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Practical legal aspects of the use of publicly accessible roads in the management of agriculture and forest land

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Abstract. The objective of the article is to analyse forest roads, one of the categories of purposeful roads, which can demonstrate the differences in the regulation of the use of public roads according to the valid legislation. The analysis of the practical legal problem was public opinion, including the use of the method of public opinion survey in order to examine the same or another problem of using the current legal regulation of forest roads by the public for walking and driving with motorized and other non-motorized vehicles.

Keywords: legal environment, competitiveness relationships, public transport, public and forest roads, management of forest land, Forest Law

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1. Introduction

The authors of the paper state that, according to Act No. 428/2012 Coll., the built-up land cannot be issued because it is considered to be a part of land which, after being subject to property injustice as a result of some of the facts mentioned in § 5, was built up or part of it was built up by a building capable of separate use (hereafter referred to as the “building”), if the building was established in accordance with the Building Law and is used as well as the part of the land directly associated with the building which is necessary for the use of the building. A piece of land built by a building, which is owned by a person other than a state or a beneficiary who is directly related to it and uses it, is also considered as a built-up land. In connection with publicly accessible purposeful roads, it can be determined whether the purposeful road may in certain circumstances be a building or not or a land built by the building as a purposeful road. According to general terminology, it is possible to define the legal status of forest roads, the use of forest roads as publicly accessible purposeful roads, the rights of walking and driving of motor and other vehicles on forest roads by the owners or possibly by the authorized users of these roads and the public, e.g. by third persons who have no private-law relationship with forest roads.

2. Theoretical background

Road is defined by Act No. 13/1997 Coll., on Roads, as amended, as a road intended for use by road and other vehicles and pedestrians, including fixed equipment necessary to ensure the use and safety of the ride. From the above-mentioned terminology, it is clear that the purpose-

ful road, as one of the legally defined types of roads, is primarily the roadway and its purpose is to be used by road and other vehicles as well as by pedestrians. Article 7 (1) of the Act on Roads specifies publicly accessible purposeful roads so that the purposeful road is a road that serves to connect individual properties according to the needs of property owners, to connect these properties with other roads or to manage agricultural and forest land [1]. The Road Act also points to the fact that, within the limits of the special regulations governing the operations on the road and under the conditions laid down by this Act, every citizen may use the infrastructure free of charge in the usual way and for the purposes for which it is intended [2, 3]. The cited provision of the Act on Roads has a considerable importance for the issue of publicly accessible roads because the user of the publicly accessible purposeful roads can be any citizen, e.g. not only the owner or user of the real estate, but also any user who is entitled to use it free of charge and no one is entitled to demand any consideration for the use of roads even through legal private law institutes [4, 5].

For the rights and obligations of the parties involved, e.g. the owner of the road and its user, it is stated that the use of the road is limited by the legal regulations regulating the traffic on the roads, as well as by the construction and technical conditions of the road which determine the road to road and other types of vehicles according to vehicle weight and other technical parameters and dimensions. According to Section 9 (1) of the Act on Roads, the owner of the purposeful road is a legal entity or individual who is legally obliged to tolerate the free use of property by third parties in general. It cannot be inferred from the above-mentioned that the obligated person, the owner of the purposeful road, must be only a private-law entity, the

owner of the purposeful road may also be state with the right of management, e.g. the organizational unit of the state, which has the right to manage it according to another entity, e.g. on behalf of the Forests of the Czech Republic, sp, Povodi Vltavy, sp, etc., add [6].

In the case of publicly accessible purposeful roads defined in § 7 paragraph 1 of Act No. 13/1997 Coll., on Roads, the ownership right is limited by the fact that the owner must tolerate the general use of the land as road (Section 19 of the Act) and allow public access there. According to the law, the land becomes the purposeful road directly when it fulfils the definition given in Section 7 (1) of the Act, e.g. when it is used to connect individual properties for the needs of its owners or to connect these properties with other roads or to manage agricultural and forest land [7], where the Act on Roads does not link the constraints with the provision of financial compensation.

