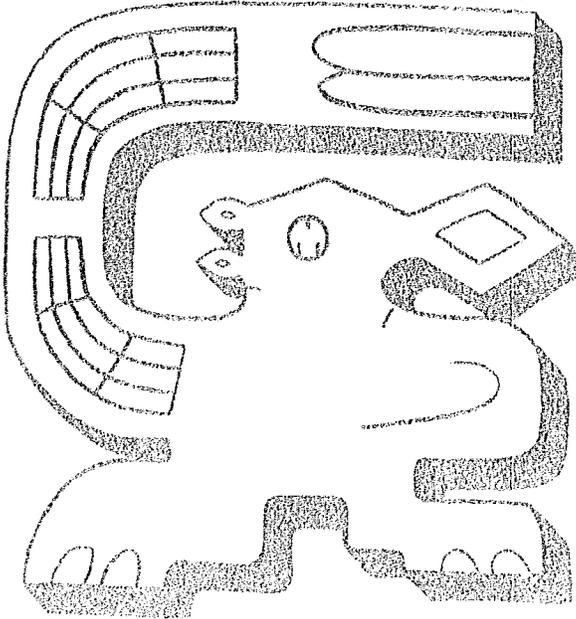


LTC Reprint No. 19



# Recent Developments in Land Tenure and Land Policies in Germany

Peter Müller

LAND TENURE CENTER      University of Wisconsin  
Madison, Wisconsin 53706

Reprinted from  
LAND ECONOMICS  
Vol. X., No. 3, August 1964

## Recent Developments in Land Tenure and Land Policies in Germany†

By PETER MÜLLER\*

THE AGRARIAN structure in Germany is the result of various strong historical developments. The ancient Germanic land tenure was modified by the feudal system of the Middle Ages and early modern times. The reformations of the feudal system took place in the first half of the 19th century. As a matter of fact, this was the first land reform in Germany. The legislatures of that time were deeply influenced by the ideas of the French Revolution and liberalism. It is obvious that there are regional differences in structure and tenure, depending upon which of these periods and trends had the strongest impact. Some of these relics of history in land tenure and agrarian structure, however, are still powerful.

Many villages in southwestern Germany, for instance, still show evidence of the Germanic land tenure. The typical German settlement has been a village without any planned or uniform layout. Through the centuries the buildings have been squeezed together within the village boundaries. Remains of the ancient "three field system" with all its consequences are additional obstacles preventing modern farming. Since there are no roads and farm lanes between fields, farmers are compelled to trespass on their neighbor's fields. In order to prevent damage to adjacent plots, every farmer must plant the same kind of crop in each of the three rotation divisions. Thus crop rotation, cultivation methods, and the timing of field work is deter-

mined not by the individual but by the village community as a whole. This compulsory system has become part of the rural tradition and this system is inevitable in areas where ancient conditions are not yet abolished by any kind of land consolidation. These obstacles become even more serious when the land is divided further through inheritance. Originally this custom was not widely used by the Germans. It developed only in certain areas, where there was favorable climate, fertile soils, as well as good marketing conditions in nearby towns. In these areas small farm units could provide a livelihood for one family. There the advantages of fragmentation might have outweighed the disadvantages; very dense population could find an adequate income in agriculture. But the customs of fragmentation spread into naturally poorer and more remote areas not suitable for these practices. Some of these regions still are problematic low income areas.

The medieval feudalism also had some influence upon the customs of inheritance. Originally the feudal lords certainly wanted to prevent a fragmentation of their lands into small and inefficient holdings. Because the success of their

---

† A first draft of this paper was presented in a seminar to the fellows of the Land Tenure Center at the University of Wisconsin, May 2, 1963.

\* Research Associate, Institute for Agricultural Policies, College of Agriculture, Hohenheim, Germany and honorary fellow, Department of Agricultural Economics, University of Wisconsin.

endeavors varied, different land tenure patterns resulted. In northwestern Germany larger peasant farms still existed under a system of hereditary tenure. It was not too difficult to make these farms legal property when the liberation of the peasants in the 19th century took place. In parts of southern Germany the power of the feudal lords had become very weak. They received only rent payments in cash or kind from their subjects. These ties could also be abolished rather easily. But in eastern Germany (Prussia) the ties between peasants and feudal lords still were very close and interwoven. There it was far more difficult to disentangle the relations. The reforms in these parts of Prussia, though important because of their impact on the historical development of Germany, were not very successful. Large estates developed under the ownership and often also under the management of the nobility. But this tenure ended in the communist land reform of 1945 and in the establishment of publicly owned estates and collective farms.<sup>1</sup>

