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Genesis of Legal Framework for Servitude of Right of Way: Legal and Practical Aspects of Interests of Dominant and Servient Property Owners

Summary of the Doctoral Thesis for obtaining the scientific degree “Doctor of Science (*PhD*)”

Sector Group – Social Sciences
Sector – Law
Sub-Sector – Civil Rights

Riga, 2023

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Table of Contents

Explanation of abbreviations used in the work

CPL	Civil Procedure Law
CM	Cabinet of Ministers
MJ	Ministry of Justice
MoEPRD	Ministry of Environmental Protection and Regional Development
MT	Ministry of Transport
MA	Ministry of Agriculture
SC	Supreme Court

Introduction

The right to own property is one of the oldest fundamental human rights, existing alongside the right to life and liberty.[1] Today, the property rights are guaranteed by Section 105 of the Constitution of the Republic of Latvia,[2] and Section 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.[3] However, based on Section 928 of the Civil Law (CL), ownership may be restricted in various ways.[4] In the Thesis, the author will focus on the restricions of property rights caused by encumbrances on immovable property such as servitude of right of way.

According to Section 1130 of Civil Law (CL), a servitude is an encumbrance whereby the property rights of the owner of the encumbered or servient immovable property are restricted to a greater or lesser extent for the benefit of another person or other immovable property. According to the Civil Law, servitudes are created by law, a court judgment, a contract or a will.[5] However, as part of the land reform in 1990, servitude of right of way were also established by administrative act. [6]

The legal form of a servitude of right of way is multifaceted and should be studied from different angles. This study is devoted to the genesis of the institution of the servitude of right of way from its origins to the present day, revealing the peculiarities of the legal regulation of the servitude of right of

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1 Krastiņš, I. 1998. *Tiesību doktrīnas.* 2.izd., [b.i.]. 3.

2 Latvijas Republikas Satversme: Latvijas Republikas likums. 01.07.1993. *Latvijas Vēstnesis.* 43.

3 Eiropas Savienības Padome. 1950. Cilvēka tiesību un pamatbrīvību aizsardzības konvencija. 13.06.1997. *Latvijas Vēstnesis.* 143/144,

4 Civillikums: Latvijas Republikas likums. 24.02.1937. *Valdības Vēstnesis.* 44.

5 *Ibid.*

6 Dinsberga, J., Bite, K. 2018. Legal consequences and problems of the servitudes of right of way established by administrative acts in Latvia. In U. Berķis, & L. Vilka (Eds.), 6th International Interdisciplinary Scientific Conference SOCIETY. HEALTH. WELFARE (Vol. 40). [01011] (SHS Web of Conferences). Retrieved from: https://doi.org/10.1051/shsconf/20184001011 [acc. 23.07.2023.], 2.

way in Ancient Roman sources and its reflection and legal expression in the Civil Law, examining its gradual development in different periods. The genesis of the development of the institution of the servitude of right of way is examined through the prism of implementation and proportionality of interests and protection of rights of the dominant and servient immovable property owners, describing the external legal and practical conditions affecting the interests of the owners of immovable property, such as the legal system existing in the country; government decisions in the real estate sector; amendments to substantive and procedural law affecting the institute of servitude of right of way; case law findings and their impact on solving problems related to servitude of right of way and protecting the legal interests of owners in servitude cases. Particular attention is paid to the study and analysis of the practical application of the legal norms governing the establishment and termination of servitude of right of way.

The laws and regulations governing servitudes in Latvia have hardly been amended since their adoption. Consequently, the range of unresolved issues related to servitudes has expanded year by year. The European Court of Human Rights has recognised that "legislation must be able to keep pace with changing circumstances."[7] Therefore, the Sustainable Development Strategy of Latvia until 2030 ("Latvia 2030") was developed on behalf of the Ministry of Regional Development and Local Government Affairs of the Republic of Latvia and adopted on 10 June 2010.[8] Paragraphs 278–307 of the Strategy[9]

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[7] The European Court of Human Rights. The Sunday Times v. The United Kingdom, judgment of 26 April 1979, Series A no. 30, p. 31, para. 49. Retrieved from: https://www.ucpi.org.uk/wp-content/uploads/2018/03/The-Sunday-Times-v-The-United-Kingdom-A30-1979-80-2-E.H.R.R.-245.pdf [acc. 10.07.2023.]

[8] Paziņojums par Latvijas ilgtspējīgas attīstības stratēģijas līdz 2030. gadam apstiprināšanu. 29.06.2010. *Latvijas Vēstnesis.* 101.

[9] Latvijas Republikas Saeima. *Latvijas ilgtspējīgas attīstības stratēģija līdz 2030. gadam (Latvija 2030).* Retrieved from: http://polsis.mk.gov.lv/documents/3323 [acc. 09.04.2020.]

contain possible solutions for transport infrastructure planning, road network development, etc. Although the Strategy does not address issues related to access to public roads, it should be stressed that the existing or to be established servitudes of right of way are an integral part of the road network, and therefore, when addressing issues related to the development of Latvia's infrastructure within the framework of the mentioned Strategy, it is also necessary to address the legal and practical issues related to servitudes of right of way.

By the Cabinet Meeting Decision No. 56 of 29 October 2013, in Paragraph 105, Point 7, the MoEPRD in cooperation with the MT, MJ, and MA was instructed to prepare a report on the problems arising in connection with the servitudes of right of way established during the land reform. The Conceptual Report "On the problems arising from the servitudes of right of way established during the land reform and their possible solutions"[10] (hereinafter – the Conceptual Report) was prepared and identified the existing problems, their impact on immovable properties, their owners and the state as a whole. It proposed rational options for solutions which, if further discussed and put into practice, would be likely to solve a number of problems related to servitude of right of way. However, in 2017, the MoEPRD prepared an Information Report,[11] which made the Conceptual Report lose its relevance.

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[10] Vides aizsardzības un reģionālās attīstības ministrija. 2016. *Konceptuālais ziņojums "Par problēmām saistībā ar zemes reformas laikā nodibinātajiem ceļu servitūtiem un to iespējamajiem risinājumiem".* Retrieved from: http://www.varam.gov.lv/lat/lidzd/attistibas_planosanas_dokumentu_projekti/ [acc. 08.08.2016.]. Link not active. Document source located in MoEPRD / Author's personal archive.

[11] Vides aizsardzības un reģionālās attīstības ministrija. *Informatīvais ziņojums "Par Ministru kabineta 2013. gada 29. oktobra sēdes protokollēmumā (prot. Nr.56 105.§) "Likumprojekts "Zemes pārvaldības likums"" Vides aizsardzības un reģionālās attīstības ministrijai, Satiksmes ministrijai, Tieslietu ministrijai un Zemkopības ministrijai dotā uzdevuma atzīšanu par aktualitāti zaudējušu".* Tiesību aktu projekti (līdz 08.09.2021). Retrieved from: https://tap.mk.gov.lv/mk/tap/?pid=40422260 [acc. 10.07.2023.]

The Report expressed the view that servitudes of right of way are to be established in accordance with the of the Civil Law and for this reason it is not appropriate for public administrations or municipalities to get involved in servitude matters. The said Informative Report was included in the agenda of the meeting of the Cabinet Committee on 13 November 2017, but at the meeting the matter was postponed. However, other alternative solutions for providing access to public roads (e.g. with the entry into force on 1 January 2015 of Section 8 of the Land Management Law[12] on the use and alienation of land necessary for maintaining roads and Section 8^1 on the determination of a road or street of local government significance), in the opinion of the author, do not solve the problems identified in the Conceptual Report and existing in practice. On the contrary, the way in which the legislator seeks to achieve its objective is to be to criticised both from the point of view of legality and fairness.

Despite the legislator's efforts to improve the legal framework related to servitude of right of way and to adapt the legal system to the rapid development of economic, social, technological and political processes, in the author's opinion, this has not been achieved at the moment. Therefore, property owners are forced to independently, through civil proceedings, resolve the problems related to the legally incorrect servitudes of right of way determined during the land reform.

In addition to the problems of servitudes of right of way determined during the land reform, real estate owners face problems related to deficiencies in the legal framework for the establishment (voluntary or judicial) and termination of servitude of right of way – lack of definitions of concepts or deficiencies therein; incomplete, unclear and misleading legal provisions; lack

[12] Zemes pārvaldības likums: Latvijas Republikas likums. 15.11.2014. *Latvijas Vēstnesis.* 228.

of regulation of certain procedural actions; conflicts of applicable legal provisions, etc. Therefore, the author, while studying the legal regulation of servitude of right of way, not only reveals the institute of servitude through the prism of historical development and analyses the reasons for the formation of problems, but also deeply addresses the issues of legal relations related to servitude of right of way, which are relevant for the owners of the ruling and servient immovable property today, assessing the need to amend the Civil Law, Civil Procedure Law and other related regulatory enactments. According to Viktorija Jarkina, Attorney-at-Law, and Krista Niklase, Assistant Attorney-at-Law, "just as the science of law evolves, so the Civil Law of 1937 must change and adapt to modern situations and their challenges. There is a need to modernise the Civil Law and improve the existing legal framework."[13]

Undeniably, a servitude of right of way as an encumbrance of immovable property is not always an acceptable restriction (the term "limitation" will also be used in the work, where this term is used in other sources) of rights for the owner of the servient real estate. For this reason, disputes arise which cannot always be resolved by amicable agreement. If no agreement is reached, the property owners are forced to settle the dispute in court, which is a lengthy and financially costly process. During the pre-litigation and litigation process, there are a number of problems that make it difficult to deal with the dispute. For example, failure to warn the servient property owner of the dominant property owner's wish to bring an action before the court; uncertainty as to the content and form of the graphic representation of the servitude territory; incorrect preparation of procedural

[13] Jarkina, V., Niklase, K. 2021. Nepārvarama vara kā pamats līguma izbeigšanai un nepieciešamie Civillikuma grozījumi. 30.06.2020. *Jurista Vārds.* 26 (1136), 17.–21. Retrieved from: https://m.juristavards.lv/doc/276840-neparvarama-vara-ka-pamats-liguma-izbeigsanai-un-nepieciesamie-civillikuma-grozijumi/#txt_3 [acc. 10.03.2023.]

documents; failure to invite third parties to the court hearing; failure to request the servient property owner's explanations when the court decides on the interim protection measure; making erroneous or poorly reasoned rulings, etc. It is unlikely that litigation on servitude of right of way issues will be eradicated. However, by amending the legislation, it may be possible to simplify these proceedings and, in some cases, avoid or reduce unjustified financial costs. For example, by introducing a mandatory pre-trial notice to the owner of the servient immovable property prior to filing a lawsuit for the establishment of a servitude of right of way; by establishing mandatory constituent elements in the content of the statement of claim in servitude cases; by establishing a certain content and form of the graphic representation to be attached to the statement of claim; by developing an out-of-court procedure for the termination of a servitude of right of way based on the statute of limitations, etc.

Analysing the development of the Latvian legal system as a whole, the author finds that in any legal sector, problems become topical only when a relatively significant number of subjects are confronted with them. The legislator focuses on the improvement of the legal regulation of problematic issues when: 1) it is established that problems of a similar nature affect a significant part of society; 2) it is established that negative legal consequences arise or may arise if the identified problem is not solved in the long term or if the solutions already found do not bring the expected results; 3) research is conducted to what extent the improvement of the legal regulation will affect the state or local government budget. The author would call this approach "formal", as she believes that in a state governed by the rule of law, the legal interests of every member of society and the rights guaranteed by the Constitution of the Republic of Latvia must be protected. Therefore, when deficiencies in the legal framework and its practical application are identified,

which affect even a small part of society, the state should respond to them by creating new or improving the already existing legal norms. The creation of new legal rules can be based on different approaches and principles. Professor Edgars Meļķisis, in describing the practical aspects of legal understanding, distinguishes between two approaches to legal understanding: normative and functional. Normativism is explained as the independence of textual content, where legal norms are given an absolute value, their literal understanding. Normativism is oriented towards adherence to the specific textual content of the norm, and deviations from the text are in fact not permissible. The functional approach, on the other hand, is characterised by the flexibility of legal norms and, more generally, of the system as a whole, since a legal norm is designed to contribute, together with other norms, to the achievement of an objective.[14] In assessing the positive and negative aspects of the normative and functional approaches to the understanding of law, the author considers that it is not necessary to limit oneself to a single understanding and approach. When drafting new or amending existing legislation, depending on the objective, the relationship to be regulated and the potential user of the norm, it should be considered whether the legal rule should be specific or flexible. Based on her experience in practice, the author considers that the existence of specific textual content, which is characteristic of normativism, is important for those legal practitioners who do not have a background in jurisprudence and who wish to open the law and see it as a sequential, logical and precise regulation of legal or factual conduct.

[14] Melķisis, E. 1997. Tiesību izpratnes praktiskie aspekti. 22.05.1997. *Latvijas Vēstnesis.* 125. Retrieved from: https://www.vestnesis.lv/ta/id/29874 [acc. 30.06.2023.]

Normativist theory is widely criticised among legal scholars. A comprehensive essay has been devoted to it by Reinhold Zippelius, referred to by the aforementioned Professor E. Meļķisis, German lawyer Karl Larenz,[15] Professor Ineta Ziemele;[16] The Supreme Court Bulletin[17] also contains a critical opinion expressed by Veronika Krūmiņa, Chair of the Senate Department of Administrative Cases.[18] The Ministry of Justice, in cooperation with the Chancellery of the President of the Republic of Latvia, has prepared an Informative Report "Proposals to reduce the number and volume of amendments to external regulatory enactments".[19] Dr.iur. Dita Amoliņa believes that: "It is the knowledge of legal theory and the skill of the legal method that allows us to clarify the content of legal norms and apply them [...]. Using legal methods makes it possible to resolve any legal issue, as it includes a set of all necessary and sufficient techniques for clarifying the content of legal norms."[20] Edgars Korčagins, a member of the Council of the State Audit Office, shares a similar view.[21] The author agrees with D. Amoliņa to the extent that knowledge is required and that legal methods can be used to ascertain the content of a legal norm. However, D. Amoliņa's opinion is expressed in

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15 Larenz, K. 1991. *Methodenlehre der Rechtswissenschaft. Sechste, neu bearbeitete Auflage.* Berlin Heidelberg New York: Springer-Verlag, 214–216.

16 Ziemele, I. 2020. Satversme jāpiemēro atbilstoši apstākļiem, nav nepieciešams normativizēt katru situāciju. 05.05.2020. *Jurista Vārds.* 18 (1128), 12–13.

17 Zvejniece, R. Iznācis Augstākās tiesas Biļetena jaunākais numurs. 10.04.2018. *Jurista Vārds.* 15 (1021), 33.

18 Krūmiņa, V. *Normatīvisms pret zināšanām un tiesisko kultūru.* Augstākās tiesas Biļetens. Nr.16 / 2018 aprīlis. Retrieved from: https://www.at.gov.lv/files/uploads/files/2_Par_Augstako_tiesu/Informativie_materiali/BILETENS16_WEB.pdf 107. [acc. 21.06.2023.].

19 Tieslietu ministrija. 2014. Informatīvais ziņojums "Priekšlikumi ārējo normatīvo aktu grozījumu skaita un apjoma samazināšanai". Iegūts no: https://tap.mk.gov.lv/lv/mk/tap/?pid=40306253&mode=mk&date=2014-08-26 [acc. 01.06.2023.]

20 Amoliņa, D. Izcilība normatīvismā. 14.07.2015. *Jurista Vārds.* Retrieved from: https://juristavards.lv/eseja/266965-izciliba-normativisma/#komentari [acc. 08.06.2023.]

21 Korčagins, E. Tiesisko neskaidrību var kliedēt ar rīcību, nevis gaidīšanu. 15.01.2019. *Jurista Vārds.* 2 (1060), 21–23.

a narrow scope. It should be stressed that not all law enforcers are lawyers who know how to interpret legal rules. It is undisputed that some of the law enforcers are persons who have neither legal education nor any connection with jurisprudence. Lack of knowledge and skills may lead to an interpretation of the law that is not in line with the legislator's intention. The Thesis therefore focuses on issues that may be of relevance to those in society who do not have a background in law.

The official website of the Saeima of the Republic of Latvia states: "The Saeima adopts laws for the whole society."[22] Thomas Jefferson – third President of the United States, politician, philosopher, lawyer, architect[23] said: "Laws are written for the common people, therefore they must be based on simple common sense."[24] William of Ockham, English philosopher and scientist, stresses that "simple explanations are better than complex ones. The more complex the law, the more problems there will be in applying it."[25] The drafting manual of the State Chancellery states that the text of a legislative act should be clear, unambiguous and unequivocal. It explains that the text should clearly and precisely identify the subject and the action. It is also necessary to assess whether the addressee of the legal provisions will understand the purpose of the legal act when reading and interpreting the text.[26] This is in line with

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22 Latvijas Republikas Saeima. Kas ir likums? Retrieved from: https://www.saeima.lv/lv/viegli-lasit/kas-ir-likumi [acc. 03.06.2023.]

23 Explore the life of the man behind the Declaration of Independence and the Louisiana Purchase. Encyclopædia Britannica. Retrieved from: https://www.britannica.com/biography/Thomas-Jefferson [acc. 03.06.2023.]

24 Valsts kanceleja, Tieslietu ministrija, Labklājības ministrija un Ārlietu ministrija. 2016. *Normatīvo aktu projektu izstrādes rokasgrāmata*. Retrieved from: https://tai.mk.gov.lv/book/1/chapter/23 [acc. 08.06.2023.]

25 Broka, B. 2010. *Juridisko tekstu rakstīšana un analīze.* Rīga: Tiesu namu aģentūra, 198.

26 Valsts kanceleja, Tieslietu ministrija, Labklājības ministrija un Ārlietu ministrija. 2016. *Normatīvo aktu projektu izstrādes rokasgrāmata.* Retrieved from: https://tai.mk.gov.lv/book/1/chapter/23 [acc. 08.06.2023.].

Cabinet Regulation No. 108 of 3 February 2009 on "Rules for the Preparation of Draft Legislative Acts", which lays down the most important legal technical requirements to be observed when drafting legislative acts. Paragraph 2.3 of the said Regulation stipulates that the text of a draft regulatory enactment shall be written: in a uniform style appropriate to the regulatory enactments, using uniform and standardised verbal expressions. [27]

Taking into account the above and the author's vision of the ideal model for the development of the legal system and the institute of servitude of right of way, the Thesis as a whole, its conclusions and proposals have been developed according to the principle – a sufficient/optimal legal framework centred on the addressee/plaintiff of the legal norm, i.e. easy to understand, simple to apply; economically sound. The author uses both the normativist and functional approaches already mentioned in developing her proposals for improving legislation.

Aim of the Thesis

To identify theoretical and practical problems in order to develop proposals for further improvement of the institute of the servitude of right of way and for safeguarding the interests of the owners of the dominant and servient immovable property by studying the development of the legal regulation of the servitude of right of way, assessing the legal and practical aspects of the regulation of the interests of the owners of the dominant and servient immovable property, to identify theoretical and practical problems in order to develop proposals for further improvement of the institute of the servitude of right of way and for safeguarding the interests of the owners of the dominant and servient immovable property.

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[27] Normatīvo aktu projektu sagatavošanas noteikumi: Ministru kabineta 2009. gada 3. februāra noteikumi Nr.108. 17.02.2009. *Latvijas Vēstnesis.* 26.

Objectives of the Thesis

1. Explore the concept and legal evolution of servitude of right of way in the context of global changes;
2. Describe the servitude of right of way as an expression of the dominant and servient subject-matter of the legal interests of the owners of the immovable property and third parties;
3. Identify the specificities of judicial and non-judicial dispute resolution in relation to servitude of right of way, improving the legal framework.

Object of the study: legal relations between the owner of the dominant immovable property, the owner of the servient immovable property and the State in the process of establishment and termination of a servitude of right of way.

Subject of the study: the doctrine of the formation and further development of the institute of servitude of right of way, legal framework and its application.

Research questions

1. What was the Ancient Roman regulation of the institution of servitude of right of way and what legal problems did the establishment of servitude of right of way during the land reform, departing from Ancient Roman law, create?
2. How does the current legal framework for servitude of right of way ensure a person's constitutional right to property and a person's right to use another's property?

3. What criteria and principles does the court apply to ensure that the interests of the parties are proportionate when deciding whether to grant interim protection measure or when ruling on the establishment of a servitude of right of way?
4. What legal means are available to balance the interests of the dominant and servient property owners?

Novelty of the Thesis

The novelty of the Thesis is manifested in the following aspects of the research: in Latvia there are no studies devoted to the legal and practical aspects of the interests of the owners of dominant and servient immovable property, but in practice, in the process of establishing, amending or terminating the servitude of right of way, property owners face a number of problems due to incomplete, complex or non-existent legal regulation. Of course, any problem can be solved, but in some cases it requires a disproportionate amount of time and financial resources. Taking into account the rhetorical question raised by Constitutional Court judge Gunārs Kusiņš: "[...] is it wise to replace norms that have in a sense passed the test of life with regulations that are yet to be tested?",[28] believes that it is not always important to make global changes in the legal system. Sometimes it is sufficient to adjust the content of certain legal provisions so that they are easily comprehensible and understandable to any person applying them, without resorting to complex and in-depth interpretation methods of legal norms. Therefore, in an effort to preserve the historical legal norms, the Thesis draws conclusions of a legal and practical nature and puts forward proposals, as a result of which it is proposed to regulate in detail the process of establishing and terminating a servitude of

[28] Tiesību spogulis: zinātnisko rakstu krājums tiesību teorijā un vēsturē. 1999. S. Osipovas zinātniskā redakcija. Tiesību spogulis I. Rīga: Biznesa augstskola "Turība", 86–126, 105.

right of way, using the positive experience of other countries in the legal regulation of the institute of servitude of right of way and the author's practical experience in dealing with servitude cases; a number of definitions and legal provisions have been refined and elaborated, making them easier to understand and apply to the addressee; criteria for the graphic representation of the servitude territory have been set out; guidelines have been developed to assist plaintiffs in drafting a correct statement of claim in servitude cases, as well as pre-trial dispute resolution mechanisms have been proposed, thus relieving the work of courts and speeding up the court or out-of-court settlement of servitude cases.

On 20 April 2021, amendments to the Civil Procedure Law entered into force, introducing a new institution of interim protection measure in civil matters. According to the data compiled by the Court Administration on court decisions on interim protection measure in servitude of right of way cases, a total of 27 decisions were adopted in the period from 25 March 2021 to 6 December 2022.[29] Therefore, it is now possible to assess the functioning of the new regulation in court practice. The author obtained and analysed 17 decisions on interim protection measure in cases of servitude of right of way adopted in the said period and summarised, in the author's opinion, the most important judicial findings. On the basis of the analysis of the court decisions and the case study, proposals have been made. To date, no such analytical compilation of the legal framework for interim protection measure in cases of servitude of right of way has been carried out, so it may be useful for the further development of the institute of servitude.