If there are other ways to achieve the objective of providing a road link between real estate without limiting the ownership right, it is appropriate to keep the property right in a different way. If there is a different choice of access to a real estate and if any purposeful road does not fulfil the role of the necessary road link, the alternative entry to the real estate through the land of another owner is purely the private interest of the property owner, which may be edited by private law institutes [8]. The transport route must link the property to the needs and purposes of its owners or serve to connect these properties with other roads or to manage agricultural and forest land or according to the consent of the owner it might be used by an unlimited circle of persons [9]. The transport route must serve the so-called necessary road need, where the connection cannot be clearly regulated by the private law institute [10].

Road is defined by the law as a transport route that displays the features of a publicly accessible purposeful road. The term transport route is not characterized by the law but through interpretation it can be deduced as a noticeable and relatively constant transport connection used by persons to walk, ride, or to some of these acts [11, 12]. The purpose of the transport route, in the case of a purposeful road, will be the connection of real estates for the needs of the owners of these properties or to connect the real estate with other roads or the management of agricultural and forest land [13].

Examples of purposeful roads are dirt and forest roads, arrivals to operational sites and other facilities designed to meet public or private needs, e.g. sports facilities, cultural facilities, forest lands and lands of water-courses, quarries, service stations, schools or other facilities, bus stations, campuses and spaces inside factories and other enterprises and public car parks [14, 15]. Pursuant to the provisions of Section 63 of Act No. 114/1992 Coll., on Nature and Landscape Protection, as amended, it is not allowed to establish or remove publicly accessible public roads, trails and paths outside the built-up area without the consent of the competent nature preservation authority. Municipalities keep an overview of publicly accessible roads, paths and trails in the area of their territorial jurisdiction [16, 17]. The consent of the owner of the purposeful road to its general use is currently being

deduced judicially mainly with reference to the finding of the Constitutional Court sp. No. II ÚS 268/06 of 9 January 2008, when it has to be the consent of the owner of the road to use it by an unlimited number of persons, with the fact that no specific form is defined for the consent, e.g. it can also be given implicitly (by factual act of the owner from which the consent to use the road can be deduced by unlimited number of people).

It is also clear from the Constitutional Court's finding that the consent which was granted by the previous private owner of the road is obligatory even for his legal successor, e.g. for the subsequent successors of the purposeful road who have acquired the road by transfer. According to § 1106 of Act No. 89/2012 Coll. of the Civil Code, a generally valid conclusion can be drawn that the person who acquires the right of ownership also acquires the rights and duties to deal with the acquired object. An applicable rule of law cannot be ruled out even in cases where the original owner of the road is a public-law body, e.g. according to the Charter of Fundamental Rights and Freedoms, Article 11, the legal protection of the property rights is provided to all entities without distinction of legal content.

If the road fulfils the attributes of purposeful road, its owner is not entitled to arbitrarily disturb the road or to prevent third parties from using it in accordance with the law, e.g. consent cannot be revoked or cancelled. According to the Law, the purposeful road is created when its owner gives consent to general use.

The question of using road "since time immemorial" is connected with the problematics of the owner's consent to originate a publicly accessible purposeful road, when the consent of a previous owner cannot be detected (statistically traced), but the road permanently serves to the needs of a transport connection to an unlimited number of persons for urgent transport needs, e.g. according to the case law it is as a publicly accessible purposeful road. In many cases consent takes the form of dedicating the road to general use that can be traced by one of the previous owners of the road. In accordance with the case law, it can be concluded that it is a publicly accessible purposeful road when the owner (the previous owner) did not state a qualified clear disagreement with the general use of his road, e.g. the road belongs to his land [18]. The case law requires an active action of the owner resulting in a clear disagreement with the use of the road for benefit of the public. If consent cannot be traced and the road serves to a necessary transport need for a long time, consent to the general use is assumed.

If these conditions are not met, it is possible to use the road only for compensation as it would be an unacceptable restriction of the property rights which are protected by the constitutional order.

