

Change in use of agricultural land for non-agricultural purposes – procedures, aspects, problems

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Abstract. *The change of the designation of agricultural land for non-agricultural purposes is related to investment intentions for realization of developmental events on the agricultural territories, which are mainly of a constructional nature. In a legal and technological aspect, this process is regulated in Chapter Five of the Agricultural Land Conservation Act (1996) and Chapter Five of the Rules for Implementation of Agricultural Land Conservation Act (1996). Other specific legal details in this respect are subject to regulation in a number of other legal acts: Spatial Development Act (2001), Black Sea Coast Spatial Development Act (2008), Cadastre and Land Register Act (2000), Ordinance No. 7/22.12.2003 on rules and norms for the construction of the different types of territories and development zones, Ordinance No. 8/14.06.2001 on the volume and content of development plans, Ordinance No. 4/21.05.2001 on the scope and content of investment projects, etc. The aim of the study is to justify the necessity to change land use on a reasonable scale as a necessary instrument in the agricultural sector, by monitoring and analyzing the current legal framework and some literary sources. In this connection, the methodology of the legal analysis and the methodology of the SWOT analysis are used. The expected results are oriented towards the formulation of some proposals concerning the improvement of the mechanisms for the change of the purpose of the agricultural land.*

Keywords: agricultural land, change of land purpose, legislation base, technical infrastructure, urbanized territories, regulated land properties

Introduction

According to data from the Annual report on the condition and development of agriculture (2017), by 2016, Bulgaria has an agricultural area of 5 214 640ha, of which the utilized agricultural area is 5 021 412 ha. Tracking the values of these two indicators by year (from 2000 to 2015) shows a downward trend - for 2000, the agricultural area was 5 874 560ha and the utilized agricultural area - 5 582 050ha, i.e. only for land with agricultural use Bulgaria lost over 600 000ha in 15 years.

To clarify the reasons for this, a thorough and detailed analysis is needed. In a shorter analysis we cannot ignore the negative influence of climate change, the activation of landslide processes, collapses, erosion, etc. These are objective factors and circumstances that bear their negative consequences but would not, at least at this stage of climate change, lead to so severe reductions in the size of the agricultural land in the country (Kostadinova and Petkov, 2012). Obviously, the burden of this reduction falls on subjective actions associated with different spatial events that have been carried out for various reasons on agricultural land, and in particular construction that has been carried out on agricultural land with a changed purpose for non-agricultural purposes.

The construction of agricultural land is regulated in several basic normative acts, depending on the realization or not of the implementation of the change of the purpose of the agricultural land. The legal regimes of construction on agricultural lands without changing the purpose of the land are regulated in the texts of Ordinance No. 19/2012 for construction on agricultural lands without change of purpose. This legal regime has been dealt with in detail by Velkovska (2014) in accordance with the above-mentioned regulation. The same author examines in detail the other variant of the construction on agricultural territo-

ries but with the change of the purpose of the agricultural land (Velkovska, 2017).

The change of the purpose of agricultural land, as regulated in Chapter 5 of the Agricultural Land Conservation Act (1996) is aimed at transforming the use of agricultural land for non-agricultural purposes. This transformation in the text of Article 17 (1) of the Agricultural Land Conservation Act (1986) is subject to a permit regime that is directly dependent on the productive qualities of the land and the objectives pursued by that act. In the text of Article 17, paragraph 1, item 1, 2 of the Agricultural Land Conservation Act [www.lex.bg], the bodies implementing the procedures for the change of the purpose of the agricultural land are specified. The change of the purpose of agricultural land is dictated by the need to satisfy either own, non-agricultural needs or satisfaction of state and/or municipal needs.

The subject of the present study is the consideration and analysis of the legal aspects of the process for transformation of agricultural land use for non-agricultural purposes and some imperfections in the legal documents referring to this process.

Material and methods

For the purposes of the study, the following valid regulatory documents were used:

- Agricultural Land Conservation Act (ALCA), 1996;
- Cadastre and Land Register Act (CLRA), 2000;
- Spatial Development Act (SDA), 2001;
- Black Sea Coast Spatial Development Act (BSCSDA), 2008;
- Ordinance № 4/21.05.2001 on the scope and content of investment projects;
- Ordinance № 8/14.06.2001 on the volume and content of development plans;

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- Ordinance No.7/22.12.2003 on rules and norms for the construction of the different types of territories and development zones;
- Ordinance №19/25.10.2012 on construction on agricultural lands without changing their purpose;
- Rules for Implementation of the Agricultural Land Conservation Act (RIALCA), 1996;

The methodology of the study included the analytical toolbox with two types of analysis - legal and SWOT analysis. The legal analysis differentiates into groups the generally applicable and specific legal regulations, seeks the link between them in specific reference texts and beyond, and establishes contradictions of a legal-logical nature. In general, the legal analysis has both a revision, a finding, and a corrective nature. Its main purpose in the process of research is to establish at a certain historical moment and to establish on a permanent basis what is archaic, obsolete and contradictory to the philosophy of any legal norm, legal regulations, regarding its effective applicability in the studied field - the change of the purpose of agricultural land for non-agricultural purposes and the subsequent changes in technological processes and legal consequences.

