

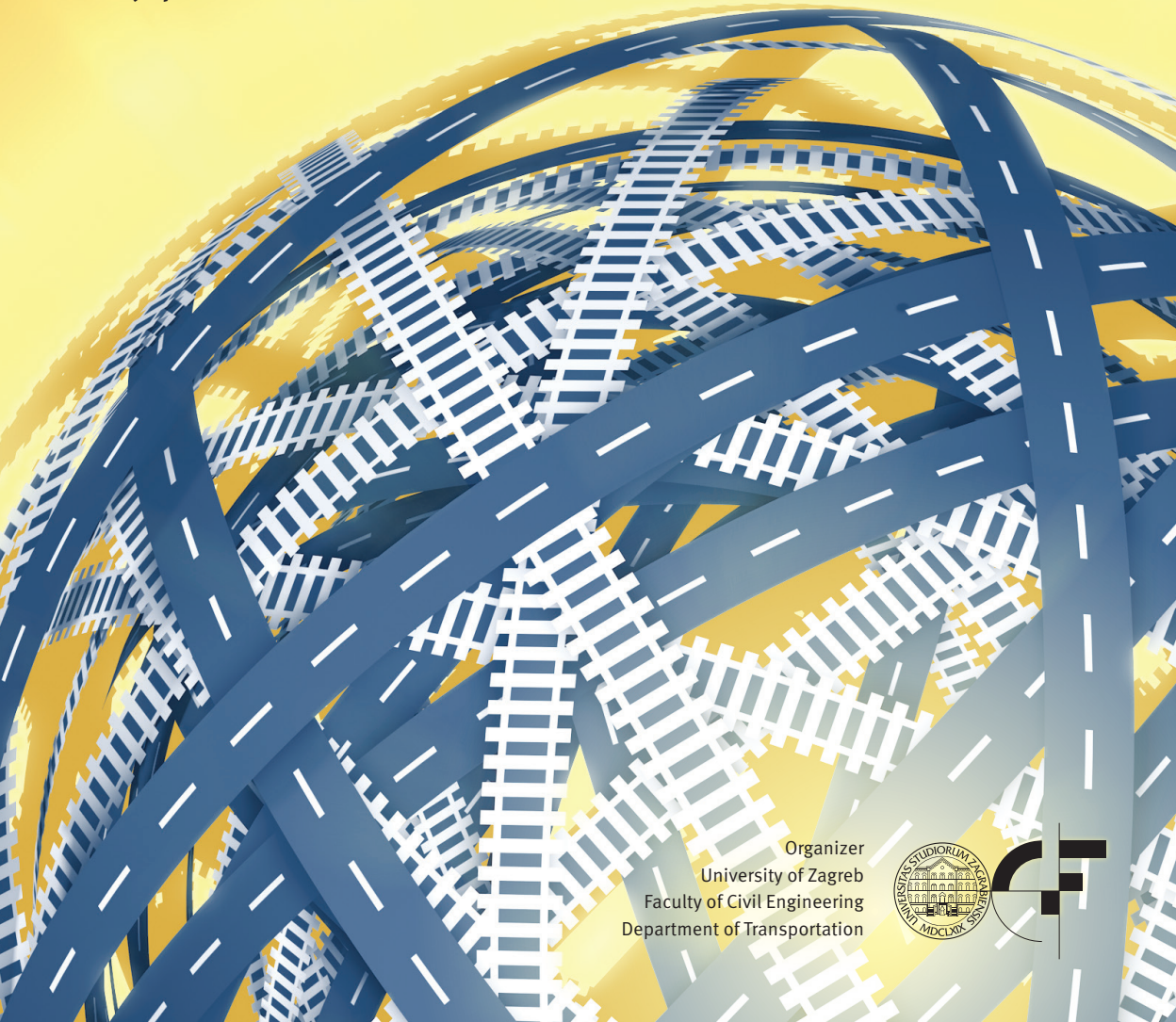


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23-25 May 2016, Šibenik, Croatia

Road and Rail Infrastructure IV

Stjepan Lakušić – EDITOR



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SOME ISSUES REGARDING THE LEGAL STATUS OF ROADS IN THE REPUBLIC OF CROATIA

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Abstract

The paper will give an overview of some of the issues concerning the legal status of roads, emphasizing the provisions regarding the registration procedure of public and unclassified roads in the land registry. These issues should have been regulated by the legislation but even after its passing some of the issues remain unresolved and cause problems in the implementation.