The content of the owner's consent will be decisive for determining the attributes of the purposeful public road when the owner is entitled to define a circle of people who can use the road according to the extent of general use, e.g. designating a public car park in front of a hypermarket which might be used only by customers of the shop. The owner can also specify other conditions including time possibilities of using the road, e.g. to set

up a road in a gardening community which links individual recreational objects and land only for property owners. According to the case law, another feature of publicly accessible purposeful road is the so-called necessary transport need, e.g. the assessment of condition whether there is another transport connection for the benefit of the owners of the concerned property, which does not interfere with the owner's property rights.

Comparable ways of connecting, which lead to less inhibitory ownership restrictions, are priority. Alternative connections must be comparable in the sense of full compensation, e.g. winter accessibility, accessibility for collection of waste, arrival of vehicles of the Integrated Rescue System etc. A longer length of the alternative connection does not mean the necessary transport need of the assessed road. From the point of view of the assessment of the transport needs and the attributes of the road or its transport alternatives, the type of land registered in the cadastral register is not decisive. The real nature of the assessed road and the possible transport alternatives are crucial. In the case that the transport need comes to an end, the concerned road is no longer publicly accessible purposeful road. According to the judgment of the Supreme Administrative Court, No. 1 as 76/2009 of 22 December 2009, it can be concluded that factual public accessibility does not make any road publicly accessible purposeful road. The owner's consent is necessary beyond the normal tolerance of the limitation of ownership, but also by the pressing urgent communication need. The owner's consent beyond normal tolerance of limitation of the property right but also the urgent transport need is necessary. The last defining feature of publicly accessible purposeful road is the absence of any private-law agreement under which the concerned entity would use the transport link in question. It might be agreement concluded in any form, mostly in form of rent, loan or service.

The existing obligation of the owner of the road to tolerate the use of the road by third parties is of a public nature which excludes the situation that the owner of the road established changes or annuls the use of the road when it is used for the same need and extent [19]. The subsequent binding legal relationship does not change the existence of the existing public commitment to tolerance of use. This condition does not exclude the fact that the owner of the relevant public road allows the access only for a selected group of persons but the owner might change this condition towards other entities using provisions of civil law, e.g. service or rent. The authors draw attention to the existence of special public regulations which modify the right to walk and to drive differently in incompatibility with the Act on Roads and, according to the principle "lex specialis derogat priori", they are prioritized over the general norm, e.g. the territory of national parks and protected landscape areas, reservoirs, water management structures and protection zones, military areas as well as hunting territories [20]. Point out the rule of free access to the land according to §63 of the Nature and Landscape Protection Act according to which every citizen has the right to free passage through land owned or leased by the state, municipality or other legal entity unless no damage to property, rights or health of another

person is caused according to generally binding legal regulations [21]. The Act excludes from public authority built-up building plots, yards, gardens, plantations, vineyards, hop gardens and parcels intended for farm animal breeding. Arable land, meadows and pastures are excluded from entitlement at a time when crops, land or cattle can be damaged.

3. Research objective, methodology and data

The objective of the article is to analyse forest roads, one of the categories of purposeful roads, which can demonstrate the differences in the regulation of the use of public roads according to the valid legislation. The analysis of the practical legal problem was public opinion, including the use of the method of public opinion survey in order to examine the same or another problem of using the current legal regulation of forest roads by the public for walking and driving with motorized and other non-motorized vehicles. The poll method is one of the methods that can be used to research the social relationships and conditions that arise as a result of existing legislation and can strengthen / weaken the effective functioning of the proposed legislation.

For the purpose of the research, the following hypotheses were formulated:

1. In practice, access to special-purpose roads is unjustifiably restricted by the owner without the permission of the road administration authority.
2. The purpose road on which the land is located can be considered as built-up.
3. The nomenclature can be described as a discrepancy in defining the issue of forest roads.
4. Unlawful conduct of citizens is considered an obligation, except for special rules and regulations.

According to the survey, research problems were identified that shed light on legal issues in a broader context:

1. If an unauthorized restriction of a communication is found, will the owner always receive a written order to restore public access to the purpose-built road?
2. Based on the findings on the offences of citizens, does the guard, within the scope of justified competencies, deal with illegal measures and actions within the framework of the general use of forest land?
3. Is public access to a sufficient extent allowed by the forest owner to enter public spaces intended for citizens?
4. Can unauthorized entry into the forest be considered an interpretatively capable interpretation perceived by the general public to a comprehensive extent?

