

“MODERN APPROACHES TO LAND EASEMENTS: LEGAL FOUNDATIONS AND DEVELOPMENT PROSPECTS”

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Abstract. *The article analyzes the right to limited use of another person's land plot for public needs, which is a novelty in the land legislation of the Republic of Uzbekistan, that is, public easement, the legal procedure for its establishment and implementation. It also highlights that public easement is established not for the interests of the owner of a particular land plot, but for the interests of the public, and is introduced to ensure the interests of the population, local self-government bodies and the state. As a result of the research conducted within the framework of the topic, scientific and theoretical proposals aimed at improving public easement were recommended.*

Keywords: *legislation, land, easement, public easement, private easement, contract, right, rule, public need.*

The proper regulation of land-related relations plays an important role in the development of the state and society. In order to ensure the rational, efficient, and market-oriented use of land in our country, reforms aimed at improving land legislation are being implemented. Ownership rights to land have been recognized in Uzbekistan, and land has been transformed into a market asset. The conditions and procedures for using agricultural land based on lease rights have also been

modernized in accordance with contemporary requirements. The involvement of state authorities in the allocation of land has been significantly restricted.

In short, the Decree of the President of the Republic of Uzbekistan No. PF-6243 of June 8, 2021, “On Measures to Ensure Equality and Transparency in Land Relations, Reliable Protection of Land Rights, and Transformation of Land Rights into Market Assets”, marked a new stage in the development of land legislation and law-enforcement practice in the country [1].

Furthermore, the Law of the Republic of Uzbekistan No. O’RQ-871 of October 23, 2023, “On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in Connection with the Improvement of Land Legislation” [2], introduced changes to the Civil Code and the Land Code. These amendments clarified long-awaited issues concerning sublease of land plots by lessees, the implementation of land servitudes, and the termination of ownership rights to land.

One of the recent changes in land legislation concerns the procedure for exercising the right to limited use of another person’s land plot for public needs (public servitude). We attempted to discuss certain aspects of this institution. Land servitude historically emerged as a constructive solution aimed at preventing disputes that could arise from the growing demand for land, the limited nature of land resources, and the need to ensure the interests of neighboring landowners—such as securing access to their own land—while preserving the existing land tenure system (ownership and other rights). This gave rise to the concept of *jura in re aliena* (a right over another’s property), which later evolved into the modern notion of servitude [3].

Although land servitude has undergone a complex evolution—from its ancient conceptualization to today’s understanding as “the limited use right over another person’s land plot”—its essence has remained unchanged. Even today, the need for using another’s land persists among members of society, which explains the necessity of improving the servitude mechanism.

In the theory of land law and civil law, public and private servitudes are recognized as distinct types [4]. In the legislation of the Republic of Uzbekistan, primary emphasis had been placed on regulating private servitudes, which were reflected in Article 173 of the Civil Code and Article 30 of the Land Code. However, the concept of public servitude and the procedure for its implementation had not been defined by law.

With the adoption of the Law [6], Article 173 of the Civil Code of the Republic of Uzbekistan was supplemented with the provision stating that “in cases necessary for public needs, a servitude may be established by the relevant state body in accordance with the law (public servitude).”

The norms on public servitude defined in the Civil Code are elaborated more extensively in the newly introduced Article 305 of the Land Code. According to this provision, the limited use of another’s land plot for public needs (public servitude) may only be established for the purposes of conducting geological surveying, exploration, geodetic and other search operations; laying and operating public electricity transmission lines, communication lines and other networks, pipelines, internal irrigation systems, engineering networks, and other infrastructure lines across another’s land. The article further states that public servitude may not be established for other purposes, nor may it be applied to land

plots occupied by buildings, structures, and perennial plantations that are not in state ownership.

The establishment of a public servitude differs from that of a private servitude. A private servitude is created based on an agreement between the person requesting its establishment and the owner of the adjacent land plot, and if no agreement is reached, it may be established by a court decision. A public servitude, however, may be established directly by law or other normative legal acts to address the interests of the state, society, local self-governing bodies, and the population.

The newly introduced Article 305 of the Land Code stipulates in its fourth paragraph that “a public servitude shall be established by the decision of the regional or Tashkent city governor based on applications submitted by interested organizations.”

From the above considerations, it is evident that in a public servitude, there is no single, specific subject holding the right to limited use of immovable property; instead, there exists a broad category of subjects. In contrast, in a private servitude, both the person granting the use right and the person benefiting from it are clearly defined. These points indicate that a public servitude is established not for the interests of a particular landowner but for public interests. Public servitudes are introduced to safeguard the interests of the population, local self-governing bodies, and the state. The state's intensive participation in production and commercial activities is one of the reasons for the emergence of public servitudes, as the state acts as an independent economic entity in such circumstances [5].

Another significant innovation introduced into land legislation is the requirement that a decision to establish a public servitude must be coordinated—on a mandatory basis—with the relevant agencies, depending on the category of land fund. According to this requirement:

- for irrigated lands — with the Ministry of Agriculture and the Ministry of Water Management of the Republic of Uzbekistan;
- for lands of the forest fund — with the state authority responsible for forestry;
- for lands intended for environmental protection, health improvement, recreational purposes, and for lands of historical and cultural importance — with the specially authorized state bodies in the respective fields.

Thus, establishing a public servitude requires mandatory coordination with the relevant authorities.

