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Alenka Kačičnik Gabrič

"TO SMEMO ŽE TAKO DOLGO"

Kmečke služnosti in njihova odprava

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Urednik dr. Aleš Gabrič
Založnik Inštitut za novejšo zgodovino
Za založnika dr. Damijan Guštin

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dr. Andrej Studen

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VSEBINA

POVZETEK

»TO SMEMO ŽE TAKO DOLGO«:

KMEČKE SLUŽNOSTI IN NJIHOVA ODPRAVA

Ob spremembah, ki so se leta 1848 kot posledica marčne revolucije zgodile na agrarnem področju, so odprava, odkup in regulacija služnosti tiste spremembe, ki so ekonomsko najbolj posegle v življenje večinskega dela prebivalstva, ki se je še vedno preživljalo z obdelovanjem zemlje in gospodarjenjem z zemljišči. Način izkoriščanja zemljišč s kmečkimi služnostmi se je oblikoval predvsem v vzhodnem germanskem prostoru, v večini avstrijskih dežel pa je prevladal do take mere, da je bilo leta 1848 težko najti zemljišče, ki ne bi bilo obremenjeno s katero od oblik služnosti. Pričujoča knjiga obravnava služnosti kot pomemben dejavnik kmetovanja v avstrijskih deželah s poudarkom na Kranjski, pa tudi kot sestavni del kmetijskega gospodarstva, kjer so služnosti predstavljale včasih težko nadomestljiv ekonomski vir. S tem so vplivale tudi na življenje kmečke družine in širše družbene skupnosti.

Služnosti so bile kot pravna kategorija poznane že v rimskem času. Prebivalci rimskega imperija so ločevali osebne služnosti in služnosti, vezane na posest. Nekatere osebne služnosti so sčasoma izgubile praktični pomen, pašne, gozdne in podobne pravice večjih ali manjših skupin prebivalstva, naselbinskih enot ali drugačnih deležnikov pa so pravno obveljale kot zemljiške služnosti. Kot pravni problem jih je kot eden zgodnejših poizkušal v 16. stoletju razložiti Martin Pegius, doma iz Polhovega Gradca, ki je sicer večinoma živel v Salzburgu. V svojem spisu o služnostih, ki je med vsemi njegovimi deli doživelo največji odmev, je ostal pri rimskem pojmu servitut in je le okvirno skušal okvalificirati različna fevdalna pravna razmerja po rimskem pravu.

Služnosti, ki so se oblikovale v pravnem redu skozi zgodovino, imajo najrazličnejše klasifikacije in poimenovanja. Delili so jih glede na način pridobitve, rabo in različne druge, praviloma zelo niansirane pojavne oblike. Pegius jih je kategoriziral v osebne, stvarne in mešane. Sredi 19. stoletja so služnosti že spadale med zadeve stvarnega prava. Čeprav je njihov izvor težko dokazati, pa naj bi bila po mnenju večine strokovnjakov najsta-

rejša služnost pravica do poti in napeljave vode, pri ljudstvih, ki so se še selila, pa pravica do paše.

Po nastanku so služnosti delili na prostovoljne in izsiljene. Medtem ko so prve nastale po svobodni odločitvi lastnika služnostnega zemljišča, so izsiljene služnosti nastale iz nujne potrebe. Kot hišne služnosti so nekdaj pojmovali npr. naslonitev lastne hiše na poslopje v lasti nekoga drugega, umestitev okna v steni svoje hiše tako, da se bo odpiralo v okno v steni sosedove hiše in ji s tem jemalo razgled in dnevno svetlobo, izdelavo take strehe na svoji hiši, ki bo s svojim vogalom ali nadstreškom posegla v sosedov (zračni) prostor, pozidavo svojega dimnika tako, da bo dim prehajal v sosedovega in od tod na prosto, ter odvajanje tekočin iz svoje hiše na sosedovo zemljišče. Kot osebne služnosti so bile pojmovane tiste pravice, ki so zadovoljevale osebne potrebe z uporabo nekega tujega predmeta. Pri tem uživalec tujega predmeta ni smel poškodovati, kot osebna služnost pa je bilo pojmovano tudi uživanje oz. zagotavljanje stanovanja. Osebnih služnosti niso vpisovali v javne knjige ali različne druge posestne evidence, regulirane so bile npr. s časovnimi omejitvami in so s smrtjo imetnika pravice tudi ugasnile.

Pri zemljiškem servitutu zemljišče koristi nekomu drugemu, ki ni pravni lastnik zemljišča. Zemljiške služnosti na obdelovalnem zemljišču so se oblikovale kot pravica, pri kateri je lastnik zemljišča izkoriščal svojo posest za en namen, sočasno pa dovoljeval, da nekdo drug izkorišča isto zemljišče za isti ali tudi drug namen.

