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## JUSTIFICATION OF THE RIGHT TO BUILD ON AGRICULTURAL LAND\*\*

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**Abstract:** *Agricultural land, as defined in comparative law, the Macedonian Ownership and Other Real Rights Act, and the subject-specific laws on agricultural land, is considered a thing of public interest and should be used for agricultural purposes. The Macedonian Agricultural Land Act promotes its rational use, with the primary aim of producing agricultural products. Regarding this aim, the Agricultural Land Act allows the construction of facilities on that land, which should enable the cultivation of agricultural products and benefit from it. The Macedonian legal system has expanded the list of types of facilities that may be built on that land. In practice, this expansion has led to extensive construction on that land. As a result, nowadays, the agricultural land is used much more for tourism and sports than for increasing the yield of agricultural production. In addition, these legal norms have contributed to the increase in the import of agricultural products from abroad, thus creating disadvantages for domestic production. Therefore, in this paper, we will address the issue of*

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*how the Macedonian legal system can resolve this social conflict through new legal norms.*

**Key words:** law, agricultural land, construction, public interest.

## 1. Introduction

To emphasize the social significance of land ownership, the German legal scholar Otto Gierke once rightly stated: „*It is meaningless to appropriate a piece of land from our planet in the same way as an umbrella or a wallet.*” (Gierke, 1889: 16). This standpoint about the significance of the right of ownership on the land becomes an integral part of the legal theory that accepts that the exercise of the right of ownership on the land, as a thing of public interest, should not be exercised only in the individual interest, but also as a right that will assign functions to the holder of the right of ownership in society (Константиновић, 1982: 289). It implies that the function of the holder of the right of ownership on land, and more specifically of the agricultural land, is to manage and rationally cultivate the agricultural land to meet the food needs of the population (Zhivkovska, 1996: 12). Considering the role of the holders of the right of ownership on agricultural land in enacting its social function, comparative legal systems define this land as land used for agricultural production.<sup>1</sup>

The proclamation of agricultural land as a good (thing) of public interest used for agricultural production in Macedonia dates back to the Usage of Agricultural Land Act of 1959.<sup>2</sup> According to Article 1 of this Act, agricultural land is a good of public social interest. In Article 2, the legislator clearly emphasized that agricultural land, as a rule, should be used for agricultural purposes, while Article 2 § 2 regulated the use of that land for non-agricultural purposes, but only in instances determined by the law.<sup>3</sup> To protect agricultural land, the legislator has prescribed some duties for users of agricultural land in social ownership and agricultural land in private ownership. Thus, the user of agricultural land in social ownership is obliged to cultivate that land in the manner customary for the area where it is located.<sup>4</sup> Users of agricultural land in private ownership are obliged to cultivate that land according to the basic plan for the usage of the agricultural land.<sup>5</sup> Additionally, the provisions of this

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1 Article 1, Agricultural Land Act, *Official Gazette of the Republic of Serbia*, 62/06; Article 2, Agricultural Land Act, *Official Gazette of the Republic of Croatia*, 20/18; Article 1, Agricultural Land Act, *Official Gazette of the Republic of Montenegro*, 15/92.

2 Article 1, Usage of Agricultural Land Act, *Official Gazette of the FPR Yugoslavia*, 43/59.

3 Article 2, Usage of Agricultural Land Act.

4 Article 23, Usage of Agricultural Land Act.

5 Article 17, Usage of Agricultural Land Act.

Act also established a special measure for placing agricultural land under so-called “compulsory administration” as a result of the user’s failure to cultivate the agricultural land in a manner customary for the location where it is situated, presuming that there was no force majeure or another justified reason preventing it.<sup>6</sup> In addition to the manner of usage of agricultural land, the legislator has prescribed measures to protect agricultural land from erosion and floods, with an aim to prepare the land for modern agricultural production.<sup>7</sup> The types of measures for protecting agricultural land prescribed by the legislator are: construction-technical, agrotechnical, and administrative measures.<sup>8</sup> In this regard, the legislator considered “facilities and long-term plantations” as things that can protect agricultural land from erosion and floods, and mandates that they should be built in such a way that they form a single protection and economic-technical unit of the erosion area, i.e., an anti-erosion system.<sup>9</sup> This provision shows that, in order to achieve the protection of agricultural land, the legislator allowed the construction of “facilities” that serve exclusively to protect the land from erosion and floods.