The SWOT analysis toolkit allows the grouping of legal regulations from the field of study as strengths and weaknesses of the legal basis and, accordingly, the opportunities that legal norms provide, as well as the weaknesses. In this respect, as a strong side, the basic objective of preserving agricultural lands and transforming planning activities, including construction, into a sustainable tool for the management of the agrarian sector, can be mentioned as a strong one. Among the weaknesses of the legal package is its very layering, which also contains contradictory legal norms leading to a negative effect on their implementation. The scope of the legal package can be found in a number of texts, but they must be precisely enforced to ignore the threats.

Results and discussion

Construction on agricultural land with change of the purpose of the agricultural land for non-agricultural needs - legal and practical aspects.

In the text of Art. 3 of Ordinance No 19/2012 on construction on agricultural lands without change of their designation [www.lex.bg], some agricultural land, zones and territories are excluded from the statutory preferential legal regime, for the construction without changing the purpose. First of all, these are agricultural lands, which fall within the range of settlements, industrial, resort and villa areas and settlement formations defined with a detailed development plan under Art. 109 or Art. 111 of the Spatial Development Act [www.lex.bg]. Secondly, these are the agricultural lands that fall into the A and B protection zones in the sense of the Black Sea Coast Spatial Development Act [www.lex.bg].

The change of the purpose of agricultural land, as regulated in Chapter Five of the Agricultural Land Conservation Act [www.lex.bg], is aimed at transforming the use of agricultural land for non-agricultural purposes. This transformation in the

text of Article 17 (1) of the Agricultural Land Conservation Act [www.lex.bg] is subject to a permit regime that is directly dependent on the productive qualities of the land and the objectives pursued by that act.

When is it allowed to change the designation of agricultural land for non-agricultural purposes? In the text of Article 17a (1) of the Agricultural Land Conservation Act [www.lex.bg], three strands serving the possibility to implement the change of the purpose of the agricultural land are regulated, namely:

- for construction of sites of the technical infrastructure according to the legal standards of the Spatial Development Act [www.lex.bg];
- creating new or expanding existing boundaries of urbanized territories;
- creating or extending the boundaries of individual regulated landed properties outside the building boundaries of existing urbanized areas.

In the text of Article 17, paragraph 1, item 1, 2 of the Agricultural Land Conservation Act [www.lex.bg], the bodies implementing the procedures for the change of the designation of the agricultural lands are specified as follows:

- commissions to the regional directorates „Agriculture“ - where the requested area is up to 50 decares from the 5th to the 10th category or irrigated and the land is on the lands of the settlements on the territory of the respective area;
- Committee on Agricultural Land at the Ministry of Agriculture, Food and Forestry.

According to the regulation of Art. 17a of the Agricultural Land Conservation Act [www.lex.bg], change of the designation of agricultural lands for non-agricultural purposes may be allowed for:

- construction of sites of the technical infrastructure within the meaning of the Spatial Development Act [www.lex.bg];
- creating new or expanding construction boundaries of existing urbanized areas (settlements and settlement formations);
- creating or expanding the boundaries of individual regulated landed properties outside the building boundaries of existing urbanized areas (settlements and settlement formations).

In addition, it is not required to validate sites and routes for designing and modifying the designation of agricultural land for the construction of linear sites of the technical infrastructure when they are not located on the surface of the terrain and the required area of each of the adjacent facilities, located on the terrain is up to 15m², for linear power transmission lines with a voltage level of 110kV and higher - the required area of each element of the linear site is up to 100m² and for crane units, stations for cathodic protection, candles, measuring instruments and electrical equipment to gas pipelines with an area of no more than 300m².

The change of the purpose of the agricultural lands for non-agricultural purposes, provided for by a Master plan in force as well as in the cases of execution of a concession contract, shall be carried out without conducting a procedure for approval of a site or a route for design.

Proposals for the approval of a site or a route for designing and changing the designation of agricultural land for state purposes shall be made by the Minister of Regional Development and Public Works for sites and facilities on the territory of more than one district by the Regional Governor for facilities and facilities of the territory of the respective area, and for municipal needs - by the mayor of the respective municipality.

Pursuant to the regulation of Article 20, Paragraphs 1 and 2 of the Agricultural Land Conservation Act [www.lex.bg], the boundaries and the purpose of the agricultural land included within the boundaries of the urbanized territories shall be determined by a general or detailed development plan.

Change of the purpose of the agricultural land included in the boundaries of the urbanized territories may also be carried out in neighborhoods according to the development of the plan at the suggestion of the mayor of the municipality.

Specification of the conditions for changing the designation of agricultural land for non-agricultural purposes.