Služnosti so bile lahko vezane na osebo, ki jih je uživala, velika večina pa jih je bila vezana na kmetijo, ki jo je imel kmet v zakupu ali lastništvu. Ker se je s kmečkim delom nekdaj preživljala večina prebivalstva, so kmečko življenje, gospodarjenje z zemljiško posestjo, lastniška struktura ter spremembe in njihovi vzroki v zvezi z njo pogosto predstavljali raziskovalni izziv. Pri tem je težavno ločevati med zakupom in služnostjo brez dokazil, torej samo na podlagi ustnega izročila ali domnev. Arhivskega gradiva o obstoju in obliki je za starejše služnosti malo, listine,

ki bi dokazovale pravni status užitka posesti kmečke služnosti, pogosto niso ohranjene, oblike užitka pa si tudi sami nosilci pravice pogosto niso znali razložiti že v času njenega obstoja. Med pravice služnosti so se zelo uspešno mešale tudi pravice lastništva nad služnostnim zemljiščem, saj se služnost na zemljišču ni spremenila kljub menjavi lastnika služnostnega zemljišča. Preplet vseh pravic je postal sčasoma marsikje zavozlan do neprepoznavnosti.

Kmečke zemljiške služnosti so omogočale kmetom, da so potrebe, ki jih na svoji kmetiji niso mogli zadovoljiti, zlasti po lesu in paši, zadovoljili na zemljiščih, ki niso bila v njihovi lasti oz. niso spadala v okvir kmetij, ki so jih imeli v zakupu ali lasti. Zato so za kmeta nekdaj predstavljale velik del vrednosti domače kmetije, na katero so bile vezane. S koriščenjem služnosti so kmetje marsikje reševali svoj eksistenčni položaj, saj so bile kmetije pogosto premajhne, zemljišča, ki so spadala v njihov okvir, pa nemalokrat slabo rodovitna in letina pogosto ni omogočala preživetja kmečke družine od ene do druge jeseni. Večinoma je služnost na določenem zemljišču omogočala lastniku, da je izvajal eno vrsto rabe, služnostni upravičenec pa drugo, še pogosteje pa sta oba zemljišče izkoriščala za isti namen (gozdarjenje ali pašo). Pravica služnosti, običajno vezana na kmetijo, je imetnikom pripadala kot plačilo za opravljeno delo ali obliko hvaležnosti za posebno uslugo, obstajala je kot pravica, vezana na določeno obveznost, npr. skrb za lovske pse, nastala pa je lahko tudi zaradi interesa fevdalca, da bi naselil kmete na kmetijah, ki so bile ogrožene in zato prazne, npr. zaradi nevarnosti opustošenja ali slabih razmer kmetovanja, kot je bil to primer kmetij na gospostvu Snežnik.

Oblik kmečkih služnosti je bilo veliko, skozi čas pa so se spreminjale tako po obliki, razširjenosti in načinih izkoriščanja kot po obveznostih, ki so jih morale ena ali druga stranka v postopku koriščenja izpolnjevati. Nekatere služnosti so se izgubile ali bile ukinjene. Ena od takih je bila pravica bohinjskih kmetov do ribarjenja v Bohinjskem jezeru in lova gamsov, ki so jo dobili

kot nagrado za branjenje meje proti Beneški republiki visoko v hribih, izpričana v 16. stoletju. Druge so se zaradi nezmožnosti preverjanja dejstev kot posledice pomanjkanja pisnih dokazov spremenile in popolnoma izgubile svojo prvotno obliko.

Najpogostejše so bile pašne in gozdne služnosti, pravica do stelje, lomljenja kamenja, kopanja peska, nabiranja odpadnega lesa najrazličnejših oblik in različnih gozdnih sadežev itd. Za kmete so gozdni servituti, s katerimi so si zagotavljali les za kurjavo in gradnjo ter obnovo stanovanjskih hiš in gospodarskih poslopij, predstavljali pridobivanje surovine, brez katere njihovo preživetje ni bilo možno, saj kmetije večinoma niso posedovale gozdnih zemljiških površin. Nič manj niso bile pomembne pašne služnosti, ki so prevladovale predvsem v visokogorskem svetu in so marsikje predstavljale temelj kmečkega gospodarstva. Dokaj pogosta je bila tudi pravica do stelje, ki pa bi jo glede na material za nastilj lahko uvrščali tako med gozdne kakor med pašne služnosti. Kmetje so namreč za nastilj najpogosteje grabili listje ali igličevje v gozdu, če tega ni bilo dovolj, pa so za nastilj želi grobo travo ali šaš različnih vrst, v Beli krajini pa praprot. Druge oblike servitutov so bile redkejše, odvisne pa so bile predvsem od tega, kar je prebivalstvu ponujal življenjski prostor.

