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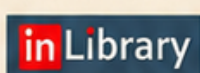
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Original research article

LEGAL ISSUES OF APPLYING LAND SERVITUDE: FOREIGN EXPERIENCE AND PROSPECTS FOR IMPLEMENTATION INTO NATIONAL LEGISLATION

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ABSTRACT

This thesis analyzes the legal nature of land servitude and its role in ensuring the rational use of land plots and balancing the interests of landowners. It examines the regulation of servitude in the Civil Code and Land Code of the Republic of Uzbekistan, as well as existing practical issues related to its establishment, registration, compensation, and dispute resolution. The study also considers the experience of Germany, France, the Russian Federation, and the United States in order to identify prospects for improving national legislation.

ПРАВОВЫЕ ВОПРОСЫ ПРИМЕНЕНИЯ ЗЕМЕЛЬНОГО СЕРВИТУТА: ЗАРУБЕЖНЫЙ ОПЫТ И ПЕРСПЕКТИВЫ ВНЕДРЕНИЯ В НАЦИОНАЛЬНОЕ ЗАКОНОДАТЕЛЬСТВО

ИНФОРМАЦИЯ СТАТЬИ

Ключевые слова: окружающая

среда, природа,
биоразнообразие,
защита,
генетическая целостность,
флора,
стратегия,
генофонд,
банк генов,
генетический фонд.

АННОТАЦИЯ

В данной статье представлен анализ решений, законов и постановлений Правительства Республики Узбекистан по охране окружающей среды и флоры. Анализ объясняет актуальность законодательных актов, которые постепенно принимались и вступали в силу после обретения независимости. Все упомянутые законодательные акты подчеркивают концептуальные подходы, направленные на сохранение биологического разнообразия нашей природы.

YER SERVITUTINI QO‘LLASHNING HUQUQIY MASALALARI: XORIJIY TAJIRIBA VA MILLIY QONUNCHILIKKA TATBIQ ETISH ISTIQBOLLARI

MAQOLA MA'LUMOTI

Kalit so'zlar:

qonunchilik,
yer, servitut,
ommaviy servitut,
xususiy servitut, shartnoma,
huquq,
jamoat ehtiyoji.

ANNOTATSIYA

Ushbu tezisda yer servitutining huquqiy tabiati hamda uning yer uchastkalaridan oqilona foydalanishni ta'minlash va yer egalari manfaatlari o'rtasidagi muvozanatni saqlashdagi o'rni tahlil qilinadi. Unda O'zbekiston Respublikasi Fuqarolik kodeksi va Yer kodeksida servitutning tartibga solinishi, shuningdek, uni belgilash, davlat ro'yxatidan o'tkazish, kompensatsiya miqdorini aniqlash va servitut bilan bog'liq nizolarni hal etishga oid amaliy muammolar ko'rib chiqiladi. Tadqiqotda milliy qonunchilikni takomillashtirish istiqbollari aniqlash maqsadida Germaniya, Fransiya, Rossiya Federatsiyasi va Amerika Qo'shma Shtatlari tajribasi ham o'rganiladi.

INTRODUCTION

Land servitude is recognized as a limited real right within the institution of property law. Its primary purpose is to expand the possibility of land use and ensure a balance between neighboring landowners. Through servitude, one landowner is granted the right to use another land plot for specific needs. Such needs may include pedestrian or vehicle access, installation of water pipelines, placement of electrical networks, or use of communication systems.

According to legal scholars, one of the main characteristics of servitude is its limited nature. In other words, servitude does not grant ownership of a land plot but only creates an opportunity for limited use. In this regard, servitude acts as a legal institution that balances private property rights and public interests.

Servitudes are generally divided into two categories:

- private servitude;
- public servitude.

Private servitude is established in favor of a particular person or landowner, while public servitude is introduced to satisfy the needs of the state and society. For example, the use of

land plots for electricity transmission lines, gas pipelines, or public roads constitutes public servitude.

Regulation of Land Servitude in Germany

In the Federal Republic of Germany, the institution of land servitude is regulated by the German Civil Code (BGB). In German legal terminology, servitude is referred to as “Grunddienstbarkeit,” which is based on the limited use of one land plot for the benefit of another.

The main feature of the German system is the strict balance maintained between the rights of landowners and public interests. Servitude may only be established when grounds explicitly provided by law exist, and it must be officially registered in the land register.