[29] The Court Administration. 2022. Compilation of data on court decisions on the provision of interim protection measure in cases of servitude of right of way. Letter to the Author of 06.12.2022. Unpublished. Located in the Author's archive.

Based on the analysis of case law materials and the analysis of the procedural conduct of court hearings, the author draws a number of conclusions and puts forward proposals on possible mechanisms for dispute resolution in pre-trial proceedings, the circulation of documents, the principles of adjudication and the conduct of proceedings. The legal doctrine has conducted studies and provided descriptions of the litigation process in general, however, no studies have been found analysing and describing in detail the specific features of the litigation in servitude cases.

The author developed "Guidelines for the preparation of an application in disputes concerning the establishment of a servitude of right of way", which can be used as an aid in the preparation of an application for the establishment of a servitude of right of way or an application for interim protection measure. The guidelines have a practical contribution – they can be useful for persons who do not use the services of a legal aid provider, can be used in the study process (law students), as well as in the work of representatives of legal professions.

In subsection 1.1, the historical aspects of the institution of servitude of right of way in Ancient Rome are revealed in detail, based on the study and analysis of the Roman primary sources – the codification parts of Justinian's *Codex Iustinianus* (Justinian Code). *Digesta seu Pandectae* and *Institutiones sive elementa* (Institutions or Elements). To date, Roman law scholars have not focused in depth on the precise sources of the servitude of right of way and on the in-depth aspects of the legal framework. Therefore, the results of the study of Roman primary sources contribute to the assessment of this legal institution in the context of Latvian law, revealing the range of problems caused by the establishment of servitude of right of way during the land reform, deviating from Ancient Roman law.

The theoretical basis of the Thesis consists of the study of both valid and expired normative acts, the study of the norms regulating servitudes in Ancient Rome in primary sources. The opinions expressed in Latvian and foreign legal doctrine on the legal regulation of servitude of right of way have been studied and reflected. The most important authors are A. Grūtups, M. Auders, G. Višņakova, K. Balodis, O. Joksts, A. Apsītis, J. Rozenfelds, H. R. Zipelius, H. *Dernburg* and P. Sokolowski. Press publications and Internet materials have been used. The author has analysed the findings of legal scholars, on the basis of which the theory and practical aspects of servitude of right of way have been further developed and shaped. Thus, the Thesis has both theoretical and practical significance. The theoretical significance is manifested in the identification of problems in the understanding of servitude of right of way and their theoretical analysis. In the process of studying the interaction between the legal regulation and practical application of servitude of right of way, the decisions of the district (city) court, the regional court and the supreme court have been analysed. The decisions of the Constitutional Court of the Republic of Latvia were used to reveal the content of property rights and the legitimate aim of restrictions on property rights.

The empirical basis of the study consists of a survey on the perceptibility of the definition of servitude of right of way; case analysis and the author's personal practice – outlining and analysing issues related to servitude of right of way within the legal relations of specific natural persons; case law materials identifying and illustrating the existing problems related to servitude of right of way; minutes of discussions with representatives of the Ministry of Justice.

Methods used in the elaboration of the Thesis

General scientific research methods:

The historical method was used to study the concept and essence of servitudes, the legal and practical expression of servitude of right of way in Ancient Rome and their reflection in modern law, to analyse the principles and circumstances of the adoption of land reform legislation and its further development, highlighting the shortcomings and impact on the legal relations of real property owners.

The analytical method was used to study the legal acts adopted during the land reform, identifying how and why the problems related to servitude of right of way developed. The legislation governing the establishment, amendment and termination of servitudes and its practical application in the context of the interaction between the rights and obligations of the owners of the dominant and servient immovable property were studied. The findings of the Constitutional Court and the courts of general jurisdiction in their decisions and legal doctrine in the context of the issue under study were also analysed.

The descriptive method was used to study in detail the content and manifestation of servitudes as encumbrances on immovable property, which result in restrictions on property rights, the procedure and grounds for establishing servitude of right of way, by collecting information and providing explanations based on the research, identifying problems and proposing their legal and practical solutions.

The inductive method was used to study the problems of the legal regulation of restrictions on property rights and to draw general conclusions;

The deductive research method was used to study the foundations of the establishment of real property encumbrances and the determination of restrictions on property rights, with concrete conclusions;

The logical-constructive method – to formulate concrete proposals of the author, to improve the legal framework.

The modelling method was used to develop conceptual solutions to current problems related to servitude of right of way.

Case analysis – based on an examination of specific cases / court judgments.

Interview – discussing the legal nature, content and practical significance of the graphical representation of a servitude of right of way with a specialist in the field – a certified land surveyor, interview of MJ representatives.

Content analysis – used for concept analysis based on the number of legal institutes in laws and regulations.

Methods of interpreting legal rules:

Historical – explaining the economic, social and historical conditions that led to the legislator's choice to regulate social relations through a legal norm to address the issues related to servitude of right of way. *Grammatical* – to clarify the exact concept and content of the servitude of right of way from the linguistic point of view, by studying the legal norms included, for example, in such laws as: the Civil Law, the Baltic Collection of Local Laws, the Land Registry Law, the State Immovable Property Cadastre Law, etc. *Systematic* – by interpreting the legal provisions governing servitude of right of way in the of the Civil Law in conjunction with land reform laws and other legislation, as well as the Constitution. *Teleological* – interpreting the substantive purpose of the legal regulation of servitude of right of way, which regulates the legal relations between the owners of the servient and dominant immovable property in the process of establishment and termination of the servitude of right of way.

The structure of the Thesis is designed to meet the objectives of the Thesis, to achieve the set goal and to reveal the essence of the problems studied. The Thesis consists of an introduction and three chapters, divided into subsections.

In the first chapter, the author introduces the concept of servitude of right of way and analyses the legal development of servitude of right of way, focusing on the study of Ancient Roman primary sources, as well as the problems and implications of servitude of right of way established during the land reform for the owners of dominant and servient properties. The chapter also analyses the conceptual scope and legal manifestation of the servitude of right of way as an encumbrance and restriction on the right of ownership of an immovable property object. In the process of elaborating the definition of servitude and developing new definitions, certain aspects of the legal regulation of servitudes in other countries (Lithuania, Estonia, Germany, France, Switzerland, the Russian Federation, Moldova, Ukraine, the Czech Republic and Thailand) are also examined.

The second chapter is devoted to the peculiarities and practical problems of the establishment and termination of a servitude of right of way. It reveals the peculiarities of establishing a servitude of right of way, describes the foundations and prerequisites for the establishment. One of the most important elements of the establishment of a servitude of right of way is the graphic representation of the servitude of right of way, therefore a separate sub-chapter is devoted to the analysis of the meaning, content, form and design of the graphic representation of the servitude of right of way and the problems related to it. In certain cases, a servitude of right of way can only be established or terminated with the consent of a third party. The Thesis therefore reveals the legal status of third parties, their rights and the possible impact of the decision on the interests of the dominant and servient property owners. Servitude

of right of way can be terminated on a number of grounds set out in the Civil Law, but the Thesis deals only with those grounds of termination which are problematic.

The third chapter examines the decisions of the district (city) court, the regional court and the supreme court, assessing how the courts apply and interpret legal norms to ensure fairness and balance the interests of the parties. It also illustrates the problems that exist in the litigation process in cases of interim protection measure and the establishment of a servitude of right of way. The study of the decisions selects and analyses the criteria to which the court attaches importance when deciding on the proportionality of the interests of the owners of the dominant and servient immovable property and on the granting or rejecting of claims in whole or in part.

The author believes that the successful functioning of a legal system in a country depends not only on an orderly regulatory base, but also on the legal mentality of a social group, a nation or a set of people, influenced by the level of development of society;[30] on the legal culture, which consists of the intellectual moment (knowledge and understanding of the law) and respect for legality;[31] on the enshrinement of moral principles in jurisprudence, inherent in natural law and which "[...] call and guide man to an understanding of dignity and duty, love and benevolence [...].[32] Therefore, the content of the author's Doctoral Thesis is also aimed at promoting the development of legal culture and strengthening moral principles in the public consciousness.

The conclusions and proposals drawn from the research are summarised in the Theses and included at the end of the paper. The paper covers a total of 125 pages.

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30 Krastiņš, I. 1995. *Tiesību teorijas pamatjēdzieni*. Rīga: LU tipogrāfija, 4.
31 *Ibid.,* 11.
32 Krastiņš, I. 1998. Tiesību doktrīnas. 2.izd. [b.i], 14.

Approval and publication of the dissertation research results. The author has published several scientific publications on the research topic in both local and international peer-reviewed collections of articles – 17 in total., 4 textbooks designed for law students have been published, which also contain an outline of the research topic. The author has presented oral reports at 42 international and local scientific conferences. 24 abstracts have been published in the framework of international and local scientific conferences (see List of publications, reports and patents on the subject of the doctoral thesis on page 78).

1 Concept and legal evolution of servitude of right of way in context of global change

The institution of a servitude of right of way has a long history and a long history of development. This chapter is devoted to the study of the legal construction of the servitude of right of way in Ancient Roman law. It then analyses the concept of a servitude of right of way, with particular attention to the use of terms, their gaps and contradictions. Finally, the specificities and problems of defining servitude of right of way during the land reform and their impact on the development and practical implementation of servitude of right of way are revealed.

1.1 Legal construction of a servitude of right of way in Ancient Roman law

To date, there are no studies in legal doctrine that have examined in detail the legal expression of a servitude of right of way in Roman law. Therefore, the author, in collaboration with Roman law scholar Dr. iur. Allars Apsītis, conducted a study of the information contained in the so-called Justinian codification **(***Codex Iustinianus,*[33] *Digesta seu Pandectae*[34] and *Institutiones sive elementa*[35]) with the aim of presenting the legal regulation of servitude of right of way and revealing its peculiarities. The results of the

[33] Krueger, P. 1906. Corpus Iuris Civilis. Editio Stereotypia Octava, Volumen Secundum, Codex Iustinianus, Recognovit P. Krueger. Berlin: Weidmannos, 141, 142.

[34] Krueger P., Mommsen T. 1928. Iustiniani Digesta, Corpus Iuris Civilis. Editio Stereotypia Quinta Decima, Volumen Primum, Institutiones, Recognovit P. Krueger, Digesta, Recognovit T. Mommsen, Retractavit P. Krueger. Berlin: Weidmannos, 143, 144, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 741.

[35] Krueger, P., Mommsen, T. 1928. Iustiniani Institutiones. Corpus Iuris Civilis, Editio Stereotypia Quinta Decima, Volumen Primum, Institutiones, Recognovit Paulus Krueger, Digesta, Recognovit Theodorus Mommsen, Retractavit Paulus Krueger. Berlin: Weidmannos, 13.

research can be found in the scientific article "The institution of the servitude of right of way (via) in Roman law",[36] , which shows that in Ancient Roman law there were legal norms which would be relevant for the modern regulation of the institution of the servitude of right of way, but which have not been taken over in the Civil Law. The most relevant ones are therefore described below.

General characteristics and absolute, in rem nature of a servitude of right of way: in Roman law, a neighbour had no right to cross another's land unless a servitude was established (C 3.34.11). In the case of rural property, several real servitudes or rights (*iura)* could be established to meet the logistical needs of the land: a servitude of the footpath (*iter*), a servitude of the cattle drive (*actus*), a servitude of the road (*via*) (see[I] 2.3, D 8.3.1) and they were also binding on subsequent owners of encumbered land (D 8.1.19, D 8.1.20, C 3.34.3, D 8.4.12).

Unlike the existing rules in the of the Civil Law (except Section 1317 CL), in Roman law, if the property was pledged, the pledgee also had a broad right to the protection of the servitude (D 8.1.16). Today, this right would be of practical importance, since the creditor could take care of his own interests.

Establishment of a servitude of right of way: a servitude could be established either by agreement – pact, contract or will (I 2.3.4, D 8.1.5, C 3.34.3) or by purchase from the landowner. A payment from the owner of the next servient parcel to the owner of the next servient parcel – a de facto purchase of the servitude – could also serve as a motivation for establishing the servitude. However, no payment for the use of an already established servitude was envisaged. The modern Civil Law does not regulate fees, so the author analysed this issue in her academic articles published in 2006[37] and in 2007[38],

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[36] Apsītis, A., Dinsberga, J. 2022. Ceļa servitūta (via) institūts romiešu tiesībās. 04.01.2022. *Jurista Vārds.* 1 (1215), 25–32.

[37] Dinsberga, J. 2006. Maksas noteikšana par servitūta ceļa lietošanu. *Administratīvā un krimināla justīcija.* Latvijs Policijas akadēmija. ISSN 1407-2971. 4 (37), 50–54.

concluding that the owner of the servient immovable property is entitled to claim a fee for the use of the servitude of right of way.

The legal framework for servitudes over roads crossed by a public river was peculiar: although the land of the same owner continued across the public river, a separate servitude had to be established to continue the servitude. If this formality was observed, the servitude road continued on the opposite side of the river (D 8.3.38).

Establishing a servitude of right of way in the case of joint ownership: if the property to be encumbered by the servitude was jointly owned by several persons, the establishment of the servitude required the consent of all the joint owners. The consent of the joint owners could not be withdrawn (D 8.3.11). In the author's opinion, such a regulation served as a guarantee of legal stability and certainty in legal relations, which is lacking in the modern statutory regulation. Chapter 2 of the Thesis deals with this aspect in more detail.

Width and location of the servitude: the author concludes that the Ancient Romans paid particular attention to the practical implementation of the right of use, e.g. according to the Law of the Twelve Tables the width of a servitude is eight feet in a straight line and sixteen in a curve (D 8.3.8). A rational approach was also manifested in the prohibition to establish a servitude of right of way in the middle of immovable property (D 8.1.9). In Latvia, there is no such limitation, so it is possible to establish a servitude of right of way also in the middle of a land unit (see the judgment of the Zemgale District Court of 5 March 2019,[39] the judgment of the Zemgale Regional Court

[38] Динсберга, И. 2007. Определение платы за использование дорожного сервитута. Международный научн-практический правовой журнал *"Закон и жизнь".* ISSN 1810-3081, 6 (187), 36–40.

[39] Zemgales rajona tiesas 2019. gada 5. marta spriedums lietā Nr. C73405818. Document located in the Zemgale District Court archive / Author's personal archive.

of 20 February 2020,[40]), thereby prejudicing the interests of the owner of the servient immovable property.

Termination of a servitude of right of way: unlike the grounds for termination of a servitude of right of way in Section 1237 of the Civil Law – the expiry of a revocation condition or time limit, Roman law did not allow termination of a servitude of right of way on such grounds.

1.2 Servitude of right of way – conceptual scope and legal expression

According to Section 1130 of the Civil Law "A servitude is such right in respect of the property of another as restricts ownership rights regarding it, with respect to utilisation, for the benefit of a certain person or a certain parcel of land.". Subjects of legal relations of servitude can be – natural persons and legal persons, as set out in Section 1131 of the Civil Law.[41] However, "[...] there are two other categories of civil law subjects in Latvia endowed with legal capacity [...] to participate in the commercial legal system."[42] Under the Commercial Law, a general partnership and a limited partnership may acquire rights and assume obligations, acquire property rights and other property rights, and be plaintiffs and defendants in court.[43] Neither Section 1131 of the Civil Law nor the Land Register Law mentions general partnerships and limited partnerships as subjects of servitude rights. At the same time, these partnerships are registered in the Land Register as owners of immovable property.

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40 Zemgales apgabaltiesas Aizkrauklē 2020. gada 20. februāra spriedums lietā Nr. C73405818. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi. [acc. 21.07.2023.].

41 Civillikums: Latvijas Republikas likums. 24.02.1937. *Valdības Vēstnesis.* 44.

42 Balodis, K. 2007. *Civiltiesību pamati.* Rīga: Zvaigzne ABC, 73.

43 Komerclikums: Latvijas Republikas likums. 90. pants. 04.05.2000. *Latvijas Vēstnesis.* 158/160; 01.06.2000. *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs.* 11.

Therefore, the circle of servitude subjects should be specified in the normative acts.

The definition in Section 1130 of the Civil Law uses the term "parcel of land", but the law does not explain it. The Land Management Law states that this term corresponds to the term "land parcel" used in the State Immovable Property Cadastre Law,[44] which is defined as "a demarcated plot of land registered in the State Immovable Property Cadastre Information System, to which a cadastral designation is assigned".[45] However, in the author's opinion, this description should be supplemented by Section 1042 of the of the Civil Law and Section 3(1) and Section 1(20) of the Law "On Subterranean Depths",[46] which define the ownership of subterranean depths and explain its concept. In other words, the grant of a right of use of a servitude of right of way confers on the user the right to use the subsoil up to a certain level (depending on whether the road is in the form of a rutted track or a constructed utility structure) and the airspace.

The definition of Section 1130 of the Civil Law does not cover the whole set of servitudes, but only those servitudes relating to "a parcel of land (to be established in favour of the parcel of land), but a servitude of right of way is also to be established in favour of buildings. Therefore, in Section 1130, the term "parcel of land" should be replaced by the term "immovable property".

Precise and uniform use of terms, clarity and comprehensibility are also important, but the existing definition of servitude in the of the Civil Law is legally complex, which makes it difficult to comprehend and understand. This

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[44] Zemes pārvaldības likums: Latvijas Republikas likums. 1. panta otrā daļa. 15.11.2014. *Latvijas Vēstnesis.* 228.

[45] Nekustamā īpašuma valsts kadastra likums: Latvijas Republikas likums. 1. panta 11. punkts. 22.12.2005. *Latvijas Vēstnesis.* 205; 12.01.2006. *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*. 1.

[46] Par zemes dzīlēm: Latvijas Republikas likums. 21.05.1996. *Latvijas Vēstnesis.* 87; 11.07.1996. *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs.* 13.

is confirmed by the results of a survey (see Annex 1) of 100 respondents with no legal background. The author finds that also the laws of other countries (Lithuania, Estonia, Germany, Switzerland, Russian Federation, Moldova, Ukraine, Czech Republic and Thailand) have relatively complicated definitions of the servitude (except France) (see Annex 2 for a summary of definitions).

Not only the complex wording of definitions, but also their absence, makes the application of legal provisions difficult. For example, the of the Civil Law does not define terms such as "servitude of right of way" (right of use) and "servitude road" (road as a physical object / engineering structure), which are widely used in practice. It is also important to distinguish between similar terms in the context of servitude law, such as "encumbrance" and "restriction" – a servitude of right of way is an encumbrance that results in restrictions on property rights.

1.3 Servitudes of right of way established during land reform and their impact on rights and obligations of property owners

During the land reform initiated in 1990, the State Land Agency, land commissions and municipalities had the right to establish servitude of right of way by administrative act. It is possible that the incorrect interpretation and application of the laws and regulations on the establishment of servitude of right of way resulted in legally incorrect decisions, which, for example, identified the servient immovable property but did not specify the dominant one; did not mark the servitude roads on the land boundary plans or attach graphic annexes with the marked servitude roads to the decisions; did not specify the width, length, etc. of the road; and did not provide for a specific indication of the servitude road's length. As a result, servitude of right of way established by administrative act today do not fulfil their function and give rise

to a number of legal and practical problems. Some of the problems identified have already been identified and discussed by the author in her publications[47] of 2003 and[48] of 2018.

The servitude of right of way must be registered in the Land Register of the servient immovable property as an encumbrance in favour of the dominant immovable property. The servitude of right of way established at the time of the land reform were entered in the Land Register in the form of a notation, which does not confer a right of usufruct. Explanations of the difference between "notations" and "entries" were not relevant at the time. On the contrary, the author notes that even misleading explanations could be found on official websites, such as "[...] a notation [...] is the basis for the use of the road even if the document on which the servitude of right of way is based does not identify the dominant immovable property".[49] However, the starting point for understanding the difference between an "entry" and a "notation" in the Land Register was the judgment of the Senate of 9 October 2013, in which the Court stated that "[...] the decision of the municipality and the notation in the Land Register do not confirm the establishment of a driveway servitude of right of way",[50] thus specifying the legal status of a servitude of right of way secured by a notation.

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47 Dinsberga, J. 2003. *Servitūti un ar to nodibināšanu saistītās problēmas.* Rīga: LPA Raksti, 10.

48 Dinsberga, J., Bite K. 2018. *Legal consequences and problems of the servitudes of right of way established by administrative acts in Latvia*. SHS Web Conferences. Volume 40, 2018., eISSN: 2261-2424. DOI: 10.1051/shsconf/20184001011 [acc. 24.04.2022.].

49 Novikova, K. 2013. Atzīme zemesgrāmatā par servitūtu ir pamats ceļa izmantošanai. Retrieved from: https://lvportals.lv/e-konsultacijas/2163-atzime-zemesgramata-par-servitutu-ir-pamats-cela-izmantosanai-2013 [acc. 07.11.2021.].

50 Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2013. gada 9. oktobra spriedums lietā Nr. SKC-458/2013. Retrieved from: http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/civillietu-departaments/hronologiska-seciba?year=2013 [acc. 24.04.2019.].

It was not until 2013 that issues related to servitude of right of way received national priority, but in 2014 a Conceptual Report on the problems related to servitude of right of way established during the land reform was prepared,[51] providing possible solutions to the problems. However, in 2017 the Conceptual Report became obsolete,[52] as the MoEPRD took the position that disputes related to servitude of right of way established during the land reform should be resolved through civil proceedings.

During the land reform, the State departed from the the Civil Law basis for establishing servitude of right of way, creating a number of problems for property owners. In the author's view, the State also violated the principle of legitimate expectations.

Although the legislator tried to address the problems related to servitudes by adopting the Land Management Law,[53] regulating the use and alienation of land necessary for road maintenance, it further restricts the rights of some property owners, as they have to put up with third parties moving on their land, and are denied the possibility to receive fair compensation for granting the use of a road on their property.

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51 Vides aizsardzības un reģionālās attīstības ministrija. 2016. Konceptuālais ziņojums "Par problēmām saistībā ar zemes reformas laikā nodibinātajiem ceļu servitūtiem un to iespējamajiem risinājumiem." Retrieved from: http://www.varam.gov.lv/lat/lidzd/attistibas_planosanas_dokumentu_projekti/. Link not active. Document source located in MoEPRD / Author's personal archive [acc. 13.03.2017.].

52 Vides aizsardzības un reģionālās attīstības ministrija. 2017. *Informatīvais ziņojums "Par Ministru kabineta 2013.gada 29.oktobra sēdes protokollēmumā (prot. Nr.56 105.§) "Likumprojekts "Zemes pārvaldības likums"" Vides aizsardzības un reģionālās attīstības ministrijai, Satiksmes ministrijai, Tieslietu ministrijai un Zemkopības ministrijai dotā uzdevuma atzīšanu par aktualitāti zaudējušu"*. Retrieved from: http://tap.mk.gov.lv/lv/mk/tap/?pid=40422260&mode=mkk&date=2017-11-13 [acc. 14.11.2021.].