Servituti niso imeli popolnoma enotnih oblik. Če je imel kmet v določenem delu gozda enako pravico pripravljanja lesa za kurjavo kakor njegov sovaščan, je lahko eden od njiju za sabo pobral tudi suhljad, drugi pa je moral suhe ostanke pustiti, saj je prišel tretji kmet, ki je smel suhe veje pobirati v celem gozdu itd. Podobno je veljalo tudi za pašne služnosti. Večina do sedaj poznane slovenske zgodovinarske literature je poudarjala predvsem gozdne služnosti, izkazalo pa se je, da za kmečko gospodarstvo pašne služnosti niso bile nič manj pomembne. Predvsem v hribovitih območjih je visokogorska paša predstavljala velik delež dohodka kmečke hube.

Ob omenjenih in najpogostejših se pojavljajo različne oblike neobičajnih služnosti, npr. pravica pranja v toplih vodnih

izvirih na Bledu ali pravica paše ali košnje na kraških tleh periodičnega poplavljanja presihajočih jezer na Moravskem. Kmetje na Kočevskem so se s posebnim dovoljenjem začeli ukvarjati z izdelavo in prodajo svojih suhorobarskih izdelkov, ena takih služnostnih pravic pa je bila tudi pravica do sekanja in pripravljanja lesa za prodajo v lastni režiji, ki so si jo pridobili kmetje na loški in postojnski strani snežniškega hribovja ter tudi ponekod drugod. Nenavadna je pravica, ko so nosilci pravice lahko žito sejali kar v vinograde med vrste trsov, zlasti je bilo to pogosto pri brajdah na Primorskem. Ponekod so lahko nosilci služnostne pravice na služnostnem zemljišču posadili drevo, ga vzgojili in uživali njegove sadeže, lastnik služnostnega zemljišča pa je moral tako izkoriščanje svojega zemljišča dopuščati. Oblike koriščenja servitutov so se razvijale glede na geografske danosti, vremenske razmere in zgodovinski razvoj. Že omenjena paša ali košnja trave po dnu presihajočega jezera ne bi bila mogoča, če jezero ne bi bilo na kraškem terenu, zaradi česar je voda v periodičnih presledkih odtekala in se nato spet pojavljala, prav tako pranje perila v toplih vodnih izvirih ne bi bilo mogoče, če ne bi bilo prav tam zemeljske razpoke, iz katere je pritekala topla voda.

S pravnega vidika so poleg čistih pašnih in gozdnih kmečkih služnosti obstajale še številne pravne različice. Med njimi je npr. pravica »Wunn und Weide«, ki sicer na ozemlju, ki ga danes pokriva država Slovenija, listinsko ni bila izpričana, kmet, ki jo je imel, pa je lahko zemljišče uporabil po lastni presoji za njivo ali travnik oz. pašnik. Tam, kjer je bilo zemljišče izkoriščano kot njiva, osnovne uporabe lastnik ni mogel izvajati. Nosilec pravice je lahko zemljišče brez zadržkov uporabljal tudi za profitne namene in je lahko produkte prodajal na trgu. Ker lastnik zemljišča svoje osnovne pravice do obdelave in pobiranja pridelkov zlasti tam, kjer je služnostni upravičenec na zemljišču uredil njivo, ni mogel koristiti, je taka služnost predstavljala vmesno stopnjo med pravico služnosti in zakupno pravico.

Služnosti so lahko pripadale skupnostim ali posameznikom. Predvsem pravica visokogorske paše je bila mnogo po-

gosteje v lasti vaških skupnosti ali sosesk kakor posameznikov. Običajno je bila to zelo stara pravica, ki so jo ponekod opredeljevale nekatere posebne značilnosti, npr. določen čas paše, pravica koriščenja vsega, kar ponuja narava v času, ko se je izvajala paša itd. Tako pravico so imenovali tudi pravica do rože (nemško poimenovana Blumsucht). Od lastništva služnostnega zemljišča je bilo odvisno, ali je roža obstajala kot klasična služnost na zemljišču, ki je spadalo v sklop katerega od zemljiških gospostev, ali pa je obstajala kot pravica paše na zemljišču v lasti domače ali druge soseske. Pred odpravo servitutov za uživalca pravice med njima ni bilo razlike.

Podatke o stanju služnosti po posameznih avstrijskih deželah sredi 19. stoletja so oblikovalci zakona o regulaciji in odkupu služnosti pridobili v posebnih elaboratih, ki so jih pripravile posebne deželne komisije vseh dežel Avstrije, oblikovane za ta namen. Izvodi elaboratov, ki jih hrani Arhiv Republike Slovenije, omogočajo primerjavo služnosti in pregled njihove razširjenosti, obsega in dejanskega stanja po avstrijskih deželah v času pred njihovo regulacijo. Izsledki pričajo, da se stanje na Kranjskem oz. tudi v ostalih, s Slovenci poseljenih deželah ni razlikovalo od stanja, ki so ga prikazovali v drugih avstrijskih deželah. Kljub enakemu načinu oblikovanja služnosti je imela vsaka dežela svoje posebnosti in posebej problematične služnosti, pa tudi take, ki v pregledanem arhivskem gradivu sploh niso bile omenjene. Upoštevajoč geografske razmere, vremenske pojave in zgodovinski razvoj je bilo nekje enih služnosti več in drugih manj ali pa so na določenem območju določene služnosti predstavljale običajne servitute, drugod pa vsaj rariteto, če ne že nepoznane oblike. Zaradi preseganja dogovorjenih okvirov so služnosti povzročale težave, zaradi katerih so začeli iskati načine, kako jih odpraviti ali vsaj preoblikovati.

