

Land Ownership; Land Regulation And Real Estate Management In The Federal Republic Of Germany

Erich WEISS¹

Abstract

The article outlines essential aspects regarding the special significance of property in land in the Federal Republic of Germany. The tasks, faced by land regulation under public law in the Federal Republic of Germany are derived from these and the system of land use planning which this is based on are described. Important land regulation instruments under public law available in the Federal Republic of Germany are presented along with aspects relating to their utilisation by private persons or third parties.

Keywords

Land regulation, ownership, Land planning, Land Consolidation Act, Urban development

Özet

Almanya Federal Cumhuriyeti'nde Toprak İyeliği; Arazi Düzenlemesi ve Taşınmaz Yönetimi

Bu makale, Federal Almanya Cumhuriyeti'ndeki toprak iyeliğinin özel önemine ilişkin temel bakış açısını açıklamaktadır. Federal Almanya Cumhuriyetinde kamusal yasalarla öngörülmiş arazi düzenleme çalışmaları ve bu yasalara dayalı olan toprak kullanım sistemi açıklanmakta, mevcut kamu hukuku kapsamındaki önemli arazi düzenleme araçları, gerçek kişiler ya da üçüncü kişiler tarafından kullanımına ilişkin konularla birlikte sunulmaktadır.

Anahtar Sözcükler

Arazi Düzenleme, İyelik, Arazi Planlaması, Arazi Toplulaştırma Yasası, Kentsel Gelişim

1. On the importance of land ownership

The legal system in the Federal Republic of Germany, a free, democratic and social state based on the rule of law, is to a significant degree characterised by the condition of general personal freedoms pursuant to Article 2 of the Basic Law (*Grundgesetz*, GG) and the guarantee of ownership pursuant to Article 14 of the Basic Law (The Basic Law of the Federal Republic of Germany incorporates those basic rights that have constitutional status):

Article 2 of the basic law [Personal Freedoms]

(1) Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.

(2) Every person shall have the right to life and physical

integrity. Freedom of the person shall be inviolable. These rights may be interfered with only pursuant to a law.

Article 2 of the Basic Law thus contains the following four basic rights: (1) Sentence 1 – the right to free development of one's personality; (2) Sentence 1 – the right to life; the right to physical integrity; (2) Sentence 2 – the right to freedom of the individual.

Article 14 of the basic law [Property, inheritance, expropriation]

(1) Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.

(2) Property entails obligations. Its use shall also serve the public good.

(3) Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In the case of dispute respecting the amount of compensation, recourse may be had to the ordinary courts.

Article 14 of the Basic Law thus systematises the following:

(1) Sentence 1 – basic rights and the legal institution; (1) Sentence 2 – regulations regarding the determination of content and limitations; (2) – social obligations; (3) – expropriation with compensation.

In this context 'land' refers to the fixed surface of the earth, possibly with negligible legal modifications. The term 'land' is significant, being the original production agent, a fixed raw material, a naturally available energy source and much more. Land, as a special production agent, is in principle non-multipliable, non-moveable, but also non-exhaustive. Using it for economic purposes results in payment of a ground rent, as for example, letting results in payment of rent.

It is characteristic of ownership that one can own an item, use it or have it at one's disposal. A geometrically delineable part of the surface of the earth is termed 'real estate' if it is owned property. Land ownership is thus the legal allocation of real estate to persons that is characterized by private use and exclusive powers of disposal. Owners of estate' if it is owned property. Land ownership is thus the legal allocation of real estate to persons that is characterized by private use and exclusive powers of disposal. Owners of such property rights can be all natural persons, but legal persons only insofar as they are capable.

¹Prof. Dr.- Ing., Dr. sc. techn. h.c., Dr. agr. h.c., Department of Land Management and Land Economics, University of Bonn, Meckenheimer Allee 172, D-53115 Bonn. E-mail: probobo@uni-bonn.de

Three hundred years BC the great statesman and progressive thinker of our so-called Western culture, Aristotle, already clearly recognised the inextricable link between freedom and ownership and stated that the development of a free democracy is connected to the livelihood of people who have access to education and ownership of property (STAHR 1855-1900).

