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TYPES OF SERVITUDES IN FOREIGN COUNTRIES AND THEIR LEGAL NATURE

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Abstract. *This article analyzes various types of servitudes and their legal nature. It examines the classical classification of servitudes, their division into proprietary and personal servitudes, and the legal and practical challenges in defining these categories. The legislation governing personal servitudes in Austria, Switzerland, Latvia, Ukraine, and Georgia is studied, highlighting the procedures for their application. The article also explores how explicit and implicit servitudes are prevalent in countries such as Germany and France, resulting in significant differences in their legal classification and regulatory enforcement. Furthermore, the application of permanent and temporary servitudes is analyzed from a legal-scientific perspective. In examining the purposes for which servitudes are established in Uzbekistan, the article argues that servitudes should not be classified into distinct types under national legislation, as they are implemented based on agreements between the parties involved. The research provides a comprehensive examination of the role and types of servitudes within international and national legal frameworks. Notably, the application of servitudes can sometimes lead to legal disputes. This article evaluates the legal regulation of servitudes in foreign jurisdictions and reviews academic perspectives on the subject.*

Keywords: *servitude, private servitude, property servitude, permanent servitude, temporary servitude, explicit servitude, hidden servitude, voluntary servitude, compulsory servitude, natural servitude, water flow servitude*

XORIJIY MAMLAKATLARDA YER SERVITUTINING TURLARI VA ULARNING HUQUQIY TABIATI

Abdusamadova Zarina Shobiddin qizi,
Toshkent davlat yuridik universiteti mustaqil izlanuvchisi

Anotatsiya. *Ushbu maqolada servitutlarning bir necha turlari va ularning huquqiy tahlili keltirilgan. Maqolada servitutlarning klassik tasnifi, ularni ashyoviy va shaxsiy servitutlarga bo‘linishi, shuningdek, ushbu toifalalarni belgilash bilan bog‘liq huquqiy va amaliy muammolar ko‘rib chiqilgan. Avstriya, Shveysariya, Latviya, Ukraina va Gruziyada shaxsiy servitutlarni tartibga soluvchi qonunchilik o‘rganilgan bo‘lib, maqolada ularning amal qilish tartibi yoritilgan. Germaniya va Fransiya kabi davlatlarda servitutlarning aniq va yashirin turlari keng tarqalgani hamda mazkur holat ularning yuridik tasnifi va qonuniy qo‘llanishini sezilarli darajada farqlashi ko‘rib chiqilgan. Bundan tashqari, maqolada doimiy va vaqtinchalik servitutlarning qo‘llanishi ilmiy-huquqiy jihatdan tahlil qilingan. O‘zbekistonda servitutlar qanday maqsadlar uchun belgilanishini o‘rganish jarayonida servitut*

tomonlarning kelishuvi asosida amalga oshirilishidan kelib chiqqan holda mamlakatimiz qonunchiligida uni turlarga ajratmaslik taklifi ilgari surilgan. Muallif mazkur maqolada servitutlarning xalqaro va milliy qonunchilikdagi o‘rni va turlarini chuqur tahlil qilish asosida muayyan xulosalarga kelgan. Shu o‘rinda ta’kidlash joizki, servitut institutidan foydalanish huquqiy nizolarga sabab bo‘lishi mumkin. Mazkur maqolada xorijiy davlatlarda servitut institutining huquqiy tartibga solinishi va olimlarning munosabatlari tahlil qilingan.

Kalit so‘zlar: *servitut, xususiy servitut, mulkiy servitut, doimiy servitut, vaqtinchalik servitut, aniq servitut, yashirin servitut, ixtiyoriy servitut, majburiy servitut, tabiiy servitut, suv oqimi servituti*

ТИПЫ СЕРВИТУТОВ В ЗАРУБЕЖНЫХ СТРАНАХ И ИХ ПРАВОВАЯ ПРИРОДА

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Аннотация. *В данной статье анализируются различные типы сервитутов и их правовая природа. Рассматривается классическая классификация сервитутов, их разделение на вещные и личные сервитуты, а также юридические и практические проблемы, связанные с определением этих категорий. Исследуется законодательство, регулирующее личные сервитуты в Австрии, Швейцарии, Латвии, Украине и Грузии, с акцентом на процедуры их установления. Автор также исследует распространённость явных и неявных сервитутов в таких странах, как Германия и Франция, что приводит к значительным различиям в их правовой классификации и нормативном регулировании. Кроме того, проводится анализ применения постоянных и временных сервитутов с научно-правой точки зрения. При рассмотрении целей установления сервитутов в Узбекистане в статье обосновывается позиция о том, что сервитуты не должны подразделяться на отдельные типы в рамках национального законодательства, поскольку они устанавливаются на основе соглашений между сторонами. Исследование представляет собой всестороннее изучение роли и типов сервитутов в международных и национальных правовых системах. Отмечается, что иногда применение сервитутов может приводить к возникновению правовых споров. В статье проводится оценка правового регулирования сервитутов в зарубежных юрисдикциях и анализируются научные подходы к данной теме.*