53 Zemes pārvaldības likums: Latvijas Republikas likums. 8., 8.[1] pants. 15.11.2014. *Latvijas Vēstnesis.* 228(5288).

To summarise, the chapter concludes that the uniqueness of Ancient Roman law has been preserved to the present day, and that some of the problems that arise between property owners today can be solved by supplementing the of the Civil Law with certain legal provisions derived from Roman law and adapted to modern times.

When drafting new or amending existing laws and regulations, it is important to adhere to the principle: the law must be easy to understand and apply. Therefore, a precise and simple definition of the content of the definitions, as well as the definition of new terms that are widely used in laws and regulations and in practice, are essential for the development of the legal framework for servitude of right of way.

Despite the fact that the problems related to the servitude of right of way established during the land reform were identifiable and even preventable in the early days of the land reform, they were addressed relatively late at the national level, without finding a rational and favourable solution for the property owners.

2 Servitude of right of way as a subject of legal interests of owners and third parties of dominant and servient immovable properties

This chapter reveals the essence of the servitude of right of way as an object of legal interest by analysing the foundations and prerequisites for the establishment and termination of a servitude of right of way, by demonstrating the problems faced by property owners in case of deficiencies in the legal regulation of the graphic representation of the servitude territory; it analyses the status of third parties and the impact of their decisions on the establishment and termination of a servitude of right of way; it examines the problems of terminating a servitude of right of way established on immovable property.

2.1 Specific features and practical problems of establishing a servitude of right of way

2.1.1 Conditions for establishing and types of a servitude of right of way

According to Supreme Court Judge K. Balodis, servitudes are rarely established ***by law***. A specific servitude is established if it is expressly provided for in the law.[54] The author believes that when establishing a servitude of right of way, the law should specify not only the specific type of servitude of right of way, but also the following elements: 1) the immovable property on which the servitude of right of way is to be established; 2) the land unit comprising the immovable property; 3) the immovable property or person for whose benefit the servitude of right of way is to be established; 4) the parameters of the servitude of right of way – length, width, total area occupied by the servitude of

[54] Višņakova, G. un Balodis, K. 1998. *Latvijas Republikas Civillikuma komentāri: Lietas. Valdījums. Tiesības uz svešu lietu (841.-926.p., 1130.-1400.p.).* Rīga: Mans īpašums, 130.

right of way. However, the author assumes that the establishment of a servitude of right of way by law will continue to be implemented in rare exceptional cases.

Servitude of right of way is established ***by a will*** on the basis of Section 1231(3) of the Civil Law. Lawyer J. Berger points out that the formal nature of the testamentary instrument forces the testator to observe the utmost care, clarity and certainty when making a will and also safeguards the execution of the instrument in cases where disputes arise.[55] There is no dispute as to the servitude of right of way as the subject-matter of the legatum.[56] However, the testator must define the legatum clearly and unambiguously, but the testator is not obliged by the legislation to specify the parameters of the servitude of right of way – length, width, total area occupied and location. In the author's view, the law should expressly state that the parameters of the servitude must be precisely defined in the will.

The Paragraph Two of Section 1159 of the Civil Law contains a regulation for cases where the testator has not marked the place of the servitude of right of way in detail, stating that the choice of the location and the direction of the right of way devolves to the bearer of the servitude.[57] But it does not address the problems that arise when the width, length, total area of the road are not specified in the will. It is also not clear what is meant by the term "servitude bearer". It is clear from the comments of Supreme Court Judge K. Balodis that the "servitude bearer" is the user of the servitude,[58] i.e. the owner of the dominant estate. The author does not share this view. The glossary

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55 Bergers, J. 1940. *Testamenta forma.* Rīga: [b.i.]. 3, 18, 19.

56 Krauze, R. un Gencs, Z. 1997. *Latvijas Republikas Civillikuma komentāri. Mantojuma tiesības (382.-840.p).* Rīga: Mans Īpašums, 113.

57 Civillikums: Latvijas Republikas likums. 24.02.1937. *Valdības Vēstnesis.* 44.

58 Višņakova, G. un Balodis, K. 1998. *Latvijas Republikas Civillikuma komentāri: Lietas. Valdījums. Tiesības uz svešu lietu (841.–926. p., 1130.–1400. p.).* Rīga: Mans īpašums, 88.

explains "to bear" figuratively as to endure, to tolerate (something unfavourable).[59] Professor J. Rozenfelds emphasises that it is the owner of the servient thing who is obliged to tolerate the limitations imposed by the servitude.[60] It can be concluded that the "person using" the servitude is the owner of the dominant estate. This conclusion is reinforced by the Roman primary sources,[61] Justinian's Codification (Gothofred D. ed. 1828),[62] as well as the content of Section 1124 of the German edition of the Baltic Local Law Collection. [63]

A court judgment establishes a servitude of right of way if there is a genuine need for it and the interested party has brought an action in court seeking justice. For a more detailed analysis of the establishment of servitude of right of way by a court judgment, see Chapter 3 of the Thesis.

When establishing a servitude of right of way by a contract, the provisions of Section 1404 of the Civil Law must be observed – the parties, the subject matter, the expression of the intent, the elements and the form must be taken into account. The parties to a legal relationship draw up contracts of very different content and scope. Sometimes they contain only a few sentences, including only the essential elements and accompanied by a graphic representation of the servitude territory. The author considers that the content

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59 Spektors, Andrejs et al. Tēzaurs.lv, 2023, Vasaras versija. CLARIN-LV digitālā bibliotēka. Termins "nest". 1.5. punkts. Retrieved from: https://tezaurs.lv/virziens:1 [acc. 11.11.2023.].

60 Rozenfelds, J. 1993. *Civillikums. Trešā daļa. Lietu tiesības ar komentāriem.* Rīga: Rīgas juridiskā konsultāciju sabiedrība "Rasa", 69.

61 Apsītis, A., Dinsberga, J. Ceļa servitūta (via) institūts romiešu tiesībās. *Jurista Vārds.* 04.01.2022., 1(1215).

62 Gothofredus, D.; Modius, F; Van Leeuwen, S. eds. 1828. CORPUS JURIS CIVILIS ROMANI, TOMUS PRIMUS, NEAPOLI, APUD JANUARIUM MIRELLI BIBLIOPOLAM, MDCCCXXVIII. Retrieved from: https://archive.org/details/corpusiuriscivil01gode/page/478/mode/2up?view=theater , [acc. 23.11.2022.], 478.

63 Provincialrecht der Ostseegouvernements. 1846. Dritter theil. Privatrecht. St.Petersburg. In der Buchdruckerei der Zweiten Abtheilung Seiner Kaiserlichen Majestat Eigener Kanzlei, 193.

of a contract of a servitude of right of way should be drafted in detail so that the rights and obligations of the parties are clearly defined. This would avoid disputes, which most often arise precisely because the contract is too concise.

The preconditions for the establishment of a servitude of right of way are factual circumstances which establish the absolute necessity for the establishment of the servitude of right of way as well as the feasibility of its establishment. As a result of the study, the author identifies the following preconditions for the establishment of a servitude of right of way: 1) two/several immovable properties which are legally interconnected; 2) certain subjects – owners of immovable properties; 3) mutual location of the dominant and servient immovable properties; 4) the ability of the servient immovable property to provide a lasting and permanent benefit to the dominant property, which follows from Section 1146 of the Civil Law. In paragraph [10] of its judgment of 4 July 2017, the Supreme Court held that a servitude chosen by the plaintiff can only confer a lasting and permanent benefit if it is combined with a servitude to be established over immovable property against which there has been no claim.[64] During the hearing at the Ogre District Court, it was established that between the immovable property of the plaintiff A.R. and that of the defendant I.B. there is an immovable property whose owner has died and whose heirs have not claimed the inheritance.[65] Consequently, a break between the immovable properties of the plaintiff A.R. and the defendant I.B. was created, which indirectly affected the progress of the proceedings for the establishment of the servitude of right of way. The author points out that, in the

[64] Latvijas Republikas Augstākās tiesa Civillietu departamenta 2017. gada 4. jūlija spriedums lietā Nr SKC 229/2017. Retrieved from: https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs/civillietu-departaments/hronologiska-seciba?lawfilter=0&year=2017 [acc. 23.11.2022.].

[65] Zemgales rajona tiesas Ogrē 2019. gada 5. marta spriedums lietā Nr.C73405818. Document source located in the Zemgale Court of Ogre City archive / Author's personal archive.

event of a so-called break, there is a risk that the court will not uphold the claim, since the established servitude is only usable to the other property, through which no right of access has been established.

2.1.2 Graphic representation of servitude territory – one of constituent elements in establishing a servitude of right of way

According to the Land Registry Law,[66] a servitude of right of way or a security for this right is established or amended in the Land Registry if the request for confirmation is accompanied by a "graphic representation of the servitude territory", which is a newly introduced term, but is not defined in the regulatory enactments. In addition, some inconsistency in the use of the term in other laws and regulations has been noted with regard to the term already mentioned. For example, the Cabinet of Ministers' Regulation No. 263 of 10 April 2012 "Regulations on cadastral object registration and cadastral data updating",[67] uses the term "*graphical annex*". On this basis, the author sees shortcomings in the regulatory enactments in the absence of a definition and in the context of different usage of terms.

The currently valid normative acts also do not regulate the legal status of the graphic representation of the servitude territory, its content, do not set specific requirements for its design, and do not define the subjects entitled to develop it. Therefore, various documents depicting the territory to be encumbered by the servitude serve as a graphic representation of the servitude territory, but the depiction is not always accurate.

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66 Zemesgrāmatu likums. Latvijas Republikas likums. 56. panta ceturtās daļas 2. punkts. 29.04.1993. *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs.* 16/17.

67 Kadastra objekta reģistrācijas un kadastra datu aktualizācijas noteikumi: Ministru kabineta 2012. gada 10. aprīļa noteikumi Nr.263. 02.05.2012. 107.^{2} 1., 107.^{2} 3. un 169.^{2}punkts. *Latvijas Vēstnesis.* 68.

The above shortcomings hinder and complicate the reaching of an agreement and the progress of the proceedings before the court. For example, the Cēsis District Court heard civil case No. C11091915[68] in which the plaintiff requested the establishment of a 6-metre-wide servitude of the carriageway. A certified surveyor made a graphic representation of the servitude territory (plan),[69] in which, guided by the actual situation in nature, he indicated the specific coordinates of the attachment to the road already existing in nature (see Annex 3). As a result, contradictions arose between the request in the application for the establishment of a 6-metre-wide servitude of right of way and the plan submitted by the plaintiff, where the width of the servitude of right of way between the coordinate points differed drastically. The Court held that the plan was not valid as a document supporting the establishment of the servitude of right of way and adjourned the hearing for specification and resubmission of the plan.

Annex 4[70] and Annex 5[71] of the Thesis contain graphic representations (plans) of the servitude territory submitted by the plaintiffs in other proceedings.

The examination of the graphical representations (plans) of the servitude territory in Annexes 3, 4 and 5 shows that there are differences in the wording of the names, the location of the coordinates, the indication of the width and length of the road. Annex 4 contains all the parameters of the servitude but no

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68 Cēsu rajona tiesas lietas Nr. C11091915 materiāli. Document located in the Cēsu District Court archive / Author's personal archive.

69 Topogrāfiskais plāns ar 10.10.2016. VZD kadastra robežām. 2016. Cēsu rajona tiesas civillietas Nr. C11091915 materiāli. Document located in the Cēsu District Court archive / Author's personal archive.

70 Vidzemes rajona tiesas lietas Nr. C-0601-21 materiāli. Document located in the Vidzeme District Court archive / Author's personal archive.

71 Skice ceļa servitūta nodibināšanai. 2022. Rīgas rajona tiesas civillietas Nr. C33577721 materiāli. Document located in the Riga District Court archive / Author's personal archive.

reference to coordinates. The author considers that the graphic representation of the servitude territory should necessarily contain coordinates at the start, end and turning points of the road, thus guaranteeing the accuracy of the road layout. Therefore, in the author's opinion, the plan in Annex 4 is the most accurate and contains all the necessary elements.

2.1.3 Legal status and rights of third parties in process of establishing a servitude of right of way

The owners of the dominant and servient immovable properties, and in some cases third parties, are involved in the process of establishing a servitude of right of way. According to the Land Registry Law,[72] when reviewing a request for corroboration or termination of a servitude of right of way, the judge must ascertain that the consent of third parties has been obtained if the corroboration affects the rights of these third parties.

In the process of establishing a servitude of right of way, all actions must be coordinated with the ***joint owners***, which follows from Section 1068(2) and Section 1232(2) of the Civil Law, Section 61(2) and (3) of the Land Registration Law. Problems are not only encountered if the actions are not coordinated, but also if during the formalities one of the joint owners changes his/her mind and does not agree to the establishment of the servitude of right of way. This complicates or even stops the progress of the process. But the solution to this problem can be found in Ancient Roman law – the joint owners who had already given their consent to the servitude could not withdraw it. In the author's opinion, this limitation of the right (prohibition of withdrawal of consent) is of significant practical importance today and should therefore be legally enshrined.

[72] Zemesgrāmatu likums: Latvijas Republikas likums. 77. pants. 29.04.1993. *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs.* 16/17.

The rules that apply to joint owners in their classical sense also apply to ***spouses*** who are joint owners, since the encumbrance of a right in rem on the spouses' joint immovable property requires the consent of the other spouse,[73] which must be given in a manner analogous to the consent of joint owners.

In cases where mortgages are attached to an immovable propert, according to Section 1234(2) of the Civil Law, a servitude limiting the rights of the ***mortgage creditors*** may be imposed on such property only with their consent.[74] In its judgment of 23 January 2020, the Senate held that the judgment under appeal was unfounded, since the creditor's consent had not been submitted in the case.[75] It should be noted that the case-law has established that consent to the encumbrance of the mortgaged thing is not related to the establishment of any servitude, but only of the one that limits the rights of the creditor (see the judgment of the Supreme Court of 12 September 2012,[76] the judgment of the Supreme Court of 9 October 2013,[77] paragraph 21 of the Compendium of the Supreme Court of the Republic of Latvia "On Case

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73 Latvijas Republikas Labklājības ministrija. Latvijas Republikas Tieslietiu ministrija. 2016. *Pirmslaulību mācību programma personām, kuras vēlas reģistrēt laulību dzimtsarakstu nodaļā. Laulības tiesiskie, psiholoģiskie, ētiskie un sadzīves aspekti. Metodiskais materiāls programmas satura modulim. Laulības tiesiskie aspekti.* Zemgales reģiona kompetenču attīstības centrs. Saturu izstrādāja Mg.iur. Jānis Maulis. Retrieved from: https://www.tm.gov.lv/sites/tm/files/2_modulis1.pdf [acc. 29.05.2023.], 32.

74 Civillikums: Latvijas Republikas likums. 24.02.1937. *Valdības* Vēstnesis. 44.

75 Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2020. gada 23. janvāra spriedums lietā Nr. SKC-71/2020. [7.4] punkts. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 22.11.2022.].

76 Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2012. gada 12. septembra spriedums lietā Nr. SKC-307/2012. 14.2.punkts. Document source located in Supreme Court of Latvia, Department of Civil Cases archive / Author's personal archive.

77 Augstākās tiesas Senāta Civillietu departamenta 2013. gada 9. oktobra sprieduma lietā Nr. SKC-38/2013. 11. punkts. Retrieved from: https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs/civillietu-departaments/hronologiska-seciba?lawfilter=0&year=2013 [acc. 22.11.2022.].

Law in Cases Arising from the Law of Servitudes"[78]). From the case law analysed in the Thesis it follows that in the majority of cases mortgage creditors refuse to give their consent. Only in one case[79] the consent was granted.

At the moment when a servitude of right of way over the immovable property of an insolvent person is established (or terminated), there is an interaction between the legal norms governing the insolvency proceedings and the institute of servitude of right of way. Looking at the rights of ***the insolvency administrator*** under the Insolvency Law, the author concludes that the insolvency administrator should be recognised as a person without whose consent the servitude of right of way cannot be established/terminated. In particular, the Insolvency Law provides for a general restriction on entering into any transaction which may deteriorate the financial situation thereof or harm the overall interests of the creditors and prohibits the debtor from encumbering an immovable property with rights in rem, except for the cases where this is provided for [...].[80] It follows from the foregoing that if the establishment of a servitude of right of way is detrimental to the interests of creditors, it could be an obstacle to the establishment of a servitude of right of way.

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78 Latvijas Republikas Augstākā tiesa. 2006. *Par tiesu praksi lietās, kas izriet no servitūtu tiesībām.* Apstiprināts ar Senāta Civillietu departamenta tiesnešu un Civillietu tiesu palātas tiesnešu kopsēdes 2006. gada 22. decembra lēmumu. 21. punkts. Retrieved from: https://www.at.gov.lv/lv/tiesu-prakse/tiesu-prakses-apkopojumi/civiltiesibas [acc. 22.11.2022.].

79 Zemgales rajona tiesas 2020. gada 19. jūnija spriedums lietā Nr.C73302819. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 22.11.2022.]

80 Maksātnespējas likums: Latvijas Republikas likums. 49. panta 4. punkts. 06.08.2010. *Latvijas Vēstnesis.* 124.

2.2 Problems of termination of a servitude of right of way established over immovable property

2.2.1 Termination of a servitude of right of way by pre-emption

The legal framework of termination of a servitude of right of way on the basis of pre-emption contains shortcomings, which the author has analysed in scientific articles on termination of a servitude of right of way by pre-emption[81] and peculiarities of termination of servitudes in the of the Civil Law and the Civil Code of Ukraine,[82] stating that: 1) the of the Civil Law does not define the concept of "pre-emption"; 2) it is not clear what is to be recognised as the subject of the pre-emption – the right of use of the road, the road as an engineering structure or the territory of the land unit located under the road / servitude of right of way; 3) the of the Civil Law does not specify who is to be recognised as the user of the servitude; 4) it is not specified what serves as the buy-out consideration – money or other property value. The listed shortcomings make the practical application of Section 1249 of the Civil Law difficult.

The author concludes that by the pre-emption of a servitude the legislator has meant just the buy-out of the right of use of the servitude from the owner of the dominant immovable property in exchange for a consideration. Such a pre-emption would be permissible if it did not conflict with the essence

[81] Dinsberga J. 2017. Ceļa servitūta izbeigšana ar izpirkumu. XVIII Turiba University Conference COMMUNICATION IN THE GLOBAL VILLAGE: INTERESTS AND INFLUENCE. May 18, 2017. Rīga: SIA Biznesa augstskola "Turība", 51–58. Retrieved from: https://www.turiba.lv/storage/files/conference-xviii-turiba-18052017final.pdf ISSN 1691-6069 [acc. 23.07.2023.].

[82] Dinsberga, J., Tarasova, D. 2017. Peculiarities of termination of servitude of right of way in the civil law of the Republic of Latvia and the civil code of Ukraine. Національний університет. "Києво-Могилянська академія" факультет правничих наук збірник наукових праць міжнародна науково-практична конференція. Україна на шляху до європи: реформа цивільного процесуального законодавства. Київ: ВД Дакор, 211–215. ISBN 987-617-7020-48-5.

of the property, since it is not logical for the owner of servient immovable property to redeem a right that he already owns. It is also contrary to the purpose of the servitude of right of way, which is to benefit the user. Therefore, the author finds no logical explanation for the termination of the servitude on the basis of pre-emption. If the owner of the dominant immovable property agrees to a pre-emption, this indicates that the need for the servitude of right of way has ceased and that it should be terminated immediately. For example, the Civil Code of Ukraine,[83] the Civil Code of the Republic of Lithuania[84] and the Civil Code of the Russian Federation[85] provide that if the circumstances which gave rise to the establishment of the servitude no longer exist, the servitude may be terminated.[86] The author believes that the practice of these countries may serve as an example for improvement of the legal regulation of termination of servitude of right of way in Latvia.

2.2.2 Expiry of a servitude of right of way by prescription

Section 1250 of the Civil Law provides that "A servitude shall be terminated through prescription if the person entitled thereto has not voluntarily, within a period of ten years, used it personally or through other persons [...]".[87] In other countries, the limitation periods are radically different,

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[83] Гражданский кодекс Украины. Статья 406, первая часть, 4.пункт. Retrieved from: https://pravoved.in.ua/section-kodeks/82-gku.html [acc. 22.11.2022.].

[84] Lietuvos Respublikos civilinio kodekso. 4.13 5 straipsnis. Retrieved from: http://civiliniskodeksas.lt/ [acc. 13.07.2023.].

[85] Гражданский кодекс Российской Федерации. Статья 276. Retrieved from: https://rulaws.ru/gk-rf-chast-1/ [acc. 13.07.2023.].

[86] Sheremeteva, N.V. Current Problems of Refusal of Servituary From Easement. 128-130. Retrieved from: https://cyberleninka.ru/article/n/aktualnye-problemy-otkaza-servituariya-ot-servituta/viewer. DOI: 10.24412/2411-2275-2021-2-127-131, 128.

[87] Civillikums: Latvijas Republikas likums. 1250. pants. 24.02.1937. *Valdības Vēstnesis.* 44.

e.g. in Ukraine[88] and Kazakhstan[89] – 3, in Moldova[90] –10, and in Spain[91] – 20 years. It follows from legal doctrine that the limitation period starts from the moment the servitude is registered in the Land Register.[92] K. Balodis, judge of the Supreme Administrative Court, is of the opinion that the servitude is automatically terminated upon the expiry of the limitation period and emphasises that in such a case the grantor or owner of the servitude does not need to express a special will to terminate the servitude.[93] It should be noted that, in law, a servitude of right of way is terminated by its deletion from the public records. The author observes that there are cases where termination of a servitude of right of way through prescription is difficult. That is in cases where the owner of the dominant immovable property: 1) does not recognise the prescription period; 2) is unreachable. In these situations, the owner of the servient immovable property is entitled to apply to the court for termination of the servitude of right of way. But, legal proceedings are financially costly and lengthy. This was also highlighted in the 2018 Report "Evaluation of the

88 Гражданский кодекс Украины. Статья 406, первая часть, 5. пункт. Retrieved from: https://pravoved.in.ua/section-kodeks/82-gku.html [acc. 11.06.2023.].

89 Земельный кодекс республики Казахстан (с изменениями и дополнениями по состоянию на 01.07.2023 г.). Статья 74. 1. Retrieved from: https://online.zakon.kz/Document/?doc_id=1040583&pos=2338;-34#pos=2338;-34 [acc. 11.06.2023.].

90 Гражданский кодекс Республики Молдова. Статья 440. f. Retrieved from: https://www.legis.md/cautare/getResults?doc_id=110277&lang=ru. [acc. 11.06.2023.].

