

FOREST AND PASTURE COMMONS IN ROMANIA

TERRITORIES OF LIFE, POTENTIAL ICCAs: COUNTRY REPORT

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 ROMANIAN MOUNTAIN COMMONS

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1. Brief country description and context

Romania is located in Eastern Europe. Its territories include the Carpathian Mountains, with the highest peak Moldoveanu at 2,544 m altitude, and border the Black Sea to the East, and the Danube river to the south. 28% of the country is mountainous, 40% hills and 30% plains. It borders other eastern European countries: Bulgaria, Ukraine, Hungary, Serbia and Moldova. It has an area of 238,391 square kilometers. The climate is temperate-continental; in general summers are hot and winters are very cold with lots of snow. The country has roughly 19 million inhabitants, from which 3.4 millions are temporary or definitive emigrants, mostly to other countries of the European Union. Romania is part of the European Union since 2007.

A strong majority of the population identify themselves as Eastern Orthodox Christians and are native speakers of Romanian, a Latin language. Like other countries in the region, its population is expected to gradually decline in the upcoming years as a result of sub-replacement fertility rates and high emigration rates. In October 2011, the latest census, Romanians made up 88.9% of the population. The largest ethnic minorities are Hungarians - 6.1% of the population, and Roma, 3.0% of the population, official estimates. Modern Romania was formed in 1859 through the unification of the Danubian Principalities of Wallachia and Moldavia. The new state, officially named Romania since 1866, gained independence from the Ottoman Empire under a foreign prince, Carol I, in 1877.



At the end of World War I, Transylvania, Bukovina and Bessarabia united with the sovereign Kingdom of Romania. Following World War II, Romania became a socialist republic and member of the Warshaw Pact. Abolition of private property, command economy, industrialization modernization, nationalization of forests, collectivization of agriculture and rural exodus, among others, characterized this period. After the Revolution in 1989, Romania entered a post-socialist transition phase in which privatization, market economy and democracy were the main acclaimed goals. Post-socialist property reforms (post 1990) did not innovate; they stressed on 'restitution', forwarding the ideological promise of reinstalling the traditional peasant society. This wave of rights recognition assumed the reversibility of events and treated the socialist era as a black hole, without reflection on the fact that rural households that were viable fifty years ago have members who have died, emigrated, married and substantially changed their relationship to land (Verdery 1996: 134). Claims were often overlapping and contentious; they were assessed based on formal knowledge from documents and also based on informal local knowledge of kinship and labor; land assignments and contestations often became memory struggles, over authoritative knowledge of past relations (Verdery 2003). A number of scholars argue that the Romanian countryside is increasingly depopulated and land is being abandoned (Kuemmerle et al. 2008, 2016; Müller and Kuemmerle 2009). To counteract these losses, the European Union's conservation policy promoted subsidies to encourage farmers to keep up traditional pastoral practices, advocating for a nature-culture hybrid model of conservation (Neumann 2014). Most rural households in Romania practice subsistence agriculture; locals also

occasionally hunt and fish, forage for berries, mushrooms, and medicinal plants. A large percent of Romanian rural population consumes mostly home-grown products. In many rural areas, locals have worked in industrial factories during socialism and now their income consists of state pensions. Usually, people in the Romanian countryside are neither poor nor uneducated.

Forests make up approximately 6 398 000 ha of the Romanian landscape (National Institute of Statistics 2015). Of these, approximately 400,000 hectares are meadows, marshes and ponds. Approximately 27% of Romania is covered in conifer and deciduous forest. Forests are dominated by beech (*Fagus Sylvatica*) (30%) and Norway spruce (*Picea Abies*) (22%) with an abundance of oak (*Quercus*) (19%) and other conifer species, such as silver fir (*Abies Alba*) (5%). From 1960-1985 inappropriate native and introduced coniferous species were planted in a few areas, resulting in ecological problems in artificial forest stands and low wood quality. However, the main function of 44% of forests was in the immediate post-socialist period to protect different ecosystems from soil erosion, pollution, and to create watershed protection (Function Group I) (Borlea FAO report 1997, <http://www.fao.org/3/a-w7170e/w7170eOf.htm>). Romania has one of the largest areas of undisturbed forest in Europe.

Pastures amount to 3,272,000 ha, of which approximately 85% are privately owned, and meadows another 1 556 000 ha (National Statistics Institute 2014). In this category we count alpine pastures, above the timberline, which are used as summer ranges. The mountain meadows occupy 1,240,000 ha. Also there are lower pastures and meadows, next to the villages (izlaz), which are usually used for the village cattle and horses. Romanian pastures are usually fertilized with manure and pesticides are not used.

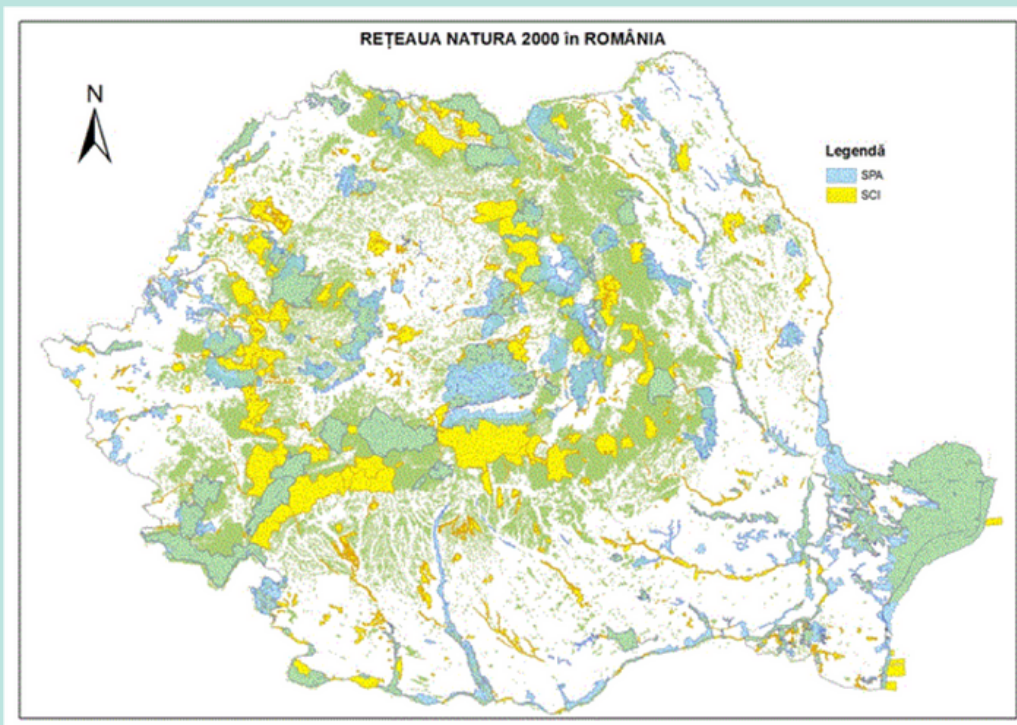
Currently forests in Romania are managed under the same laws (Ioras and Abrudan 2006), but the region has historically experienced very different forest management regimes because it was split between the Habsburg - region of Transylvania, and Ottoman Empires - regions of Wallachia and Moldavia, during the 18th and the 19th century (Munteanu et al. 2015, 2016). Historical forest management in Romania was mostly focused on natural regeneration. After the Second World War (WWII) all land was nationalized and managed by the state. Soviet policies heavily influenced forest management leading to widespread clear cuts and planting of fast growing species. With the collapse of the Soviet Union in 1990, land was partially returned to former private owners following three restitution laws in 1991, 2000 and 2005 (Ioras and Abrudan, 2006). In 2007, Romania joined the European Union, and new land management regulations, such as a requirement for management plans for private forests (Ioras and Abrudan, 2006). However, forests experienced high levels of disturbance after 1990, and particularly after 2000 (Griffiths et al. 2012, 2014), including the loss of valuable ecosystems and old-growth forests (Knorn et al. 2012).

The forest service, in charge of forest administration and guarding, currently is partly a state structure, partly private structure. During socialism it was one of the most powerful territorial state structure, with more than The privatization of forest service structures started in 2002. A private forestry district included former state employees, and it needed authorization from various state institutions. It needed to make administration contracts with private forest owners, so as to cover a minimum of 7000 hectares of forest (criteria for mountain areas). In 2016, there were 104 private forestry districts from 478 in total [1]. The state forestry districts automatically administer the state forests and also some of the private owners, which choose to contract their service for a negotiated price. Studies argued that while foresters from both state and private structures shared values related to forestry, as they had the same education, there were increasing tensions between the two sides (Lawrence 2009) and the foresters who started working for the private structures were trusted more by the local communities that they worked with, and had a better morale (Lawrence and Szabo 2005).

