

LAND CONSOLIDATION IN SLOVAKIA POZEMKOVÉ ÚPRAVY NA SLOVENSKU

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I. Introduction

The current state of ownership and use relations to agricultural land and the reason for the existence of land legislation can hardly be understood without further study of historical context. In particular, it is important to understand the causes that have led to the fragmentation of land and land ownership in Slovakia, which are considered to be one of the biggest problems of the development of the agricultural land market. At present, it is quite common that one hectare of land has more than ten owners and that an owner of the agricultural land does not have one or several plots of land with a size reasonable for farming but he/she is a co-owner of a number of small-scale plots scattered in the vicinity or more distant surroundings. If one of the co-owners is an unknown owner, it is impossible to dispose such land (sell, donate, exchange), it is possible to dispose only with the share. As a result, ownership of agricultural land loses its value. Land consolidation seems to be a solution for such situation, however, in practice, there are numerous of administrative and factual obstacles.

Land consolidation is an important legal institute for fragmented agricultural land in Slovakia but also in other Euro-

pean countries e.g. Czech Republic, Germany, or Austria⁽¹⁾. The fragmentation of land makes it difficult to transfer land to the agricultural land market, as well as to the rational and efficient use of agricultural land for agricultural purposes. The necessity of land consolidation was realized by the peasants in Slovakia at the beginning of the 20th century, when they began to voluntarily exchange land for the purpose of obtaining land with an area sufficient for rational management.⁽²⁾ Though, the institutional environment and legal regulation of land relations then did not allow for realizing of these intentions⁽³⁾. The law maker in Slovakia, however, did not realize the need for the arrangement of land relations until the year 1989, when the Law No. 229/1991 Coll. on the regulation of ownership relations to land and other agricultural property and Law No. 330/1991 Coll. on land arrangements, settlement of land ownership rights, district land offices, the Land Fund and land as-

⁽¹⁾ Muchová, Konc (2010)

⁽²⁾ See e.g. Bezáková et al. (1996), Fábry (1977), Kolesár et al. (1980), Gajniak (2010)

⁽³⁾ Štefanovič(2006)

Abstract (EN)

Land consolidation in the Slovak Republic is an important legal institute for fragmented agricultural land, which makes it difficult not only for the agricultural land market but also for the rational and efficient use of agricultural land. The necessity of land consolidation was already realized by the peasants in Slovakia at the beginning of the 20th century, when they voluntarily began to exchange the land. The law maker in Slovakia, however, did not realize the need for the arrangement of land relations until the year 1989, when the Law No. 229/1991 Coll. on the regulation of ownership relations to land and other agricultural property and Law No. 330/1991 Coll. on land arrangements, settlement of land ownership rights, district land offices, the Land Fund and land associations as amended were adopted. Moreover, land consolidation also addresses the development of the countryside and, last but not least, increases rural attractiveness for the inhabitants themselves. Rural development also belongs to the priorities of the EU. Thus, the implementation of the land consolidation projects is not only a wish of the owners or private investors, but also one of the ways to realize the goals of Slovakia and even of the European Union.

Keywords (EN)

land consolidation, fragmentation of land ownership, agricultural land, land ownership

Abstrakt (SK)

Pozemkové úpravy sú nevyhnutným právnym inštitútom pre rozdrobenú poľnohospodársku pôdu na území Slovenskej republiky, ktorá sťažuje nielen trh s poľnohospodárskou pôdou, ale aj racionálne a efektívne užívanie poľnohospodárskej pôdy. Pozemkové úpravy riešia aj usporiadanie poľných a lesných ciest, vodohospodárske, protierózne a ekologické opatrenia, ktoré pozitívne ovplyvňujú vidiek, zabezpečujú ochranu a rozvoj vidieckej krajiny a v neposlednom rade zvyšujú atraktivnosť vidieka pre samotných obyvateľov. Nevyhnutnosť komasácií si uvedomovali roľníci na Slovensku už začiatkom 20. storočia, kedy si začali sami dobrovoľne zamieňať pozemky. Zákonodarcia na Slovensku si túto potrebu usporiadania pozemkových vzťahov uvedomil až po roku 1989, kedy bol prijatý zákon č. 229/1991 Zb. o úprave vlastníckych vzťahov k pôde a inému poľnohospodárskemu majetku a zákon č. 330/1991 Zb. o pozemkových úpravách, usporiadaní pozemkového vlastníctva, pozemkových úradoch, pozemkovom fonde a o pozemkových spoločenstvách. Po legislatívnej úprave sa vyskytol finančný problém realizácie pozemkových úprav, preto pozemkové úpravy napredovali iba veľmi pomaly. V súčasnosti je možné finančný problém riešiť čerpaním finančných zdrojov zo štrukturálnych fondov EÚ alebo prenechaním realizácie jednoduchých pozemkových úprav na súkromných investorov.

Kľúčové slová (SK)

pozemkové úpravy, rozdrobenosť pozemkového vlastníctva, poľnohospodárska pôda, pozemkové vlastníctvo

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sociations as amended (hereinafter as Land Consolidation Act) were adopted.