Sčasoma so začele služnosti ovirati napredek pri gospodarjenju s kmetijskimi zemljišči. Nekateri lastniki služnostnih zemljišč so se vzrokov težav zavedali in so se s problemom njihovega odkupa spopadli že pred intervencijo države. Po letu 1848,

ko je bil tudi formalno ukinjen fevdalni družbeni sistem, se je pokazalo, da popolna kmečka odveza brez odprave služnosti ni mogoča. Zato se je država lotila priprave postopkov, s katerimi bi jih odpravila na način, ki bi povzročil čim manj škode obema v služnostnem odnosu prizadetima stranema.

Razrešitev kmečkih služnostnih pravic je bila tako za lastnika zemljišča kot za kmete bistvenega, če ne že kar življenjskega pomena. Izguba služnosti je precej bolj kakor velike prizadela male kmete, saj je močno omejila njihove ekstistenčne možnosti. Za lastnika zemljišča, na katerem so kmetje koristili služnostne pravice, je pomenila neke vrste olajšanje, kmetje pa so se zaradi načina odkupa znašli v ekonomsko ogroženem položaju. Težave pri razpletanju zapletenih odnosov so imeli vsepovsod, saj so tako lastniki služnostnih zemljišč kakor služnostni upravičenci želeli iztržiti čim več. Zemljiški posestniki so želeli služnostne upravičence izplačati z malimi denarnimi zneski ali pa jim odstopiti manjše gozdne površine, služnostni upravičenci pa so pričakovali velike gozdne in pašne komplekse. Kompromis, ki so ga na koncu sklenili, ni zadovoljil nikogar. Služnostni upravičenci so v trajno last pogosto dobili že opustošena zemljišča, na katerih jim večinoma ni uspelo zadostiti vsem potrebam svoje kmetije po lesu, paši, nastilju itd. Mnogi med njimi so bili prisiljeni opustiti kmetovanje, potreba po preživetju pa je prebivalstvo vodila v proletarizacijo in izseljevanje. Lastniki služnostnih zemljišč so bili prepričani, da so morali služnostnim upravičencem odstopiti prevelike zemljiške komplekse, kar naj bi po njihovem mnenju v prihodnosti povzročilo njihovo osiromašenje in padec produktivnosti velikih zemljiških posesti.

Čeprav je bila sprejeta krovna zakonodaja enotna za celotno monarhijo, je kazal potek dogodkov v vsaki izmed avstrijskih dežel nekatere specifične lastnosti. Če si ponekod niso znali zamisliti gospodarjenja brez določene pravice in so jo zato regulirali, je bilo treba drugod isto obliko služnosti brez razprave popolnoma odpraviti, saj gospodarjenje na zemljiščih sicer ni bilo možno. Kot posebej problematične so v Šleziji izpostavili

salaše, naselja, ki so nastala iz močno razširjenih pastirskih začasnih bivališč na šlezijskem območju Karpatov. Zlasti so bili poznani salaši v okolici mesta Tešin. Tirolska in Predarlsko sta se spopadala s pravico »Wunn und Weide«, razreševanje pašnih služnosti pa je bilo težavno vsepovsod tam, kjer so ob planinskih pašnikih nastale majerije oz. pristave, nekdaj gospodarsko pomemben del osnovne, v nižini ležeče kmetije. Te so npr. na Salzburškem in v Gornji Avstriji preraščale v samostojne kmetije in bile ponekod kot samostojni zemljiškoknjižni vložek vpisane v zemljiško knjigo. Za Tirolsko je poleg pašnih servitutov in poti na visokogorske pašnike posebej pomembno pravico predstavljalo sekanje lesa in njegovo spravljanje iz gozdov ter transport v Italijo. V Gornji Avstriji so imeli težave s služnostmi v upravno ločenem in skoraj zaprtem območju Salzkammerguta, ki so se tesno prepletale z življenjskimi razmerami industrijskih delavcev in rudarjev v solnih in drugih rudnikih, na Kranjskem pa so bile za regulacijo najbolj težavne že omenjene služnosti na gospostvu Snežnik. Te so kot problem za regulacijo navajali tudi na zborovanju kmetijcev na Dunaju leta 1849, kjer so razreševanje, regulacija in odkup služnosti predstavljali posebno temo v razpravi.