[1] According to official website
<http://ocoalederegim.ro/index.html> .



Map 1. Map of Romania



Map 2. The network of protected areas Natura 2000 in Romania.
http://www.rosilva.ro/articole/prezentare_generala__p_184.htm
 © National Forest Directorate

Roughly 25% of the Romanian land territory is in some form of nature protection (UNEP-WCMC 2016), either as national parks, natural parks, nature or scientific reserves, or protected under the Natura 2000 Network, on the basis of the Habitats and Birds Directives. These areas mostly have their own management structures and management plans. In some cases they overlap with territories owned by communities of local users. The relation between the administration of protected areas and local communities who own land in those areas is not always an easy one; there are many complaints on both sides. Usually, the communities complain of lack of respect for property rights, lack of participation in the decision-making process and severe impositions on their livelihoods. In return, the protected area administrators complain about the 'greed' of local dwellers, about poaching and illegal

logging. Romania has the largest population of large carnivores in Europe including the brown bear (*Ursus arctos*), wolf (*Canis lupus*) and lynx (*Lynx lynx*). There are approximately 6600 brown bears and 3000 wolves (Ministry of Environment and Climate change report 2014[1]). The country supports half of Europe's brown bears and 30 per cent of Europe's wolves. There are 89 mammal species in Romania including the red deer (*Cervus elaphus*), wild boar (*Sus scrofa*) and fox (*Vulpes vulpes*). Birds are abundant in the beech forest and include a large diversity of species. It is estimated that Romania has 33,802 faunal species and 3700 flora species (ibid.).

[1] <https://www.cbd.int/doc/world/ro/ro-nr-05-en.pdf> consulted June 15 2017

2. Features of ICCAs

2.1. What are potential ICCAs in Romania? General overview

The first point to be clarified regarding ICCAs in Romania is that the concept of ICCA is unknown locally, to practitioners or administrators and, as a consequence, there are no formally recognized ICCAs. However, there are land commons with characteristics that fit the ICCA definition as stated in Borrini-Feyerabend et al. (2004), however, they cannot be formally called such. As the expertise of the author bears mainly on forested and grassland areas, the analysis provided will mainly be focused on this type of land, to be found in the Carpathian Mountains of Romania. Community.

The described potential ICCAs are forests, pastures and woody pastures owned and governed mostly by communities, which can be territorial villages, kinship-groups or groups of descendants. And while the territorial villages are clearly groups of people living together in a certain bounded area, the kinship-groups are more diffuse

communities, based on common ancestry, or descentance from a group of villagers who were given rights to the commons at a certain point in history and inherited the rights. The community rightholders have a bond to the owned territory, and this bond understood as ownership and stewardship is getting stronger, as the commons were only restituted for 19 years (details section history).

The rural residents of today Romania are mostly literate and educated, making a living from sparse wages and pensions, small business operations, day-labor, and subsistence practices. Rural inhabitants of Romania are fully integrated in a European society, with aspirations for education, good living standards and consumption. But, the possibilities for earning an income are not as developed as in Western Europe. This gap increased in the last 25 years, because of deindustrialization after the fall of socialism the countryside was left without jobs.



Grazing on the Southern Carpathian summer ranges. Fagaras Mountains, Wallachia. ©Arryn Snowball 2016, AE database



Household work in Apuseni Mountains, Transylvania ©Monica Vasile 2010

The villages today are slightly aged and depopulated, with an average rate of depopulation of 20% for the last 25 years. The commons and the communities of rightholders are organized in legal entities, which include the members of communities and the owned territory. They are called in Romania 'traditional associative forms', referred to in local language mainly as **obște** (pl. *obști*), **composesorat** (pl. *composesorate*) and **asociație urbarială** (pl. *asociații urbariale*). In Romanian, obște and composesorat designate mainly the institution governing the commons, but also the community of rightholders and can also be used to designate the area, the land itself. From a legal point of view, these commons are considered land in private property of 'juridical persons'.

Governance. The potential ICCAs described here have governance independence and were organized since year 2000, when a property restitution law (law 1/2000) enabled the return of the land in the hands of communities, after 60 years of hiatus when it was owned, governed and managed exclusively by the state. The local institutions/organizations of community members – owners of the commons are legally recognized as associations, also generically called 'historical property forms', with own by-laws and decision-making system - usually assemblies, of commoners and elected councils, as it will be detailed further in the report. Thus, governance is independent, but management of forests is co-management, together with specialized forest service providers, either private forestry districts, *ocol privat de regim*, or state forestry districts, *ocol de stat*.

Conservation. The Romanian Carpathian ecosystems are considered to be healthy and biodiverse, a wilderness frontier of Europe. Part of them are in stewardship of communities since the land restitution law in

year 2000. Among these areas, some are included in the Natura 2000 network, in natural and national parks, and most of the pastures conform to European Union regulations for traditional use and management, and receive subsidies, which are partly destined towards maintaining further biodiversity levels. From the AE database, 42% of the Romanian forest and pasture commons organizations have areas included in protected areas, and 15% are in national parks.

Despite being a practice in the awareness of local people, 'nature conservation' is a concept that is not central to community vocabularies, but mostly perceived as a recent restrictive idea, imposed from 'above', through designated protected areas. Communities do not perceive environmental threats to a high degree, neither aridity nor invasive species, the forests and grasslands being considered abundant and nutritious. Communities often derive livelihoods from using the environment commercially, either through logging, and selling roundwood and sawnwood, or through shepherding and selling produce, meat and cheese (details in section 2.6.). Most of the potential ICCAs described are centered on use of the land, mostly grazing and logging, from which the communities derive monetary income, distributed towards commoners and invested in needed community infrastructure. Firewood is also extracted and distributed towards local population, for heating and cooking (further details in section 2.6.).

In several areas, environmental organizations and government agencies levered severe accusations that community dwellers use resources unsustainably, accusations of illegal logging, and poaching. Recently, since 2015, a governmental clampdown on illegal logging reduced it drastically, and there is an obvious turn towards environmentally sound practice. In addition, a number of communities with commons support conservation projects in partnership with NGOs.

2.2. Numbers and coverage

Basic official statistics on forest and pasture commons of Romania are either inconsistent or entirely missing. The present study is mainly based on research the author has done in the past 15 years (Vasile 2006, 2007, 2009, 2015, 2018; Vasile and Mantescu 2009), examining a wide range of case-studies and interviewing a large number of commons representatives. The main research database for quantitative estimations comes from a survey of 330 commons from 2015-2017, Romanian Mountain Commons Project, henceforth referred to as AE database [1].

From my research, by piecing together information from different sources[3], it can be said that there are around 1500 forest and pasture commons, counting 873.000 ha of forest, 14% of the total forested surface of the country. This official figure is presented for 'traditional associative forms' by the Romanian Court of Accounts in a report from 2014[4]; other sources indicate other figures, such as 788.694 ha (year 2015), source official report filed by the Ministry of Forest and Waters[5]. In addition, the potential ICCA territories consist of about 300.000 ha of pasture, which is a rough estimate[6]. The resources are owned and managed by over 400.000 commoners[7]. Commons are located in the mountains, but also in hilly areas. The potential ICCAs on the exterior arc of the Carpathians, in the historical regions of Wallachia and Moldova are generally larger, and the ones situated inside the Carpathian arc, in the historical region of Transylvania are smaller, but more numerous. In the region of Moldova, a strong local class of landed landlords during the feudal period. Their size depends on historical conditions at the moment of their legal recognition, more than 100 years ago, which will be detailed in the further sections of this report.

- *cca. 453.000 commoners* in 2016: 24% in Wallachia, 67% in Transylvania, 9% in Vrancea*
- *cca. 338.343 commoners* in 1948: 15% in Wallachia, 73% in Transylvania, 12% in Vrancea*
- *111% increase of number of commoners in Wallachia since 1948*
- *24% increase of number of commoners in Transylvania since 1948*
- **estimations from AE database*

[1] AE database was created in the project „Romanian Mountain Commons”, led by the author. More information on methodology at:

<http://romaniacommons.wixsite.com/project>

[3] Such data sets include official forestry statistics, reports provided by the state court of accounts, databases with registered associations.

