



# Analysis of Legal Framework and Recognition of Romanian Commons: Research Results

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## Table of Contents

<b>Introduction</b>	<b>2</b>
<b>Obsti and Composesorate, differentiated according to historical regions</b>	<b>3</b>
<b>The Legal Framework for the Restitution of Ownership Rights</b>	<b>6</b>
<b>The Restitution Process – Facts and Figures</b>	<b>11</b>
<b>The Commons’ Relation with Public Authorities</b>	<b>15</b>
<b>Contemporary Legal Framework, a Summary</b>	<b>16</b>
<b>Economic Benefits from the Commons</b>	<b>18</b>
<b>Legal Pitfalls and Recommendations</b>	<b>20</b>
<b>Legal Documents Consulted</b>	<b>22</b>
<b>References, Further Readings and Sources</b>	<b>23</b>

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## Introduction

In this report we summarize the legal aspects of commons in Romania. Our appraisal is based on qualitative and quantitative research data collected between 2003 and 2017, and also an extensive survey conducted during 2015-2017 (funded by Romanian National Authority for Scientific Research and Innovation, CNCS-UEFISCDI, grant PN-II-RU-TE-2014-4-2865), an analysis of legal documents, including texts of laws and regulations, both contemporary and from the past, as well as on secondary literature. The analysis includes all forms of commons to be found across the territory of Romania, with major differences highlighted across regions. The purpose of this report is to serve as a research-informed instrument for future policy-making and law-making, to be disseminated and embedded in multimedia format on a specialized website (Romanian Mountain Commons Project). This report is aimed to promote information about Romanian local communal governance systems internationally and nationally. Report information will be freely accessible to readers.

The Romanian commons and communities with rights of property over mountain land described in this report have governance independence. The local communities of rightsholders are currently legally constituted as legal bodies, namely as associations, with their own by-laws and decision-making systems. They were legally recognised and organized in 2000, when a postsocialist property restitution law (law 1/2000) enabled the return of large mountain tracts in the hands of communities, after it was owned and governed exclusively by the state during the centralized socialist rule (1948-1989). The communal land holding system of the present is in close connection to older, presocialist, systems of rights. The communities define themselves strongly in relation to ancestry and past landholding traditions. Up until the middle of the twentieth century, the common property and land-use systems followed the typical patterns of feudal silvo-pastoral villages in Europe, with a certain degree of independence in self-managing resources communally. In 1948, the Romanian communist state decided that all the resources above and under the ground would be transferred into the state's ownership, including the large amounts of



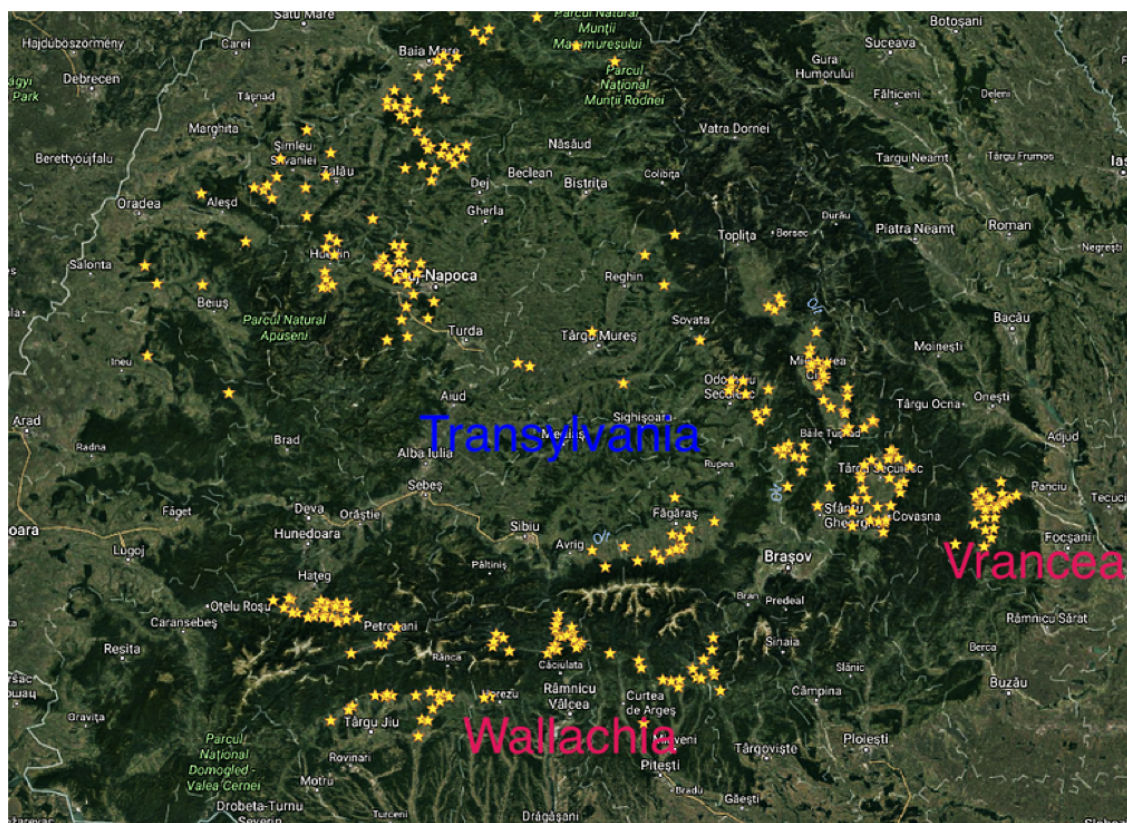
forests and pastures jointly owned by rural communities in the form of commons. Communities and individuals were thus deprived of their right to manage and own their properties. After 1948, with the dawn of the socialist regime, forests were nationalized and were managed in a state-centralized manner. Most of the pastoral land was collectivized in cooperatives. The cooperatives erased the older communal rules and allowed locals to retain ownership of only a small number of livestock per household, obliging commoners to enroll as paid workers for the cooperative's herds and deliver produce for the centralized economy. In the socialist system, economic productivity was paramount, and an ethos of modernization and industrialization dominated land use and management. However, eleven years after the fall of the regime (fell in 1989) a process of restitution of the collectively-owned forests started and historical commons were re-established in most of the communities where they previously existed. In 2000, the communal property systems that existed prior to 1948 were reinstated through restitution law 1/2000, and the communities took hold again of pastures and forests. Under this law's provisions commons and communities of rightsholders were registered, mainly under the traditional names of *obste* and *composesorat*, the founding legal documents being signed by the regional and local authorities along with appointed representatives of communities.

