EASEMENT: STAGES OF DEVELOPMENT

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Abstract: In this article, the author examines the legal nature of an easement (the right of limited use of someone else's land). As one of the institutions of civil law. The stages of easement development from well-known land forms to the form of easement in the digital space are studied. The most important phases of development are regarded: Roman law, the unification of easements in civil laws of the XIX-XX centuries, their adaptation to the realities of the industrial period. Due to the emergence of new regulatory objects in the Internet space, the author pays attention to changes in the easement and easements of legal relations in this environment. In the end, the author's conclusion and suggestions on how to improve this institution in modern realities are given.

Keywords: easement, private easement, public easement, digital easement, right of access, data.

It is necessary to study the history of the easement before analyzing the legal nature and content of the easement in domestic legislation. With the development of private property law, the origin and connection of an easement with private property aroused increasing interest among legal scholars and became the object of their study.

Researchers such as A.Gusakov[1] and G.F. Shershnevich[2] studied servitude legal relations in their works. It was their view that the initial or originated right, which existed before the emergence of the easement was the right, which belonged to ownership of a thing with the use of all its values. It was in their view that the right of small-scale land ownership and the necessity to guarantee the economic greatness of the latter only became the case when a limited right appeared which was to compensate the inherent disadvantages of certain pieces by the natural resources of others. It is noteworthy that the purpose of easements is to supplement the rights of the property and to eliminate inconsistent allocation of advantages and this is to be accredited to the supremist superiority of easements.

The situation above was however not the only viewpoint. In the late 18th century another viewpoint existed, advocated by Elveret and Schoeneman. They claimed that

[1] A. Gusakova. On the question of the theory of servitude law // Journal of Civil and Criminal Law. 1884. No. 8. Articles 31-62.
[2] G. Shershenevich.F. N. Izbrannoe. 5: Textbook of Russian civil Law / Intro. slovo, comp.: P. N.V. N. Krasheninnikova. - M. N.: Statute, 2017. 832 p. ill.

the easement even had a more primitive cause as compared to the right of ownership. To affirm their perception, Elvere and Schoeneman made the case of nomadic tribes which long stayed unable to create total domination over the land. (Nomadic tribes by their right enjoyed only the private sides of the thing - grass in the field, watering hole, i.e. what is referred to today as easements to that extent).

One should note that the opinion of Elveret and Schoenemann on the origin of the easement has encountered a massive dissent, both in individual of A. Gusakov and G.F. Shershenevich, but in Russian scientists, there were such opinions that support the non-classical opinion, so the works of I.I. Goronovich "Research on easements" lends support to the Schoenemann opinion.

The right to the property of the individual is connected with the appearance and formulation of the easements. The fragmentation of communal land ownership and the rise of small-scale land ownership provoked the necessity of establishing the mechanism that guarantees the interests of land owners on an economical level. Lack of this mechanism of an easement would result in the loss of the economic value of the land.

The idea of easement and the premise of the doctrine of easement entered into existence so early as in Ancient Rome. One of the oldest rights in a thing belonging to someone else could be land easement. Some hold that it was prior to the right of ownership or to say it, a property right that is most primitive of all preexisting property rights. The very term easement denoted, in fact, to easement "slavery of a thing", the "duty", a form of "service to a thing". The topography of the region with a lack of water was in great need of new property law that would restrict the right of small land owners at the expense of neighbors. The right to passage, travel, transportation of goods and the conduction of water through the lands of other owners were also intertwined to these rural duties. This fact of the development of Rome as the capital of the state where there was a great number of buildings closely located to each other also led to the necessity of the emergence of duties. However, these were already urban duties, which were manifested in the possibility of “supporting a building on someone else’s support (servitus oneris ferendi), draining rainwater through a neighboring plot (servitus stillicidii), installing sewage (servitus cloacae), as well as the absence of the right to build a building above a certain height and thereby block the view of a neighbor (servitus alus non tollendi), building up a neighbor’s windows, etc.”[3]

At first, in the process of formation of the key legal traits of servitude, the Roman lawyers were forced to confront some issues. The greatest contribution of the legal thought was the passing of the notion of servitude as a right to a section of the

[3] Dozhdev D.V. Roman private law. Textbook for universities / Ed. Corresponding Member of the Russian Academy of Sciences, Professor V.S. Nersesyants. Moscow: INFRA M-NORMA Publishing Group, 704 p., 1996.

belongings of another person into the reality of servitude starting to be denoted as the right of a human being to utilize the belonging of another human being in a particular way.