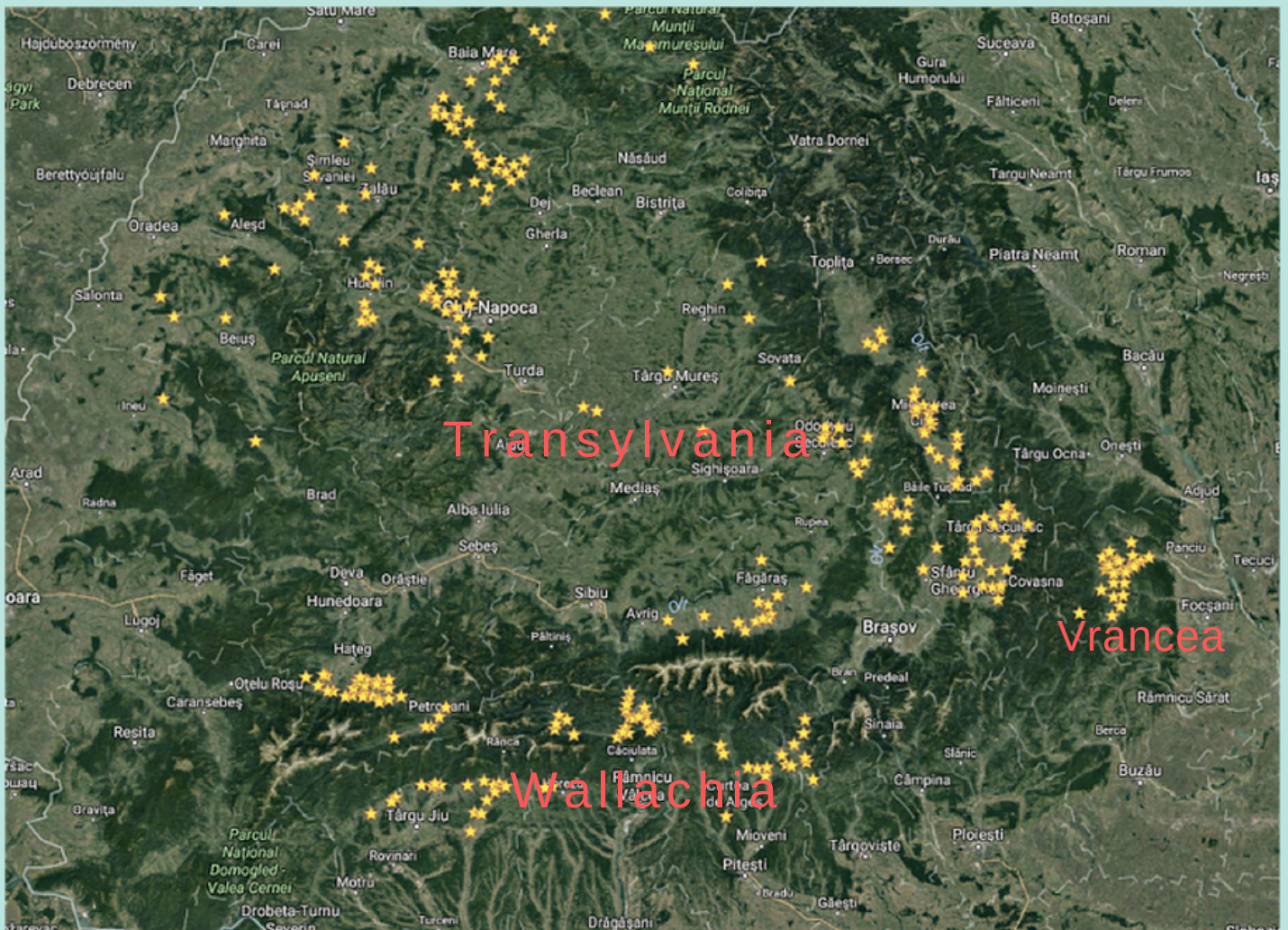
[4] Consulted under the following link http://www.curteadeconturi.ro/Publicatii/Sinteza_FF.pdf in May 2017.

[5] Consulted under the following link [http://www.mmediu.ro/app/webroot/uploads/files/2016-12-](http://www.mmediu.ro/app/webroot/uploads/files/2016-12-16_Raport_Starea_padurilor_2015.pdf)

[16_Raport_Starea_padurilor_2015.pdf](http://www.mmediu.ro/app/webroot/uploads/files/2016-12-16_Raport_Starea_padurilor_2015.pdf)

[6] Official data is absent in this case.

[7] Estimation based on AE survey database



Map 3. Commons in the Romanian Carpathian Mountains, surveyed in the project Romanian Mountain Commons (AE database) in three main regions. Stars indicate the location of communities in which research was conducted.
<http://romaniacommons.wixsite.com/project> ©Monica Vasile

Estimates from AE survey, Romanian Mountain Commons Project:

Land in Commons

- *cca. 1500 commons*
- *cca. 450.000 commoners*
- *cca 870.000 ha woodland are commons, owned and governed by communities*
- *14% of the forested area of Romania*
- *cca. 300.000 ha grazeland are independent commons, owned and governed by communities*

2.3. Historical developments

Contemporary commons and their governance owe a lot to their historical development in the feudal period, leading up to formal recognitions after 1850. As it will be seen further, their governance regulations, surfaces owned, names, ways of defining the community of rightholders, are due to their historical recognition and formalization in the modern period (19th-20th century), which followed processes of the earlier historical periods (16th-18th century).

The Romanian forest and pasture commons were legally recognized in relation to communities of landholders during the 19th and 20th century in the different historical provinces.

The delineation and recognition of commons in **Transylvania**, coupled with a formalization of personal rights occurred in the 19th century, starting in 1853: this process was a massive, centrally-driven policy by Austrian state and its continuator, the Austro-Hungarian Empire, which essentially transformed the previous entitlements of peasants to common lands. It also quantified the shares of peasants in the commons.

A similar process happened in **Wallachia** in 1910, a region under Romanian rule, covering the Southern Carpathians; a centrally driven operation of legal recognition and registration of commons, with roots in local customs of rights demarcations, based on lineages and broadly understood kinship groups. However, in Wallachia, as well as in Transylvania, grassroots processes of rights recognition ratified by local courts happened much earlier in connection to free peasants. These free holders existed merely in the mountainous areas, where landlords did not spread their influence to a large extent. The **rights of free holders** were based on (1) donations from medieval kings to communities of kin-groups of vassals, arms-bearing cavalry, or knights, or

borderguards, or (2) on rights of first settlers on unclaimed land, or (3) on redemptions (buying) of land by peasants from former landlords or land-owning monasteries. Various peasant groups/communities were constituted as legal persons, following different rationales. In some areas, the villages as territorial units were entitled to own land (e.g. obști in Vrancea region, South-Eastern Carpathians); in others, it was kinship groups, the descendants of initial settlers who were constituted as legal owners of the common land, with the exclusion of newcomers (e.g. obști in region of Wallachia); yet in others it was descent-groups formed of heirs of those who redeemed lands from the local landlords in the 18-19th centuries; or descent-groups of former military that were donated lands by medieval kings for whom they fought wars (e.g. composesorate nobile of Maramureș) or descent groups of former serfs. The different categories will be detailed in further sections.

When they were constituted as legal persons, most of these groups had allocated unequal individual shares, as rights, to the mountain commons for individual households or persons, on the basis of their holdings – in Transylvanian associations of former serfs, or on the basis of their position in the lineage of the initial settlers, in the southern region of Wallachia, or on their monetary contribution in the redemption process, etc. Such shares/rights did not mean that they were allotted a certain plot, but that they were allowed to derive a certain quantity of benefits from the commons, for example to graze a number of animals, or receive a certain amount of money from leasing the forest. These groups were organized in self-governing institutions, they elected a management committee, elected a forest

guard, organized village assemblies and devised their own by-laws, ratified by legal courts and registered. Regional by-laws were at times suggested as unified models and adopted.

The commons governance institutions, obști and composesorate, were thus functioning from the 19th century, and some even from before, as independent governing bodies, according to their own rules, with full recognition from the state, upon fulfilling legal procedures of registration.

An important distinction should be made between the independent commons, considered 'private domain' and the municipality lands considered 'public domain'. The municipality owned land (păduri, pășuni comunale) starts to be an important category of ownership starting with 1920. This land was called the communal forest, padure comunale, or the communal pasture, with reference with the name of the territorial administrative rural unit called commune, *comună*. The municipality land was a form of owning land especially in Transylvania, destined also for the use of residents, governed by the local state officials (mayor and councillors), but without any say on the part of the actual community of residents.