In its history our country has repeatedly suffered waves of expropriation and confiscation. Expropriation is thus a legal impairment by sovereign act that leads to a depreciation in net worth and places unequal or unreasonably heavy burdens on those affected in comparison to others. Confiscation is the divestment of property without compensation which is not primarily aimed at procuring goods for the public good or which is not carried out in the interests of private persons supported by the public interest, but rather constitutes action directed against private persons or an act to punish a specific group of persons with respect to their property rights. One need only call to mind the following:

- In 1789, during the French Revolution, Robespierre had people beheaded and their land confiscated in order to establish a better social order.
- In 1803, during a period of secularisation, Napoleon I confiscated property belonging to palaces, cloisters and churches in order to abolish the roots of feudalism and to establish the principles of freedom and equality for all people.
- After 1933, Hitler's henchmen degraded our Jewish fellow citizens and robbed them of their property in consequence of the dominant anti-Semitic ideology. Thus the law to compensate the victims of National Socialist injustice, which is based on agreements reached between Konrad Adenauer and David Ben Gurion, is testimony to the fact that the Federal Republic of Germany is again bound by the principles of the Western European world, namely of the intellectual history of freedom and ownership of property.
- From 1945 onwards the Soviet occupying powers confiscated large quantities of land owned by the population in the five eastern provinces in Germany, at first by means of a so-called land reform, then through collectivisation of agriculture and finally by building the Berlin Wall in 1961 in order to safeguard its own power (WEISS 1992 a).

The Russian sociologist Fedor Stepun, who taught in Dresden in the 1920s, once pointed out in this connection that on account of its Byzantine Christianity, Russian had not been influenced by Aristotle's natural law and had thus not adopted the European definition of ownership. That is possibly why, he said, his compatriots lacked a concept of freedom and independence as had developed in Western Europe. Perhaps that was why in 1917 Lenin had been successful in seizing power in Russia, in the face of all Marxist-Leninist theories, and had been able to establish his social order by means of expropriation and confiscation (BOSSLE 1992). The politics

of the Soviet occupying power in Germany after the Second World War then seems a logical consequence, as does the failure of the Communist system particularly in Poland, as well as the fact that the Republic of Ireland strictly renounced the principle of expropriation in its constitution (WEISS 1992 b).

The Federal Court of Justice (*Bundesgerichtshof*), the highest civil court in the Federal Republic of Germany, commented on the matter which has only been touched upon in the above in a judgement of 10 June 1952 (*Entscheidungen des Bundesgerichtshofes in Zivilsachen*, BGHZ 6, 276.): "Individuals, who are integrated into the State, require a sphere regarding ownership of property that is strictly safeguarded by law in order to live as equals, i.e. in freedom and self-responsibility, and in order not to become mere objects of an all-powerful State power, i.e. for their freedom and dignity."

The Federal Constitutional Court (*Bundesverfassungsgericht*), the highest court in the Federal Republic of Germany, confirmed this in a judgement of 18 December 1968 (*Entscheidungen des Bundesverfassungsgerichts*, BVerfGE 24, 367): "Ownership is an elementary basic right which is closely linked to everyone's guaranteed personal freedom. Within the overall framework of basic rights, it is the task of ownership to guarantee liberty in matters relating to property rights and thus to allow each person to be responsible for shaping their own life. The guarantee of ownership as a legal institution serves to secure this basic right." These lines of thought make clear the fundamental importance of ownership and in particular land ownership, since this particular good cannot be multiplied indefinitely. The question thus arises in this connection of to what extent the guarantee of ownership can be privatised, since it affects basic human rights (HAUG 1999). I believe that this also sheds light on the difficulties that are becoming evident today regarding the convergence of such fundamentally different legal systems as those in Eastern and Western Europe.

This also clearly shows why former potentates and totalitarian rulers regularly tampered with the structures of land ownership by means of so-called reforms: they wanted to, they had to restrict human rights to secure their own power structure.

May those with political responsibility in this matter not allow themselves to be orientated to these value structures alone.

2. On the definition of land regulation

Land regulation in the Federal Republic of Germany has a static and a dynamic component. The static component of land regulation comprises the (legal) ownership of land, including use and taxation of the land. The dynamic component of land regulation comprises all measures which serve to harmonise as far as possible the status of ownership, possession and use of land (so-called subjective legal relationships) with claims to use of this land documented in land use planning (so-called objective planning targets) and to eliminate disruptive

influences in use conforming to planning, that is to rule out conflicts between private and public interests. In this, land use planning combines those elements of regional planning, regional planning of a federal state (*Land*), specialist planning and urban land use planning which apply directly to land use and not to the edifices built thereupon nor to their development.

With regard to land regulation measures one may distinguish between rural and urban land regulations, depending on whether they primarily are the result of agricultural/forestry or urban planning motives.

One may also, with regard to the legal bases of land regulation measures, distinguish between those which are implemented pursuant to private law or public law, or rather on a voluntary or official basis.

