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Land Consolidation as an Example of Local Social Activity Leading to the Sustainable Rural Development

Scalanie gruntów jako przykład lokalnej aktywności społecznej prowadzącej do zrównoważonego rozwoju obszarów wiejskich

ABSTRACT

Sustainable rural development comprises, among other things, social development in relation to the need to build new infrastructure. Land consolidation provides such an opportunity. The consequences of land consolidation have many aspects and layers, and touch upon all functions of rural areas. They refer to the spatial structure, production structure and the social structure of rural areas, while affecting their development. Local social activity, which is understood as all types of actions within a specific local area to satisfy the needs at the local level, is an effect of land consolidation that had not been previously noticed in literature and that is discussed in this paper. Local activity during land consolidation refers to public participation and to other actions taken in the course of land consolidation proceedings and regulated by law; those actions give the ability to participate in the land consolidation proceedings ("co-organise", "co-manage" the proceedings – the so-called communitarianism). The underlying thesis of the paper is that active participation of the local community in land consolidation actually supports sustainable rural development and that such actions may be described as a communitarian concept of development.

Keywords: land consolidation; sustainable rural development; local social activity; communitarianism

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INTRODUCTION

There have been many theoretical concepts formulated in regard to rural areas and their development.[1] It is in particular worth noting the concept of sustainable rural development which provides for combining production objectives with environmental purposes, as well as harmonising social, economic and environmental objectives which lead to an improvement in the quality of life at present while keeping the possibility of satisfying the needs of future generations.

Even though sustainable rural development is not a novel concept and its various aspects have been discussed both in economic literature[2] and in legal literature,[3] it is rarely emphasised that sustainable development is also caring about social development as new infrastructure needs to be built.[4] As a consequence, infrastructural constraints should be included among constraints of rural development[5] while support for sustainable rural development should be based on building foundations for initiating public and private projects to create the right infrastructure, among other things.[6]

The institution of land consolidation provides an opportunity to shape rural areas while observing the principle of sustainable development.[7] In this article, land consolidation is presented from a different perspective than before, i.e. from the perspective of local activity. The issue of local social activity has so far been mainly tackled by economists, sociologists and political scientists.[8] There are few legal

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[1] The following concepts can be listed as an example: the concept of (social, economic, spatial) structure, ecological development, land revitalisation, revival, activation and development of local communities, as well as local development strategy, etc.

[2] For example, see D. Żmija, *Zrównoważony rozwój rolnictwa i obszarów wiejskich w Polsce*, "Studia Ekonomiczne" 2014, no. 144; M. Adamowicz, M. Zwolińska-Ligaj, *Koncepcja wielofunkcyjności jako element zrównoważonego rozwoju obszarów wiejskich*, "Zeszyty Naukowe SGGW w Warszawie. Polityki Europejskie, Finanse i Marketing" 2009, no. 2; J. Wilkin, *Wielofunkcyjność rolnictwa – konceptualizacja i operacjonalizacja zjawiska*, "Wieś i Rolnictwo" 2009, no. 4.

[3] For example, see T. Kurowska, *Planowanie przestrzenne a zrównoważony rozwój obszarów wiejskich*, "Studia Iuridica Agraria" 2016, vol. 14; P. Litwiniuk, *Program Rozwoju Obszarów Wiejskich jako dokument programowy i źródło prawa rolnego*, Warszawa 2018.

[4] Judgement of the Constitutional Tribunal of 13 May 2009, Kp 2/2009, OTK-A 2009, no. 5, item 66.

[5] M. Foltynowski, *Polityka przestrzenna obszarów wiejskich w kierunku wielofunkcyjnego rozwoju*, Warszawa 2008, pp. 48–50.

[6] A. Wlazły, *Zrównoważony rozwój obszarów wiejskich w aspekcie teorii wielofunkcyjności*, "Progress in Economic Sciences" 2018, no. 5, p. 78.

[7] T. Kurowska, *op. cit.*, p. 58.

[8] For example, see J.M. Pijanowski, W. Przegon, R. Szewczyk, *Podstawy zintegrowanego rozwoju obszarów wiejskich*, Kraków 2016; *Partycypacja obywatelska w życiu społeczności lokalnej. Stan, bariery, rekomendacje*, ed. G. Prawelska-Skrzypek, Kraków 1996; K.Z. Sowa, *Lokalizm, centralizm i rozwój społeczny*, "Państwo i Kultura Polityczna. Zeszyty Politologiczne" 1988, no. 5.

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studies concerning that topic;[9] in particular, there is no analysis of social activity in the context of actions leading to sustainable rural growth. That was the reason for tackling this topic. The purpose of this paper is to present consolidation from a communitarian perspective, to show local social activity resulting in sustainable growth of rural areas using the example of land consolidation.

