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THE HISTORY OF THE FORMATION OF LAND SERVITUDE IN THE CENTRAL ASIAN REGION

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Abstract. This article explores the legal foundations for the emergence of limited rights to use land plots and examines the historical development of servitudes within the Central Asian khanates. Servitudes were primarily formed through agreements between communities and were regulated by evolving and traditional governance systems. During the khanate period, the forms of servitudes, including rights of access to land and the use of natural resources, evolved to reflect the cultural and social needs of society. In the Soviet era, the monopolization of land and natural resources as state property halted the development of servitudes. However, by the late 20th century, following the collapse of Soviet rule, legislation and regulations related to servitudes were revised, paving the way for their integration into the modern legal framework. In the Republic of Uzbekistan, the contemporary regulation of servitudes is being implemented through new provisions in the Land Code. This process serves as a crucial legal foundation for land and property management, introducing new forms of legal relationships and enhancing their economic and social significance. Servitudes play an important role in the country's economic development, particularly in the fields of agriculture and infrastructure. Proper and effective regulation of servitudes helps improve relations between landowners and other legal entities. Furthermore, efficient mechanisms are being developed to define the legal basis of servitudes and resolve related disputes.

Keywords: Central Asia, servitude, property rights, traditional norms, Soviet era, land plot, limited usage rights, legal relations

Introduction

From a legal standpoint, servitudes are a legal institution with historical roots that grant the right to use another person's property within certain limits. This concept emerged during the early stages of human development, when subjective rights,

particularly the right to property, began to take shape. In the initial phases of societal progress, ownership rights were not limited to possession alone but were closely linked with associated needs. In some cases, individuals who did not own land still faced the necessity or even the obligation to use it.

The increasing complexity of economic life and production activities, especially the practical demands of land use, necessitated the formation of servitude rights. For example, when a land plot lacked access roads or was cut off from water sources, the need to use neighboring land naturally arose. Under such circumstances, the legal regulation of relations involving the use of another's property became essential.

Servitudes were not limited to land plots alone; they were also applied to other types of immovable property such as water bodies, industrial facilities, mining structures, and even infrastructure elements. These relationships evolved and became more sophisticated over time, ultimately leading to the development of an independent legal institution – servitude – that clearly defines the right to use another's property [1, pp. 174–177].

Such norms have existed in nearly all countries. Servitudes have been known in both Western and Central Asia since ancient times. In the traditions of northern peoples, landowners were required to build signal towers near shorelines to aid travelers [2, pp. 309–317]. In the North Caucasus, local authorities imposed an obligation on homeowners to clear mountain paths within their territories. In Islamic law, the *waqf* – still prominent today – was essentially another form of servitude. In ancient Russia, there were several regulations concerning the restricted use of others' property. Thus, “servitude” became a general legal concept, as it found application in various branches of law [3, pp. 61–66].

Materials and methods

The object of this study is the origin of the “land servitude” within servitude law, its application in foreign countries, the potential benefits it may offer in practice, and the stages of servitude development in Central Asia. The research also examines measures implemented during the period of the khanates, ongoing reforms in the field of land servitude in Uzbekistan, and

the current place of servitude within the country's normative-legal framework. In the course of the research, various scientific methods were employed, including the system-structural approach, analysis and synthesis, logical-legal and formal-legal methods, comparative-legal analysis, and statistical methods.

Research results

It is well established that a real right arises from the establishment of actual control over a thing. The control or dominion granted to the holder of such an object may be either full or limited. In the latter case, we refer to a right known as a real (property) right.

Real rights are legal relations recognized by law within defined boundaries. As noted by Sinayskiy, the existence of such boundaries indicates that the concept of absolute real rights is not entirely accurate, since a real right is a form of limited ownership.

