

LAND CONSOLIDATION ORGANIZED IN A SPECIAL COURT

– EXPERIENCES FROM NORWAY

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1. Introduction

In Norway land consolidation is carried out by a permanent public institution, entirely within the framework of the judicial system. The institution is called *The Land Consolidation Service* and has 250 employees. The jurisdiction is divided into 34 land consolidation court districts and 5 land consolidation court of appeal districts. As far as we know, Norway is the only European country that has organized its land consolidation process completely within the framework of its judicial system.

The first legislation based on land consolidation was as early as in 1821. Sevatdal (1986) writes that this early legislation relied on existing legal structures to supervise and carry out land consolidation. No specific land consolidation services were established by the government until after the 1857 Land Consolidation Act, when the Land Consolidation Services were established in 1859. By virtue of the 1857 Land Consolidation Act, the decision-making body regarding land consolidation was modelled on the traditional court. From 1950 onward, these courts have been referred to as land consolidation courts. The current version of the Act has been in effect since 1979, but has been revised several times since that. In 1979 the Highways Department and the Norwegian State Railway received permission to begin applying for land consolidation when circumstances became “unfavorable” as a result of building, improvement, maintenance, and operation of public roads and railways. And finally, in December 1998, the most recent major change to the body of land consolidation legislation was passed. Public authorities can now apply for land consolidation in connection with general, non-agricultural development in agricultural areas, “natural” areas, or recreational areas. The land consolidation court also function as a valuation

court (expropriation for private roads, appraisal for fences and easements). The next major change will probably be land consolidation in urban areas.

One can say, therefore, that Norway has had a relatively long history of land consolidation and currently has well-developed land consolidation services. As one can see, the land consolidation courts' jurisdiction has expanded extensively and in popular terms we often call it "a problemsolver for all that own a part of Norway".

2. What is land consolidation?

The term "jordskifte" in Norwegian is normally translated as "land consolidation" in English or "Flurbereinigung" in German. A more precise translation of *jordskifte* in English would be "*reallocation of holdings by pooling and redistribution.*" This more accurate translation would express the fact that many land parcels are pooled or put together, and from this pool the same number of holdings emerge but in new physical and legally-recognizable shapes. At the same time, these new parcels retain their old values, broadly conceived. Land consolidation is normally carried out for all the holdings in a specific, geographically limited—but defined—area. The size and scope of land consolidation varies from minor adjustments of boundaries between two holdings, to complete rearrangement of hundreds of holdings with planning and investments in new infrastructure. At a fundamental level, the land consolidation process is intended to restructure outdated, or unsatisfactory ownership patterns. Any landed property that is considered difficult to utilize efficiently under existing circumstances may be subjected to land consolidation under the terms of the Land Consolidation Act. The same applies when circumstances become unfavorable as a result of building, improvement, maintenance, and the operation of public roads, including the closing down of private railways or non-agricultural development in agricultural areas (Land Consolidation Act, § 1).

3. What land consolidation may comprise

It will be necessary to provide in some detail the specific subject matter that land consolidation may comprise. The relevant sections in the Act are § 2, § 88 and § 88a (§ 2h in an earlier version of the act).¹

¹ The text is not an exact translation of the Act. An unofficial translation of the Act can be downloaded from the Internet <http://www.ub.uio.no/ujur/ulovdata/lov-19791221-077-eng.pdf>.

- § 2a) dissolving a system of joint ownership under which land or rights are jointly owned by estates;
- § 2b) reallocating landed property through the exchange of land;
- § 2c) prescribing rules relating to the use of any areas that are subject to joint use by estates or prescribing rules relating to the use of any area that is not subject to joint use by estates when the land consolidation court finds that the attendant circumstances make such use particularly difficult;
- § 2d) eliminating outdated rights of use, and assigning compensation. Such perpetual outdated rights of use are mentioned in § 36 of the Land Consolidation Act: rights of way; grazing; hay-making; making wells and aqueducts; felling and all other production of timber in forests; taking peat for fuel, turf, heather, moss, humus, clay, sand, and stones, seaweed; beaches for boats, mooring, and landing places; sites for boathouses and boat sheds; drying and stocking places; places for laying out nets and seines; millraces and water-wheels with damming and aqueduct rights pertaining thereto; and fresh-water fishing with exception of salmon and sea-trout fishing.
- § 2e) organizing such joint measures as mentioned in chapter 10 of Land Act No. 23 of May 12, 1995 (measuring for agricultural purposes), and § 31 of Act No. 3 of March 15, 1940 relating to water resources (measuring for draining);
- § 2f) reallocating landed properties when land and rights are to be disposed of in accordance with the purpose of the Land Act;
- § 2g) dividing a landed property with the rights pertaining to it in accordance with a specific scale of values; and
- § 88a (§ 2h) clarifying and determining conditions relating to property and rights of use under joint ownership and in other areas that are subject to joint use by estates when this is necessary with a view to a rational use of the area.