LAND CONSOLIDATION – ORIGINS, LEGAL FRAMEWORK, OBJECTIVES

Land consolidation should be understood as changing fragmented or incorrectly shaped parcels that are owned by different entities and that are located on a certain area to create better conditions for development in agriculture and forestry, to improve the area structure of agricultural holdings, forests and wooded areas, to shape land parcels in a rational manner, to adjust the parcel borders to the drainage systems, roads and the topography.[10]

In accordance with Article 1 (1) of the currently effective Act of 26 March 1982 on land consolidation and exchange,[11] the purpose of land consolidation is to create more favourable conditions for management in agriculture and forestry by improving the area structure of agricultural holdings, forests and wooded areas, to shape land parcels in a rational manner, to adjust the parcel borders to the drainage system, roads and the topography.[12]

It is believed that consolidation should be a complex of correlated actions related to sustainable rural development agriculture.[13] Currently, the goals of consolidation are broadly defined,[14] pointing to the development of agriculture by creating better production conditions. This is to be achieved by basic consolidation measures, such as: reducing the number of plots on the farm and their distance from the habitat,

[9] For example, see W. Pańko, *Lokalizm – szansa dla rozwoju czy mit?*, "Państwo i Kultura Polityczna. Zeszyty Politologiczne" 1988, no. 5, p. 69.

[10] A. Zieliński, [in:] *Prawo rolne*, ed. P. Czechowski, Warszawa 2017, p. 399; idem, *Scalanie gruntów w prawie polskim*, Poznań 1972, p. 34.

[11] Consolidated text, Journal of Laws 2018, item 908, hereinafter: the Act.

[12] See J. Paliwoda, *Scalanie i wymiana gruntów*, Wrocław 1972, p. 17; judgement of the Supreme Administrative Court of 28 March 2018, II OSK 860/16, Legalis no. 1838523.

[13] A. Zieliński, [in:] *Prawo rolne…*, p. 399.

[14] A. Bielska, *Wpływ procesu scalenia gruntów na wielofunkcyjny, zrównoważony rozwój obszarów wiejskich*, "Infrastruktura i Ekologia Terenów Wiejskich" 2012, no. 1, p. 5. See also a broad perspective in Germany and the Netherlands: Z. Pijanowski, *Realizacja polityki rolnej a rozwój obszarów wiejskich w Polsce*, "Woda–Środowisko–Obszary Wiejskie" 2011, no. 1, pp. 232–234; A. Dacko, *Tworzenie warunków do rozwoju terenów wiejskich poprzez scalanie gruntów – aspekt teoretyczny*, "Infrastruktura i Ekologia Terenów Wiejskich" 2006, no. 2, p. 37. Cf. T. Kurowska, *op. cit.*, pp. 47–61

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increasing the size of farms and improving the shape of plots. Consolidation has become a major instrument in the strategies and projects for overall renewal of villages involving an improvement of living conditions, efficient management and protection of natural environment, ensuring an adequate infrastructure.[15]

ACTIVITY OF LOCAL COMMUNITY AS PART OF LAND CONSOLIDATION

In order for consolidation to bring the desired effects, it should be executed according to certain rules; under one of those rules, the consolidation process should be effected with an active (democratic) participation of the community residing in the area to be consolidated.[16] This is where the term "social activity in consolidation proceedings" comes in play. In order to continue this analysis, it is fundamental that we indicate the main assumptions in terms of terminology. The activity in general understanding is any action, initiative or participation.[17] A local community is any community that occupies a specific area (rather than just any local area), that has its own name and its own local social tradition. A local community is a special unity that always occupies a specific local settlement area.[18] Therefore, social activity may be understood as all types of activities within a specific local area. What is important in the case of that participation is not that it takes place at the local level but rather that it is aimed at satisfying the needs arising at the local level.

While translating the above general comments into the context of land consolidation, it should be noted that the activities that make up social activity include both public participation, as well as other forms of activity and actions permitted under law.

Public participation, also known as citizen participation, refers to the participation of both individuals, groups of individuals (residents) and their organisations in public life.[19] As part of public participation, residents take part in collective efforts, campaigns and projects arising from the fact that they use the resources in a given area and oriented towards satisfying the needs of people who live there.[20]

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[15] A. Vitikainen, *An Overview of Land Consolidation in Europe*, 2014, after: A. Dacko, *op. cit.*, p. 37; *The design of land consolidation pilot Project in Central and Eastern Europe*, "FAO Land Tenure Studies" 2003, no. 6, after: A. Dacko, *op. cit.*, pp. 32–33.

[16] A. Dacko, *op. cit.*, p. 34.

[17] *Słownik języka polskiego*, vol. 1: *A–K*, ed. M. Szymczak, Warszawa 1978, p. 27.

[18] K.Z. Sowa, *op. cit.*, p. 55.

[19] G. Prawelska-Skrzypek, *Znaczenie partycypacji obywatelskiej dla rozwoju lokalnego*, [in:] *Partycypacja obywatelska w życiu społeczności lokalnej…*, p. 100.

[20] P. Starosta, *Poza metropolią. Wiejskie i małomiasteczkowe zbiorowości lokalne a wzory porządku makrospołecznego*, Łódź 1995, p. 198.

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In general, no legal regulations are needed to govern public participation. In fact, social activity in the form of public participation occurs in places in which there are no legal regulations at all or where they are insufficient.