In the Federal Republic of Germany, pursuant to the Civil Code (*Bürgerliches Gesetzbuch*, BGB), land regulation measures under private law distinguish between sale, exchange, gifts and partition. No further details will be provided on this in the following.

Land regulation measures in the Federal Republic of Germany under public law (in the narrow sense) can be further subdivided into reallocation and adjustment of plot boundaries pursuant to the Federal Building Code (*Baugesetzbuch*, BauGB) (Federal Building Code of 27 August 1997. Federal Law Gazette I, p. 2141), as well as land consolidation, standard (normal) land consolidation, accelerated land consolidation and voluntary exchange of land pursuant to the Land Consolidation Act (*Flurbereinigungsgesetz*, FlurbG) (Land Consolidation Act of 16 March 1976. Federal Law Gazette I, p. 546 (last revised by law on 23 August 1994 by Federal Law Gazette I, p. 2187)), insofar as one does not take into consideration in this context the possibilities of expropriation of urban and specialist agricultural land as well as some land regulations that are partially subject to federal law and specific legal regulations of the *Laender*. However, it is only legally legitimate to apply the above-mentioned land regulation measures under private law if the goals of the land use planning cannot be achieved by means of suitable measures (principle of subsidiarity).

In economic terms the implementation of these laws on land regulation is a procedure for the exchange of areas of land that is equipped with coercive measures under public law rather than a "procedure for the exchange of real property". Depending on their location, characteristics and utility, legally enforced land regulation plans regularly lead to the formation of new plots to replace the old ones. Only in this sense would this also constitute an exchange. In legal terms the (abstract) unchanged right of ownership thus refers to a new, altered object (principle of substitution).

Furthermore, land regulation measures are also characterised by the following principles (SEELE 1982):

- The legal relationships of the old real property units are adapted to meet the expedient regulations for improvement of the land use as desired by new real property units (principle of conformity).

- The areas of land for common or public facilities are generally provided by all real estate owners pro rata (principle of solidarity).
- The property in land is never reduced in terms of substance and remains extant for the respective owner (principle of conservation).
- Land regulation itself is carried out in the interests of private real property owners (principle of private interests).

Regular expropriation that is not object related and concomitant urban land consolidation for companies pursuant to the Federal Building Code and specialist agricultural land consolidation for companies pursuant to the Land Consolidation Act basically differ from these land regulation measures in the narrow sense due to their being based on the principle of third-party interests (Judgement by the Federal Constitutional Court of 24 March 1987 – 1 BvR-1046/85; NJW 1987, p. 1251).

Land regulation pursuant to public law (in the narrow sense) is the result of regulations governing contents and limits pursuant to Article 14(1) Sentence 2 of the Basic Law. Expropriation as a means of land regulation (in the broader sense) is based on Article 14(3) of the Basic Law, which is strictly differentiated from the former. Urban reallocation pursuant to the Federal Building Code always remains a measure that determines content even when it does not lead to significant loss of value, or even leads to certain owners of small properties receiving no land at all. Regulations on compensation in such cases thus do not constitute regulations to compensate expropriation. Regulations pursuant to Sections 93 ff. of the Federal Building Code must thus (only) be correspondingly applied, as Section 59(2) Sentence 2 of the Federal Building Code rightly states (SCHMIDT and ASSMANN 1997). This matter should not arise with respect to rural land regulation measures (in the narrow sense) pursuant to the Land Consolidation Act. That means that regularly transmuting land regulation pursuant to public law (in the narrow sense) into expropriation as a measure for land regulation (in the wider sense) would be unthinkable. This land regulation measure then, possibly, becomes legally invalid.

Of particular interest, naturally, in the case of public law and also civil possibilities of land regulation, is also the form of the respective right of initiative on the part of the state. The following lines of thought have developed in Switzerland to solve conflicts regarding land use in urban and rural areas:

If urban planning replotting is dependent on a required majority or assent, this regulation can lead to very contradictory circumstances in certain building zones in which often very small areas are to be replotted. If the majority of owners has landed property where it is possible to build over the boundary line, then it will not be possible to replot the area to the detriment of the others. This not only contradicts the principle that the land should be suitably utilized, but also infringes upon the property rights in land of the minority in

that they may be compelled to sell their landed property as it may not be possible to build over the boundary line without replotting. The principle of equality, which results not only to the requirement that the content be fairly and properly realized, but also that the law be correctly implemented, thus demands that the relevant authority, i.e., the state, may have to order land regulation proceedings to be initiated *ex officio*.

