

Frane STANIČIĆ*
Land Consolidation in Croatia, Problems and Perspectives**

Abstract

Land consolidation is a very important instrument in agricultural planning and in making agricultural policies. It has a very long history in Croatia, dating to 18th century. However, it was formally made into legislation in the late 19th century. From then onward, it was rather widely used as a tool for consolidating fragmented pieces of agricultural land. After the independence in 1991, Croatia changed its constitutional and political setup in a manner which made further use of the existing law on land consolidation from 1979 impossible. However, the law stayed in force until the new law entered into force in 2015. Consequently, the institute of land consolidation was legally regulated the entire time, but the law was not applicable. Therefore, no land consolidations were made after 1991. Furthermore, last initiated land consolidation dated from 1989 and it was not, formally finished as the bodies which conducted land consolidations were abolished and new ones were never created. This is why the Constitutional Court had to react and this reaction brought the new law concerning land consolidation in 2015. However, from 2015 until now, no land consolidations were conducted or even initiated under the new law. In 2021, the Government started drafting the new law on land consolidation.

Keywords: land consolidation, tradition, Constitutional Court, problems in practice.

1. Introduction

“Land fragmentation exists as a side effect with detrimental implications for private and public investments, sustainable economic growth and social development, and natural resources. Less-favoured and least developed regions with economies still depending on agriculture have witnessed negative growth rates, soaring unemployment, increasing rural poverty and as a result, serious social and economic disintegration and wide-spread disappointment among local actors and stakeholders. ... The small and fragmented parcels, sometimes scattered over different political, juridical and administrative boundaries obstruct spatial/territorial planning especially in terms of land administration, land use planning, and land management. This hampers the implementation of rural regional development policies, strategies, programmes, and projects aimed to improve rural livelihoods.”¹ Land consolidation represents an institute which modern development started back in the 18th century, and from that time its adaption to different needs of different times is visible. The first law regulating land consolidation originates from Denmark at the beginning of the 18th century.²

Frane Staničić: Land Consolidation in Croatia, Problems and Perspectives. *Journal of Agricultural and Environmental Law* ISSN 1788-6171, 2022 Vol. XVII No. 32 pp. 112-125, <https://doi.org/10.21029/JAEL.2022.32.112>

* Associate Professor, Faculty of Law, University of Zagreb, frane.stanicic@pravo.hr, ORCID: 0000-0001-8304-7901.

** *This study has been written as part of the Ministry of Justice programme aiming to raise the standard of law education.*

¹ The Munich Statement 2002.

² Staničić 2013, 1127. Ivković et al. 2010, 299.



Its basic purpose is the consolidation of fragmented agricultural land in order to enable for effective and profitable production of agricultural goods.

However, through time also urban land consolidation had developed. Therefore, today³ two types of land consolidation exist – agricultural land consolidation and urban land consolidation.⁴ Agricultural land consolidation is used to enable the most possible unification of land for all land owners in the area in which it is performed. Usually, during land consolidation a new network of roads, canals and other devices is built, needed meliorations of land are performed and ownership (and possession) relations are resolved.⁵ It is, of course, possible to find reasons *pro* et *contra* land consolidation. Among the pros there can be found: it is easier to cultivate unified land, it is easier to monitor the cultivation, heavy machines can be used, less land is lost to boundaries etc. On the other side, the opponents use the following arguments: one can profit and the other can lose in the land consolidation procedure, danger of hail is greater, smaller plots are more valuable and easier to sell and the cost of the procedure is too great.⁶ Of course, another thing which is not to be neglected is that it is usually possible to conduct land consolidation without consent of owners and/or holders of land (depending on the percentage needed to start it).

„A main objective of land consolidation is to improve the land holdings of farmers by concentrating their farms in as few parcels as possible, and to support the farms with roads and infrastructure when needed. ...Executed properly, land consolidation contributes to improvements in the productivity, efficiency, and competitiveness of the agricultural sector. It secures jobs in rural areas. It leads to better land use planning and land management. It facilitates private and public investment in rural space. It supports environmental protection and natural resource management if it is done in a comprehensive way.”⁷

1.1. Different definitions of land consolidation

As a procedure, land consolidation requires the cooperation of several professions in order to achieve the aforementioned targeted results as it represents a very complex procedural institute. One needs lawyers, of course, but also economists, surveyors, agronomists, etc. in order to properly conduct it. Without cooperation of all aforementioned professions, land consolidation is impossible. *“A review of contemporary definition of land consolidation and a comprehensive review of land consolidation projects clearly show that they are of high level of complexity and high financial investments and consequently designing of land consolidation should be provided carefully in order to reach the necessary level of their effect.”⁸*

³ Both types existed in Croatia until 2013, when urban land consolidation was stricken out from our legislation without any explanation.

