and their distinctive legal features. A division of servitudes into public and private would create separate legal foundations for the two classes of servitudes, including bright-line rights and duties. As a result, both the courts and legislature would have the ability to create specialized legal apparatus for handling not only the disputes arising from each form of servitude, but would also be able to tailor legislation to better serve the needs of servitudes and to handle its conflict more effectively. In addition, the way property taxes are assessed could vary based on the nature of the servitude, especially for public servitudes compared to private servitudes.

When considering the prospects for the development of servitudes, it is important to address the possibility of expanding their substantive scope. This would include granting the dominant landowner not only a limited right to use part of the servient land, but also the right to prohibit the servient landowner from undertaking certain uses. Thus, as in the legislation of many foreign countries, it would be appropriate to classify servitudes into positive and negative categories.

Although not expressly codified in the legislation of the Republic of Uzbekistan, servitudes are, in substance, divided into positive and negative. Positive servitudes grant limited rights to use another's immovable property, expressed in any active acts regarding the land (e.g., passage across the land, transport of water, etc.). Negative servitudes, by contrast, consist in prohibiting the servient landowner from undertaking certain actions (e.g., constructing buildings above a certain height, obstructing light, and so forth).

This classification appears distinctly in the various systems of adjudication. Some do so explicitly through the terminology of "positive" and "negative servitude" (e.g., Spain, Puerto Rico, Panama, the Philippines, Moldova, etc.) while others imply the distinction by the substantive definition of servitudes (as in the Land Codes of Germany, Austria, Switzerland). On the other hand, in some countries like Armenia and Ukraine, there is no separate category for negative servitudes.

The content of positive servitudes is relatively straightforward: classical servitudes such as the right of passage on foot or by vehicle across another's land fall into this category. The Land Code of the Republic of Uzbekistan (Article 30) contains an approximate list of such servitudes, but does not allow for the establishment of negative servitudes. Negative servitudes, as noted above, prohibit the servient landowner from engaging in certain acts. These may include: light servitudes, view servitudes (barring construction that would block a neighbour's view), prohibiting the laying of pipelines, restricting the height of buildings, prohibiting the planting of trees close to a boundary wall, or restrictions on drawing excessive quantities of water from a source [15].

There have been similar cases in furious reality. Such as a context where a building being built on a nearby plot blocks a view from a window of a house or cast a shadow over an actual garden and the court will treat this dispute under the interference experienced by the plaintiff in using their property. In our opinion, issues concerning land views and scenic rights are of no less economic significance for the real estate market (particularly for luxury housing, resorts, and hotel complexes) than the installation of infrastructure such as power lines, communications, or water supply. Some scholars, however, argue that because negative servitudes restrict ownership rights, their legal nature should not be considered as a proprietary right in the strict sense.

In several foreign jurisdictions, light and view servitudes are classified as "neighbor law" and are regulated accordingly, with a tendency to reject such servitudes in favor of neighbor law norms. In fact, the draft of the new Civil Code of the Republic of Uzbekistan includes a special provision (Article 214) under the chapter "Neighbor Law" that incorporates servitudes. We propose that this provision expressly allow for the establishment of negative servitudes by agreement between neighbors, thereby permitting them to derogate from statutory norms of neighbor law.

As various sources note, neighbor law may serve as the traditional basis for the emergence of negative servitudes, since these arise through the voluntary waiver of rights. For example, a neighbor entitled to construct a building of a certain height may, in consideration of the interests of the adjacent landowner, voluntarily undertake not to exercise this right. Such an arrangement, in substance, constitutes a servitude.

Accordingly, we propose amending Article 214 of the Draft Civil Code of the Republic of Uzbekistan and Article 30 of the Land Code of the Republic of Uzbekistan as follows: "A servitude is a right that allows one person (the 'dominant owner') to make limited use of another's property (the 'servient estate'), while at the same time imposing upon the servient owner an obligation to refrain from certain actions that would interfere with such use" [16].