Provisions of § 19 of the Land Act defines land consolidation as changes in the arrangement of land on a given territory made for the purpose of creating land-wise unified economic units according to the needs of individual landowners, with their consent and according to the requirements of society for landscape, environment and investment construction. Based on that, it can be said that the content of land consolidation is not only a rational spatial arrangement of land ownership in a particular territory together with other immovable agricultural and forestry property associated with it, carried out in the public interest, but also it takes into account the requirements and conditions of environmental protection, the creation of territorial system of ecological stability, functions of agricultural landscape and operational - economic aspects of modern agriculture and forestry and support for rural development.⁽⁴⁾

In accordance with the § 1 section (2) of the Land Consolidation Act, land consolidation includes not only the identification and arrangement of ownership and use conditions, other material rights in the area of land consolidation and the new division of land in the form of consolidation or fragmentation or other modification but also technical, biological, ecological, economic and legal measures related to the new arrangement of land. That is why experts from various scientific disciplines, especially geodesists, as well as farmers, forestry and landscape engineers, construction engineers, water managers, ecologists and many others are involved in the land consolidation projects and their implementation. The land consolidation process involves *ex lege* both the land consolidation participants, whose rights are affected (in particular landowners, land tenants, owners of other immovable agricultural property, natural or legal persons whose other rights may be affected by the land consolidation, investor or another natural or legal person in whose interest the land consolidation is carried out, the Slovak Land Fund, an administrator of forest property owned by a state, a municipality or a higher territorial unit) and, on the other hand, state administration bodies (the Ministry of Agriculture and Rural Development of the Slovak Republic and district offices).

II. Objective and Methodology

The objective of the paper is to focus on the legal regulation of land consolidation in Slovakia. Firstly, the process of complex land consolidation is described. Secondly, we point out the legal institute of simple land consolidation, which is realised by a private investor. For the purpose of this paper, literary sources available on this subject, the national laws, and explanatory memoranda were used. Basic methods of legal science such as legal analysis and comparison were used.

III. Land Consolidation Procedure

It is not possible to understand the complexity and, in many cases, also the reasons for the failure to implement land consol-

idation projects without detailed explanation of the land consolidation procedure enacted in the Land Consolidation Act.

Land consolidation procedure may be initiated either by a proposal of a participant of land consolidation or by the Land and Forest Department of the District Office from an official duty. The result of the procedure is a decision about the proposal, by which the administrative authority will either allow land consolidation or stop the procedure if the conditions for land consolidation are not met.

After the decision about the permission or regulation of land consolidation enters into force, the next stage of the procedure starts, in which the administrative authority ensures the preparation of the initial documents (operator of district of the land consolidation project, the updating of the maps of the bonited land-ecological units, the land value, the register of the original state, for the purpose of land modifications, local territorial system of ecological stability for the purposes of land consolidation, the general principles of the functional arrangement of the territory in the area of land consolidation) and the design of the new land arrangement in the area of the land consolidation project.

Subsequently, the district office will display the register of the original state in the municipality for 30 days and deliver an extract from the register of the original state to each participant, whose place of residence is known. Participants may file objections in a written form within 30 days from the display or delivery. If the objections are justified, the district office agrees with them and the contractor re-elaborates the register of the original state upon the decision of the administrative body. If the objections are unjustified, the district office will reject them, which needs to be duly justified in the decision. After the decision about the objections, the district office will approve the register of the original state.

The district office will also publish the general principles of the functional arrangement of the land consolidation in the area at an appropriate place in the municipality or its part for 30 days, deliver it to the association of participants and invite the participants of the land consolidation to submit the proposal within 30 days from the publication or delivery. At the same time, it will notify all relevant government authorities that the general principles of the functional arrangement of the territory were published. They are required to communicate their standpoints towards the proposal of the general principles of functional organization of the territory within 30 days from the day of delivery. If the authority concerned does not communicate any standpoints within that time, it is assumed that it has no objections towards the proposal.

The district office will consult all objections with the association of participants. Based on the results of the discussion, the office will decide on the approval of the general principles of the functional arrangement of the territory. The decision shall be delivered by a public notice. The approved general principles of the functional arrangement of the territory in the area of land consolidation replace, for the purposes of construction of common facilities and measures, the decision on the location of construction, the decision on the land use drawn up in accordance with the binding part of the land use planning documentation, the decision on the withdrawal of the agricultural land and the decision on the withdrawal of forest land.

⁽⁴⁾ Štefanovič(2006)

Once the initial documents have been approved, the district office will prepare a land consolidation project, which will consist of an accompanying report, initial documents and a proposal for the new arrangement of land in the land consolidation district. The proposal for the new land arrangement includes the principles of the placement of new plots, a plan of public facilities and measures serving municipal residents (e.g. recreational facilities, sports facilities), a plan of common facilities and measures serving landowners (e.g. roads, water management facilities), a distribution plan (a plan for a new spatial arrangement in the land consolidation project), and a list of financial settlements.