In the past, the independent commons forests were used for firewood and construction timber, for digging peat, also for grazing pigs in early spring. Pastures were extremely important for raising cattle and sheep. They were also an important source of monetary income for local communities, as some mountains were leased to shepherds from other areas, and to logging companies. Especially in the end of the 19th century and the beginning of the 20th century, many companies from the Austro-Hungarian Empire started the capitalist exploitation of the Carpathian forests, and in many areas they mercilessly deforested entire areas. They build logging infrastructure, narrow-gauge railways, roads,

and funiculars and used timber flottation techniques, which ensured the transport of large quantities of timber. In many cases dubious deals were struck between local elites and commercial entrepreneurs representatives of the companies, considered abuses of local rights, leading to dispossession of the peasants of their rights to the commons (Stahl 1998; Iuga 1936). The state attempted to stop this kind of 'irrational' logging and define better the rights of locals, in order to protect them, and this is one reason for the regulations of the commons from 1910.

Socialism. Between 1950 and 1957, the socialist state seized the commons in a process of **nationalization**. In this period, forests became a state resource, their timber started to be produced, extracted and commodified by the state. Community users became forest workers, guards, woodcutters, wood transporters, forestry engineers, technicians, sawmilling specialists and so on – tens of thousands of employees. A network of forestry districts was put in place and forest was mapped into UA – administrative units and UP – production units. Also local language of forests became that of scientific forestry and the language of production. Concerning pastures, they were administered by local socialist collectives, either by independent associations called 'camaraderies' or 'communities of comrades' (*întovărășiri*), which kept the old rules for sharing pastures, grazing and making cheese. They were restituted to communities after year 2000. The historical track is very important for current developments.

Post-socialism. In the contemporary period, after 1989, there were a few successive restitution laws, which allowed the property restitution of land to former owners, those from before the nationalization in 1948 and their rightful heirs. The restitution law 1/2000 allowed the pre-socialist commons to be

reorganized and the former commoners to receive back their property rights, but limited the amount of land that could be restituted. Later on, law 247/2005 aimed to right that wrong and to restitute integrally. This law was called *restitutio in integrum*. The post-socialist laws did not introduce many innovations and explicitly required the use of the old by-laws. Even though formal recognition was initially fairly straightforward, the process of full titling and registration in the 'land book' required cumbersome procedures. According to the law, the new entitled commoners were the 'old' members (from 1948), and their descendants. However, after 60 years of interrupting the 'existence' of the commons, it was not obvious who these people were. The process of making new commoners entailed complex negotiations. The stories of restitution were mostly bureaucratic stories about 'papers', of finding and deciphering old maps, lists with

commoners, property documents, and about making new official documents. Overall, the surface of land restituted after 2000 was less than what the commons covered prior to 1948. This diminishing relates to various situations: 1) unaffordable or unavailable legal assistance and lack of initiative of the heirs of former commoners; 2) lack of evidence for claims, i.e. legal property documents, which were either lost, made unavailable, hidden, stolen or destroyed; 3) confusion regarding the legal procedures of reconstituting commons property; 4) the reluctance of local state officials, entitled to run the restitution process, to hand over the land to the new claimants; 5) reluctance of state forestry districts, who managed the forest land, to hand over the land to commons claimants; 6) changes in the administrative structures that created confusion; 7) new private enclosures.

Results from AE survey, Romanian Mountain Commons Project:

Shortcomings of post-socialist commons restitution; N=329

- *40% of the communities of commoners had lawsuits regarding the restitution of commons*
- *39% of all lawsuits were against local state officials, mostly in Transylvania*
- *23% of all lawsuits in Wallachia had as reason the unclear borders between neighboring commons*
- *13% of all lawsuits in Transylvania were due to lack of clarity regarding the old border between the Austro-Hungarian Empire and the Romanian Principalities*
- *38% of the commons do not have a property title as per 2016, 16 years into the restitution process*
- *26% of the communities of commoners' representatives believe that confusing legislation is the main reason for the commons problems*
- *19% of the representatives see the incomplete restitution as their primary problem in governing the commons*
- *13% of the representatives fear a new nationalization*

2.4. Contemporary laws and regulations regarding commons

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 *obste*, *composesorat*, *asociatie urbariala*, in law text named under the unified denomination of ‘historical associative forms’. Communities of owner-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 (Forest Code, 2008, art. 94-95).

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 in a sum of individual shares, although the property was not divided on the ground (Forestry Code, 1910); thus it somehow denied the wholeness of a collectivity and reduced it to a sum of parts. The process of establishing who was a commoner 50 years ago and who are their heirs today proved to be cumbersome. 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 rightholders 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

inscribed in the “Registry of Associations and Foundations”.

Forest management and harvesting is regulated by state laws, 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 (for more details see section 2.6.).

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 from growing weeds and encroaching trees, as well as keeping the sources of water. 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.

It is recognized that community land rights may be held in perpetuity. There is no durational limit mentioned in Forestry Code or property restitution laws 1/2000 or 247/2005. Most legal by-laws found in local communities mention 'unlimited duration'. Land in the commons, or quota-shares held by individual persons cannot be acquired from or sold towards persons who are not part of the community of rightholders (law 400/2002), thus, external members cannot be accepted, by law. However, in certain areas members can sell their shares/quotas to other rightholders inside the same obște/composesorat; the sales were

usually a reason for confusion and abuses in the past, and in some cases also in the present, see section on "Threats". Transactions with shares have to be approved by the council and the assembly of commoners and properly publicized in advance. In case the legal landholding 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.



Village in Apuseni Mountains, Transylvania ©Monica Vasile 2010

2.5. Communities of rightholders: a typology of Romanian potential ICCAs

Currently, the Romanian communities related to land commons can be defined as **'communities of rightholders'**, people who own and share the land and mostly live in the same territory. In practice, what we understand by 'community of rightholders' is complex and very different across the Carpathians, defined by layers of successive histories, local and state decisions. Communities are always in flux, changing in the course of time, with their borders being defined also by administrative-bureaucratic policies attempting to regulate and contrive concepts of what makes community and what makes rights to territory. As mentioned before, the Austrian state policies starting with 1853 in Transylvania, and the Romanian Forestry Code implemented in 1910 in the Romanian Principalities (Wallachia and Vrancea county included here) enabled various peasant groups to constitute as landholding legal persons, and recognized their rights to common lands, following different rationales.

Today in the Carpathian commons, we see a range of different communities linked to certain territories, owning rights to common lands, which can be distinguished in a few types:

1) The territorial villages. Rights to commons defined by residence.

Here, the community holding rights to the commons is formed by people who live at a certain time in a village. Locally this system is called 'organized by the chimney smoke' (in Rom. 'pe fumuri'), meaning that if you want to count the members in the community, you count the number of smoke columns coming out of chimneys in winter. This means one counts the households that are lived in at the moment. This suggests that, as in other parts of Europe, we have a **'community of households', a territorial village unit holding the rights to the land**. We have here the primacy of households, or of place over persons, suggesting a conception linked to the Germanic type of ownership.



Group of commoners of Composesorat Suseni, before 1948. Harghita county, Transylvania. ©Stefan Voicu 2016, AE database



Elected executive council of Composesorat Ciucani, 2014. Harghita county, Transylvania. ©2016, AE database

The community is historically linked to a certain piece of land, to a certain place, a mountain that includes pasture and forest, in which every villager holds equal rights in common with all the others. This is the simplest form of commons. When someone leaves the village to settle somewhere else, they lose the right to the common land. If the person comes back, they receive their right back. If a foreign person comes as a newcomer to the village, they receive the right to the common land. The rights are not transferable, and not inheritable. This type of commons / rights holding system are located preponderantly in the Eastern part of the Carpathians, all the 30 communities of the region of Vrancea, owning rights to over 60,000 hectares of forest within the Vrancea Mountains. In the region of Vrancea, the average number of commoners per community of rightholders is 971, according to the AE database. This type of commons are also scattered across the other regions, 11% of such commons are located in Transylvania (especially in Braşov and Sălaj counties).

2) The communities of former free-holders of northern Wallachia. Rights to commons defined by common ancestry.

They inhabit the mountain villages ranging along the southern rim of the Carpathian Mountains. They own approximately 24% of the forested surface of the area (counties Argeş, Vâlcea and Gorj) and 17% of the grazeland of the area. The commons owned by each community count on average 2600 ha of mountain land, including forest and pasture (alpine pastures and lower foothills grasslands), and a community of rightholders currently counts on average 741 members, according to AE database. Their land is mostly defined as 'mountains', the land of each community comprising forest and pasture, and alpine pastures. The land in these areas is different from other areas of the Carpathians, as it has alpages, alpine pastures above the timberline with nutritious grasses grazed by sheep in summer. This feature is important because

over the course of history it raised the question of who is entitled to pasture and how many sheep can be allowed, which leads to a quantification of rights/shares to avoid overgrazing, as in other parts of Europe (the Swiss Alps for example). In this type, commoners usually **inherit** rights/shares, which are **split** between heirs, in time leading to an **inequality** of shares inside the community.