In many parts of western Germany small farms and land parcellation are the main structural problems of agriculture. There the average size of land holdings over 0.5 hectares is at present 8.3 hectares.<sup>2</sup> 72.8 per cent of these agricultural holdings are less than 10 hectares in size; and 31.7 per cent of the total cultivated acreage is in these small farms. Assuming that a farm must yield a working income of 8,000 to 10,000 German Marks to assure a good income for a family making its living entirely from farming, then a family farm in Germany should comprise 8 to 10 hectares if in a good farming area and 10 to 15 hectares in average areas.<sup>3</sup> In 1961 only 26.0 per cent of all farms were in the range between 10 and 20 hectares, and this com-

prised 57.8 per cent of the entire cultivated acreage. But this general description of West Germany's agrarian structure does not show the great differences between regions. Furthermore, it shows only an intermediate stage in a rapid development. From 1949 to 1961 the number of farms over 0.5 hectares decreased 18.9 per cent. But this decrease was not evenly distributed over all farm size groups. There was, on the contrary, an increase in the number of family-size farms. In these 12 years, the number of farms between 10 and 20 hectares increased 13.6 per cent and those between 20 and 50 hectares increased 9.1 per cent. On the other hand, the number of the very tiny land holdings also increased rapidly. In 1960, 21.5 per cent of the land holdings were 0.01 to 0.5 hectares. Although no exact data about the even smaller holdings are available, it is well known that more and more people own one or two small parcels which they use for gardens, orchards, or recreational purposes.

It is also significant that the number of land owners working between 0.5 and 10 hectares of land is decreasing. This group is typical of the part-time and leisure-time farmers who hold another job in nonagricultural businesses and work on their land evenings, weekends, and holidays. If they still run a complete farm enterprise a substantial burden of the work is left to their wives and chil-

<sup>1</sup>The preceding description draws from Wilhelm Abel, *Agrarpolitik*, second edition (Göttingen, Germany: Vandenhoeck & Rupprecht, 1958), pp. 13-23.

<sup>2</sup>One hectare is 2.47 acres.

<sup>3</sup>In this general discussion farms in highly favorable environments are not considered. Special intensive crops, such as growing hops or tobacco or producing wine, may yield a family income already from a very small acreage. See also F. v. Babo, "Verbesserung der Agrarstruktur," *Berichte über Landwirtschaft*, new series, September 1956, p. 417.

dren. Germany's economic boom since 1950 has improved the part-time farmer's opportunity to earn his living exclusively from nonagricultural work. These farmers are increasingly inclined to limit their agricultural businesses or even give them up completely.

This discussion of the farm size distribution and its changes is meaningless unless connected with the people who have to make their living in agriculture. The number of full-time farmers dropped 35.9 per cent between 1950 and 1960 while the number of part-time farmers declined only 6.1 per cent. These rapid changes in the agricultural labor market are another facet of the developments of rural society. Germany is a highly industrialized country. Only 12 per cent of the population make their living from agriculture and forestry. But 40 per cent of all families are still in direct contact with the land. It is estimated that over 4.5 million families own a land parcel with an acreage of less than 0.5 hectares mainly for a garden or other leisure-time work. Another 1.2 million landowners own between 0.5 hectares and 10 hectares. Only 420,000 are working on farms over 10 hectares but these full-time and family farmers do not alone represent agriculture. Between 10 and 15 million people owning small acreages are an intermediate link between rural and urban society. This phenomenon is being taken into consideration by the German federal government which has stated a dual objective in its program for improving the rural structure: on the one hand to strengthen and support the family farm and on the other hand to keep as many families as possible in ownership contact with the land.<sup>4</sup>

A question closely related to this discussion is, who really owns the land and who is actually tilling it? In 1960, 20 per

cent of the acreage included in farm enterprises over 0.5 hectares was not owned by the farmers who were working it. In 1949 this ratio was only 12 per cent. In addition to this overall increase there are important differences in the legal status of the leased land.

The lease of an entire farm to another person is a legally determined transaction. It occurs mainly in those areas where the transfer of undivided inheritance is also practiced and therefore where farms are not extremely small or split up into tiny parcels. In 1960, 5 per cent of all farms and 7 per cent of the land were let on lease as a whole.