The change of the purpose of agricultural land is dictated by the need to satisfy either own, non-agricultural needs or satisfaction of state and/or municipal needs. How are these two strands different:

a) In the case of a detailed development plan already in force, the owner or person entitled to term in a foreign property, according to the text of Article 40 of the Rules for the Application of the Agricultural Land Conservation Act [www.lex.bg], may submit a proposal to change land use when the site is built for its own needs.

These persons prepare a motivated proposal with an accompanying file according to the requirements of Article 30 of the Regulations for the Application of the Agricultural Land Conservation Act [www.lex.bg].

The following are attached to the file:

- A copy of the detailed development plan in force, the order of the mayor or the decision of the municipal council for its approval and a statement of attestation confirming their entry into force;

- For linear sites - plot plan;

- For territories with Master plans in force - an extract from the plan with a scope of the land property and a certificate of the planning zone issued by the respective municipal administration.

The right to property or the right to build on agricultural land is a legal condition on the basis of which an investor may request a change of the designation of agricultural land - when the land is owned by a natural or legal person and there is an established site or a route for building a site, this request may be made after the investor has fulfilled that condition.

Where the land is in a state or municipal land fund and a site or a route for the construction of a site by a natural or legal person (investor) is established, the person is required to acquire a right of ownership or right to build on the land before the change of its purpose.

The authority that discusses the purpose shall pronounce within 30 days, and the decision of the commission shall also indicate the amount of the fee to be paid. The decision on the

purpose of the land according to the wording of Article 41, paragraph 1 of the Regulations for the Application of the Agricultural Land Conservation Act [www.lex.bg] shall enter into force upon payment of the fee for the site.

Within 7 days of the announcement of the decision, the Commission shall send a copy of the decision of the municipal administration and of the geodesy, cartography and cadastre office to the cadastre.

If the decision to change the designation, according to the text of Article 42 of the Regulation for the Implementation of the Agricultural Land Conservation Act [www.lex.bg], creates new properties, the Office of Geodesy, Cartography and Cadastre gives the identifier of the new land properties.

A building permit shall be issued to the natural or legal person, according to the norm of Article 43 of the Regulation for the Implementation of the Agricultural Land Conservation Act [www.lex.bg], if there are three conditions fulfilled:

- A validated decision of the Commission to change the designation of agricultural land;

- Border crossing;

- Removing and storing or utilizing the humus layer.

b) In the event of a detailed development plan for sites for state or municipal needs located on agricultural land owned by natural or legal persons, the norm of Article 44 of the Regulation for the Implementation of the Agricultural Land Conservation Act [www.lex.bg] shall regulate the necessity for submitting a motivated proposal to the Commission.

The proposal shall be submitted within one (1) year after the entry into force of the detailed development plan. This one-year period does not apply to established highways, highway I, II and III roads, railways, power lines, gas pipelines, oil pipelines and well-established mining sites, power plants, municipal solid waste landfills for cities with more than 100 000 inhabitants and other industrial sites of national importance.

The effective decision of the Commission to change the designation of agricultural land - property of legal and natural persons, is the reason for commencing the expropriation procedure. According to the norm of Article 46 of the Regulation on the Implementation of the Agricultural Land Conservation Act [www.lex.bg], the expropriation procedure should start within three years from the entry into force of the decision to change the designation of the agricultural land.

Where land expropriation takes place in stages, the land-owners use them for their original purpose without the right to construct sites and to invest in investments of a lasting nature. If these limitations are not met, the owners lose the right to compensation for the improvements they have made. In addition, they are obliged to remove the constructed buildings and facilities at their own expense.

For the implementation of municipal projects related to the construction of information and other sites and facilities - public municipal property, according to the regulation of Art. 48, para. 3 of the Regulations for the Implementation of the Agricultural Land Conservation Act [www.lex.bg], with the consent of the Minister of Agriculture, Food and Forests, it is allowed to change the designation of land from the State Land Fund.

The regional governor has the right to terminate such transfer transactions, in administrative and judicial proceedings. The acts with which the transfer is canceled are grounds for re-assignment of the property to the State Land Fund.

Conclusion

From the point of view of the need to meet non-agricultural needs and needs, including of a public nature, the change of the designation of agricultural land for non-agricultural purposes is a necessary process and legal act covering a number of legal regulations. Legislative regulation in separate norms requires ongoing corrections and a process of permanent delineation and improvement of the entire legislative package related to the change of the purpose of agricultural land. For example, the wording of Article 41^a of the Rules on the Implementation of the Agricultural Land Conservation Act [www.lex.bg] does not specify the nature of the issues of clarification when the Commission, using this Regulation, suspends the procedure for the change of the designation of agricultural land. In the text of Article 45, paragraph 5, of the Regulation on the Implementation of the Agricultural Land Conservation Act [www.lex.bg], the single legal regulation of the conditions and processes for changing the designation of agricultural lands has been violated with an application mechanism for the automatic recognition of the agricultural land with changed purpose from the moment of entry, including a detailed development plan providing for the construction of a national site or municipal site of primary importance that becomes public state or public municipal property. These and other texts, from the point of view of their specific purpose, may be subject to other laws and regulations.

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