Keywords: registration, roads, land registry

1 Introduction

The Croatian Parliament passed at its session held on 8 July 2011 the Roads Act (hereinafter referred to as “RA”) published in the Official Gazette of the Republic of Croatia No. 84/11 [3]. The RA was amended by the Act on Amendments published in the Official Gazette No. 22/13, the Act on Amendments published in the Official Gazette No. 54/13, the Act on Amendments published in the Official Gazette No. 148/13 and the Act on Amendments published in the Official Gazette 92/14. The subject of this paper are the provisions of the RA and the Act on Amendments published in the Official gazette No. 92/14 (hereinafter “AA RA/14”).

2 Public roads

Public roads are public goods in general use owned by the Republic of Croatia, which can be used by everyone in the manner and under the conditions specified in the RA and other acts. According to Vedriš and Klarić, public goods are owned by the Republic of Croatia, and can be in general use (e.g. roads) or in public use (e.g. vehicles) (Građansko pravo 2004: p. 240) [1]. Public roads in the ownership of the Republic Croatia cannot be alienated nor can the proprietary rights of public roads be acquired, except in the cases specified in the RA. According to Vedriš and Klarić, the Roman principle of *numerus clausus* applies to the number of proprietary rights in our legal system, therefore there can only be proprietary rights which are specified as such in a legal act, and which are divided into the proprietary right of one’s own possessions (right of ownership) and proprietary rights of another’s possessions (other proprietary rights), which some authors refer to as sector rights (Građansko pravo 2004: p. 185-186) [1]. Act on Ownership and Other Proprietary Rights [4] acknowledges the following proprietary rights: ownership, easement, lien, encumbrance and building right. Easement right can be established over a public road as well as building right with the purpose of building public utilities, water, energy constructions and electronic communications constructions and other associated facilities, in a manner prescribed by the RA (Act on Ownership and Other Proprietary Rights acknowledges proprietary and personal easements).

A public road becomes a public good in general use upon the legal validity of the use permit, i.e. upon issuing of another act on the basis of which the use of the construction is permitted with respect to the special regulation.

Public road is registered in the land registry books on the basis of a valid use permit as a public good in general use and as an inalienable property of the Republic of Croatia, with the registration of Croatian Motorways Ltd. (Hrvatske ceste d.o.o.) as a legal entity authorised to manage motorways, of Croatian Motorways Ltd. as a legal entity authorised to manage state roads and of county department for roads as a legal entity authorised to manage county and local roads. Real estates and proprietary rights over those estates, as well as other important real estate information, are registered in the land registry books.

Easement and building rights over a public road as well as concession rights are entered in the land registry as required by the legislation governing the Land Registration Act [5].

2.1 Termination of the public good in general use status of a public road

When the need for using a public road or any of its parts as a public road permanently stops, its status of a public good in general use may be terminated, and the property losing its public good in general use status remains in the ownership of the Republic of Croatia.

Proposal for termination of the public good in general use status of a public road or its part is submitted by a legal entity managing the public road to the competent ministry. The resolution to terminate the public good in general use status of a public road or its part as proposed by the competent ministry is made by the Government of the Republic of Croatia or the body authorised by the Government.

The resolution to terminate the public good in general use status of a public road or its part contains a provision referring to deletion of a public road or its part as a public good in general use from land registry books and it is delivered to the legal entity managing the public road together with the allotment analysis to the competent municipal state attorney's office with the purpose of implementing the resolution in the land registry.

2.2 Classification of public roads

Public roads are, depending on their social, transport and commercial value, classified into one of four categories, Article 6 of the RA.

2.3 Criteria for classification of public roads

Public roads are classified according to the criteria specified in the regulation passed by the Government of the Republic of Croatia, Article 7 of the RA.

The resolution to classify public roads, which specifies motorways, state roads, county roads and local roads and their marking, is made by the competent minister and it is published in the Official Gazette of the Republic of Croatia.

Public road which is no longer classified as such, as a rule, becomes an unclassified road.

On the other hand, by classifying an unclassified road as a public road, an unclassified road becomes a public road.

Both described methods of status change require no payment of fees to the former owner, and the existing registry information in cadastre and land registry books will be replaced by new relevant decisions regarding the change of their status. Cadastre is the register of land and objects on and under that land, containing the necessary land plot information.

2.4 Registration of public roads in the land registry

Public roads which were built before the date of the RA's entry into force, for which the survey of the current state was conducted and which are recorded in the cadastre, should have been registered in the land registry as a public good in general use, as an inalienable property of the Republic of Croatia, with the registration of the legal entity managing the public road, regardless of the existing registration in the land registry books. Transitional and final provisions, Articles 123-130 of the RA. Registration was conducted ex officio by the land-registry courts based on the decision regarding classification and the application form with the current state analysis.

