

„Issues In Creation and Use Of Roads In Agricultural Areas”,

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ISSUES INCREATION AND USE OF ROADS IN AGRICULTURAL AREAS

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ABSTRACT

Creating roads in agricultural land covers many aspects such as legal eligibility, planning and design, quality assurance, road safety, mobilization of resources, environmental protection, social contribution, maintenance management, research and development provision, etc. Investing in rural roads in Bulgaria, including agricultural earth roads, is given presently low priority over the need for national highways. Underestimation of the rural roads stems from the lack of scientific, legal and management resources for the recently established dynamic economic environment, connected with private ownership. Though creation and improvement of the agricultural road infrastructure was subsidized by EU through CAP of the Programme Period 2007-2013, society was not institutionally prepared to start this process and it was delayed. The objectives of the paper are to examine the existing legal grounds of providing access to farmland outside the urban area; to examine the state of arts of the rural road design and its regulations; to derive conclusion and to suggest direction of changes of the regulatory framework connected with the agricultural roads. The study covers the legal status of the roads that lead to and serve the landed properties under different ownership: state, municipal or private; explores the problems and the issues of road establishment through different access procedures: voluntary legal relation settlement, administrative proceeding and in some cases judicial intervention; examines the scientific background and the normative documents on rural road design and maintenance. The paper stresses on the need of legal concretization for guaranteeing both the user's and the landlord's rights when establishing agricultural roads for accessing and/or servicing the land use process under various forms of entities and tenure rights: lease, rent or joint processing, and secondly, on the need of filling in the gap of the regulatory framework with technical requirements for construction, operation and maintenance of safe, sustainable and cost effective un-surfaced low-traffic roads and for achieving minimal adverse effects on soils and the environment in the process of operation with these roads.

Keywords: agricultural land, roads, environment, regulatory framework, property management

INTRODUCTION

Creating roads in agricultural land covers many aspects such as legal eligibility, planning and design, quality assurance, road safety, mobilization of resources, environmental protection, social contribution, maintenance management, research and development provision, etc. Investing in rural roads in Bulgaria, including earth surface roads, is given low priority over the need for national highways. Underestimation of the rural roads issues stems from the lack of scientific, legal and management resources in the recently established dynamic economic environment based on private ownership. Though creation and improvement of the agricultural road infrastructure was subsidized by EU through CAP of the Programme Period 2007-2013, society was not institutionally prepared to start this process and it was delayed.

Still in the process of land division while elaborating the Landed Property Distribution Plans it was provided necessary to ensure road access to each landed property and to determine the width of the agricultural roads and animal paths (Art. 20, para. 4, item 4 of the Implementing Regulations of the Act on Ownership and Use of Agricultural Lands, prom., SG, No. 34 of 30 April 1991, last am. SG, No. 55 of July 3, 2018). With the plan of the newly formed properties, roads or streets accessing them should have been designed, the width being 5 m and, exceptionally, 3.5 m (Art. 28, para. 5 of the Implementing Regulations of the Act on Ownership and Use of Agricultural land). The issue of the road width in the agricultural land is substantial because of the agricultural oversized machinery and/or heavy vehicles moving along (Ordinance No. 11 of 03.07.2001 on the Movement of Oversized and/or Heavy Road Vehicles; prom. SG, No. 65 of 24 July 2001).

According to Art. 41, para. 1 and 4 of the Supplementary Provisions of the Cadaster and Property Registry Act (prom. SG, No. 34 of 25 April 2000, am. and suppl. SG, No. 42 of 22 May 2018), a cadastral map for non-urbanized areas (Landed Property Distribution Map) is created on the basis of plans and maps approved under the Act on the Ownership and Use of Agricultural Land (prom. SG, No. 17 of 1 March 1991, last am. and suppl. SG, No. 77 of 18 September 2018) and the Act for Restoration of the Ownership of Forests and Lands of the Forestry Fund (prom. SG, No. 110 of 25 November 1997, last am. SG, No. 55 of 3 July 2018), in which there appear agricultural roads.

The study focuses on issues about the legal ways of accessing farmland outside the boundaries of the urban areas. It also deals with the legal status of the roads and the possible implications for the arable land in different hypotheses.