Ключевые слова: *сервитут, частный сервитут, вещный сервитут, постоянный сервитут, временный сервитут, явный сервитут, скрытый сервитут, добровольный сервитут, принудительный сервитут, естественный сервитут, сервитут потока воды*

Introduction

Land is a fundamental asset of society, serving as the foundation for economic sector development and a crucial means of production in agriculture. Therefore, the issue of the rational use of land resources is not only relevant to agriculture but also vital for all economic sectors that utilize land.

Since ancient times, land has been the material basis for societal development and the primary source of ownership. The process of efficient land use is also deeply rooted in history; initially, it developed spontaneously and was mainly limited to the allocation of land according to usage purposes.

As a legal category, servitudes emerged alongside the formation of subjective rights, particularly property rights, in human society. The practical realities of economic life and the specific characteristics of land use necessitated the establishment of legal norms to define the rights of individuals who, while not landowners themselves, had an

objective interest in utilizing the property of others.

The legal nature of the institution of servitude and its place within the system of proprietary rights has been interpreted differently by various legal scholars.

For example, Russian jurist E.V. Sukhanov defines servitude as a "limited real property right" and considers it a legal instrument with a stable status with respect to third parties, distinguishing it from mere contractual obligations [1, pp. 485–488]. This approach is theoretically well-grounded and based on traditional concepts of real rights and the hierarchy of subjective rights. However, it does not adequately reflect the economic and environmental necessity of servitudes, or their practical relevance in contemporary property relations.

In contrast, B.A. Pishchev views servitude as a "permanent real right that grants access to use another's property," emphasizing its practical importance, particularly in relation to infrastructure such as roads, electricity, and gas supply [2, pp. 231–233]. This approach is more practice-oriented and accurately illustrates the economic function of servitudes. Pishchev's perspective is particularly valuable in demonstrating the relevance of servitudes in resolving property-related disputes.

Uzbek scholar S.Kh. Sa'dullayev, on the other hand, considers servitudes as a legal tool to ensure socio-economic balance, emphasizing their role in state policy and environmental protection [3, pp. 134–136]. While this viewpoint is significant in the context of Uzbekistan's socially oriented legal system, the widespread occurrence of disputes related to servitudes and the underdeveloped legal mechanisms for their regulation make practical implementation of this approach difficult. Therefore, despite being theoretically sound, Sa'dullayev's ideas require further support through an enhanced legal framework and judicial practice to become fully effective.

In summary, although these approaches address different aspects of the issue, the effective functioning of the institution of servitude requires the integration of both theoretical insights and practical considerations.

The continuity of a land plot and the physical impossibility of using it in isolation from adjacent areas necessitated the development of servitude law. Similar issues also arose concerning other objects, such as water bodies, immovable property on land, remote industrial enterprises, the mining industry, and others. Ultimately, based on accumulated experience, the right of "servitude" emerged as a legal mechanism for resolving issues related to the use of another person's property.

Such regulations have been established in almost all countries: servitudes have been known in Western and Central Asia since ancient times. In the customary law of northern peoples, landowners were required to construct pendulum towers near the shores of their property to facilitate passage for others.

Likewise, in the North Caucasus, administrative authorities imposed obligations on homeowners to clear obstacles from mountain roads within their territories. In Islamic law, the waqf system—which still exists today under Sharia principles—is, in essence, one of the specific forms of servitude.

In ancient Russia, several regulations were in place regarding the limited use of others property. As a result, servitude gradually became an integral part of common law, as it was applied not only in land relations but also in other areas of law. Over time, the legal regulation of servitudes was further refined, and its fundamental principles were integrated into the legislative systems of many countries. Today, the institution of servitude remains one of the key mechanisms for regulating property rights and land relations.