Public roads built before the date of the RA's entry into force which are not recorded in the cadastre or there is no record of their actual state, are, first of all, recorded in the cadastre based on the resolution regarding classification and geodetic survey analysing the current state, and which the legal entity managing the public road was obliged to obtain. Relevant provisions regarding the registration of public roads which were recorded in the cadastre were applied to the registration procedure in the land registry.

The AA RA/14 (Article 2) made amendments to the resolutions regarding public roads which were not recorded in the cadastre or there was no record of their actual state, so that these public roads, built before the date of the RA's entry into force, would be recorded in the cadastre based on the resolution regarding classification, geodetic survey analysing the current state of the public road and the decision by a competent land-registry court concerning the implementation of application form.

These public roads will be recorded in the land registry as a public good in general use, as an inalienable property of the Republic of Croatia, with the registration of the legal entity managing the public road, regardless of the existing registration in the land registry books.

Properties which were regarded as public roads according to the RA and which were used as public or unclassified roads before 1 January 1997 are a public good in general use and an inalienable property of the Republic of Croatia. Unclassified roads are inalienable property of the local self-government units within whose territory the road is situated.

Furthermore, the RA's transitional provisions regulated the issues regarding the registration of public roads built after the date of its entry into force, so that its implementation is achieved in accordance with general provisions which regulate the registration of ownership rights.

Proposal for the registration of ownership rights of the roads at issue is made to the competent land-registry court by the competent state attorney's office.

The competent land-registry court issues a decision regarding the registration process, which is in accordance with the procedure specified by the act regulating the land registry.

3 Unclassified roads

Article 98 of the RA stipulates that unclassified roads are those which are used for motor traffic and which can be freely used by anyone in a manner and under conditions specified by the RA and other regulations, and which are not classified as public roads within the meaning of the RA. The RA particularly sets apart:

- roads in city areas with population over 35,000 and city areas which are county seats, which were classified as public roads by the decision concerning the classification of public roads into state roads, county roads and local roads (Official Gazette No. 54/08, 122/08, 13/09, 104/09 and 17/10). The competent minister specifies these roads by the decision published in the Official Gazette of the Republic of Croatia.

Exceptionally roads which meet the provisions specified for the classification of public roads into state roads will be classified as state roads:

- roads which connect settlements,
- roads which connect areas within cities and settlements,
- public transport terminals,
- access roads leading to residential, business, commercial and other buildings,
- other roads in settlement and city areas.

Some authors believe that only the RA regulated for the first time the issues of defining an unclassified road and its ownership.

Article 101 regulates the legal status of unclassified roads as public goods in general use in the ownership of local self-government units within whose territory the road is situated.

Furthermore, the unclassified roads in the ownership of the local self-government units cannot be alienated nor can the proprietary rights of unclassified roads be acquired, with the exception of easement right and building right with the purpose of building constructions pursuant to the decision made by the executive body of the local self-government unit, provided that it doesn't obstruct traffic flow and maintenance of the unclassified road.

Exceptionally a part of the unclassified intended for the use of pedestrians (sidewalk and such) can be leased in accordance with the special provisions (Utility services regulations).

3.1 Registration of unclassified roads in the land registry (Article 102 of the RA)

Unclassified road becomes a public good in general use upon the legal validity of the use permit, i.e. upon issuing of another act on the basis of which the use of the construction is permitted with respect to the special regulation.

Unclassified road is registered in the land registry books as a public good in general use and as an inalienable property of the local self-government unit. Local self-government units are municipalities and cities.

3.2 Termination of the public good in general use status of an unclassified road

When the need for using an unclassified road or any of its parts permanently stops, its status of a public good in general use can be terminated, and the property, which loses its public good in general use status, remains in the ownership of the local self-government unit.

The resolution to terminate the public good in general use status of an unclassified road or its part is made by the representative body of the local self-government unit and it is delivered to the competent court in order to delete the public good in general use status of an unclassified road from the land registry. Representative bodies of the local self-government units are municipal and city council.

3.3 Registration of unclassified roads in the land registry according to the transitional and final provisions

The RA's transitional and final provisions (Articles 131-133) include provisions regarding the registration of unclassified roads in the land registry books. Roads which were used on the date of the RA's entry into force for motor traffic under any conditions and which are accessible to a larger number of users, and which have not been classified as public roads within the meaning of the RA, became unclassified roads whereby the existing land registry records in the ownership of the local self-government unit should have been replaced ex officio by registration of the unclassified road, public good in general use, as an inalienable property of the local self-government unit.