An identical definition on agricultural land, as well as identical exceptions concerning when it can be used for non-agricultural purposes, were also prescribed in the provisions of the Basic Usage of Agricultural Land Act of 1965.<sup>10</sup> This Act also contains identical provisions regarding the placement of agricultural land under “compulsory administration”, the protection of agricultural land from erosion, and the regulation of floods.<sup>11</sup>

The Macedonian Usage of Agricultural Land Act of 1976 defined agricultural land as a good of public interest, which is most beneficial to be used for agricultural production<sup>12</sup>. This Act also outlined the exceptions under which a non-agricultural use of agricultural land is permitted.<sup>13</sup> Exceptions on the use of agricultural land for non-agricultural purposes were made when the matter was regulated by: 1) a zoning or urban plan; 2) by a decision of the municipal assembly; and 3) in other cases prescribed by the law.<sup>14</sup>

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6 Articles 24,25,26,27,28,29,30, Usage of Agricultural Land Act.

7 Article 69, Usage of Agricultural Land Act.

8 Article 71, Usage of Agricultural Land Act.

9 Article 72, Usage of Agricultural Land Act.

10 Articles 34, 35, Basic Usage of Agricultural Land Act, *Official Gazette of the SFR Yugoslavia*, 25/65.

11 Articles 17, 73, Basic Usage of Agricultural Land Act.

12 Article 1, Usage of Agricultural Land Act, *Official Gazette of the SR Macedonia*, 40/76.

13 Article 2, Usage of Agricultural Land Act.

14 Article 17, Usage of Agricultural Land Act.

Article 2 of the Temporary Prohibition of the Use of Agricultural Land Act for non-agricultural purposes of 1983 prescribed that agricultural land may not be used for purposes other than the production of agricultural cultures.<sup>15</sup> The exceptions to the prohibition on using agricultural land for non-agricultural purposes were regulated in Article 2 § 3 of this Act, which prescribed that it may be used for the construction of facilities, performance of other construction works of public interest for the Republic, and construction of other facilities and performance of other construction works upon the consent of a state authority. From the exceptions prescribed in the Act, it is evident that Macedonian law still allowed the “construction”, i.e., the “performance of construction works” on agricultural land for the State’s social needs, but in exhaustively listed cases.

A novelty of the Macedonian Use and Protection of Agricultural Land Act of 1986<sup>16</sup> was the introduction of the duty of the owner to protect the agricultural land while exercising the right of ownership, considering that agricultural land was declared as a good of public interest. This atypical duty undoubtedly needed to be regulated, considering the nature of agricultural land and the fact that it was used for satisfying broader social interests (preservation of agricultural land, prohibition of erosion, fire, floods, etc.). Due to the significance of the protection as an intricate part of exercising the right of ownership on agricultural land, it was incorporated in the name of the Act. In that regard, the Act prescribed a provision outlining the consequences that owners and users should bear if they fail to cultivate the agricultural land. Hence, if agricultural land remained uncultivated for unjustified reasons, the owners of that land were obliged to pay an increased tax. On the other hand, users of agricultural land in social ownership were required to pay compensation as determined by a special law.<sup>17</sup> To protect the nature and fertility of agricultural land, the legislator regulated a prohibition on the use of agricultural land of I to IV cadastral class for non-agricultural purposes, except when provided for in the zoning or urban plan.<sup>18</sup> However, the legislator allowed the construction of vacation homes but only on agricultural land of VI to VIII cadastral class and in areas designated by the zoning or urban plan.<sup>19</sup> In order to achieve certain social goals (storage of agricultural equipment, placement or collection of agricultural products in auxiliary facilities, etc.) within the framework of the use of agricultural land,

15 Article 2, Temporary Prohibition of the Use of Agricultural Land Act, *Official Gazette SR Macedonia*, 23/83.

16 Article 1, Use and Protection of Agricultural Land Act, *Official Gazette of the SR Macedonia*, 7/86.

17 Article 12, Use and Protection of Agricultural Land Act, *Official Gazette of the SR Macedonia*, 7/86.

18 Article 13, Use and Protection of Agricultural Land Act.

19 Article 16, Use and Protection of Agricultural Land Act.

the legislator also introduced the institute of “conversion of agricultural land”, as an atypical disposition power. The legislator implicitly expressed the temporary conversion of agricultural land (as ploughed land, garden, orchards, vineyards), which is only permitted for “temporary facilities” to be built for the storage of agricultural equipment, placement, or collection of agricultural products.<sup>20</sup> In contrast to the temporary conversion, the permanent conversion of agricultural land was also permitted, primarily for the benefit of the armed forces and public national defense, as well as the construction of water management facilities, roads, and other facilities that benefited citizens engaged in agricultural activities.<sup>21</sup>