## **Obsti and Composesorate, differentiated according to historical regions**

Communities of commons rightsholders in Romania are fully-fledged community organisations, officially registered as associations, democratically controlled and managed by their own members, while having a strong historical legacy. Commons all over the country valorise local resources by selling timber, receiving subsidies or by investing in tourism ventures and contributing with these revenues to the local development and to the well-being of their members.


Two different terms are mainly used in Romanian language for forest and pastures commons: *obște* and *composesorat*, depending on the historical region where they functioned and were re-established. *Obste* and *composesorat* are words employed for both the actual plot of land and for the community of rightsholders. *Obste* has slavonic

origins, etymologically meaning togetherness or collectivity. Composesorat has latin origins, suggesting co-possession. Additionally the name of asociatie urbariala exists in some areas, notably in western and central-western areas, the word urbarium naming a type of old documents in use in the Austro-Hungarian empire, which enlisted the duties and obligations of former serfs to their landlords. Asociatie urbariala therefore suggests that these commons were once used by the feudal serfs, who gained possession after long trials and negotiations enabled by the end of serfdom. In the historical regions of Romania, commons have been legally recognized in the late modern period (around 1890) in



**Map of researched commons (2016-2017) on map of Carpathian Mountains**

relatively different ways, with specific particularities even in the same region. The villagers of the communities in Transylvania, formerly under Austro-Hungarian rule (up until 1918, when Transylvania became part of the national state of Romania) became collective owners and members of composesorat either by receiving the forests as a compensation for their guarding of the borders, or by purchasing properties from the state as joint-owners, or as a part of their entitlement to make a livelihood as free peasants, after the liberation from serfdom (1848). In Wallachia and Moldavia (Vrancea included), the communities of free



peasants, grouped in obște bought the lands or had access to common property and managed it in a collective democratic manner.

The three different denominations (composesorat, obște and asociatie urbariala) basically express the same form of community-based organization for collective forest and pasture management, but some similarities and differences have to be highlighted. First difference regards territorial location, which reflects past historical borders. The composesorat is mostly present inside the Carpathian circle, in the region of Transylvania (see map included), in the counties Harghita, Covasna, Hunedoara, Arad, Brasov, Salaj, Maramures etc., while the obște is present in the mountain ranges on the 'outside' of the Carpathians, in the counties Valcea, Gorj, Vrancea, Arges etc, which are located in the regions of Wallachia and Moldova (where Vrancea is included, see map). The composesorats of former border guards in the counties of Harghita, Covasna, Hunedoara and Maramures - are usually larger in territory size (an average size would be 2500 hectares). The obști are also usually large.