In determining the selection of research problems, the legal aspects concerning the forest road as a multi-purpose road were decisive. The procedural method of classifying a road into the category of special-purpose road was not necessary for the bodies of the road administrative authority, as is required for special-purpose roads. The basic category of roads is not suitable for forest roads.

On the other hand, legal issues of a technical codification nature were excluded. In a survey conducted in February 2020 on a sample of enterprises engaged in agricultural production, forestry and water management in the region of South Bohemia in the Czech Republic, a sample of 250 small and medium-sized enterprises examined four

issues related to the general problem, e.g. compliance and non-compliance of applicable law with public opinion. The agreement between the law and the public opinion was found only in 5 cases, in 10 differences were found and in 2 it was difficult to determine a clear answer. The applicable law was in line with the company's legal feelings in the following cases:

1. Should a forest owner restrict the movement of citizens in his own forest?

2. Should public roads always be accessible with regard to the requirements of the forest owner?

In contrast, there was no agreement on the following issues:

1. Should citizens have free access to forest land areas?

2. Is it possible to unambiguously formulate the illegal actions of a citizen in the control of a forest guard?

Questions for which the answers were not clear:

1. Should citizens have free access to forest land areas?

2. In your opinion, is there a traffic sign for a field road with an unambiguous sign with all the legal requirements?

The general conclusion of the survey was to find that there is a difference between the current law in force and opinions on which legal awareness should be relevant. As the results obtained interpret, it is a significant problem to define access to roads for farming purposes, as the ambiguous issue is to identify forest roads, such as field roads, which can be located near the edge of the forest or located on forest lands overgrown with grass. When finding out the WHOM record of the road regulations, it should help to see whether it is a forest road or not. One of the alternatives that can help solve the problem of unauthorized entry into the forest is a traffic sign that informs citizens about the ban or permit to enter the forest. The implementation of a traffic sign is financially demanding and at the same time non-binding, as it does not consider it the duty of the road administrative authority to prepare a traffic sign. The material burden of the forest owner is to protect land from unauthorized entry and use by citizens; it is their own free will, not an obligation that places claims in terms of fulfilling the purpose of the law within the competence of the qualified authority, which is entitled to issue administrative decisions.

The agreement between the law and the legal feeling of society can be expressed in all the above research problems, as most citizens in the Czech Republic (South Bohemian Region) have in their personal ownership an excluded part of the land, most often a forest stand. Another output of the survey was the statement that free access to forest land areas is always allowed together with access to the forest road within the scope of the landowner's decision. Based on the findings, it can be stated that in not every country is this alternative possible and accepted by the forest owner. The authors of the article state that the main problem in the inspections carried out by forest guards, in connection with the infringement, is not clearly formulated in the case of a misdemeanor.

4. Results and discussion

The authors' own knowledge of the legal practice made it possible to formulate conclusions on the estab-