It is a fact that possession and use are typical powers concerning the content of the right of ownership.<sup>22</sup> This has been the case since Roman law until today (Живковска, 2005: 21; Eisner, Horvat, 1948: 229; Станковић, Орлић, 1999: 57; Vedriš, Klarić, 2003: 225). However, in addition to possession and use as typical powers, legal scholars rightly claim that in some things (such as agricultural land, depending on its nature and purpose) the right of ownership of agricultural land also entails a new atypical power - conversion for the purpose of construction. They emphasized that the owners and users of agricultural land have both powers and duties, such as protection (Живковска, 2005:107; Gavella, Gliha, Josipović, Stipković, 1992: 26-27; Kovačević Kuštrimović, Lazić, 2004: 72; Athias, 1999: 35; Rašović, 2005, 89; Бабић, 2021: 277; Групче, 1983: 10; Perkušić, 2009: 195). Namely, the owners and users are required to protect the agricultural land, and this duty restricts how they could exercise the right of ownership. Therefore, as indicated at the beginning of this Introduction, Otto Gierke rightly emphasized that the exercise of the right of ownership is not the same when it comes to a wallet and land, especially agricultural land, which is a matter of public interest.

The Macedonian Agricultural Land Act of 1998 (the predecessor of the current act) declared agricultural land as a good of public interest for the Republic that enjoys special protection.<sup>23</sup> Regarding the use of agricultural land, the Act prescribed that both owners and users have a duty to maintain and use arable agricultural land for agricultural production.<sup>24</sup> In the same fashion, the legislator prescribed provisions regarding the protection of agricultural land from pollution and contamination, as well as the taking of appropriate

20 Article 17, Use and Protection of Agricultural Land Act.

21 Article 18, 19, 20, Use and Protection of Agricultural Land Act.

22 Article 8, Ownership and Other Real Rights Act, *Official Gazette of the Republic of Macedonia*, 18/01.

23 Article 2, Agricultural Land Act, *Official Gazette of the Republic of Macedonia*, 25/98.

24 Article 8, Agricultural Land Act.

measures to prevent erosion and fires.<sup>25</sup> The Act recognized the possibility for conversion of agricultural land, as part of the disposition power of the owner, in two forms: permanent and temporary.<sup>26</sup> The permanent conversion occurred when the agricultural land will no longer be used for agricultural production. The temporary conversion occurred when agricultural land can be used again for agricultural production after a period of time. Evidently, permanent conversion of agricultural land leads to reducing the fund of high-quality agricultural land. In order to prevent its reduction, the Act prohibited the conversion of farm land of I to IV cadastral class. As in previous acts, the prohibition for the permanent conversion of high-quality agricultural land was only exempt in cases concerning urban planning and development.<sup>27</sup>

The legislator's primary aims in adopting the current Agricultural Land Act (2007) were to provide for the rational use of agricultural land as a limited resource, its protection, and legal certainty for the owners and users of agricultural land.<sup>28</sup> In line with the provisions of the former acts, the current Agricultural Land Act declares agricultural land as a good of public interest for the Republic, which enjoys special protection and is used under the conditions and in the manner determined by this law.<sup>29</sup> In terms of the use of agricultural land, the Act prescribes a duty of owners and users of agricultural land who are obliged to use the agricultural land according to its purpose, to maintain and increase its fertility, and to prevent its pollution or other type of degradation.<sup>30</sup> From this provision, it follows that users and owners should rationally use agricultural land in a manner appropriate for its purpose, to increase its fertility, and to take proper measures to prevent its pollution and destruction.<sup>31</sup>

For the sake of rational land use, the legislator prescribes some restrictions on the disposal of agricultural land, such as the right of priority, the prohibition of physical division exchange and consolidation.<sup>32</sup> They are prescribed primarily for the purpose of protection and preservation of agricultural land. Nowadays, the institute of consolidation on agricultural land is regulated in detail in the special Consolidation on Agricultural Land Act.<sup>33</sup>

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<sup>25</sup> Article 31, 32, 33, 34, 35, Agricultural Land Act.