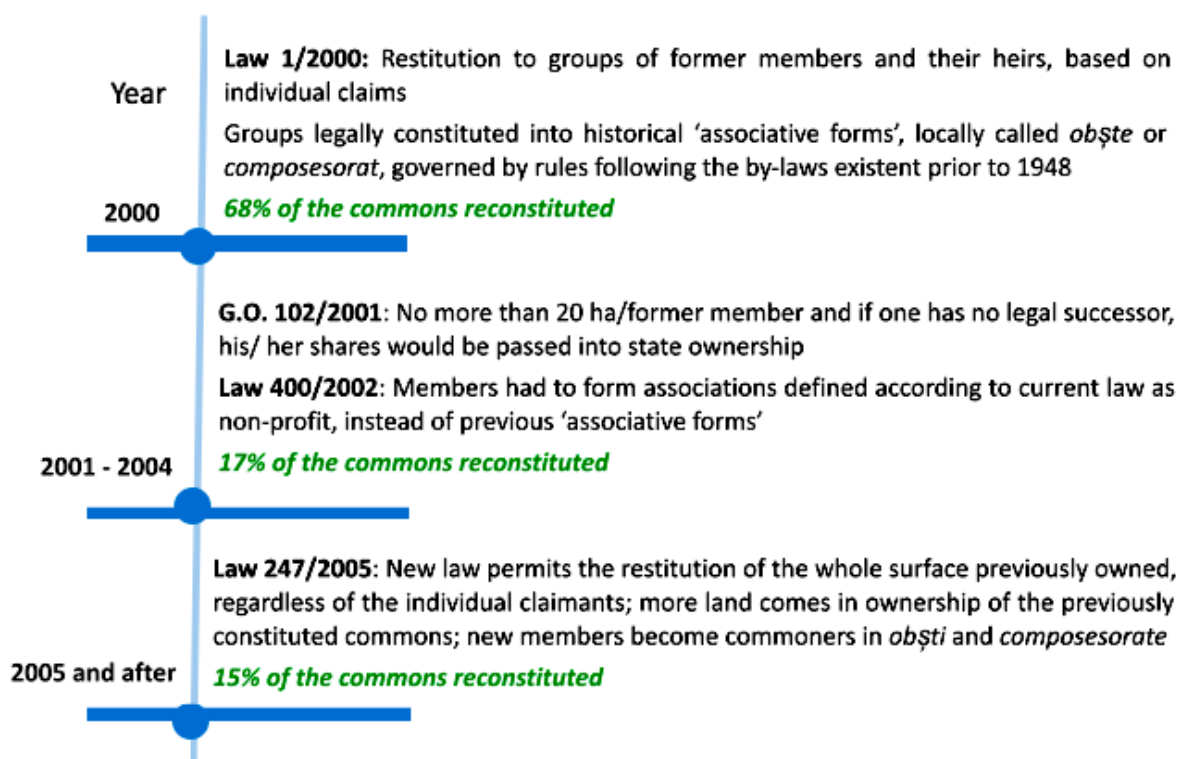
An important difference is to be made regarding the distribution of and access to property rights and shares. Thus, both obște and composesorat can be equalitarian (rights based on residence) and non-equalitarian (rights based on inheritance). The equalitarian obști can be found mostly in Vrancea region - every individual over 18, resident of the village, has an equal right to the products of the association (a share of wood or a sum of money) and an equal right to vote in the general assembly. Equalitarian composesorate are rare (less than 10%), and they can be found mostly in the counties of Brasov and Salaj. The non-equalitarian obște and composesorat base their rights system on a sum of shares inherited from their parents (they are in this respect akin to joint-stock corporations). In this case, someone becomes a member only after his/her mother or father passed away and the rights and shares are divided between siblings.


A similarity between all is that the property title is on the association's name, as a legal form and the members, although proprietors, cannot specify where exactly is the surface of forest or pasture that they own, only that they own a certain amount which has attached a quantity of benefits (in kind or in cash) and the right to vote in the general assembly. Moreover, in both forms, as a general rule, the property cannot be divided between members, nor sold to individuals or enterprises outside the association.

## The Legal Framework for the Restitution of Ownership Rights

The first wave of restitution began with the Law no. 1 of 11 January 2000 (also named the *Lupu law*, according to the initiator and promoter of this law in the Parliament), for the reconstruction of the property right on agricultural and forestland. While previous restitution laws (the previous Land Fund Law no. 18/1991 and of Law no. 169/1997) only allowed *private individuals* to request their (or their ancestors') former properties, law 1/2000 entitled *juridical entities* to request their former rights. According to it, restitution would entail returning the same plots in the same locations that were historically possessed, with very few exceptions (e.g.: sites where forestry roads or works are in place, forest crops, scientific study reserves etc.).

The law states that former members of the historical communities of commons rightsholders (*obști*, *composesorate*) and their heirs/descendants are entitled to file a reconstitution claim, and only one property title would be issued, having the community of rightsholders as a juridical owning body. Furthermore, the property deed (title) would have





attached a site map and a nominal list with all the claimants that are part of the community, entitled to rights on the basis of inheritance documents.