This type is defined by a historical reference to the **group of people descending from the first pioneer settlers** in a given territory, or descendants of people with military titles, knights or borderguards (called plăieşi), who were considered freeholders in the feudal ranking, and were granted communal rights to the land by rulers/kings, for their military service. In time, various transactions with the land had occurred, so that by the 16-17th centuries some of the peasant communities lost the land to large landlords or monasteries, and in order to become community-lands again, they had to be bought/reclaimed.

Crucial to our discussion is the fact that today these groups of rightholders hold an understanding of being a community and are also legally recognized as traditional groups of owners. Historical references, a sense of **shared ancestry**, and past struggles against feudal exploiters – take shape in a shared identity as a community that lays claim today to certain pieces of common land. In the documents from the beginning of the 20th century, as well as since the postsocialist restitution, these communities of rightholders call themselves in vernacular language '*ceata de moşneni*', group with a common ancestor, or '*obşteă de moşneni*', the word obşte coming from Slavonic and meaning 'togetherness' or community. At the beginning of the 20th century, **the moşneni peasants** were 50-60% of all peasants inhabiting the northern counties of Gorj, Vâlcea and Argeş. They were defined by the Ministry of Water, Forests and Domains in 1899 as those peasants who were not dependent,

did not pay tribute to monasteries or landlords, and freely owned their lands prior to the agrarian reform from 1864, on the basis of their ancestral rights (Ciobotea 1999). In time, in order to survive, the customary property rights of these 'communities of moșneni' had to be formalized and recognized by the Romanian state, and tune in to complex concepts of law and procedures of quantification and bureaucratization. The formalization of the community as a legal juridical body (*obște*) owning rights to the land, in late 19th- early 20th century, was crucial for the survival and definition of such communities of descent.

In past times all commoners would inhabit one village, but, in time, with increasing mobility some commoners migrated to cities, but did not lose their right, which was inherited and secure as a property right. So, at the time of postsocialist restitution, in 2000, in most cases a core nucleus of the community of descent would still live in the village, i.e. on average 73% of the rightholders according to AE database, while a number of descendants don't inhabit the area anymore, but they are still registered as commoners and can participate in meetings and receive part of the distributed proceeds. Such communities are reminiscent of the segmentary lineage systems of the African tribes, such as the Nuer and are also similar to the Montes de Socos in Spain.

3) Communities of former enserfed peasants (urbarialisti, iobagi, coloni) in Transylvania.

Rights to commons defined by descent from a group of entitled predecessors.

These commons have been formally recognized since 1853, when after the liberation of feudal serfs, an imperial patent law (called the segregation law) delineated plots of lands from the larger manorial estates for the use of liberated peasant communities. The delineations were fraught with conflicts and injustice, as the former

feudal landlords had all the interest to keep large estates for themselves and they had the power to control the commissions of clerks and judges in charge with operating the land allocation to peasants. The resulted communal plots of land, the 'composesorate of former serfs' were usually **too small** to actually sustain the livelihoods of peasant communities, and thus were subject to ceaseless conflicts, complaints and reassessments. Their organization as governing institutions was provisioned by an Austrian law in 1898, which required formulation of by-laws. The processes of recognition and formalization of rights have lasted very long, marked by successive changes to legal provisions, administrative changes, recalculations and re-delineations, which in fact did not cease until the abolition of the commons in 1948.

Today, these commons are usually of a small size. Most are organized on the basis of **unequal shares, genealogically**, as in type 2). with the inheritance of rights from the entitled 'former serfs' listed in the membership tables and the official land books at the time of the formalization of rights (late 19th century).

For this category the process of restitution after 2000 was made very difficult by local state officials in the area (local government, mayor's office).

The forests of these commons are predominantly deciduous - located at small altitudes in the immediate vicinity of the villages, from which a share of firewood is allocated to the commoners. 26% of composesorate commons in this category have no pasture at all. Monetary proceeds in this type of commons are very low, and therefore, due payments and fees towards state forestry districts that guard and manage the forests by law, often represent a problem. Most of the time, the presidents of these composesorate dedicate a lot of voluntary time for running the governing institutions and fulfilling legal procedures (for further details, see also case-study Composesorat Tauții de Sus - Valea Gordanului).

4) The communities of former small nobility and borderguards of Transylvania. Rights to commons defined by descent from a group of entitled predecessors.

In 1762, in the Transylvanian Principedom, communities located along the Carpathian mountain rim, at the border of the Austrian Empire, received land in ownership in exchange for military service to the Crown. To the south, the counties of Sibiu, Brasov and Hunedoara. To the east, Harghita and Covasna counties, areas inhabited mostly by the Hungarian minority [1].

The local communities derived their rights to the commons historically from a feudal class of cavalry, who, in exchange for class and property privileges, were required to defend the borders of the Habsburg Empire, and therefore to support horses, bear arms, and be ready to fight. They are similar to other cavalry in feudal Europe. Were considered free people, lesser nobility and were provided with land, as opposed to being serfs. They were called either borderguards, *grăniceri*, or nobles, *nobili*, or *nemeși*. To some extent they were also considered peasants, free peasants, similar to the *moșneni* in Wallachia.

These commons were owned by legal institutions - a community of members - called *composesorat*, with independent elected councils and by-laws from 1898, organized according to a law passed by the Austro-Hungarian state, which made similar provisions for type 3 (the former serfs commons).

Within one territorial village, sometimes the community of borderguards descendants would distinguish themselves from the rest of the village population, and so only a part of the village would have rights to commons.

The same **inheritance principle** described for Wallachian communities above also operates here, the commons organized on the **quota/shares system** whereby the rights **inherited are transmitted and divided** among the heirs, and are preserved even if the person leaves the area where the land is located, or is born elsewhere.



Office buildings for composesorates/institutions of former borderguards (type 4) commons in Harghita county, Transylvania. 1. Ciucsangeorgiu 2. interior of Ciucsangeorgiu composesorat headquarters, youth orchestra practice room 3. Frumoasa, 4. Mădăraș

©Stefan Voicu 2016, AE database

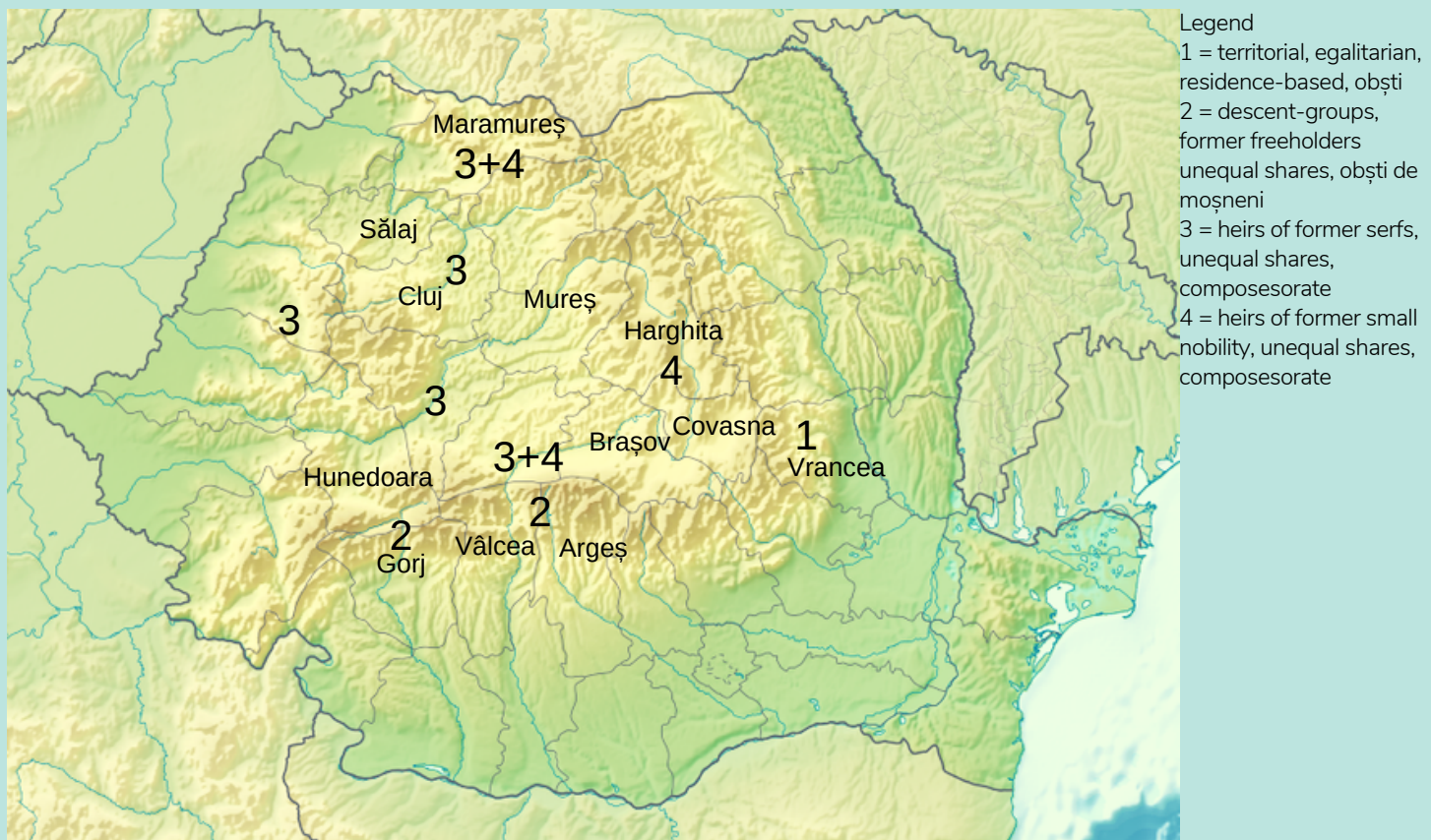
Rights, just as in southern Wallachian communities, can be transferred to other persons inside the community, by selling or donation.