<sup>26</sup> Article 3, Agricultural Land Act.

<sup>27</sup> Article 37, 38, 39, Agricultural Land Act.

<sup>28</sup> Article 2, Agricultural Land Act, *Official Gazette of the Republic of Macedonia*, 135/07.

<sup>29</sup> Article 3, Agricultural Land Act.

<sup>30</sup> Article 9, Agricultural Land Act.

<sup>31</sup> Article 5, 12, 42, Agricultural Land Act, *Official Gazette of the Republic of Macedonia*, 135/07.

<sup>32</sup> Article 15, 15a, 16, Agricultural Land Act.

<sup>33</sup> Article 1, Consolidation on Agricultural Land Act, *Official Gazette of the Republic of Macedonia*, 187/13.

Considering that agricultural land is a matter of public interest in the Macedonian legal system, as underlined above, it is awarded a “special regime of protection” under the conditions and manner determined by the Agricultural Land Act.<sup>34</sup> Like in previous acts, the protection of agricultural land from pollution and contamination is implemented to safeguard human health and ensure the production of healthy food. This means that the owner, as well as other users of agricultural land, should respect the prohibitions and restrictions relating to the direct release of harmful substances into the soil, water, or through the air, and take other measures to improve its productivity (protection against erosion, fires, floods, etc.).

Generally, the use of agricultural land is primarily achieved through the allocation of land to meet the needs of agricultural production. Although contrary to the nature and purpose of agricultural land, and contrary to the intent to promote the use of agricultural land for agricultural production, the Agricultural Land Act (2007) allows building facilities on agricultural land.<sup>35</sup> Like all other previous acts, this Act also regulates the conversion of agricultural land.<sup>36</sup> Unfortunately, this Act expands the possibility for permanent conversion of agricultural land. The legislator emphasized that the subject of a permanent conversion procedure can be agricultural land of V, VI, VII, or VIII cadastral classes, as well as non-categorized agricultural land according to the classification of the Agency for Real Estate Cadastre. From this provision, it can be concluded that the current Agricultural Land Act, like the previous ones, prohibits the conversion of the agricultural land of I, II, III, and IV cadastral classes. Despite this, the subject matter of permanent conversion can be agricultural land that is: not under hydromeliorative measures; unsuitable for food production due to pollution; infertile land; and not part of blocks with natural borders. In these cases, the legislator stipulates that the conversion can also be carried out on agricultural land, provided that it does not involve dividing this land into smaller parts and that it is not subject to consolidation or exchange.<sup>37</sup> We encountered a very similar provision in previous acts but the current one concerns an exception, i.e., that the subject of conversion may also be an agricultural land not covered by earlier listed cases, if there is a submitted prior request for adopting the urban plan that anticipates constructions of public interest determined by law.

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34 Article 42,43,44,45,46, Agricultural Land Act, *Official Gazette of the Republic of Macedonia*, 135/07.

35 Article 11, Agricultural Land Act.

36 Article 48,49,50,51,52,53,54, Agricultural Land Act.

37 Article 49, Agricultural Land Act, *Official Gazette of the Republic of Macedonia*, 135/07.



The indisputable conclusion is that this leads to further reduction of the agricultural land fund. The permanent conversion that occurs when agricultural land is transformed into construction land, despite the state's legal norms regulating it, leads to social conflict. This transformation of agricultural land into construction land opens up additional problems for the State. In addition to reducing the agricultural land fund, it also results in a decrease in agricultural production, which should not be allowed for an agricultural state like Macedonia.

Although the legislator prescribes provisions aimed at the protection, rational use, consolidation of agricultural land, and making it suitable for modern agricultural activity, the legislator has allowed the infiltration of social factors which lead to a reduction in the agricultural land fund, such are: construction, conversion, expropriation, abandonment of agricultural land, failure to initiate probate proceedings for deceased owners of agricultural land, and others. All these factors, which are a product of legal norms in the modern legal order, create a social conflict. Instead of promoting agricultural production on agricultural land as the primary objective, in favor of creating sustainable and quality food production, the regulation enables construction, thus decreasing the agricultural land available for food production. As suggested in the title, this paper will examine the complexity of exercising the right to build on agricultural land and the social conflicts it creates.