If amalgamation of agricultural land or re-allocation of land is dependent on a required majority or assent, this can also lead to very contradictory circumstances. If the majority of owners has landed property which can be economically cultivated, amalgamation of agricultural land or re-allocation of land may be to the disadvantage of farmers who are dependent on an improvement in the situation. This also not only contravenes the principle that land should be suitably utilized, but also infringes upon the property rights in land of the minority, in that they may be compelled to sell their landed property, as it may not be profitable to cultivate this land without the amalgamation or re-allocation of the land. The principle of equality, which results not only in the requirement that the content be fairly and properly realized, but also that the law be correctly implemented, thus demands that the relevant authority, i.e., the state, may have to order land regulation proceedings to be initiated *ex officio*.

Land regulation is thus a tool leading to the lasting securing of land ownership, the component of personal liberty pertaining to property rights, an individual human right. Because of the special nature of land and the exceptional socio-political significance of land ownership, this tool should not, on the one hand, be put at the mercy of the free interaction of forces in a market economy; the state is here required to fulfil its original function of providing for general basic needs, naturally controlled by democratic principles. However, if, on the other hand, the functionality of the various land regulation tools is restricted by state measures, the citizens of this state's personal liberty pertaining to property rights will also have become restricted; we must continue to show great sensitivity in paying the greatest attention to this matter.

3. On the system of land use planning

The fundamental principles of land use planning in the Federal Republic of Germany are set out in the Federal Regional Planning Act (*Raumordnungsgesetz*, ROG) (Federal Regional Planning Act of 18 August 1997. Federal Law gazette I, p. 2081), in the respective *Land* planning acts (*Landesplanungsgesetze*, LaPlaG) (Land Planning Act of 29 June 1994. GB. NW. p. 474.), as well as in the Federal Building Code. They are supplemented by various federal and *Land* specialist planning laws. This planning system is divided into:

- The upper tier of regional planning at the federal level (by the Federal Administration),
- The middle tier of regional planning and development at the *Land* level,

- The lower tier of urban land use planning at the municipal level.

Specialist planning by special authorities is carried out between these planning levels. The lower-ranking body in this planning system participates in decision-making of the next highest ranking body (the so-called principle of countervailing influence).

The Federal Regional Planning Act, by its very nature, only comprises tasks formulated in the abstract, overall concepts and generally accepted principles. According to these the entire territory of the Federal Republic of Germany and the regions of which it is made up shall be developed, organised and protected by integrative general regional plans and the harmonising of regionally significant plans and measures. The differing requirements to be met by the area shall be harmonised and conflicts arising at the respective planning level shall be resolved and provision shall be made for individual functions of an area and individual land uses (Section 1 (1) of the Federal Regional Planning Act).

The overall concept of the task laid down in the above is that of sustainable regional development which will bring the social and economic demands made on an area into line with its ecological functions and result in a stable order that will be well-balanced on a large scale. In so doing:

- The right to self-fulfilment within the community and with responsibility to future generations shall be ensured,
- The natural resources shall be protected and developed,
- The locational prerequisites for economic development shall be created,
- Land use possibilities shall be kept open in the long term,
- The characteristic diversity of individual regions shall be enhanced,
- Similar standards of living shall be established in all regions,
- The regional and structural imbalances between the territories which had been separated prior to German unification shall be eliminated, and
- The regional preconditions for achieving cohesion within the European Community and on a wider European scale shall be established.

The development, organisation and protection of individual regions shall match the conditions and requirements of the territory as a whole; the development, organisation and protection of a territory as a whole shall allow for the conditions and requirements of its individual regions (Section 1 (2) and (3) of the Federal Regional Planning Act).

In terms of content and the areas they apply to, these federal regulations regarding regional planning are given more concrete form in the regional planning and *Land* development of each respective *Land*. Their development programmes and

development plans constitute guidelines for subordinate planning levels. Regional planning and *Land* development cover both the natural area and the subject matter. They each refer to the entire federal or *Land* territory and comprise all subject matters that are relevant to planning. This general and supralocal planning is given further concrete, specific and localised form by municipal urban land use planning and by specialist planning (which differs very specifically according to the sector).

The realisation of binding urban land use planning and specialist planning (with respect to private use) is always a matter for the land owner. Only in certain exceptional cases may the planned private use of the land be forced by sovereign act, e.g. by means of urban land use planning and utilisation offers. Furthermore, the respective planners, such as the Federal Administration (*Bund*), the *Laender* and municipalities, are always required to allow the binding, planned utilisation of land under appropriate conditions.