Ker je država težila k oblikovanju enotne zakonodaje za vse, je bilo treba pri oblikovanju zakona predpisati samo osnovne smernice, s posameznimi primeri pa so se ukvarjale komisije na nižjih ravneh. V končni verziji je zakon o regulaciji in odkupu služnosti, sprejet leta 1853, upošteval večino predlogov in pripomb glede postopkov, ki so jih predlagale posamezne dežele. Čeprav so bili za njegovo izpeljavo izdani dopolnilni zakoni in navodila, pa sta odprava in regulacija služnosti marsikje povzročili nered, obubožanje ali celo pripravili razmere za nastanek novih služnosti, če je bilo večjemu številu nekdanjih služnostnih upravičencev kot odkupnina odstopljeno zemljišče v skupno last. Take skupnosti niso bile zakonsko regulirane in urejene, pa tudi pri gospodarjenju na odstopljenih zemljiščih so bili novi sodružbeniki prepuščeni sami sebi. Gospodarstvo na skupnih

zemljiščih je še naprej ostajalo neurejeno, saj so bila zemljišča prepuščena samovoljnemu izkoriščanju posameznikov, zato so tudi v novi ureditvi pogosto vzplamtevali medsebojni spori.

Največ služnosti je bilo odkupljenih z odstopom zemljišč nekdanjim služnostnim upravičencem. Zaradi različnih pojavnih oblik je problematiko služnosti statistično težko ovrednotiti. Možno je sicer ugotavljati, koliko je bilo za regulacijo porabljenih finančnih sredstev ter koliko in kako se je zaradi regulacije služnosti spreminjalo lastništvo zemljišč, druga možnost pa je ugotavljanje števila rešenih primerov. Vsa ostala obravnava servitutov prehaja na področje obravnave posamezne pravice.

Raziskava je pokazala, da do sedaj uveljavljeno splošno mnenje, da kmetje za svoje pravice niso dobili ustrezne odškodnine, drži le deloma. Kmetje so k slabemu stanju gozdnih in pašnih zemljišč veliko pripomogli tudi sami. S prekomernim sekanjem in podiranjem dreves v neustreznem letnem času ali skupnim izkoriščanjem nekaterih zemljišč, ki jih je vsak želel izkoristiti, kolikor se je le dalo, vanje pa ničesar vložiti, so tudi sami pomagali iztrošiti in oropati gozdne in pašniške parcele, ki so jim bile na razpolago. Na pogovorih o odkupu služnosti oz. ustrezni ceni zanje so mnogokrat izsiljevali in postavljali za lastnike posesti nesprejemljive pogoje, spori pa so uravnavo služnosti nerazumno razvlekli in dolgo obremenjevali gospodarski razvoj in družbene odnose.

Kot resnična se je pokazala tudi do sedaj le bežno omenjena domneva, da služnosti niso bile nujno vezane na fevdalni odnos med zemljiškim gospodom in podložnikom. Med imetniki služnostne pravice so bili namreč poleg domačih podložnikov tudi podložniki drugih zemljiških gosposk, svobodniki, ki niso bili podložni nobenemu zemljiškemu gospodu, ponekod pa je obstajala tudi služnostna pravica plemiča na kmečkem zemljišču. Služnosti so postale zelo moteče za razvoj kmetijstva in posledično gospodarstva v državi, spori, ki so se razvili zaradi njih in njihovega koriščenja, pa so obremenjevali pravni sistem prek razumnih meja. Odprava fevdalizma je le pripravila raz-

mere, da je bilo mogoče servitute v opisanih oblikah tudi zakonsko odpraviti.

Zaradi raznovrstnosti nastanka služnosti in njihovega pravnega položaja je bilo nemogoče vse služnosti razrešiti v kratkem času in po enovitem postopku. Individualna obravnava vsakega primera je dokončanje zgodbe o uravnavi služnosti ponekod še razvlekla. Postopki regulacije in odkupa so predvsem tam, kjer do dogovora nikakor niso mogli ali znali priti, trajali dolgo in na današnjih slovenskih območjih ponekod sovpadli z agrarnimi operacijami po prvi svetovni vojni. Dodatno zmedo je po demokratičnih spremembah v devetdesetih letih 20. stoletja vnesla denacionalizacija, ki je omogočila obujanje nekdanjih pašnih skupnosti, ki pa v pravnem smislu niso ustrezno regulirane, saj njihove nekdanje pravice odstopajo od današnjega pravnega reda.

SUMMARY

“WE HAVE BEEN ABLE TO DO THAT FOR SUCH A LONG TIME”:

PEASANT EASEMENT AND ITS ABOLISHMENT

Of the changes taking place in the agrarian field in 1848 as a consequence of the March Revolution, the abolishment, purchase and regulation of easement were the most significant economic changes that influenced the lives of the majority of the population still making a living by farming and managing the land. The way of land exploitation through peasant easement had been established especially in the eastern Germanic space. In most Austrian countries this was dominant to such a degree that in 1848 almost all land was burdened by some form of easement. This book focuses on easement as an important factor of farming in the Austrian provinces with the emphasis on Carniola and as an integral part of the agricultural economy, where easement sometimes represented an economic resource that was difficult to replace. In this manner it also affected the lives of peasant families and wider social community.