Although servitude law is considered a relatively new principle in national legislation, an examination of foreign legal practices shows that this institution emerged much earlier and has undergone a long process of development.

In the field of land servitude, Uzbekistan has implemented a number of significant reforms in recent years. A law adopted on October 23, 2023, introduced amendments to the Civil Code and the Land Code of the Republic of Uzbekistan concerning servitudes. These amendments regulate servitude agreements, the rights and obligations of participants, modification and termination of servitudes, payment for servitude, and the establishment of public servitudes.

According to the statistical report on registered real property rights on the Mygov.uz website, as of May 10, 2024, only 117 servitudes had been registered. Between 2020 and 2023, civil courts reviewed 194 disputes (as of April 23) related to the limited use of another person's land plot—i.e., servitude—of which 64 were satisfied. This indicates that civil disputes related to servitudes still persist. The root cause of such situations lies in the fact that the regulation of servitudes—and more broadly, the system of limited property rights—does not fully meet the requirements of modern legislation and property circulation. To eliminate such shortcomings in practice, it is necessary to undertake reforms and thoroughly analyze the experience of foreign countries.

These reforms aim to make servitude relations more transparent and equitable, ensuring a balance of interests in the use of land plots. This, in turn, is crucial for the efficient use of land resources and the protection of property rights.

Drawing on international experience, the institution of servitude is widely used in many countries as an important tool for regulating land relations. For example, in Germany, France, and the United States, servitudes clearly define land use rights and restrictions. Uzbekistan is actively studying the experiences of these countries and implementing consistent reforms to improve its national legislation.

Materials and methods

The object of this study is the concept of "land servitude" in servitude law, its application in foreign countries, the advantages that can be introduced into practice, as well as the opinions of scholars regarding the use of land servitude in foreign countries and its role in normative legal documents.

This research employs a systematic-structural approach, analysis and synthesis, logical-legal, formal-legal, comparative-legal, and statistical methods as part of the scientific cognition process.

The article addresses the establishment and development prospects of land servitudes in foreign countries, highlighting the need to reform national legislative documents within the framework of foreign countries' legislative bases and mutual cooperation.

In the course of researching the topic, the following methods were utilized:

1) An empirical method that allows for the study of the legal foundations of utilizing existing servitudes in national legislation;

2) A historical method to examine the legal, theoretical, and practical aspects of land servitudes in foreign countries;

3) Comparative methods are used to analyze laws in international legislation as a set of existing elements.

Research results

In general, the reforms in the field of land servitude are aimed at ensuring the rational use of land resources, regulating legal relations between landowners and users, and contributing to economic development.

A legal scholar from the Russian Federation, specializing in civil law,

particularly in the areas of real property rights and servitudes. Their work focuses on the legal foundations of servitudes and issues related to their practical application. In the textbook edited by L.I. Goncharenko, the team of authors defines land servitude as a legal institution that grants a non-owner the right to limited use of a land plot belonging to another person [4, p. 175].

Russian scholars D.G. Chernik, L.S. Kirina, and V.V. Balakin state that "land servitude is a legal restriction that allows third parties to use land with the consent of the owner or based on legislation" [5, p. 439]. Moreover, various approaches to land servitude, as well as foreign experiences, are discussed in the works of A.V. Ignatushina and A.V. Arkhipova [6, p. 192], T.N. Gushchina and L.V. Usatova [7, p. 240], L.A. Mazurina [8, p. 300], L.S. Kirina [9, pp. 206–209], and other authors. These publications examine the legal nature of the servitude institution, its application, and its role in judicial practice.

Examining the views of the aforementioned scholars, it becomes evident that their definitions of land servitude are shaped by the specific field or aspect of research they focus on. In this regard, it is possible to agree with A.K. Kobylyanskiy's perspective, according to which "land servitude is a legal institution of significant importance in balancing the interests of landowners and other individuals, developing infrastructure, ensuring social needs by restricting owners' rights, and regulating legislative norms" [10, pp. 81–88].

Considering this approach to land servitude, its essence can be described as ensuring the right to use land plots, establishing limited rights, and safeguarding the legitimate interests of landowners.

Land servitude has a legal form and holds economic significance. A. Savruk and R. Krasyuk are Ukrainian legal scholars who have conducted research in civil law, particularly focusing on real property rights and servitudes. Their work is aimed at the development of Ukraine's civil law system, specifically addressing issues related to the institution of servitudes and their legal regulation. This aspect distinguishes it from other legal institutions, as noted by R.N. Anthony [11, p. 216], J.H. Jackson [12], and A. Savruk and R. Krasyuk [13], who emphasize its importance from both legal and urban planning perspectives.