⁴ Staničić & Pribičević 2014, 1.

⁵ Krbek 1962, 160.

⁶ Staničić, 2013, 1128.

⁷ The Munich Statement 2002.

⁸ Lazić et al. 2020, 1330.

Teleological definition of land consolidation starts from the objective which is primarily achieved by it and in that sense *“land consolidation of agricultural land is an operation of land development with one most important objective – unifying scattered and fragmented plots of land with the additional objective of improving production and work and living conditions in the rural area.”*⁹

Economical definition of land consolidation states that *“it is a devised set of investment projects by which social-economic goals of development are achieved with the use of state supports and other means of social accumulation”*¹⁰ and it sets out that land consolidation achieves social goals with state supports from which a conclusion that it is a procedure conducted in public interest is derived, which is to be taken into account when legislatively regulating its costs.¹¹

One of the goals of land consolidation is surely an organized landscaping because of what a spatial-planning definition must be mentioned, by which land consolidation is determined as *“a social activity which is devised in a manner by which it affects the environment with the purpose of changing it in a way to reduce entropy and disintegration and to increase organization and cohesion.”*¹²

Geodetic profession also has a definition of land consolidation which understands that it is an *“agrarian-technical operation which main purpose is to gather fragmented plots of land in several rounded areas.”*¹³

At the end, the legal definition of land consolidation must be mentioned. From the legal theory’s viewpoint, it represents a special administrative procedure which is conducted with the goal of deciding administrative matters in the area of development and protection of agricultural land, forests, water management, environmental protection and spatial and urban planning.¹⁴

1.2. Content and spatial coverage of land consolidation – forms of land consolidation

Potential of land consolidation comes from the fact that it represents the only procedure which is able to radically change the organization, disposition and form of prior existing plots of land on a specific area.¹⁵ This is why land consolidation offers significant possibilities regarding the realization of great investment and infrastructure projects which cannot otherwise be realized, or their realization would be significantly hindered. The land consolidation projects initiation in the developed European countries such as Finland, Sweden, Netherland, Switzerland, Germany and others are conditioned by provision of the cost benefit analysis, and the benefits must be greater than the cost.¹⁶

⁹ Trifković, Ninkov & Marinković 2013, 1.

¹⁰ Miladinović 1997, 13.

¹¹ Staničić & Pribičević 2013, 1.

¹² Miladinović 1997, 13.

¹³ Medić & Fanton 1992, 197.

¹⁴ Miladinović 1997, 13, Borković 2002, 616.

¹⁵ Staničić & Pribičević 2014, 2.

¹⁶ Lazić et al. 2020, 1331.

The question remains in what measure will those possibilities be exploited what depends on needs and opportunities in concrete cases. Therefore, it is possible to differentiate multiple forms of land consolidation, depending on the complexity of the land consolidation intervention. As definite forms we have land consolidation of lower intensity (moderate land consolidation)¹⁷, and its opposite, land consolidation of higher intensity (radical land consolidation).¹⁸ Some authors also mention re-land consolidation (regrouping of state owned land) and land consolidation thorough expropriation procedure (sometimes it follows the building of great infrastructure of general interest).¹⁹ Also, we can have a whole sequence of combined solutions by which concrete needs on a specific territory are satisfied.²⁰ *“There is no common methodology for land consolidation effects accepted. The methodology varies from a country to a counter because of the differences in natural and social conditions, different goals of land politics and in most cases it is dependent on available data. Bearing in mind that the wide spectra of methodologies for effects of land consolidation estimation, the chosen method should be harmonized with specific requirements in the country where the land consolidation project is provided.”*²¹