91 Медведев, С. Н. 2014. Гражданский кодекс Испании 1889 г. О сервитутах Retrieved from: https://cyberleninka.ru/article/n/grazhdanskiy-kodeks-ispanii-1889-g-o-servitutah/viewer [acc. 11.06.2023.], 76.

92 Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2013. gada 9. oktobra spriedums lietā Nr. SKC-458/2013. Retrieved from: http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/senata-civillietu-departaments/hronologiska-seciba_1/hronologiska-seciba/ [acc. 19.04.2017.]

93 Višņakova, G. un Balodis, K. 1998. *Latvijas Republikas Civillikuma komentāri: Lietas. Valdījums. Tiesības uz svešu lietu (841.–926. p., 1130.–1400. p.).* Rīga: Mans īpašums, 135.

Latvian Judicial System".[94] The author does not aim to solve the problems of court overload. However, the achievement of one objective contributes to the implementation of another. Namely, the protection of the interests of property owners. Therefore, by modelling possible situations, the author proposes to establish an out-of-court procedure for the termination of a servitude of right of way on the basis of prescription, proposing a conceptual solution and summarising its positive and negative aspects (see Point 4.2 of the Conclusions, Annex 6).

Summarising the discussion in the chapter, the author concludes that the process of establishing and terminating a servitude of right of way is complicated or hindered by various circumstances. For example, the of the Civil Law does not define such terms as "pre-emption", "right of pre-emption", "user of servitude", "graphic representation of the servitude territory", the vagueness of which may lead the applicator of legal norms to misinterpret particular legal norms. But, for the termination of a servitude of right of way on the grounds of prescription, the problem arises from the unreachability of the owner of the dominant immovable property.

The establishment of a servitude of right of way may be affected by a decision of third parties. And, the protection of the interests of third parties in some cases overrides the protection of the interests of both the dominant and servient property owners.

[94] Report Evaluation of the Latvian Judicial System on the basis of the methodology and tools developed by the CEPEJ. March 2018 CEPEJ-COOP(2018)1. Retrieved from: https://www.ta.gov.lv/lv/media/201/download?attachment [acc. 30.09.2022.].

3 Settlement of disputes related to servitude of right of way in court

The primary task of the State is not only to provide a mechanism for resolving the problem, but also to make it simple and comprehensible for the subjects, possibly quick and economically feasible, and to facilitate the resolution of disputes between parties before recourse to the courts.

This chapter examines the legal and practical aspects of establishing a servitude of right of way by a court judgment and of determining the interim protection measure, analysing the situations in dispute and the court decisions.

3.1 Procedural features of settlement of disputes concerning establishment of servitude of right of way

Use of mediation in pre-litigation proceedings: When filing an application with the court, the plaintiff must provide details about using mediation to resolve the dispute before going to court. However, this does not make it compulsory to use mediation. The author observes that mediation is sometimes perceived by the parties as a formality. For example, the plaintiff states in the statement of claim: "The plaintiff confirms that mediation has not been used in this case and that there is no reason to believe at this time that the dispute will be resolved by negotiation before going to court."[95] An examination of other judgments discussed in the Thesis (the author will not list them separately) shows that the legislator's intention to encourage out-of-court settlement of disputes in cases of servitude of right of way has not yet been implemented.

[95] 2021. gada 13. oktobra Prasības pieteikums par braucamā ceļa servitūta nodibināšanu un pieteikums par pagaidu aizsardzības līdzekļa noteikšanu (precizētā redakcijā) civillietā Nr. C33577721. Unpublished. Located in the Author's archive.

Informing the defendant of the intention to bring an action: the *Civil Procedure Law* does not require the plaintiff to inform the defendant of his/her intention before bringing an action for the establishment of a servitude of right of way. The defendant is forced to engage in litigation that could have been avoided by entering into an agreement. For example, the defendants Z.M. and V.M. state in their submissions to the court that "[...] the plaintiff has not even approached the defendant with a request for the establishment of a servitude of right of way. [...] such conduct is [...] deliberately harmful, as the defendants are forced [...] to spend their time and financial resources in obtaining various documents and to suffer moral discomfort. [..]".[96] The author considers that the defendants' objections are well-founded, but that their legitimate interest does not currently enjoy legal protection, and therefore proposes that the Civil Procedure Law be amended to require the plaintiff to submit, along with filing the statement of claim, a document certifying that the plaintiff has notified the defendant of his/her intention before filing the statement of claim with the court.

Formulation of claims (constituent elements): One of the most important elements of the content of an application is to state precisely what the plaintiff claims. Therefore, the author has formulated a possible claim, which is set out in Annex 9, paragraph 5.

Request for entry in the Land Register: the author notes that in the judgments analysed in the Thesis, in most cases, along with the request for the establishment of a servitude of right of way, requests for the "corroboration/entry in the Land Register" of the servitude of right of way are made, and most often granted. Such a request is not well-founded and the court has no reason to grant it. The establishment of a servitude of right of way by

[96] 2020. gada 8. aprīļa paskaidrojumi lietā Nr. C73312620. Unpublished. Located in the Author's archive.

a court judgment does not create a personal obligation, therefore a unilateral corroboration request by the user of servitude is sufficient for the corroboration of the servitude right in the Land Register.[97] The author agrees with the opinion of the Supreme Court of Justice, as the corroboration of a servitude of right of way is the competence of the district (city) court in whose Land Register the immovable property is registered and the servitude right is corroborated on the basis of the judge's decision.

Specifications by surveying in nature / coordinates. Usually (but not in all statements of claim), when formulating claims, the plaintiff asks for the establishment of a servitude of right of way of a certain width and length, based on a document showing the location of the servitude of right of way, with the remark that the length, width and area of the road should be specified after its survey in nature. This note is of fundamental importance as the situation in nature may vary and the existence of such a note prevents disagreement between the parties when the servitude is surveyed. The indication of the coordinates of the location of the servitude of right of way is of particular importance in cases where the plaintiff seeks to establish a servitude of right of way which is winding in nature and contains several turning points. For example, the plaintiff argued in her appeal that the line of the servitude of right of way was drawn on the drawing, but there was no anchor to mark the line in nature.[98] The Senate of the Supreme Court held that the defendant's arguments were well-founded.

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97 Latvijas Republikas Augstākās tiesas Civillietu departamenta 2015. gada 27. oktobra spriedums lietā SKC – 165/2015 [10].punkts. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 05.05.2023.].

98 Latvijas Republikas Augstākās tiesas Civillietu departamenta 2017. gada 4. jūlija spriedums lietā Nr. SKC-229/2017, [5.3.], [8.3.] punkts. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

Absolute/objective necessity for the establishment of a servitude of right of way: according to Sections 1132, 1139 and 1146 of the Civil Law, a servitude of right of way on servient immovable property may be established only in case of its absolute necessity (also referred to as "objective necessity" in court decisions) and provided that the servient immovable property is capable of providing the dominant one with the necessary benefit during its entire existence.

From the court decisions analysed in the Thesis, it can be concluded that the plaintiffs justify the objective necessity by the lack of access, in parallel pointing to other circumstances (see cases No. C31329916,[99] No. C11129810,[100] No. SKC-1429/2016,[101] No. SKC-38/2013,[102] etc.). In the author's view, the owner of the immovable property only has to prove one fact: lack of access to the public road. However, the other circumstances must be assessed not in the framework of objective necessity, but in the framework of proportionality of the interests of the parties, since, according to the legislation, any immovable property must have access to[103] and each owner is obliged to manage it.

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99 Latvijas Republikas Senāta 2022. gada 14. janvāra spriedums lietā Nr. SKC-24/2022. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

100 Vidzemes apgabaltiesas Civillietu tiesas kolēģijas Valmierā 2013. gada 3. oktobra spriedums lietā Nr. C11129810. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

101 Latvijas Republikas Augstākās tiesas Civillietu departamenta 2016. gada 15. februāra spriedums lietā Nr. SKC-1429/2016. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 13.05.2023.].

102 Latvijas Republikas Augstākās tiesas Senāta 2013. gada 9. oktobra spriedums lietā Nr. SKC-38/2013. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

103 Zemes pārvaldības likums: Latvijas Republikas likums. 7. pants. 15.11.2014. *Latvijas Vēstnesis.* 228.

Examination of equitable considerations: Section 1139 of the Civil Law states that every person who owns a servitude right shall use it justly, together therewith conserving the ownership rights of others as much as possible. This provision applies to a servitude already established. However, in case law, Section 1139 of the Civil Law is interpreted broadly, i.e. also in relation to the establishment of a servitude of right of way (see, e.g. Case No. SKC-247/2016,[104] No. CA-0092-18/11[105]). The Constitutional Court notes that a lenient approach is particularly important in cases where [...] the right to use one's own property is wholly or partially lost[106] or one has to choose between a road passing through a yard or a land border. Other factors must also be taken into account. For example, when deciding on the possible location of a servitude of right of way, consideration should be given to whether road safety is compromised. This is particularly the case when establishing a cattle track that crosses a heavily trafficked road.

Holding an off-site hearing: The cases of servitude of right of way are specific in that the theoretical granting of a claim must be based on the likelihood of the right being exercised in practice. Therefore, the court must be satisfied that the servitude road will be actually usable and will actually be beneficial. The Zemgale Regional Court recognizes: "The on-the-spot examination of the written evidence helped the Court of Appeal to be satisfied

[104] Latvijas Republikas Augstākās tiesas Civillietu departamenta 2016. gada 7. jūlija spriedums lietā Nr. SKC-247/2016. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

[105] Zemgales apgabaltiesas Jelgavā 2018. gada 28. maija spriedums, lietas arhīva Nr. CA-0092-18/11. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

[106] Satversmes tiesas 2008. gada 22. decembra spriedums lietā Nr.2008-11-01 11.2 "Par Civillikuma 1231. panta 2. punkta atbilstību Latvijas Republikas Satversmes 105. pantam", 15.3.punkts. Retrieved from: https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2008-11-01_Spriedums.pdf [acc. 06.05.2023.].

that the conclusions reached by the Court of First Instance were correct."[107] Off-site court hearings have also been held in a number of other servitude cases, as the author notes in the court decisions analysed (see Annex 7, Table 3.1).

Road alternatives on other properties: The defendants, in their comparative submissions, refer to other alternative access possibilities to the plaintiff's property. Table 3.2 of Annex 7 summarises the issues that the court must necessarily consider. Although this practice is well established, the author is critical of it. The court would be justified in assessing the defendant's alternatives if the following conditions were present: 1) the defendant provides the court with evidence that access through one or more other properties is actually and legally possible; 2) one of the owners of the other alternative properties has agreed to the establishment of the servitude; 3) the owners of the alternative properties have been invited to the hearing as third parties. By hearing a third party, the court can ascertain whether it will be possible to provide access through the other property.

3.2 Theoretical aspects and practical application of interim protection measure

Over the period 25.03.2021–06.12.2022, the Court adopted 27 decisions[108] on interim protection measure in cases of servitude of right of way. Analysing some of the decisions, the author came to important conclusions, which are set out below.

[107] Zemgales apgabaltiesas Civillietu tiesas kolēģijas Jelgavā 2018. gada 9. novembra spriedums, lietas arhīva Nr. CA-0352-18/8. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

[108] Tiesu administrācija. 2022. Datu apkopojums par tiesu lēmumiem par pagaidu aizsardzības līdzekļa nodrošināšanu ceļa servitūta lietās. Vēstule autorei. 06.12.2022. Unpublished. Located in the Author's archive.

The concept of certain actions: Section 38[1] (2) and (3) of the Civil Procedure Law do not list any particular actions that the defendant must refrain from, nor actions that the defendant should perform. Nor does the law specify the degree of specificity to which and the level of detail to which the formulation/enumeration of actions should be made. Therefore, in the author's view, the notion of "certain actions" is not linked to a necessity or a mandatory requirement to name and enumerate certain actions in detail. The prohibition must be such that the person (against whom the prohibition is directed) is able to identify those actions which he/she is not entitled to perform in order not to cause disturbances. The author concludes that the courts have not developed a uniform practice in applying the concept of "certain actions". For example, the Riga District Court in Sigulda obliged the plaintiff to list specific actions, whereas most of the decisions analysed by the author (see Annex 8) provide for a general ban on putting up any obstacles, without listing specific actions.

Specification or reformulation of the interim measure sought by the plaintiff: The Court "[...] may, if necessary, specify or reformulate the interim measure sought by the plaintiff, in so far as this is not contrary to the fundamental principles of civil procedure."[109] Attorney-at-law Benno Butulis is concerned about the expansion of the role of the court in civil proceedings, as it may require a change in the court's approach to adjudication [...].[110] Although in practice there have already been decisions in which the court clarified claims (see the decision of the Zemgale District Court of 24 May 2022,[111] the decision

[109] Likumprojekts "Grozījumi Civilprocesa likumā". Retrieved from: https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/7124D67541E6AF94C225851A0033211A?OpenDocument#_ftn1#_ftn1 [acc. 10.03.2023.].

[110] Butulis, B. 11.05.2021. Jaunais Civilprocesa likuma regulējums: ceļā uz efektīvu pagaidu aizsardzības sistēmu. *Jurista Vārds*. 19 (1181), 27–33.

[111] Zemgales rajona tiesas 2022. gada 24. maija lēmums lietā Nr.C73405622. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi. [acc. 21.07.2023.].

of the Riga City Pardaugava Court of 26 April 2022[112]), the author believes that judges are experts in the field and, by clarifying or reformulating what the plaintiff has asked for, will be able to do so in accordance with the basic principles of civil procedure.

The prima facie formal legal basis for decisions: In assessing the prima facie legal basis, credibility plays a decisive role – the claim must be credible even though the evidence presented would not yet have been fully established.[113] By its decision of 22 November 2021[114] the Court rejected the application for interim protection measure, accepting as credible the defendant's explanation in the documents that the road used by the plaintiff would be repaired and assuming that other roads could in fact be used for access. It should be noted, however, that there are no other roads in nature and that the movement of heavy vehicles is not possible. The author sees shortcomings in the legal framework, as the legislation allows for a rather formal approach to the assessment of evidence. In the present situation, the court should have ascertained whether it is legally permissible to travel on other roads, whether other roads exist in nature and whether it is possible to travel with heavy vehicles of several tonnes on roads that are visible in the documents. The Court assessed the documents but did not ascertain the actual situation in nature.

Assessment of proportionality in decisions: the court or judge may hear an application for interim protection without holding a hearing, unless it considers it necessary to clarify additional circumstances. In the author's view,

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[112] Rīgas pilsētas Pārdaugavas tiesas 2022. gada 26. aprīļa lēmums, lietas arhīva Nr. C-2992-22. Unpublished. The source of Document located in the archive of the Pārdaugava Court of Riga City / Author's personal archive.

[113] Bukovskis, V. 1933. *Civīlprocesa mācību grāmata.* Rīga: Autora izdevums, 509.

[114] Rīgas rajona tiesas Siguldā 2021. gada 22. novembra lēmums lietā Nr. C33577721, lietvedības Nr.C-5777-21. Unpublished. The source of the documents is located in the Sigulda archive of the Riga District Court / Author's personal archive.

such a legal framework does not respect the principle of equal rights and the principle of adversarial proceedings, as the defendant is not even given the opportunity to make submissions or submit evidence. In the author's view, in cases of servitude of right of way, departures from the above principles are permissible if the decision is to be taken immediately. But that is not always necessary. It is impossible to assess proportionality if the court is only presented with the arguments and evidence of one party. In that case, the merits of the application are assessed rather than proportionality.

Assessment of significant harm in decisions: the Supreme Court points out that almost any prejudice to interests can have negative consequences and the harm must be significant enough to justify the court in taking an immediate decision.[115] In the author's opinion, the courts do not pay due attention to the substantiation of the assessment of the substantial damage, basically limiting themselves to a list of the plaintiff's limitations (see the decision of the Zemgale District Court in Tukums of 10 July 2021,[116] the decision of the Zemgale District Court in Jelgava of 27 May 2021,[117] the decision of the Riga District Court in Riga of 27 June 2022.[118] Material damage is a general clause which acquires a certain content in each individual case.

Summarising the discussion in the chapter, it can be concluded that the problems in case law are caused by the incomplete legal framework and its ambiguous interpretation. The legislator's objective of introducing

[115] Augstākās tiesas Senāta 2022. gada 14. jūlija lēmums lietā Nr. SKC-751/2022. Retrieved from: https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs/civillietu-departaments/hronologiska-seciba?lawfilter=0&year=2022. [acc. 21.07.2023.].

[116] Zemgales rajona tiesa Tukumā 2021. gada 10. jūnija lēmums lietā Nr.C73445821. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi. [acc. 21.07.2023.].

[117] Zemgales rajona tiesas Jelgavā 2021. gada 27. maijā lēmums lietā Nr.C73419321. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi. [acc. 21.07.2023.].

[118] Rīgas rajona tiesa Rīgā 2022. gada 27. jūnija lēmums lietā Nr.C33424022. Unpublished. Document located in the Riga District Court archive / Author's personal archive.

a comprehensive interim protection measure institute has been achieved, but the courts have not yet developed a uniform approach to the application of the rules governing interim protection measure in servitude cases.

Conclusions and proposals

The aim set out in the introduction of the Doctoral Thesis has been achieved, the objectives have been fulfilled and the answers to the research questions have been obtained as reflected in the conclusions and proposals.

Consecutively examining the development of the legal regulation of the institute of servitude of right of way from its origins to the present day, at certain stages of its development the author revealed legal and practical problems that negatively affected the realisation of the interests of the servient and dominant property owners in the process of establishment and termination of servitude of right of way. The author presented and analysed the legal regulation of the servitude of right of way through the prism of its practical implementation, assessing the problems faced by the owners of the dominant and servient immovable properties, the factors influencing it, the existing mechanisms for the protection of the owners' interests and the improvements needed in the substantive and procedural legal norms.

Conclusions and proposals for amendments to the relevant normative acts have been developed in accordance with the general principles of drafting normative acts, which include comprehensibility, transparency, clarity, explicitness and unambiguity of the normative act; as well as using the approaches to the understanding of law mentioned in the legal doctrine and in the introduction to the research work – the normative appraoch (specificity and precision of legal provisions, i.e. following the letter of the law) and the functional approach (flexibility and adaptability to changing circumstances) in their interaction with each other.

As a result of the research carried out, the author drew conclusions and developed proposals which, for the sake of clarity and readability, are divided into 7 distinct groups.

[1] This group includes theoretical conclusions and proposals aimed at improving the existing definitions in the legislation and developing new definitions.

[1.1] Conclusion: The definition in Section 1130 of the Civil Law is complex, difficult to understand and does not cover all types of servitudes. Although servitude applies to all immovable property, both land and buildings, the definition only mentions land. But, on the basis of Section 1173 of the Civil Law, a servitude of right of way is to be established in favour of all immovable property (including buildings).

Proposal: To amend the Civil Law as follows:

To express Section 1130 in the following wording:

"1130. A servitude is a right over another's thing, established in favour of **a certain immovable property** or a certain person, conferring on the user the right to use the other's thing in a certain manner and to a certain extent, while the owner of the thing is subject to certain restrictions as to the nature and extent of the right of ownership over their thing."

[1.2] Conclusion: Section 1131 of the Civil Law specifies natural or legal persons as the subjects of a servitude (also referred to as civil law subjects). The status of a civil law subject is also conferred on partnerships and limited partnerships, which are also covered by the Commercial Law and may own property, be plaintiffs and defendants in court, incur liabilities and acquire rights in rem, including servitudes of right of way. However, general and limited partnerships are not included in Section 1131 of the Civil Law as entities for which a servitude is to be created.

The Land Register also registers immovable property owned by both a general partnership and a limited partnership, despite the fact that Section 16 of the Land Registration Law specifies only natural or legal persons as the owners of immovable property to be registered in the Land Register.

Section 1131 of the Civil Law narrows the scope of subjects to exclude general and limited partnerships, thereby prejudicing the interest of general and limited partnerships in being recognised as the subject of a servitude. But, in practice, there is an unjustified and extended interpretation of Section 1131 of the Civil Law and Section 16 of the Land Registry Law, granting rights also to those subjects to whom such rights are not provided by the law.

Proposal: To amend the Civil Law as follows:

To express Section 1131 in the following wording:

"1131. A servitude established in favour of a particular natural or legal person or a **general or limited partnership** shall be a personal servitude; a servitude established in favour of a particular immovable property so as to be used by each of its successive owners shall be a real servitude."

Taking into account the proposed amendment to the Civil Law, expanding the circle of servitude subjects, the Land Registry Law and related regulatory enactments should be amended, expanding the circle of real estate owners to include general and limited partnerships.

[1.3] Conclusion: In court practice and in documents related to immovable property (e.g. a copy of the Land Registry Office, a land boundary plan, an agreement on the establishment of a servitude of right of way, as well as in decisions issued by state administration bodies, etc.) the terms "servitude of right of way" and "servitude road" are used. However, these terms are not defined in the legislation, their conceptual content is different, but some of the owners of the dominant and servient properties perceive these terms as synonymous. Also, "servitude of right of way" is associated with the road as a physical object / engineering structure in its classical sense rather than with a right of use.

The negative aspects of the absence of definitions are:

1) misconception about the use of terms, resulting in incorrect drafting of documents and in some cases requiring redrafting;
2) it hinders the resolution of issues related to the establishment of a servitude of right of way in circumstances where, for example, the owner of the dominant immovable property mistakenly believes that there is no basis for establishing a servitude of right of way because the immovable property does not contain a road as an engineering structure. Not understanding that a servitude of right of way is a right and not a physical, tangible object.

The author puts forward the thesis that defining the terms “servitude of right of way” and “servitude road” will ensure the substantive understanding and precise use of these terms and will prevent the aggravation of conflicts between property owners due to different understanding of the substantive meaning of the terms.

In order to ensure clarity, explicitness and unambiguous use of the terms “servitude of right of way” and “servitude road” and their correct application in practice, definitions of the terms “servitude of right of way” and “servitude road” should be developed.

Proposal: To amend the Civil Law as follows:

To supplement Section 1156 with Paragraph Two in the following wording:

“A servitude of right of way is the right to use a road or water body, existing or to be constructed in the future, in the immovable property of another person, restricted in nature by a certain territory of the servitude of righ of way. For the purposes of this Law, the territory of the servitude of righ of way is the graphical projection of the parameters of the servitude of right of way (length,

width, total area occupied) established by law, contract, court judgment or will on the graphic representation of the servitude territory.

A road the right of use of which has been established on the basis of Section 1231 of this Law shall be called a servitude road.

For the purposes of this Law, a servitude road shall be a road actually existing or to be constructed in the future as an engineering structure, or a strip of land – a compaction of the surface of the land of a certain width, free from trees, bushes and other vegetation, formed by repeated use, and on which it is possible to travel on foot, by means of vehicles or to drive cattle."