lished hypotheses. Research questions identify facts that very often occur based on arguments about the exercise of land use rights as a purpose-built road, despite the fact that the road has been publicly accessible for many years without any problems and groups the properties of other owners. If an unjustified restriction of public access to a purpose-built road is found, the owner will receive a written order, even in rare cases, such as repeated sending of written orders with a fine of up to 3921 Euro. In the case of forest guards, it is very problematic to solve the offence of the person violating the law and take a position on the situation. In the case of non-purposeful intervention of a person violating the law, the forest guard must notify the police of the Czech Republic of the unlawful conduct of an individual, whose statement can be considered, in the context of resolving disputes, as contradictory. A forest guard often does not have to succeed in resolving an offence against an individual or a group of persons violating the law. Another witness notifying the police of the Czech Republic will often resolve inconsistencies in potential disputes. All legislation using publicly accessible roads declares the fact that forest roads, which are located on roads, are intended to fulfil the function of the forest and are part of the transport network, which is used to transport timber, transport people and materials for the passage of medical and fire vehicles, techniques, for walking, for cycling, on horseback, on skis and for connection to individual properties. The forest owner should not restrict the free access of citizens in order to pass through a publicly accessible path and road in favour of carrying out leisure activities or integration into other roads. The authors expressed the opinion that the determination of the legal attributes of the purposeful road will be significant from the private law's point of view (the Civil Code addresses the relationship of the land and the buildings built on it in this sense) in accordance with Act No. 428/2012 Coll. It can be considered whether the purposeful road is / is not a matter or part of the land on which it is located or eventually the assessment whether the land on which the purposeful road is can be considered as built-up in the sense of Act No. 428/2012 Coll., e.g. excluded from the issue within the meaning of Section 8 of this Act. If the purposeful road is not a building in the sense of civil law, but only a part of the land, it cannot be considered whether the civil relations to the road and the land on which it is located differs. The authors note that even if the opposite conclusion was valid and the purposeful road was found building and not only part of the land then it is still valid that when it is utilized so buildings build up on the land and other facilities are part of the plot including everything that is embedded in the land except for temporary buildings under the meaning of Section 506 of the Civil Code, effective as of 1 January 2014. In the case there are different entities on the part of the owners of the land and the construction, the transitional provisions of the Civil Code § 3054 to § 3060 would be applied, including the legal pre-emptive right and the different legal regimes of the land and the construction. In this connection, the authors draw attention to the problematic provision of Section 3059 of the Civil Code on the building which is located on more plots and

which, in case of roads, will be a frequent case when the double legal regime will be applied only to the land on which the majority of the building is located. A different opinion on the attributes of the purposeful road formulated by the Supreme Administrative Court according to which the construction of the purposeful road is such that it is possible to clearly define where the land ends and the building starts. At the same time, the construction of a purposeful road cannot be removed without its destruction / substantial deterioration of its ability / viability; separate real estate is discussed as a thing within the meaning of Section 119 (2) of the Civil Code, which is subject to legal relations. Considering the meaning of Act No. 428/2012 Coll., which excludes issues of built-up land, it will be decisive to determine whether the purposeful road is / is not a building which is a part of a land and is not capable of separate use, or whether a part of the land is used which is directly related to the building which is necessary to use the building and will not be excluded from issue, although it will not be a purposeful road, e.g. road equipment on another land (lighting, etc.). Prior to the analysis of the legal regulation of the general use of forest roads, the authors define the legislative term “forest road” for the purpose of legal regulation of the use of forests; the authors also define the forest road as a road because of absence in a legal regulation. Only implementing Regulation No. 433/2001 Coll. to the already abrogated Building Act No. 50/1976 Coll., on Spatial Planning, and the Building Code (Building Act) defines the technical requirements for constructions in order to fulfil the function of the forest, characterizes the forest roads as purposeful roads that are part of the forest transport network used for wood removals, transport of persons and material only for the benefit of the owner of the forest and the passage of special vehicles. The authors see inconsistencies in the nomenclature of forest roads, in the meaning of purposeful road, which is not concerned in the access of citizens to public road with regard to the subject of the regulation. The nomenclature is inconsistent, rather controversial, as the inclusion of forest roads into purposeful roads provokes to answer where the purposeful road is located if it is not located in an enclosed area in the sense of the Act on the Roads, Sections 7 and 19. If the definition also states that the forest road serves only to the interest of the forest owner it would exclude other persons from the definitional features. According to the Czech Technical Standard ČSN 73 6108, the Forest Transport Network, we consider forest roads as so-called forest transport networks where transport facilities of all kinds used to interconnect forest complexes with the public transport network [22], as well as to approach and collect wood and other forest products, to transport people and material in the context of forest management [23], respectively to other purposes, are possible.