As a legal category easement was already known in the Roman times. The inhabitants of the Roman Empire distinguished between personal easement and propertyrelated easement. Certain forms of personal easement gradually lost the practical significance, while the rights with regard to grazing, forests and similar rights of the larger or smaller groups of the population, settlement units or other parties persisted legally as land easement. Martin Pegius from Polhov Gradec, who mostly lived in Salzburg, was among the first who tried to explain easement as a legal problem in the 16th century. In his essay on easement, which was the most resounding of all his works, he kept using the Roman concept of "servitude" and attempted to qualify the various feudal legal relationships according to the Roman law only broadly.

Different forms of easement, established in the legal order throughout the history, have various classifications and names. They were distinguished in view of how they had been acquired and used, as well as in accordance with their various nuances and manifestations. Pegius categorised easement as personal, material, and mixed. In the middle of the 19th century easement

was already a matter of property law. Although its origin is hard to prove, according to the majority of the experts the oldest form of easement was the right of access and water supply, and in the case of nomad peoples the right to grazing.

According to its origin, easement was separated into voluntary and forced. While the former was established in accordance with the easement landowners' voluntary choice, forced easement originated from urgent need. The following used to be deemed as house easement: building one's own house so that it touches someone else's building; placing a window into one's own wall so that it opens in front of the window of the neighbouring house, thus spoiling its view and daylight; building one's roof in such a manner as to interfere with the (air) space of one's neighbour because of a corner or by jutting; building one's chimney so that the smoke has to escape through the neighbour's chimney; and diverting water from one's house to the neighbour's land. The rights that satisfied one's personal needs by using somebody else's objects were deemed as personal easement. The beneficiary of this right had to take care not to damage any items belonging to others. Apartment use and renting was also seen as personal easement. Personal easement was not entered into any public registers or other property registers, and it was, for example, regulated by time constraints and ended with the death of the right holder.

In case of land servitude somebody else, who is not the legal owner of the land, benefits from the property. Land easement of farmed land had been established as a right where the landowners exploited their land for one purpose, while they simultaneously allowed somebody else to exploit the same land for the same or other purpose.

Easement could be granted to certain individuals, but in the majority of cases it was bound to the farm leased or owned by the peasants. Since in the past the majority of the population made a living with agriculture, the peasant life, land management, ownership structure and changes as well as reasons for

this structure often represented a challenge for the researchers. In this regard it is difficult to distinguish between lease and easement without any proof, on the basis of oral reports or suppositions. Archive materials about the existence and forms of older easement are rare. Documents proving the legal status of peasant easement have rarely been preserved, and the right beneficiaries themselves were often unable to explain the forms of easement even while they still enjoyed them. The rights of ownership of easement land very often got mixed up with easement rights, since the easement for the land did not change even if the ownership of the easement land did. Frequently the conundrum of all the rights became irreversibly entangled.

Peasant land easement allowed the farmers to satisfy the requirements they were unable to meet on their own farms, especially with regard to wood and grazing, on the lands that were not owned by them or did not belong to the farms leased or owned by them. Thus for these farmers easement once represented a significant part of the value of their own farm. By means of easement peasants commonly solved their existential situation, as their farms were often too small and their lands frequently not very fertile, so harvests were too meagre to make the survival of the peasant families possible from year to year. Easement at certain lands mostly allowed the owners to exploit these lands in one way, while the easement beneficiaries exploited them for other purposes. Even more frequently both parties used the lands for the same purpose (forestry or grazing). Easement rights, usually bound to certain farms, belonged to the beneficiaries as payment for services rendered or were a form of gratitude for special services. They existed as rights related to certain obligations, for example taking care of hunting dogs, and they could also arise if the feudal landowners wanted to settle peasants on farms that were threatened and therefore empty, for example because of the dangers of desolation or poor farming conditions. This was the case on the farms of the Snežnik land holding.

Many forms of peasant easement existed. With time they kept changing in terms of form, frequency, ways of use, as well as obligations of either party in this process. Some forms of easement were lost or abolished. One of these was the right of the Bohinj peasants to fish in the Bohinjsko jezero lake and hunt chamoix, which had been their reward for defending the border against the Venice Republic in the highlands that they had received in the 16th century. Other forms of easement changed because the facts could not be checked in the absence of written proof, so they lost their initial form completely.

The most frequent forms of easement involved grazing and forestry, the right to strewing, sand digging, gathering waste wood of various forms, gathering of forest fruits, etc. For the peasants the forest servitude, providing the wood for heating, construction as well as restoration of residences and agricultural buildings represented a way of acquiring raw materials. Without this easement they were unable to survive, as the farms most often lacked forests. Grazing easement was equally important. It was most frequent especially in the highlands and it often represented the basis for the agricultural economy. The right to strewing was quite frequent as well. In terms of the material used for litter we could see it as forest or grazing easement, because the peasants most often gathered leaves or fallen needles in the forest. If this was not enough, they used rough grass or different kinds of sedge for litter as well, while in Bela krajina they used fern. Other forms of servitude were rarer and depended mostly on the living space conditions.

