



14 years ESJ
Special edition

Peer-reviewed

Comparative Legal Context of Land Consolidation in Georgia

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[Doi:10.19044/esj.2024.v20n37p352](https://doi.org/10.19044/esj.2024.v20n37p352)

Submitted: 01 December 2023

Accepted: 31 January 2024

Published: 21 February 2024

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Cite As:

Merebashvili T. (2024). *Comparative Legal Context of Land Consolidation in Georgia*. European Scientific Journal, ESJ. 20 (37), 352.

<https://doi.org/10.19044/esj.2024.v20n37p352>

Abstract

From the time of independence to the present day, land legislation in Georgia has undergone several changes, while the legislation has been developing at its own pace. However, Georgia's aspiration to join the European Union requires other changes. The present article studies one of the problems - land consolidation, which was analyzed as a result of comparative legal and historical-toponymic research on the example of similar countries, such as Hungary, Slovakia, and other European states, which is due to the small size of the above-mentioned countries, the short history of joining the European Union and simultaneous reforms of land consolidation in an angle that continues even now. The topic is relevant and result-oriented, as land consolidation is closely related to public and private legal interests. This article covers Georgian and foreign legislative acts, doctrinal material, and other historical sources. Land consolidation is one of the main components of land law in a broad sense, and more practically, it is the main key to the functioning of the agricultural sector, the country's development, and its accession to the European Union. Thus, this article examines Georgia's ability to create the right policy and legislative framework to regulate these relationships.

Keywords: Land Fragmentation; Agricultural Land, Land Reprivatization

Introduction

Land consolidation includes in itself the meaning of distributing land pieces in order that land owners can get a much bigger patch of land in one or

several places in return for their former small or scattered land pieces. The term “land consolidation” originates from the Latin word “commassatio” (press no. 658)

Land consolidation has always been something more than only the change of land configuration. This process is also tightly related to other objectives which as a whole have increased agricultural production. In addition, land consolidation has always been and still is tightly linked to the urban planning of a country since an effective allocation of the agricultural land in the village is usually followed by the planning of non-agricultural land areas, such as roads and other infrastructural units.

Traditionally, land consolidation was always considered as the primary concept for the development of land and the best approach to land management. Earlier notions about the development of the village were almost the same as nowadays and was associated with the strengthening of agriculture to the extent that agriculture had a dominant role, especially in the past. Hence, this process was and still is good for farmers which enables them to possess larger land plots and of better geographical location and configuration as their estate (Remba, C.,2019).

By increasing land use and eliminating the issues associated with fragmented land ownership, land consolidation is a successful step forward to developing agriculture. Georgia will benefit significantly from adopting the policies that will ensure a successful implementation of land consolidation by taking its enormous agricultural potential into account. To facilitate agricultural growth and sustainability, this research will deal with legal issues of Georgian agriculture and offer some creative strategies and recommendations for land consolidation.

The goal of this article is to discuss the similarities and differences between Georgia and other European countries in terms of land consolidation. On the basis of various scientific literature, land consolidation goals in Germany, Hungary, Slovakia, the Netherlands, Finland, and Sweden were compared to the ones in Georgia, and as a result of historical- toponymic and comparative legal research the relevance and long-term perspective of this process in the context of Georgia’s accession to the European Union was analyzed. The paper will highlight that land consolidation is a prerequisite for the development of agriculture and the provision of life in equal conditions for the population living in urban and rural areas. The recommendations proposed by the research paper as a result of the research will ease the practical implementation of the already existing legal regulatory norms and the development of new, more specific regulatory norms.

The comparative legal context of the nature of land

Property rights have a complex content to the extent that it comprises the integrity of various rights or to say more precisely, as some English scholars have defined, it is a relationship expressing dependence on the thing in possession between the owner and other persons (A.M. Honore, 1961), therefore, it expresses the connection between two heterogeneous worlds, which is known to have existed before the fundamentals to the law (Remba, C., 2019), and which acquires rights to property objects more interesting. Property rights are one of the oldest rights in the history of mankind which are also referred to as “natural” rights by some scholars (Dzamukashvili, D. 2017). The discussion of the notion of property and its concept has a long history. As one of the Doctor of Juridical Science Davit Dzamukashvili working in Georgia