I. TERMINOLOGICAL PROVISIONS AND ECOLOGICAL ISSUES.

The first terminological clarification refers to "**agricultural land**". These are lands that are located in a territory with a permanent purpose of use "Agricultural territories", determined by Master Plans approved under the provisions of Art. 7, para. 1 of Spatial Planning Act (prom. SG, No. 1 of 2 January 2001, last am. SG No. 1 of 3 January 2019) and maps under the Cadaster and Property Registry Act (Art. 13, para. 1, item 3 of Ordinance RD-02-20-5 of 15.12.2016 on the Content, Creation and Maintenance of the Cadastral Map and the Cadastral Registers, issued by the Minister of Regional Development and Public Works (prom. SG, No. 4 of 13 January 2017). In Art. 1 of the Act on the Ownership and Use of Agricultural Land, the purpose for agricultural use is

pointed as the leading criterion for agricultural land, after which negative preconditions are listed. The Agricultural Property Protection Act (prom. SG, 54 of 12 July 1974, last ed. SG, No. 58 of 18 July 2017) in Art. 2, para. 1, item 1 uses the term "agricultural land" (arable land, natural meadows and pastures) that belong to agricultural property. The analysis of these provisions concludes that land is agricultural only if it is cultivated for agricultural production or if it is a meadow or a pasture (Decision No. 2536 of 6 November, 2014 of the Administrative Court of Varna on Administrative Case No. 2009/2014, which entered into force on 06.11.2014). It is interesting to note that the scope of agricultural property to be protected includes agricultural land (arable land, natural meadows and pastures), field crops, perennial and flower plantations, greenhouses; agricultural production (Art. 2, para. 1 of the Agricultural Property Protection Act), which is applicable to lands within the boundaries of the settlements too.

A further clarification refers to the term "**road**". According to the definition of § 1, item 1 of the Additional Provisions of the Roads Act (prom. SG, No. 26 of 29 March 2000, last am. and suppl. SG, No. 105 of 18 December 2018), "road" means a strip of land which is specially adapted for traffic of vehicles and movement of pedestrians and meets certain technical requirements. The legal definition in § 6, item 1 of the Additional Provisions of the Road Traffic Act (prom. SG, No. 20 of 5 March 1999, am. SG No. 17 of 26 February 2019) is that "road" is any land area or facility intended or commonly used for the movement of road vehicles or pedestrians. [1] have present a generalized road classification of Bulgarian roads, according to which the agricultural roads, together with the forest, industrial and others, fall into the class of "specialized roads".

There are different terms used for low-traffic roads, located in agricultural or forest environment, that have no asphalt or any other artificial covering, such as "earth roads", "dirt roads", "unpaved roads", "off-roads", "vicinity roads" [2, 3, 4, 5]. Synonyms like "soil paths" and "cart roads" are also used. This terminology reflects one or another feature: purpose of use, location, construction, etc. In agricultural areas the earth roads are intended for the agricultural machinery passing and servicing, for the transportation/passing of people and livestock. From a road construction point of view Sharma [6] divides earth roads into "ordinary" and "stabilized", i.e. with or without compacted layers of stabilized soil. Hindson [4] distinguishes two types of roads depending on their function: "village roads" and "market roads". Some authors [7, 8, 9, 10] use the terms "field roads" and "field road network" for denoting a secondary connectivity level, important for the production processes.

Corresponding to the subject of the study is the term "**agricultural roads**", used in Bulgarian legal regulation. From Art. 1, para. 2 of the Roads Act, it can be concluded that these are roads providing access to landed properties and this law is not applicable to them. In Annex 3 of the "Classifier on the Methods of Permanent Use of the Landed Properties" to Art. 14, para. 4 of Ordinance RD-02-20-5 of 15 December 2016 on the Content, Creation and Maintenance of the Cadastral Map and the Cadastral Registry, issued by the Minister of Regional Development and Public Works "agricultural roads" are included under code 2230, and "local roads" have the 2220 code. The Act on Agricultural Land Protection and its Implementing Rules does not specify any special order for the "field roads", so they can be considered "agricultural roads" and should also be entered with the code 2230 (Letter outgoing No. 10-22-14 / 15.07.08 of Agency

of Geodesy, Cartography and Cadaster to the Head of Sofia Geodesy, Cartography and Cadaster Service - Sofia).