Thus, municipalities are obligated to open up new areas for development, i.e. to create all the prerequisites regarding traffic and technical supply lines required for utilising buildings and other planned real estate facilities. In order to enable building to take place according to plan, the real property in question must be adapted regarding location, shape and size, i.e. urban land regulation measures implemented such as reallocation (pursuant to Sections 45 ff. of the Federal Building Code) and adjustment of plot boundaries (pursuant to Sections 80 ff. of the Federal Building Code) or by means of the law on urban expropriation as a development measure (pursuant to Sections 165 ff. of the Federal Building Code) and a special land consolidation procedure for allocating plots for companies (*Unternehmensflurbereinigung*; pursuant to Sections 190 ff. of the Federal Building Code) by means of the law on urban expropriation. And insofar as these land regulation measures cannot be implemented by the real estate owner himself, they become the obligation of the municipality pursuant to the principle of subsidiarity.

It must be noted in this context that for certain urban planning land regulation problems regarding utilisation by third parties, i.e. subject to the law on expropriation, no adequate land regulation instrument is available, since reallocation and adjustment of plot boundaries is always in principle geared to utilisation in the interests of private users and the urban development measure can only be applied in town and countryside in the event that uniform preparation and rapid implementation is in the public interest. Special urban land consolidation procedures for companies have in the past always given priority to utilisation of agricultural and/or forestry land, otherwise this constitutes use by a third party and the tried and tested land regulation instrument used in general specialist planning is not valid as yet here (cf. the Winterberg problem, BGHZ 113, 139 ff.) (WEISS 1999). If its area of application were to be extended, the mere bogus private use of many a reallocation procedure would become obsolete.

The following principles of regional planning with respect to sustained regional development (Section 2 (1) and (2) of the Federal Regional Planning Act) must be applied in the sense of the aforementioned overall concept regarding regional planning (Section 1 (2) and (3) of the Federal Regional Planning Act):

- A well-balanced system of settlements and open spaces shall be developed in the entire territory of the Federal Republic of Germany;
- The decentralised settlement structure of the territory as a whole with its large number of well-functioning centres and city regions shall be maintained;
- The large-scale and integrative system of open spaces shall be maintained and improved;
- The infrastructure shall be harmonised with the system of settlements and open spaces;
- Agglomerations shall be established as residential, production and service centres;
- Rural areas shall be developed as independent residential and economic areas;
- Efforts shall be made to establish a well-balanced economic structure which will be competitive in the long term and to offer a variety of adequate jobs and training opportunities;
- Certain areas shall also be reserved and protected for the agricultural sector to develop as an efficient and competitive sector of the economy based on a family farm structure, co-operating with an efficient and sustainable forestry sector in the protection of natural resources and in the preservation and shaping of the natural surroundings and countryside;
- The housing requirements of the population shall be taken into account. Care shall be taken to provide for the independent development of the communes (municipalities) in the housing sector;
- Easy access between all regions by passenger and goods transport shall be ensured;
- Historical and cultural relationships and regional affiliations shall be maintained; the characteristic features and the cultural and natural monuments of evolved cultural landscapes shall be preserved;
- Provision shall be made for areas and locations suitable for leisure in natural surroundings and in the countryside and for recreational and sports activities;
- Provision shall be made for the reservation of land required for civil and military defence purposes.

In order to be able to realise such sustainable land use development particularly in rural areas and on the fringes of urban agglomerations in the Federal Republic of Germany, the respective legislative organs, planning administrations

and court decisions have shaped the Land Consolidation Act and have created a diverse specialist planning instrument in the course of a development process that has stretched over several decades. Land consolidation today generally constitutes a reorganisation of rural property in land by means of measures for improving production and working conditions in the agricultural and forestry sectors, as well as for promoting the general culture of the land and land development (Section 1 of the Land Consolidation Act).

Improvements to production and working conditions in the agricultural and forestry sectors in the Federal Republic of Germany must be oriented to the economic efficiency and competitiveness of agricultural and forestry businesses, i.e. to their productivity. Promoting the general culture of the land thus comprises all those measures for improving agricultural structures and the preserving the countryside, taking the ecological function of rural regions into consideration. The promotion of land development comprises all those measures regarding planning, preparation and realisation that are suited to maintaining and improving the economic, residential and recreational functions of rural regions and in periurban zones, in order thereby to ensure the permanent improvement of living conditions outside of urban areas.