The commons in this type are **relatively large**, on average they are around 1500 ha, larger in Harghita. The **monetary proceeds are therefore quite substantial**, and these institutions are locally **very powerful**, they run their own small enterprises, like

sawmills, tourism facilities, farms, or tree nurseries, and they contribute revenues from the commons to community life by sponsoring local youth groups, village cultural associations, fanfares, fire brigade. they also sponsor building infrastructure.

[1] 85% of the population in Harghita county is Hungarian and 74% in Covasna.

Map 4. Geographical distribution of types of Romanian commons, names of studied counties by Romanian Commons project, AE survey. ©2016, AE database



Distribution of types detailed in section 2.5. on counties:

type 1: Vrancea

type 2: Gorj, Argeș, Vâlcea

type 3: Sălaj, Cluj

type 4: Harghita, Covasna

type 3+type 4: Hunedoara, Maramureș, Brașov

2.6. Socio-economic uses. Contribution to livelihoods and delivery of public good

Commoners perceive the primary uses of the commons to be firewood, grazing and liquid proceeds from commercial leases and enterprises. The forest commons are a mixture of broadleaved species in the lower areas, beech (*Fagus*) trees, hornbeam (*Carpinus betulus*), used as firewood, and also oak (*Quercus*), and at higher altitude coniferous species of commercial value, which can be leased to timber entrepreneurs; Norwegian spruce (*Picea abies*), silver fir (*Abies alba*) some are spruce plantations, some are natural forests.

Currently, strict state directives regulate the harvesting of forest, vested in forestry specialists, however accusations of overlogging loom large, especially in areas densely forested with resinous species. Each common property institution is affiliated with a forestry district, which guards, manages and administers the forests, for a price per hectare, which translates into costs for commoners. For example, for a small commons of say 200 ha, the expenses towards the forestry district can amount to 2000 euro per year, which is a significant amount in the Romanian countryside. Each commons forest has a detailed management plan[1], which states how much can be harvested, where, what kind of work needs to be done to allow for healthy growth and regeneration, according to scientific forestry conceptions.

Forests are viewed as productive. Communities lease them to lumber companies which log them, through selective cuttings, which according to forestry conceptions ensure regrowth. Logging, even if for small quantities of firewood, has to be done by a specialized company, according to the law, which translates into monetary costs for the commoners. Usually, commoners, the *obști* and

composesorate hire local companies and log an average of 3 cubic meters of timber per hectare, from which one part is for local necessities of firewood for heating and cooking and another part is sold as timber and the proceeds are used to cover expenses and to distribute sums of money to commoners.

[1] The management plan is a large work of more than 200 pages, containing tables and maps. It is done by private companies, accredited by the state. To acquire the plans is very costly, especially burdensome for small commons.



Mixed forests of commons obșteiTitești, Vâlcea county, Wallachia.
©Arryn Snowball 2016, AE database

The commons pastures are 1) lower pastures located next to the village (izlaz), where cattle and horses are usually left to graze on their own, and 2) remote alpine pastures (up to 2500m altitude) leased by owners of large sheep-herds, who often incorporate the village sheep into their flocks. Sheep herding is a traditional occupation, especially on the southern Carpathian alpages, also called the Transylvanian Alps, both on the side of Wallachia, southern exposure, and of Transylvania, northern exposure (the border is on the mountain crest). In the past, the organizing of shepherding on the common alpine pastures was an important component of commons governance and many interesting systems of sharing were devised, however, today pastoral practices are declining; there are fewer herds, less competition. Usually rights to common alpine pastures are allocated yearly to the one or two owners of larger flocks in the community for a small fee. These shepherds might take on the alpage also the sheep of the villagers for a small fee and the villager will receive a quantity of cheese. The alpages are usually remote, shepherds and flocks build sheepfolds and do not return to the village during summer grazing. The community is paid EU subsidies for maintaining the pasture. Shepherds complain about the low prices they obtain for their produce and the hard life of transhumance, exposed to attacks by wildlife. Pastoral occupations are declining in Romania, yet in several traditionally pastoral areas there is competition for the use of pasture. In some areas, commons yield individual revenues and cash proceeds derived from commercial logging and subsidies. Research findings suggest that the material value derived from such proceeds for individual commoners, are on average not significantly high. Rarely commoners with larger shares can receive between 2500-3000 euro/year



The shepherds' hut and alpine pasture commons in Southern Carpathians, Vâlcea county, Wallachia. ©Arryn Snowball 2016, AE database

from commons dividends. However, this is usually the case with only one or two persons in a commons, especially in the Southern Carpathian commons, in the region of Wallachia, which tend to be more unequal. In general, a commoner receives around 100 euro per year on average from proceeds and also can graze animals for free, and receive a quota of firewood at half price. Animal husbandry is generally a declining practice at household level, however firewood is very necessary, being the only fuel for heating and cooking.

The commons institutions also sponsor young families for building houses, offering up to 20 cubic meters of wood, they sponsor funerals of poor families, village festivities and Christmas presents for school children.

The ways in which the proceeds from commercial enterprises on the commons are distributed varies substantially from place to place, being subject to the decisions of the general commons assemblies.

In many cases, instead of distributing the proceeds to commoners, the communities of commoners decide to invest the proceeds into much needed community infrastructure, for which local government does not allocate funds. The commons institutions that are oriented mostly towards community-at-large benefits are in the Eastern areas of Vrancea, the region of Moldavia and the eastern Transylvanian counties (Harghita and Covasna). Here they contribute to reparations of infrastructure, public buildings, schools, and roads. Churches are often sponsored, as they are important community buildings, in which the commoners take a lot of pride and wish to invest. They also offer stipends for students, supporting education, mostly in the Transylvanian eastern areas. Traditionally in these areas, the composesorate commons institutions (composesorate in Harghita county) sponsor local groups of musicians, football teams and other youth activities.



Alpine pasture commons in Southern Carpathians, Vâlcea county, Wallachia. ©Arryn Snowball 2016, AE database

The communities owning larger commons also developed private community enterprises, and many other communities intend to follow this path, to reduce the timber extraction activities, and to invest in other types of income-generating enterprises, to 'diversify their activities', for example tourism ventures, trout farms, or processing of forest fruits and mushrooms. However, such initiatives are accessible mostly to communities owning larger commons, which are able to raise initial capital (see also section on large commons, and case study Zetelaka for a concrete example).

Deriving a monetary revenue from the commons seems to be a relatively distinctive feature of the Romanian case, different from other areas where the commons are only used by local commoners for grazing or collecting firewood. However, such monetary proceeds from the commons can be found in Europe for example in the region of Trento, or other highly forested areas, where sawmilling operations are in place.

And while the commoditization of nature in the form of extraction may indeed be harmful if done excessively, and also contributing to a utilitarian mindset of local communities of understanding nature as resource, it should also be acknowledged that many of the communities of the Carpathians have reduced funds for improving local infrastructure and the commoners have reduced possibilities of obtaining monetary income, as local sources of employment are scarce. Some of the communities are threatened by depopulation and also much of the land is threatened by land grabbing by external companies or individual buyers.

Therefore, the commercial use of the commons brings much needed funds for the survival of these communities, and also gives the common land a concrete and meaningful value, an argument against total alienation.