[1.4] Conclusion: Several normative acts regulating the real estate sector and related to the institute of servitude use the term "land plot" (for example, Section 1, Paragraph 11 of the State Immovable Property Cadastre Law; Section 1, Paragraph 2 of the Law on Land Administration; as well as the Civil Law). The term "land parcel" has several meanings, depending on the legal or factual situation and the sector in which it is used. The term is used in different spelling styles in the legislation (in some places it is spelled separately as "land plot", in others as a whole as "land parcel"). This is contrary to one of the general principles of drafting regulatory enactments – the principle of unity.

In order to ensure uniform use and understanding of the term "land parcel" in regulatory enactments, as well as to simplify the interpretation of the definition in Section 1130 of the Civil Law, a definition of the term "land parcel" should be developed.

Proposal: To amend the Civil Law as follows:

To add a remark to Section 861 of the Civil Law in the following wording:

Remark. A land parcel is a physically separated land territory of a certain shape and size, owned or possessed by a certain person, consisting of the land surface with its soil and waters up to the depth where their use is

economically and technically feasible and prescribed by the legislation, land layers, minerals located in the land layers and subject to registration or registered in the State Immovable Property Cadastre Information System.

In the future, when drafting amendments to existing normative acts or drafting new normative acts, the uniform use/spelling of the term “land plot” / ”land parcel” should be ensured. The author proposes to use the word “plot” in normative acts.

[1.5] On 1 December 2019, amendments to the Land Register Law and the State Immovable Property Cadastre Law entered into force. The amendments to the aforementioned normative acts introduced a new term “graphic representation of the servitude territory”.

There are a number of practical problems with the “graphic representation of the servitude territory”, relating to its conceptual understanding, lack of definition, form, content, drafting principles and subjects.

[1.5.1] Conclusion: Section 56 (4) (2) of the Land Register Law and Section $60.^{1}$ (1) (4) of the State Immovable Property Cadastre Law use the term “graphic representation of the servitude territory”. But, in the paragraphs 107^{2} 1, 107^{2} 3 and 169^{2} of the Cabinet Regulation No. 263 of 10 April 2012 “Regulations on Cadastre Object Registration and Cadastre Data Update”, the term “graphical annex” is used when regulating the evaluation of information from the State Unified Computerised Land Register and the grounds for registration of the territory of the servitude of right of way. Both terms have the same meaning. This creates inconsistency in the use of the terms in the regulatory enactments, thus making it difficult to apply them in the process of establishing a servitude of right of way. The different usage is confusing for the owners of the dominant and servient properties, who consider that a graphic

annex can be a plan of the boundaries of the land, which does not even mark the servitude road.

Proposal: To amend the Cabinet Regulation No. 263 of 10 April 2012 "Regulations on Cadastre Object Registration and Cadastre Data Update" as follows:

1. The words "graphical annex" in Points 107,[2] 107[2] 3, and 169[2] shall be replaced by the words "graphic representation of the servitude territory".

[1.5.2] Conclusion: The term "graphic representation of the servitude territory" contained in Section 56 (4) (2) of the Land Register Law and Section 60.[1] (1) (4) of the State Immovable Property Cadastre Law is not defined. The absence of a definition makes the practical application of the provisions of the above-mentioned laws difficult. Also:

1) the basic principles of the presentation of the graphic representation of the servitude territory are not regulated;
2) the content elements of the graphic representation of the servitude territory are not defined;
3) it is not regulated who is competent to develop the graphic representation of the servitude territory – the owner of the servient or the dominant immovable property or a certified specialist in the relevant field – a surveyor.

The graphic annex of the servitude territory is the document containing the essential information required for entry in the public registers. It is therefore necessary to establish both uniform formatting requirements and content elements. In practice, a problem arises when the graphic annex of the servitude territory submitted by the property owners (manually or even prepared by a competent authority / specialist) does not contain the set of data necessary for the registration/corroboration of the servitude of right of way in the public

register or the data are not accurate. In such a case, corrections should be made to the document, which both prolongs the process of registration/corroboration of the servitude of right of way and increases the financial costs.

The successful establishment and use of a servitude of right of way depends on the accuracy of the data and measurements included in the graphical representation of the servitude. Experience has shown that documents produced by the owners themselves may be erroneous and incomplete. Therefore, only a certified surveyor with access to databases containing the necessary data and with the knowledge and skills to prepare such documents should be entitled to prepare the graphical representation.

The following documents are currently recognised as supporting the graphic representation of the servitude territory: land boundary plan; encumbrance plan; situation plan; topographic plan; printout from the Cadastre Information System cadastral map; master plan at a scale of 1:500; detail plan; sketch for the establishment of the servitude of right of way. When using these documents, owners are confronted with problems such as: the document does not correspond to the real situation in nature, as the actual conditions have changed since it was drawn up; the servitude road is not accurately depicted, as the document was drawn up for other purposes and the depiction of the servitude is for conceptual purposes only; the width of the servitude shown in the document varies from place to place, but no coordinates are given for the points of narrowing, widening or turning points; the location of the future servitude in nature, as indicated in a sketch prepared by the owners of the dominant and servient properties, cannot be precisely determined in nature, as the sketch does not contain precise measurements.

Proposal: To amend the Land Registry Law as follows:

To supplement Section 56 with Paragraph Six and express it in the following wording:

"The graphic representation of the servitude territory referred to in Point 2 of Paragraph Four of Section 56 of this Law shall be a document prepared by a certified surveyor, which schematically shows the location of the existing or planned servitude road (the territory of the servitude of right of way) in the land unit and contains the data of the land unit and of the servitude of right of way established by this Law. The graphic representation of the servitude territory shall contain the following data:

1) name of the graphical representation of the servitude of right of way with an indication of the cadastral number of the immovable property on which the servitude of right of way is to be established;
2) graphical representation of the land unit and its cadastral designation on which the servitude road is located;
3) length of the servitude of right of way;
4) width of the servitude of right of way;
5) total occupied area of the territory of servitude of right of way;
6) the exact location of the servitude road within the land parcel;
7) the coordinates of the servitude road;
8) information on the source of the data on the basis of which the certified land surveyor has prepared the graphical representation;
9) information on the preparer (name, surname, certificate number and validity period of the certificate).

In order to ensure a uniform and complete graphic representation of the servitude territory, the author presents a proposal that follows from the previous one – the Latvian Society of Surveyors should organise training of certified surveyors or develop guidelines for the procedure of developing the graphic

representations of the servitude territory and for the preparation of documentation for the establishment, registration and representation of the servitude of right of way on the cadastral map.

[2] Conclusions and proposals aimed at clarifying legal provisions, formulating the content of legal provisions clearly and unambiguously and facilitating its practical application.

Conclusion: When establishing a servitude of right of way by will, the testator is not obliged to specify the length, width and location of the servitude of right of way to be established.

If the length, width and location of the servitude of right of way are not specified in the will, the Paragraph Two of Section 1159 of the Civil Law applies, which provides that the choice of the location and direction of the right of way devolves to the bearer of the servitude. However, that Section does not indicate the person entitled to choose the length and width of the road.

Section 1159(1) of the of the Civil Law grants the right of option to the persons exercising the servitude in cases where the location of the road has not been determined at the time of the establishment of the servitude of right of way. But, in the Paragraph Two of the said Section, – to the bearer of the servitude, if the servitude of right of way has been established by a will. It is not clear from the Paragraph Two of Section 1159 of the Civil Law who is the "servitude bearer" to whom the choice of servitude is granted – the heir (or owner) of the dominant or the servient immovable property.

The Paragraph Two of Section 1159 of the Civil Law grants the bearer of the servitude the right to choose the location and direction of the road. The term "direction" has no legal meaning, since the most important thing in the case of the establishment of a servitude of right of way is the choice of the location, since it is natural that the user of the servitude of right of way will need to travel in both directions, forwards and backwards, along a particular

chosen road. The choice of direction would only be relevant if there were more than one road on the property. However, this would be contrary to the Paragraph One of the same Section, which limits the right of choice to the choice of a single road.

Proposal: To amend the Civil Law as follows:

To supplement Paragraph Two of Section 1159 as follows:

"Where a servitude of right of way is created by will without specifying its location, width and length, the choice of the location, width and length of the servitude of right of way devolves to the heir or owner of the servient plot of land, who, however, in so choosing, may not act intentionally to the detriment of the exerciser of the servitude"

[3] Conclusions and proposals designed to protect and balance the interests of both the dominant and servient property owners and to facilitate the establishment of the servitude of right of way and practical use of the road in future

[3.1] Conclusion: In Roman law, during the process of establishing a servitude, the joint owners who had already given their consent to the servitude could not revoke it. This kind of limitation of rights is still of fundamental importance today. However, the legislation does not restrict a joint owner from withdrawing his consent in the process of establishing a legal relationship in cases concerning the establishment of a servitude of right of way.

Withdrawal of consent already given may cause unjustified losses to the other joint owners and to the owner of the dominant immovable property (e.g. legal fees, document preparation, travel costs, etc. incurred in connection with the planned agreement).

Proposal: To amend the Civil Law as follows:

To add the third paragraph in Section 1232 of the Civil Code as follows:

"The owner (including a joint owner) of the servient immovable property who has given his consent to the establishment or termination of a servitude of right of way may not subsequently withdraw it."

[3.2] Conclusion: The Ancient Romans, when establishing servitude of right of way and realising that a winding road could be difficult for large vehicles, provided for road widening where the road curved. This norm has a practical meaning, but has not been adopted in the Civil Law. Servitudes of right of way are not always established with scrupulous consideration and anticipation of all future uses of the servitude road and the needs of the dominant immovable property. And, in cases where the road is used by bulky machinery, a larger area of road or adjacent territory is used. This creates discord between the property owners. By settling the issue of road width at turning points initially, disputes can be avoided in the process of using the servitude of right of way.

Proposal: To amend the Civil Law as follows:

To add the Paragraph Two in Section 1158 as follows:

"Where a road curves or turns at a certain angle, the width of the road at the turning point shall be determined taking into account the general principles of highway design and the needs of the dominant immovable property, i.e. the types of vehicles that move or are planned to move on the carriageway and their possible dimensions."

[4] Conclusions and proposals designed to eliminate inconsistencies in the legal norms governing termination of a servitude of right of way by pre-emption and to expedite the process of termination of a servitude of right of way by prescription by providing for an out-of-court procedure for termination of a servitude of right of way

[4.1] Conclusion: Sections 1237(5), 1249 and 1135 of the Civil Law are mutually contradictory. The right of pre-emption provided for in Section 1237(5) of the Civil Law can be exercised under Section 1249 by the owner of the servient immovable property redeeming the servitude from the "user" or owner of the dominant immovable property. Given that a servitude is a right, it follows that the law allows the owner of servient immovable property to redeem a right which is already part of his title. But if the owner of the dominant immovable property agrees to the redemption, it can be concluded that he does not need the right of servitude and that he is abusing the opportunity, contrary to the principle of good faith, to enrich himself unjustly at the expense of the owner of the servient immovable property. If the servitude does not bring the benefit mentioned in Section 1135 of the Civil Law to its user, the servitude of right of way must be terminated. Unlike the Republic of Lithuania, where a servitude of right of way is terminated if the necessity for the servitude ceases to exist, the Civil Law of Latvia does not provide for such a manner of termination of a servitude of right of way as the grounds for termination of servitudes.

Proposal: To amend the Civil Law as follows:

1. In Section 1237(5), the words "by pre-emption" shall be replaced by the words "the disappearance of the circumstances which gave rise to the establishment of the servitude".
2. To delete Section 1249.

[4.2] Conclusion: According to Section 1237(6) of the Civil Law, a servitude of right of way is terminable through prescription. The prescription terminates the legal relationship between the owners of the dominant and the servient immovable property. However, a servitude of right of way is not automatically deleted from the public registers. In order to delete the entry on the servitude of right of way from the Land Register and the entry on the

servitude territory from the State Immovable Property Cadastre Information System, a document certifying the deletion of the right must be submitted. The author identifies cases when the owner of the servient immovable property is unable to obtain the necessary document for the deletion of the servitude of right of way, thus there are long-lasting (even for several years) problems with completing the procedural steps for termination of the servitude of right of way on the grounds of prescription. This is concerning in cases where the owner of the dominant immovable property:

1) does not recognise the prescription period and does not agree to the invitation to voluntarily terminate the servitude of right of way and to complete the formalities, does not give his/her consent;
2) is not present in his immovable property, does not deliberately collect or receive mail sent to his declared address of place of residence and his actual location is unknown.

Currently, the owner of the servient immovable property in these situations has the right to apply to the courts to terminate the servitude of right of way on the basis of prescription. But, legal proceedings are financially costly and lengthy. An encumbrance on the real estate hinders the implementation of the owner's intentions – sale of the property, development, start of commercial activity, etc. The author believes that there is another possible solution – financially cheaper, quicker and simpler for the owner of the immovable property – by establishing a special out-of-court procedure for termination of a servitude of right of way on the basis of prescription. And, the owner of the servient property should only have recourse to the courts in cases where the alternative solutions have been used. Only to no result. This would also relieve the work of the courts.

Proposal:

The author conceptually proposes a special out-of-court procedure for termination of a servitude of right of way on the grounds of prescription.

In order to terminate a servitude of right of way through prescription, a set of successive actions must be provided, namely:

1) the owner of the servient immovable property shall send to the owner of the dominant immovable property (in case of joint ownership, to all the joint owners) a notice of the prescription period and a request, within one month from the date of receipt of the notice, to express his/her views on giving or refusing a written consent to the termination of the servitude;
2) if the owner of the dominant immovable property has not replied to the notice within one month, the owner of the servient immovable property shall be entitled to apply to a sworn bailiff for the service of a further notice to the owner of the dominant immovable property (in the case of a joint ownership, to all the joint owners), again requesting his/her opinion on giving or refusing to give his/her consent in writing to the termination of the servitude of right of way.

It is necessary to define the essential elements to be included in the text of the notice, e.g. the date on which the prescription period starts to run; the deadline for replying – 2 months; the legal consequences of failure to reply;

3) concerning the notice served, the sworn bailiff shall issue to the owner of the servient immovable property a deed on served notice, refusal to accept the notice or impossibility of serving the notice;
4) if within two months the owner of the dominant immovable property (in case of joint ownership none of the joint owners) has not provided a written reply to the repeated notice, it shall be deemed that he/she has agreed to the termination of the servitude of right of

way and the deletion of the servitude of right of way from the public registers in accordance with the procedure established by the regulatory enactments;

5) after the expiry of a period of 2 months from the service of the notice, refusal to accept the notice or impossibility to serve the notice, the owner of the servient immovable property shall apply to the Land Registry / State Land Service to have the entries removed from the public registers. The grounds for termination of the servitude shall be the deed on served notice, refusal to accept or impossibility to serve the notice.
6) in cases where the owner of the dominant immovable property (or, in the case of joint ownership, all the joint owners) agrees, in response to a notice, to terminate the servitude, the owners of the dominant and servient immovable properties shall enter into an agreement;
7) if the owner of the dominant immovable property (in the case of joint ownership, one of the joint owners) does not agree to terminate the servitude of right of way in response to the notice, the dispute must be settled in court.

In order to facilitate the comprehensibility of the proposal, a schematic representation of the proposal has been developed (see Annex 6).

Adopting the above procedure for termination of a servitude of right of way through prescription, Section 1237 of the Civil Law should be amended by adding a new paragraph(s).

The author's proposal is applied only to the termination of the servitude of right of way, but in a holistic view, it is possible that such a solution could be reducible to other types of servitudes.

The proposed solution would require successive amendments to a number of laws and regulations:

To amend the Civil Law as follows:

To supplement Section 1250 with Paragraph Four and express it in the following wording:

Upon the expiry of the prescription period, the court shall, upon application by the owner of the servient immovable property, render a judgment terminating the servitude, except in the following cases:

1) the owners of the servient and dominant tenement have entered into awritten agreement to terminate the servitude by prescription;
2) if the servitude of right of way is terminable by prescription, the owner of the dominant immovable property (in the case of joint ownership, any of the joint owners) has failed to reply in writing within 2 months from the date of receipt of the notice from the owner of the servient immovable property to terminate the servitude of right of way by prescription, refused to accept the notice or its service was not possible, as evidenced by a deed on served notice to the addressee drawn up by a sworn bailiff.

To amend the Cabinet Regulation No. 263 of 10 April 2012 "Regulations on Cadastre Object Registration and Cadastre Data Update" as follows:

To supplement clause 111 with sub-clause 111.3, wording it as follows: "111.3. a deed on document served to the addressee drawn up by a sworn bailiff, the addressee's refusal to accept the document or the impossibility of delivering the document."

To amend the Cabinet Regulation No. 263 of 10 April 2012 "Regulations on Cadastre Object Registration and Cadastre Data Update" as follows:

To supplement clause 169^3 with sub-clause 169^3 (3) wording it as follows:

"$169.^3$ 3. a deed on document served to the addressee drawn up by a sworn bailiff, the addressee's refusal to accept the document or the impossibility of serving the document."

[5] Conclusions and proposals aimed at improvement of procedural legal norms in establishing servitude of right of way and interim protection measure in court in the cases of servitude of right of way.

[5.1] Conclusion: The Civil Procedure Law does not require the plaintiff before filing an action for the establishment of a servitude of right of way to inform the defendant of this intention. The defendant is therefore placed in a legally unfair position. The defendant will be forced to engage in litigation which could have been avoided if he/she had been informed of the plaintiff's intention and sought to resolve the dispute out of court, saving both financial resources and time.

Proposal: To amend the Civil Procedure Law as follows:

Section 128 of the Civil Procedure Law shall be supplemented by the following eighth paragraph: "(8) An application in cases concerning the establishment of a right of way servitude shall be accompanied by a document certifying that the plaintiff has sent or served on the defendant a notice of his intention to bring an action for the establishment of servitude of right of way to the defendant's declared or legal address and providing details of the defendant's actions in relation to the notice sent or served."

[5.2] Conclusion: According to Section 140^1 of the Civil Procedure Law, an application for interim protection shall be decided by the court or judge without a hearing and without prior notice to the parties. Except where it is considered necessary to clarify additional circumstances. This prejudices the interests of the owner of the servient immovable property (or defendant), as he is not given the opportunity to explain himself and there is a likelihood that the owner of the dominant immovable property does not include in the application all the legal and factual circumstances which may significantly influence the decision of the court or judge in a direction adverse to the plaintiff.

Proposal: The author makes a conceptual proposal for a regulation of the problem raised in the conclusion. In cases where no hearing is held, the parties should be notified of the date and time of the decision and the defendant should be required to respond to the plaintiff's statement of claim within a certain time limit.

Only where the plaintiff justifies the urgency of the decision would the court or judge be entitled to decide on the application without holding a hearing and without prior notice to the parties.

[5.3] Conclusion: The Court has not developed a uniform practice in cases of interim protection measure as regards the application of the notion of "certain actions" used in Point 3 of Paragraph One of Section 138^1. The Civil Procedure Law does not regulate how and to what detail certain actions should be listed. The author observes that the courts have interpreted the notion in different ways, holding that:

1) the list of actions must be precise – e.g. no parking, no digging up the road, no lockable barrier, etc. If the list is not precise, the court will leave the action pending until the deficiencies have been remedied;

2) actions are understood as a general prohibition aimed at preventing nuisance – prohibiting the erection of any obstruction which would impede the successful use of the road.

Proposal: The author makes a conceptual proposal for the interpretation and application in court decisions of the term "certain actions" used in Point 3 of Paragraph One of Section 138^1 of the Civil Procedure Law. "Certain actions" shall be interpreted both as specific activities obstructing the road enlisted in the statement of claim and as a generally worded prohibition aimed at eliminating the obstruction – asking for an injunction against any act or obstacle that obstructs the road on the servient immovable property.

[6] Conclusions and proposals concerning the protection of the constitutional rights of the owners of the dominant immovable property

Conclusion: Laws and regulations adopted in the field of public law may indirectly affect the interests of individuals in the field of private law. Section 8^1 of the Land Management Law introduces a new concept of "municipal road or street". A road or street of municipal significance shall be established by an administrative act. This significantly restricts the property rights of landowners, as they: 1) cannot prevent others from travelling on a road they own; 2) cannot object to the installation of utilities in the right of way occupied by the road; 3) cannot establish a servitude of right of way on a contractual basis and are denied the opportunity to receive fair compensation for the use of a road they own.

Proposal: Roads that are currently determined as municipal roads should be expropriated in accordance with the Law on the Alienation of Immovable Property Necessary for Public Needs in return for a fair compensation, thus guaranteeing the constitutional right to the owners of immovable property for the protection of property (with a compensatory mechanism).

[7] Conclusions and proposals on the application of the legal norms.

Conclusion: An unskilfully drafted statement of claim, incomplete/inaccurate wording of the claims are grounds for a decision to dismiss the case; prolong the proceedings; are grounds for partial or total dismissal of the claim; incur additional financial costs; add to the workload of the court. Some plaintiffs, for various reasons, are unable to hire a lawyer and therefore draw up the documents on their own. In such cases, guidelines/explanations with concrete indications and examples are of practical use.

Proposal:

The author has developed "The Guidelines for drafting the statement of claim in disputes concerning the establishment of a servitude of right of way" (see Annex 9). The guidelines will serve as an aid for drafting up an statement of claim in disputes regarding the establishment of a servitude of right of way.

These guidelines could be useful not only for owners of dominant and servient properties, but also for courts and law students. The guidelines do not include those elements of the content of a statement of claim listed in Section 128 of the Civil Procedure Law which are of a technical nature and, in the author's view, do not need to be explained in depth.

The guidelines have been developed taking into account the conclusions and proposals for improvement of regulatory enactments put forward by the author in her Doctoral Thesis.

The guidelines contain and explain the following elements of the application:

1) the subject matter of the claim;
2) the circumstances on which the plaintiff bases his/her claim and the evidence supporting them;

3) information about mediation used to resolve the dispute before going to court;
4) notice of his/her intention to bring an action for the establishment, termination or disturbance of a servitude of right of way;
5) the law on which the claim is based;
6) the wording of the claims;
7) the details of the dominant and servient immovable properties and the characteristics of the servitude of right of way;
8) the recording/fixing of the servitude of right of way in the Land Register;
9) the summoning of third parties to the hearing;
10) the list of documents to be attached to the application;
11) the bringing of a counterclaim;
12) the conclusion of an amicable settlement.