Earth roads are recently underestimated from the point of view of their impact on the environment. They are of the lowest technical type and have different operation properties depending on soil and geology of the area: sandy to clayey foundation, rocky foundation, bare terrain, etc. Generally they are flat, without transverse slope and lateral drainage. Water can pass through these roads at every point. Their level coincides with the level of the adjacent lands. The risk of flooding, water retention and erosion is great. Usually, the carriageway is without soil improvements. Ruts are quickly formed. During rainy days, these roads often become unusable for motor vehicles. Furthermore, these vehicles/agricultural machinery can cause soil compaction under roads that have no proper load capacity construction according to traffic intensity, and physical properties of soil. Unavoidable soil erosion would occur as mud splashes out of the tracks by passing vehicles during heavy rain. For this reason the term that in Australia and New Zealand use is "dry-weather roads", while in India rural roads are proved to be catalytic for economic development and the efforts are towards maintenance of high quality "all-weather roads" [11]. In order to keep the earth roads serviceable for a longer period of time, they need maintenance to remove the effect of the erosion damage to the level of the road.

Still in the 50-s of the last century, [12] has presented in his book on Agricultural Roads Design scientific technical requirements and rules for construction and locating of agricultural roads in Bulgarian conditions. He has described a categorization scale of the agricultural roads according to their load capability, traffic intensity and types of moving vehicles, including oversized ones. He has given the methodology of sizing the transverse and longitudinal profiles, together with draining methods for different situations. Except for this book, no other analogous or upgrading research work has been documented up to now. What is more, no normative document on a construction and maintenance technology of rural roads, agricultural roads inclusive, has been issued up to now for the sake of movement/transport safety and soil and environment friendly operation.

II. PROVIDING ACCESS TO AGRICULTURAL LAND

Firstly, it is the municipality's responsibility to provide access to the unit of landed property through local roads. The framework, which the Master Plan (Annex 2 to Art. 68, para. 2 of Ordinance 8 under Art. 117 of the Spatial Planning Act) and the Detailed Development Plan (Art. 109 of the Spatial Planning Act and Art. 45, para. 2 of the Ordinance 7 under Art. 13, para. 1 of the Spatial Planning Act) set for the agricultural territories, includes "the locations and the routes of the agricultural roads"; and "planning for the main road network with a certain density"[12]

Secondly, the access can be ensured by passing through an exterior landed property through an easement. The legal institution "easement" is not regulated in the legislation in force, although it was part of the revoked Act on Property, Mortgages and Easements. The voluntary establishment of the right of servitude shall be done through a contract with a notary certification of the signatures of the owners of the dominant and the servicing property which is subject to entry in the Property Registry at the Registry Agency and shall be obligatory irrespective of the subsequent change in the ownership

in its capacity as an encumbrance (Art. 31, para. 1 of the Cadaster and Property Registry Act).

Art. 192, para.1 and para.6 of the Spatial Planning Act contains the basic rules for establishing the right of passing through an exterior regulated property. The peculiarities of agricultural land as a subject of easement rights have imposed the definition of a special legal regime defined in Art. 36 of the Agricultural Property Protection Act. The owner or the user of a landed property, which has no access to a public road, accepts administratively determined way to pass and market valuation for the granted right of passage, requiring this to be done with minimal damage to the service land. Compensation is provided, except for the cases when the landed property is not accessible as a result of sale, replacement, partition, or it has been granted for personal use.

III. LEGAL STATUS OF THE AGRICULTURAL ROADS

A criterion for the development and operation of roads in the agricultural land is their legal status. They might be owned by municipalities or by separate legal or natural persons (republican roads are not agricultural because they have another administrative and economic significance). The Roads Act is not applicable to agricultural roads that providing access to landed properties and that are private roads in landed properties not open for public use (Art. 1, para. 2, items 2 and 4).