The other possibility is the lease of allotments. This practice is very closely related to the different historical developments in the various regions of Germany. The lease of land, parcel by parcel, occurs mainly in those areas where land parcellation by inheritance is the custom. Leasing of allotments is done largely on a very informal basis, often without any written contract. Usually only oral agreements exist and these are automatically extended from year to year if not revoked by one of the partners. Quite often people actually living in far away cities or abroad still own land in the home village of their parents. They lease these parcels to relatives or somebody else and often for only a nominal rent or for some compensation in kind. In villages in the industrialized parts of southwestern Germany up to 20 per cent of the communal area under agricultural use may belong to such absentee owners. Leasing of allotments is important. It guarantees a flexible farm size distribu-

<sup>4</sup>H. Rohm, "Stellung und Bedeutung des bodenverbundenen Industriearbeiters in Vergangenheit und Gegenwart," *Berichte über Landwirtschaft*, new series, March, 1959, p. 2.

tion in these areas. Fifty-one per cent of all farms have rented supplementary land. The changes in the farm-size structure during the last decade are in general not due to selling or purchasing land but only to leasing it. This means that the described spectacular changes between 1949 and 1961 may not be permanent. External factors such as price fluctuations or an overall economic recession might cause considerable changes since most of these allotment lease contracts may be revoked in a short time period. On the other hand, this chance to rent land was the great buffer which made the structural changes possible. It allowed those who wanted to continue farming to increase their acreage without putting too much capital into land purchases since land is very expensive in these areas if available at all. The part-time farmers often considered working on their land an additional burden to their other jobs in industry or elsewhere. These small landowners are by far more inclined to lease out their land rather than sell it. It is quite understandable that after experiencing two wars and two inflations, people see their land as the only reliable asset and hence are very reluctant to give it up.<sup>6</sup>

The key role that inheritance customs are playing in the development of land tenure and in variations of the agrarian structure in Germany has been pointed out several times. The original Germanic custom held that only one of the heirs should inherit the farm and the land. But this successor was only the first among equals. His fellow heirs, his sisters and brothers, could stay on the farm and work with him but generally they were not allowed to marry. If they chose to go away they had to be compensated for certain rights. If the farm was to stay in the family for generations it was log-

ical that only one principal heir could be privileged; and the rights of the other heirs had to be limited. This preference could be carried out in several ways. It might be, for instance, that for the principal heir the price of the farm was not assessed according to its current market value but to the capitalized return value or even to a lower special "brother-sister" assessment; or it might be that the privileged successor got an advance of one-third or more of the production value and the rest was divided equally among the joint heirs. Compensations for this transfer of the undivided farm to only one principal heir were that the fellow heirs were equal in status, they might receive an equivalent education, or that sometimes all joint heirs could have well defined rights towards extraordinary surpluses and profits drawn out of the farm. This is the one extreme side of inheritance customs; the other end of the scale is marked by free division of land and property in case of succession.

The customary partition of inherited land led to a peculiar mechanism of the social life, too. The inherited holding is equally apportioned among the children. Sometimes even the buildings and the inventory are divided. If, as is the general case, the heir who gets the buildings remains a farmer, he might be compelled at the beginning to earn some supplementary income in off-farm, part-time jobs. Since the buildings are too big for the inherited farm after the division, he looks around for expansion of his holdings. Besides a clever marriage policy this expansion is achieved in the main by additional leases and purchases. And if perhaps after a lifetime he is able to

<sup>6</sup> H. Rohm, "Die Landpacht im südwestdeutschen Raum," *Berichte über Landwirtschaft*, new series, December, 1959, pp. 805-833.

obtain a family size farm his children will be old enough to leave their parents' home and marry. In this event the farmer will endow them with a piece of his land. The parents will gradually reduce the acreage of their farm by giving away more parcels to their children or letting some land on lease partly to strangers but partly also to their children. In this manner every division of inherited land creates many new small owners and tenants.