When implementing other specialist planning procedures relating to property in land in the Federal Republic of Germany, such as plan approvals pursuant to the law concerning

- Federal highways,
- Railways,
- Air traffic,
- Federal waterways,
- Public transport of persons,
- Water (water management),
- Waste management,
- The energy-supply industry,
- Telecommunications,
- Mountains, etc.,

reference is regularly made to expropriation being a public land regulation measure (in the broader sense). According to the generally applicable administrative principle of proportionality of state action, the instrument of specialist/rural land consolidation for companies (pursuant to Sections 87 ff. of the Land Consolidation Act) finds application. Once any arising conflicts have been settled in the respective planning and planning approval procedure, this guarantees the property in land will be treated with due consideration (WEISS 1991).

4. New land regulation instruments under public law

4.1. On reallocation and adjustment of plot boundaries pursuant to general urban planning legislation in the Federal Building Code

It is permissible for both developed and undeveloped land to

be reorganised by a municipality through a process of reallocation within the area covered by a binding land use plan and in built-up areas for the purpose of reorganising and/or opening up specific new areas for development in such a manner as to create plots suitable in terms of location, shape and size for built development or for other urban uses. Reallocation is permissible in built-up areas if the idiosyncrasies of the immediate environs fulfil sufficient preconditions to allow the plots to be reorganised (Section 45 (1) of the Federal Building Code).

A qualified land use plan is defined as a land use plan in isolation or jointly with other building regulations that at least determines the type and extent of use for building purposes, the real property on which built development may take place and spaces dedicated to public thoroughfares. A project is permissible if it does not contravene any of these regulations and development of the site is guaranteed. A land use plan which does not meet these minimum requirements is defined as a standard (normal) land use plan. In this case, the permissibility of development projects is determined by the regulations regarding the development of built-up areas or undesignated outlying areas (Section 30 (1) and (3) of the Federal Building Code).

Attention must be drawn to supplementary local municipal statutes on account of the increasingly important role they are playing in this context. Thus, they can

- Designate the boundaries of built-up areas - statute pertaining to boundaries (pursuant to Section 34 (4) No. 1 of the Federal Building Code) -
- Designate built-up spaces in undesignated outlying areas as built-up areas in the event that the areas of land have already been represented as general land use areas in the preparatory land use plan statute pertaining to development (pursuant to Section 34 (4) No. 2 of the Federal Building Code) – and
- Incorporate individual plots located in the undesignated outlying areas in the event that the plots to be incorporated have been significantly affected by the built development in the adjoining areas - statute pertaining to completion (Section 34 (4) No. 3 of the Federal Building Code).

In order to facilitate orderly building on a particular site, including development and/or to eliminate circumstances that contravene building law, a municipality may

- Exchange adjacent plots or parts of adjacent plots where such action serves an overriding public interest, or
- Unilaterally allocate adjacent plots, in particular scattered or fragmented plots, or parts of adjacent plots where such action is in the public interest,

by adjusting plot boundaries within the area covered by a land use plan or within built-up areas.

The plots and parts of plots may not be capable of independent development and the loss in value incurred by

the owner as a result of the adjustment to plot boundaries may only be minimal (Section 80 (1) of the Federal Building Code).

4.2. On land consolidation, standard (normal) land consolidation, accelerated land consolidation and on voluntary exchange of land pursuant to the law concerning specialist planning in the Land Consolidation Act

The administration responsible for land consolidation in a particular *Land* may initiate a land regulation procedure pursuant to the Land Consolidation Act for the purposes of improving the production and working conditions in the agricultural and forestry sectors and for promoting the general culture of the land and rural development (objective of land consolidation, Section 1 of the Land Consolidation Act).

The general tasks of land consolidation, in the narrow sense, are thus defined as follows (Section 37 (1) of the Land Consolidation Act):

- The respective area of land to be consolidated shall be redeveloped, bearing the existing structure of the countryside in mind, as corresponds to the interests of those involved (which are to be weighed up against one another) as well as the interests of the general culture of the land and land development and as required for the good of the general public.
- The field boundary is to be predetermined and scattered or uneconomic real property shall be amalgamated according to modern commercial aspects and shall be redeveloped as is deemed fit in terms of location, shape and size of the land.
- Pathways, roads and waters and other common facilities shall be established.
- Measures to improve and protect the land and to develop the landscape shall be implemented.
- The legal situation shall be clarified.
- All other measures for improving the basis of agricultural and forestry businesses, for reducing the amount of work to be done and for making cultivation easier shall be implemented.
- Measures for village renewal may be implemented; this does not preclude also incorporating parts of the village or town in the land consolidation process by means of land use plans and similar plans.

