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LEGAL REGULATION OF LAND RELATIONS IN BULGARIA

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ABSTRACT

Purpose: The purpose of the present study is to evaluate and analyse the current legislation framework for the settlement of land relations in Bulgaria, to draw conclusions and recommendation for its improvement. **Methods:** The main methods of application for research and analysis are: systematic analysis, logical approach, normative method, synthesis, etc. **Results:** Through the research and analysis of the legal framework, significant contradictions and weaknesses are identified, which impede the successful settlement of land relations in the country. Guidelines are provided for changes which are meant to contribute for solving specific problems. **Conclusion:** The performed legal analysis of the normative regulations, which govern the land relations reveals the need for a normative initiative for overcoming gaps and contradictions in the legislation in this field, in order to fully protect the rights and interests of the legal entities.

Key words: land relations, regulation, legislation, legal framework, law enforcement and analysis.

INTRODUCTION

In Bulgarian law there is no legal definition of the term *land relations*. In theory and practice, land relations are defined as public relations in terms of agriculture.

The regulation of land relations in Bulgaria is by its very nature a complex rulemaking process that has followed the historical development of society. Its role is to meet the economic, social and political needs of landowners and users, on the one hand, as land is a basic and indispensable natural resource and, on the other hand, to guarantee and protect the exclusive right of its ownership.

The development of society, reflected through the prism of its social and economic transformations and realities, has a direct influence on the creation and regulation of the legislation of land relations in Bulgaria.

The purpose of this work is to examine and analyze the current legal framework for settling the land relations in Bulgaria, to draw conclusions and make recommendations for its improvement.

RETRSOPECTIVE ANALYSIS OF THE LEGAL BASIS FOR SETTLEMENT OF LAND RELATIONS IN BULGARIA (FROM 1978 TO 1989)

Historically, the need to establish a legal framework for the regulation of land relations arose after the Liberation of Bulgaria from Turkish slavery.

This new independent stage of Bulgaria's historical development required the establishment of a legal regime by which Turkish land ownership could be converted into private

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bourgeois property. The first legislative act in this regard was the Tarnovo Constitution, adopted on April 16, 1879, at the Constituent National Assembly in Tarnovo. Innovative and progressive for its time and liberal character, the Tarnovo Constitution affirmed the principle of privacy and private property as the basis of production and public relations.

The regulations on land relations established during this period were strongly influenced by the historical context. Legislation strived to meet the needs of the Bulgarian society, consisting of Bulgarians, migrants, refugees, etc., who were holders of different types of property rights.

During this period of time, the rules of law concerning land ownership were largely borrowed from foreign laws. The perception of the concept of full dominance of the owner in respect of the property was largely adopted by the Roman private law. In legal terms, the principle that the owner of the property had the right to ask all third parties to refrain from taking action against it was legally laid down.

In 1904 the basic law regulating the right in rem was adopted – *the Law on Property, Ownership and Rights of Way* (LPORW), which established a single legal regime for real estate in Bulgaria. Land, including covered and uncovered, fell within the scope of this law. In view of this, the law also regulated public relations linked to the ownership of agricultural land, restrictions on ownership and limited rights in rem on them. The LPORW regulated ownership and put an end to all Ottoman laws. The act established full, comprehensive, absolute private ownership of the property and the right of the holder of its possession, use and disposal. Both full and limited ownership were regulated. In this sense, the act established ownership as a comprehensive and unlimited right. This act addressed and formulated the ownership of the land, stating that it is defined as the ownership of the space above it and "all that is located below or above the surface". This definition was very important in terms of natural resources and ownership by the state, respectively ownership of the land by the owners. This law legally incorporated the principle that the right to property entitles everything that the property (movable or immovable) produces or which is naturally or artificially attached to it. This right was meant as an accession.

The Law on Agricultural Chambers was adopted in 1912, and laid the foundation for the regulatory regulation of Bulgarian agriculture. By its very nature, this law was a statutory act, through which state-subsidized agricultural chambers in Sofia, Plovdiv and Ruse were established, tasked with lifting and improving agriculture and its industries, and hence the development of related land relations.

The National Assembly adopted in 1941 the *Land Cadastre and Parceling Act* (SG 127/41), which introduced a legal regime for cadastral imaging of properties, their listing and description. The cadastre became mandatory for the whole country. The aim was to establish the type, location, boundaries, size and owner of the real estate by drawing up a cadastral plan and drafting the necessary papers. This law had a great economic importance and was directly relevant to the regulation of land relations in Bulgaria, because the cadastre made it possible to conduct land ownership in notoriety, to serve transactions in properties, mortgages and other activities, including the parceling of plots. Typical of land ownership in our country during this period was that the majority of farms developed on their own land, i.e., landowners were also farmers.