It is difficult in these regions of parcellation to assign people to special well defined professions. Craftsmen, industrial laborers, office clerks, even the officials of the local government are landowners. They are working on part of their land and are leasing the remainder. That means that these villages are a conglomerate of all sectors of the economy — agricultural and nonagricultural — which in fact cannot be separated from each other. The advantages as well as the disadvantages of this fragmentation can only be evaluated if all environmental conditions such as location, time, and climate are taken into consideration. It provides one of the few ways to climb the agricultural ladder in Germany. "The partition of the land is a great spur for all people to establish an independent existence in agriculture." The rapid transfer of land in these regions, however, results in high prices which are often without any reasonable relation to the productivity of the soil. This makes climbing the agricultural ladder a hard and burdensome task and on the other hand it stresses the importance of available land for leasing. Another consequence of this custom of parcellation is widespread landownership which provides an extraordinary social stability. But this is true only in those regions where in spite of the great disadvantages

of fragmentation, a comparatively high standard of living can be maintained.

One of the main obstacles is not only the splitting up of the land into small and economically inefficient units but also that often these small farms comprise a number of tiny parcels scattered all over the village area. Family farms frequently consist of fifty or more separate plots and in many districts the average size of a parcel is less than 0.25 hectares. The distance from the farmstead in the village to these scattered fields is considerable and leads to an enormous waste of time lost on the roads. This is only one of the obvious drawbacks to managing a farm in a region where farm fragmentation is practiced.<sup>7</sup>

So far only the two extreme possibilities of land inheritance customs in Germany have been discussed. There exist, of course, manifold intermediate stages especially in the fringe zones between the districts of parcellation and those where transfer of the undivided inheritance is practiced. Regional customs do not necessarily coincide with the actual inheritance law. The liberal principle of partitioning the inheritance had also been introduced into the German Civil Code of 1896.<sup>8</sup> However this was definitely in contradiction to the custom of undivided inheritance in many parts of Germany. Regional modifications in special hereditary ordinances led to a

<sup>7</sup>Friedrich Aereboe, *Agrarpolitik* (Berlin, Germany: Paul Parey, 1928), p. 260.

<sup>8</sup>Parts of the preceding discussion draw from M. Sering, "Die wirtschaftliche und soziale Bedeutung der Zeitpacht in der deutschen Landwirtschaft," Part I: R. Sciff, "Die Kleinbauerngebiete," *Berichte über Landwirtschaft*, new series, December 1924, p. 17. Citation and translation in H. W. Spiegel, "German Tenancy Problems and Policies," *The Journal of Land & Public Utility Economics*, August 1939, p. 335. See also Wilhelm Abel, *op. cit.*, pp. 150-162.

<sup>9</sup>*Bürgerliches Gesetzbuch*, 3rd edition (Berlin, Germany: Carl Heymanns, 1896).

great variety of the heritage customs in addition to those diversifications mentioned. The most recent legislative effort to influence the inheritance of farm land and property is the Land Transactions Act of 1961. This Act (with the full title, "Act Concerning Measures for the Improvement of the Agrarian Structure and the Protection of Agricultural and Forest Enterprises") has as one of its objectives the abolition of the variety of existing laws.

The Land Transactions Act of 1961 is only part of a legislative network aimed at overcoming obstacles of an ancient and traditional agrarian structure now obsolete. The most important acts in this legislative network are: (1) the Consolidation of Holdings Act of 1953; (2) The efforts of the federal government to improve the agrarian structure through the annual "Green Plans" according to the Agricultural Act of 1955, supplemented by corresponding measures of the Länder governments; (3) The Reich Land Settlement Act of 1919 which still is in force although amended several times; (4) The previously mentioned Land Transactions Act of 1961; and (5) The Federal Town Planning Act of 1960. And finally, a proposed law being discussed at present concerns principles and objectives of regional planning in the Federal Republic of Germany.

The most active changes and improvements in the existing structure are the results of the Consolidation of Holdings Act<sup>9</sup> and the "Green Plans." The goal of land consolidation is to create larger land units by abolishing ancient field divisions and the fragmented and odd-shaped land plots not suitable for modern machinery. A land consolidation may be ordered by the government authority concerned on request of a majority of landowners but if necessary the govern-

ment may order land consolidation even without the consent of the majority of the landowners. This is sometimes the case, for example, where a new highway cuts through old parcel borders. But generally land consolidation procedures will be started only if a great majority of the landowners are in favor of it. Fortunately, this is more and more the case but a comprehensive land consolidation is such an elaborate and complicated procedure that with the present organization the land consolidation authorities cannot keep up with the growing demand. The classical land consolidation, consisting of an assessment of the value of every parcel, reshaping the whole area, repartitioning the fragmented holdings, constructing roads, ditches and other improvements of the land, takes about four to seven years. Every landowner may express his desires concerning the layout of his new fields and may lodge complaints with the supervising consolidation authority or with the courts if his demands are not justly satisfied. The costs of the land consolidation are shared by the government and the landowners.