These general tasks are supplemented by the following specific tasks of land consolidation in the narrow sense (Sections 86, 91 and 103a of the Land Consolidation Act):

- A standard (normal) land consolidation procedure shall be initiated in order to:
 1. Facilitate or implement measures for land development, in particular measures for improving agricultural structures,

housing development, village renewal, urban planning measures, measures for environmental protection, for developing waters as close to natural conditions as possible, for the purposes of nature conservation and preservation of the countryside or for redeveloping the village/town and the landscape;

2. Eliminate the disadvantages which arise or have arisen for the general culture of the land by producing, changing or eliminating infrastructure facilities or by means of similar measures;

3. Resolve conflicts regarding land use; or

4. Carry out a necessary reform of land ownership in hamlets, smaller municipalities, areas with solitary farms as well as municipalities that have already undergone land consolidation.

- An accelerated land consolidation procedure may be initiated in the areas in which initially facilities for a new network of pathways and larger-scale measures regarding water management are not necessary, in order to:
 1. By means of general land consolidation, bring about the desired improvement in production and working conditions in the agricultural and forestry sectors as rapidly as possible; or
 2. Facilitate necessary measures for the purposes of nature conservation and preservation of the countryside.
- Voluntary exchange of land may be implemented
 1. In order to reform rural real property to improve the agricultural structure in an accelerated and simplified procedure; or
 2. For reasons of nature conservation and preservation of the countryside.

In realising this comprehensive catalogue of tasks relating to land consolidation in the narrow sense, the administrative authorities responsible for land consolidation must also take account of tasks relating to land consolidation in the wider sense (Section 37 (2) of the Land Consolidation Act). These include doing justice to the public interests and the requirements of regional planning, regional planning of a *Land* and orderly urban development, environmental protection, nature conservation and preservation of the countryside, the protection of ancient monuments, recreation, water management (including water supply and sewage disposal), fishing, hunting, energy supply, public transportation, rural housing development, small housing estates, allotment holdings and the organisation of the village/town and the landscape, as well as possible use for mining purposes and for maintaining and safeguarding mineral deposits.

According to a judgement by the Münster Higher Administrative Court (Muenster Higher Administrative Court, judgement of 21 st November 1968. *Recht der Landwirtschaft*

(RdL) 1969, p. 272 ff.), "doing justice to" here refers to taking into consideration the above-mentioned public interests, depending on the individual case, and realising the respective plans either in their entirety or partially where it is possible to compensate all those involved in the land consolidation procedure as is fair pursuant to the Land Consolidation Act, and where the land consolidation procedure is thereby not or only minimally delayed.

Currently the general trend regarding the tasks of land consolidation means they are moving away from large-scale and complex structures towards smaller, clearer individual tasks. The realisation of extensive plans regarding nature conservation and preservation of the countryside in the form of separate specialist plans is thoroughly laudable. However, this practice is not without its problems in this context, since such plans generally also tend to constitute use by third parties. Nevertheless, the special land regulation procedures in the Land Consolidation Act enable these plans to be realised; these are thereby always subject to the principle of use by private parties. Naturally, the same applies to the resolution of other types of conflicts regarding land use caused by use by third parties (WEISS 1998).

4.3. On specialist planning/rural and urban land consolidation for companies pursuant to the Land Consolidation Act and the Federal Building Code

The administration responsible for land consolidation in a particular *Land* may, upon filing of an application by the respective authority responsible for expropriation, initiate specialist planning/rural land consolidation for a company, if expropriation for specialist planning purposes is permissible for special reasons, by means of which rural plots are to be exchanged on a large scale and the land those affected will lose is spread across a larger circle of owners and/or disadvantages that arise on account of the company are to be avoided for the general culture of the land (Section 87 (1) Sentence 1 of the Land Consolidation Act).

An urban land consolidation procedure for a company may be initiated following submission of an application by a municipality with the approval of a higher administrative authority if claims are being made to agricultural and/or forestry property in land (BGHZ 113, 139 ff.) (by means of expropriation), so that the land loss suffered by the aggrieved parties is distributed across a larger group of land owners and/or adverse effects are prevented for the land as a whole. The municipality would in this case be the executing agency (pursuant to Section 190 (1) of the Federal Building Code).

The following important aspects should be highlighted in this context:

- The areas of land the company requires, insofar as they have not previously been acquired without assistance, shall

be purchased or acquired by the participants according to the relationship between the value of their old real property and the value of all the real property affected in the particular instance. The executing agency shall pay pecuniary compensation for the areas of land purchased or acquired in this context.