Festivities and weddings community hall built with funds from local obște, Vizantea, Vrancea county ©George Iordachescu 2016, AE database



Bridge built with funds from local obște, Nistorești, Vrancea county ©George Iordachescu 2016, AE database



Mountain chalet intended for tourism, built with funds from local obște, Poduri, Vrancea county © 2016, AE database

Results from AE survey: benefits from the commons; N=329

- 59% of Romanian commons' institutions provide funds for community infrastructure
- 53% of commons' institutions offer sponsoring for different local activities
- 48% of commons' institutions distribute annually a quota of wood to commoners, mostly firewood and in some cases also construction timber
- 27% of common' institutions distribute exclusively a quota of wood as benefit (no liquid proceeds)
- 50% of commons' institutions distribute monetary proceeds to members, and 30% distribute only monetary (no wood)
- 11% of commons' institutions cannot afford to distribute anything, neither wood, nor money
- 42% of commons' institutions provide free pasturing for the commoners' livestock



Cheese produce from obstea Boisoara, Southern Carpathians, Vâlcea county, Wallachia. ©Arryn Snowball 2016, AE database



Household production of lumber, Apuseni Mountains, Transylvania ©Monica Vasile 2010

2.7. Governance and community participation

The governance of the commons is done independently by the communities of commoners, and decision-making is reached through **executive councils and general assemblies**. Whether in practice the assemblies are really deliberative, and whether the community is interested to participate in the process, depends from place to place. The commoners elect a commons council (*consiliu*), usually formed of five members, and, among the members of the council, a president. They also elect an auditing committee (*comisia de cenzori*), formed of three members. Councils are temporary (2 to 5 years). Councillors of small commons work on a voluntary basis and for larger commons they are paid wages. In order to maintain the institution of the commons in a legal sense, the council has to fulfill a lot of paperwork, administrative and financial obligations, land measurements and various registrations. Also, a large part of the institutional work is dedicated to dealing with forestry and environmental regulations, which are constantly changing and utterly confusing. The councils' work requires a high amount of astute improvisation and networking, in order to keep up to bureaucratic necessities. Many councils, especially for the small commons (type 3) are formed mostly of elderly people, with limited resources and experience in the administration field. During the survey research conducted by the author, presidents mentioned that they face stress and fear making mistakes. An important instrument of governance are the **by-laws**, *statute*, different for each commons, and adaptable to the decisions of the general assemblies. They are registered as an official document. Generally, they contain rules about membership in the community of commoners, rules about council elections, etc.

In the turmoil surrounding restitution in 2000, each commons had to formulate their own by-laws; the law (1/2000) indicated to take as a basis the by-laws from before 1948, and to adapt them to current realities. The old by-laws took shape initially in 1910, when a model by-laws was given by the state, so by and large the current by-laws are based on regulations formulated more than one hundred years ago. After 2000, the local ad-hoc committees of 'reconstitution' of each commons were in charge with adapting the old by-laws to 'current realities', as a requirement of legalization of the commons. The degree of freedom given to the local commoners was very high. The 'adaptation to current realities' was done differently across each community. In some cases, the committees cut down the by-laws to a few pages, so that the legal boundaries of action became very loose. In other cases, the committees formulated entirely new by-laws, inspired from contemporary cooperatives or commercial firms, twisting the spirit of the institution. The by-laws were to be approved by local notaries, who were equally ignorant of these new forms of property and governance and they mostly certified whatever was presented to them.

By-laws are a flexible governance instrument. Theoretically, the by-laws can be modified at any time, provided that the general assembly of commoners ratifies the changes. However, in practice this is difficult to achieve because there is usually a threshold of participation of 2/3 of members to uphold the changes, which can almost never be met. Many communities have never modified their by-laws since 2000, although a large number consider them to be totally outdated and wish to operate changes in the future.

The **participatory system** of the Romanian commons is strong. The **general assemblies of commoners**, gathered at least once a year, have to decide on distribution of proceeds, on new rules introduced in the by-laws, and so on. The assemblies elect the council and the president, also a committee of auditors, who control the ruling committee. The assemblies are legally valid with 50% +1 of the members, or of the shares.

In some cases, it is difficult to attain valid quorum at assemblies, because of the delocalization of members. In the descent-based communities of commoners, because of urbanization and emigration, many of the people who inherited rights do not reside in the commons' villages anymore, which makes it difficult to gather them at assemblies. In approximately 50% of cases or more, quorum is not met in the first assembly, and a second one needs to be convoked.

The voting system for assemblies is by raising the hand. For elections of councils in some cases, secret vote is preferred. There are a few different voting systems; some are more equalitarian, others more monopolistic.

Some communities (less than 30%) give every commoner one vote, regardless their number of shares. This system allows for equality, and monopolies are avoided. Many communities vote according to number of shares, the vote of a commoner with one share counts as one vote, and the vote of a commoner with 20 shares counts as 20 votes. This system allows for monopolies, and it was preferred in the Argeş county, where historically a few families were more influential. In most cases the voting is in function of shares, but capped/limited at 5% or 10%, so that monopolies are avoided[1]. The councils are obliged to announce the assembly two weeks or more in advance, in the local press, in posters placed at the town hall, or at the churches.

Because of the inheritance system present in most potential ICCAs, in which the children inherit the right after the parents' death, most of the current participants are elders. In more than half of the investigated commons, not even 10% of the participants are below 40 years old (according to AE database). The assemblies are also strongly gendered, although women held rights, men largely dominate the assemblies.



Commons assemblies in Southern Carpathians, left Vâlcea county, right council at presidium in Arges county, Wallachia. ©George Iordachescu 2016, AE database

2.8. Small and large commons

Small commons

In this type I include commons below 500 hectares. Historically, they formed in Transylvania for the use of former serfs (urbarialisti and iobagi), presented in a section above as type 3. The small commons are more usual in the western part of Romania, also in the center. Occasionally they exist in the Southern Carpathians as well. The forests in this category of commons are mostly broadleaved – beech, hornbeam, ash, oak, - lower altitude forests in the proximity of villages, which are used for domestic purposes. Pastures are also small, village pastures.

The commercial value of resources in these potential ICCAs not being very high, making the institutions financially vulnerable, meaning that various fees and payments due represent a problem. Especially the payments towards the forestry districts that administrate and guard the forest make up an important amount of the expenses.

The most important benefit for communities is firewood and the possibility to graze animals. Because the revenues are not high and many commoners regard them as unimportant, participation does not work properly, not many commoners want to involve. Most of the work of managing the commons is done voluntarily by the council and the president.

Because of the socialist legacy, in which the state administered large surfaces of forest for production of timber, the small commons today are regarded by the forestry district to which they are affiliated and also frequently by the commoners themselves, as not productive enough, not efficient. The lack of perceived productive value might mean that these forests are not exploited and left on their own. However, for the respective commons institutions to continue to exist as legal entities, as

organized communities of rightholders, various fees and payments are due, and commoners usually do not all feel compelled to contribute financially, which represents a challenge.

2.8.1. Case study 1 small commons: Composesorât Tauții de Sus – Valea Gordanului, Maramures

The commons is in the proximity of the former mining town Baia Sprie in Transylvania, an industrial mining area with more than six working factories during socialism. Gold and silver mining was famous in the area apparently from Roman times. Recently, it is also an area renown for edible chestnuts and locals would collect chestnuts and sell them. Nowadays, the chestnut trees are drying up, for unknown reasons, people suspect air pollution. Also, locals complain that “people who were working the land have died, nobody mows the grass anymore, forest is growing and encroaching our village.”

The commons is very small, it has 45 hectares of forest. Historically, it was the commons of former serfs (urbarialiști), type 3. There were also 45 hectares of pasture, but during the socialist period industrial buildings were erected on the pasture and now the area stores mining sterile. In order to get the area recognized as the commons’ property, they needed to sue the state, which was costly, and the commoners did not want to contribute to the cost of lawsuit, which in the end was covered by the president.

The forest is broadleaved, oak and beech species. The trees are old, over 100 years and the oak is starting to dry up. In the period following the fall of socialism (1990-2000), before the constitution of the commons, the forest was not regulated, it was “nobody’s forest, and people would just take wood from there” (president, interview October 2016).

The only cuttings of trees done in this commons are clearing from dry or fallen trees. In order to prevent further drying, they do sanitary cuts. In 2015 there were windthrows in the area, which allowed the community a harvest of 139 cubic meters of thrown wood in 2015. The commons is affiliated to a forestry district since 2015, but because of the inefficiency of small surfaces, guarding and administration is perceived to be difficult. Therefore the state forestry district to which the commons is currently affiliated requires a high price for their services (twice as much as in other areas), 1000 euro per year for the Tautii commons. In 2016, all over Romania there was a 'firewood crisis'. Scarcity of firewood in the area became a problem in recent years. However, the commons decided not to distribute any firewood to the members for the time being, and instead to sell some of the timber and make 'a stock of money' that can be used for community needs; building a celebration hall is one of the strongest wishes of the commoners. Another wish of the commons' council is to distribute firewood only to the commoners in need.