Another type of case that can be handled in the land consolidation court covers the delimitation of boundaries (§ 88). An owner may request the land consolidation court in a specific case to clarify, mark, and describe the boundaries of his property and the boundaries for perpetual rights of use. This type of case represents approximately 40-50% of all cases handled in the court. The owner has the right to choose to bring these types of cases to the ordinary courts or to the land consolidation court. Most often these cases are brought to the latter for the following reasons (Sevatdal 1986:10): the case has not developed into a real dispute in the legal sense, such that it should be brought to the ordinary court; the legal situation regarding the land is uncertain, and one of the owners

wants an independent institution to investigate the matter; the land consolidation court procedure has the benefit that that parties need not be represented by a lawyer; finally, the land consolidation court has the technical equipment and competence that is needed for all the cadastral work that typically follows upon a verdict of the court. This is not true of the ordinary courts.²

In short; the land consolidation court follows a normal court procedure in all kinds of decisions, even in matters like valuation and physical planning. This procedure is well known and generally accepted. The land consolidation process can be outlined in the following main stages: applying for land consolidation; the decision whether the case shall proceed; clarifying the boundaries and mapping the consolidation area; valuation of anything that is subject to the exchange; preparation of a draft consolidation plan; presentation of the plan to the parties for discussion; comments from the parties; alteration on the basis of comments on the plan that the court deems right and proper; formal adoption of the plan; marking out of all new boundaries in the fields; formal conclusion of the land consolidation proceeding in court.

Mediation is a very important activity during the phase in the process in which the land consolidation court draws up the draft consolidation plan for presentation to, and discussion with, the parties. This is also emphasized in the Land Consolidation Act (§ 20), that the court shall draw up a draft consolidation plan which shall be presented to the parties for discussion. The land consolidation court shall also consult with the public authorities if the consolidation plan is likely to affect matters within their jurisdiction.

The Land Consolidation Act emphasizes among other things that the court should first utilize mediation (§ 17) in the case of boundary disputes before a prospective trial. The court may, in unusual cases, decide that the parties will submit the dispute to arbitration, but arbitration is seldom used and therefore will not be discussed further here. In the land consolidation court a mediated result is often better than an adjudicated one, especially in land consolidation cases, where the parties most likely have to cooperate in the future.

Land consolidation: compulsory or voluntary? The Norwegian legislation is characterised by compulsion in this respect. A land owner can be drawn into a land

² After a verdict in a boundary dispute in the ordinary courts, the parties have to request a survey from the

consolidation case against his will. It is enough that one owner in an area applies for land consolidation. The others can be opposed to land consolidation, but if the court finds that none of them will lose because of land consolidation, the case proceeds. The land consolidation cannot be carried out if the costs and disadvantages involved exceed the benefits accruing to each individual property (§ 3a). The overall aim for land consolidation, if boundary disputes are left out of the equation, is to increase the net income from the holdings. Roughly, this may be obtained by increasing the volume of production or by lowering the cost of production.

4. The extent of land consolidation

The following are statistics from 2000 for all of Norway's land consolidation courts. The land consolidation courts closed 1084 cases. The land consolidation courts of appeal closed 52 cases. On average there were approximately 8 parties per case. The average lifespan of a case from beginning (when the parties applied for land consolidation) to end was 2.8 years. 72,426 hectares were consolidated in 2000, 583 fragmented plots were eliminated, and almost 1900 km of property boundaries marked. The construction of over 184 km of forest roads was authorized. 841 disputes were resolved through either mediation, voluntary settlement by the parties, or verdict by the court. This is a significant increase compared to 1999. At the end of 2000, the courts had a backlog of 2,363 cases (these cases have been in the system for an average of 2.2 years).

5. Organizational models

The land consolidation service is now being restructured in Norway (see Falkgård and Sky, 2002). There are three different organizational models which are under consideration: (1) a specialized court; (2) a model in the administrative body; and (3) a hybrid.

In short, the *specialized court* follows a normal court procedure in all kinds of decisions. The land consolidation court integrates judicial decisions in disputes with planning competency and administrative decisions. The judge must have a special degree from the Agricultural University of Norway after a course of study comprised of a variety of relevant subjects. It is also expected that a prospective candidate for a judgeship will have gained some practical experience as a surveyor in the Land

Consolidation Services before appointment. Cases can be appealed to the ordinary courts of appeal or the land consolidation court of appeal depending on the grounds of appeal (see § 61 of the Land Consolidation Act).

The typical practice is to handle land consolidation issues through *administrative bodies*. The administrative body can give statutory administrative orders in, for instance, a boundary dispute within the land consolidation area, and it also has planning competency. The appeal system is different from the specialized court. Decisions in boundary disputes can be appealed to the ordinary court (first level) or to a higher level of the administrative body. Complaints in planning issues are often handled by a higher level of the administrative body and, after that, if the parties still do not agree, the ordinary courts.