In the case of forest roads, transport needs must be considered as the forest transport network presents unpaved forest roads where, in relation to third parties, every transport need is unlimited by number so we call it a purposeful road not a publicly accessible road. According to the definition of the forest road as a purposeful road under § 2 of Act No. 361/2000 Coll., on Road Traffic and

on amendments to some laws, e.g. the Road Traffic Act, as amended, which also define the crossroad as a place in which roads intersect or cross, the crossroad is not the end of a dirt or forest road or other purposeful land road because the concept of a forest road is perceived as another purposeful road [24]. The Act on Forest Roads perceives the forest road as a part of a forest which serves not only for forest management but also for the non-productive function of the forest, e.g. non-wood-based forest infrastructure or environmental [25]. In terms of the priority of the owner of the forest and its economic use, but to the public interest, the use of the forest road for the needs of the owner can be completely excluded [26]. The forest road is in principle accessible to the public free of charge and, under the valid rules, it is primarily designed to protect the forest, nature and landscape [27].

The forest road is a publicly accessible purposeful road within the meaning of the Act on Roads, due to the utility of the purposeful road, e.g. the management of forest lands [28]. In the case that the required attributes of the necessary transport need are met, publicly accessible is a land road, regardless of the absence of forest management functions. Concerning the above-mentioned facts, we conclude that a purposeful road can be used free of charge both for walking and driving by motor and other vehicles, taking into account the rules of road traffic, the construction and technical conditions of the road and other generally binding legal regulations [29].

The authors think that the Forest Act as regards the use of forest roads as land roads is considered to be special in relation to the Roads Act, since the existence of a special Act on public access to roads might vary (we find a direct reference in the law to the Forest Act and its provisions § 20 (1) (j)), it is related to the limitation of forest use in relation to the limitation of forest use outside forest roads, not on forest roads, because forest law regulation does not define forest management rules to fulfil production / non-production functions. The Forest Act not only fulfils the function of a legal regulation (in what way and how much wood it is possible to extract) but also regulates a specific area of public interest namely forest protection as a unique special part of life and the relationship of men to their surroundings [30]. Assuming that a purposeful communication (regarding its construction condition) can show attributes of building (whether under the Building Act or the Civil Code) which would mean that all forest roads that are buildings, respectively the land on which the building of the road is located is built-up land and therefore is automatically excluded from the use limitation regulated by the Forest Act.

A special regulation of the right of entry and walk on land intended for the fulfilment of the functions of the forest, respectively on forest roads, which categorically define land intended for the fulfilment of forest functions according to the provisions of § 19 and § 20 of the Forest Act, we conclude that every citizen has the right to enter the forest at his own risk or to collect forest fruits and dry woods for his own use. Furthermore, the citizen is obliged not to harm the forest, not to disturb the forest environment and to observe the instructions of the owner or the tenant of the forest and his employees. In forests, it is

forbidden to enter fenced or labelled areas and wood stands where harvesting, extraction or transport of woods is carried out. However, these prohibitions are not valid within activities that are carried out during forest management [31]. Special rules are applied to organized sports events in the forest, which can only take place on the basis of an announcement at the State Forestry Authority under the conditions set out in the Forest Act and with the consent of the forest owner. In principle, the right to enter forest roads is unlimited because, according to the provisions of Section 63, paragraph 2 of Act No. 114/1992 Coll., On the Protection of Nature and Landscape, everyone has the right to free passage through land owned or rented by the state, municipality or other legal entities, unless it causes damage to the property or the health of another person and infringes the rights to the protection of personality or neighbouring rights. Considering the attributes of the Forest Act as a special legal regulation in relation to the Roads Act, the authors conclude that (in the sense of the relevant provisions of the Forest Act) riding and stalling of motor vehicles are also prohibited on forest roads which are also lands designated for the fulfilment of forest functions to ride a bike or horse, skiing and sledging are prohibited outside marked roads [32]. The prohibitions mentioned above are not applied within activities carried out in forest management, as they are important with regard to driving and standing of motor vehicles [33].

The Forest Act further states that the forest owner may permit an exception from these prohibitions. A written form is not required to establish a clause; the clause may be granted by the owner in written and oral form or implicitly on the basis of the factual behaviour of the owner who, for example, will tolerate the entry of vehicles on forest roads, on which the entry is normally forbidden, for a certain time. This may be a general exception for an unlimited number of people or a clause appointed for specific entities. Accordingly, it is permissible that the owner, within lease or tenancy of a forest land, allows the tenant (lessee) to enter and to stand motor vehicles of tenants (lessees) or third parties with the permit of the tenant (lessee).