Another new rule introduced into legislation is that the decision establishing a public servitude must include all the conditions that would otherwise be specified in a servitude agreement. Article 173² of the Civil Code sets forth the conditions of a servitude. According to this provision, when a servitude is established, the following must be specified: the size of the land plot subject to the servitude; the conditions for constructing, operating, inspecting, and repairing engineering and communication networks on the land plot; the procedure for compensating damage caused to the landowner, land user, lessee, and/or proprietor, regardless of the land category; the current condition of the land plot; the obligation to restore the land plot to a usable condition for its intended purpose;

the procedure for payment of servitude fees; and the restrictions on the use of the land plot subject to the servitude.

Article 301 of the Land Code sets out the rules for a servitude agreement, and it requires the inclusion of the following conditions:

- the cadastral number of the land plot on which the servitude is to be established;
- the purposes and grounds for establishing the servitude;
- information about the parties to the agreement;
- the duration of the servitude;
- the amount of payment established for the servitude (if any);
- the rights, obligations, and liabilities of the parties;
- the obligation to restore the land plot to a usable condition for its designated purpose after the servitude period expires.

A public servitude may be amended or terminated either by agreement of the parties or, at the request of one of them, through judicial procedures. In our opinion, the inclusion of this rule in legislation represents one of the mechanisms aimed at reliably protecting the rights of individuals and legal entities in the field of land relations.

According to the Land Code, a public servitude is terminated either upon the expiration of the term of the servitude itself or the validity period of the decision establishing it (Article 305 of the Land Code). Pursuant to Article 304 of the Land Code, a servitude may also be terminated under the following circumstances:

- by mutual agreement of the participants;

- at the justified request of the landowner, land user, lessee, or proprietor of the land plot, or of the person for whose benefit the servitude was established;
- if the servitude has not been used for a long period (at least three years);
- upon expiration of the servitude's term;
- if the grounds that justified the establishment of the servitude have lost their significance.

Thus, these provisions may serve as the legal grounds for terminating a public servitude.

The decision establishing a public servitude does not grant the right to commence construction or installation works, to rebuild or reconstruct buildings and structures on the land plot subject to the servitude. Furthermore, the establishment of a servitude does not deprive the landowner, land user, lessee, or proprietor of the land plot of their rights to ownership, use, or disposal of the land.

A servitude agreement must be registered with the state, and it remains valid even if the land plot is transferred to another person. Registration of a servitude agreement is carried out in accordance with Article 10 of the Law of the Republic of Uzbekistan **“On State Registration of Rights to Real Estate”** [7] and the **Administrative Regulation on the Provision of Public Services for State Registration of Rights to Real Estate**, approved by the Resolution of the Cabinet of Ministers No. 424 of August 25, 2023 [8].

The amendments introduced by Law No. O'RQ-871 **“On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in**
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Connection with the Improvement of Land Legislation” to the Civil Code and the Land Code, including new provisions on public servitudes, can be seen as a logical continuation of ongoing reforms aimed at further implementing market economy principles in regulating land relations in Uzbekistan.

It can be stated that these legislative changes, while ensuring the rule of law in land relations, also serve to reliably protect the rights of landowners, land users, lessees, and proprietors.

REFERENCES

1. Саипова Ю.Б. Правовой режим недвижимости как имущественной основы предпринимательской деятельности. Автореф....дис.канд.юрид.наук.-Ташкент: 2010.- 14 с.
2. Matluba, M. (2025). *Yer servitutini rivojlanishi. Actual Problems of Humanities and Social Sciences*, 12(4), 78–89.
<https://scienceproblems.uz/index.php/journal/article/view/3943>
3. Vlahna, K., & Kuçi, H. (2022). *Protection of the right of real servitude according to local and international legislation and practice. Revista de Investigaciones Universidad del Quindío*, 35(2), 112–129.
<https://portal.amelica.org/ameli/journal/517/5173110028/html>
4. Lincoln Institute of Land Policy. (n.d.). *Easements, covenants and servitudes*. <https://www.lincolnst.edu/es/publications/articles/easements-covenants-servitudes>
5. Победоносцев К.П. Курс гражданского права. Первая часть: Вотчинные права. – Спб., 1873. – С. 11-14; Гамбаров Ю. С. Гражданское право. Общая часть / Под ред. В.А. Томсинова. – М., 2003. – С. 608 – 611; Васьковский Е.В. Учебник гражданского права. – М., 2003. – С. 118 – 119.
6. Францессон К.И. Продажа зданий, воздвигнутых на чужой земле // Журнал Министерства юстиции. – 1905. – № 10. – С. 148 –149, 154 – 156.

7. Законы гражданские (Свод законов. Т.Х., ч.1). Практический и теоретический комментарий / Под ред. А.Э. Вормса, В.Б. Ельяшевича. - М., 1913. — С. 18-22: Думашевский А. Характер прав на здание, построенное на чужой земле // Журнал Министерства юстиции. 1868, кн. 2. - С. 168-174.
8. Бобокулов С.Б. Ижара муносабатларининг тарихий ривожланиш босқичлари ва бозор иқтисодиёти шароитида ижара шартномаси конструкцияларини табақалаштириш муаммолари.-Тошкент: Илм-Зиё, 2008.- 76 б.
9. Akmaljon Rakhimjonov, N.F. Imomov. (2021). Improving the creation of a land information base for the privatization of land plots in the republic of Uzbekistan and foreign experience in this area. "The American journal of social science and education innovations", pp. 160-165
10. Bakhromjon Topildiev; Rustam Khursanov; Muniskhon Usmonova. "Trust management agreement Property and prospects for its development in the Republic of Uzbekistan". European Journal of Molecular & Clinical Medicine, 7, 3, 2020, 3199- 3205.
11. Топилдиев Б. Р. Особенности гражданско-правового регулирования передачи предприятия в доверительное управление //правовые аспекты регулирования общественных отношений. – 2019. – с. 29-33.