"The necessary prerequisites for establishing the right of servitude were: 1) the permanence of the right of servitude - causa servitutis perpetua esse debet. The permanence of servitudes was either objective or subjective: objective permanence arose from the constant need of the titular of the servitude to use someone else's property to improve the economic exploitation of his land; subjective permanence was measured by the length of life of the titular, especially in the case of a personal servitude; 2) the passivity of the owner of the thing burdened with the servitude - servitus in faciendo consistere nequit - meant that the owner of such a thing was not obliged to actively act for the titular of the servitude, i.e. to participate in the implementation of the goals and interests of the titular of the servitude."[4]

Grounds for Introduction of Easement	Grounds for Termination of Easement
Court verdict	Destruction of the property (physical or legal)
Private agreement between two parties	Death of the person holding a personal easement
Inheritance	Expiry of the established easement term
	Change in the essential nature of the property
	Merger of ownership and easement rights in one person
	Non-use of the easement for two years

The history of easements is also not less interesting in domestic civil law. As the legislation of Uzbekistan of the centuries was the same as Russian law, it may be useful to examine the easement in the Russian law. The concept of easement entered the Russian legislation in the 18th century. It was brought out through the Regulation on the notarial part. Servitudes were classified into two, that is, personal surface and pre-personal. Individual easements - that belong to certain individual. Pre-personal - meant that it should belong to the subject as a proprietor of some property.

Agrarian reform in Russia also contributed a lot to development of easement at the beginning of the 20th century. Although there is certain peculiarity in the development of history, the main shift in Russia was the shift between the communal form of peasant land arrangement towards the private ownership of land. Peasants

[4] Puhan I., Polenak-Akimovskaya M.: Roman rights. M., 2000.

became owners, because of what the natural process of the formation of easement started, in the framework of which the peasant owners were gradually involved in the formation that was caused by the emergence of a need.

So, the development of legal relations regarding the easements was rather active in Russia at the end of XX century. Juridical practice in the aspects of litigation between the parties of legal relations connected with easements was developed and the laws which were devoted to the aspects connected with easements started to be studied more carefully.

Pre-revolutionary Russia civil law possesses a number of features. The disorder in the terminology is the first characteristic. In the beginning, the legislation applied in those days did not apply the term easement but the Regulation then applied the notarial part. The precursor to the introduction of easement was the usage of terminologies like right of lands in the property of another person or right of personal involvement in property in legislations.

In domestic legislation, the legislator in Articles 173–173.7 of the Civil Code of the Republic of Uzbekistan has the opportunity to specify the legal nature of the consideration of the easement. Thus, it can be concluded that such a legal nature of the easement is the right to use someone else's land plot for the purposes determined by the agreement of the parties, and in a manner that does not contradict the intended use of the encumbered land plot. Article 173 distinguishes between two types of easements: private easement and public easement.

«A private easement is a type of land easement. Private easements are established on the basis of an agreement between the owners of the land and the user of the easement.

A private easement requires the existence of a corresponding agreement between the person who requests the establishment of the easement and the person who owns the adjacent land; an alternative to the agreement is a court decision. A private easement is characterized by the mandatory presence of an authorized and obligated person for whose use the easement is established; it is established in the interests of a specific owner of the land and is directly related to his needs»[5].

According to Article 173 of the Civil Code of the Republic of Uzbekistan: "The owner of real estate (a land plot, other real estate) has the right to demand from the owner of a neighboring land plot, and, if necessary, from the owner of another land plot, the provision of the right of limited use of someone else's land plot (easement)."[6]

The law also provides an explanation of the concept of a public easement, in part five of the above-mentioned article it is stated: "In cases where it is necessary for public

[5] Romanova E. N., Zelik V. A. Legal nature of public easements: [archived November 7, 2016] // Society and Law. - 2012. - Vol. 40, No. 3. - ISSN 1727-4125

[6] Civil Code of the Republic of Uzbekistan dated 01.03.1997 https://lex.uz/docs/11118.