List of publications, reports and patents on the subject of the Thesis

Scientific publications in international databases (Web of Science, SCOPUS, ERIH PLUS):

Web of Science:

1. Dinsberga, J., Savickis, V. 2019. Legal and practical aspects of establishing servitude of right of way by court judgment within the framework of urban and rural development and changing global conditions. *SHS Web of Conferences*. 68(01024). DOI: https://doi.org/10.1051/shsconf/20196801024

2. Dinsberga, J., Bite, K. 2018. Legal consequences and problems of the servitudes of right of way established by administrative acts in Latvia. *SHS Web of Conferences*. 40(01011). DOI: https://doi.org/10.1051/shsconf/20184001011

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2. Dinsberga, J. 2017. *Tālmācības studiju kurss "Civiltiesības: Lietu tiesības" II Studiju posms.* Papildināts. Rīga: Biznesa vadības koledža, ISBN 978-9984-838-25-0.

3. Dinsberga, J. 2009. *Tālmācības studiju kurss "Civiltiesības: Lietu tiesības" I Studiju posms.* Rīga: Biznesa vadības koledža. ISBN 978-9984-838-21-2.

4. Dinsberga, J. 2009. *Tālmācības studiju kurss "Civiltiesības: Lietu tiesības" II Studiju posms.* Rīga: Biznesa vadības koledža, ISBN 978-9984-838-25-0.

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1. Apsītis, A., Dinsberga, J. 2022. Ceļa servitūta (via) institūts romiešu tiesībās. 04.01.2022. *Jurista Vārds*. 1 (1215). 25–32.

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3. Dinsberga, J. 2017. *TERMINATION OF SERVITUDE OF ROAD THROUGH PRESCRIPTION*. Daugavpils Universitātes 59. starptautiskās zinātniskās konferences rakstu krājums. B. daļa "Sociālās zinātnes". *Proceedings of the 59th International Scientific Conference of Daugavpils University. Part B "Social Sciences".* Daugavpils Universitāte, akadēmiskais apgāds "SAULE", 48–54. Pieejams: https://dukonference.lv/files/proceedings_of_conf/978-9984-14-833-5_59_konf_kraj_B_Soc%20zin.pdf.

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5. Dinsberga, J, Tiesniece, I. 2016. Problems Related to the Abolition of Divided Real Estate Ownership. *Economics and Culture.* 13(2), 77–88. DOI: https://doi.org/10.1515/jec-2016-0021.

6. Dinsberga, J. 2006. *Maksas noteikšana par servitūta ceļa lietošanu. Administratīvā un krimināla justīcija.* Latvijas Policijas akadēmija, 4 (37), 50–54. ISSN 1407-2971.

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Scientific articles in publications published abroad:

1. Dinsberga, J. and Tarasova, D. 2017. *Peculiarities of Ttermination of Servitude of Right of Way in the Civil Law of the Republic of Latvia and the Civil Code of Ukraine.* Національний університет. "Києво-Могилянська академія" факультет правничих наук збірник наукових праць міжнародна науково-практична конференція. Україна на шляху до європи: реформа цивільного процесуального законодавства. Київ: "ВД Дакор", 211–215. ISBN 987-617-7020-48-5.
2. Динсберга, И. 2007. *Определение платы за использование дорожного сервитута.* Международный научно-практический правовой журнал. "Закон и жизнь", июнь 2007, 36–40, 6 (187). ISSN 1810-3081.

Presenting an oral paper or abstract at an international scientific conference

Oral presentation at an international scientific conference:

1. 2023. gada 27. aprīlī dalība starptautiskā zinātniski praktiskā konferencē "Mūsdienu sabiedrības drošības nostiprināšanas izaicinājumi un risinājumi" (*International scientific-practical conferences Challenges and Solutions for Strengthening the Security of Modern Society*). Ar mutisku referātu "Prasības pieteikuma par ceļa servitūta nodibināšanu iesniegšana tiesā, nebrīdinot atbildētāju – tiesiskie un praktiskie aspekti".
2. 2023. gada 30. martā dalība *Rīga Stradiņš University 3rd International Interdisciplinary Conference "PLACES"*, 29–31 March, 2023. Ar mutisku referātu *Roman Law Real Servitudes as Predecessors to Modern-Day Latvia's "Ceļa servitūts" – Servitude of Right of Way*.
3. 2023. gada 30. martā dalība *Rīga Stradiņš University 3rd International Interdisciplinary Conference "PLACES"*, 29–31 March, 2023. Ar mutisku referātu *Graphic Representation of the Easement Territory – Legal and Practical Aspects*.
4. 2022. gada 9.–10. decembrī dalība *BALTIC INTERNATIONAL ACADEMY XI International Research-to-Practice Conference "Society Transformations in Social and Human Sciences"*. Riga, Latvia. Ar mutisku referātu "Ceļa servitūta kā legāta priekšmeta tiesiskā izpausme".
5. 2021. gada 24. aprīlī dalība Biznesa vadības koledžas starptautiskajā konferencē "Organizācijas un indivīda dzīves kvalitāte digitālajā laikmetā" ar mutisku referātu "Digitalizācijas plusi un mīnusi tiesību sistēmas pilnveidē un apguvē".

6. 2021. gada 24. aprīlī dalība Rīgas Stradiņa universitātes Juridiskās fakultātes, Siedlicas Dabas un humanitāro zinātņu universitātes, Jaroslava Gudrā Nacionālās juridiskās universitātes (*Національний юридичний університет імені Ярослава Мудрого*), "Sv. Kirila un Sv. Metodija" Veliko Tarnovo universitātes, *Mykolas Romeris* universitātes, Juridiskās koledžas organizētajā starptautiskajā zinātniski praktiskajā konferencē "Tiesiskās sistēmas aktuālās problēmas" ar mutisku referātu "Ceļa servitūtu nodibināšanas tiesiskie un praktiskie aspekti kopīpašuma tiesisko attiecību ietvaros".

7. 2021. gada 25. martā dalība *Rīga Stradiņš University the 2nd International Interdisciplinary Conference "PLACES"* konferencē ar mutisku referātu *Legal scope of the notions "servitude of right of way" and "servitude road"*.

8. 2021. gada 25. martā dalība *Rīga Stradiņš University the 2nd International Interdisciplinary Conference "PLACES"* konferencē ar mutisku referātu *Historical scope of the registration, updating and deletion of the servitude of right of way*.

9. 2021. gada 25. martā dalība *Rīga Stradiņš University the 2nd International Interdisciplinary Conference "PLACES"* konferencē ar mutisku referātu *The beginnings of competition law in Roman law institutions*.

10. 2021. gada 25. martā dalība *Rīga Stradiņš University the 2nd International Interdisciplinary Conference "PLACES"* konferencē ar mutisku referātu *Problems of trade mark and consumer protection regulation*.

11. 2020. gada 26.–28. augustā dalība Biznesa vadības koledžas starptautiskajā zinātniski praktiskajā TIEŠSAISTES konferencē "Šodienas pieredze nākotnes biznesam" ar mutisku referātu "Nekustamā īpašuma apgrūtinājumi un to ietekme uz uzņēmējdarbības attīstību".

12. 2020. gada 23. aprīlī dalība Rīgas Stradiņa universitātes Juridiskās fakultātes, Latvijas Zinātņu akadēmijas, Baltijas Stratēģisko pētījumu centra, Siedlicas Dabas un humanitāro zinātņu universitātes, Jaroslava Gudrā Nacionālās juridiskās universitātes (*Національний юридичний університет імені Ярослава Мудрого*), "Sv. Kirila un Sv. Metodija" Veliko Tarnovo universitātes organizētajā starptautiskajā zinātniski praktiskajā konferencē "Tiesiskās sistēmas aktuālās problēmas" ar mutisku referātu "Hipotekāro kreditoru tiesības un pienākumi servitūtu nodibināšanas procesā".

13. 2020. gada 22.–23. aprīlī dalība Ekonomikas un kultūras augstskolas rīkotajā konferencē *International Scientific Conference "Emerging Trends in Economics, Culture and Humanities"* (etECH2019) ar mutisku referātu *ESTABLISHMENT OF AN APARTMENT RIGHT BY A COURT JUDGMENT*.

14. 2019. gada 27. aprīlī dalība starptautiskajā studentu zinātniski praktiskajā konferencē "Integrālā pieeja biznesa ilgtspējai" ar mutisku referātu "Servitūtu veidi un tiesiskais regulējums Senajā Romā un mūsdienās".

15. 2019. gada 25. aprīlī dalība Rīgas Stradiņa universitātes Juridiskās fakultātes, Baltijas Stratēģisko pētījumu centra, Latvijas juristu biedrības, Siedlicas Dabas un humanitāro zinātņu universitātes, Zviedrijas Drošības un politikas attīstības institūta, Juridiskās koledžas un Jaroslava Gudrā Nacionālās juridiskās universitātes starptautiski zinātniski praktiskajā konferencē "Tiesiskās sistēmas aktuālās problēmas" ar mutisku referātu "Atbildība par māju ceļa patvaļīgu aizšķērsošanu – administratīvi tiesiskie un civiltiesiskie aspekti".

16. 2019. gada 25. aprīlī dalība *Baltic International Academy Siedlce University of Natural Sciences and Humanities, The Russian Presedential Academy of National Economy and Public Administration, Belarus State Economic University, National Academy of legal Sciences of Ukraine, University "ALMATY", Rezekne Academy of Technologies, Latvian Lawyers Association annual international and practical conferences "Science. Law. Stability. Current Trends of Modernization in Law"* ar mutisku referātu "Servitūtu tiesiskā regulējuma īpatnības Šveicē".

17. 2019. gada 24.–26. aprīlī dalība Ekonomikas un kultūras augstskolas rīkotajā konferencē *International Scientific Conference "Emerging Trends in Economics, Culture and Humanities"* (etECH2019) ar mutisku referātu *CONCEPTUAL MEANING OF A SERVITUDE AS THE RIGHT IN RESPECT OF THE PROPERTY OF ANOTHER*.

18. 2019. gada 24.–26. aprīlī dalība Ekonomikas un kultūras augstskolas rīkotajā konferencē *International Scientific Conference "Emerging Trends in Economics, Culture and Humanities"* (etECH2019) ar mutisku referātu *DECISION ON PROVISIONAL REGULATION IN CASES RELATED TO ESTABLISHING A SERVITUDE OF RIGHT OF WAY AT COURT – NECESSITY AND IMPLEMENTATION PROSPECTS IN LATVIA*.

19. 2019. gada 11.–12. aprīlī dalība Daugavpils Universitātes 61. starptautiskajā zinātniskajā konferencē ar mutisku referātu "Taisnprātīgas un saudzīgas servitūta tiesības izlietošanas izpratne Civillikuma un tiesu prakses ietvarā".

20. 2019. gada 2. aprīlī dalība *Rīga Stradiņš University International Internationaldisciplinary Conference on Social Science "PLACES"* ar mutisku referātu *Contract of Employment (Locatio Conductio Operarum) and Contract for Work (Locatio Conductio Operis) as a Roman Law Institutes for use of Paid Labour*.

21. 2019. gada 2. aprīlī dalība *Rīga Stradiņš University International Internationaldisciplinary Conference on Social Science "PLACES"* ar mutisku referātu *Graphical annex – one of Constituent Elements of a Road Easement Establishment*.

22. 2018. gada 10.–12. oktobrī dalība Rīgas Stradiņa universitātes rīkotajā *7th Internationaldisciplinary Scientific Conference "Society. Health. Welfare 2018"*, Riga, Latvia. Ar mutisku referātu *Legal and Practical Aspects of Establishing a Servitude of Right of Way within the Framework of Rural and Urban Development and in Circumstances of Global Change*.

23. 2018. gada 10.–12. oktobrī dalība Rīgas Stradiņa universitātes rīkotajā *7th Internationaldisciplinary Scientific Conference "Society. Health. Welfare 2018"*, Riga, Latvia. Ar mutisku referātu *Institutions of Roman Law for Challenges of Rural Logistics: Contract for Work (locatio conductio operis) of Transportation and Rustic Praedial Servitude of Way (servitus viae)*.

24. 2018. gada 10.–12. oktobrī dalība Rīgas Stradiņa universitātes rīkotajā *7th Internationaldisciplinary Scientific Conference "Society. Health. Welfare 2018"*, Riga, Latvia. Ar mutisku referātu *FAST AND EFFICIENT INSOLVECNY PROCESS, AS ONE OF THE PRECONDITIONS OF AN OUTSTANDING BUSINESS ENVIRONMENT AND TERMS OF POTENTIAL OF THE REGIONS*.

25. 2018. gada 26.–27. aprīlī dalība Daugavpils Universitātes 60. starptautiskajā zinātniskajā konferencē ar mutisku referātu *CREATION OF A ROAD EASEMENT THROUGH COURT*.

26. 2018. gada 26. aprīlī dalība Ekonomikas un kultūras augstskolas rīkotajā konferencē *International Scientific Conference "Emerging Trends in Economics, Culture and Humanities"* (etECH2018) ar mutisku referātu *JUST AND CAREFUL USE OF ROAD EASEMENT*.

27. 2018. gada 26. aprīlī dalība Ekonomikas un kultūras augstskolas rīkotajā konferencē *International Scientific Conference "Emerging Trends in Economics, Culture and Humanities"* (etECH2018) ar mutisku referātu *ROAD EASEMENT POSSESSION*.

28. 2018. gada 26. aprīlī Baltijas Starptautiskās akadēmijas un Baltijas Juridiskā žurnāla (Latvija, RĪGA) rīkotajā starptautisko zinātniski praktisko konferenču ciklā "ZINĀTNE. TIESĪBAS. STABILITĀTE" ar mutisku referātu "Servitūta izlietotāja blakus tiesības kā neatņemama servitūta sastāvdaļa".

29. 2018. gada 25. aprīlī dalība Rīgas Stradiņa universitātes Juridiskās fakultātes, Baltijas Stratēģisko pētījumu centra, Siedlicas Dabas un humanitāro zinātņu universitātes, Mīkola Romera Universitātes, kā arī Zviedrijas Drošības un politikas attīstības institūta, Juridiskās koledžas un Jaroslava Gudrā Nacionālās juridiskās universitātes (*Національний юридичний університет імені Ярослава Мудрого*) organizētajā starptautiski zinātniskajā praktiskajā konferencē "Tiesiskās problēmas Latvijas simtgadē: retrospektīva un perspektīva" ar mutisku referātu "Ukrainas Civilkodeksā reglamentēto servitūta izbeigšanas pamatu raksturojums".

30. 2018. gada 19. aprīlī dalība Biznesa augstskolas "Turība" XIX STARPTAUTISKĀ ZINĀTNISKĀ KONFERENCĒ "Latvijai 100: cerības, sasniegumi un izaicinājumi" ar mutisku referātu "Publiskā servitūta institūts Krievijas Federācijā".

31. 2017. gada 18. maijā dalība *Faculty of Communication of Turiba University in cooperation with Latvian Chamber of Commerce and Industry and Latvian Public Relations Association organizes the 18th international scientifically practical conference "Communication in the Global Village: Interests and Influence"* ar

mutisku referātu "CEĻA SERVITŪTA IZBEIGŠANA AR IZPIRKUMU (*TERMINATION OF THE RIGHT OF WAY BY PRE-EMPTION*)".

32. 2017. gada 26.–28. aprīlī dalība Ekonomikas un kultūras augstskolas rīkotajā konferencē *University of Economics and Culture. International Scientific Conference Emerging Trends in Economics, Culture and Humanities* (etECH2017) ar mutisku referātu *ESTABLISHMENT OF EASEMENTS BY LAW*.

33. 2017. gada 27. aprīlī dalība Baltijas Starptautiskās akadēmijas rīkotajā starptautiskajā zinātniski praktiskajā konferencē "ZINĀTNE. TIESĪBAS. STABILITĀTE. Privāttiesību modernizācijas mūsdienu tendences" ar mutisku referātu "Ar ceļa servitūtiem saistītu strīdu risināšana civiltiesiskā kārtībā".

34. 2017. gada 26. aprīlī dalība Rīgas Stradiņa universitātes Juridiskās fakultātes rīkotajā starptautiskajā zinātniski praktiskajā konferencē "Tiesiskās sistēmas modernizācijas virzieni: reālais stāvoklis un nākotnes perspektīvas" ar mutisku referātu "Konceptuālajā ziņojumā "Par problēmām saistībā ar zemes reformas laikā nodibinātajiem ceļu servitūtiem un to iespējamajiem risinājumiem" piedāvātā 1. varianta risinājuma analīze".

35. 2017. gada 6.–7. aprīlī dalība Daugavpils Universitātes rīkotajā konferencē "DAUGAVPILS UNIVERSITĀTES 59. STARPTAUTISKĀ ZINĀTNISKĀ KONFERENCE" ar mutisku referātu *TERMINATION OF SERVITUDE OF RIGHT OF WAY THROUGH PRESCRIPTION* (CEĻA SERVITŪTA IZBEIGŠANA AR NOILGUMU).

36. 2017. gada 26.–27. maijā dalība Rēzeknes Tehnoloģiju akadēmijas rīkotajā konferencē *"SOCIETY. INTEGRATION. EDUCATION". Proceedings of the International Scientific Conference* ar mutisku referātu "MĀCĪBU METODES TEMATA "SERVITŪTU TIESISKAIS REGULĒJUMS" APGUVĒ" (*TEACHING METHODS IN THE MASTERING COURSE "LEGAL REGULATION OF EASEMENT"*).

37. 2016. gada 23.–25. novembrī dalība Rīgas Stradiņa universitātes rīkotajā *6th International conference "SOCIETY. HEALTH. WELFARE 2016 Living in the World of Diversity: Social Transformation, Innovation, Solutions"* ar mutisku referātu *Evaluation of the Servitudes of Right of Way Established by Administrative Acts*.

38. 2016. gada 7.–8. aprīlī dalība Ekonomikas un kultūras augstskolas rīkotajā konferencē *VI International Scientific Conference "21ST CENTURY CHALLENGES FOR ECONOMICS AND CULTURE"* ar mutisku referātu *PROBLEMS OF TERMINATING LEGAL RELATIONS OF SHARED OWNERSHIP*.

International scientific conferences – abstracts:

1. Dinsberga, J. *Graphic Representation of the Easement Territory – Legal and Practical Aspects. Rīga Stradiņš University 3rd International Interdisciplinary Conference "PLACES"*, 29–31 March, 2023: Abstracts. Rīga: RSU, 34–111. ISBN: 978-9934-618-27-7. Pieejams: https://doi.org/10.25143/rw2023.places.abstracts-book.

2. Apsītis, A., Dinsberga, J., Tarasova, D. *Roman Law Real Servitudes as Predecessors to Modern-Day Latvia's* "Ceļa servitūts" – "*Servitude of Right of Way*". *Rīga Stradiņš University 3rd International Interdisciplinary Conference "PLACES"*, 29–31 March, 2023: Abstracts. Rīga: RSU, 54–111. ISBN: 978-9934-618-27-7. Pieejams: https://doi.org/10.25143/rw2023.places.abstracts-book.

3. Dinsberga, J. *Legal scope of the notions "servitude of right of way" and "servitude road"(*23. p .*), Rīga Stradiņš University 3rd International Interdisciplinary Conference "PLACES"*, 25 March, 2021: Abstracts. Rīga: RSU, i-ix p., 123 p. Pieejams: https://doi.org/10.25143/rw2021.places.abstracts-book.

4. Dinsberga, J. *Historical scope of the registration, updating and deletion of the servitude of right of way* (19. p.). *Rīga Stradiņš University 2nd International Interdisciplinary Conference "PLACES"*, 25 March, 2021: Abstracts. Rīga: RSU, i-ix p., 123 p. Pieejams: https://doi.org/10.25143/rw2021.places.abstracts-book.

5. Dinsberga, J. 2017. *ESTABLISHMENT OF EASEMENTS BY LAW. University of Economics and Culture. International Scientific Conference "Emerging Trends in Economics, Culture and Humanities"* (etECH2017). Abstract. APRIL 26–28, Rīga: Ekonomikas un kultūras augstskola (EKA), Alberta koledža (AK), 32. ISBN 978-9984-24-206-4 (EKA), ISBN 978-9984-9633-4-1 (AK), Pieejams: https://www.augstskola.lv/upload/augstskola/zinatne/EKAconf%20_2017_Abstract_proceedings.pdf.

6. Dinsberga, J. *ESTABLISHMENT OF AN APARTMENT RIGHT BY A COURT JUDGMENT. Abstract. International Scientific Conference "EMERGING TRENDS IN ECONOMICS, CULTURE AND HUMANITIES"* (etECH2020). Pieejams: https://www.augstskola.lv/?parent=619&lng=lva.

7. Dinsberga, J. *CONCEPTUAL MEANING OF A SERVITUDE AS THE RIGHT IN RESPECT OF THE PROPERTY OF ANOTHER. International Scientific Conference "Emerging Trends in Economics, Culture and Humanities"* (etECH2019), Abstract. 54 p. ISBN 978-9984-24-222-4 / 978-9984-24-223-1 (pdf), ISBN 978-9934-8772-1-6 / 978-9934-8772-2-3 (pdf). Pieejams: https://www.augstskola.lv/upload/2019_etECH_Abstract_proceedings.pdf.

8. Dinsberga, J. *DECISION ON PROVISIONAL REGULATION IN CASES RELATED TO ESTABLISHING A SERVITUDE OF RIGHT OF WAY AT C OURT – NECESSITY AND IMPLEMENTATION PROSPECTS IN LATVIA. International Scientific Conference "Emerging Trends in Economics, Culture and Humanities"* (etECH2019). Abstracts Proceedings. Roga 2019. 55 p. ISBN 978-9984-24-222-4 / 978-9984-24-223-1 (pdf), ISBN 978-9934-8772-1-6 / 978-9934-8772-2-3 (pdf). Pieejams: https://www.augstskola.lv/upload/2019_etECH_Abstract_proceedings.pdf.

9. Dinsberga, J. *Graphical Annex – One of Constituent Elements of Road Easement Establishment. Abstract. Rīga Stradiņš University International Interdisciplinary Conference on Social Sciences "PLACES"*. Abstracts. Rīga, Latvia, 2 April 2019., 70 p. ISBN 978-9934-563-45-4. Pieejams: http://places-conference2019.rsu.lv/sites/default/files/documents/PLACES_abstracts_book.pdf.

10. Apsītis, A., Tarasova, D., Dinsberga, J., Joksts, J. *Abstract. Contract of Employment (Locatio Conductio Operarum) and Contract for Work (Locatio Conductio Operis) as a Roman Law Institutes for use of Paid Labour. Rīga Stradiņš University International Interdisciplinary Conference on Social Sciences "PLACES"*. Abstracts. Rīga, Latvia, 2 April 2019., 62 p. ISBN 978-9934-563-45-4. Pieejams: http://places-conference2019.rsu.lv/sites/default/files/documents/PLACES_abstracts_book.pdf.