According to scholars N.N. Bashkirova and E.B. Sugrobova, "land servitude refers to legal relations in which the right to use another person's land plot is legally restricted. This institution plays a crucial role in resolving legal disputes between landowners and third parties" [14].

Generalizing the theoretical and practical needs allows for the identification of the key principles for classifying servitudes. These include the content of servitude, its purpose, the method of its implementation, its designation, and other relevant factors.

Based on these criteria, it is necessary to establish systematic approaches and classification methods for servitudes. Several classification criteria can be applied, which enable a more precise characterization of a particular servitude. Taking into account accumulated experience, it is possible to determine criteria that improve the qualification of different types of servitudes.

By examining the types of servitudes established in foreign legislation, we can describe them based on their practical application**.** Foreign legal systems provide numerous classification approaches to servitudes, offering various bases and criteria for qualification. The main challenge lies in determining whether and how these classifications can be effectively applied within our national legislation and how servitudes fit within the system of limited property rights, given the significant scientific and historical differences in their legal mechanisms.

Summarizing rich international experience allows us to propose ways to improve the modern legislative framework on servitudes in Uzbekistan.

Analysis of research results

The *classical classification* of servitudes is based on whether they are *linked to a land plot or a specific person.* This criterion divides servitudes into *real (property-related) servitudes* that benefit a particular land plot and personal servitudes that are established for the benefit of a specific individual [15].

In modern times, servitude classifications are expanding beyond classical approaches, incorporating contemporary legal and economic needs. New types of servitudes are emerging to meet urban planning and environmental requirements, as well as those related to digital infrastructure. This evolution highlights the increasing significance of the servitude institution and the need for its legal and practical enhancement.

For instance, according to the Latvian Civil Code, if a servitude is established "for the benefit of a specific individual or legal entity," it is classified as a private servitude. However, if it is established "for the benefit of any immovable property," it is considered a real servitude.

In the first definition of servitude, as well as in its organizational methodology, several issues and ambiguities can be observed. In particular, due to the lack of application of certain principles inherent to servitudes and the specific characteristics of the rights incorporated into these concepts, classifying servitudes as proprietary and usufructuary (a legal institution that grants a person the right to possess and use another's property but does not confer the right to dispose of it, i.e., sell, donate, or mortgage it). The usufructuary is obliged to maintain the property in its original condition, and typically, upon the expiration of this right, the property reverts to its original owner. This institution is enshrined in the civil legislation of many countries and is applied to legal relations involving land plots, buildings, agricultural lands, and other immovable properties, including use and habitation rights as private servitudes, and has previously been noted as controversial or even incorrect. This position is confirmed by the fact that such a classification of servitudes is absent or exists only in a limited form in most legal systems worldwide [16, p. 34].

The concept of "private servitude" exists in the Civil Codes of Austria, Switzerland, Latvia, Ukraine, and Georgia. However, the meaning of this concept differs. For example, in the Austrian Civil Code, the term "private servitude" includes the right to use fruits and income (usufruct) and the right of habitation when necessary. In contrast, in the Georgian Civil Code, "private servitude" is understood solely as the right of habitation.

The German Civil Code employs the concept of a "limited private servitude," which combines characteristics of land servitude and usufruct [17, p. 86]. On the other hand, the Civil Codes of France and Italy define the content of usufruct, usage, and habitation rights, but these concepts do not fall under the category of private servitudes; rather, they are considered separate legal rights [18, p. 344].

When transitioning to the classical concept of servitudes established for the benefit of any immovable property, it should be noted that it is referred to differently in various legal frameworks: predial, real, or land servitude. In the literature, such terminological differences are generally not emphasized, as they do not hold fundamental significance.

In cases where the category of private servitudes is not distinguished, the law is limited to the general concept of "servitude." As an exception, for instance, the Italian Land Code refers to servitude as "predial,"

but it does not include a category for private servitudes. Similarly, the Panamanian Code equates predial servitude with a general servitude. However, the Louisiana Land Code classifies servitudes into private and predial categories [19, p. 89].

Another widely used term is "land servitude." It is worth noting that although the word "predial" originates from the Latin term *praedium* (meaning "property"), it is often translated simply as "land."

