FOREIGN EXPERIENCE OF LEGAL REGULATION OF LAND CONSOLIDATION

The issue of land consolidation is becoming more and more important for most of countries, especially in Europe, because the significant fragmentation of agricultural land is not only an obstacle to the sustainable development of agricultural activity in the region, but also hinders the implementation of infrastructure and other projects which are necessary for the community and complicates environmental protection measures. That is why an important task for European states is the development of national legislation on land consolidation. The purpose of this article is to conduct a legal analysis of the legislation of the Federal Republic of Germany, the Czech Republic, and Poland in the field of land consolidation in order to identify positive experience that can be used in the development of legislation in other states. The situation when the land is not used has negative consequences, not only economic, but also ecological and social. A position has been expressed, that it is useful to consolidate land plots which owner is unknown and which can be used in a way that is useful for society.

Key words: consolidation of land; land management; administrative procedure; land ownership; land reform.
Statement of the problem in a general form and its connection with important scientific or practical tasks. In many European countries, there is a situation where the masses of agricultural lands have become too fragmented, and it is impossible to process them with large-sized equipment. There are plots of land that are not cultivated and it is not known who owns them. These problems can be solved by land consolidation. This process needs adequate legal regulation. Therefore, it is relevant to study the foreign experience of legal regulation of land consolidation in order to identify positive experience worth following.

Analysis of the latest research and publications in which the solution to this problem was initiated and on which the authors rely. A number of authors studied the foreign experience of regulating the land market. Hoshtynar S.L. proves the usefulness of following the experience of France and Spain in the formation of the mechanism of state regulation of the land market. According to the scientist, a strict model of the land legal system with broad powers of the relevant state control bodies is more effective in order to avoid the concentration of this unique, most valuable non-resource in the hands of a small number of owners [1, p. 177].

Kovalenko T.O. and Miroshnychenko A.M. while studying the modern regulation of land relations abroad established that in foreign countries such wealth as land is treated with great care, trying to use it as much as possible in the interests of society, and that the main tool for implementing land reforms is a balanced policy of the state in the agrarian sphere, and effective rural economy is possible when the model of land relations corresponds to the interests and needs of the state. World experience proves that states achieve good results in agriculture if the state controls the use and circulation of agricultural land, sets restrictions on their sale and lease [2, p. 91].

Babenko O.M. [3, p. 97], Mytsenko I.M. and Reshitko T.V. [4, p. 25] in their studies note that during the land reform the lease of agricultural land, which is the main form of land relations in many countries, deserves special attention. At the same time, it is important to have an honest partnership between the lessor and the lessee, legal protection of their rights, rational use and preservation of land, fair determination of the level of rent, solving the issue of employment of the rural population, etc.

Anysenko O.V. and Skilaruk T.I. studied the essence of the term «land consolidation». Researchers prove that when implementing land consolidation, it is necessary to apply conceptual approaches to determining the rational size of land for agricultural enterprises, namely: strategic priorities of land use greening, which are based on the application of nature conservation and nature-recreational measures [5, p. 28]. Máčaj, L. and the team studied the administrative procedure for land consolidation in some foreign countries [6].

Formulation of the goals of the article (statement of the task). The purpose of this article is to conduct a legal analysis of the legislation of the Federal Republic of Germany, the Czech Republic and Poland in the field of land consolidation in order to highlight positive experience that can be used in the preparation of legislation in other countries.

Presentation of the main research material. Consolidation of land as one of the measures to improve the structure of land ownership is a relatively new and practically undeveloped concept for many Eastern European countries. However, due to the large scale of land use fragmentation and the growing importance of rural areas, land consolidation is becoming an increasingly important element of strategies and projects aimed at improving the quality of life in rural areas by ensuring more effective management of natural resources and environmental protection, increasing the competitiveness of agriculture and stimulating development of rural areas, creation of infrastructure and provision of services, creation of employment opportunities and improvement of living conditions in rural areas [7, p. 11].