A *hybrid* system or organization means that boundary disputes (or all kinds of disputes) have to be solved in ordinary courts. The land consolidation issues are handled through administrative bodies. Decisions in boundary disputes can be appealed to the court of appeal. Complaints in planning issues are handled in the same way as in the administrative model.

One of the disadvantages regarding mediation in a specialized court like Norway's is that the judge has different roles. The judge acts as a mediator and as an ordinary judge in each separate case. This distinction is difficult both for the disputing parties and for the judge. A result of the different roles is that the judge mediates less effectively than if he or she did not have to render a verdict if mediation fails. A clearer distinction between the two roles and training in mediation would most likely have a positive effect on the results of mediation. This is an ongoing project in court administered mediation in the ordinary courts in Norway. Mediation is done by a judge other than the one that will render a verdict if mediation fails. The results so far have been positive. A similar procedure in the land consolidation court would be recommended. Another aspect is that the land consolidation courts formulate and decide their own plans in cooperation with the parties. The ordinary process in planning is that experts formulate the plan while the politicians decide which plan to choose. The land consolidation judge has therefore three different roles which all make the process more effective, but this effectiveness is perhaps difficult for the parties to perceive.

What type of organizational model will create the best environment for mediation or land consolidation? Without any other changes the hybrid model will be best, but with the introduction of court administered mediation the two other models will create similar opportunities. I do not think that the administrative model or the hybrid model would reduce the backlog. I do, on the other hand, think that the backlog would likely increase because of the number of disputes in connection with land consolidation, and indeed this figure is slowly rising. The crucial point is that in order for the land consolidation service to be effective, it must retain the opportunity to make decisions when the parties disagree.

I do think that a specialized court involving the use of court administered mediation will be the most efficient model for handling land consolidation cases in Norway.

6. Land consolidation and local government

The land consolidation courts' relation to local government is widely debated in Norway because of the concern that the courts should be independent from the government. This is also one of the main concerns of a working group appointed by the Ministry of Agriculture. They will deliver their report in June 2002 and the report will play an important role in the decision whether the land consolidation services shall continue to be organized in the judicial system or be a part of the administrative body.

There are two types of costs involved in land consolidation, investments and costs of the proceedings itself. The investments are financed by government subsidies, loans, or by the parties themselves. The parties do not get many subsidies from the government—neither at the local nor the county level—but there are some exceptions. One example is the subsidy for construction of forest roads. The subsidy is 60 percent of the total cost of roads meant for trucks and 40 percent for roads meant for tractors. The costs of the proceedings are mainly paid by the government. The parties pay a small fee. In 2000 the parties paid 7,1 million NOK (\$788, 888) in court fees. They also paid for boundary markers and they had to assist in surveying and construction of boundaries. The total budget for Land Consolidation Service was 136 million NOK (\$15,100,000). This shows that land consolidation as an activity is quite heavily subsidized in Norway.

The parties pay the costs of land consolidation, with the exception of permanent office expenses, postage, telephone and wages, transport and board allowances for the officials

(§ 74). The costs that the applicant is not required to bear alone under the terms of § 75 (if the application for land consolidation is groundless, withdrawn, or dismissed) shall be apportioned between the parties on the basis of the benefit accruing to each from the land consolidation.

Another aspect is that the parties in certain cases need permission from the local or county authority. Section § 3b says that land consolidation cannot be carried out for properties situated in built-up areas, before the building council has had an opportunity to express its opinion. Division of a property that is owned by two or more individual persons, called personal joint ownership, needs permission from both from the local and county authority. This is not needed when the property is owned by two or more estates.

Section § 20a (§ 20 in an earlier version of the Act) says that the land consolidation court shall consult with the public authorities if the consolidation plan is likely to affect matters within their jurisdiction. The same applies when matters that are subject to the decision of public authorities are likely to affect the land consolidation plan. In connection with this consulting, it is important to keep in mind that the judge represents a special court which is part of the judicial system.

7. Lessons learnt

Today the land consolidation court integrates judicial decisions in disputes with planning competency, administrative decisions, and surveying and mapping competency. As soon as possible after final judgment of land consolidation has been pronounced, the president of the court shall obtain a certified extract of the court records and have it registered. This “one-stop shopping model” is very efficient and speeds up the land consolidation process. In countries with obscure descriptions of property boundaries and a lot of disputes, organization of land consolidation in the judicial system is recommended. Efficient dispute resolution techniques, for example mediation, are also of great importance. I do think that a specialized court involving the use of court administered mediation will be the most efficient model for handling land consolidation cases in Norway.

Surveying and planning are time-consuming tasks which require the use of geographical information systems and global positioning systems to make the process efficient. It is also of importance that the land consolidation authorities calculate the benefits of land

consolidation (for one method see Sky, 2002). The parties and politicians ask for such documentation. It is also of great importance for the owners that the land consolidation plan take into account the social variables connected with the land (Goodale and Sky, 1998).

The Land Consolidation Services have a long history. Owners still apply for land consolidation and if we look 5-10 years ahead, we will most likely see the introduction of land consolidation measures in urban areas in Norway.

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