The following aspects of German practice are particularly significant:

1. Mandatory state registration of servitude;
2. Clearly defined compensation mechanisms;
3. Strong judicial supervision;
4. Existence of an electronic land cadastre system.

In Germany, damages caused to a landowner due to servitude are determined according to a special assessment methodology. This significantly reduces the number of disputes. Furthermore, all information related to servitude is reflected in an electronic cadastre system, allowing citizens and investors to receive advance information about restrictions imposed on land plots.

This experience is highly relevant for Uzbekistan because a unified electronic database concerning servitude restrictions has not yet been fully established.

The Institution of Servitude in French Legislation

In the French Republic, the institution of servitude is закреплено in the Civil Code under the term “servitudes.” French law considers servitude an integral part of property rights.

One distinctive feature of the French legal system is that certain types of servitudes arise directly from the law. For instance, when a land plot has no access road, servitude may arise even without a court decision.

In addition, France has developed the institution of environmental servitudes. According to this mechanism, restrictions are imposed on the use of certain land plots for the purpose of environmental protection. This serves as an important legal instrument in ensuring ecological security.

The following aspects of French experience deserve special attention:

- existence of environmental servitudes;
- expedited establishment of servitude through judicial procedures;
- priority of neighborhood law principles;
- strict liability for violation of servitude rights.

Based on this experience, it would be appropriate to introduce the concept of environmental servitude into the legislation of Uzbekistan, especially regarding forest lands, water protection zones, and specially protected natural territories.

Experience of the Russian Federation

In the Russian Federation, land servitude is regulated by both the Land Code and the Civil Code. Russian legislation distinguishes between private and public servitudes.

One of the most important features of the Russian system is the clear definition of the powers of state authorities in establishing public servitudes. Public servitudes are often applied for road construction, communication networks, or defense purposes.

Moreover, Russian legislation provides a specific procedural mechanism for terminating servitude. If the grounds for servitude cease to exist or if it excessively violates the rights of the landowner, the servitude may be canceled by court decision.

Another positive aspect of Russian practice is the extensive development of judicial practice. Plenum resolutions of the Supreme Court ensure uniform interpretation of disputes related to servitude.

This issue is also relevant for Uzbekistan because judicial practice concerning servitude disputes has not yet been sufficiently systematized.

The Institution of Servitude in the United States

In the United States legal system, servitude is referred to as “easement.” The main characteristic of the American approach is that easements are primarily based on contractual relations.

The following types of easements are widely used in the United States:

- utility easement;
- access easement;
- conservation easement.

Utility easements are used for the placement of public utility networks, while conservation easements are introduced for environmental protection purposes.

The U.S. system provides strong legal protection for landowners’ interests. Easements may only be established with the consent of the owner or by court decision. In addition, compensation is determined based on market value.

Conservation easements play a particularly important role in ensuring environmental protection. In some regions, landowners voluntarily establish restrictions on their land to preserve natural resources.

This experience could also be useful for Uzbekistan in expanding protected environmental territories.

Problems in Uzbek Legislation and Ways to Eliminate Them

Although land servitude is provided for in the Civil Code and Land Code of Uzbekistan, several practical problems remain. First, the legal grounds for establishing servitude are not sufficiently clear, which leads to different interpretations by state authorities and courts. Second, there is no unified methodology for determining compensation for damages caused by servitude. Third, a unified electronic database for information related to servitude has not been fully developed. Fourth, the concept of environmental servitude has not yet been закреплено in national legislation.

To eliminate these problems, the following proposals may be advanced:

1. Clearly define the grounds for establishing servitude in the Land Code;
2. Create a digital system for state registration of servitude;
3. Develop a unified methodology for determining compensation;
4. Introduce the institution of environmental servitude;
5. Systematize judicial practice related to servitude disputes;
6. Adopt explanatory resolutions of the Supreme Court concerning servitude-related issues.

CONCLUSION

The institution of land servitude is one of the most important legal instruments for regulating modern land relations. The experience of Germany, France, the Russian Federation, and the United States demonstrates that when servitude is implemented through effective legal mechanisms, it ensures a balance between private property rights, public interests, and environmental security.

Based on the analysis of foreign experience, it can be concluded that improving national legislation concerning servitude, developing electronic cadastre systems, introducing environmental servitude, and unifying judicial practice are urgent tasks for Uzbekistan.

Implementation of these measures will contribute to ensuring legal certainty in land relations, improving the investment climate, and effectively protecting citizens' property rights.

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