The ownership of the local roads which are open for public use and provide transport links of local importance is public municipal under Art. 3, para.1 of the Municipal Property Act (prom. SG, No. 44 of 21 May 1996, last am. SG, No.77 of 18 September 2018). The prohibition of Art.7, para.2 of the same Act prevents both ownership transfer/limited property rights assignment and ownership restoration under the Act on the Ownership and Use of Agricultural Land. Even a registered under public municipal ownership agricultural road was proceeded for ownership restoration under the Act on the Ownership and Use of Agricultural Land, its public municipal ownership wouldn't change (Decision No 87/7.12.2017 of District Court Vidin on Case No. 301/2017). It would not be changed, even if there are other circumstances - another access to the situated on both sides of the road landed properties or not maintained road line hinders the passage of any vehicle (Decision No. 1976 of 16 February 2010 of the Supreme Administrative Court under Case No 6857/2009, III Section).

The character of municipal ownership of the agricultural roads affects the legal relations in case of consolidated use of the landed properties, especially the creation of massifs for agricultural use. In this respect, the Minister of Agriculture, Food and Forestry has given instructions for application of Art. 37b and Art. 37c of the Act on the Ownership and Use of Agricultural Land and Chapter Seven "Use of Agricultural Land" of the Implementation Rules to the same Act for the 2018-2019 economic year as an Annex to Order No. RD 46 - 395/08.08.2018. Art. 37c, para. 4 of the Act on the Ownership and Use of Agricultural Land provides for a detailed procedure for the roads, included in the massifs for agricultural use according to the Landed Property Distribution Plan. On the basis of an user's request, the director of the corresponding Regional Directorate of Agriculture submits a request to the corresponding municipal council for acquisition to the barer of the tenure rights for cultivation of the roads that are not necessary for property access (under Art. 37c, para. 16 of the Act on the Ownership and Use of

Agricultural Land). The order should not include roads in massifs, for which there is information that they will be used as roads. In case a massif includes landed properties which by declaration will be cultivated in their real borders (i.e. they don't participate in the Agreement for Massifs for Agricultural Use), the massif's user has the obligation to provide access to these properties. The price for the agricultural roads under cultivation should be deposited in the municipality bank account within one month of issuing the order.

There is a legal option for the users of the agricultural roads provided by the municipality to apply for support under the Agricultural Producers Assistance Act (prom. SG, No. 58 of 22 May 1998, last am. SG, No. 77 of 18 September 2018) subject to payment within 3 months after the legal basis for the use of the property is issued. The legal basis for the use of agricultural roads, respectively for applying for financial support is the contract concluded with the mayor of the municipality, or the order of the director of the Regional Directorate of Agriculture under art. 37c, para. 16 of the Act on the Ownership and Use of Agricultural Land.

As far as the unopened for public use roads within the borders of a landed property are concerned, there are no other specific requirements for locating and operation than those related to ecology and conservation of agricultural land.

IV. REQUIREMENTS FOR THE USE OF AGRICULTURAL PROPERTIES AND THE POSSIBILITY FOR CREATION OF NEW ROADS

Roads represent elements of the technical infrastructure and fall into the "construction" category within the meaning of §5, item 38 of the Supplementary Provisions of the Spatial Planning Act (prom. SG, No. 1 of 2001, last am. SG, No. 51 of 3 July 2018). For the construction of roads in agricultural land, Ordinance No. 19/25.10.2012 on Construction in Agricultural Land without Change of its Permanent Purpose of Use (prom. SG, No. 85 of 6 November 2012) is applicable. Generally, the requirements of buildings, networks and facilities construction in properties with an area of less or more than 1 ha are mentioned in it (Art. 2, para. 1 of Ordinance 19). There is no clear address for construction or separation of agricultural roads.

Art. 4 of the Act on the Ownership and Use of Agricultural Land proclaims the principle that the owner freely chooses the method of permanent use of his landed property according to its permanent purpose of use, determined by a Master Plan. The method of permanent use is reflected in the cadastral map and in the issued sketch and ownership document, respectively. The only limitation in applying agricultural practices is not to damage the soil and to comply with the recommended sanitary, fire and environmental standards. The construction of facilities, such as roads, should be by an Order of the Spatial Planning Act and the Agricultural Land Protection Act.