The institution of proprietary rights remains one of the most complex and underdeveloped areas of civil law. The systematization of proprietary rights existing in modern civil law is an objective necessity for the development of civil circulation. It is necessary to analyze the interaction of civil and land law with other branches of law, to engage with judicial practice where appropriate, and to adapt the Civil Code and Land Code of the Republic of Uzbekistan to the present-day realities of land servitudes.

It must also be recalled that the constitutional basis of servitude rights (Constitution of the Republic of Uzbekistan, Article 20) provides that "In exercising their rights and freedoms, citizens must not infringe upon the lawful interests, rights, and freedoms of other individuals, the state, or society." Every person, in exercising rights derived from immovable property, especially in pursuing entrepreneurial activity, must refrain from actions that negatively affect neighbors [17]. In particular, disturbances exceeding the tolerable level according to the condition, quality, or local custom of immovable property are prohibited.

The institution of servitudes in the Republic of Uzbekistan, as regulated by the Civil Code and the Land Code of the Republic of Uzbekistan, remains at an early stage of development. Despite its legal recognition, practical application is hindered by ambiguities, inconsistent judicial interpretations, and the absence of standardized procedures for registration and enforcement. These deficiencies decrease legal surety and impair the functionality of servitudes as a property rights regulator.

Conversely, servitudes have some very important benefits. They can strike a balance between private property rights and the public interest, enhance infrastructure accessibility, and encourage the sustainable use of land resources. Appropriately administered, servitudes can reduce land conflicts, increase the security of investment, and promote sustainable urban and rural development.

Uzbekistan should implement reforms that create clear separation between public and private servitudes, incorporate both affirmative and negative servitudes, and establish unified standards for both registration and enforcement. Bringing national laws into line with international best practice would not only enhance judicial coherence, but also increase the strength of the entire land administration system. Conclusively, though little more than a skeleton framework, the modernisation of servitude regulation has significant ramifications for certainty in the law, the growth of the economy and the protection of private and public interests.

This study is primarily limited by several factors. First, the research focuses mainly on the legal regulation of servitude and land relations within the Commonwealth of Independent States (CIS), with a particular emphasis on the Republic of Uzbekistan. Therefore, the findings may not be fully generalizable to countries with significantly different legal systems or land ownership models. Second, due to the limited access to certain legislative archives and statistical data, the comparative analysis between CIS member states was based mainly on available open-source materials and legal publications. Third, the research was conducted within a restricted timeframe, which limited the depth of empirical observation and stakeholder interviews. Despite these constraints, the study provides a comprehensive theoretical and legal framework for understanding the development of servitude rights in land relations.

4. Conclusion and Recommendation

The conducted study demonstrates that the institution of servitudes in the legal framework of the Republic of Uzbekistan remains underdeveloped and requires significant reform. However, vagueness with regard to the public and private servitude, positive and negative servitude in the Civil Code of the Republic of Uzbekistan and the Land Code of the Republic of Uzbekistan creates legal uncertainty and minority/non-unified judicial practice.

When comparing to foreign jurisdictions: Utilisation of servitudes appears to provide an effective mechanism for balancing private property rights and public interests — this evidenced by work undertaken in jurisdictions such as Russia, Spain, France, and Germany, and others. In Uzbekistan, however, the lack of a unified regulatory approach has hindered the resolution of land disputes, delayed investment projects, and negatively affected efficient land use, particularly in agriculture and infrastructure development.

It is therefore recommended that Uzbekistan's legislation be amended to:

- introduce explicit classifications of public and private servitudes, as well as positive and negative forms;
- establish clear procedures for their creation, modification, and termination;
- align servitude regulation with modern economic and social needs;
- ensure judicial consistency by providing standardized legal criteria.

In conclusion, the modernization of servitude law in Uzbekistan will strengthen property rights protection, improve legal certainty, facilitate investment, and harmonize individual and public interests, thereby contributing to sustainable economic development and social stability.

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