Servitude did not manifest itself in completely identical forms. If a peasant had the same right to gather wood for burning in a certain part of the forest as his fellow villager, one of them could also pick up the dry wood, while the other had to leave the dry remnants, because a third peasant was allowed to pick up dry branches all over the forest, etc. Similarly was true of the grazing easement. Most of the Slovenian historical literature known to date has focused on forest easement, but it turned out

that grazing easement was no less important for the agricultural economy. Especially in the highlands the highmountain grazing represented a significant percentage of the farm income.

Besides the aforementioned and most frequent forms, certain unusual forms of easement also existed, for example the right to washing clothes in the warm springs in Bled, or the right to grazing or mowing grass at the intermittent Karst lakes in Moravia. The Kočevje peasants had a special permission for the manufacture and sale of woodenware, and one of the forms of easement was the right to cutting and preparing wood for sale, enjoyed by the peasants at the Lož and Postojna side of the Snežnik mountains as well as elsewhere. Another unusual right was the right to sowing wheat in the vineyards, between the lines of vines. This was especially frequent in the vineyards in the Littoral region. Occasionally the beneficiaries of easement were allowed to plant a tree at the easement land, grow it, and enjoy its fruits, while the owner of this land had to allow such exploitation of his land. The forms of servitude developed in view of geographic and weather characteristics as well as historical development. The aforementioned grazing or mowing of the grass at the bottom of intermittent lakes would not have been possible, had the lakes not been located on Karst terrain where water could periodically disappear and reappear. Washing the clothes in the warm springs would also not have been possible but for a crevice from which the warm water poured.

From the legal point of view many legal versions existed besides pure grazing and forestry peasant easement, among them, for example, the socalled "Wunn und Weide" right. This was a right that was not certified with written documents in what is today the Slovenian territory, and peasants that had this right could use the lands under consideration as fields, meadows or pastures. Where the lands were exploited as fields, the basic use by the landowners was not possible. The owners of this right could also use the land for profit and sell the products in the market. Because the landowners were not able to exer-

cise their basic right to farming the land and harvesting where the easement beneficiaries had tilled the land, such easement represented an intermediate level between easement rights and leasing.

Communities or individuals could benefit from easement. Especially the right to highmountain grazing far more often belonged to village communities or districts than individuals. This was usually a very old right, sometimes defined by certain special characteristics, for example a specific time of grazing, the right to using everything that nature offered during the time of grazing, etc. Such a right was also called the "right to flowers" (in German called the "Blumsucht"). It depended on the ownership of the easement land whether this right existed as a classic easement in the areas belonging to one of the land holdings or as the right to grazing on the land owned by the home or neighbouring district. Before the servitude for the beneficiaries of this right was abolished, there had been no differences between the two.

The information about the state of easement in the individual Austrian provinces in the middle of the 19th century was acquired by the authors of the Regulation and Purchase of Easement Act during the special elaborations prepared by the special provincial commissions, established for this purpose in all of the Austrian provinces. The copies of these elaborations, preserved in the Archives of the Republic of Slovenia, allow for the comparison between forms of easements, their frequency, scope, and actual state of affairs in the Austrian provinces before they were regulated. The findings show that neither the situation in Carniola nor in the other territories inhabited by Slovenians differed from the state of affairs in the other Austrian provinces. However, despite the identical ways in which easement was established, each of the provinces had its peculiarities and forms of easement that were especially problematic, as well as those which were not even mentioned in the analysed archive materials. Depending on the geographic circumstances,

weather patterns and historical development, certain forms of easement were more frequent in certain places as others, or they represented ordinary servitude in certain places while they were at least rare if not unknown elsewhere. When it started exceeding the agreedupon contexts, easement caused problems, which is why eventually ways were sought of abolishing or at least transforming it.

Gradually easement started hindering the progress of agricultural land management. Some owners of easement lands were aware of the reasons for these issues, and therefore they had tackled the problems involved in the purchase of these lands already before the state intervened. After 1848, when the feudal social system was also formally abolished, it turned out that a complete abolishment of serfdom was impossible without abolishing easement. Thus the state started preparing the procedures for the abolishment of easement in such a manner as to cause as little damage as possible to both sides involved in the easement relationship.