The restitution of mountain commons, in addition to the claimants had as main actors on the part of state authorities the following: 1) for the forest areas, the National Forest Service (Regia Nationala a Padurilor) through its local branches - which were in charge with the delimitation of plots to be restituted and establishing the availability of the claimed areas - and 2) the administrative municipality and county commissions set up by local authorities. All were responsible with the reconstruction of the property rights, the validation and the issuance of the property papers. Land would be effectively passed into the former owners' property once the papers regarding the "placing in possession" (punere în posesie) would be finalised. The final step, of the title deed, was not deemed essential for access and benefits, therefore in practice this final step of issuing the definitive property title was a step that took years to achieve.

The first step of 'validation' was essential. The law allowed ninety days from the law's issuance to the claimants to form 'ad-hoc committees' and file valid claims with the regional court of law, containing all necessary evidence. In support of their applications, committees would also present the certificate issued by the local commission to validate their claim. Upon verifying the documents submitted, the court would decide the granting of the status of legal person to the community. An important mention made here is that the law specifically states that the forested surfaces jointly-owned should remain indivisible for the duration of their existence.

In addition, the claimants had to submit a complete set of formalized *bylaws for governing the commons*, which had to include governance regulations, for example rules for forming an executive board, elections rules, validity of general assemblies, and also management regulations, forestry exploitation practices, the rights and obligations of the rightsholders, sanctions, and other specific provisions. These bylaws usually were formulated by the communities themselves on the basis of the old presocialist bylaws that were in use before 1948. Very few updates were brought. In some cases, communities would borrow from each other and regional authorities would contribute to bylaws formulations for the entire



region. This is how for example all the bylaws in the region of Vrancea ended up very much alike.

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*Short example, excerpt with the voice of commoners regarding restitution. In 2008, we recorded the following interview describing what happened to legal commons documents in many Wallachian villages:*


*“When times have come now with the commons, to restitute the land, I had found some documents in my house, which said how the obște was organized in the old times. Many records were lost when communists came into power, people did not keep them. But at some point in 1948, or 1951, I can’t remember very well, somebody gave me some documents, the local notary, he said to me, ‘take these because otherwise they will be set on fire’, you know they set the old records on fire at the municipality office. So he gave them to me and this is how we could prove now and get back the obște [i.e. the commons].”*

*“This obște was made right, with justice, we made it with documents, with inheritance from documents, with a lawful meeting and signatures, lawsuits, as our ancestors have done. Initially, we did not know anything, what could we know, uneducated people from this village?! We went to the county administration and they told us, go to the archives, find those papers, go to the notary, take those papers, authorize them. We then went to the court, and registered our commons. And it was done.”*

*(2008, Barbatesti, Valcea county, Wallachia)*

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From 2000 onwards, successive new laws or government ordinances were passed in order to amend this first law and ease some of its misunderstandings and flaws. Thus, the government’s emergency ordinance 102/2001, passed in June 2001 (see timeline provided), stated that associative forms would only receive those areas for which restitution claimants were submitted by former members or their heirs, but amounting to no more than 20 ha/former member and if one has no legal successor, his/her shares would be passed into the state’s ownership. These amendments practically limited the amounts to be restituted, making that the postsocialist commons were smaller in size. In July 2002, another law, 400/2002, was passed and fully sanctioned the previous ordinance and also brought two major changes. First, it stated that all forestry exploitation should follow the current forestry legislation, and not only the old bylaws, as law 1/2000 foresaw. Secondly, former members of the historical associative forms or their heirs should now organise themselves



in an association authorised by the regional court of law, according to the current law. By that time, Romania had a specific legal framework for associations and foundations – the Government Ordinance no. 26/2000 on associations and foundations.

Five years after law 1/2000, in full swing of ongoing restitution processes, a new major property law was passed, meaning to modify yet again much of what had been already done. This was the Law no. 247 of 19 July 2005, also called *Restitutio in Integrum*, on the reform of property and justice, as well as some adjacent measures (Title VI). This law opened the possibility of restitution for everything, for the whole areas previously collectively owned as commons (not just the ones accounted for by the members, without a limit/cap), based on collective property titles from before 1948 or other documents that certified the right of property. The 247/2005 law reinforced the requirement of indivisibility of the joint-property by specifically mentioning that members cannot alienate any part or the totality of their shares and the communities as juridical persons cannot alienate the whole or any part of the surfaces they own.

The legal framework focuses almost exclusively on the restitution process and does not pay much attention to the further organization and functioning of such commons, leaving gaps for confusion but also for local adaptations. Since 2002, the communities with commons had their status as associations enforced and recognized. At that point more than 80% of them were already established as “associative forms” or “legal persons”, with the specific aim to manage forestland and pastureland, taking into account their historical heritage and characteristics. The legislation regarding their functioning was pieced together from a variety of different laws and regulations (property restitution laws, forestry code, law for associations, etc.), and the commons did not benefit of a coherent and definite piece of legislation dedicated entirely to them.