2. The development of land consolidation in Croatia

It is necessary to mention that Croatia has always been, especially in the past, mostly agricultural country. Rural areas comprise more than 90% of mainland Croatia, and around 47% of the population lives on it.²² Therefore, problems linked with agriculture have always been very important. Land consolidation was first regulated in 1891 by the Land Consolidation Act of 1891. However, it was not unknown even in the earlier period. Namely, land consolidation was regulated by several laws dating in the early 19th century which enabled for land consolidation even without the consent of the parties involved.²³ Only in the period from 1870 to 1879 forceful land consolidation was prohibited. A very important law regulating land consolidation was the Land Consolidation Act from 1902 whose drafting started in 1899. During the drafting of this Act which was in force until 1945, an extensive debate was held, in public, and in the parliament. This Act resulted in 212 land consolidation procedures until 1941 and other data suggest that around 120 cadastral municipalities entered into the land consolidation procedure from 1902 until 1941.²⁴

After the Second world war, the land consolidation did not take place until 1954, when the first socialist land consolidation regulations entered into force. Prior that time, the state conducted numerous agrarian reforms in 1945 and 1953. However, the fragmentation and scattering of land became a large obstacle in land cultivation. Therefore, the need for land consolidation emerged again.

¹⁷ Roić 2012, 157.

¹⁸ Roić 2012, 157, Boban 2011, 281.

¹⁹ Boban 2012, 281.

²⁰ Medić 1978, 42.

²¹ Lazić et al. 2020. 1331.

²² Ivković, Barković & Bačani 2010, 298.

²³ Staničić 2013, 1129.

²⁴ Staničić & Pribičević 2014, 2, Ivković et. al. 2010, 301.

This need was, at the beginning, satisfied by conducting arondations, but without a proper legal framework. These procedures were marked by large formal mistakes which made the needed changes in cadaster and land books impossible.²⁵ This is why the aforementioned Land Consolidation Act from 1954 came into force. Land consolidations could had been instigated by interested parties or by decision of state authority. The proclaimed goal of this regulation was to create larger and more suitable land plots in order to enable more efficient and more profitable cultivation of land and to create preconditions to perform meliorations and urban development. It is noteworthy to mention that this Act resembled the 1902 Act for the most part.²⁶ It was significantly changed in 1965, but this change was rated by experts as a step back in the development of land consolidation regulation.²⁷ After the constitutional amendments in 1971, federal laws were incorporated into the republic legislation and federal laws contained norms regarding land consolidation. So, after 1971 the regulation of land consolidation was fragmented, and new regulation was necessary. In 1979 the new Land Consolidation Act entered into force. This was the last socialist law which regulated land consolidation and it was in force (but not in use) until 2015. In the period from 1956 until 1991 in total 656,782 hectares undergone land consolidation and 603,068 hectares were hidromeliorated. In average, 19,302 hectares of agricultural land underwent land consolidation yearly, and average plot increased from 0.4 hectares to 1.04 hectares, and number of plots by a holding decreased from 8.8 to 3.4.²⁸ Of course, this did not satisfy the needs of agricultural production and did not resemble the objectives achieved in most European states.²⁹

3. The 'vacuum' period of land consolidation in Croatia

Land consolidations were performed in Croatia, in accordance with the Land Consolidation Act from 1979 (1979 Act) until the Republic of Croatia became independent in 1991. Prior to that, in December 1990, the new Constitution was enacted. It is important to mention that the 1979 Act was a part of the republic, not federal legislation, which means that it remained a part of Croatian legal order even after independence.³⁰ However, it was not, under the new Constitution and different legal and territorial setup, possible to apply it. As a consequence, no land consolidation procedures have ever been initiated from 1991.³¹ The main problem was the constitutional protection of property and the 1979 Act enabled for forceful land consolidation, not in accordance to the proportionality principle and the need to compensate those who loose part of their property in full market value (not all participants of land consolidation emerge from the procedure with equal land area they entered into the procedure).

²⁵ Medić & Fanton 1992, 202.

²⁶ Staničić & Pribičević, 2014, 2.

²⁷ Medić & Fanton 1992, 202.

²⁸ Ivković, Barković & Bačani. 2010, 301.

²⁹ Ivković, Barković & Bačani 2010, 302.

³⁰ Malenica 2015, 370.

³¹ Marušić 2001, 114.