Would state – “the notion of property originated when Eva and Adam covered themselves with the fig leaves”. During the English Revolution, property right was considered a fundamental right and was established in the same way in the legislation of that time as well. In view of the fact that the property right, as it was already stated, is an absolute right pursuant to private law, for some reason science and legislation do not outline the depths that concern the state interests, consequently, the protection of public interests, environmental values and natural resources is not regulated. In Slovakia, decisive measures to protect land were taken in the 19th century which was related to the development of certain sciences and the creation of unprecedented means for the soil harvest. Boosting the profit from cultivating land, which required taking regulation actions, put the need for legislation regulations on the agenda in this regard. In Slovakia and in leading developed countries the evolution of the correlation between people and land began at that time which contributed to the creation of a protected and harmonious environment at the legislative level. The European Commission considers that the efficient management of land in Europe is entirely dependent on legal regulation; this is worth paying attention to since land is a resource that will degrade and lose its properties faster than it can retrieve them, therefore, it needs effective management. Thus, a more effective agricultural land management policy should be determined. It is noteworthy that by the decision of the European Parliament, an environmental action program has been established, which indicates human impact on land and its scope, which causes significant pressure on nature (press no. 658). Land in Georgia falls into categories (Law of Georgia, Agr.Land. Art.3) and agricultural land has a special significance which is due to the international approach and natural conditions of Georgia since the economy and main development vector of Georgia are addressed towards agriculture (Mepa Gov. web source).

In Georgia, it is necessary to regulate such a significant issue in more depth at the level of the constitution, because according to the latest European practice, in the example of Slovakia, it is clear that the declared provision of the constitution states that the land of the Slovak Republic is the heritage of the state, citizens and future generations, and land is a non-renewable natural resource in the earth's ecosystem, in Slovakia. When adopting the aforementioned constitutional act, each member of the parliament relied on the legal acts adopted so far and defined land as a non-renewable natural resource (Constitution of The Slovak Republic).

In Georgia it is imperative to regulate such an important issue more deeply at the level of the constitution, as pursuant to the latest European practice, in the example of Slovakia, it is clear that the declared provision of the constitution states that the land of the Slovak Republic is the heritage of the state, citizens and future generations, and land is a non-renewable natural resource in the earth's ecosystem; in Slovakia when adopting the aforementioned constitutional act, each member of the parliament relied on the legal acts adopted so far and defined land as a non-renewable natural resource (Constitution of The Slovak Republic). Management of agricultural land resources in Georgia "nobody knows" whether it is effectively regulated at the constitutional level, however, it undoubtedly needs more depth in order to be a correct policy determinant as a basis for further acts. Apart from that, the foundation of the agricultural development of Georgia is in the promotion of farms; the effective operation of the farm, on the other hand, is a significant means of the development of the agricultural sector. Since 2016, a significant legal step has been taken, which was supposed to facilitate bringing agriculture.

Land Consolidation in EU and Georgia (comparative legal research) **Objectives of land consolidation**

Land consolidation seemingly unites public and private interests and makes something like a synthesis since farming serves a private owner's economic interests as well as state business. Both the world's doctrinal and practical materials give an exact list of the objectives of the land consolidation. The paper brings forward the most general list in the form of a table in order to clearly show the goals that the above notion of land law denotes.

- To contribute to solving the problem of land fragmentation and to having small land area;
- To improve and systemize farmers' farming structure;
- To unite investments for new infrastructural projects and/or for the rehabilitation of the damaged village infrastructure;
- Developing competitive agriculture;
- To protect natural resources and the environment in the farming area;

- To facilitate the implementation of rural developmental program projects;
- To create new workplaces in the rural areas;
- To ensure global climate care.

The objectives of the land consolidation varies from country to country taking into consideration both historical tendencies and current situation which is stipulated by different cultures, traditions, and peculiarities of legislation (Macaj, L., 2022). However, the main goals of the land consolidation which are common for all countries and unite all countries, are presented in the form of a table (Figure 1). As it turns out, the necessity of the ratio of public and private interests becomes vivid, which is determined by the interests of landowners, the general public, and the state. The best possible way of using land is land consolidation which creates better conditions for the intended usage of the agricultural land (Filagova, L., 2022).

In Georgia, land consolidation should also be based on the synthesis of both public and private interests. In a broader sense, land consolidation facilitates the effective use of land, minimizes land fragmentation, and increases agricultural yields. The consolidated land pieces make it easier to develop modern farming techniques, irrigation systems, and infrastructure which improves food production, rural development, and economic prosperity and well-being. At the same time, it simplifies land administration and creates a guarantee in the long run in the view of having a positive impact on the environment.