## **2. The right to build on agricultural land in Macedonian property law**

Since the adoption of the first acts of the SFR Yugoslavia (which included the Republic of Macedonia) up to the current legislative act, the right to built on agricultural land as a thing of public interest in the Macedonian legal system has been permitted under the conditions and in the manner prescribed in the Agricultural Land Act or by another act.

As for the right to build, it can be said that this typical power is exercised on construction land, as a thing of public interest,<sup>38</sup> which by its nature and purpose is meant to be built on. In view of this, the right to build on agricultural land, as a thing which serves for planting, cultivating, and preparing agricultural products, is not essential and conflicts with its nature. This point may be confirmed by the Construction Act, which specifies what falls under the term "construction": performing previous works, preparing project documentation, performing preparatory works, constructing a new building, upgrading an exi-

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<sup>38</sup> Article 16, Ownership and Other Real Rights Act, *Official Gazette of the Republic of Macedonia*, 18/01; Articles 1,2, Construction Land Act, *Official Gazette of the Republic of Macedonia*, 15/15.



sting building, etc.<sup>39</sup> Further analysis reveals that construction on agricultural land converts it into construction land, which means the land is used contrary to its original nature and purpose.

Therefore, when considering construction on agricultural land, the Agricultural Land Act determines the types of facilities that can be built on such land, regardless of whether it is in state or private ownership. When the legislator limits the type of facilities that can be built on agricultural land, it protects, to a certain extent, the nature and purpose of agricultural land. Because of that, most facilities that can be built on that land should be for the purpose of agricultural production, except for those intended for tourism, sports activities, etc. A legal instrument that regulates the implementation of construction on agricultural land is the conversion of agricultural land. This legal possibility allows agricultural land in state or private ownership to be converted into construction land, thereby changing its status.

Hence, it can be concluded that the deviation from the rule that agricultural land, according to its nature and purpose, should be used for the needs of agricultural production, is possible only in those cases that are explicitly allowed by the legislator. Although construction on agricultural land was initially allowed only as an exception, it is notable that the list of types of facilities that can be built on agricultural land is gradually expanding.

With the adoption of the Act amending the Agricultural Land Act (2011), the legislator prescribed three types of facilities that can be built on agricultural land: greenhouses, auxiliary facilities, and facilities for the primarily processing of agricultural products.<sup>40</sup> Greenhouses are a type of facility for the production of primary agricultural products of vegetative origin in a sheltered area on agricultural land, as well as for the placement of maintenance equipment. Auxiliary facilities serve as shelter for humans and livestock, for temporary storage of agricultural products, covering an area of up to 500 square meters and a maximum height of 5,5 meters. Facilities for the primary processing or cultivation of agricultural products (i.e. farms) are intended for: livestock and fish breeding; placement of equipment for maintenance of the quality of water and environment; processing of primary agricultural and animal products and fish; storage of equipment for monitoring the quality and safety of the primary agricultural products and of the products obtained by their processing; hydromeliorative activities, etc. Building these types of facilities aligns with the purpose for which the legislator allows construction on agricultural land. They are aimed at ensuring the consistent production of high-quality food and facilitating modern agricultural production (Живковска, Пржезка, 2013: 5).

<sup>39</sup> Article 2, Construction Act, *Official Gazette of the Republic of Macedonia*, 130/09.

<sup>40</sup> Article 4, Amendments to the Agricultural Land Act, *Official Gazette of the Republic of Macedonia*, 18/11.

Yet, the legislator did not stop here. By adopting a new Act amending the Agricultural Land Act in 2019, the legislator expanded the list of facilities that can be constructed on agricultural land.<sup>41</sup> Namely, this Act includes two additional types of facilities that can be built on agricultural land: facilities for promoting agricultural products, and facilities for sports and recreational activities. Under this Act, facilities for promotion of agricultural products are types of facilities where agricultural products are promoted, covering an area of up to 500 square meters and having a height of up to 8 meters. As for the facilities for sports and recreational activities, the legislator prescribes that they may be constructed on state agricultural land leased before 30 June 2019.<sup>42</sup>

Unfortunately the legislator's initial aim to restrict the possibility of building on agricultural land was not fully realized by expanding the list of types of facilities that can be constructed on agricultural land. The construction of facilities on agricultural land that is used for the promotion of products, as well as the construction of facilities for performing sports activities rather than for agricultural production, results not only in the termination of agricultural activity and the production of agricultural products but also in the reduction of the agricultural land fund. In the Macedonian legal system, this situation has the opposite effect in practice: agricultural land is often used for tourism and sports activities instead of being used as a basic resource for food production.