The abolishment of the peasant easement was essential if not critical for the landowners as well as peasants. The loss of easement was far more detrimental to small rather than large peasants, since it severely limited their existential possibilities. For the landowners where the peasants had enjoyed easement this was a kind of a relief, but the peasants found themselves in an economically threatened position due to the manner of purchase. The problems with solving the complicated relations arose everywhere, since the owners of the easement lands as well as easement beneficiaries wanted to gain as much as possible from the process. The landowners wanted to pay off the easement beneficiaries with meagre monetary sums or let them have smaller forested areas, while the easement beneficiaries expected to gain extensive forests and pastures. The compromise reached in the end did not satisfy anyone. Easement beneficiaries gained the permanent ownership in what had frequently been already desolated lands, where they were mostly incapable of satisfying the

demand of their farms for wood, pasture, litter, and so on. Many of them were forced to give up farming, and the need for survival led the population into proletarisation and emigration. On the other hand the owners of easement lands were convinced that they had to give up stretches of land that were too large. In their opinion this would in the future result in their destitution and the decline in the productivity of large land properties.

Although the adopted framework legislation was the same for the whole Monarchy, the developments in each of the Austrian provinces had certain specific characteristics. While in some areas it was impossible to envision land management without certain rights and thus these rights were regulated, elsewhere the same forms of easement had to be abolished without question, as working these lands was otherwise impossible. The settlements that developed from the very frequent temporary shepherd dwellings in the Silesian part of the Carpathian Mountains were underlined as especially problematic. Such settlements around the city of Teschen were especially wellknown. In Tyrol and Vorarlberg the "Wunn und Weide" right had to be dealt with, while the solving of the grazing easement was problematic wherever the herdsman dwellings or dairy farms – once an economically significant part of the primary farm, located in the lowlands – had been established next to highland pastures. For example around Salzburg and in the Upper Austria these facilities grew into independent farms, and in certain places they were entered in the land register independently. In Tyrol woodcutting, wood storage and its transport to Italy represented an especially important right besides grazing servitude and the right to crossing certain areas on the way to highmountain pastures. In Upper Austria problems arose involving the easement in the administratively separate and almost isolated region of Salzkammergut, intertwined with the living conditions of the industrial workers and miners in the salt and other mines, while in Carniola the aforementioned easement at the Snežnik land holding was most difficult to regulate. These were also listed as

difficult to regulate at the assembly of farmers in Vienna in 1849, where the resolution, regulation and purchase of easement represented a special topic of the discussion.

As the state strived to establish a single legislation for everyone, it was only necessary to provide for the basic guidelines, while individual cases were addressed by the commissions at the lower levels. In its final version the Regulation and Easement Purchase Act, adopted in 1853, took account of most proposals and remarks with regard to the proceedings presented by the individual provinces. Although complementary legislation and instructions were drawn up for its implementation, the abolishment and regulation of easement frequently resulted in disorder, impoverishment, or even creation of new forms of easement, if certain lands were given to a large number of former easement beneficiaries as a purchase fee. Such communities were not regulated by law, and the management of the lands given in this manner was up to the new partners. Thus the management of joint lands remained unregulated, since these lands depended on the arbitrary exploitation by certain individuals. Therefore mutual disputes often arose under the new system as well.

Most often easement was purchased by assigning lands to the former easement beneficiaries. Due to the various manifestations the issue of easement is hard to evaluate statistically. It is possible to establish how many financial resources were used for regulation and how and to what degree land ownership changed because of the regulation, while another option is to establish a number of solved cases. All other ways of analysing servitude focus on individual rights.

The research has shown that the opinion that peasants did not receive a suitable compensation for their rights only holds true up to a certain point. Peasants themselves had contributed significantly to the poor state of forests and pastures. By cutting down too many trees, also during the wrong time of the year, or due to the joint exploitation of certain lands where everyone wanted to profit from this exploitation as much as possible

and invest nothing, peasants themselves helped to wear out and strip clean the forests and pastures they had at their disposal. During the negotiations about easement purchase or a suitable price they often extorted the landowners and made impossible demands. The disputes delayed the easement regulation excessively, hindering the economic development and social relations for a long time.

What has until now been only a supposition mentioned in passing – that easement did not necessarily depend on the feudal relationship between the landowners and their subjects – turned out to be true. Apart from the local subjects, easement beneficiaries also included the subjects from other land holdings or freemen who were not subjects of any landlords, while noblemen sometimes also enjoyed easement on the lands belonging to peasants. Gradually easement became a significant obstacle to the development of agriculture and consequently state economy, while the disputes resulting from easement and its exploitation burdened the legal system excessively. The abolishment of feudalism only prepared the conditions for the legal abolishment of servitude as described above.

Due to the various ways in which the forms of easement and their legal status had been created, it was impossible to address all of the cases quickly and in accordance with a single procedure. The examination of each individual case even postponed the completion of the story of easement regulation. The procedures involved in regulation and purchase lasted a long time, especially where the parties involved could not or did not know how to reach an agreement. In certain places on the today's Slovenian territories they were sometimes delayed until the agrarian operations after World War I. Additional confusion was introduced by the denationalisation after the democratic changes during the 1990s, allowing for the restoration of the former pasture communities. These are not suitably regulated in the legal sense, as their former rights derogate from the today's legal order.