needs, an easement may be established by the relevant state body in accordance with the law (public easement)."[7]

A public easement is somewhat imperative in nature and is actually independent of the will of the owner on whose land such an easement is created. The public easement is a special way of easement on the land that is determined by law or some other legal act that is to act with the interests of the state, local government, or local population and does not imply the appropriation of the land parcels. “The main difference and characteristic of a public easement is the absence of a specific authorized subject for whose use the easement is established, as well as the establishment of this restriction of ownership in the interests of an indefinite number of persons.”[8]

The Land Code of the Republic of Uzbekistan also defines a public easement, so according to Article 30.5 of the Land Code of the Republic of Uzbekistan it is stated: "The right of limited use of someone else's land plot for public needs (public easement) may be established for the following purposes:

conducting geological survey, prospecting, geodetic and other exploration work on someone else's land plot in accordance with Article 25 of this Code;

laying and operation of electrical networks, communication lines and other lines, pipelines, internal irrigation networks, utility networks and other public networks on someone else's land plot.

A public easement is established by the decision of the khokim of the region and the city of Tashkent based on appeals from interested organizations.

It is prohibited to establish a public easement for purposes other than those provided for in this article on land plots on which buildings, structures that are not state property, and perennial plantings are located.

The decision to establish a public easement based on the category land fund must be agreed upon with the following organizations:

on irrigated lands - with the Ministry of Agriculture and the Ministry of Water Resources of the Republic of Uzbekistan;

on forest fund lands - with the authorized state body in the field of forestry;

on lands of nature conservation, health, recreational purposes and on lands of historical and cultural significance - with specially authorized state bodies in the relevant areas.

The decision to establish a public easement must specify all the conditions that must be specified in the easement agreement. At the same time, the conditions of a public easement can be changed and canceled by agreement of the parties or at the request of one of them in court.

[7] Civil Code of the Republic of Uzbekistan dated 01.03.1997 https://lex.uz/docs/11118.

[8] Baturin, V. A. Servitudes in modern civil law: [archived November 7, 2016] // Gaps in Russian legislation. - 2009. - No. 3. - P. 48. - ISSN 2310-7049.

The decision to establish a public easement does not give the right to begin construction and installation work, redevelopment, reconstruction of buildings and structures on the land plot on which the easement is established. At the same time, in order to carry out construction and installation work for the purposes of a public easement, it is necessary to undergo permitting procedures in the field of construction, established legislation.

A public easement shall be terminated in accordance with this Code, as well as upon expiration of the term of the decision to establish a public easement."[9]

For a better understanding, we present a table based on domestic legislation on private and public easements.

Aspect	Private Easement	Public Easement
Definition	Right of limited use of another's land for private needs (e.g., access, utilities)	Right of limited use of land for public needs (e.g., infrastructure, surveys)
Establishment	By agreement between parties or court decision if no agreement is reached	By decision of state authorities (e.g., regional khokim) for public purposes
Parties Involved	Between private landowners (e.g., neighbors)	Between the state/public organizations and the landowner
Registration	Requires registration with real estate authorities	Established by official decree; registration follows state procedures
Purpose	Private needs (e.g., passage, pipelines, water supply)	Public needs (e.g., power lines, geological surveys, public utilities)
Consent	Mutual consent of landowners (or court-imposed)	No landowner consent required; state decision suffices
Termination	By agreement, court order, or expiration of term	By state decision, expiration, or court ruling
Restrictions	Cannot deprive the landowner of ownership rights	Prohibited on lands with private buildings/perennial

[9] Land Code of the Republic of Uzbekistan dated 30.04.1998 https://lex.uz/docs/149947.

		plants unless for stated purposes
Coordination	Not applicable	Requires approval from relevant ministries (e.g., agriculture, forestry)
Construction Rights	Not applicable	No automatic right to construction; separate permits required

In foreign legislation, public easements are differentiated, for example in France "Everything concerning public easements in France is determined by laws and separate regulations. Articles 649, 650 of the French Civil Code establish the subject of a public easement in the form of public benefit or the benefit of a commune, in the form of a towpath along shipping or rafting rivers, the construction or repair of roads, and other public, including communal, works[10], including those encumbering land plots located next to fortresses, easements for the alignment of buildings facing city streets, etc."[11]