Public participation may be viewed from the perspective of rural development. In that case, it is considered an element of the local development process, which – by definition – relies on the initiative and active participation of residents. By taking that perspective, participation is understood as cooperation with other social entities and local authorities that play an important role in the local development.[21]

Self-government is considered the basic institution organising the life of the local community and satisfying its needs. The main responsibility of *sołectwo* is to care about the collective needs of its residents as a community. However, an auxiliary unit called *sołectwo*, which is the smallest administrative unit in Poland comprising a village or several neighbouring villages, has a special role in rural areas. *Zebranie wiejskie*, or the "village assembly", is a resolution-passing body,[22] and *sołtys*, or the "village leader", is the executive body. The activity of the village leader is supported by the village council.[23] The village leader holds both a representative and executive function. The powers of the village assembly include all matters of importance for the residents. The assembly also passes resolutions on disposing of the *sołectwo*'s property and gives opinion on matters, including: the local zoning plan, the location of investment projects or the repurposing of educational facilities, healthcare facilities, cultural facilities, sports or recreation facilities located within the area of *sołectwo*. Therefore, the power of *sołectwo* is not extensive. On the other hand, *sołectwo* has certain rights and opportunities to act for a given community as part of public participation, among other things. Consolidation may be planned at the level of *sołectwo*, or actually as part of cooperation between *sołectwo* and the residents.

[21] I. Pietraszko-Furmanek, *Partycypacja społeczna w środowiskach lokalnych*, "Rejony Humanistyki" 2012, no. 8, p. 67.

[22] All residents of the *sołectwo* who have the right to vote on the municipality council have the right to participate and elect during the village assembly. The assembly participants have the right to take part in discussions, present motions and draft resolutions, make statements, or request putting a statement on record. The representatives of the municipality council may also take part in the village assembly. The meeting is usually called by the village leader on its own initiative, at the request of the municipality council or residents. Resolutions of the village assembly are passed in open mode, except for the election and dismissal of the village leader and members of the village council. The agenda is adopted by the village assembly. Resolutions and motions are passed by a simple majority of votes. As a rule, meetings are held as needed, but at least once a year. The date and place of the village assembly is announced to the public by the village leader in the manner adopted in the area of a given *sołectwo*.

[23] The village council comprises about a dozen of residents of the *sołectwo*. The articles of association typically sets out the final shape of the village council. The village council's debates are chaired by the village leader. The village council is an opinion-giving and advising body.

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The activity of people residing in rural areas, particularly in the case of consolidation, assumes defining[24] and implementing a vision of development with institutional support, using the bottom-up approach. It is important that result in a participative model of village, where the partnership between the local community and the local authorities takes the form of joint participation in the creation and implementation of solutions. This requires a long cycle of shaping opinions and making arrangements.[25]

It is also pointed out that the deliverables of the work with the *sołectwo* residents should not be pre-defined. The owners (beneficial owners) of agricultural land should decide by themselves how the areas which see various, often conflicting, interests should evolve. It is also important to convince *sołectwo* residents who do not earn their living from agricultural production (migrants from the cities, people who are not interested in agriculture) that land consolidation proceedings make sense. By expanding the earlier consolidation proceedings (which focused only on the agricultural interests) so that they also include land shaping and rural renewal, there should be coalitions among all residents who want to shape their area of work and residence together.[26]

As regards the working methods as part of social participation, the moderation process is listed as a way of working during the first stage of the process, i.e. when preparing for the consolidation (before the proceedings are even initiated). All participants have equal rights during the moderation process; therefore, all participants may join the work on the deliverables and express their views. The moderator (e.g., the village leader or another local leader) is to set the process in motion. In general, communication takes place among the residents involved. The moderator moderates the discussion and reconciles conflicting views to ensure better understanding and find solutions. The moderator should make sure that the group finds its own goal on its own. The goals of moderation are: awakening and visualization of the internal forces of the local community, mobilizing the creative potential of the group, creating and improving communication within the group, collecting ideas and thoughts and achieving results, documenting the results. Moderation should go from identifying problems to finding solutions.[27]

It seems that the mapping method can also be used during the preparations for the consolidation; under that method, citizens are engaged in the identification of

[24] J.M. Pijanowski, W. Przegon, R. Szewczyk, *op. cit.*, p. 67; B. Lewenstein, *Między rządzeniem a współrządzeniem. Obywatelskie modele rozwoju społeczności lokalnej*, [in:] *Partycypacja społeczna i aktywizacja w rozwiązywaniu problemów społeczności lokalnych*, eds. B. Lewenstein, J. Schindler, R. Skrzypiec, Warszawa 2010, p. 27, 37.

[25] J.M. Pijanowski, W. Przegon, R. Szewczyk, *op. cit.*, p. 65. See also B. Lewenstein, *op. cit.*, pp. 27–30.

[26] J.M. Pijanowski, W. Przegon, R. Szewczyk, *op. cit.*, p. 65.

[27] *Ibidem*, pp. 66–67.