Legal literature presents two principal approaches to understanding the essence of real rights. F.K. Savigny considered real rights to be unlimited in nature. This view has been supported by legal scholars such as G.F. Puchta, B. Windscheid, R. Sohm, and others. In contrast, scholars like H. Hartmann, G. Dernburg, V.I. Kurdinovsky, G.F. Shershenevich, and D.I. Meyer regarded real rights as limited rights. V.P. Gribanov supported the second position, arguing that it “more accurately reflects the essence of the right” and pointed out that in 19th-century legislation, it was codified as “the right to dominion over a thing within limits established by law” [12, pp. 309–317].

Undoubtedly, the relevance of the servitude institution in land relations is directly linked to the size of the land plot. In particular, when the land area is small, the need to use neighboring property through servitude rights increases significantly. This is especially critical for landowners with limited or no direct access to infrastructure facilities, such as roads, water sources, electrical grids, and communication lines.

This research has explored the historical development of land-related real rights, specifically servitudes as a limited form of ownership. It has been revealed that during the era of the Central Asian khanates, rather than written laws, customary law served as the foundation for agreements that regulated the use of neighboring property. These agreements indicate the existence of relationships characteristic of servitudes. Servitude-type relations were primarily established through oral agreements, customs, and local inter-community arrangements. Examples include the use of neighboring land for grazing rights, passageways, or access to water, needs that gave rise to mechanisms for shared land use.

Additionally, during the Soviet period, the transfer of land and other immovable properties into state ownership rendered the institution of servitude unnecessary. At that time, land relations were regulated through permanent or temporary use, and the individual right to use another's property was not recognized as an independent legal institution. Within the framework of Soviet law, servitudes had no place, as ownership belonged solely to the state, and access to land and resources was allocated through centralized administrative management.

This study demonstrates that the existence and necessity of the servitude institution are directly tied to historical circumstances, the form of ownership, and the socio-economic significance of landholding. While servitudes were present in practice during the khanate period, they were not codified in legal documents. In the Soviet period, the concept was entirely excluded from the legal domain.

Analysis of the research results

Servitude Rights During the Era of the Khanates

In the Central Asian khanates, the legal system was generally characterized not by written legislation but by traditional norms and customary practices. However, from

the perspective of servitude as a specific type of property right, it may be stated that various forms of servitude based on local customs and traditions existed in different communities and villages within the region. A servitude constituted the right to use or access another person's immovable property for specific purposes, but it did not constitute ownership of that property. In the context of the Central Asian khanates, such rights often arose through agreements between various social groups or individuals. Examples include rights of passage over land, access to water resources, grazing rights, and similar uses.

However, in the absence of concrete historical records or documents, it is difficult to determine with precision the specific forms of servitudes that existed in Central Asia during the khanate period. Typically, such rights were regulated by customs and agreements between local communities or established authorities [4, pp. 189–247].

During the khanate era, contracts between different social groups or communities could be concluded either orally or in writing, depending on the circumstances, the level of cultural development, and the administrative organization of society. These agreements could vary in form and content depending on the subject matter they regulated. For instance, contracts concerning servitudes, such as grazing or passage rights, could stipulate the conditions for use of certain lands or resources. They might also define the duration of the agreement, the amount of compensation (if applicable), the responsibilities of the parties involved, and other terms.

It should be emphasized that such agreements were typically based on mutual consent and derived their legitimacy from societal customs and traditions. They were often affirmed by witnesses or authoritative figures within the community, thereby granting them legal effect. However, because many of these agreements were oral and not documented in written form,

their exact content and scope remain largely unknown to modern scholars.

The Soviet Period

During the Soviet era, the monopoly of state ownership over land, natural resources, and the vast majority of immovable property eliminated nearly all grounds for legal relations requiring the application of the servitude mechanism in land use. The concept of servitude as a restricted right to use another's land plot was absent from Soviet land law, as well as from the RSFSR Land Code and Civil Code [7]. Instead, property relations in this domain were regulated through the concepts of permanent or temporary use.