The Constitution of the People's Republic of Bulgaria of 1947 was a basic law governing the socio-political and business relations, state planning and fundamental rights and obligations of the citizens of the People's Republic of Bulgaria for the period 6th December 1947 – 18th May 1971. This Constitution was also known as the Dimitrov Constitution and was created under the influence and effect of the ideas and principles of the Soviet Law School. The ideological basis of the Soviet constitution, legal institutes and institutions was reproduced in it.

This legislative act also began the transformation of property in Bulgaria, consisting in the expropriation of property and capital, confiscation of the properties of those convicted by the People's Court. It was the basis for the implementation of the "Agricultural Reform", related to the cooperatives on agricultural land. The Constitution set out principles for regulating

public relations in the field of land, as the provision of Art. 11 stated that "the land belongs to those who toil on it." A legislative option was introduced for direct state intervention in private relations in the possession and use of agricultural land. According to the provisions of the Constitution, large landownership in private hands was not allowed. Thus, at constitutional level the legislature demonstrated its intention to restrict and control the relationships of ownership in agriculture. The new state policy related to the organisation and management of agricultural production was manifested in the construction of Labour Cooperative Agricultural Holdings (LCAHs), which were promoted and supported by the State and enjoyed special protection.

The trend for restriction of private property continued in the *Constitution of the People's Republic of Bulgaria of 1971*. According to it, there were four forms of ownership: *state* (general state), *cooperative owned by public organizations* and *private*. The main tendency of the land regulations in this period was to strengthen the state's leading role in determining the possibility, order and manner of establishing control over the ownership of citizens, both in terms of real estate in general and the owned agricultural land. New legal forms of ownership were introduced, creating specific means for the acquisition and expropriation of property by natural persons, for the benefit of other natural persons as well as for the benefit of the characteristic new structured legal form of the LCAH, i.e., for the benefit of the state in the face of the Agricultural and Industrial Complexes (AIC). The basic idea of consolidation of agricultural land, under the exclusive control of the state, was imposed. This trend introduced a new approach and the creation of an ideologically new concept for the reassessment of all institutes of property rights in general, and agricultural land in particular and their use.

ANALYSIS OF THE LEGAL BASIS FOR REGULATING MODERN LAND RELATIONS IN BULGARIA (SINCE 1991 TO PRESENT)

A whole new approach to property rights, essential to the modern legislation of land relations, introduced *The Constitution of the Republic of Bulgaria*, adopted by the Grand National Assembly in 1991. On the basis of this legislation, the legislature defined ownership as *private* and *public* (state and municipal). Since the Constitution is a basic and supreme law in the legal hierarchy and other laws cannot conflict with its provisions, the legislative framework of the legal regulation of land relations has been established on this division of ownership.

Land legislation was created to regulate the relations for the use and protection of land in Bulgaria as the basis of the life and business activity of people. Land relations appeared as a set of relations arising between the subjects of land law in connection with possession, use and disposal of the land as a limited natural resource and labor factor, respectively a means of production. *Subjects of land relations* were all participants holding land rights and obligations (citizens, legal persons, the state and municipalities). *Site of land relations* was the land as an object, resource and plot of land.

The main legal act in this regard was *The Law on the Ownership and Use of Agricultural Land* (SG 17/03/1991), the main purpose of which was to settle public relations referring to the restitution of agricultural land and its purposeful use. In order to define the procedures for the implementation of the legal provisions in further detail, *Regulations for the implementation of the Law on the Ownership and Use of Agricultural Land* (SG 34/04/91) were adopted. In general terms, these regulations determined the scope and purpose of agricultural land, the entities who may own properties there, and the rights and obligations of persons with restored property rights in the use of the land.

The Agricultural Land Conservation Act and its implementing regulations were of key importance in regulating land relations. These regulations managed public relations arising in connection with the protection of agricultural land. Procedures for changing the use of agricultural land for non-agricultural purposes, the revegetation of wasted land, as a complex of technical and biological activities to restore the initial use of the land were also laid down; the sale of agricultural land on which construction was carried out before the entry into force of the Law on Ownership and Property of Agricultural

Lands, etc. The Agricultural Land Conservation Act (ALCA) was promulgated in 1996 and repealed the Arable Land and Pasture Conservation Act of 1973. Since its promulgation to date, this law has undergone repeated amendments and additions. Its regulation was fragmented into numerous legal and sub-normative acts of different legal force, which made it difficult to follow up the overall framework and created contradictions in implementation.

Given that the provisions of the LOPAL and the ALCA regulated public relations arising from the same subject– land, and in some cases, there were contradictions between the two acts. In this sense, we believe that synchronization and unification of their legal basis is necessary, together with the provisions of the regulations for their application and part of the ordinances. A common legislative act is needed to arrange, through an efficient regime of rules, the possession, use, management and preservation of a special category of immovable property - agricultural land. Thus, the modern requirements of the socio-political and socio-economic realities in Bulgaria can be met, and the regulatory framework can be synchronized with that of the European Union. This will lead to a significantly more effective regulation of land relations in the country.