Anticipating the urgent demand, a short cut procedure was provided in the Act of 1953 in order to speed up the consolidation of the fragmented farms. In this accelerated process the repartitioning is performed more generously and more informally. This increasingly important procedure is usually carried out between harvests. Now not only the land consolidation authorities but also official settlement companies are working on it. From 1945 to 1960, 2.3 million hec-

<sup>9</sup> Flurbereinigungsgesetz, *Bundesgesetzblatt*, I, Number 37, Bonn, Germany, July 1953, pp. 591-613. Translated extracts in Food and Agricultural Organization, *Food and Agricultural Legislation*, Volume II, Number 3, Rome, Italy, 1953.

tares were consolidated in Germany. An additional 3.5 million hectares urgently require consolidation and another 8.5 million hectares will require consolidation measures later on. Most of the farmers now realize that they can survive only if they do not cling too much to the soil their fathers tilled. For a comprehensive land consolidation the cooperation of the small landowners is necessary. They make up a majority in many villages but are not too interested in land consolidation since their main income generally does not come from agriculture.

The government efforts to improve the agrarian structure through the "Green Plans"<sup>10</sup> consist of a wide range of measures such as financial support for strengthening very small farms through supplementary land acquisitions; aids for improving the construction of old farm buildings; help in the transfer of rented land into ownership; subsidies for construction of roads, drinking water supply and electrification in rural areas; and the shifting of submarginal land to forestry use. The "Green Plans" provide funds for reducing the interest rates of agricultural credit. The main task, however, is the resettlement of family farmsteads out of the congested villages. Between 1956 and 1962, 12,250 farm families were provided with new buildings out in the country away from the villages. In many areas this caused a rapid change in the rural settlement pattern. Ten years ago old villages were the only settlements shaping the image of the countryside: now hundreds of new farmsteads are lying amidst their fields between the villages. The Reich Land Settlement Act, in force since 1919, provides the institutional framework for the settlement programs and calls for the creation of official settlement companies, stipulates the settlement procedures, and imple-

ments a right of pre-emption for the settlement companies.<sup>11</sup>

Amendments to this right of pre-emption are part of the recent Land Transactions Act.<sup>12</sup> As the full title of this law states, its objective is not only to prevent the deterioration of the existing agrarian structure but also to actively improve it. Three crucial points are combined into one ordinance for that purpose: (1) control of any transfer of title of agricultural land, (2) change in the inheritance laws and (3) acquisition of land by right of pre-emption.

Government control of farm real estate transactions has existed in Germany since 1918. But only since 1962 has there been legal means to prevent new partitioning of consolidated land. As previously indicated, the Act requires government authorization of any transfer of agricultural land exceeding a certain acreage. The facts which necessitate refusal of the authorization are defined less explicitly in order to allow room for interpretation by the courts. Authorization may be refused if the transfer of title implies an unsatisfactory distribution of land and property. This is considered to be relevant if the transaction is contradictory to the improvement of the agrarian struc-

<sup>10</sup> Bericht über die Lage der Landwirtschaft (*Grüner Bericht 1962*). Massnahmen der Bundesregierung (*Grüner Plan 1962*) Deutscher Bundestag, 4. Wahlperiode, Drucksache IV/180, Bonn, Germany, February 1962.

<sup>11</sup> Reichssiedlungsgesetz. Translation and codified texts of the enactments arising out of the amendments in Food and Agricultural Organization, *Food and Agricultural Legislation*, Volume XI, Number 2, Rome, Italy, 1962: Federal Republic of Germany, Land Transactions Act, Appendix I, pp. 14-24.

<sup>12</sup> Grundstücksverkehrsgesetz, *Bundesgesetzblatt I*, Number 58, Bonn, Germany, August 1961. Translated extracts in, Food and Agricultural Organization, *Food and Agricultural Legislation*, Volume XI, Number 2, Rome, Italy, 1962: Federal Republic of Germany, Land Transactions Act. See also, J. Vorwerk, "Das Grundstücksverkehrsgesetz," *Berichte über Landwirtschaft*, new series, September 1961, pp. 400-412.

ture. Any land transaction which leads to an uneconomical fragmentation of a parcel or a group of allotments may also not be authorized. This is the case if by such a transfer of title an independent family farm would lose its minimum necessary acreage, or if any agricultural parcel would become smaller than one hectare, or if a partition of already consolidated land would be conflicting with the original improvement measures. A third reason calling for the refusal of authorization is the existence of a considerable discrepancy between the actual value of the parcel and the purchase price.