Land fragmentation and its rationality in Georgia

It is not strange to anyone that Georgia gained its independence in the 1990s which led to the establishment of an independent legislative order including the changes to existing laws. Land law was no exception either. It is a well-known fact that pursuant to the existing regulations in the Soviet Union no citizen of Georgia had the rights to land ownership (Demetriou, D., 2014). However, the “privatization” of agricultural land, the purpose of which primarily was to utilize agricultural land funds after being registered for private use and which was previously owned by the state and use them rationally, changed the general situation in terms of distribution, possession, and realization of property rights objects. The aim of the Georgian government of that period was to completely eradicate the socialist system and commence building the capitalist system. The socialist model, which prohibited the population from owning agricultural land in private possession, could not provide for existing challenges and human needs resulting from development. Thus, land distribution was one of the problematic and urgent issues as a result of the collapse of the socialist system. The unfortunate existence of corruption

and bureaucratic system in the 1990s had a very negative impact in terms of distributing agricultural land irrationally. A citizen of Georgia, who used to be an employee of the soviet farming, got a 1.25 ha patch of land, however, in a particular geographical unit a definite area of land may amount to 0.75 ha, or even 0.25 ha. Problems existing due to the lack of land area worsened as this specific amount of land was allocated in fragments (scattered) and in most cases, land was given away in 4-5 plots, one out of which was usually intended for homesteading.

The problems existing in Georgia were not new to other countries either which in turn had the same soviet past in common. This was due to the absence of private property. However, when countries such as Hungary, Slovakia, and Georgia left socialist regimes behind, they found themselves facing some challenges like distributing land plots rationally and fairly. Unfortunately, it did not work as planned; for example, the development of agricultural land in Georgia is hampered by some other factors by the irrational distribution of land. 77% of Georgia's population possesses less than 1 ha land plot (Law of Georgia "On Rights to Immovable Property) which is concerning and unfavorable for the intended use of agricultural land.

International experience

There is a big similarity between Hungary, Slovakia, and Georgia in terms of historical development in land law, land consolidation, and even the reasons for land fragmentation. This article describes the experience of these two countries as newly joined members of the European Union, which resembles Georgia with little land area as well. In the 1990s the political system in Hungary changed and as a result of the collapse of socialist cooperatives, compensations were issued to employees and re-privatization policy began. As a result of this process, 8 percent of the population of Hungary was granted agricultural land plots in private ownership, but in the years that followed farming land was distributed among 1.8 million people which in total comprised 2.6 million land fragments.

However, the compensation with arable category land and subsequent privatization led to a huge fragmentation of land ownership which was mainly manifested in the fact that a large number of landowners possessed one or several land plots that could not be used for their intended purpose, which did not correspond to the practice and requirements of the European Union member states. Due to the above-mentioned problems Hungary, like Slovakia, had to adopt a legal act which was issued by the Slovak authorities in 1994 "Unification of land on the basis of free will" as a possible solution to the mentioned problem (Mikaberidze, R., 2015). These processes are worth paying attention to for Georgia since the consolidation of land not only in the abovementioned two states but also throughout history in more stably

developed countries, such as France, was paid great attention to, which Slovak scientists also emphasized. The scientific article by Ludovit Machai, a professor at Bratislava Jan Komenski State University highlights the history of land arrangement in the territory of the French Republic based on the Roman experience which dealt with land consolidation and which was used as an example in the reforms carried out in Slovakia. In the territories of today's French Republic, the development and distribution of land have a long history, the foundation of which was laid in ancient Rome as the territory of Roman Gaul was rich in land suitable for agriculture. The fertility of these lands requires proper management and rational distribution of territories (geographical units). Of course, we find similar efforts in the medieval state, as well as in modern state entities, from the French Revolution to the present day. In all periods, agriculture played a significant role in the development of the state economy and the development of the primitive state (Dzamukashvili, D.2017). In France, even during the Fifth Republic, land ownership was guaranteed in the 1789 Declaration of the Rights of Man and Citizen. Such a great experience of France is also connected with the fact that the period of legal regulation of land consolidation began much earlier in 1955-1975. The purpose of the current land consolidation was agricultural development, while secondary purposes included environmental protection and other aspects. The last records of land consolidation can be found in the Agricultural Code adopted in 1982, which lists three main goals:

- Effective management of agricultural land
- Simplified possibility of exchange of agricultural lands for private owners
- Protection of uncultivated land and forest massifs (Van Dijk, T., 2004).