"The German Civil Code contains provisions only for private easements (paragraphs 1018-1029 BGB) and excludes public interest. A public easement in favor of the public interest, in the form of an encumbrance on a privately owned land plot, is classified as a restriction of property rights, and its regulation is within the sphere of public law."[12] In the event of the need to establish public restrictions on a land plot in favor of third parties, the provisions of neighboring law are used in Germany."[13]

"In English law, a public easement is established in the public interest, for example, for the construction of buildings, the maintenance of roads and passages, including their lighting and ensuring clean air, understanding this concept as "provision for public use", at the same time, the emergence of a public easement on the basis of law is not excluded."[14]

Having analyzed the key stages of the development of easement and having analyzed domestic legislation, we will move on to the most significant part of the study, namely, the digital easement.

[10] French Civil Code of 1804. With later amendments up to 1939 / Translated by I. S. Peretersky. - M., 1941. - P. 171. Archived November 11, 2016.

[11] Arsnaliev M.A. Servitudes in modern civil law systems of foreign states: [archived May 30, 2019] // Power of law. - 2013. - Vol. 16, No. 4. - P. 90-99. - ISSN 2079-0295.

[12] Tsaranok E. A. Servitude in Russia and Western European Countries // SCIENCE TIME. - 2015. - Vol. 24, No. 12. - P. 818-821. - ISSN 2310-7006.

[13] Kalinichenko K. S. Legal regime of a land plot and buildings and structures located on it in Russia and Germany // Abstract of a dissertation for the degree of candidate of legal sciences. - 2015. - St. Petersburg. - P. 14.

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The legal relations of servitude have a long history that had started with Roman law in the sense of private law, and have been experiencing a qualitative transformation in our era, reaching the digital domain. Assuming that a conventional servitude was a property right of limited use of another party land (servitus praediorum), in the domain of the digital transformation of the economy, there should be a property right that would guarantee the right to access a digital asset and infrastructure. In theory, the digital servitude could be described as a derivative right of use of digital resources under law or contract that would leave all the powers of the owner with the original owner.

The evolution of the digital servitude shows the dialectical nature of legal forms: the realm of service on the roads and water of Roman law to the servitudes of the industrial era of the 19th century and up to the present-day analogs of the digital era. Here, we do not regulate material assets but digital objects, i.e., data, algorithms, computing power, channels of information interchange. The issue of the character of such legal relations is especially topical: whether these relations have the property-legal foundation or are converted into obligatory, due to the inexistent nature of digital property.

The perspectives of the evolution of this institution are connected with some vectors. To begin with, this is the development of a network of electronic common easements through which there is an opportunity to gain access to important infrastructure (such as access, for instance, to trunk lines of communication or state databases). Secondly, the private law models will be developed that would make it possible to create easement encumbrances on the commercial digital objects on a contractual basis. Special attention should be paid to the problem of inter-jurisdictional regulation, as digital legal relations of cross-border character take place.

This should be done in a collective manner to enhance legislation. There must be legal definition of digital easement with precise elicitation of its characteristics: restriction of use, retention of the rights of the owner, orientation to target. Some special procedures are needed to be created to ascertain and register such encumbrances perhaps by creating digital registries on blockchain platforms. The stringing out between the interests of the copyright owners and the needs of the general population to have an access to the digital resources is especially problematic and needs the fine-tuning of the legislation.

When it comes to law enforcement, special protection mechanisms are to be developed in consideration of the peculiarities of digital assets. This is in the context of jurisdictional as well as extra-judicial forms of protection (both special judicial panels and digital arbitrations). The correlation of the national regulation and the international standards is also not less important in the meantime when the global digital space is being created.

So, digital easement is not a mechanical transfer into the digital space or environment of a classical institution, but a qualitative new phenomenon in the legal world that must be interpreted in the paradigm of the modern civil law. The technological changes and the evolution of the legal consciousness will shape its development but the development will not sever its connection with the basic ideas of the law of easements.

Thus, the author studied the stages of development of the easement to modern realities, moreover, proposed the improvement of this institution in connection with the development of the digital space, introduced the concept of the term "digital easement" and explained its application for subsequent changes in the legislation of the Republic of Uzbekistan.

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