

# Easement in Sweden and Slovenia in the comparative perspective

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Miran Ferlan, Hans Matsson and Radoš Šumrada

# Why and what to compare?

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## Slovenia - Roman (German) law

- ✦ Law of Property Act
- ✦ Agricultural Land Act
- ✦ Water Act
- ✦ Planning Act

## Sweden - Nordic law tradition

- ✦ Land Code
- ✦ Real Property Formation Act
- ✦ Utility Easements Act
- ✦ Joint Facilities Act

**In both countries easements are derived from Roman law.**

# Easement through the history

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Such rights are often described as rights to use the land of another for a special purpose.

Historically easements were limited to the:

- ✦ right of way and
  - ✦ rights over flowing waters (*Roman Law*).
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- An easement mostly binds two kinds of properties:
    - ✦ the dominant property is the piece of land to which the benefit of an appurtenant easement is attached to and
    - ✦ the servient property, which is the piece of land that bears the burden of the easement.

# Easements in Slovenia (1)

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An easement is the **right**:

- to **use** another's property
- or to **exploit** some rights on others property,
- or to demand from the owner of the dominant property that he refrains from actions that he would otherwise have the right to carry out on his servient property.

**An easement can be established because of every day's life needs.**

The owner of a real property can establish, regarding the conditions that derive from the legislation, the next two types of easements:

- **real easements** and
- **personal easements.**

# Easements in Sweden (2)

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**An easement must be:**

- of **importance to the dominant property** unit and
- this importance has to be **enduring** and
- **if it so calculated** to promote appropriate land use.

**The right in one property unit may be granted to the owner of another property unit:**

- **to enjoy**
- or **use** in a certain respect the serviant property unit or building or other facility belonging to the same property unit.

# Comparison of easements between Slovenia and Sweden (1)

<b>General characteristics</b>	<b>Slovenia parcel, real easement, personal easement</b>	<b>Sweden property unit, easement</b>
<b>An easement is protected against any third party.</b>	<b>yes</b>	<b>yes</b>
<b>An easement must be of importance to the dominant property unit (parcel).</b>	<b>yes</b>	<b>YES if calculated</b>
<b>An easement is established as enduring.</b>	<b>yes</b>	<b>yes</b>
<b>An easement should be exercised in the manner which least encumbers the object of the easement.</b>	<b>yes</b>	<b>yes</b>
<b>An easement (exercising) must be space limited.</b>	<b>yes</b>	<b>Yes</b>
<b>If the owner of the dominant property unit has exceeded his right so, i.e. he makes damage or has neglected his obligation, he must restore what has been disturbed.</b>	<b>yes</b>	<b>yes</b>

# Comparison of easements between Slovenia and Sweden (2)

<b>General characteristics</b>	<b>Slovenia</b>	<b>Sweden</b>
<b>An easements on own real property can not exist.</b>	<b>yes</b>	<b>yes</b>
<b>The creation of an easement requires an entry in the land register.</b>	<b>Yes</b>	<b>Yes</b> (protection against third party)
<b>The easement may also be established for a specific time (10, 20, ... years) or for a specific time of a year (harvest, haymaking time etc). The easement may also be established for a specific arranged time of year (once per year during harvest, haymaking time ..).</b>	<b>yes</b>	

**An easement can be established because of everyday life needs (Slovenia).**

# Comparison of easements between Slovenia and Sweden (3)

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<b>Creation of easements</b>	<b>Slovenia</b>	<b>Sweden</b>
<b>by law</b>	<b>yes</b>	<b>yes</b>
<b>with a legal transaction (contract)</b>	<b>yes</b>	<b>yes</b>
<b>by decision of a state body (law court)</b>	<b>yes</b>	<b>yes</b>
<b>as a result from cadastral procedure</b>	<b>no</b>	<b>yes</b>
<b>If the dominant property is subdivided, any real easement remains on all of its parts.</b>	<b>yes</b>	<b>surveyor decides</b>



# Comparison of easements between Slovenia and Sweden (4)

<b>Extinguishment of easements</b>	<b>Slovenia</b>	<b>Sweden</b>
<b>by law</b>	<b>yes</b>	<b>yes</b>
<b>with a legal transaction (contract)</b>	<b>yes</b>	<b>yes</b>
<b>by decision of a state body (law court)</b>	<b>yes</b>	<b>yes</b>
<b>If the dominant property is amalgamated with the servient property, the easement is terminated.</b>	<b>yes</b>	surveyor decides, <b>or automatically</b>
<b>If the amalgamated property is subdivided again the easement is restored.</b>	<b>yes</b>	surveyor decides
<b>If the owner of dominant property does not exercise the right for a three successive years.</b>	<b>yes</b>	

# Comparison of easements between Slovenia and Sweden (5)

<b>Personal easements (SI)</b>	<b>Slovenia</b>	<b>Sweden</b>
<b>A personal easement is the right of the holder to use another's property or to exploit.</b>	<b>yes</b>	
<b>A personal easement lasts until the holder's death.</b>	<b>yes</b>	<b>no</b>
<b>A personal easement could be established for the benefit of a <b>legal person</b> and its duration can not be more than thirty years.</b>	<b>yes</b>	
<b>The holder can not transfer it.</b>	<b>yes</b>	
<b>The holder can transfer its exercise.</b>	<b>yes</b>	
<b>The personal easement can not be inherited.</b>	<b>yes</b>	

# Comparison of easements between Slovenia and Sweden (6)

Type of real easements	Slovenia	Sweden
right of way	yes	yes
right to drain or supply water	yes	yes

Types of personal easements	Slovenia	Sweden
usufruct	yes	
use	yes	
habitation	yes	

# Comparison of easements between Slovenia and Sweden (7)

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<b>Existence of utility easements (infrastructure only)</b>	<b>Slovenia</b> (contract)	<b>Sweden</b> (Cadastral procedure)
<b>sewage</b>	<b>yes</b>	<b>yes</b>
<b>telephone line</b>	<b>yes</b>	<b>Yes</b>
<b>cable TV line</b>	<b>yes</b>	
<b>gas pipe</b>	<b>yes</b>	<b>yes</b>
<b>water supply</b>	<b>yes</b>	<b>yes</b>
<b>electric supply</b>	<b>yes</b>	<b>yes</b>

# Conclusions (1)

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- **General provisions regarding an easement in Slovenia in Sweden are almost the same, because they derive from the Roman law.**
- **The laws, where the easements are described, are similar (*Law of Property Act and Land Code*).**
- **The important is condition for establishment of easements**
  - ✦ **In Slovenia every day life needs and the better exploitation of the land (*specially for agricultural land*) are decisive.**
  - ✦ **In Sweden the surveyor has the primary role and he decides, if an easement is important or not.**
- **Personal easements**
  - ✦ **are very frequent in Slovenia, especially in connection with the inheritance of real property.**
  - ✦ **In Sweden personal easements are not applied.**

## Conclusions (2)

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- **The role of surveyor in establishment or extinguishment of an easement is very different.**
  - ✦ **In Slovenia the involved parties use oral or written agreement to arrange a relation among neighbors.**
  - ✦ **Suits at the court are also frequent (*high costs*).**
- **At the purchase of real property encumbered with the easement**
  - ✦ **they tend to reduce the marked value of real property,**
  - ✦ **or even the seller can not sale the real property at all (*habitation*).**
- **The creation or cancellation of an easement requires an entry in to the Land Register in both countries described.**