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the structure of problems that are of importance for their local community insofar as they justify the consolidation. As a first step, a meeting is organised with all the parties concerned who decide on their expectations from the local mapping process.[28]

All these methods result from the adoption of the community-based solution perspective, where the members of the local community become experts who are best suited to define their own problem, create an action plan, and also organise funds and resources to take up effective solutions.[29]

Communication and defining goals as part of multi-level discussions in working groups seem to be an effective form of the residents' participation during the stage of the preparation works for the consolidation procedure. Each working group should aim primarily at clear formulation of the problems at the starting point. On the basis of the problems, with the help of a moderator, the topics of individual fields of activity should be determined, and then the paths of solutions to achieve the goal should be described. At the beginning of the work of the working group, there must be preparation for an inventory of the existing state with the use of optical means (e.g., photographs of typical elements of a village). All participants should present motions regarding changes to the existing state of affairs. Afterwards, each working group should commence works to analyse the problems. Both the existing situation ("as is") and the desirable one ("as should be") should be analysed.[30]

Once the consolidation proceedings are initiated, the subsequent stages of local activity are regulated by law.[31] In addition to the existing public consultations and direct actions which are characteristic of the preparation stages of the consolidation proceedings, there are also administrative proceedings which are another tool of social activity.[32] When initiating administrative proceedings, the procedural position of a party depends on the procedure according to which the proceedings are initiated. Where proceedings are initiated upon a motion, in order to initiate administrative proceedings, the parties must submit a motion (Articles 61–61a of the Administrative Procedure Code[33]). In accordance with Article 3 (2) of the Act, the consolidation proceedings may be initiated upon the motion of the majority of owners of agricultural holdings located on the area to be consolidated, or upon the

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[28] See M. Calderbank, *Wykorzystanie mapowania do rozpoznania, oceny i wsparcia rozwoju zrównoważonego społeczności lokalnych*, [in:] *Partycypacja społeczna i aktywizacja w rozwiązywaniu problemów…*, p. 283, 285.

[29] J.P. Kretzmann, J.L. Mcknight, *Building Communities from the Inside Out: A Path Toward Finding and Mobilizing a Community's Assets*, Evanston 1993.

[30] *Ibidem*, pp. 66–67.

[31] It refers to the provisions of the Act of 26 March 1982 on land consolidation and exchange and of the Administrative Procedure Code (Article 33 (1) of the Act).

[32] *Komunikacja i partycypacja społeczna*, red. J. Hausner, J. Górniak, S. Kołdras, S. Mazur, R. Paszkowska, Kraków 1999, p. 42.

[33] Act of 14 June 1960 – Administrative Procedure Code (consolidated text, Journal of Laws 2021, items 735, 1491), hereinafter: APC.

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motion of landowners if the total area of their land exceeds a half of the area to be consolidated.[34] It is evident already when the proceedings are initiated that the interests of all participants merge.[35] In certain situations, the consolidation proceedings may also be initiated *ex officio*, upon receiving prior opinion of the village council and upon the opinion of social and professional farmers organisations active in a given village (Article 4 (1) of the Act).

The proceedings on land consolidation or exchange are based on the principles defined in the Administrative Procedure Code. The proceedings are conducted and performed by the *starost* (or a district administrator).

The proceedings on land consolidation should be conducted with an active participation of the parties concerned (Article 10 APC).[36] Participants of the land consolidation are a party, within the meaning of Article 28 APC, to the consolidation proceedings.[37] The owner at any given time, owner-like possessor and user of land within the consolidation area is a participant of the consolidation; where the land is the property of the State Treasury or a local government unit, the entity managing that land is also a participant. A participant of the consolidation proceedings as a party within the meaning of Article 28 APC (under Article 33 of the Act) is entitled to all procedural guarantees set forth in the Administrative Procedure Code, including those relating to the principle of active participation in each stage of the proceedings.[38]

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[34] Whenever the Act refers to the owner, it is also understood as the independent holder (Article 1 (2) (4) of the Act).

[35] J. Poliwoda, *Scalanie i wymiana gruntów*, Wrocław–Warszawa–Kraków–Gdańsk 1972, p. 100. In the judgement of 3 October 2014 (II OSK 743/13, Legalis no. 1087378), the National Administrative Court indicated that one of the reasons for initiating the consolidation proceedings is stating that "the consolidation will not deteriorate the conditions of management for other proceedings participants". It goes without saying that when interpreting the above statutory premise one should keep in mind the purpose of land consolidation, as defined in Article 1 (1) of the Act on the one hand, and on the other hand one should also consider the interest of proceedings participants other than the mover in that the conditions of their management should not deteriorate.

[36] According to the principle expressed in Article 10 APC, the public administration body has the duty to ensure active participation to the parties at each stage of the proceedings, but also to enable the parties to comment on the collected evidence and materials as well as on the demands made before issuing the decision. This duty has two aspects: external and internal. The external aspect of the principle of active participation of a party in the proceedings is ensuring a proper and complete group of parties to the proceedings (for example, see judgement of the Supreme Administrative Court of 2 June 2009, II OSK 908/08, Legalis no. 238209; judgement of the Supreme Administrative Court of 9 September 2014, I OSK 2001/14, Legalis no. 1327842). The internal aspect of the principle of active participation of a party in the proceedings is related to ensuring the parties with proper participation in the proceedings activities.