The district office will deliver the land consolidation project to the association of participants and publish it in the municipality for 30 days. At the same time, it will deliver an extract from the distribution plan to each participant, whose stay is known. The participants of the proceeding and the association of participants may lodge an objection against the distribution plan within 30 days from the publication or delivery. About the objections, the district office will discuss with the participants of the land consolidation. If the objection is not solved during the discussion, the district office in the seat of region shall decide upon it.

The administrative authority may approve the land consolidation project in cases when the land consolidation has been authorized and there is an agreement of participants owning at least two-thirds of the land on which the land consolidation has been authorized. If the owner does not lodge an objection or the objection is unfounded, it is also deemed as an agreement. If, even after the redesign of the distribution plan, it is not approved by the participants who own at least two-thirds of the land, on which land consolidation has been authorized, the district office shall stop the proceedings.

If the land consolidation were ordered, the consent of the participants of land consolidation is not necessary. The decision to approve the land consolidation project is announced by a public notice. The decision approving the implementation of the land consolidation project cannot be appealed.

After approval of the land consolidation project, the district office will order its execution. Execution of the project means the demarcation and marking of the breaking points of the new plot boundaries. The order will be accompanied by the procedure of transfer to the new arrangements, which will be also published. Land consolidation project is the basis for land-use planning documentation and forest management plans. For the construction of common facilities and measures, the approved land consolidation project replaces the land use decision, the decision on location taken in accordance with the binding part of the land use planning documentation, the decision on withdrawal of the agricultural land and the decision on withdrawal of the forest land.

The date of the decision on approval of the execution of the land consolidation project or later date specified in the decision is the date of obtaining the property right to the new land or the right to financial settlement. At the same time, rent relations to the original real estate expire.

The implementation of the land consolidation is time and financially demanding. The period of implementation of complex land consolidation projects exceeds five years. Moreover,

does not always lead to the successful implementation of the land consolidation project.

IV. Simple Land Consolidation

The implementation of the land consolidation is both time and financially demanding (as shown by the procedure described above) and it does not always lead to successful implementation of the land consolidation project. The most frequent reason of failure to implement the land consolidation, which was authorized, is the impossibility of obtaining sufficient votes from participants to approve the project, especially if they disagree with the land exchange or with the financial compensation. In the case of land consolidation ordered by the district office, where the owner consent is not required, this risk is avoided. The reasons for these concerns must be sought in the recent past, particularly in the process of collectivization of ownership and use relationships, the expropriation of property without compensation and similar measures that caused property crimes to owners of land and agricultural property and, on the other hand, inadequate information of landowners on the purpose, content and procedure of land consolidation. Greater awareness leads to the state that not only investors but also the landowners themselves pursue the land consolidation projects.

Due to these facts, the legislation allows for land consolidation implemented only in a part of the cadastral territory, in the form of simple land consolidation with simplified documentation. An investor calls for the simple land consolidation and, if the state allows it, the investor also bears the costs..

An investor uses this option usually when it is impossible to resolve ownership relationships in that location otherwise. The time of simple land consolidation is generally half the time of the "complex" land consolidation⁽⁵⁾. Simple land consolidation is usually implemented within the horizon up to three years

Simple land consolidation is performed for agricultural use, if the owner of the land wants to farm on his land, but also for non-agricultural use, e.g. for the purpose of identifying a site for residential development, recreational facilities or the establishment of a landfill. The project of simple land consolidation is also an option for investors to build motorways, roads; railways that de facto degrade the land of the owners and therefore they cannot use it anymore.

On the other hand, simple land consolidation brings also disadvantages consisting mainly of the fact that it concerns only a small part of cadastral area; primarily focusing on the arrangement of ownership of this little part and it does not address comprehensively all ecological, biological, territorial and regional aspects of the land consolidation, as some of the priorities of land consolidation lie in the arrangement of agricultural and forest roads, water management, anti-erosion and ecological measures that have a positive influence on the countryside, ensure the protection and development of the countryside and increase attractiveness of the rural areas for the inhabitants. This cannot be fully reflected when land consolidation is implemented only at a limited territory or a part of the cadastral area.

⁽⁵⁾ Bažík, Muchová (2013)

V. Conclusion

The implementation of the land consolidation is time and financially demanding and does not always lead to the successful implementation of the land consolidation project. Complex land consolidation is financed from the state budget and after accession of Slovakia to the EU, also through the EU structural funds. A measure concerning land consolidation is also included in the Rural Development Plan of the Slovak Republic for 2014-2020. Additionally, there is the legal regulation allowing simple land consolidation financed by investors. These facts, however, do not significantly contribute to solving the long-term problems of land ownership in Slovakia, such as fragmentation of land and land ownership and access to land.

Land consolidation addresses the development of the countryside and increases rural attractiveness for the inhabitants themselves. Rural development also belongs to the priorities of the EU and rural development policy is part of the EU Common Agricultural Policy and it should lead to the sustainable development of rural areas in the member states. Thus, the implementation of the land consolidation projects is not only a wish of the owners or private investors, but also one of the ways to realize the goals of Slovakia and even of the European Union.

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