The prohibition to ride and stand in the forest with motor vehicles is not applied to employees of the state forest administration body in the area of their competence in carrying out activities under this Act and to persons who perform activities authorized by special regulations such as vehicles of a fire brigade. Exceptions to the law are also provided for the hunting rights. The Forest Act defines the obligations of the entities in the so-called forest transport under the provisions of §34. The question of general use of forest roads, respectively lands for the fulfilment of the functions of the forest, was mentioned by the Ombudsman who (within dealing with cases of forest protection) interpreted the following statements which confirmed the mentioned hypotheses including the statements of the partial opinions and the final debates of the authors. The authors point to the final opinion expressed by the Ombudsman in sp. No. 512/2013 / VOP / DS of 12 August 2013, which states that the owner of a publicly accessible purposeful road is not entitled to collect any payments from its users even if it is a land intended for

the fulfilment of forest functions. Charging exemptions from the statutory ban on motor vehicles entering the forest is illegal. Lands intended to fulfil forest functions are not paved forest roads that serve as driveways to built-up land; the road user of the road is not obliged to deal with the forest owner's exemption from the prohibition of entering motor vehicles into the forest [34]. Participants in the declaration procedure, in the case of uncertainty about the attributes of the land, are also owners of neighbouring property as they may be directly affected by their rights and obligations in view of possible legal restrictions. From the opinion of the Ombudsman, 5076/2007 / VOP / DS dated 17 June 2008, the authors of the chapter conclude that the forest as a whole cannot be an enclosed area within the meaning of Section 7 paragraph 2 of the Act on Roads, therefore it cannot be a purposeful communication in the woods considered to be non-public communication. It follows from the above-mentioned facts that where the forest road is a land intended to fulfil the functions of the forest, even if it is a purposeful communication, the prohibition of entry and parking of motor vehicles is valid when the general Act on Roads provides exemptions from the general use of purpose roads. The part of the professional public cited the conclusions of the decision of the Supreme Court of the Czech Republic, 33 Odo 449/2005 dated 22 February 2005 which are not in accordance with the applicable legal regulations. They agree that the Supreme Court wrongly assessed the relationship between the Act on Roads and the Forest Act as a relationship between the special act and the general act as the Supreme Court states the following while claiming that the Forest Act is, in relation to the Act on Roads, a special regulation and that, having regard to these facts, their land, through which a part of the disputed road leads, has attributes of a, land intended to fulfil the functions of the forest and therefore the courts should judge the matter in accordance with this special law. However, this opinion is not correct, add the authors. In accordance with the subject-matter of the regulation, as defined in § 1, the Act on Roads should be applied to all roads which fulfil the features specified in the other provisions of this Act and contain no provision to exclude certain roads from this arrangement. The Forest Act does not deal with traffic problems on roads located on forest land which is confirmed by the wording of Section 7 (1) of the Act on Roads which expressly includes communication used for the management of forest land between purposeful roads as same as the wording of Section 3 paragraph 1 letter b) of the Forrest Act states that the paved forest road be included among the plots intended for forest functions. If the paved forest road on the plot intended to fulfil the functions of the forest shows at the same time the features of the purpose road pursuant to Section 7 paragraph 1 of the Act on Roads, it is subject as well as other purposeful communications to the regime of this Act including Section 19 paragraph 1, which regulates the general use of roads. Arguments of the applicants by Decree No. 433/2001 Coll. are not permissible. It should not be forgotten that the Decree entered into force on 1 January 2002 whereas the applicants claimed entitlement to unjust enrichment for the period up to 14 November 2001. Furthermore, the purpose of the above-

mentioned decree which specifies the technical requirements for buildings providing forestry function and forestry terminology cannot be absent since it is stated in Section 2 paragraph 1 letter a) taken into account for the purpose of this Decree. It is clear from the wording of the above-mentioned provision that the forest road is at the same time a purpose road which is a concept operated by the Act on Roads. At least with the effect of Act No. 152/2011 Coll., which amended the provisions of § 7 of the Act on Roads, it is unexpected that the Forest Act is a special legal norm in relation to the Act on Roads with respect to the use of forest roads. The Forest Act defines a dual regime, firstly transport roads which are a part of forest in a broad sense, respectively part of forest transport roads network and are publicly accessible purposeful roads (mainly paved forest roads) and secondly driveways to built-up lands as well as a regime of transport roads referring to the principles of forest protection and its function of preventing general use of the entrance and standing of motor vehicles.