Land consolidation is an integrated system of measures for the organization of the territory of land use (land ownership) through the unification of fragmented land plots into compact massifs, the creation of legal and institutional mechanisms to avoid land fragmentation, as well as environmental protection measures, the implementation of necessary improvements for agricultural formations, in particular irrigation and drainage infrastructure, road network, erosion control measures and improvement of natural landscapes based on the principles of rationality and economic efficiency [5, p. 28].

The primary regulation governing consolidation of land in the Federal Republic of Germany is

Ключові слова: консолідація земель; землеустрій; адміністративна процедура; право власності на землю; земельна реформа.
Federal Land Consolidation Act adopted in 1953 in the version of 1976 and last amended in 2008. According to § 1, in order to improve production and conditions of production in agriculture and forestry and to promote general regional culture and rural development, rural property can be reorganized through land consolidation. The reasons for carrying out consolidation are specified in § 37, which regulates the new layout of the land development area, while also defines the basic condition for arrangement of land. According to the Land Consolidation Act, the land consolidation area is to be redesigned, taking into account the respective landscape structure, in accordance with the interests of the parties involved, which must be weighed against each other, and the interests of general regional and rural development, and as required by the public good. The field mark is to be re-divided and fragmented or uneconomically formed property is to be combined according to modern business management perspectives and to be designed appropriately in terms of location, shape and size; paths, roads, bodies of water and other communal facilities are to be created, measures to protect and improve the soil and landscape design and all other measures that improve the basis of economic operations, reduce the workload and facilitate management are to be taken. When carrying out the measures pursuant to § 1, the land consolidation authority shall safeguard the public interest, above all the requirements of spatial planning, state planning and orderly urban development, environmental protection, nature conservation and landscape conservation, monument protection, recreation, water management including water supply and sewage disposal, fishing, hunting, energy supply, public transport, agricultural settlements, small settlements, allotment gardens and the design of the landscape as well as possible mining use and the preservation and protection of mineral raw material deposits. Natural bodies of water may only be modified for water management reasons and not just for surveying reasons, with the timely consultation of experts [8].

A simplified land consolidation procedure is also provided by law and according to § 86 of the Land Consolidation Act can be initiated in order
- to enable or implement rural development measures, in particular measures to improve agricultural structures, settlements, village renewal, urban planning measures, environmental protection measures, the near-natural development of water bodies, nature conservation and landscape management or the design of the town and landscape,
- to eliminate disadvantages for the general national culture that arise or have arisen through the production, modification or removal of infrastructure facilities or through similar measures,
- to resolve land use conflicts, or
- to carry out a necessary reorganization of the property in hamlets, communities of smaller extent, areas with individual farms as well as in communities that have already been cleared of land.

In case of simplified land consolidation procedure, the land consolidation authority orders the land consolidation by resolution and determines the land consolidation area. A copy of the decisive part of the resolution may be sent to the parties involved or made public.

Land consolidation in case of compulsory acquisition is foreseen by § 103a of the Land Consolidation Act. A voluntary land exchange can be carried out to rearrange rural plots of land to improve the agricultural structure in a quick and easy process. The voluntary exchange of land can also be carried out for reasons of nature conservation and landscape conservation.

As we can see from the provisions of the German Land Consolidation Act, consolidation and development of rural territories is aimed at increasing the functionality of settlements for living, economic, as well as cultural and social activities. The main focus is on such elements as the development of the transport network, creation of public areas, parks, recreation centers, construction of new infrastructure facilities, development of agricultural and forestry enterprises.