Unclassified roads which were not registered in the land registry books or there was no record of their actual state, should have been registered in the land registry ex officio based on the application form which after the recording of the unclassified road, i.e. its actual state in the cadastre, is delivered ex officio to the land-registry court by the body responsible for the cadastre.

Unclassified roads which were not recorded in the cadastre or there was no record of their actual state, should have been recorded in the cadastre based on the appropriate geodetic survey analysing the current state, and which is obtained and delivered to the body responsible for the cadastre by the local self-government unit, i.e. legal entity authorised to manage the unclassified road.

This provision was amended by the AA RA/14 (Article 3) so that the land-registry court decision concerning the implementation of the application form is also required for the registration of respected roads in the cadastre.

Paragraph 5 of Article 131 of the RA was amended as well, so that the application form for the earlier implementation in the land-registry is delivered to the land-registry court ex officio by the competent cadastre office based on the reviewed and confirmed geodetic survey analysing the current state of the unclassified road.

Furthermore, a provision was added pursuant to which the unclassified roads referred to in Article 131, paragraph 1 will be registered in the land registry books as a public in general use, as an inalienable property of the local self-government unit with the registration of the legal entity managing the public road, regardless of the existing registration in the land registry books.

Article 132 of the RA stipulated that the existing registration in the cadastre and land registry regarding public roads, which became roads referred to in Article 98, paragraph 1, subparagraph 1 of the RA, should be replaced ex officio by the registration of the unclassified road, public good in general use, as an inalienable property of the local self-government unit based on the decision in Article 89, paragraph 2 of this Act.

Data regarding the land register plots which is required for the change of that registration in the land registry books is delivered ex officio to the land-registry court by the body responsible for the cadastre.

Roads referred to in Article 98, paragraph 1, subparagraph 1 of this Act, which are not recorded in the cadastre nor is there any record of their actual state, are recorded in the cadastre based on the decision in Article 98, paragraph 2 of the RA and the appropriate geodetic survey analysing the current state, and which is obtained and delivered to the body responsible for the cadastre by the local self-government unit, i.e. legal entity authorised to manage the unclassified road.

This provision was amended by the AA RA/14 (Article 4) so that the land-registry court decision concerning the implementation of the application form is also required for the registration of respected roads in the cadastre.

Amended was also paragraph 4 of Article 132 which specified that roads referred to in Article 98, paragraph 1, subparagraph 1 of the RA, which are not registered in the land registry books nor is there any record of their actual state, are recorded in the land registry ex officio based on application form which is after the recording of the unclassified road, i.e. its actual state in the cadastre, delivered ex officio to the land-registry court by the body responsible for the cadastre. According to the amended, valid provision, roads referred to in paragraph 3 of this Article will be registered in the land registry as a public good in general use, as an inalienable property of the local self-government unit with registration of the legal entity managing the public road, regardless of the existing registration in the land registry.

Article 5 of the AA RA/14 stipulates that the management of statements requiring implementation of an appropriate geodetic analysis in the land registry, and which are submitted to the land-registry court before the date of the AA RA/14's entry into force, are subject to the AA AR/14's regulations.

4 Conclusion

The issues regarding the legal ownership status of public roads regulated by the RA and its amendments don't cause any difficulties in its implementation. However, the issues concerning the legal ownership of unclassified roads after the RA's entry into force have posed a series of problems for the local self-government units, the practice of the cadastre, as well as land registry. The AA RA/14 amended and added the resolutions at issue "in order to ensure more effective practice of the cadastre offices and land-registry courts in proceedings (...)". Nevertheless, a series of issues regarding the legal status of unclassified roads still remains unresolved.

References

- [1] Vedriš, M., Klarić, P.: Građansko pravo, Narodne novine, 2004.
- [2] Zakon o cestama (Narodne novine 84/11, 18/13, 22/13, 54/13, 148/13, 92/14).
- [3] Zakon o vlasništvu i drugim stvarnim pravima (Narodne novine 91/96, 68/98, 137/99, 22/00, 73/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 90/10, 143/12, 152/14).
- [4] Zakon o zemljišnim knjigama (Narodne novine 91/96, 68/98, 137/99, 114/01, 100/04, 107/07, 152/08, 126/10, 55/13, 60/13).