Under the Agricultural Land Act (2007), an agricultural land as an thing of public interest can be in state and private ownership.<sup>43</sup> Thus, it can be concluded that all facilities (greenhouses, auxiliary facilities, facilities for the primary processing of agricultural products (farms), facilities for promoting agricultural products, and facilities for sports and recreational activities) that the legislator regulates as eligible to be built on agricultural land can be constructed on both state-owned and privately owned agricultural land.<sup>44</sup>

Further analysis of the provisions of the Agricultural Land Act shows that the legislator also regulates the registration of facilities on agricultural land in the Real Estate Cadastre. Given the fact that facilities built on agricultural land can be registered in the real estate cadastre, they are, by nature, permanent facilities. According to the real estate cadastre regulations, the Real Estate Cadastre Agency performs their registration in the real estate cadastre.<sup>45</sup> As these

41 Article 1, Amendments to the Agricultural Land Act, *Official Gazette of North Macedonia*, 161/19.

42 Article 4, Amendments to the Agricultural Land Act, *Official Gazette of North Macedonia*, 161/19.

43 Article 7, Agricultural Land Act, *Official Gazette of the Republic of Macedonia*, 135/07.

44 Article 51a, Amendments to the Agricultural Land Act, *Official Gazette of North Macedonia*, 161/19.

45 Article 51, Agricultural Land Act, *Official Gazette of the Republic of Macedonia*, 135/07.

facilities are built on agricultural land and registered in the real estate cadastre, it is concluded that these facilities are considered to be immovable things.<sup>46</sup>

It is worth noting that the reduction of the agricultural land fund is not only the result of legal but also of illegal construction. By adopting the Act on the Legal Treatment of Illegally Built Facilities (2011)<sup>47</sup>, which was followed by the Act amending the Agricultural Land Act (2012)<sup>48</sup>, the Macedonian legislator enabled the legalization of illegal facilities built on agricultural land before 2011. Thus, the provisions of these acts allowed the legalized facilities built on agricultural land to remain permanently on the privately owned land.

Legal construction and legalisation of illegally built facilities significantly contributed to the reduction of the agricultural land fund. However, it is important to note that this situation in Macedonia does not only lead to a reduction in the agricultural land fund. In most cases, agricultural activities cease because the constructed facilities are often used as vacation homes rather than facilities that enable or facilitate agricultural production.

To resolve the social conflict between the need to protect the nature and purpose of agricultural land and the need to use the agricultural land for non-agricultural purposes, new legal solutions are required. The protection of agricultural land and its cultivation can be at a higher level if certain measures for the protection of the land are made to be mandatory. Additionally, there is a need for more precise and clear provisions regarding the construction of facilities on agricultural land. The type of facilities that can be built on agricultural land should depend on its cadastral class. Considering that the legislator permits building facilities on agricultural land intended for tourism and sports, it would be reasonable to include a rule allowing such facilities to be built on agricultural land of the lowest cadastral class.

Bearing in mind that, in every contemporary legal system, agricultural land is a limited natural resource used for food production, its preservation should be paramount. For this reason, occupying agricultural land with permanent facilities should be done only in exceptional situations where the benefit of the facility outweighs the harm it causes to the agricultural land. This is why the legislator should establish a very restrictive list of the types of facilities that can be built on agricultural land. By doing so, the legislation will contribute to the protection and preservation of agricultural land as a thing of public interest, and ensure that the land will be primarily used for food production rather than for construction.

<sup>46</sup> Article 2, Real Estate Cadaster Act, *Official Gazette of the Republic of Macedonia*, 55/13.

<sup>47</sup> Article 1, Legal Treatment of Illegally Built Facilities Act, *Official Gazette of the R. of Macedonia*, 23/11.

<sup>48</sup> Article 3, Amendments to the Agricultural Land Act, *Official Gazette of the Republic of Macedonia*, 95/12.