The other important issue was the fact that all bodies which were to conduct the land consolidation procedure ceased to exist with time and reforms in territorial setup.³² This is especially true for the once existent Republic Committee for land consolidation.³³ Sadly, new ones were not ever created as the 1979 Act was never amended in the Republic of Croatia. Therefore, we had legal regulation of land consolidation, but this legal regulation was not applicable which created the legal and factual impossibility to perform the land consolidation procedure. This in a situation in which the state, notwithstanding great natural potentials, faces growing problems in agricultural production. Beside the fact that this situation has a negative effect on our economy, such state of affairs in the agrarian sector is also the cause of poor standard of life in rural areas, in which a growing number of young people leaves to more prosperous urban zones. Because of that our rural areas continuously loses new strengths and knowhow.³⁴ It is a rather devastating fact that, from the independence until today, not a single land consolidation procedure has been conducted.³⁵ In a country that regulated this institute so far back as the early 19th century and which has conducted more than several hundred large land consolidation procedures. The data shows that, for example, in the period 1956-1991 around 650,000 hectares of agricultural land were unified.³⁶ However, because of long flow of time, almost no one in state administration remembers how to conduct land consolidation procedures and most citizens do not even know that this institute even exists. Moreover, although urban land consolidation was revived in early 2000s, it disappeared after the enactment of new Building Act and the new Spatial Planning Act in 2013, without any explanation why this occurred.³⁷ While it existed (2007-2013) it was defined as a procedure of merging plots of building land into one whole and its division to building and other land in accordance with the detailed spatial plan on whole land consolidation area with simultaneous resolving of ownership and other relations on that whole with the objective of dividing the building land to the owners of the whole in proportion to the area and to the local government for the needs of public areas. Its main objective is to enable unimpeded development and construction of cities and settlements.³⁸

However, this was not the only problem.

3.1. The pending land consolidation procedure issue and the decision of the Constitutional Court

The Constitutional Court of the Republic of Croatia made the decision U-III A-3222/2009³⁹ in December 2013 in which the Court ordered the Government of the Republic of Croatia to, in the shortest possible deadline, but not longer than three

³² Malenica 2015, 370.

³³ Staničić 2017, 4.

³⁴ Staničić & Pribičević 2013, 2.

³⁵ Marušić 2001, 114, Staničić & Pribičević 2013, 2., Staničić 2016, 78.

³⁶ Staničić 2016, 91.

³⁷ Staničić 2016, 78.

³⁸ Boban 2012, 284.

³⁹ Official Gazzette, no. 14/2014.

months, determine the competent body for conducting all necessary actions to conclude the administrative matter in the procedure conducted by the Municipal land consolidation commission which originated in 1989. From the above stated, it is obvious that the land consolidation procedure was initiated according to the 1979 Act in 1989, but was never completed. As was already mentioned, after the new Constitution and the independence, most land consolidation bodies ceased to exist. This is especially true regarding the second instance land consolidation body – the Republic land consolidation Commission.⁴⁰ Consequently, the commenced land consolidation procedure never reached the end of procedure. In the aftermath, negative clashes of competence between the Ministry of Justice, Ministry of Agriculture, and counties (on the regional level) arose with a problem of establishing competence. The Committee for complaints of the Parliament suggested to the Ministry of Justice, Agency for agricultural land and the Ministry of Agriculture to commence necessary activities in order to enable for the continuation of the ‘stalled’ procedure. However, the legal framework did not enable for such continuation, in the opinion of said bodies. Consequently, the procedure was stalled for more than twenty years. The Constitutional Court found, in 2013, that the key reason for unreasonable lengthy procedure was the fact *“that the Land Consolidation Act was enacted in 1979 in the Socialist Republic of Croatia, and not even today was it aligned nor with the administrative-territorial setup nor with the state administration or local administration systems. On the other hand, until today the regulation which would contain clear rules regarding the competence of bodies of state or public authority for the deciding of started, yet unfinished land consolidation procedures do not exist.”* Because of this, the Constitutional Court had no choice but to declare that *“such legal state of affairs is not aligned with the principle of the rule of law (Article 3 of the Constitution). It reiterated its view, expressed in multiple decisions, by which the state is obliged to organize its legal order in a manner that enables for the bodies of state and public authority to fulfill the demands enshrined in Article 29 para 1 of the Constitution and Article 6 para 1 of the Convention, as this is important for the correct and regular conducting of court and other legal procedures.”*

