

Servitudes

Abstract

The aim of this thesis is to analyse the legal institute of servitudes and its issues, especially focusing on its current legal regulation in the Civil Code and related case law. The thesis deals with the problematic issues that arise in connection with the examined institute and tries to find possible ways of overcoming the flaws of the legal regulation.

The thesis is divided into four parts. The first chapter briefly outlines the theoretical concept of servitudes.

The second part of the thesis analyses the historical development of servitudes from their beginnings in Roman law, when the foundations of the institution under study were formed and, in many ways, survive to this day. It then continues with an explanation of the codifications regulating servitudes. It continues with an explanation of the codifications regulating easements in the Czech territory from the General Civil Code through the communist codifications of 1950 and 1964, in the latter case the most important amendments are described. Then the reasons for the deletion of the term servitude from the applicable law and its replacement by a superior term covering both servitudes and real burdens, which was the state of law until the adoption of the current Civil Code, are discussed. This part of the thesis focuses on the changes in the concept of servitudes in the past and the sources of inspiration for the current legislation. The author tries to show the influence of the evolution of society and its needs on the development of servitudes.

Afterwards, the place of servitudes in the systematics of the Civil Code is explained, including a detailed explanation of the present concept of servitudes. First, the concept of rights in rem as an institute superior to servitudes is explained. Subsequently, the individual aspects of the institute of servitudes, its subject matter, content, scope, creation, methods of protection and legal relations arising from it are analysed. Then the different types of easements, which are listed in the Civil Code, are analysed and finally the methods of their termination are described.

The author tries to point out some problematic aspects of the legal regulation of servitudes and offers possible solutions with references to case law and the writings of scholars.