11. Apsītis, A., Tarasova, D., Dinsberga, J. *Institutions of Roman Law for Challenges of Rural Logistics: Contract for Work (locatio conductio operis) of Transportation and Rustic Praedial Servitude of Way (servitus viae). Abstract. Conference "Society. Health. Welfare 2018"*, 10-12th of October, Riga, Latvia, 18. ISBN 978-9934-563-39-3. Pieejams: https://talpykla.elaba.lt/elaba-fedora/objects/elaba:32200006/datastreams/ATTACHMENT_35362851/content.

12. Savickis, V., Dinsberga, J. *FAST AND EFFICIENT INSOLVECNY PROCESS, AS ONE OF THE PRECONDITIONS OF AN OUTSTANDING BUSINESS ENVIRONMENT AND TERMS OF POTENTIAL OF THE REGIONS. Abstract. Conference "Society. Health. Welfare 2018"*, 10-12th of October, Riga, Latvia, 129. 39–3, ISBN 978-9934-563. Pieejams: https://www.shs-conferences.org/articles/shsconf/abs/2020/13/shsconf_shw2020_01007/shsconf_shw2020_01007.html.

13. Dinsberga, J. *Issue of Divided Property and Consequent Problems of Urban-Rural Development. Conference "Society. Health. Welfare 2018"*, 10-12th of October, Riga, Latvia. – 36. Pieejams: https://talpykla.elaba.lt/elaba-fedora/objects/elaba:32200006/datastreams/ATTACHMENT_35362851/content.

14. Dinsberga, J., Savickis, V. *Legal and Practical Aspects of Establishing a Servitude of Right of Way within the Framework of Rural and Urban Development and in Circumstances of Global Change. Abstract. Conference "Society. Health. Welfare 2018"*, 10-12th of October, Riga, Latvia. – 37. DOI https://doi.org/10.1051/shsconf/20196801024. Pieejams: https://www.shs-

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16. Dinsberga, J. *JUST AND CAREFUL USE OF ROAD EASEMENT. International Scientific Conference "EMERGING TRENDS IN ECONOMICS, CULTURE AND HUMANITIES"* (etECH2018) Abstracts Proceedings. Riga 2018, 44. Pieejams: https://www.augstskola.lv/upload/2018_etECH_Abstract_proceedings_PDF.pdf. ISBN 978-9984-24-212-5 /pdf (Ekonomikas un kultūras augstskola). ISBN 978-9984-9633-6-5 /pdf (Alberta koledža).

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18. Dinsberga, J. *ROAD EASEMENT POSSESSION. International Scientific Conference "EMERGING TRENDS IN ECONOMICS, CULTURE AND HUMANITIES"* (etECH2018) Abstracts Proceedings. Riga 2018, 45. Pieejams: https://www.augstskola.lv/upload/2018_etECH_Abstract_proceedings_PDF.pdf. ISBN 978-9984-24-212-5 /pdf (Ekonomikas un kultūras augstskola). ISBN 978-9984-9633-6-5 /pdf (Alberta koledža).

19. Dinsberga, J. 2017. *TERMINATION OF EASEMENTS DUE TO THE FULFILMENT OR EXPIRATION OF A RESOLUTORY CONDITION, PRE-EMPTION OR PRESCRIPTION. ABSTRACTS OF THE 59 SCIENTIFIC CONFERENCE OF DAUGAVPILS UNIVERSITY*. DAUGAVPILS UNIVERSITĀTES AKADĒMISKAIS APGĀDS "SAULE", 146. Pieejams: https://dukonference.lv/files/2017_978-9984-14-797-0_DU%2059%20starpt%20zinatn%20konf%20tezes.pdf.

20. Dinsberga, J. 2016. *Evaluation of the Servitudes of Right of Way Established by Administrative Acts. Rīgas Stradiņš University the Welfare Departament of The Riga City Council Association of Clinical Social Workers. 6 th International conference "SOCIETY. HEALTH. WELFARE 2016" Living in the World of Diversity: Social Transformation, Innovation, Solutions. Living in the World of Diversity: Social Transformations. Innovations. Solutions. ABSTRACTS.* Riga, 23–25 November, 32. Pieejams: https://www.rsu.lv/sites/default/files/imce/Zinas/Zinu%20pielikumi/konferences-Sabiedriba-Veseliba-Labklajiba-tezes-2016.pdf.

21. Dinsberga, J. *Problems of Terminating Legal Relations of Shared Ownership.* In: *Abstracts Proceedings – International Scientific Conference "21st Century Challenges for Economics and Culture"*. April 7–8, 2016. – Riga, Latvia, 31–32. ISBN 978-9984-24-201-9. Pieejams: https://augstskola.lv/upload/augstskola/zinatne/EKAconf%202016%20Abstract%20proceedings.pdf.

Presenting an oral paper or abstract at a scientific conference of local interest

Presenting an oral paper at a local conference:

1. 2018. gada 14. aprīlī dalība Biznesa vadības koledžas zinātniski praktiskajā konferencē "Biznesa izaicinājumi Latvijas simtgadē" ar mutisku referātu "Valdošā un kalpojošā nekustamā īpašuma īpašnieku interešu līdzsvarošana ceļa servitūta nodibināšanas procesā".

2. 2018. gada 22.–23. martā dalība Rīgas Stradiņa universitātes zinātniskajā konferencē ar mutisku referātu "Servitūta ceļa atrašanās vietas izvēles tiesība".

3. 2016. gada 17.–18. martā dalība Rīgas Stradiņa universitātes 15. zinātniskā konferencē ar mutisku referātu "1938. gada 8. decembra Likuma par dalītā īpašuma tiesību atcelšanu pieņemšanas un faktiskās izpildes ietekme uz likumprojekta "Piespiedu dalītā īpašuma tiesisko attiecību privatizētajās daudzdzīvokļu mājās izbeigšanas likums" izstrādi".

4. 2012. gada 7. oktobrī dalība RSU rīkotajā konferencē "Tiesisko problēmu aktuālie jautājumi *Pacta sunt servandta*" ar mutisku referātu "Ar ceļa servitūta nodibināšanu saistītā problemātika".

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1. Dinsberga J. Servitūta ceļa atrašanās vietas izvēles tiesība. Rīgas Stradiņa universitāte. 2018. gada zinātniskā konference (Rīgā, 2018. gada 22.–23. martā). Tēzes. Rīga: RSU, 2018. – XXIV. ISBN 978-9934-563-29-4. Pieejams: https://www.rsu.lv/sites/default/files/imce/Zin%C4%81tnes%20departaments/2018/RSU_zinatniskas_konferences_tezes_2018.pdf.

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3. Dinsberga, J. 1938. gada 8. decembra Likuma par dalītā īpašuma tiesību atcelšanu pieņemšanas un faktiskās izpildes ietekme uz likumprojektu "Piespiedu dalītā īpašuma tiesisko attiecību privatizētajās daudzdzīvokļu mājās izbeigšanas likums". Rīgas Stradiņa universitāte. ZINĀTNISKĀ KONFERENCE. Politiskās, ekonomiskās, sociālās un tiesiskās sistēmas transformācijas Latvijā un pasaulē. 2016. gada 17.–18. marts. Tēzes. Pieejams: http://www.rsu.lv/images/stories/zk_2016/likums_par_dalita_ipasuma_tiesibu_atcelsanu.pdf.

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119. Vidzemes rajona tiesas lietas Nr. C-0601-21 materiāli. Atrodas Vidzemes rajona tiesas arhīvā/ autores personīgajā arhīvā.

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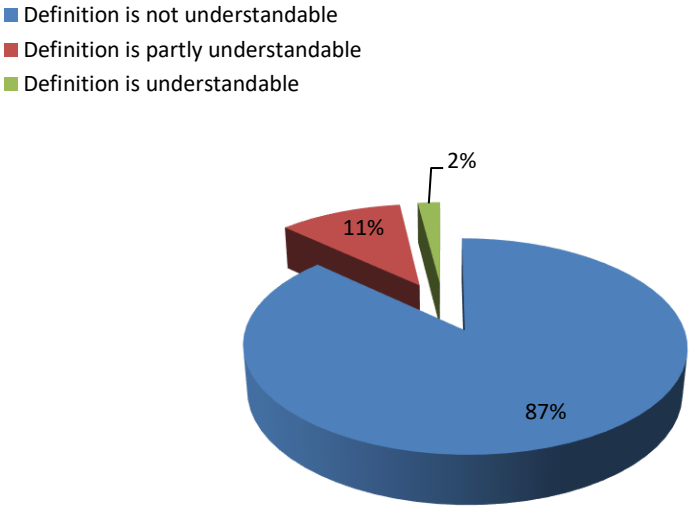
Annexes

Survey on perceptibility of definition of servitude of right of way

SUMMARY OF DEFENDANTS' ANSWERS:



*NUMBER OF DEFENDANTS POLL: 100

QUESTION ASKED TO DEFENDANTS:
Section 1130 of the Civil Law defines *"A servitude is such right in respect of the property of another as restricts ownership rights regarding it, with respect to utilisation, for the benefit of a certain person or a certain parcel of land."*

Are you clear about the definition?

Please choose the most appropriate option:
1. The definition is not understandable
2. The definition is partly understandable
3. The definition is clear

Annex 2

Definition of the term "servitude" in the laws of other countries (author's compilation)

No.	Title/paragraph number of the legislative act	Content of the legislative act
1	Section 4.111, paragraph 1, of the Civil Code **of the Republic of Lithuania**[119]	A servitude is a right in respect of an immovable thing of another that is granted for the use of that thing (the servient thing) or a restriction of the right of the owner of that thing in order to ensure a proper utilisation of the thing in favour of which the servitude is established(the dominant thing).
2	Section 172, Paragraph One, of the **Estonian** Property Law[120]	A real servitude encumbers a servient immovable for the benefit of a dominant immovable such that the actual owner of the dominant immovable is entitled to use the servient immovable in a particular manner or that the actual owner of the servient immovable is required to refrain to a particular extent from the exercise of the owner's right of ownership for the benefit of the dominant immovable..
3	Section 1018 of the **German** Civil Code [121]	A plot of land may be encumbered to the benefit of the respective owner of another plot of land in such a way that the latter may use the plot of land as part of individual relationships or that certain acts may not be undertaken on the plot of land or that the exercise of a right towards the other plot of land that arises from the ownership of the encumbered plot of land is excluded (servitude).

[119] Lietuvos Respublikos civilinis kodeksas pirmoji knyga bendrosios nuostatos. Retrieved from: http://www.lithuanialaw.eu/lt/pradzia/civiline-teise/civilinis-kodeksas/servituto-turetojo-teise-reikalauti-atlyginti-nuostolius/#servituto-turetojo-teise-reikalauti-atlyginti-nuostolius. [acc. 25.09.2021.]

[120] Asjaõigusseadus. Vastu võetud 09.06.1993. 172. Retrieved from: https://www.riigiteataja.ee/akt/13322575?leiaKehtiv. [sk: 18.09.2021.]

[121] Bürgerliches Gesetzbuch. 18.08.1896 (BGB). Retrieved from: https://www.gesetze-im-internet.de/bgb/BJNR001950896.html. [acc. 25.09.2021.]

No.	Title/paragraph number of the legislative act	Content of the legislative act
4	Section 637 of the **French** Civil Code[122]	A servitude is a charge imposed on an immovable for the use and utility of another immovable belonging to another owner.
5	Section 730, Paragraph One, of the **Swiss** Civil Code[123]	A parcel of land may be encumbered in favour of another property such that the servient owner must permit the owner of the dominant property to exercise certain rights over it to or may not exercise certain of the rights attaching to his or her property for the benefit of the owner of the dominant property.
6	Section 274 of the Civil Code **of the Russian Federation**[124]	The owner of the immovable property (the land plot and other realty) shall have the right to claim from the owner of the neighboring land plot, and if necessary, also from the owner of yet another land plot (the neighboring plot) that the right of the limited use of the neighboring land plot (the servitude) be granted to him.
7	Section 428, paragraph 1, of the Civil Code of the Republic of **Moldova**[125]	A servitude is an obligation to encumber immovable property (the immovable property encumbered by the servitude) in order to secure the right to use the immovable property or the immovable property needs of another owner (the dominant immovable property). The need may be related to increasing the comfort of the dominant immovable property or result from its economic purpose.

[122] Code civil. Créé par Loi 1804-01-31. Retrieved from: https://www.legifrance.gouv.fr/ codes/article_lc/LEGIARTI000006430276. [acc. 25.09.2021.]

[123] Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907. Retrieved from: https://www.fedlex.admin.ch/eli/cc/24/233_245_233/de [acc. 25.09.2021]

[124] Гражданский кодекс Российской Федерации. 21 октября 1994 года. Retrieved from: https://rulaws.ru/gk-rf-chast-1/ [acc. 10.07.2023.]

[125] Гражданский кодекс Республики Молдова. Retrieved from: http://lex.justice.md/ru/325085/ [acc. 20.09.2021.]

No.	Title/paragraph number of the legislative act	Content of the legislative act
8	Section 401 of **the Civil Code of Ukraine**[126]	A right over another person's property (servitude) can be established over a parcel of land, other natural resources (land servitudes) or other immovable property to meet the needs of others that cannot be met in other ways.
9	Section 1029, first part, of the **Czech** Civil Code[127]	An owner of an immovable thing which may not be duly managed or otherwise duly used because it is insufficiently connected to a public road may request that his neighbour allow him the necessary passage through his tract of land for compensation.
10	**Civil and Commercial Code of Thailand** Section 1387[128]	An immovable property may be subjected to a servitude by virtue of which the owner of such property is bound, for the benefit of another immovable property, to suffer certain act affecting his property or to refrain from exercising certain rights inherent in his ownership.

***** Lithuania, Estonia, Germany, France, Switzerland, Russian Federation, Moldova, Ukraine, Czech Republic and Thailand are selected for comparison.

Latvia, Lithuania and Estonia – the three Baltic countries occupied by and part of the Union of Soviet Socialist Republics between 1940 and 1990. When these countries regained their independence, each country began to develop its own legal system. Therefore, the author has chosen and examined how the servitude of right of way is defined in the nearest neighboring countries of Latvia.

[126] Гражданский кодекс Украины. Retrieved from: https://pravoved.in.ua/section-kodeks/82-gku.html [acc. 10.07.2023.]

[127] Гражданский кодекс. Свода законов 89/2012. Закон от 03 февраля 2012. Retrieved from: http://obcanskyzakonik.justice.cz/images/pdf/novy-obcansky-zakonik-rj.pdf [acc. 20.09.2021.]

[128] Thai Civil Law. Retrieved from: https://www.thailandlawonline.com/thai-real-estate-law/1387-1401-civil-law-right-of-servitudes [acc. 20.09.2021.]

The study of the German, French and Swiss legal frameworks is useful in view of the high human development index in these countries, as evidenced by the data compiled by the Human Development Data Centre for 2021/2022.[129] It would therefore be important to study the legal framework of such countries.

Post-communist countries[130] – Ukraine, Russian Federation, Moldova – have been selected, as Latvia was part of the post-communist countries together with these countries. Because to date the legal systems of each country have developed differently. Czech Republic – a Warsaw Pact country that was formally independent, but is also considered post-communist country.[131]

Thailand, or the Kingdom of Thailand, is one of the most exotic countries in Southeast Asia, notable also for its total land area (510 890 km²[132]) and population (71 805 213 as of 18 July 2023, based on the latest United Nations figures[133]). It operates under the Romano-Germanic legal system (with the influence of the Anglo-Saxon legal system). It is therefore of interest to see how servitudes are handled in this densely populated country.

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[129] Human Development Data Centre. *Human Development Index (HDI) Ranking.* Retrieved from: https://hdr.undp.org/data-center/country-insights#/ranks [acc. 10.07.2023]

[130] Postkomunistisko valstu attīstība. Retrieved from: https://www.uzdevumi.lv/p/pasaules-vesture/9-klase/eiropas-integracija-7228/re-12b07ca3-fafe-4f38-b3ec-6917d238400a, [acc. 25.09.2021.]

[131] Desmit gadu pēc mūra krišanas. The Economist. 12.11.1999. *Latvijs Vēsnesis.* 374/377. Retrieved from: vestnesis.lv/ta/id/15588. [acc. 25.09.2021.]

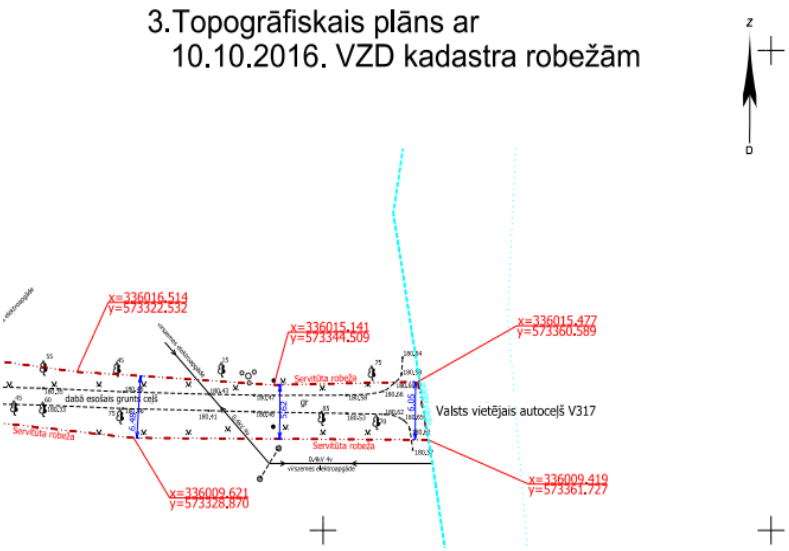
[132] Thailand Population. Retrieved from: https://www.worldometers.info/world-population/thailand-population/ [acc. 18.07.2023.]

[133] Thailand Population. Retrieved from: https://www.worldometers.info/world-population/thailand-population/ [acc. 18.07.2023.]

Graphical representation of a servitude of right of way (1)

Topographical plan:

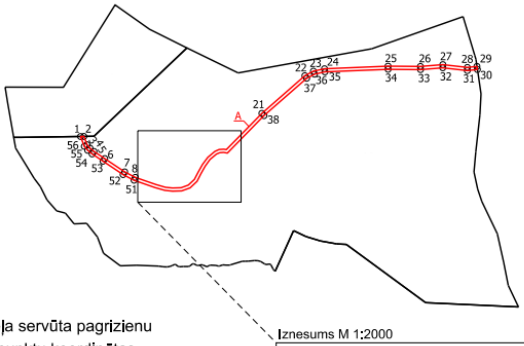
- a red dotted line shows the boundary of the proposed servitude road;
- the coordinates 'X' and 'Y' of the boundary;
- the blue shaded lines show the width of the proposed servitude road (in metres and centimetres), which is significantly wider than the width of the existing road.



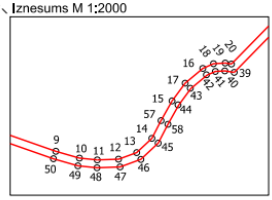
Annex 4

Graphical representation of a servitude of right of way (2)

SERVITUDE OF RIGHT OF WAY PLAN AT 1:5000 SCALE. On the possibility of access to the land unit with cadastral designation [..] [address] through the land unit with cadastral designation [..], [address]



Iznesums M 1:2000



Ceļa servūta pagrizienu punktu koordinātas
Koordinātu sistēma LKS92 TM
Mēroga koeficients: 0.999686

Nr	X	Y
1	328420,49	609480,64
56	328407,91	609485,47
55	328402,79	609489,81
54	328398,16	609495,44
53	328388,94	609509,35
52	328371,81	609535,00
51	328364,58	609549,00
50	328355,18	609575,84
49	328351,55	609588,36
48	328350,57	609598,10
47	328350,99	609609,88
46	328354,84	609620,51
45	328363,17	609629,37
58	328372,80	609634,34
44	328382,58	609639,80
43	328391,07	609646,08
42	328397,96	609654,30
41	328399,85	609658,56
40	328400,12	609663,40
39	328399,36	609668,19
38	328447,20	609715,01
37	328494,93	609769,46
36	328500,21	609779,49
35	328503,16	609792,76
34	328506,46	609873,46
33	328506,06	609914,92
32	328508,39	609943,32
31	328504,78	609974,67
30	328506,14	609987,58

Nr	X	Y
29	328510,10	609986,99
28	328508,80	609974,69
27	328512,41	609943,39
26	328510,06	609914,77
25	328510,47	609873,39
24	328507,14	609792,24
23	328504,00	609778,10
22	328498,24	609767,18
21	328450,11	609712,26
20	328403,63	609666,78
19	328404,14	609663,61
18	328403,80	609657,61
17	328401,39	609652,16
16	328393,83	609643,14
15	328384,76	609636,43
57	328374,70	609630,81
14	328365,61	609626,13
13	328358,32	609618,37
12	328354,97	609609,11
11	328354,58	609598,23
10	328355,49	609589,12
9	328358,99	609577,06
8	328368,26	609550,58
7	328375,26	609537,03
6	328392,27	609511,57
5	328401,38	609497,82
4	328405,65	609492,63
3	328409,98	609488,96
2	328420,54	609484,90

ceļa apz.	z.v.kad.apz.	garums (km)	platums (m)	platība (ha)
A		0,591	4	0,2364

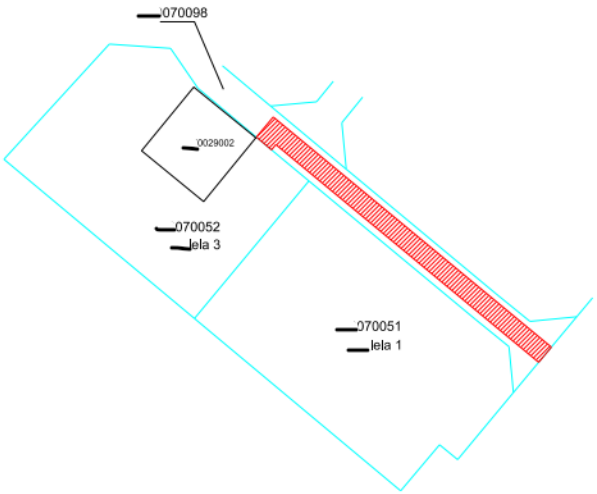
APZĪMĒJUMI:

o9 - ceļa servitūta pagriezlena punkts un tā numurs

Annex 5

Graphical representation of a servitude of right of way (3)

Sketch for establishing a servitude of right of way



Ceļa servītūta teritorijas garums 110 metri (0.110 km, 0.0671 ha)