The system of rapidly evolving land relations in the USSR was fundamentally reformed by the Decree "On Land" of 1917 and the Law "On the Socialization of Land" adopted on January 28, 1918. The nationalization of all land, including subsoil resources, forests, and waters, was enacted by the historic Decree "On Land" adopted on October 26 (November 8), 1917, at the Second All-Russian Congress of Soviets. Article 1 of the Peasant Mandate, an integral part of the Decree, proclaimed: "Private ownership of land is abolished forever," meaning that land could neither be sold, purchased, leased, nor mortgaged [13, pp. 499–516].

All lands, including state-owned, cabinet, monastic, ecclesiastical, privately held, communal, and peasant lands, were expropriated free of charge, nationalized, and transferred to the use of those who worked the land [8].

Soviet legislation excluded the concept of servitude not only in land relations but also within the broader framework of property law. The Soviet legal doctrine did not recognize land as a form of property, nor did it accept the idea of assigning monetary value to land, which further complicated the situation. The legal scholar N.N. Vedenin, who advocated for recognizing land as a form of property and assigning it economic value (a position

later validated by history), was criticized by G.A. Aksenenko, a corresponding member of the USSR Academy of Sciences, in 1973: "I do not support the author's point of view." According to the Fundamentals of Land Legislation, land was excluded from civil turnover and could not be the object of civil transactions, and therefore, could not be considered property [14, pp. 19–21].

Although Soviet civil legislation did recognize the concept of a lifelong right to reside in another person's home, this institution was not classified as a servitude in the RSFSR Civil Code, as it was in Roman law. Servitudes were not a direct subject of study in Soviet civil law. Instead, they were discussed primarily in research devoted to Roman law or the history of state and law [15, pp. 56–59].

Legal norms regulating the limitation of an owner's rights in favor of other persons began to emerge only in the final years of the Soviet Union as an independent legal institution. One of the first provisions addressing such restrictions appeared in the 1991 RSFSR Land Code. Article 54 of the Code provided that the rights of landowners, land users, landholders, and tenants may be restricted in the interest of other users of natural resources, and that such restrictions must be based on law and other normative acts. However, this provision was poorly formulated. First, the choice of the term "user of natural resources" was problematic, as such a user could be a single individual or an unlimited number of persons. Second, if we consider the concept of servitudes as adopted in modern legislation, the provision fails to fully elaborate on the nature of the restrictions [5, pp. 345–391].

A similar but slightly rephrased provision appeared in Article 2, Clause 8 of the Law "On Property in the RSFSR" dated December 24, 1990, which stated: "The owner may be obligated, under conditions and within limits provided by law, to allow other persons limited use of their property" [16, pp. 487–576].

The Fundamentals of Civil Legislation of the USSR and the Republics, adopted on May 31, 1991, introduced a different formulation of the rule regulating limited use of another person's property. Clause 4 of Article 45 stipulated: "In cases and under conditions specified by law, the owner must permit the limited use of their property by other persons." Although neither of these provisions explicitly used the term "*servitude*," both essentially regulated servitude-like legal relationships. The limited use of another's property is one of the key distinguishing features of servitude as a legal institution [9].

Moreover, in contrast to prior Soviet legislation, the 1991 norms in both the USSR and RSFSR did not address the restriction of ownership or use rights *per se*, but instead dealt directly with the right of limited use. For the first time, the law established the right of the owner to transfer their powers of ownership, use, or disposal of property to another person, to use property as collateral, or to entrust it to the management of others. Importantly, the owner was allowed to exercise their rights over property in any form not prohibited by law [10]. According to the principles adopted in civil law, servitude was considered an obligation. Article 2 of the Law "On Property in the RSFSR" not only permitted the granting of a right to limited use based on legal authority but also allowed such obligations to arise voluntarily through a gratuitous agreement. A crucial condition for such limited use was that the obligation must be defined strictly within the limits prescribed by legal acts. The law also aimed to protect the rights of the owner against potential abuse by those entitled to limited use.

The Development of Servitude in the Republic of Uzbekistan Today

Currently, in the Republic of Uzbekistan, the institution of servitude is progressively developing within the system of civil legal relations. Establishing a right of servitude over land does not mean that

the owner is deprived of the right to use the property. For example, if a neighbor is granted a servitude to drive livestock across a certain part of a land plot, the landowner retains the same right to use that section for their own livestock. This may result in significant savings in time and other resources.