The government authorities may demand that the acquired land must be given to somebody who is able to manage it as a farmer. If the acquirer is not eligible himself, he may be obliged to sell or lease the land to an eligible person. Thus the old German slogan "farmers' lands into farmers' hands" still can be, but does not have to be, enforced by the new act.

Previously a strong farm inheritance law existed only in that northwestern part of Germany which formerly had been the British occupation zone. Now in all parts of Germany, in case of intestate succession, one of the heirs may request that the farm land and property be given to him in toto if the joint heirs cannot agree upon a liquidation of the inheritance or if the partition cannot be executed. In case the property is large enough to sustain several families, it may be given to several heirs. The remaining fellow heirs are compensated according to the productive value of the farm. Considering the high prices of farms and land in Germany, this means a high preference for the one heir to whom the farm is given.

Another cardinal point of the new law is the change in land settlement provi-

sions. In the original law of 1919 the settlement companies could exercise the right of pre-emption only after a private land transaction had been approved by the government authorizing office. This was an inconsistent overlapping of the actions of two public agencies. In the new act the settlement company may exercise its right only if authorization has been refused. Thus land transactions which are disapproved for anyone of the three above mentioned reasons still may contribute to the improvement of the agrarian structure.

Other laws enacted do not concern agricultural and rural problems exclusively. The Federal Town Planning Act<sup>10</sup> is equally important in the development of urban as well as rural areas. Its objective is to direct growth and renewal of towns and villages. It is a necessary supplement to the previously discussed laws reshaping the open countryside. The Town Planning Act calls for the establishment of two plans directing the development in every town and village. The first is a land use plan for the whole area administered by the local village or town government. This plan is only of a preliminary character and may be adjusted to new conditions. The second plan, however, is legally binding once it has been adopted by the local legislature and approved by the land government. This zoning plan deals in detail with the subdivision of new construction areas at the fringe and directs the renewal in the core of the villages or towns. The town Planning Act also provides control of any real estate transactions within the boundaries of a zoning plan. But disapproval is possible only if the transactions are

<sup>10</sup> Bundesbaugesetz, *Bundesgesetzblatt* I, Number 30, Bonn, Germany, June 1960, pp. 341-388.

contradictory to the zoning plan or to the objectives of an orderly urban development. The right of pre-emption which might be exercised by the local government if desirable for the development of the community is also very important for the growth of the villages. Other items deal with the procedures of expropriation in the public interest and the ways compensation has to be granted. While under the laws dealing with agricultural land the capitalized return value is the standard of evaluation, the Town Planning Act explicitly provides that assessments and compensation payments must be based on the market value of the property.

This difference in attitude towards agricultural and nonagricultural land is significant. It stresses the special situation of agriculture for which land is a main creative input and at the same time the fixed location of production. This difference in attitude is also a challenge to the responsibility of the public, of government policy, and of science to determine and define the role of agriculture in present and future spatial structures and functions of socio-economic regions. This is one aspect which calls for a regional planning act as a final supplement in the described legislative network. It is the point of view of the rural planner. But he, as well as the city planner, needs basic guiding principles for

a comprehensive and harmonic development of the polar unity comprising metropolitan areas on the one hand and rural districts on the other. The conglomerate complex of agricultural and the nonagricultural sectors of the economy in many parts of Germany clearly show that in a highly industrialized country, agriculture cannot be treated independently. Rural planning is successful only if these interrelations are observed. Thus a regional planning law should provide not only for a synthesis of the different planning sectors but also for coordination of the subsequent actions. This means, for instance, coordinating highway construction with land consolidation and farm resettlement, or industrialization in rural areas with the development of public services and water and energy supplies. This demand has become more obvious since the need for larger planning districts is more and more recognized. Land consolidation and farm resettlement measures, as well as allocation of industries and the strengthening of central places become possible and more efficient if the planner considers not only one village or town area but a whole region of adjacent villages and towns. Consequently the new law should also specify and define the rights and duties of planning authorities. This regional planning Act is only in the very first stages of planning and it may be a long time before it is realized.