### 3. Conclusion

All of the previously presented legislative acts, starting from the Agricultural Land Act of the FPRY (1959) up to the current Macedonian Agricultural Land Act (2007), which regulate the legal regime of agricultural land, declare it as a thing of public interest, which should be used primarily for agricultural production. To preserve the basic purpose of agricultural land, all these regulations prescribe the duty of owners and users to cultivate and protect the agricultural land. The detailed analysis has revealed that the regulations also demonstrate that the legislator continually deviates from the primary purpose of agricultural land by prescribing exceptions and permitting its conversion for non-agricultural purposes. The institute of conversion, shown as an atypical power to dispose of agricultural land, can be permanent or temporary. Permanent conversion is the first type of conversion that not only allows the use of land for non-agricultural purposes but also leads to the permanent loss of agricultural land as a natural resource. As a result of the conversion of agricultural land into construction land, the construction of permanent facilities is enabled and can be registered in the real estate cadastre, ensuring that such facilities remain on the land permanently. The legislator's limitation on the possibility of building on agricultural land is evident in its exhaustive specification of the types of facilities that can be built on such land: greenhouses, auxiliary facilities, facilities for the primary processing of agricultural products (farms), facilities for the promotion of agricultural products, and facilities for sports activities. However, although most facilities that are built on the land should be used for agricultural production purposes, the construction of facilities for sports activities and tourism is also permitted, which is not in the function of agricultural production.

Given that the Macedonian legislator does not regulate specific conditions and limitations on the scope of building such facilities for sports activities on agricultural land, there remains a risk that they may become more prevalent in practice. What is even more striking is that all the facilities that can be built for the purpose of agricultural production are not used for that purpose at all. In practice, such facilities are often used in practice as vacation homes, which further defeats the aim that the legislator intended to achieve. Therefore, in order to avoid such abuses in practice and to ensure the preservation and protection of agricultural land, there is a need for new and more precise regulations in the Macedonian legal system. Additionally, the regulation should be very restrictive in terms of the types of facilities that can be constructed on agricultural land.

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## **Оправданост права грађења на пољопривредном земљишту**

### **Резиме**

Поред законског уређења као ствар од општег интереса, пољопривредно земљиште је један од најважнијих природних ресурса, а такође и основа за одрживи економски развој и заштите животне средине. Његов огроман значај се не огледа само у чињеници да је основни извор хране за становништво, већ пољопривредно земљиште обухвата и шире аспекте као што су рурална политика, заштита животне средине и очување националних ресурса. С обзиром на место које заузима у македонском правном систему, пољопривредно земљиште је предмет строге законске регулативе. О томе сведочу велики број законских прописа који се односе на пољопривредно земљиште и његовог правног режима, што је резултат озбиљног задатка законодавства да уравнотежи реализације јавних и приватних интереса, а пре свега заштиту овог природног ресурса. Стога, сви закони донети од 1959. до 2007. године, који регулишу правни режим пољопривредног земљишта, проглашавају га као ствар од општег интереса које треба очувати, заштитити и користити у пољопривредне сврхе. Дужност заштите и очувања пољопривредног земљишта пада на власнике и кориснике пољопривредног земљишта. Ове дужности се остварују предузимањем мера заштите од загађења, ерозије и других. Очување укључује дужност обезбеђивања његове континуиране обраде.

Законски утврђене обавезе за очувања и заштите пољопривредног земљишта су међувремену ослабљени изменама закона којима се дозвољава коришћење пољопривредног земљишта у непољопривредне сврхе као што су грађевинарство, туризам, спорт и истраживање минерала. Све ове непољопривредне активности потенцијално доводе до трајне пренамене плодног пољопривредног земљишта за непољопривредне активности, а не за производњу хране. Уклањањем првобитно утврђених ограничења у погледу коришћења пољопривредног земљишта у непољопривредне сврхе, законодавац је оставио много простора за деградацију пољопривредног

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земљишта која настаје услед његовог коришћења у непољопривредне сврхе. Недостатак прецизних одредби, као и недовољна рестриктивност у погледу коришћења пољопривредног земљишта у непољопривредне сврхе, отворили су могућност за злоупотребу пољопривредног земљишта. Недостаци закона који регулишу правни режим пољопривредног земљишта детаљно су описани и анализирани у овом раду. Узимајући у обзир налазе, овај рад предлаже усвајање прецизнијих прописа, који ће повећати ефикасност заштитних мера усмерених ка очувању пољопривредног земљишта као природног ресурса.

**Кључне речи:** право, пољопривредно земљиште, јавни интерес, грађење.