[37] Judgement of the Voivodeship Administrative Court in Kraków of 22 August 2017, II SA/Kr 113/17, Legalis no. 1681720

[38] Judgement of the Voivodeship Administrative Court in Poznań of 25 August 2009, II SA/Po 389/09, Legalis no. 182192.

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A person who has the status of consolidation participant also has rights that allow him/her to engage in special social activity. For example, consolidation participants may submit written objections to the *starost* in regard to the land consolidation design within 14 days from the presentation of that design (Article 24 of the Act). Another example is Article 26 of the Act, whereby any changes made to the consolidation design after it was demarcated on land and presented to the consolidation participants must be demarcated again on land and presented to the participants concerned. Furthermore, the consolidation participants take part in the meetings of the consolidation participants convened by the *starost*. The order on the initiation of the consolidation proceedings is read out during such meetings; the participants pass resolutions on the principles of estimating land, forests and orchards (Article 11 of the Act); the results of the land, forests and orchards, gardens, hop plantations and other special crops estimation are announced;[39] during the meeting and while presenting the results of the land estimation to the public, the consolidation participants may raise their objections to the estimations. During the meeting convened by the *starost* the consolidation participants give their approval of the estimation of land, forests and orchards, gardens, hop plantations and other special crops; such approval is given in the form of a resolution. Each participant of the consolidation proceedings is entitled to one vote. Where no resolution is passed, the *starost*, upon reviewing the objections and the opinion of appraisers, and upon making amendments (if any), accepts the estimation of land, forests and orchards, gardens, hop plantations and other special crops, by way of an order, which may be appealed. Written statements of the land exchange participants are a proof of unanimous estimation of land by the exchange participants or of their consent to the appraisers' estimation of forests and orchards, gardens, hop plantations and other special crops. If there is no unanimous approval of the estimation by all exchange participants, the exchange proceedings are simply discontinued (Article 13 of the Act). The land consolidation design, and the rules of taking up new parcels into possession, is demarcated on land and presented to the participants. The design may be approved if no objections are raised by the majority of the proceedings participants after its presentation (Article 24 of the Act).[40] The consolidation participants obtain possession of the set-aside parcels of land during the participants' meeting convened by the *starost* (Article 30 of the Act).

Interestingly enough, the consolidation participants transfer some of their rights in the course of the consolidation proceedings to specific collegial bodies

[39] Notification by way of announcements concerning's the activities taken as part of the consolidation proceedings is a sufficient way of providing the individual consolidation participants with the ability to take an active part in those activities. It is up to the participants whether or not they take advantage of the ability to take part in the activities taken as part of the consolidation proceedings (judgement of the Voivodeship Administrative Court in Białystok of 10 June 2010, II SA/Bk 805/09, LEX no. 630043).

[40] The objections to the land consolidation design are reviewed by the *starost*, upon obtaining the opinion of the commission, as referred to in Article 10 (1) of the Act.

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(authorities), notably: the consolidation participants' meetings, the consolidation participants' council, the special commission and an additional team.

Where the number of consolidation participants is greater than 10, the consolidation proceedings are conducted together with the consolidation participants' council consisting of 3 to 12 members; the consolidation participants' council is a public advisory body elected and recalled by the consolidation participants from each village subject to consolidation (Article 9 (1) of the Act). It is a body acting on behalf of the participants in all matters that arise during the consolidation. It may be involved in matters that require its opinion or cooperation. The council is knowledgeable about all topics with which it is to deal. Such a body is the best platform to involve parties in the process of shaping the decisions of administrative bodies during proceedings with many parties and many conflicting interests.[41] If no consolidation participants' council is elected by the deadline set by the *starost*, the function is performed by a team established by an order of the *starost*; the team members include: the village council, the village leader and a representative of the National Centre for Agriculture Support being a consolidation participant, as well as a representative of social and professional farmer organisations (Article 9 (3) of the Act).[42]

The special commission holding advisory functions (Article 10 of the Act) is another collegial body taking part in the consolidation proceedings: The members of the commission are as follows: 1) all consolidation participants or the consolidation participants' council, if their number is greater than 10; 2) a representative of social and professional organisations of farmers; 3) a representative of the National Centre for Agriculture Support being a consolidation member; 4) a representative of the *starost* overseeing the area on which the land subject to consolidation is located; 5) a representative of the farming chamber in the area on which the land subject to consolidation is located. The land subject to consolidation is estimated and the consolidation design is developed by a land surveyor – consolidation designer authorised by the *starost*, with the participation of the above-mentioned commission. The commission examines the objections as to the land estimations and presents the results of its findings to the consolidation participants during a meeting convened by the *starost*. If the objections to the land estimations are upheld, the consolidation participants may establish an additional team, during that same meeting, comprising uninterested parties who will give their opinion (Article 12 of the Act). The commission members take part in the process of the land consolidation design development and act as an advisor (Article 22 (2) of the Act). The commission expresses its opinion on the objections of the pro-

[41] J. Poliwoda, *op. cit.*, p. 55.