- The executing agency shall eliminate disadvantages that those affected suffer on account of the company and, insofar as this is not possible or does not seem sensible in the opinion of the authority responsible for land consolidation, must pay pecuniary compensation.

- The right of the company applies to any pecuniary compensation paid.

- The executing agency shall bear all the costs of the land consolidation procedure for a company.

4.4 .Urban development measures pursuant to special urban planning legislation in the Federal Building Code

The purpose of urban development measures is to subject local districts or other parts of the municipal territory to development for the first time in a manner which is in keeping with their particular significance for urban development within the municipality, or which is in accordance with the desired development of the *Land* district or the region, or to make such areas available for new developments within the framework of urban reorganisation (Section 165 (2) of the Federal Building Code).

A municipality may by resolution formally designate an area in which urban development measures are to be implemented as an urban development zone, where:

1. The measure conforms with the aforementioned aims and purposes;

2. Implementation of the measure is required in the public interest, in particular in order to meet an increased demand for housing and places of employment, for the construction of public facilities or consequential developments, or in order to return derelict land to productive use;

3. The aims and purposes being pursued by means of an urban development measure are not capable of being achieved through the use of urban development contracts or where owners of the plots affected by the measure are not prepared to sell their plots to the municipality or the developer appointed by the municipality at a suitable price;

4. Speedy implementation of the measure can be guaranteed within a foreseeable period.

Public and private interests shall be duly weighed up against one another (Section 165 (3) of the Federal Building Code).

The requirement that the good of the general public be taken into consideration is worth particular mention here, i.e. the basis for the law concerning expropriation pursuant to Article 14 (3) of the Basic Law, which was not always made particularly clear in practice initially. Furthermore, it would be worth testing the application of this instrument to land regulation in urban planning development in combination with urban land consolidation procedures for companies, as was intended in the original law on urban planning development of 1971 (WEISS 1999).

5. On the definition of Real Estate Management

The main tasks of real estate management include the previously defined planning of land use in the sense of providing a general basis for permanent use of landed property, as well as real estate valuation. The multifarious and multifaceted aspects of modern planning of land use resulting from nature and ecology, from administration and the economy are naturally today monitored using comfortable information systems.

Planning of land use should as a rule comprise all private and public interests in land use in the respective planning area. Of course, this approach leads to certain conflicts in land use which must be settled in such a way that they remain transparent and understandable for all concerned. To achieve this, all the private and public interests pertaining to the conflict should be included in the process of finding a solution and should then be weighed up against each other fairly and properly, i.e., in particular with the required respect for the property rights of private persons as well as for the good of the general public, before reaching a final decision. The resulting planning measures will then possibly only constitute guidelines on measures for dynamic land regulation in urban and/or rural areas for appropriate reorganization of landed property structures according to location, form and size and characterized by private and/or third party use.

The plausible valuation of the applicable real estates is generally seen as an important prerequisite for economic processes on the land property market, i.e., especially for real estate loans as well as for the willingness to regulate land according to civil law and for the legality of land regulation according to public law, both by private and third parties. Valuation of real estate usually takes the location, the condition and the utility of the object into consideration. This utility, seen as the product of landed property, is thus strictly determined by statements on planning of land use.

6. Conclusion

The multilayered and multifarious system of land use planning available in the Federal Republic of Germany on a regular basis guarantees that sufficient options are at hand for organising all areas of our body politic – no specific problems relating to urban agglomerations or periurban zones have

arisen in the past. Given the interconnections and conflicts of interest that exist by force of nature, diverse mechanisms are available for settling conflicts. The quality of planning is thus naturally dependent on the careful work of those responsible for resolving disputes. Going about this task prudently to a large extent prevents bad planning and bad investments, and thus, at the end of the day, macroeconomic loss.

Similar multidimensional and multifarious tools are also available with respect to settling conflicts arising between land owners regarding ownership. Nevertheless, when all is said and done only a very specific land regulation procedure is legally permissible. One does not have free choice in terms of instruments, since this would leave us open to official whim and would also contravene the principle of the rule of law as set out in the Basic Law of the Federal Republic of Germany. This should be borne in mind on occasion by politicians when drawing up directives regarding the application of certain laws.

Land regulation measures likewise always exert an influence on the correct valuation of property in land, otherwise sufficient mobility could not be guaranteed. And with that reference to a further complex issue of fundamental relevance to this topic I would like to bring this survey to a close.

This sufficiently describes the particular responsibility of those working in this sensitive area of rights of personal liberty.

And thus, also, the trinity of land ownership, land regulation and real estate management according to this line of thought is complete.

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