Legal regulation of land consolidation in the Czech Republic is carried out by the Law on land consolidation and land authorities № 139/2002. According to the Law, land consolidation is spatially and functionally arranged in the public interest, by consolidation or division of land plots to ensure the accessibility and use of land in order to create conditions for rational management of land. In these contexts, the original plots of land cease to exist and at the same time new plots of land are created, to which ownership rights and related encumbrances are arranged. At the same time, the aim of land adjustments is to ensure conditions for improving the quality of life in rural areas, including diversification of economic activity and improvement of the competitiveness of agriculture, improvement of the environment, protection and fertilization.
of the soil fund, forestry and water management, especially in the area of reducing the adverse effects of floods and droughts, solving drainage conditions in the landscape and increasing the ecological stability of the landscape (§ 2). The results of land adjustments serve for the renewal of the cadastral register and as an indispensable basis for spatial planning. The subject of land improvements is land that is owned and land, which is in use. The subjects of legal relations are the participants in the proceedings and the State Land Office and its territorial structures – regional land offices, which will implement the proceedings (§ 5) [9].

Land consolidation intended for the extraction of minerals in the specified mining area, land intended for the defence of the state, land with a structure owned by the state can be consolidated only with the consent of their owner and the relevant administrative authority. Land included in the reserve of state land for the implementation of state development programs approved by the government can be consolidated only with the consent of the relevant administrative authority. If the owners do not answer within the time limit set by the land office, it is considered that they agree with the consolidation.

The proposal for a new layout of the owners’ land is preceded by the preparation of a plan for common facilities, which are mainly measures used to make land, such as field or forest roads, bridges, railway crossings, etc. accessible, anti-erosion measures to protect the soil fund; water management measures used for the harmless removal of surface water, protection of the territory from floods, drought and water retention in the landscape, including underground water such as water reservoirs, ponds, treatment of watercourse beds, drainage, protective dams, polders, etc.; measures to protect and create the environment, support biodiversity and increase ecological stability through renewal of permanent vegetation, landscaping, etc (§ 9 (8)).

Legal regulation of land consolidation in Poland is carried out by the Law on Consolidation and Exchange of Agricultural Land of March 26, 1982. The purpose of land consolidation according to the Law is to create more favourable conditions for farming and forestry by improving the area structure of farms, forests and forestlands, rational land layout, adjusting real estate boundaries to the system of water drainage facilities, roads and relief. Under the subjects of the process of consolidation, the Law understands the owner, user of the land plot located in the area of consolidation or the investor, and in the case of land owned by the State Treasury or local government units, also the entity managing these lands. In the legal conditions of Poland, an investor can also be considered an important participant in the proceedings, which should be understood as an entity implementing or intending to implement a public purpose investment in the territory that is planned to be consolidated [10].

Council of participants must be established in the proceedings in the event that the land consolidation proceedings have more than 10 participants. The Council of the participants in the proceedings represents a joint advisory body, which consists of three to twelve members who are elected and recalled by the participants in the proceedings (article 10 of the Law 1982 on Consolidation and Exchange of Agricultural Land).

Conclusions from this study and prospects for further investigations in this direction. Legal regulation of land consolidation in the Federal Republic of Germany has a long history. The Law on land management which provides for consolidation in its first edition was adopted in 1953 and in nowadays provides for various procedures – comprehensive land consolidation in order to improve conditions of production in agriculture and forestry and to promote rural development, simplified land consolidation in order to implement rural development measures, to resolve land use conflicts or to carry out a necessary reorganization of the property, as well as voluntary land exchange. Consolidation concerns separated or economically inappropriately formed plots or plots needed for construction of roads, reservoirs and land reclamation. The public interest in the legislation of Slovakia for the purpose of consolidation is defined broadly from improving the quality of life in the countryside to increasing environmental sustainability. The possible purpose of land consolidation in Poland is defined more narrowly in the legislation than in the Federal Republic of Germany and Czech Republic.

It was found that in the EU countries, land consolidation is allowed at the legislative level with the following goal: improving the quality of life in the countryside, diversifying economic activity, increasing the competitiveness of agriculture, improving the state of the environment, protecting land resources, reducing the negative consequences of floods and droughts, by increasing ecological stability.

The situation when the land is not used has negative consequences, not only economic, but also ecological and social. Therefore, we consider it useful to consolidate lands which owner is unknown and which can be used in a way that is useful for society. The advantages and disadvantages of such consolidation are a prospect for further research.

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