By virtue of Art. 69 and Art. 70 of the Act on the Ownership and Use of Agricultural Land, the obligation of the owners of agricultural lands is to submit a declaration to the respective Municipal Office of Agriculture about the management method and the method of permanent use, as well as about any change in these circumstances. Possible management methods are: by lease, by rent, by joint processing or use agreement, by cooperatives. Under Art. 78c of the Act on the Ownership and Use of Agricultural Land, a document from the Regional Inspectorate of Environment and Waters is required on the issues connected with NATURA 2000 sites under the Biodiversity Act (prom. SG,

No. 77 of 9 August 2002, last am. SG, No. 98 of 27 November 2018) or with protected areas under the Protected Areas Act (prom. SG, No. 133 of 11 November 1998, last suppl. SG, No. 1 of 3 January 2019). In case of a falling within the scope of a the "Permanent grassland" specialized layered property is to be changed, an order of the Minister of Agriculture, Food and Forestry in connection with Art. 33b, para. 2 of the Agricultural Producers Assistance Act is needed.

A great importance for preservation of land quality is the way of regulation of the relationships in case the tenure rights are assigned to a legal entity other than the owner. The Land Lease Act (Art. 9) (prom. SG, No. 82 of 27 September 1996, last am. and suppl. SG, No. 55 of 3 July 2018) stipulates an obligation for the lease holder to use the rented by the contract object with the care of a good owner. The lease holder is obliged to respect the regulated sanitary, hygiene, fire and environmental standards and not to damage the object on a contract. It is obligatory to have the landlord's prior written consent to change the method of permanent use, which will reflect the use of the object of the contract. The same applies to construction works related to building permits, such as roads. In case of worsening of land quality, there is a special claim for compensation (Art. 13 of Land Lease Act), which can be claimed within three years of returning the land to the landowner.

The possibility to hire agricultural land has been established as a possible contractual form other than the lease (Interpretative Decision No. 2/20.07.2017 of the General Assembly of the Council of the Civil College of the Supreme Court of Cassation under No. 2/2015). As a result of the changes made in 2018, special provisions related to the rent were included in the Act on the Ownership and Use of Agricultural Land in view of the peculiarities of the agricultural land as an object of a rental relationship, which differs from the general legal regime under Art. 228 - Art. 239 of the Obligations and Contracts Act (prom. SG, No. 2 of 5 December 1950, denom. 5 July 1999, suppl. SG, No. 42 of 22 May 2018). Besides the general obligation of the tenant to return the property as it has been, in the rental relationship of landed properties we can find a reason for preserving the method of permanent use as to the notarized contents of the mandatory sketches of the Cadaster and Property Registry/the relevant Municipal Agricultural Office that has to keep this element. Any deviation from the permanent purpose of use of a landed property, including through internal road creation and consequent use, entitles the owner to terminate the rental contract and to claim compensation for the damage caused.

It should be mentioned that in the legislation on the protection of agricultural land's qualitative characteristics, there are no specific sanctions related to the development of roads.

V. CONCLUSIONS AND RECOMMENDATIONS

At present, there are insufficient normative and sub-normative documents for the creation and use of agricultural road infrastructure in the agricultural territories and which guarantee efficient and sustainable land use in the agricultural territories as a whole. The legal framework implies vaguely and inefficiently both the private interest in protection of land ownership/tenure rights and the public interest in soil erosion control within the road line and soil fertility conservation in adjacent land. The topic of

construction, operation and maintenance of the agricultural road network is completely absent from the regulatory environment.

Recognizing the scientific achievements of the past in connection with construction of agricultural roads, it is necessary to pay close attention to these roads as arteries of agricultural production services. We offer to the legislators:

- To consider the economic, environmental and social functions of the agricultural roads as important for the integrated development of the rural areas; to pay serious attention to their establishment for achieving optimal connectivity in the rural areas and eligible transport costs of the agricultural production.
- To supplement the normative regulations for construction without changing of the permanent purpose of use of the agricultural territory with rules and standards for construction and maintenance of agricultural roads in order to guarantee long-term road operation, transport safety of people, production quality during transportation, traffic and vehicles (including agricultural machinery) permeability, soil erosion control, and soil productivity in the adjacent land.
- To improve the normative framework so that it enables new locations of agricultural roads across landed properties without changing of the permanent purpose of use, i.e. to protect the rights of both the lease holders/tenants/cooperatives and the landlords, connected with the quality of land under the roads and of the adjacent territories. The users should be free to establish the best territorial structure for their agricultural production, including agricultural road creation and use, and the landlords shouldn't lose the value of their land as an asset or they have to be compensated in case of caused damages or decreasing of land quality because of road operation.

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