Land servitudes are specifically provided for in the Land Codes of Germany, Austria, and Ukraine.

The classification of servitudes based on their purpose also has numerous variations. For example, under Article 474 of the Austrian Civil Code, if a servitude is established on a plot of land intended for agricultural use, it is called an "agricultural servitude." If the dominant land is intended for other uses, the servitude is referred to as a "residential servitude."

According to Article 687 of the French Civil Code, if a servitude is established concerning buildings, it is referred to as an "urban servitude." If it is established for the use of land plots, it is called a "rural servitude."

Similarly, under Article 1143 of the Latvian Civil Code, if the encumbered property is a house, the servitude is called a "house servitude," whereas if it applies to land, it is classified as a "rural servitude."

The content of the French and Latvian Civil Codes emphasizes that this classification is not based on whether the objects are located in urban or rural areas. A comparable distinction is found in the California Civil Code [20, p. 341], where servitudes are divided into those related to land (Article 801) and those unrelated to land (Article 802).

Some scholars argue that there is no practical need to classify servitudes as urban or rural [21, p. 589]. However, we do not fully agree with this. The location, time, and scope of a servitude may differ based on its type. As is evident, pedestrian passage in an urban setting and livestock movement in a rural setting require different legal considerations. At the same time, it should be acknowledged that under the legislation of the Republic of Uzbekistan, there is no mandatory need for separate identification of these types. Instead, the definition and scope of such servitudes should be left to the discretion of the parties involved.

According to the legislation of some countries, servitudes are classified based on the manner of human action into permanent and temporary servitudes (Article 532 of the Spanish Civil Code, Article 688 of the French Civil Code).

Permanent servitudes last for an extended period and do not require human intervention. Examples include a servitude for water supply (where water is supplied through special communication systems) or a servitude supporting a building structure.

Temporary servitudes, on the other hand, depend on human actions and cannot be exercised without human involvement, such as the right of way or the right to draw water from a well. The established legislation and commentaries allow for a full understanding of this classification of servitudes.

It is easier to explain this classification based on the frequency of use and the nature of actions rather than human involvement. However, the terminology of servitudes necessitates this distinction. Permanent servitudes are almost always required for the dominant estate—for example, access to water is a constant need. Meanwhile, temporary servitudes do not require continuity; they are only exercised when necessary. For instance, continuous movement across a neighboring plot or permanently grazing livestock on another's land is not feasible—such actions occur only as needed.

Based on their visibility, servitudes are divided into apparent and hidden servitudes. The first category is characterized by external signs visible to the human eye (such as a road or a window) that indicate the nature of the servitude's use.

Hidden servitudes, in contrast, have no external signs and are not visually detectable, making them appear nonexistent. Examples of such servitudes include restrictions on constructing buildings above a certain height on another person's land.

The classification of land servitudes into permanent and temporary, as well as apparent and hidden types, holds practical significance in their determination. According to Article 620 of the Philippine Civil Code, a permanent and apparent servitude may be acquired either through a legal document confirming the right or through possession (use) for a period of 30 years.

The commencement of the right of possession, in turn, depends on whether the servitude is positive or negative. In the case of a positive servitude, the right begins from the date the owner of the dominant estate first exercises the servitude on the burdened estate. In contrast, for a negative servitude, the right begins on the date the owners of the dominant and burdened estates agree to prohibit specific actions on the servient estate.

In most foreign countries, regardless of whether a land servitude is permanent or temporary, apparent or hidden, it must be based on a legal foundation. If there are no documents or evidence confirming the existence of a servitude, it can only be recognized through acknowledgment by the servitude holder or a court decision.

This legal approach is crucial for ensuring the legitimacy of servitudes and regulating land-related claims. The certification of servitudes serves as a special procedure for the official recognition and documentation of legal relations, requiring the submission of a primary document. If there are discrepancies between the certification document and the primary document, such details will not hold legal force. These provisions aim to ensure legal reliability through documentation and to prevent uncertainties surrounding servitudes.

In the legislation of Uzbekistan, servitudes are not classified into permanent-temporary or apparent-hidden categories. On the one hand, this ensures the simplicity of the legal system; on the other hand, it may create difficulties in the legal regulation of certain complex situations related to the use of land plots. Taking into account international experience, the introduction of such classifications could contribute to enhancing the clarity and stability of land rights. For instance, if the concept of hidden servitude were recognized in legislation, it would be easier to determine the rights and obligations of third parties concerning a land plot in advance.