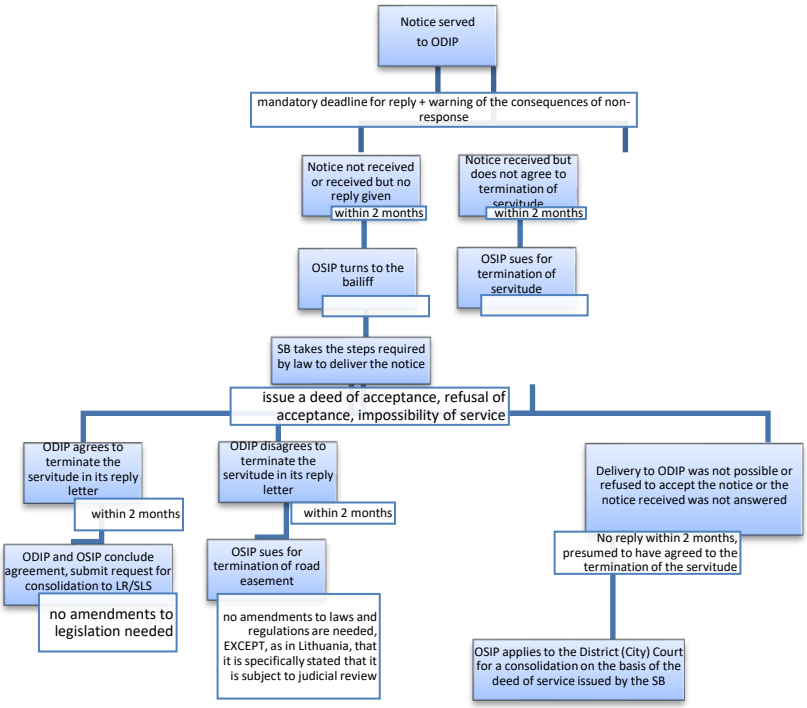
Ceļa servitūta teritorijas platums 6.0 metri

Skice sagatavota atbilstoši 2021.gada 20.augustā kadastrs.lv pieejamajai informācijai

Annex 6

Procedure for termination of a servitude of right of way out of court on prescription grounds Schematic representation (by the author)

Abbreviations used:
ODIP – owner of the dominant immovable property
OSIP – owner of the servient immovable property
SB – sworn bailiff
LR – Land Register
SLS – State Land Service



Positive and negative aspects of the conceptual proposal for an out-of-court procedure for the termination of a servitude of right of way on prescription grounds (by the author)

No.	Positive aspects of the proposed conceptual solution	Negative aspects of the proposed conceptual solution
1	Modernisation and development of legislation	The risk of bad faith behaviour by the dominant property owner. For example, providing documents to the Land Registry and not disclosing the fact that the owner of the dominant immovable property has responded (by not agreeing to the termination of the servitude of right of way) to a notice within 2 months. In such circumstances, the rights of the owner of the dominant immovable property may be prejudiced. However, this risk is minimal, as the forms of the request for registration of a servitude in the annexes to the Cabinet Regulation No. 898 of 31 October 2006 "Regulations on the forms of the request for registration in the Land Register"[134] contain a requirement for the plaintiff to certify by signature that the information provided is correct.
2	Ensuring that data is factual and is entered in public registers	The precarious legal position of the dominant property owner and the potential imbalance in legal equality. Initially, it may appear that the out–of–court procedure proposed would prejudice the interests of the dominant property owner by not providing for the possibility to defend them in court. However, it should be stressed at the same time that the proposed mechanism can only be implemented if the owner of the dominant immovable property deliberately fails to accept the notice, fails to reply or is unreachable. As has been clarified above, it is the responsibility of any person to ensure that he or she is reachable in communication with the State. If the owner of the immovable property does not take care to receive correspondence, does not exercise his right to object, he also does not enjoy the protection of the law. This also follows from the decision of the Senate of the Supreme Administrative Court of 3 May 2005 in Case No. SKA-229[135] , which emphasises the obligation of the addressee to declare the place of residence where he can be reached in legal relations. Consequently, the author considers that this risk is also minimised

[134] Noteikumi par zemesgrāmatu nostiprinājuma lūguma formām: Ministru kabineta 2006. gada 31. oktobra noteikumi Nr. 898. 09.11.2006. Latvijas Vēstnesis. 180.

[135] Augstākās tiesas Senāta Admnistratīvo lietu departamenta 2005.gada 3.maija lēmums lietā Nr.SKA-229. Retrieved from: https://www.at.gov.lv/lv/judikaturas-nolemumu-arhivs-old/senata-administrativo-lietu-departaments/hronologiska-seciba/2005 [acc. 12.07.2023.].

No.	Positive aspects of the proposed conceptual solution	Negative aspects of the proposed conceptual solution
3	Removing uncertain legal status of servient immovable property	Additional burden for sworn bailiffs
4	Relieving the workload of the courts	–
5	Saving time and financial resources for the owners of the properties being managed and served	–
6	No impact on the national budget	–

Annex 7

Summary of decisions

Table 3.1

Off-site court hearings in servitude cases (by the author)

1	Judgment of the Tukums District Court of 8 February 2018, Case No. C37058517;[136]
2	Judgment of the Civil Division of the Zemgale Regional Court of 9 November 2018, Case No. CA–0352–18/8;[137]
3	Judgment of the Civil Division of the Zemgale Regional Court of 15 May 2018, Case No. CA–0008–18/11;[138]
4	Judgment of the Civil Cases Panel of the Zemgale Regional Court of 13 November 2014, Case No. C07040608;[139]
5	Judgment of the Vidzeme District Court in Gulbene of 20 October 2022, Case No. C–0737–22/14[140] ;
6	Judgment of the Civil Division of the Vidzeme Regional Court of 3 October 2013, Case No. C11129810.[141]
7	Judgment of the Civil Division of the Zemgale Regional Court in Jelgava of 10 June 2022, Case No. CA–0082–22/7;[142]

[136] Tukuma rajona tiesas Tukumā 2018.gada 8.februāra spriedums lietā Nr.C37058517, lietvedības Nr. C-0097-18/3). Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

[137] Zemgales apgabaltiesas Civillietu tiesas kolēģijas Jelgavā 2018. gada 9. novembra spriedums, lietas arhīva Nr. CA-0352-18/8. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

[138] Zemgales apgabaltiesas Civillietu tiesas kolēģijas Jelgavā 2018. gada 15. maija spriedums, lietas arhīva Nr. CA-0008-18/11. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

[139] Zemgales apgabaltiesas Civillietu tiesu kolēģijas Jelgavā 2014. gada 13. novembra spriedums lietā Nr. C07040608. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

[140] Vidzemes rajona tiesas Gulbenē 2022. gada 20.oktobra spriedums, lietas arhīva Nr. C-0737-22/14. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

[141] Vidzemes apgabaltiesas Civillietu tiesas kolēģijas Valmierā 2013. gada 3. oktobra spriedums lietā Nr. C11129810, lietas arhīva Nr. CA-0173-13/7. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

[142] Zemgales apgabaltiesas Civillietu tiesas kolēģijas Jelgavā 2022. gada 10. jūnija spriedums, lietas arhīva Nr. CA-0082-22/7. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

8	Judgment of the Civil Division of the Zemgale Regional Court in Jelgava of 3 December 2021, Case No. CA–0200–21/11;[143]
9	Judgment of the Civil Division of the Zemgale Regional Court in Jelgava of 19 July 2021, Case No. CA–0178–21/11;[144]
10	Judgment of the Riga Regional Court, Civil Division, Riga, 20 January 2021, Case No. CA–0012–21/31;[145]
11	Judgment of the Zemgale Regional Court in Jelgava of 28 May 2018, Case No. CA–0092–18/11;[146]
12	Judgment of the Vidzeme Regional Court of 19 October 2021 in Case No. CA–0183–21 [147]

[143] Zemgales apgabaltiesas Civillietu tiesas kolēģijas Jelgavā 2021. gada 3. decembra spriedums, lietas arhīva Nr. CA-0200-21/11. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

[144] Zemgales apgabaltiesas Civillietu tiesas kolēģijas Jelgavā 2021. gada 19. jūlija spriedums, lietas arhīva Nr. CA-0178-21/11. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

[145] Rīgas apgabaltiesas Civillietu tiesas kolēģijas Rīgā 2021. gada 20. janvārī spriedums, lietas arhīva Nr. CA-0012-21/31. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

[146] Zemgales apgabaltiesas Jelgavā 2018. gada 28. maija spriedums, lietas arhīva Nr. CA-0092-18/11. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

[147] Vidzemes apgabaltiesas 2021. gada 19. oktobra spriedums, lietas arhīva Nr. CA-0183-21. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 06.05.2023.].

Table 3.2

Court Decisions – Evaluating Alternative Access Offers (by the author)

1	Judgment of the Regional Court of Zemgale in Jelgava of 28 May 2018, Case No. CA–0092–18/11 [148]
2	Judgment of the Civil Division of the Vidzeme Regional Court in Valmiera of 3 October 2013 in case No. C11129810[149]
3	Riga City Northern District Court Judgment of 3 November 2017 in Case No. C–0051–17/3[150]
4	Judgment of the Riga District Court in Sigulda of 2 November 2022 in Case No. C33577721[151]

[148] Zemgales apgabaltiesas Jelgavā 2018. gada 28. maija spriedums, lietas arhīva Nr. CA-0092-18/11. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi. [acc. 06.05.2023.].

[149] Vidzemes apgabaltiesas Civillietu tiesas kolēģijas Valmierā 2013. gada 3. oktobra spriedums lietā Nr. C11129810, lietas arhīva Nr. CA-0173-13/7. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi. [see 06.05.2023.].

[150] Rīgas pilsētas Ziemeļu rajona tiesas 2017. gada 3. novembra spriedums, lietas Nr. C-0051-17/3. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi. [acc. 06.05.2023.].

[151] Rīgas rajona tiesas Siguldā 2022. gada 2. novembra spriedums, lietas Nr. C33577721. Unpublished.In the archives Riga District Court in Sigulda / Located in the Author's archive.

Annex 8

Court decisions in interim protection cases (author's own)

No.	Court ruling
1	Decision of the Zemgale District Court in Tukums in case No. C73445821[152]
2	Decision of the Zemgale District Court in Jelgava in case No. C73419321[153]
3	Decision of the Riga District Court in Riga in case No. C33424022[154]
4	Decision of the Riga District Court in Riga in case No. C33439221[155]
5	Decision of the Riga District Court in Jurmala in case No. C33497822[156]
6	Decision of the Riga District Court in Jurmala in case No. C33525422[157]
7	Decision of the Riga City Pardaugava Court Case No. C-4318-21[158]
8	Decision of the Vidzeme District Court in Gulbene, archive case No. C-3527-21[159]
9	Decision of the Vidzeme District Court in Gulbene Case No. C-3333-21[160]
10	Decision of the Zemgale District Court in Tukums in case No. C73445821 [161]
11	Decision of the Zemgale District Court in Jelgava in case No. C73419321[162]

[152] Zemgales rajona tiesas Tukumā 2021. gada 10. jūnija lēmums lietā Nr.C73445821. Retrieved from: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi [acc. 21.07.2023.].

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[162] Zemgales rajona tiesas Jelgavā 2021. gada 27. maija lēmums lietā Nr. C73419321. Unpublished. In the archives Zemgale District Court in Jelgava / at the Author's disposal.

The Guidelines for drafting the statement of claim in disputes concerning the establishment of a servitude of right of way (by the author)

THE GUIDELINES FOR DRAFTING THE STATEMENT OF CLAIM IN DISPUTES CONCERNING THE ESTABLISHMENT OF A SERVITUDE OF RIGHT OF WAY

Abbreviations used in the Guidelines:
SC – Supreme Court
CL – Civil Law
CPL – Civil Procedure Law

[1] These guidelines are designed to assist in the drafting of an application for establishing a servitude of right of way. The guidelines contain explanations on the elements of the content of the claim, the documents to be attached to it and the presentation of the claim.

[2] Section 128 of the Civil Procedure Law sets out the requirements to be complied with when drafting a statement of claim. The Guidelines provide guidance only on certain (in cases of establishment of a servitude of right of way) key elements of the composition of the statement of claim, as set out in Section 128 of the Civil Procedure Law:

1) the subject-matter of the claim (Section 128, Paragraph Two, Point 3);
2) the circumstances on which the plaintiff bases his claim and the evidence supporting them (Section 128, Paragraph Two, Point 5);
3) the use of mediation to resolve the dispute before going to court (Section 128, Paragraph Two, Point 5^1);
4) the law on which the claim is based (Section 128, Paragraph Two, Point 6);
5) the claims of the plaintiff (Section 128, Paragraph Two, Point 7).

[3] The Guidelines are recommendatory. These Guidelines do not contain recommendations for all possible disputes. It is therefore advisable to consult a specialist in the field for cases not covered by these Guidelines or in case of any doubt as to the application of these Guidelines.

[4] Terms used in the Guidelines:
Plaintiff - a person who brings an action in court because of the need to establish a servitude of right of way
Defendant - the person against whom a court action has been brought to establish a servitude of right of way.
Dominant immovable property – immovable property for which a servitude of right of way is to be established.
Servient or encumbered immovable property – the immovable property on which the servitude of right of way is to be established.

General questions	
If the servitude has not been established by law or by will, and it is not possible to reach a voluntary agreement with the owner of the servient immovable property to establish the servitude by contract, the servitude must be established by a court.	CL Section 1231, Point 2
Any natural or legal person (including limited partnerships and general partnerships) of legal age and legal capacity may bring an action in court to establish a servitude of right of way.	Section 127, Paragraph One, CPL
Important! The owner of the dominant immovable property is entitled to bring an action for the establishment of a servitude of right of way (if the dominant immovable property is owned by several persons, the action is brought jointly by all the joint owners).	Section 1232 Paragraph Two CL
When bringing an action in court to establish a servitude of right of way, it must be established whether the claim affects the interests of third parties.	See Chapter 11 of the CPL.
The acquisition of servitude rights or the encumbrance of immovable property by a right in rem (establishment of a right of way) requires the consent of third parties (persons whose interests are or may be prejudiced by the judgment).	CL 1234, Paragraph Two Section 1068(2) CL CL 1232, Paragraph Two Section 90(2) CL Section 124 CL
Interested third parties may include, for example: • mortgage lender • spouse, • joint owners • insolvency administrator, etc.	
An application for the third party to be heard by the court must be made to the court. The court shall decide whether to grant or refuse the application. The application is submitted to the court by the parties or a third party.	Section 64(1)(1) of the Insolvency Law
All the allegations made by the plaintiff in the application must be provable. But the claims must be supported by the law, including case law and legal doctrine.	Section 80(3) CPL, Section 81

1 Subject of the claim	
Subject-matter of the application: The application is made to the court in respect of the need to establish a servitude of right of way (as a footpath, driveway or cattle track servitude) over the defendant's servient immovable property in favour of the plaintiff (the plaintiff's immovable property – the dominant immovable property) in order to provide access to the dominant immovable property. **Note:** Where the plaintiff has reason to believe that the plaintiff's rights are being, or are likely to be, prejudiced by the entry into force of the decision, or that the plaintiff is likely to suffer substantial damage as a result of the defendant's act or omission, the plaintiff is entitled to apply to the court for interim protection (either before or with the bringing of the action). For example, if the only access to the dominant immovable property is via a road in the servient immovable property, but the owner has piled firewood on the road, installing lockable gates, dug a hole, plans to build a greenhouse or carry out other activities that prevent movement, etc.	Section 1130 CL Section 1131 CL Section 1156 CL See also CPL Chapter 19 – Securing and provisional protection
2 The facts on which the plaintiff bases his claim and the evidence supporting them	
In the application, the plaintiff must state all the circumstances and facts relevant to justify the establishment of the servitude of right of way. The justification for establishing a servitude is the need to provide the dominant immovable property with the benefits necessary for the normal functioning of the dominant property. For example, the plaintiff cannot get in or out of his property to the common road; it is the plaintiff's only place of residence; the plaintiff's property needs to be managed but this is not possible; the plaintiff has tried to reach an out-of-court settlement with the defendant, but the defendants have not agreed; the plaintiff's and the defendant's properties are contiguous and the servient estate is capable of benefiting the dominant estate; the defendant already owns a road which could be used as a servitude; the plaintiff is engaged in commercial activities and the lack of access causes substantial damage, etc.	

2 The facts on which the plaintiff bases his claim and the evidence supporting them	
Servient immovable property must benefit the dominant property, not only incidentally or temporarily, but by its permanent characteristics. This means that there must be a real possibility of travelling at any time along a road (or, in the absence of a road, a strip of land on which it is possible to travel) in order to reach the servient immovable property.	Section 1146 CL
Evidence is information on the basis of which a court determines the existence or non-existence of facts that are relevant to the determination of a case. Evidence for establishing a servitude of right of way can include: 1) Parties' and third parties' explanations (Section 104 CPL) 2) Witness statements (Section 105 CPL) 3) Written evidence (Section 110 CPL) 4) Expertise (Section 121 CPL) 5) Institutional opinion (Section 126 CPL) The evidence to be annexed to applications depends on the specific case and the choice of the plaintiff. It is important that the application is accompanied by evidence which confirms all the facts on which the claim is based. Basic documents that should be attached to the application to give the court an idea of the overall situation: 1) a copy of the Land Register entry for the dominant immovable property; 2) a copy of the Land Register section of the servient immovable property; 3) Land boundary, situation and encumbrance plan of the land units; 4) Cadastral information on the land parcels of the dominant and servient immovable property; 5) a graphical representation of the servitude of right of way area for the purpose of establishing the servitude of right of way and other documents. **Important!** The application must be accompanied by a graphical representation of the servitude of right of way, drawn up by a certified surveyor. This is the basis for the plaintiff's claim and, if the claim is successful, the graphical representation of the servitude of right of way will have to be submitted to the Land Registry for the registration of the right of servitude of right of way and to the State Land Service for registration in the State Immovable Property Cadastre Information System and representation on the Cadastre Map.	See CPL chapters 15, 16, 17 Section 92 CPL

2 The facts on which the plaintiff bases his claim and the evidence supporting them	
The graphical representation of the servitude of right of way produced* by a certified surveyor shall contain the following: 1) the name of the graphical representation of the servitude of right of way with an indication of the address and cadastral number of the immovable property on which the servitude of right of way is to be established; 2) a graphical representation of the land unit on which the servitude of right of way is to be established and its cadastral designation; 3) the length of the servitude territory; 4) the width of the servitude territory, 5) the total area occupied by the servitude of right of way; 6) the exact location of the servitude territory within the land parcel; 7) the reference of the servitude territory to the coordinates; 8) information on the source of the data on which the graphical representation of the servitude was made by the certified land surveyor and the scale; 9) information on the producer (name, certificate number, date of issue and expiry date of the certificate); 10) the date of the graphical representation of the servitude territory. * *the reference is included in the Conclusions and Proposals section of the Thesis*	
3 Details on the use of mediation to resolve a dispute before going to court	
The plaintiff must provide information about the use of mediation to resolve the dispute before going to court. Mediation is a process of voluntary cooperation in which the parties try to reach a mutually acceptable agreement to resolve their differences through a mediator. **See also:** https://www.tiesas.lv/Media/Default/baneri/mediacija_final.pdf The CPL does not impose an obligation to use mediation. However, the use of mediation is recommended and preferable because it can help resolve a conflict through mutual negotiation and settlement. The settlement must be submitted to the court for approval. Mediation may also be used to waive or admit a claim in whole or in part. Mediation is a more cost-effective and time-saving process for resolving a conflict (as opposed to years of litigation). Each party can reach a solution that is as favourable as possible for itself through mutual concessions.	Section 128, Paragraph Two, Point 5^1 See Mediation Law The rules on conciliation are set out in Sections 226–228 of the Civil Procedure Law

4 The law on which the claim is based	
The list of laws and articles on which the claim is based is individual. It depends on each specific situation. For example: **Sections 1**, 1130, 1131, 1135, 1141, 1146, 1147, 1156 (relevant paragraph 1, 2 or 3), 1158, 1159, 1231(2), 1459(1), etc. **of the Civil Law.** **Section 1**, Section 29 (1), Section 33, Section 34 (1) (4) and (1) (7), Section 39, Section 41, Section 74, Section 93, Section 96, Section 97, Section 127 (1), Section 128 (2) (2^1) and (2) (5^1), Section 137 (2), Section 138^1 (1) (3), Section 197 **of the Civil Procedure Law,** Depending on the situation and the need, the requirement may also be based on other laws and regulations. However, it is not necessary to mention all possible laws and regulations. Even if a statute or an article is missing, it is a generally accepted principle of case law that the court knows the law and must apply the law relevant to the particular case, even if the parties have not referred to it in their application or if the wrong law is referred to in the application.	
5 Plaintiff's claims	
The plaintiff's claims are what the plaintiff asks the court to do. The claims must be formulated as concisely (without being unnecessary) and precisely as possible so that the claim can be enforced if the claim is allowed. Incorrect or imprecise wording may lead to the claim being rejected. The plaintiff must state in the claim formulation part of the application: 1) the servient immovable property on which the servitude of right of way is to be established – cadastral number, address, cadastral designation of the land unit (it is particularly important to indicate if the immovable property consists of several land units); 2) the dominant immovable property in favour of which the servitude of right of way is to be established – cadastral number, address, cadastral designation of the land unit; 3) the parameters of the servitude of right of way area – length, width, total occupied area and coordinates attached to the territory of servitude of right of way. It is also recommended to include a note that the length, width and total occupied area of the territory of servitude of right of way is to be specified after its survey in nature. 4) name of the court, number of the Land Register division in which the possession and service of the immovable property are registered (conditional necessity).	

5 Plaintiff's claims	
Important! The request part of the statement of claim **should NOT include the request for recording the servitude /consolidation of the right of servitude of right of way in the Land Register.** The court hearing the servitude case does not have jurisdiction to decide on the issue of entering the servitude in the Land Register, as the basis for entering the right to the servitude of right of way in the Land Register is a court judgment. The servitude shall be established in the Land Register pursuant to Section 44 of the Land Register Law. Consolidation of the right of servitude is in the competence of the district (city) court in whose Land Registers the immovable property is registered and the right shall be established on the basis of the judge's decisions. For the servitude to be registered in the Land Register, if it has been established on the basis of a court judgment, a unilateral corroboration request by the user of the servitude is sufficient.	Section 44 of the Land Registry Law
OTHER:	
1 Bringing a counterclaim	
In servitude cases, the owner of the servient property does NOT have to counterclaim if he offers an alternative to the servitude of right of way.	See the judgment of the Senate of the Supreme Court of the Republic of Latvia of 11 April 2007 in case No. SKC-259.
2 Notice of intention to bring an action in court to terminate or disturb a right of way servitude	
The application in cases concerning servitudes of right of way shall be accompanied by a document proving that the plaintiff has sent or served on the defendant a notice of his intention to bring an action for the establishment, termination or disturbance of a servitude of right of way at the defendant's declared or registered address 1 month before the application is lodged with the court and providing details of the defendant's actions in relation to the notice sent or served. ** the reference is included in the Conclusions and Proposals section of the Thesis*	–

* The guidelines have been developed taking into account the Proposals made by the author in the Conclusion of the Thesis.