[42] If the land consolidation procedure covers the land of more than one village, the team consists of village leaders, representatives of village councils, one from each village, a representative of the National Centre for Agriculture Support participating in the consolidation process, and a representative of socio-professional farmers' organizations.

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ceedings participants to the consolidation design; the objections are reviewed by the *starost*. The commission is active because, according to the regulations, the opinion as to the objections to the land consolidation design is given in the presence of the consolidation participants concerned and at least a half of the commission members. Moreover, if necessary, the commission or members authorized by the commission make an inspection (Article 24 (2) and Article 25 of the Act).

While tackling the issue of social activity in the consolidation process, one cannot ignore the conflicts that arise during the consolidation.[43] Resolving potential conflicts is another special aspect of social activity.[44]

The concept of a conflict is usually combined with a "conflict of interest".[45] It is characteristic for the consolidation proceedings that there are many interests present due to the number of consolidation participants.[46] Moreover, those interests are often antagonistic which is not the case in other proceedings.[47] A conflict is understood as a collision of contradictory social and individual objectives; a clash of contradictory interests, views. The synonyms of the term "conflict" include: "dispute", "feud", "disagreement", "collision".[48]

With land consolidation, conflict of interest can be related to many issues,[49] but the most frequent ones are as follows: no agreement as to the choice of land to be consolidated, the estimated value of the land, the subsidies amount (Article 8 (4) of the Act), the choice of land that the participants would receive (e.g., the participants may be dissatisfied that they would receive new land far from the farming house, or that they would receive land of poorer soil quality), the principles of determining the equivalent for land (Article 14 of the Act). Disputes can also be related to changes in the method of existing use of the land owned and appurtenances to the land (buildings, trees, shrubs, perennial crops, etc.), drainage fee (Article 18 of the Act). Finally, the fact that proceedings participants will come into actual possession of new parcels of land that they had previously not had, can also give rise to

[43] The problem is not a new one. Already J. Paliwoda (*op. cit.*, pp. 58–63) pointed to disputes during land consolidation.

[44] See B. Lewenstein, *op. cit.*, pp. 34–35.

[45] A. Niewiadomski, *Publicznoprawny i prywatnoprawny konflikt interesów na przykładzie Europejskiej Sieci Ekologicznej Natura 2000*, Warszawa 2017, pp. 52–53.

[46] The multitude and variety of the participants' interests were also noted in judgements. For example, see judgement of the Voivodeship Administrative Court in Rzeszów of 23 May 2017, II SA/Rz 1596/16, Legalis no. 1676459; judgement of the Voivodeship Administrative Court in Białystok of 28 January 2016, II SA/Bk 150/15, Legalis no. 1470005.

[47] A. Zieliński, *Scalanie gruntów…*, p. 50.

[48] A. Niewiadomski, *op. cit.*, pp. 52–53. See also footnotes 3 and 4. Therefore, the term "conflict" is understood differently than the definition provided by A. Niewiadomski (*ibidem*, p. 56).

[49] The fields and areas of conflict are discussed in general by R. Skrzypiec, *Konflikt jako strategia rozwiązywania problemów w społecznościach lokalnych*, [in:] *Partycypacja społeczna i aktywizacja w rozwiązywaniu problemów…*, pp. 115–125.

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conflicts. There may be a problem if the existing owner or beneficial owner of the land subject to consolidation prevents another authorised proceedings participant to come into actual possession of the new parcel of land.[50]

While signalling that topic,[51] it needs to be pointed out that social activity should certainly manifest itself in good communication, informal discussions or mediations. An active village leader or members of the village council who implement their integrating function by integrating the community around mutual objectives and who also, or primarily, have a mediation function in that they resolve any conflicts in the community.[52]

In legal terms, the solution to conflicts during the consolidation proceedings may be found in the cooperation of the proceedings participants during the proceedings or during the activity of the consolidation participants' meetings or other collegial bodies. The activity of the consolidation participants and collegial bodies provides for an opportunity not only to raise objections and comments (Article 12 (2) and Article 25 of the Act) but also to discuss things before any decision or resolution is taken (Articles 11, 12 and 13 of the Act). The final provisions of the administrative procedure provide for the possibility of appealing against administrative decisions taken by the administrative bodies.[53] Sometimes the only solution is to bring the matter before the court.[54] In such cases, the responsibility for the

[50] *Ibidem*, pp. 97-98.

[51] This topic seems to be rather extensive and requires more analysis than can be presented in a paper.

[52] Such view on the self-government functions was presented by J. Kida, *Samorząd gminny i jego funkcje rozwojowe*, Warszawa 1997, pp. 26–28.