The *bylaws of each community of commons rightsholders* has an important legal role. The law currently provides that the organization and functioning of commons be done according to each commons' bylaws, locally formulated and legalized by legal experts, notaries and courts of law. Communities of rightsholders thus rely on their individual bylaws to organise and structure their activity. As both laws (1/2000 and 247/2005) foresaw, in order to gain

the statute of juridical person, the commons were required to submit to the court of law authorised bylaws, which should roughly follow the ones they had before nationalization, between 1924 and 1948, and also fit the current legal conditions - but what this meant exactly was up for interpretation. It is no surprise that, given the just ninety days available to put together the substantial amount of paperwork, most of the communities used a slightly amended version of the old bylaws. Therefore, the bylaws followed the presocialist ones, which were thus mostly formulated one hundred years prior, with only minor updates to fit contemporary realities (for more detail on this please see Vasile 2019) . Once registered with the court of law, the bylaws can be amended, provided that the changes undergo a voting procedure in the general assembly of the commons and are ratified by a certain majority of commoners. The process of bylaws amendments is cumbersome, and although sometimes deemed necessary, such changes are not operated on a usual basis.

By 2016, 16 years after their reestablishment, 59% of the commons' representatives that we interviewed considered their bylaws still functional and almost 30% considered them outdated (see table below). Moreover, 32% of the communities made changes to their bylaws (with only 5% of them making substantial changes), usually regarding new areas of activity, the board's structure or other minor adjustments. The bylaws are regarded as the main reference document for the governance and management of the commons, but are often considered by commoners as not harmonized with certain areas of legislation – e.g. the fiscal code or the forestry legislation.


Evaluation of the commons' bylaws, according to the commons boards' representatives (as per 2016)	No. of cases/communities counted
59% of the bylaws are still functional	N = 328
30% of the bylaws are outdated	
33% of the communities made some changes to the bylaws	N = 274
5% of the commons made substantial changes to the bylaws	

## The Restitution Process – Facts and Figures

As mentioned briefly above, the Romanian commons included in our study were re-established in their majority (68%) during the year 2000, shortly after the promulgation of Law 1/2000. Only 17% of the studied commons were re-established between 2001 and 2004 and 15% during and after the year 2005. Thus, most of the commons property, over 65% of the total, was returned under the first restitution law, the rest of the land - especially the pastures - being returned under Law 247/2005.

Recognition of each of the commoners' rights was an important step in the process of restitution of the collective property. The commons in Romania account for about 400000 commoners, according to an estimation made by the authors around this represents 15-20% of the total population of each county analysed (according to the 2011 census). One of the difficulties of the commons restitution was to establish *who were exactly the rightful commoners*. As stated, in some cases the rights were residence-based (as in Vrancea region for example) and in these cases it was easy. But in most cases the rights were inheritance-based and in these cases it was cumbersome to demonstrate and calculate *who was entitled to how many shares of the commons*. As the law stated, all over the country the heirs of the former commoners, who wished to claim their rights, presented to the local committees a series of documents demonstrating their rights, and subsequently the shares of their predecessors were equally divided between them (for the most part equal division was preferred, for some cases the rights passed on only to one heir, provided arrangements between siblings). In some cases, these heirs have moved away from the area where the common territory was located, sometimes to a nearby city, but sometimes on other continents. These non-local heirs were also entitled to the common, according to the law, and in many cases, the communities include up to 25% non-local commoners.

In the region of Transylvania, as already said, an important advantage was represented by the existence of the Land Books, in which the commoners were enlisted so that the reconstruction of the tables of rightful commoners was in most cases possible and smooth.



However, the entanglement and complexity of inscriptions to be deciphered from these older documents proved to be an extremely difficult task in a number of cases (see for details Vasile, 2018). In regions such as Wallachia, the lists containing the names of former commoners were oftentimes kept as private records, and we encountered several cases in which such records were lost or destroyed in the fifty years period of the state-socialist regime, impeding the restitution process. More than half of the commons analysed were able to identify and record all the successors of their former commoners, having no share left unclaimed, and 34% of the commons only have 'a few' shares unclaimed. In this case, the shares either passed into the common estate or were distributed among the other commoners.

In the whole country, the successive restitution laws lacked a structured vision of the process and were applied more or less rigorously by the responsible local committees. Commoners usually suspect malevolence on the part of state authorities in allowing a full and just restitution, as one of our respondents expressed: "In Romania there are chaotic laws, but each forest piece had its own map, why did they not just give it back?" (46 years old, forest engineer). However, the restitution proved to be smoother in Transylvania, since the region had an important advantage in the existence of the Land Books (extended property registry called *Carte Funciara*), which were instated by the Austro-Hungarian state long before the period of socialist nationalization, which in postsocialism facilitated the whole process of recognizing and claiming the old properties.

A number of problematic situations regarding the restitution process have been reported by commoners during our research, with varying recurrence, including: 1) difficulties in returning the areas on the old sites, meaning that other plots were restituted which were sometimes deemed of lesser 'quality'; 2) litigation with public authorities for the complete restitution of property rights; 3) delays in issuing the property title for the claimed and returned areas and, 4) last but not least, anxiety regarding Romania's legislative instability. We will treat each of these issues separately in the following.