Moreover, the division of servitudes into voluntary and mandatory categories is particularly common in post-Soviet states. According to Article 101 of the Land Code of Tajikistan, a servitude established based on mutual agreement between the parties is considered private, whereas a servitude imposed by a decision of the state or local authorities is regarded as public (mandatory). In Russian legislation, servitudes are classified based on whose interests they serve. These approaches may serve as valuable experience for the development of national legislation.

From this, it is evident that the servitude institution in Uzbekistan's legislation requires improvement in accordance with international standards. In particular, it is necessary to establish legal norms regarding apparent and hidden servitudes and to clearly regulate their legal consequences. Furthermore, when introducing mandatory

servitudes in the interests of the state, it is essential to strengthen mechanisms for protecting landowners' rights. Such reforms would facilitate the practical application of servitude law and enhance the efficiency of land use.

Article 233-11 of the Civil Code of Kyrgyzstan [22, p. 148] stipulates that a servitude established by agreement between the parties is voluntary, whereas a mandatory servitude is imposed based on a decision of the competent authority. Unlike previous models, there is no mention of public servitude. In this context, a mandatory servitude is established by a decision of a state authority or a local government body at the request of an interested party. For instance, it may be introduced to ensure access to real estate when alternative access is impossible, extremely difficult, or entails disproportionate costs.

In the Civil Code of Armenia (Articles 211 and 212), a voluntary servitude is established through a notarized written agreement between the party requesting the servitude and the owner of the adjacent land plot. Conversely, a mandatory servitude is imposed by a court decision upon the request of the party seeking the servitude if an agreement on the voluntary servitude or its terms cannot be reached. Under this model, mandatory servitudes are inherently voluntary, as their enforcement requires the intervention of judicial authorities. The advantage of this approach is that the establishment of servitudes is largely overseen by competent authorities. However, the downside is that resolving disputes through the courts demands more time and financial resources. This model is also applied in the legislation of the Russian Federation [23, p. 276].

According to their origin, servitudes are classified as natural, legal, and voluntary. This classification is specifically recognized in the Civil Codes of Chile [24, p. 87] and France. In the Civil Codes of Mexico [25, p. 436] and Spain, natural servitudes are incorporated within the category of legal servitudes.

Natural servitudes arise from the natural positioning of land plots. They come into existence when certain plots are situated at a higher elevation than others. Lower-lying land plots must naturally accommodate the water flowing down from higher plots without human intervention. The owner of the lower land plot is not entitled to obstruct this flow by constructing barriers such as embankments or dams. Likewise, the owner of the higher land plot is not permitted to engage in any actions that would worsen the servitude affecting the lower land plot. In other words, this type of servitude is commonly referred to as a water flow servitude [26, p. 576].

Considering the specific "water-related" nature of these servitudes, Chilean legislation has likely transferred their regulation to the Water Code. The Louisiana Civil Code is limited to the general principles outlined above. In contrast, the French Civil Code provides a more detailed explanation of the content of such servitudes. Specifically, a property owner has the right to use and manage rainwater that falls on their land. However, if the use of such water or any alterations to its natural flow worsen the conditions of the watercourse, the owner of the lower-lying property is entitled to compensation.

I believe the same principle should apply to water sources located on a land plot. In other words, if drilling or underground works conducted by the landowner result in water flowing out of their land, the owners of the lower-lying plots must accept it. However, if such water flow causes damage, the affected landowners are entitled to compensation. In any case, such actions must not result in the flooding of residential buildings, courtyards, gardens, or enclosed

areas adjacent to residential properties [27, p. 335].

According to Article 642 of the French Civil Code, a person who owns a water source (spring or groundwater) on their property may always use the water at their discretion to meet the needs of their land.

However, the owner of such a source is not entitled to use the water to the detriment of lower-lying landowners if, for more than 30 years, they have built and maintained visible and permanent structures in the area through which the water flows to facilitate its use or its discharge onto their land.

These legal provisions indicate that property rights are not absolute and may be restricted in consideration of public interests. For instance, the right to own a water source may be limited by the necessity of ensuring general access to its flow. This principle serves to promote the equitable distribution of water resources. From this perspective, Uzbekistan's legislation should also establish clear regulations to balance the general use of water resources with the rights of landowners.

