

Servitude of footpath, cattle drive and way

Abstract

Civil Code No. 89/2012 Coll. introduced the servitude of footpath, cattle drive and way into the Czech legal system after a long pause. The aim of this thesis is to find an answer to the question whether the explicit regulation of each of these servitudes makes it possible to achieve an unambiguous definition of the subjective rights and obligations arising from these servitudes. The thesis also looks at the extent to which the legislation allows for balancing the interests of the owner of the servient land and the beneficiary of easement. To this end, historical and contemporary legislation, case law and literature are analyzed.

The first chapter discusses the historical development of servitudes, from Roman law through the General Civil Code to Civil Code No 40/1964 Coll. The third chapter is closely related to the servitude of footpath, cattle drive and way, where the problematic issues relating to the area designated for them, their content and scope, and their rate are discussed. Closely related to the servitudes that are the subject of this thesis is the regulation of the necessary way, which is therefore also part of this chapter. Finally, a discussion of public purpose roads has been included in the same chapter in order to find their interrelation with private law institutes. In the penultimate chapter, each of the servitudes that are the subject of this thesis is discussed in detail. The last chapter is devoted to a comparison with Swiss law.

On the basis of an analysis of historical, contemporary and foreign legislation, the thesis concludes by taking the view that the legal regulation of servitudes of footpath, cattle drive and way, as well as servitudes in general, is quite appropriate, especially due to the possibility of building on the sophisticated case law on the General Civil Code. Nevertheless, some significant shortcomings were also identified, for which *de lege ferenda* proposals were made.

Key words

praedial servitudes, footpath, cattle drive, way