Another major source of legislation in the field of land relations is *the Agricultural Lease Act* (SG, issue 82 of 27.09.1996; amend. and add., issue 35 of 16.04.1999). This Act governs the emergence, amendment and termination of lease relations, which by their legal nature constitute land relations. The main legal fact from which the lease relationship arises as the land relationship is the lease agreement.

The lease agreement in agriculture finds its legal definition in Art. 2 of the Agricultural Lease Act (ALA). According to it, with the lease agreement, the lessor undertakes to provide the timeshare tenant with the object of the contract and the lessor to make a certain lease payment. The yields from the leased sites become the property of the lessee from the moment they are detached. From this definition, the main characteristics of this contract can be elicited - bilateral, retribution and consensual. It establishes the rights and obligations for the parties from the moment of agreement.

Art. 3 of ALA lays down another important feature of the lease in agriculture - its formality. The valid conclusion of such a contract requires it to be done in writing with notarial verification of the signatures of the parties carried out simultaneously.

The subject of the lease in agriculture is the contract right of use on the leased site. This contract has no real effect. Its specific object, explicitly defined in art. 1, para. 3 of ALA , is what distinguishes it from other leases. Its object may be agricultural land and / or immovable and movable property for agricultural production, including agricultural buildings, inventory and domestic animals. The legal definition of the lease agreement shows its exceptional proximity to the lease agreement. In contrast, however, the lease the object of the contract must be a fruit-bearing item. This is necessary, due to the characteristic feature of the lease to be concluded in order to obtain the fruits of a given item, for which the rent is due. The lease agreement presupposes the transfer of ownership of the detached or newly created fruits in the patrimony of the lessee.

Since the lease agreement is bilateral in nature, each of the parties to this agreement has rights and obligations. The main obligation of the lessor under a lease agreement in agriculture is to hand over to the lessee the possession - the actual power over the item, to ensure its unimpeded use and to allow the lessee to extract its fruit. The lessee has the opposite right to ask him to allow him to receive the fruits produced - the subject of the contract. In this case, the principle rule is derogated that the fruits belong to the owner of the fruit-bearing item (argument from art. 2, para 2 from ALA). The lessor should hand over to the lessee the object of the contract in a condition corresponding to its use under the contract and maintain it in this condition for the duration of the lease. The transfer is concluded by a protocol - inventory. The signatories of the protocol - inventory of the parties may not challenge its content in court. The drawing up of such a protocol - inventory is not a ground for validating the lease agreement. The legislator introduces a presumption that if the object is not handed over

by inventory, it is assumed that it has been accepted in proper condition. This presumption, however, is rebuttable, with the burden of proof on the person challenging it. (Order № 12/2011 of the Supreme Court of Cassation). The distribution of the costs of maintaining the property generally follows this in the case of rental legal relations. The current maintenance required due to the normal use of the contract object, including residential and farm buildings, roads, ditches, irrigation and drainage systems and other service facilities and fences, is at the expense of the lessee. The lessee is also obliged to pay the taxes and fees related to the use of the leased object of the contract, and the lessor - the taxes and fees related to his property. The lessor also owes the amount by which the value of the object of the contract has increased, as a result of the improvements made with his consent. In order to protect the lessor, who is often the economically weaker party, the legislator grants him the right to pledge the yields of the leased object and the imported items to secure his receivables under the lease for the year. This right may be exercised under the procedure of Art. 310 - 314 of Commercial Law (CL).

The lessee, in turn, has two main obligations. The first of them is to use the leased object of the contract with the care of a good owner according to the purpose specified in the contract. This can be regulated by explicitly listing or excluding certain purposes - to plant a certain crop, not to plant genetically modified varieties, etc. The second main obligation is to pay rent. The law stipulates that, unless otherwise agreed, the rent payment is due on the first working day after the end of the business year - the period from October 1st of the current year to October 1st of the following year. In principle, rent payments are made on an annual basis, and in the absence of contrary provisions, the payment is due on the first working day after the end of the business year (i.e., October 1st). The parties can agree on payments to be made at shorter periods, and there is no obstacle to agreeing to a one-time payment for the entire period of the contract. The payment itself can be in value, in kind or a combination of both. In order to protect the rights of the lessee in case of bad faith of the lessor, the legislator settles in the burden of the lessor an objective liability for defects, the agreement for exemption, from which it is always null and void. This liability exists even when the defect is unknown to the landlord. If the defect is due to a reason for which the lessor is responsible, the lessee may seek compensation for damages under the general rules for non-performance under the Obligations and Agreements Act.