Additionally, under Article 644 of the French Civil Code, the owner of land adjacent to a flowing water source that is not classified as state property may use it for irrigation purposes. This provision is aimed at harmonizing private and public interests and serves as one of the legal mechanisms for the efficient use of water resources. Such an approach not only respects landowners' rights but also contributes to maintaining ecological balance [28, p. 162].

Legal servitudes are primarily established to serve the interests of the state or individuals. They play a crucial role in regulating interactions between neighboring land plots. For instance, obligations related to shared walls, irrigation channels, drainage systems, and access routes must be legally regulated. The Spanish Civil Code provides a detailed classification of servitudes, ensuring a clear approach to their regulation. In Uzbekistan's legal framework, further refinement of servitude classifications and the expansion of their scope of application would be beneficial.

The necessity for legal servitudes arises from obligations between property owners to safeguard individual interests. Clearly defining these servitudes in the Civil Code is essential, as they help regulate property and functional relationships between neighboring landowners. Issues such as the obligation to construct or maintain shared walls or irrigation channels, support structures, preservation of the overall aesthetic of adjacent properties, regulation of roof drainage systems, and the use of common access paths fall within the scope of these servitudes.

The Spanish Civil Code provides a more detailed classification of servitudes, dividing them into the following key categories: water-related servitudes (including natural servitudes), servitudes facilitating access, obligations concerning shared walls, rights related to light and visibility, duties regarding drainage systems, and servitudes associated with specific structures and agricultural land.

When discussing the strengthening of our national legislation, the practical application of certain provisions from the legal norms of the aforementioned foreign countries proves to be effective. Such a systematic classification of servitudes serves to reduce disputes among property owners. This is because servitudes act as a mechanism for maintaining the legal balance between property owners by clearly defining specific rights and obligations.

In Uzbekistan's legislation, a more detailed and precise classification of servitudes is necessary, as this would have a positive impact on land relations and infrastructure development in practice. In particular, servitudes related to water

resources can help ensure ecological balance and reinforce the principles of rational resource use.

In addition to the aforementioned aspects, the Civil Code of the Philippines includes two more types of servitudes: interference and nuisance, as well as principal and accessory servitudes.

In these examples, we focus on the legal restrictions on property rights in favor of specific individuals—neighbors—referred to as neighbor rights. Although Uzbekistan's legislation does not explicitly define neighbor rights, they have long been recognized in the legal systems of foreign countries. The Swiss Civil Code contains provisions on neighbor rights in the chapter on restrictions on property rights (Articles 684-698). Similar provisions are also enshrined in the Civil Codes of Japan [29, p. 466] and Turkmenistan [30, p. 301].

From this, it follows that within the framework of neighbor rights and legal servitudes, the granting of passage rights is not only a matter of protecting property (necessity) but also ensuring sufficient and necessary access (benefit) for the effective use of a land plot.

If the servitude-imposed property restricts land cultivation or continuous harvesting solely due to the necessity of passage, compensation should cover the damages caused by such obligations. In this case, the specific nature of agricultural activities, which depend on climatic and other natural conditions and occur during certain seasons, is taken into account. It is considered that this does not lead to a significant restriction of property rights.

Certain requirements exist for determining the passage route. The landowner whose property provides the most natural access may be required to grant passage rights, considering the location of the servitude-imposed land plot, as well as the benefits and potential damages. The servitude for passage must be established in the area of the property that causes the least negative impact, and as a general rule, the passage should be provided from the side where the distance between the enclosed area and the public road is shortest. If necessary, the route of the road and the boundaries of the passage rights can be determined by a court decision.

Conclusion

The institution of servitude is widely employed in international practice as a vital legal mechanism for developing infrastructure, ensuring environmental sustainability, and harmonizing the rights of neighboring landowners. Analyzing the effective implementation and emerging challenges of this institution in certain countries can provide valuable insights for improving the legal framework in Uzbekistan.

For example, under the Civil Code of the Federal Republic of Germany (BGB), servitudes are defined as a form of *limited real rights*. In Germany, servitudes are commonly applied in relation to roads, pipelines, power lines, and other infrastructure facilities. However, conflicts sometimes arise when implementing new infrastructure projects, particularly in balancing environmental interests with the rights of landowners.

In France, servitudes are categorized into *servitude légale* (statutory servitude) and *servitude conventionnelle* (contractual servitude). These forms are primarily used in relation to agricultural lands, forestry, and mining activities. Nonetheless, the legal procedures required to abolish or revise historical servitudes that no longer meet modern economic and social demands are often complex and time-consuming.