The adoption of land consolidation in Slovakia and Hungary was due to their accession to the European Union on May 1st, 2004. Their membership required both countries to carry out certain reforms to develop agriculture. The fact that the documents establishing the right, which implies the transfer of a certain area of land to citizens in a certain geographical area by the state during privatization, required a configuration change, and these changes meant the adjustment, exchange, or relocation of the land in order to allow for the rapid and efficient development of the agricultural sector, which would enable the farmer to carry out his activities under favorable conditions.

Thus, it can be said that a complex systemization and consolidation of land is a way to guarantee the development of agriculture, environmental protection, a healthy environment, forestry, landscape protection, and urban planning. The closeness of Georgia to the experience of the reviewed countries is great, taking into account the history and shortage of land.

A significant goal of the "European Union" policy is to reduce the disparity in the living standards of citizens living in cities and rural areas. In terms of improving agriculture. Consolidation of land is a priority subject of support from the "European Union" for member states and those wishing to join (A.M. Honore, 1961).

Perspectives of the Alternative Land Consolidation Model in Georgia

There is no clear record of land consolidation in Georgian legislation. Registration of ownership rights is possible on the basis of the unification of immovable property, which means the unification of immovable property, or the building-structure on it or without it, as well as the building-structure (under construction, built or demolished) or the unit of the building-structure and linear structures. This makes it possible to register the union of rights on two adjacent areas owned by one person, and it is well known from civil legal relations that it is permissible to exchange objects of different owners on the basis of a transaction, or registration arising from a different transaction. However, land consolidation is a broader and more significant process. The Law of Georgia "On Ownership of Agricultural Land" provides for the prevention of fragmentation and irrational use of land (Law of Georgia "On Agricultural Land Ownership), although this is not enough, it is necessary to create a single legal framework for land consolidation, which will lay the foundation for the formation of a multidisciplinary body. This body ensures both public and private legal interests.

Based on the information covered in this article, the correct model of land consolidation has a decisive role in the development of agriculture. However, the existing legislation in Georgia seems to be almost inactive and cannot work in practice, because only a legislative act, especially as superficial as this one, cannot be the creator of the process. This requires the right policies and enforcement mechanisms, which modernity has invested in technology, and all developed countries benefit from these technologies.

The proposed alternative model involves encouraging small landowners to exchange their land voluntarily, as Hungary, and Slovakia have done, based on German and French legal models because their experience showed that making mutually beneficial deals between private owners really facilitated the country's agricultural situation. It is also unconditionally necessary to promote the development of cooperatives and give freedom to these organizations to manage the consolidated land areas jointly. Cooperatives increase the efficiency and profitability of farming enterprises by using common resources. The state should ensure the technical efficiency of such associations (cooperatives), such as providing remote software and the formation of a body similar to the registry, which will register and further regulate other relations on consolidated lands within its competencies. It is

also necessary to create a unified farm management system. Technological advances have indeed improved the productivity of agricultural systems and the efficient management of resources. Thus, an inactive legislative act cannot ensure proper functioning without appropriate mechanisms.

On the whole, land consolidation unifies public and private interests and ensures their peaceful co-existence. It is the state's responsibility to ensure protection from the risks arising from such relationships.

Conclusion

This academic research takes a close look at the historical context of the land unification framework in Slovakia and Hungary, two EU members. This thorough study offers insightful information that may act as the basis for Georgia's future EU membership. The paper outlines the course that Georgia must take to pursue this main goal through a comparative legal analysis.

Agricultural land plots in Georgia have an unfavorable configuration which leads to disruption of farming and violation of the legal private interests of private owners since they cannot use their agricultural land for its original, intended purpose which in total damages public interests as well.

The offered recommendation is to create separate regulating normative material that will deal with the regulation of land consolidation and relations related to it which is relevant to the covered comparative legal study and the historictoponymic review.

It is imperative to establish an administrative body that will ensure the functioning of the already created cooperatives through the appropriate register. The established cooperatives will enhance the standards of life of the farmers living in the village, will create workplaces, and will encourage the people who are interested in farming which eventually will create abundant revenue for the state.

And lastly, land consolidation in Georgia is the process that aims at the efficiency, productivity, and sustainability of agricultural land. Farmers can benefit from this opportunity and enhance their resources. Therefore, uniting fragmented land plots into bigger units will regulate existing problems. In Georgia, land consolidation activities are crucial for sustainable development and for the future membership of the European Union as well as for agriculture and for attracting investments for farming.

Conflict of Interest: The author reported no conflict of interest.

Data Availability: All of the data are included in the content of the paper.

Funding Statement: The author did not obtain any funding for this research.

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