The actual land restitution was made either by taking into account the old sites (Rom. *vechile amplasamente*) of the claimed areas, or alternatively, other areas similar in size that were available. For example, in the case of the common in Brăduț, Covasna County, the whole process of restitution lasted almost two years, because the Local Forest District had already assigned to someone else the areas claimed by the commoners, and complex steps were needed to clarify the situation and assign the areas on the old site. Another special case is also found in Covasna County, represented by the common "Imreh Albert" Păpăuți from Zagon, to which 600 hectares of forest have been returned to the old site, but they were totally deforested while the land was owned by the state.

Despite presenting clear records of ownership, 42% of the communities analysed declared to us a total area of 30718 hectares that has not been returned to them so far, and will by all probability not be returned. The first ten largest unreturned areas encountered are over 1000 hectares each. Some of these cases were trials involving neighboring commons or claimants, but most were cases in which the state, represented either by municipalities town hall administration (*primarie*) or by the State Forest Service (*Regia Nationala a Padurilor Romsilva*) opposed restitution invoking insufficient evidence. Such litigations regarding the property rights and their restitution were reported by most of the commons' representatives interviewed as follows: litigation with the municipality town hall (39%), with the National Forest Service (17%), with the County Council (10%) or with another community (13%).


<b>The restitution process of the forest and pasture commons – figures (as per 2016)</b>	<b>No. of cases/communities counted</b>
<p><i>Frequency of litigations for commons</i></p> <p>39% communities have litigations with the municipality /town hall            17% have litigations with the National Forest Service            10% have litigations with the County Council            13% have litigations with a neighbouring community</p>	N = 101
<p><i>The situation of property titles</i></p>	N = 188

67% of the communities didn't have property titles for a part or the entirety of the common	
<i>Problems and fears triggered by the restitution process</i>	
24% see the incomplete restitution of commons as the biggest problem	N = 260
24% greatly fear the legislative system and a new nationalization	N = 292

Another situation that affects the activity of the commons, directly related to the restitution process, is the delay in the issuance of property titles - 67% of the commons studied did not have property titles for parts of the forest and/or pasture at the time of study. Although generally the distinct areas for which the property title is missing are relatively small compared to the total surface of each common, there are situations in which more than 60% of their surface has not yet issued this document and even some cases where the common does not own a title for the entire area restituted.

The lack of ownership titles is not just a legal issue of formal recognition of the right of ownership, but it directly influences the activities of the association. Thus, pasturelands, which accounts for the largest part of land for which no property titles have been issued, risk no longer being eligible for grazing subsidies from the state-EU subsidy programme. Representatives of the commons in this situation have consistently expressed their concern about this issue, from the perspective of their ability to manage their pastures, but also from the perspective of diminishing the financial resources resulted from the commons.

The whole process of restitution, sometimes inconsistent and unreliable, caused anxiety among our respondents. 19% of them believe that the incomplete restitution of property rights is the biggest problem of the common they manage. The unstable Romanian legislative system and the idea of a new nationalization represent the greatest fear for 22% of the respondents. They deplore that successive legal changes make it difficult for the communities' executive boards to operate, leading to perpetual fear of making mistakes that can lead to costs and to excessive stress. Some commoners expressed feeling insecure



about the common property, despite the law guaranteeing rights in perpetuity, because the legal instability means everything can change overnight. These aspects will be detailed also in the next section.

## The Commons' Relation with Public Authorities

Since the reestablishment of commons, the commoners' relationship with the public authorities was marked by misunderstandings, lack of communication between actors and conflicts that had their roots in the actual restitution process that allowed for the commons' contemporary existence. As stated above, more than half of the Romanian commons had or still have at least one litigation regarding the restitution process with a public authority, either the town hall, the National Forest Service, the County Council or the National Fiscal Authority. Still, the communities depend on these institutions for their functioning, thus relations are strained. All these problems led to a relative anxiety of the interviewed representatives on Romania's legislative stability, which emerged in almost all the discussions we had.

When asked how they feel about their relationship with the state, 47% of the commoners respondents evaluate it as a good one, while 34% considered it a faulty one and for 7% of them, the state constitutes the primary cause for most of their problems. However, the legislative system in Romania is regarded with fear by 9% of the respondents and 13% of them are mostly afraid of a new nationalisation, the possibility that the state would seize again their forests and pastures. Moreover, the lack of clarity in legislation and the lack of tailored procedures for the functioning and management of the commons – regarding either the forestry district's requirements, the inclusion of certain surfaces in protected areas, high levels of taxation or high costs for officially registering the land - is seen as the major problem of their organisations by almost 40% of the respondents.