In the Russian Federation, servitude-related legal relations are governed by the Civil Code, which allows for the broad use of servitudes to support infrastructure

such as utility networks, gas pipelines, and electric power lines. However, one of the pressing issues in practice is the imposition of servitudes without the consent of landowners, which has resulted in numerous legal disputes.

In Uzbekistan, the theoretical and practical foundations of the servitude institution are defined by the norms of the Civil Code and the Land Code. Furthermore, national judicial practice illustrates how servitudes are applied in real-world cases. For instance, in a civil case reviewed by the Supreme Court of the Republic of Uzbekistan in 2024, a claim to establish a service servitude on neighboring land for the passage of a water pipeline was upheld. The court recognized the social and economic necessity of the servitude and emphasized that the landowner's property rights were minimally restricted.

At the same time, several systemic challenges hinder the practical implementation of servitudes in Uzbekistan. These include a lack of coordination between notarial and cadastral authorities, deficiencies in accurately reflecting land rights in the state register, and difficulties in balancing environmental interests with the property rights of landowners during the servitude establishment process.

In conclusion, the institution of servitude is developing as an important legal tool both in international practice and within the framework of Uzbek legislation and judicial application. To further improve its effectiveness, it is essential to study foreign experiences, simplify legal mechanisms, and strengthen inter-agency coordination. Additionally, systematizing judicial practice and formulating approaches that balance ecological and proprietary interests are among the urgent tasks ahead.

Comparative Servitude Activity by Country

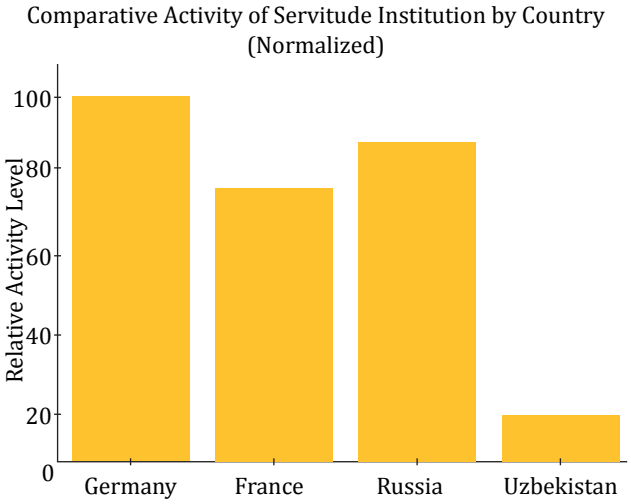

Figure. Normalized comparative analysis of the application of the servitude institution in Germany, France, Russia, and Uzbekistan

Notes: Data are normalized based on activity levels where Germany is taken as the 100% reference value.

Sources: Federal Notarial Chamber (Germany, 2022); National Property Agency (France, 2021); State Land Control Agency (Russia, 2020–2023); Notary and Cadastre Agency (Uzbekistan, 2023).

Analytical Summary

The comparative diagram illustrating the application of the servitude institution in Germany, France, Russia, and Uzbekistan reveals significant differences in practice and legal implementation levels. Germany, which serves as the reference point (100%), exhibits the highest level of servitude-related legal activity, with more than 20,000 servitude contracts registered annually. This highlights the maturity and practical functionality of the servitude mechanism in supporting public infrastructure and property planning.

France, marked at 75% relative activity, also demonstrates a well-established system, where approximately 15% of all land-related transactions involve servitudes. These are especially common in agricultural and rural contexts, indicating a regulatory framework that integrates traditional land use with modern legal instruments.

Russia follows with an 85% activity index, driven by rapid infrastructure expansion. The growth in servitude-related cases—especially for utility services—has resulted in both extensive use and increasing legal disputes, often due to a lack of prior consent from landowners.

In contrast, Uzbekistan, with a normalized value of 20%, shows that the servitude institution is underutilized. According to data from the Agency for Notary and Cadastre Services, servitudes account for only 2.7% of registered land transactions, and most are initiated due to legal disputes rather than proactive planning. The limited integration of servitudes into land development policy and insufficient inter-agency coordination are among the key challenges. These discrepancies underline the need for Uzbekistan to enhance legal awareness, simplify registration procedures, and adopt best practices from jurisdictions where servitude law effectively balances public interest and private rights. Moreover, judicial consistency and the availability of precedents may strengthen the trust of stakeholders in using servitude as a constructive tool for land governance.

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