Although this decision of the Constitutional Court is to be warmly greeted, it is not without flaw. It should be greeted as it prompted legislative changes and the enactment of a new law regulating land consolidation. However, there is a special issue regarding this decision. Namely, the Court ordered the Government to decide, on its own by its decision, which public body is competent for the continuation of the ‘stalled’ land consolidation procedure. In other words, the Constitutional Court empowered the Government to designate the competent authority, without clear legal basis for such a decision. It is important to note that the Constitution prescribes that setup and affairs of state administration and the manner of their performance shall be determined by law (Article 114 para. 1). Furthermore, the General Administrative Procedure Act (GAPA)⁴¹ prescribes that law (Article 15 para. 1) must determine the competence of public bodies. Therefore, it is highly questionable whether the Constitutional Court had had the right to order the Government to determine, by its decision, the competent body for the continuation of this ‘stalled’ land consolidation procedure. Perhaps it would have been a better solution if the Constitutional Court ordered the Government

⁴⁰ Staničić 2016, 77.

⁴¹ Official Gazette, no. 47/2009.

that it is obliged to initiate, within three months, the amendments of the 1979 Act in order to solve the problem of non-existent competent bodies. Alternatively, if the prior solution would have been deemed impossible, to initiate the enactment of a special law by which the competent bodies for the continuation of initiated but unfinished land consolidation procedures would be determined.⁴² The Government, as is known to the author, opted for the enactment of a completely new law regulating land consolidation that came into force in 2015. This Act contains a provision that regulates such situations – where the procedure has been initiated according to the 1979 Act, but no first instance decision has been brought, or there has been a first instance decision, but it never has become final. In such cases, the competent body is determined according to the new Act, and the procedure is carried out according to the 1979 Act.

4. The new Land Consolidation Act from 2015

The above analyzed decision of the Constitutional Court shows that the situation with the legal regulation of land consolidation, which was existent, but not applicable as was explained above, was not sustainable any more. The Government acknowledged the fact that small and fragmented plots of agricultural land still prevail in the Republic of Croatia, what does not enable for a successful and profitable agricultural production. Most of the rural settlements and municipalities do not have the vitality in order to overturn unfavorable trends.⁴³ Furthermore, agricultural holdings in Croatia are six times smaller than the ones in most EU member states. Such fragmented holdings cause the increase of costs of tillage, sowing, protection and harvesting, causing decrease of income and no competitiveness.⁴⁴ Therefore, a new law on land consolidation was needed.⁴⁵ In 2015, the new (now in force) Land Consolidation of Agricultural Land Act (2015 Act)⁴⁶ came into force. After almost 25 years the conditions for ‘reinventing land consolidation’ were finally set as the ‘legal gap’ that existed since 1991. As was explained, there was no real legal gap, but there was a legal gap *de facto*, if not *de iure*.⁴⁷ The 2015 Act prescribes that land consolidation is performed in order to unify plots of land into bigger and regular ones, so they can be used better than before the land consolidation. It is also prescribed that land consolidation is in the interest of the Republic of Croatia. This means that it is possible to perform land consolidation by force, notwithstanding the eventual opposition by the owners.⁴⁸ Land consolidation must be performed in accordance with the yearly and perennial programs that are made by a governmental Agency for agricultural land.

⁴² Staničić & Pribičević 2013, 3.

⁴³ Ivković, Barković & Bačani 2010, 298.

⁴⁴ Ivković, Barković & Bačani 2010, 298.

⁴⁵ Ivković, Barković & Bačani 2010, 308.

⁴⁶ Official Gazette, no. 51/2015.

⁴⁷ Staničić 2017, 4.

⁴⁸ Staničić 2016, 92.