The land plot for whose benefit the servitude is established is referred to as the dominant tenement, while the land that provides the servitude is called the servient tenement. Since a predial servitude pertains to the dominant tenement itself rather than to a specific individual, any change in the ownership of the dominant land automatically leads to a corresponding change in the holder of the servitude [6, pp. 99–121].

In legal relationships involving servitudes, one party holds a right while the other bears a corresponding obligation. That is, the authorized person (the holder of the servitude) has the right to use the property of another, and the obligated person must permit such use. However, the existence of a servitude does not grant the authorized person the right to compel the landowner to take any specific actions. The obligation of the owner is limited to tolerating the use, refraining from interference, and not diminishing the value of the property.

A servitude cannot be established over another servitude. Since a servitude expresses a right over land or similar immovable property, it cannot be granted over another right but only over land or comparable property.

The obligated person retains the rights of ownership and use of the land. In other words, the owner of the land remains entitled to use and possess it. In contrast, the authorized person only has the right to use the property in accordance with the servitude and does not enjoy ownership rights. The servitude does not relate to the land as such but to the right to use specific features or functions of the land. The

authorized person does not have the right to consume the products or harvest of the land under servitude [11].

The content of servitude is articulated in Article 173 of the Civil Code of the Republic of Uzbekistan and Article 30 of the Land Code. According to paragraph 1 of Article 30 of the Land Code, the right of limited use of another's land plot (servitude) is defined as the right of the owner of immovable property (a land plot or other real estate) to use a neighboring land plot, and in necessary cases, another land plot, in a restricted manner. This is not merely a limited right but also a compulsory use right, as it is granted only in cases where certain needs cannot be met without establishing a servitude.

Article 165 of the Civil Code lists, in addition to servitude, four types of property rights: the right of lifelong inheritable possession of a land plot (Articles 176–181 of the Civil Code), the right of permanent use of land (Article 20 of the Land Code), and others. Unless otherwise provided by law or agreement, real rights may not be pledged without the consent of the owner. This highlights a key difference between property ownership and real rights.

Servitude differs significantly from other rights to land and is regarded as a right over a land plot for the benefit of the servitude holder, while it constitutes an obligation for the landowner. A land under public servitude serves not only as a type of immovable property but also as part of the territory of the state.

Servitude may also be reciprocal in nature (for example, a road passing through two adjacent land plots). While a landowner has the right to restrict access to their land, particularly to protect their property rights, such restrictions may cause difficulties for neighboring landowners or users who require passage. Servitude serves as a legal tool to resolve such issues.

Undoubtedly, the smaller the landholding, the more important servitudes become. Conversely, in cases involving large, self-sufficient landholdings, such as those used for agriculture, the development and necessity of servitudes are considerably reduced.

Conclusion

This article successfully explains the development of the right of servitude in the Khanates of Central Asia through the lens of traditional norms and customary practices. During the Soviet era, legal relations pertaining to servitudes were significantly restricted, as land and other natural resources were treated solely as state property. In present-day Uzbekistan, the servitude system is evolving, with the right to limited use of land now regulated by legal norms.

At the same time, the current legislation has both strengths and shortcomings in defining the essence, advantages, and limitations of the servitude institution, which requires further analysis and development. Despite the adoption of certain legal norms and ongoing reforms in the field of servitudes, there remains a need for the full and effective implementation of the servitude system within the modern legal framework. This area still requires considerable improvement.

Moreover, the lack of concrete historical documents and data on servitudes during the period of the Central Asian khanates presents a significant limitation to scholarly research. The differences between the servitude regulations in the Soviet era and those in the current legislation of the Republic of Uzbekistan have not been fully elucidated. The absence of clear guidance on the practical application of these laws contributes to persistent shortcomings in the regulation and enforcement of servitude-related legal relations.

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