[53] See A.S. Tokarz, *Zaskarżanie rozstrzygnięć administracyjnych w postępowaniu scaleniowym zwyczajnym*, "Samorząd Terytorialny" 2017, no. 7–8, pp. 138–146. In its judgement of 8 December 2017 (II OSK 635/16, Legalis no. 1726080), the Supreme Administrative Court explained, when addressing the issue of conflict resolution, that there were usually many conflicts among the participants of consolidation proceedings who only expected an improvement in the conditions under which they manage the land. The implementation of the consolidation objectives, as defined in Article 1 (1) of the Act, cannot apply to every single parcel and all circumstances because it is impossible. A decision on consolidation results from a trade-off; sometimes a significant improvement of conditions of land management can be achieved at the expense of a single parcel or at the expense of one consolidation participant which in the end justifies the adopted solution. It is important and necessary that the consolidation objective, that is to create more favourable conditions of land management by improving the area structure of agricultural holdings, to shape land parcels in a rational manner and adjust the parcel borders to the road system and the topography, is achieved in respect to each agricultural holding separated as a result of the consolidation. It is also important that each consolidation participant should receive a full equivalent of their agricultural holding in terms of value and quantity as a result of the consolidation proceedings. Even if the individual interest of a particular consolidation participant is actually breached in a single case, the legitimacy of the decision approving the consolidation plan cannot be undermined if the basic rule of land demarcation, as defined in Article 8 (1) of the Act, has been complied with.

[54] As in the case of a consolidation proceedings participant who did not come into possession according to the administrative procedure or who did not actually take over the land

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conflict resolution is shifted to institutions (authorities, courts), and social activity can only be seen in the initiation of the appeal procedure.

The final aspect which is worth mentioning in the context of social activity resulting in rural development is co-financing of consolidation from EU funds. It should be kept in mind that the level of social activity is neither permanent nor uniform. The activity of the members of a given local community may be affected by various factors, such as: the type of the community: village, town, large city; the size of the community; social and demographic structure; the level of socio-economic development; local traditions; conflicts; the way of governing; external legal and administrative, socio-economic as well as civilisation and cultural context; the tendency to intervene among the players of the public scene, such as: the local authorities, the enterprise sector or the political parties.[55] Consequently, economic issues, such as co-funding of costs of consolidation and post-consolidation proceedings, may be an impulse sparking a local initiative in that area.

The basic rules and objectives of EU support for rural areas are set forth in Regulation (EU) no. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) no. 1698/2005.[56]

In response to leveling structural restrictions and ensuring modern technical infrastructure for rural areas it is also envisaged as part of the Territorial Development programme that there would be also investments in fixed assets and there is a sub-activity "Support for investment projects related to the development, modernisation and adjustment of agriculture and forestry (land consolidation)". Article 3 (1) (4) of the Act of 20 February 2015 on support for rural areas with the participation of the European Agricultural Fund for rural development as part of the rural development programme for the years 2014–2020.[57] The above-cited legal regulations coincide with the provisions of the Land Consolidation and Exchange Act; those provisions specify that public funds may be used as a source of funding of consolidation and exchange works on terms and conditions set out in the provisions of the Act of 7 March 2007 on supporting rural development with the participation of the European Agricultural Fund for Rural Development as part of the Rural Development Programme for the

despite such an activity, the claim is made against the previous landowner or beneficial owner. It seems that the only option is the so-called *skarga wydobywcza o wydanie nieruchomości*, or a complaint seeking the release of the real property (Article 222 § 1 of the Civil Code). This view was expressed by the Supreme Court in its judgement of 22 June 1989, II CR 236/89, OSNC 1991, no. 4, item 53. It may be added, as a side note, that there may be also disputes, during the consolidation proceedings, concerning the available rights to land.

[55] I. Pietraszko-Furmanek, *op. cit.*, pp. 71–72.

[56] OJ L EU 347/487, 20.12.2013.

[57] Consolidated text, Journal of Laws 2018, item 627.

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years 2014–2020[58] and in the provisions on supporting rural development with the participation of the European Agricultural Fund for Rural Development as part of the Rural Development Programme for the years 2014–2020.

Detailed principles of aid provided in regard to consolidation proceedings are set out in the Regulation of the Minister of Agriculture and Rural Development of 10 December 2015 on detailed terms and conditions and the procedure for awarding financial aid as part of the activity "Improvement and development of infrastructure related to the development and adjustment of agriculture and forestry by way of land consolidation" covered by the Rural Development Programme for the years 2014–2020.[59] Applications are evaluated on the basis of the scoring. The scoring depends largely on the number of owners who applied for the initiation of the consolidation proceedings (§ 11 of the Regulation). The percentage share of the number of owners of agricultural holdings located on the area to be consolidated who applied for the consolidation proceedings versus the total number of owners of agricultural holdings covered by the consolidation proceedings is taken into consideration, or the percentage share of area of parcels located on the area to be consolidated and owned by landowners who applied for the consolidation proceedings vs the total area of parcels covered by the consolidation proceedings. The scoring corresponds to the percentage of owners of agricultural holdings located on the area to be consolidated who applied for the consolidation proceedings or to the percentage of parcels located on the area to be consolidated and owned by landowners who applied for the consolidation proceedings. The higher of the two scores awarded as part of that criterion is taken into consideration for evaluation purposes.[60]

Thus, it turns out that it works both ways – the possibility of co-funding the consolidation and post-consolidation works affects social activity in that regard but whether or not aid from the Rural Development Programme is awarded depends on the activity of the local community.