The prerequisites for initiating land consolidation are that fragmentation and irregular shape of land makes it impossible to cultivate it purposefully, that existing property relations or extreme fragmentation of land make organization of production impossible in a way to ensure purpose for the invested funds on an area on which water buildings for melioration are already built or are being built and if the construction of new traffic infrastructure and/or arrangement of larger watercourses would cause further fragmentation of existing plots and disturbances in road and canals network (Article 5 para. 1). It is important to note that 2015 Act does not differ much from the prior in force 1979 Act. Of course, there are some significant changes. It was stated in theory that it is an Act by which any land consolidation will be performed with extreme difficulty.⁴⁹ This Act centralized the initiating part of the land consolidation procedure, and decentralized the performing of the land consolidation in the field.⁵⁰ Namely, only the Agency for agricultural land is, in effect, determining on which area land consolidation will be initiated, not taking into account the real needs and interests of owners and users of land. This represents a sharp turn from the tradition which dates in 1902, by which the owners and users of land were entitled to initiate the procedure.⁵¹ One should think on the merits of initiating such a procedure in a case where the majority of owners and possessors of land are not inclined to participate.⁵² The biggest flaw in the 2015 Act, as was seen by legal theory, is the solution by which land consolidation bodies are not allowed to determine ownership as a preliminary question during the procedure. Namely, when we examine Article 11 of the 2015 Act, one can see that it is necessary, in order to perform land consolidation, to determine the real state of ownership over the land which will be entered into the land consolidation procedure. If the ownership is not disputable, there is no problem and the procedure can be performed. However, if the ownership over the land is under dispute, the 2015 Act prescribes that such disputes must be resolved in front of a competent court. Of course, the 1979 Act contained a similar provision, but with an added paragraph that stated that, in case that disputes would significantly burden the performing of land consolidation, land consolidation bodies are allowed to resolve them as a preliminary question. Sadly, the 2015 Act does not contain such a provision. When we link this fact with the provision of Article 26 of the 2015 Act which prescribes that the land consolidation bodies are not allowed to apply the institute from the General Administrative Procedure Act – to resolve a preliminary question except if the parties transfer the resolving of such a preliminary question to them. In case of already instigated disputes it is questionable if this is really a possibility. According to this, if there is a dispute regarding ownership of land which should enter into the land consolidation procedure, the procedure cannot end until such disputes are prior dealt with.⁵³ This legal regulation in reality makes land consolidation impossible. If we take into account that land consolidation is performed on an area of one or more cadastral municipalities, it is safe to presume that there will be a large number of pending

⁴⁹ Staničić 2016, 108.

⁵⁰ Malenica 2015, 371.

⁵¹ Malenica 2015, 376.

⁵² Staničić 2016, 111.

⁵³ Staničić 2016, 110.

disputes over the ownership of plots of land which are to be entered into the land consolidation procedure. If the prerequisite for ending the procedure is the all such disputes are resolved, in other words, the decision on land consolidation cannot be issued if all disputes are not resolved, is it realistic to expect this in any reasonable time? Therefore, it is necessary, in order to fulfill the purpose of the 2015 Act that the land consolidation bodies use the institute from the general administrative procedure (preliminary question).⁵⁴ When we take into account the composition of the land consolidation bodies, we can see that in every one a municipal judge should preside (municipal judges rule on ownership disputes in general) so there really is no obstacle for the land consolidation bodies to rule on ownership disputes as a preliminary question within the land consolidation procedure.

Furthermore, it must be stressed out that the 2015 Act ignores the fact that the land consolidation procedure is an administrative procedure which should be performed according to the rules set up in GAPA. This will, without doubt, cause collisions between the two Acts in which case it will not be easy to determine which one has priority.⁵⁵

These elements combined with the aforementioned loss of institutional memory (there are very few people who know how to perform land consolidation procedures since the last one originates from 1989⁵⁶) resulted with zero land consolidation procedures in the period from 2015. Only five pilot projects were instigated, but all of them stayed only in the phase of conceptual design. Because of the delay in continuing with land consolidations, a theme debate of the Committee for Agriculture if the Croatian Parliament was arranged in 2017 in order to discuss the initiative of five faculties of the University of Zagreb to instigate the amendments of the existing legal setup and to promote the need to perform land consolidations.⁵⁷ It is obvious that the 2015 Act did not fulfill its purpose and that a new Act is needed in order to finally create such legal regulation which would enable, in reality, land consolidation. Of course, not all problems arise from flaws in the 2015 Act. Namely, The Government of the Republic of Croatia adopts the annual consolidation plan at the proposal of the Agency for agricultural land, and the Croatian Parliament adopts five-year plan of land consolidation, also at the proposal of the Agency. The Government did not adopt any yearly plans nor did the Parliament adopt the first five-year plan.⁵⁸ Although the 2015 Act exists, there was obviously no political will to enforce it, notwithstanding its obvious flaws.

5. Suggestions for the legislative change in order to enable land consolidation in Croatia

As was mentioned above, the land consolidation procedure is extremely centralized regarding the decision whether to, and in what area, initiate the procedure.

⁵⁴ Staničić 2016, 110.

⁵⁵ Staničić 2016, 111, Staničić 2017, 6.