The commons' relationship with the state	No. of cases
58% of the respondents consider they have a good relationship with the state 42% considered the relationship faulty	N = 266
<i>The primary cause of the commons' problems</i> 8% - the state as a whole 29% - the legislation 13% - the local municipality offices 10% - the National Forest Service (and corresponding local branch)	N = 299

In the case of the Romanian commons, the state, through its local branches and institutions, is not seen as a partner, but rather as a disturbing element which disables rather than enables the communities' development. 26% of the respondents believe that the legislation is the primary cause of their problems, 12% identify the local municipality offices as the major source of their problems, 9% to the National Forest Service and 7% to the state as a whole.

## Contemporary Legal Framework, a Summary

The law provides for community ownership rights to forest and pasture lands (Art. 92, Forest Code, 2008; Art. 26, Law 1/2000), in the form of village communities or kinship-groups, constituted as associations – juridical entities with private ownership. The commons are called in Romanian language *obste*, *composesorat*, *asociatie urbariala*, in law text named under the unified denomination of 'historical associative forms'. Communities of owners-users form associations to obtain these rights (Arts. 93-95, Forest Code, 2008), as independent governance bodies, managed by elected committees/councils. The community or kinship-group are considered private collective owners, their property is guaranteed, indivisible and inalienable, and provided security by law (Forest Code, 2008, art. 94-95).



Land cannot be acquired by, or alienated towards outsiders, according to law 1/2000, meaning that rightsholders cannot sell their shares to outsiders (modification introduced by law 400/2002). In case the legal land-holding entity dissolves, the land becomes property of the municipality, enters the public domain, but does not become state property. The 'dissolving' procedure is detailed in the by-laws (according to law 1/2000, art. 28). Most by-laws specify that the dissolving has to be decided by the general assembly, following detailed voting procedures.

The laws that first recognized collective landowning rights required the formation of legal entities (at the end of 19th century, beginning of the 20th century), formed of individual members, enlisted in tables; in most cases the common property came to be expressed as a sum of individual shares, although the property was not divided on the ground (Forestry Code, 1910); thus it reduced it to a sum of parts. These past processes are important today, as the current tenure regime follows the organization of rights and legal provisions of the past. Today, the tables with commoners and the number of each commoner's shares is an important instrument of governance.


Law explicitly grants authority over commons to the community itself. Power is devolved to the local level, communities of rightsholders govern independently through elected councils and general assemblies, according to locally created and approved by-laws, upheld by state courts (Law 1/2000, Art. 29). These procedures are upheld by the law of associations and all the changes must be registered with the local court of law.

The law recognizes property of communities of rightsholders (constituted as associations) over the 'forestry fund', which includes trees. The community of rightsholders can log trees for household consumption, and derive benefits from commercial logging. Forest management and harvesting is regulated by separate state laws that govern forestry, communities are bound to follow imposed management plans (Forestry Code 2008) and to affiliate to forestry districts, which can be state-run or privately-run for guarding and administration of the forests.

Pasture management is regulated mostly by rules pertaining to the subsidies schemes offered by the European Union CAP policy; these regulations require fulfillment of certain procedures: limits the number of animals per hectare, requires the maintenance of pasture Collectives own the ponds and streams on their lands, of less than 5 km long and with a hydrographic basin of less than 10 sq km. Over this size, they are owned by the state. The right to use the water is free for all. The community may not use the water for commercial purposes without formal authority from the government (Law of waters 107/1996). Some commons are located in areas that are designated protected areas. This does not relinquish the right of commoners to the land; it imposes restrictions, according to the degree of protection. Protected areas may contain land held under any tenure type, including collective entities, and are divided into core zones and buffer zones. In these zones, restrictions of use apply and compensations should be paid to owners (Government decree on protected areas OUG 57/2007). However, these compensations are usually not paid automatically and the communities of owners have to fulfill bureaucratic operations to obtain them, which are costly and not immediately available.

## **Economic Benefits from the Commons**


To better understand the economic ends of the commons which stand in close connection to the legal frameworks, we will detail here the type of benefits derived from commons for communities and their rightsholders. The Romanian commons are organized as associations, or in some ways, associative forms (as the first restitution law foresaw) that obtain revenues through economic activities. Their revenues come mainly from the direct exploitation of their natural resources – forest and / or pastures. Forests can be commercialized as softwood for the construction industry, or as hardwood for firewood. Pastures can be located at low altitudes, or at high altitudes as nutritious alpine pastures used by professional shepherders. The quality of the resources held and the possibilities of capitalizing on them decisively influence both the welfare of the community and the



benefits distributed to the members. and the community in which they function. More than half (55%) of the commons included in our sample provide financial resources through harvesting the wood and selling it further, while little over 10% provide revenue through various subsidies received for their pastures or the grazing fees charged to shepherders who lease pastureland.