CONCLUSIONS

A well-conducted consolidation procedure may result in numerous favourable transformations in rural areas.[61] They refer to the spatial structure, production structure and the social structure of rural areas, while affecting their development.[62]

[58] Journal of Laws 2007, no. 64, item 427.

[59] Journal of Laws 2015, item 2180, as amended.

[60] See J.M. Pijanowski, W. Przegon, R. Szewczyk, *op. cit.*, p. 57.

[61] Positive effects of consolidation have been described by A. Dacko, *op. cit.*, pp. 35–37.

[62] See M. Krzysztofik, *Problematyka prawna pojęcia obszaru wiejskiego*, „Studia Iuridica Lublinensia" 2017, vol. 26(1), pp. 299–314.

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Social local activity which leads to sustainable rural development is an effect of consolidation that has not been described in literature yet.

As previously mentioned, social activity before the consolidation proceedings are formally launched, occurs mainly as public participation (the meetings of the members of the local community, talks, discussions, consultations as to the purpose, scope and size of land consolidation and – consequently – as to the development of a given rural area, works in the working groups, moderation, and mapping). Those arrangements are made during individual private meetings and meetings in the public space, such as shops, offices or in church (informal working groups). A proactive village leader, members of the village council or local leaders can play a special role during that process. As a consequence, the initiative of the local community implies the application for the initiation of the consolidation proceedings. While the consolidation proceedings can also be initiated *ex officio*, the legislator does not provide financial assistance in that case, rightly assuming that such activities should be driven by social activity. Administrative proceedings become the main tool of social activity from the moment the consolidation proceedings are initiated. Social activity that is regulated by law manifests itself in the possibility of being a consolidation participant (a party to the administrative proceedings), taking advantage of the available rights (raising objections, commenting, appeals), taking part in the meetings of the consolidation participants, being a member of collegial bodies (authorities), giving opinion and expressing one's view by way of resolutions. It is noticeable that during each stage of the consolidation proceedings the consolidation participants or other collegial bodies (authorities) comprising members of the local community have legal possibilities of taking part in the consolidation proceedings ("co-organise", "co-manage" the proceedings – the so-called communitarianism[63]). Thus, even though the proceedings are conducted by an administration authority (the *starost*), the legal regulations ensure special activity of the consolidation participants in various forms. It can even be concluded that the general rule of active participation of parties to the proceedings envisaged under Article 10 APC has been expanded in the consolidation proceedings. Such active participation of the local community in land consolidation actually supports sustainable rural development which may actually be described as communitarian rural development.

As part of final conclusions, it is worth noting that in order to increase social local activity as part of consolidation, it should be postulated that the village leader be awarded certain competences as part of the consolidation proceedings. For example, the village leader could convene and chair the meetings of consolidation

[63] B. Lewenstein, *op. cit.*, pp. 27–30. The word "communitarianism" derives from the Latin word *communis*, that is 'common', 'universal'. Communitarianism is a stream in contemporary political philosophy, emphasising the importance and value of communities in the social life of a human being.

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participants,[64] represent and take care of the rights of landowners who are absent – the way it was regulated in the Consolidation Act before WW2. Such an amendment to the regulations would provide for greater social activity by involving the village leader elected by the local community and limiting the activity of the administrative body (the *starost*) in that area.

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[64] See Articles 20 and 46 of the Act of 31 July 1923 on land consolidation (consolidated text, Journal of Laws 1927, no. 92, item 833).

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ABSTRAKT

Zrównoważony rozwój obszarów wiejskich to m.in. rozwój społeczny związany z koniecznością budowania nowej infrastruktury. Szanse na taki rozwój daje instytucja scalenia gruntów. Skutki scalania są wieloaspektowe, wielowarstwowe i dotykają wszystkich funkcji obszarów wiejskich. Odnoszą się one zarówno do struktury przestrzennej, struktury produkcyjnej, jak i do struktury społecznej obszarów wiejskich, wpływając na ich rozwój. Niedostrzeżonym dotychczas w literaturze skutkiem scalania, o którym mowa w artykule, jest lokalna aktywność społeczna rozumiana jako wszelkiego rodzaju działania w ramach pewnej określonej przestrzeni lokalnej, mająca na celu zaspokojenie potrzeb wyrastających na podłożu lokalnym. Aktywność lokalna przy scalaniu gruntów to zarówno partycypacja społeczna, jak i inne działania w toku postępowania scaleniowego uregulowane prawnie, dające możliwości współuczestnictwa w postępowaniu scaleniowym („współogranizacji", „współprowadzenia" postępowania, tzw. komunitaryzm). Artykuł opiera się na tezie, że aktywne działania lokalnej społeczności w ramach scalania gruntów w efekcie wspomagają zrównoważony rozwój obszarów wiejskich i można je określić komunitarną koncepcją rozwoju.

Słowa kluczowe: scalanie gruntów; rozwój obszarów wiejskich; lokalna aktywność społeczna; komunitaryzm