⁵⁶ Staničić 2017, 4, Ivković, Barković & Bačani 2010, 310.

⁵⁷ Staničić 2017, 4.

⁵⁸ Staničić 2017, 6.

Only Agency for agricultural land is authorized to prepare land consolidation plans and to submit them to the Government (yearly plans) and to the Parliament (five-year plans). It is necessary to authorize the owners and holders of land to give initiative to instigate the procedure by a qualified majority. In addition, the municipalities should also have a say in such matters, as they are best aware of the state of affairs on their territory. Especially as they bear the costs of the land consolidation. It is also worth rethinking the situation in which land consolidation is initiated even most of the owners and/or holders of land are not in favor of it. Of course, practice of conducting land consolidation throughout Europe shows that it is nowhere only voluntary, but public interest must be respected. Therefore, it is customary to determine the percentage of participants whose land would be taken into land consolidation who must be for its initiation.⁵⁹

It is also worth mentioning that the system of land consolidation is very complicated with many bodies that are obliged to participate in it. First, we have the Agency that prepares the procedure, formally instigates it and names the committee for land appraisal. Second, we have the county land consolidation committee that conducts the procedure in the first instance. Third, we have the State land consolidation committee that resolves appeals against first instance decisions. Fourth, we have the special committee that determines the state of land and resolves all property issues regarding the land which is entered into the procedure. Fifth, there is a special committee for land appraisal and seven the contractor of professional geodetic works. Therefore, it is obvious that the procedure should be less complicated and with less bodies. Of course, land consolidation will always be a lengthy and rather complicated administrative procedure, but certain phases of the procedure can be merged, and a lot of responsibility should be placed on the municipalities on which area land consolidation is carried out.⁶⁰ However, only such owners and/or holders who really deal in agriculture should have a say in whether land consolidation should be conducted or not. Others should be given the opportunity to sell their land to the state or other participants.⁶¹

As was said, land consolidation is an administrative procedure and, as in all administrative procedures, GAPA is applicable. 2015 Act does not contain special provisions regarding many questions what could cause problems in practice as than GAPA is applicable entirely. Therefore, it is necessary to take a stand that in land consolidation procedures all interim decisions (with the exception of the decision to initiate land consolidation) can only be disputed in the appeal against the land consolidation decision. If this would not be the case, the procedure would be too lightly and almost impossible to conclude.⁶² Perhaps it would be even better to exclude appeals in land consolidation procedures, so the only available legal remedy would be administrative dispute. As we have two-tier administrative adjudication, a solution in which the normally second instance High Administrative Court of the Republic of Croatia should adjudicate in the first instance as the court of first and last instance.

⁵⁹ Ivković, Barković & Bačani 2010, 308.

⁶⁰ Staničić 2017, 6.

⁶¹ Ivković et al. 2010, 308.

⁶² Staničić 2017, 6.

This would not be an exception, as the High Administrative Court Acts as a first instance court in several administrative areas (access to information, public procurement etc.). This because 'normal' legal protection in our administrative law includes two-tier administrative procedure and two-tier administrative dispute. In even the best circumstances, it is impossible for a decision, which is under scrutiny, to become final under a year if the party exhausts all available legal remedies. When it comes to land consolidation, it is also important to allow for extraordinary legal remedies narrowly. For example, renewal of proceedings as an extraordinary legal remedy prescribed by GAPA is always excluded in land consolidation procedures. However, one should rethink the use of other extraordinary legal remedies prescribed by GAPA and not excluded in land consolidation procedures. Namely, if the land consolidation is carried out after the decision becomes final, all changes will also be carried out in all relevant registries and new plots of land will be created, divided among the participants, new roads, canals etc. will be built. Most extraordinary legal remedies prescribed by GAPA can be used several years after the decision has become final, even parallel with an administrative dispute. The annulment of a final land consolidation decision can therefore have grave consequences for all participants and the municipality so special care should be given to this issue when we regulate land consolidation.