5. Conclusion

The aim of the article was to summarize the legal problematics of publicly accessible purposeful roads with regards to the up-to-date valid legal case law in accordance with the question that is connected with issuing of properties to churches and religious societies, including land on which publicly accessible purposeful roads are established pursuant to Act No. 428/2012 Coll. This issue is closely related to forest lands and forest management where one of the reasons for the accessibility of purposeful roads is (according to Czech legislation), inter alia, forest management as this activity is considered to be a public interest and owners of forest lands have a legal mechanism for access to forest and other land which is not owned by them but is necessary for forestry activities. According to the finding of the Constitutional Court of the Czech Republic sp. No. 268/2006 of 9 January 2008 and the case law of the Supreme Administrative Court, the definition of the purposeful road can be deduced: a) it must be a transport road within the meaning of § 2 of the Act on Roads, b) it must connect real estates with each other for the needs of its owners or it must join the property with other roads or to be used for the management of agricultural and forest land; c) the consent of the owner of the purposeful road to its use by an unlimited circle of persons; d) the transport road is used for the so-called transport need, or e) the connection cannot be clearly regulated by the private law institute. According to the assessment of the transfer of the authorization for the general use of the purposeful road, the issue of the land on which purposeful communication exists might be evaluated anyway if it is possible to deduce the existence of publicly accessible purposeful road according to the valid legislation and the case law; the obligation to tolerate the

public authorization to the authorized entity is transferred, irrespective of the fact that the statutory body was a public body. At the same time the above-mentioned consent of the previous owner (as a necessary condition for the duration of authorization for general use) was not deduced during the restitution, e.g. the previous owner was a public body who claimed that the consent of a public entity has a different form than a consent of a private person. However, if the person who acquired the purposeful road by issue did not express a qualified disagreement with the general use of the road within a reasonable period of time, the obligation to tolerate it then passes. If the Constitutional Court does not deviate from the pronounced opinion, it is permissible, in the authors' opinion, that the "religious entity" will cancel the existing public use of the purposeful road by its active disagreement with the general use of the road. It will be of greater significance to see whether in individual restitution cases the issue of purposeful communication will be refused because it is a building (in the case of unpaved roads created by building activities). Free access to land surroundings is not limited with regard to the issuance of property; risks exist when arriving on motor vehicles. The authors in the final summary agree with the statements of the Ombudsman concerning land intended for the performance of forest functions which is not paved forest roads which serve as a driveway to built-up land. The user of such a road is not obliged to obtain the forest owner's exemption from the prohibition of motor vehicles entering the forest because it is not a forest. The entitlement to use a driveway paved forest road should not be affected by the Forest Act or in connection with the issue of forest paths to religious subjects.

Fulfilment of the Strategy for the Development of Legal and Administrative Activities of the Ministry of Agriculture is the transfer of measures into binding legal regulations. The partial goals of providing legal and legislative service are:

- to maintain a high level of comprehensive legal advice,
- to achieve the expected success in representing the Ministry of Agriculture in court disputes in cooperation with the interdepartmental departments of the Ministry of Agriculture,
- to make objective decisions in appeal proceedings and review commissions of the Ministry of Agriculture in accordance with the deadlines set in the Administrative Procedure Code,
- to guarantee a departure from the fragmentation and parcelling of legal regulations that occur in ensuring the legislative process of legal regulations, especially draft laws, decrees and amendments to legal regulations,
- to strive for quality standardization of contracts and agreements through standard contracts,
- to disseminate information on the protection of the intellectual property of forest land owners.

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