An important feature of the lease in agriculture is the duration for which the contract can be concluded. What is specific here is that a minimum duration of five economic years has been introduced in an imperative manner (art. 4, ALA). The parties may not agree otherwise in violation of this provision. There is no limit to the maximum duration of the contract. It is possible to conclude the lease without a term or for an indefinite period (for example, for life). Due to the durability of the bond between lessee and lessor, which can last for decades, and due to the significant restriction of the rights that the owner of agricultural land or property must tolerate, the legislator provides a special form for concluding a lease - written with notarization of signatures. It is entered in the notarial books and registered with the relevant municipal agricultural service. Upon registration, a sketch of the leased object of the contract, issued or certified by the municipal agricultural service, shall be submitted. Usually, registration is done by the lessee, as he is a stakeholder. The proceedings before the municipal service are formal and do not allow assessment by the registration body whether the contract applied for registration is validly concluded. (Decision № 3469/2012 of the SAC). Not only the initial lease agreement is subject to entry in the register, but also the one with which the lease term is extended. (Decision № 3910/2012 of the SAC). The non-registration does not lead to the invalidity of the concluded lease contract, but only its irresistibility to another registered contract. (Decision 672/2011 of the Supreme Court of Cassation). There is also a peculiarity about the figure of the lessor. He does not need to be the absolute owner of the leased property. According to Art. 3, para. 4 of ALA the lease contract is allowed to be concluded only by one of the co-owners of agricultural land, when they are several. The hypothesis of sublease is also possible (art. 11 of ALA), but only when it is explicitly agreed in the lease agreement. The sublease agreement should

be concluded in writing, with notarized signatures, entered in the notary books and registered in the relevant municipal agricultural service. (Decision № 2312/2007 of the SAC).

Termination of the lease agreement is of great practical importance. The grounds for termination of a lease agreement under ALA are listed in Art. 27. The first ground for termination concerns fixed-term leases. They shall be terminated upon the expiration of the term for which they have been concluded. A contract concluded without a fixed term may be terminated unilaterally by either party with written notice after the end of the fourth year. Unless otherwise agreed, the notice shall be valid for two business years. It must take place at the latest by the end of the marketing year preceding the beginning of the two-year marketing year. The parties may agree on a duration of the notice other than the said two financial years. In case of non-fulfillment of a contractual obligation, the party in good standing may terminate the lease contract in accordance with the general procedure of OAA - with notice. This possibility exists insofar as otherwise provided in ALA . An example of this is the revocation of the lessee's right to terminate the contract. When he seeks compensation for non-performance, or when there is a defect, he does not notify the lessor. Thus, the latter fails to take the necessary measures to preserve the object of the contract or to divert the claimed rights from third parties.

The termination of the lease contract may be made with a unilateral notice by the parties and when there is no culpable non-performance of contractual obligations, as long as the possibility is settled in ALA. Such unilateral termination is present in case the lessee becomes permanently incapacitated. The legislator accepts that in such cases the preservation of the contract loses its meaning, as the lessor will not be able to actually exercise his rights under the contract and to derive fruit from the leased property. ALA regulates the lease agreement in agriculture as a contract in view of the identity of the lessee. The death and placement under guardianship of a natural person, as well as the termination of a legal entity - lessor is grounds for innocent termination of the contract. The provision is dispositive and the parties may agree otherwise - the heirs or successors do not replace the incompetent party.

Another hypothesis of innocent termination of the lease agreement under ALA is in case of forced expropriation of leased land for state and municipal needs under of the Law on State Property and of the Law on Municipal Property. What is special in this case is that although there is no fault, the lessor owes the lessee compensation for the incurred damages. The cancellation of a lease contract concluded for a period longer than 10 years or for life is done by court, regardless of the grounds for cancellation. In all cases, the cancellation of the contract is subject to entry in the notary books and the municipal agricultural service. Notice of termination, even if sent as a notarial summons, is not subject to such entry. (Decision 672/2011 of the Supreme Court of Cassation).

CONCLUSION

From the performed analysis of the normative base for regulation of land relations in Bulgaria after the democratic changes in the beginning of the 90s of the XX century the following main conclusions can be made:

The normative acts regulating modern land relations do not identify all problem areas in the agricultural practice of the country.

Some of the provisions have expired or are not fully applicable in view of the new socio-economic conditions in the country.

There are also regulations that are not fully compatible with the applicable European legislation.

In this regard, we allow ourselves to give a recommendation to the legislative institutions in our country on the need to create a consistent and comprehensive regulation of land relations, through which to overcome the shortcomings of this regulation.

The normative matter related to land relations should be systematized in order to eliminate the contradictions in the individual acts and to introduce new norms that reflect the peculiarities of the socio-economic environment in the country. This will speed up the procedures for buying and selling agricultural land and renting it out.

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