6. Conclusion

Land consolidation in Croatia has a long history of use. Legal regulation of this institute started in the 19th century, with its continuous use throughout the entire 20th century. Fragmentation of land was always and still is a major problem in profitable agricultural production. However, after 1991 land consolidation ceased to be used as a tool in agricultural policy and practice. Institutional memory regarding land consolidation is almost extinct as last land consolidation was instigated in 1989 and was never formally finished. The fact that we have had legal regulation *de iure*, but not in reality, effectively disabled the use of land consolidation. On the other hand, there was a step in the right direction when urban land consolidation was introduced in the legal area of building and spatial planning in 2007. However, this institute was also never successfully used in practice. Furthermore, it 'disappeared' after the 2013 legislative changes and was never reintroduced. The only conclusion that can be reached is that Croatia abandoned land consolidation altogether. Fortunately, the Constitutional Court brought its decision U-III A-3222/2009 in late 2013 which prompted the Government to reopen the debate on land consolidation as a useful tool. Soon after, the 2015 Act came into force. However, this Act did not bring sufficient change as it is really not applicable in practice.

The reasons for this are threefold. Firstly, the procedure prescribed is unnecessarily complicated and lengthy with many bodies in prescribed cooperation. Secondly, the land consolidation bodies are prohibited to resolve ownership disputes, which renders impossible to conclude the procedure in a reasonable time. Thirdly, the state does not show the political will to conduct land consolidation as it never brought the needed land consolidation plans which are the basis for the next step – initiating land consolidation procedures according to the plan of land consolidation in that year.

Therefore, land consolidation is not to be expected while the 2015 Act is in force. However, there are legislative changes in the making and it is possible that we will have a new Land Consolidation Act in 2022.⁶³

⁶³ The author is a member of the working group named by the competent ministry.

Bibliography

1. Boban T (2012) Značenje primjene komasacije u prošlosti i sadašnjosti uz vrednovanje nekoliko specifičnih lokacija u Požeško-slavonskoj županiji, *Radovi Zavoda za znanstveni i umjetnički rad u Požegi*, 1, pp. 273–291.
2. Borković I (2002) *Upravno pravo*, Narodne novine, Zagreb.
3. Ivković M, Barković Đ & Bačani S (2010) Komasaacija zemljišta i ruralni razvoj, *Geodetski list*, 4, pp. 297–312.
4. Lazić J, Marinković G, Borisov M, Trifković M & Grgić I (2020) Effects and Profitability of Land Consolidation Projects: Case Study – the Republic of Serbia, *Tehnički vjesnik* 27(4), pp. 1330–1336.
5. Marušić I (2001) Komasaacije i hidromelioracije zemljišta - preduvjet dugoročnog i stabilnog razvitka poljoprivrede, *Geodetski list*, 55, pp. 105–120.
6. Miladinović M (1997) *Uređenje zemljišne teritorije*, Beograd.
7. Medić V (1978) *Agrarne operacije*, Zagreb.
8. Medić V & Fanton I (1992) Devedeset godina komasacija u Hrvatskoj, *Zbornik Geodetskog fakulteta Sveučilišta u Zagrebu u povodu 30. obljetnice samostalnog djelovanja 1962. – 1992.*, pp. 97–106.
9. The Munich Statement on land consolidation as a tool for rural development in CEE/CIS countries (2002), <https://www.oicrf.org/documents/40950/43224/The+Munich+Statement+on+land+consolidation+as+a+tool+for+rural+development+in+CEE+CIS+countries.pdf/0f6b8848-e58b-dcb6-f81f-c89cad7991b5?t=1510170650542> [5.10.2021.]
10. Roić M (2012) *Upravljanje zemljišnim informacijama*, Zagreb.
11. Staničić F (2013) Neka javnopravna ograničenja vlasništva u Kraljevini Hrvatskoj i Slavoniji u razdoblju od 1852. do 1918. *Zbornik Pravnog fakulteta u Zagrebu*, 63(5-6), pp. 1119–1142
12. Staničić F & Pribičević I (2014) Osvrt na odluku Ustavnog suda, br. U-III-A-3222/2009 od 19. prosinca 2013. godine glede komasacije, *Informator*, 6267, pp. 1–3.
13. Staničić F (2016) Novi zakon o komasaciji poljoprivrednog zemljišta, in: Barbić J (ed.) *Pravna zaštita tla*, Hrvatska akademija znanosti i umjetnosti, Zagreb, pp. 77–112.
14. Staničić F (2017) Problemi u provođenju komasacije prema Zakonu o komasaciji poljoprivrednog zemljišta, *Informator*, 6498, pp. 4–6.
15. Trifković M, Ninkov T & Marinković G (2013) *Komasacija*, Novi Sad.