In connection with obtaining revenues, lies their perceived duty of the commons' boards towards their members, that expect (and sometimes demand) to be granted their benefits, according to their shares, either in kind or in cash. The service to rightsholders/commoners is always placed ahead of the profits obtained. Romanian communities of rightsholders distribute a wood quota to their commoners (48% of communities), and/or an amount of money (50%). In some cases both are distributed, 20% offer both wood (usually for fire) and a sum of money, Only very few commons cannot afford to offer any benefit whatsoever, 11%, the revenues in these cases being barely enough to cover necessary functioning costs. However, this reality of the commons' revenues contradicts both the associations' law (OG 26/2000) and the social economy law (L219/2015) in Romania, which demand that the distribution of profits to associates to be limited, the latter even setting a limit of 90% of the profits, amount that has to be reinvested in the fulfilling of the organisation's social aim and the statutory reserves.


Looking at those percentages, one might think that being a rightsholder in the commons brings quite a profit to a household, but the reality is quite different. The commons size relative to the number of commoners is relatively small. In the case of the commons that provide firewood, the average yearly quota is of two cubic meters / hectare, and two-three cubic meters of wood per commoner, while a small household needs 6-7 cubic meters per winter and large households that have a wood-based heating system need around 18 cubic meters. When it comes to the cash benefits, the average yearly amount is around 250 RON (aprox. 50 Euro) / hectare, which again, in most cases, doesn't account for an important part of an individual's revenues. According to an estimation made for the Vrancea region, around 5% of a household's yearly earnings come in kind or in cash from the common.



In most cases, it is not only individual revenues that are important, but community-based economic benefits. The commons' executive boards devote their attention to the community's welfare and its sustainable development. 59% of communities of commoners provide funds for community infrastructure. Commons all over Romania support their local communities either occasionally in the form of sponsorships or in the form of large-scale investments (around 22% of their annual revenues). Investments include: restoration or renovations of local churches, road repairs or construction (sometimes in partnership the local authorities), the construction or renovation of the festivities halls important for community celebrations, the construction of mortuary chapels, purchases of agricultural machinery for community use, the renovation of the local medical facilities, the purchase of good breeds of bulls or rams for local livestock husbandry, and the construction of wells and bridges.

## Legal Pitfalls and Recommendations

Many local actors involved in the governance of the commons mentioned for our survey that they perceive the state laws and more broadly, bureaucracy, as the main threat to the commons, as already detailed in the previous sections. Therefore, it is noteworthy that many problems arise from difficulties of fitting the commons into legal and financial categories, which allows for confusion, accounting mistakes. For example, from a legal point of view, the commons are non-profit associations. The surplus cash (profit) resulted after selling timber and receiving pasture subsidies is distributed towards the rightsholders, as detailed previously, which is fair. However, these distributions are cumbersome from a legal point of view because a distribution of profit appears to have no legal basis, as the communities of rightsholders are non-profit. The commons and the communities of commoners are their own legal category, which does not fit within the existent boundaries. They have to be thought about on their own terms. But very few experts have the necessary knowledge of what these 'own terms' might mean. Law and policy makers often have a reduced knowledge about the ways in which the commons are



organized, their historical legacies; liberal policies regard them as relics of the past, as hindrances to 'progress' towards fully fledged individual property rights.

The commons are navigating the bureaucratic density, being subject to laws concerning associations, laws concerning forestry, conservation and commercial enterprises, among others. All of these issues require expert legal knowledge from the part of the council, which is in some cases not even remunerated for their work, or heavy fees for expertise. In this case, the commons might appear as 'backward' and 'stuck' local institutions, of low administrative and economic performance, to other state institutions/actors with which they interact, to law and policy makers, and there is fear from the commons representatives for various types of failures.

A policy recommendation in this sense is to support policies designed to enhance the financial and legal capacity building for commons council members, or training of local commoners about their rights and procedures. Also, in relation to the bylaws, which, as stated, are often outdated and the commoners lack the capacity to change them in proper ways, a recommendation is to enhance the real dialogue between communities of commoners regarding those bylaws regulations that work to achieve certain goals. It is also necessary to enhance participation in commons assemblies, by finding ways to incentivise commoners to participate. This would offer to commoners ranges of possibilities and examples of best practices to help them in governing the commons.

On the other hand, it is also necessary to train the law and policy makers for acquiring more knowledge about what the commons and the communities of rightsholders entail. Decision-makers should be better informed about the diversity of commons, of their range of organizational systems, range of actions, benefits distributed towards communities and members. It would also be beneficial that decision makers are informed about other European commons, how other country-based policies are shaped to enhance the good functioning of communities. This would lead to better informed decisions.

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- · Government decree on protected areas OUG 57/2007
- · Law of waters 107/1996
- · Emergency Ordinance no. 102/2001 for amending and supplementing Law no. 1/2000 for the reestablishment of the ownership right over the agricultural and forest lands, requested according to the provisions of Law no. 18/1991 and Law no. 169/1997, as well as amending and completing the Law no. 18/1991, republished
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