There were roughly 100 members on the lists from 1948. Currently they do not keep updated registers yet, because apparently people were not interested to come and claim their rights, so the list of rightholders is 'still open'. The commons president believes people will start to be more interested in the near future, and they will contact the commons institution, as since the affiliation with the forestry district and the possibility to harvest, 'there is a stake'. The distribution of rights is unequal, on shares. However, the level of inequality is low.

One of the problems is lack of participation. Members seem not to be interested and at commons' assemblies they show up in very small numbers; only 30 members were present at the last assembly. The president has a background in forestry. His complaints are that "it is not possible to make a team, people do not show any involvement or

understanding; they just grumble in the backstage." Despite this, he is optimistic, "we managed to do this association now, to have administration and a management plan, my hope is that we can rehabilitate this commons, it will grow in the future."

Large commons

For the category of 'large commons/potential ICCAs', an estimate would be 30 commons in the country owning and managing above 4000 hectares of forest and pasture each[1]. The very large commons were formed in areas of freeholders, usually close to the high mountains, in remote localities at the end of the roads.

Forests of large commons are mostly coniferous, of high commercial value, including species such as spruce and fir. Some of the large commons include large amounts of pasture (e.g. obștei Petrila in Hunedoara county 1002 ha of pasture or Composesorât Sândominic in Harghita county with 1500 hectares of pasture), but this is not a rule, in Vrancea and in Maramureș they do not own large pastures. The commons governing institutions were able to constitute their own private forestry district (ocol silvic), and to hire their own forest administrators and guards. Because the commons governing institutions are basically controlling the forestry districts, the power balance is in favor of the commoners, which means 1) they have more decision power over forest issues; 2) they can impose lower prices on forestry services, resulting in lower costs of management.

[1] 9 commons in the southern counties Gorj and Vâlcea, 3 in the county of Argeș, 10 commons or more in Harghita county, also 4 in Vrancea, 1 in Mureș, 2 in Maramureș.

The large obști and composesorats function as community institutions, sometimes more important than the town hall; with a few exceptions, their budgets are largely used for improving community facilities, building water supply, building village markets and a village bakeries, celebration halls, road reparations, etc.

Often cash is distributed to the commoners; but also firewood (e.g. obștea Runcu, Gorj county distributed 3000 cubic meters of firewood to 420 members in 2015); from commons proceeds there is sponsoring towards commoners in need (e.g. sponsor funerals or medical interventions for severe illnesses); sponsoring for sportive and cultural activities such as football teams, music festivals, artistic residencies.

With proceeds from large commons, there are investments for commercial enterprises, which can be forestry enterprises, fish farms, tourism ventures, aiming at increasing the revenues for the communities of commoners. The communities also own large machinery with which they contribute to reparations in the communities (e.g. bulldozers), also agricultural machines, which can be rented out to members for cheap prices.

2.8.2. Case study 2 large commons: Zetelaka composesorat – a potential ICCA

The largest commons in Harghita county is Zetea (Zetelaka *kozbertokossag* – in Hung.), comprising of 10,275 ha of land, 8305 ha coniferous forestland and 1970 ha grazeland. It belongs to type 4, community of former borderguards, formalized and registered as a *composesorat* in 1886. Livelihoods in the area are based on forestry and animal husbandry. During socialism, a forestry enterprise was based in the locality (*IFET*), which employed many locals, but dissolved. The *composesorat* plants annually 20 ha with seedlings from their own nursery and log annually around 40,000 cubic meters of timber. Logging and processing of the composesorate timber is done by local companies, leading to cca. 500 local people employed in the timber industry.

4000 hectares of composesorat land is included in the protected area network Natura 2000, for protecting bear habitat. Bears are regarded as one of the most important problems of the area, bears debarking trees which then dry up, they are also a threat to livestock. They attack shepherds, they depredate domestic animals, also crops; locals do not cultivate corn because they fear bear depredation. Bears in the area are apparently more numerous than 'normal' levels.

The composesorat counts today 2500 rightholders, of which approximately 65% reside in the locality. Distribution of rights is unequal, based on successive divisions among heirs of the initial rightholders, and transactions. The normative statute limits the shares members can acquire; one member can accumulate (through buying) at 2.5% of the total. The average share can be calculated at about 4 ha and 20% of the commoners count around 1 ha[1].

The composesorat board declared that they have annual proceeds of more than 600,000 euro, distributed towards their members. In 2015, the benefits for the members included (as the composesorate calculates according to different categories of revenue): cash proceeds from selling timber, firewood, cash proceeds from pasture subsidy. To stimulate the commoners to keep raising animals, and to stock the pastures, the commons institutions pays money to the commoners for the animals they put on the commons pasture (roughly 25 euro per year for a cow and 5 euro per year for a sheep). For example, a member without animals on the commons pasture, with 1 share receives 335RON/year (roughly 80 euro). A member with 4 shares, 3 sheep and 1 cow on the pasture receives 1525RON/year (roughly 350 euro).

[1] The system of shares does not mean that commoners have a precise plot, the whole area is still communal, administered and managed in common; only the uses and proceeds distributions are calculated for each member in function of their share.

There are 4 members with over 50 shares, the maximum being 70 shares. The member with 50 shares and no animals receives annually 16,750 RON, that is 4000 euro.

Great emphasis is put on investment. Composesorat Zetea invested in their own factory for processing wild forest berries and wild mushrooms. They gather annually from local collectors quantities of 30 tones of blueberry, 10 tones of raspberry, and 30 tones of mushrooms (boletes, in Rom. *hribi*). In addition, they have their own farm with about 250 cattle that belong to the commoners. In the near future they also want to breed bulls.

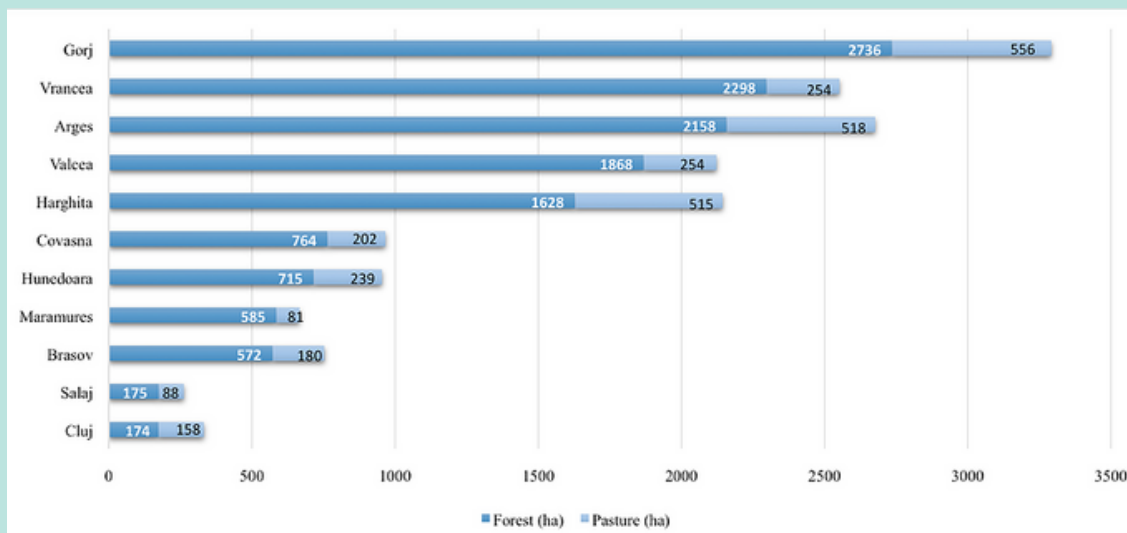
The president and the administrator see the role of the composesorate as “the most important institution in the community, a form of common management that sustains and develops the community”. In the future they would like to develop the farming activities more and support small farmers with 4-5 cattle to market their products. The board complained that the subsidies system encourages large individual farmers and they faced a lot of problems as a collective to apply for EU subsidies. The board members perceived that commons are a good way of maintaining rights to the land; they estimated that if there wasn't a commons, 70% of the forestland would have been sold towards foreign capitalist companies and local people would have been dispossessed and made precarious. The council members and the commoners are very much attached to the idea of rights to the commons.

Zetelaka community own a very abundant and valuable commons, which is managed responsibly, with regard to the environment and also with regard to local livelihoods, yielding important revenues for the commoners. This commons would in my opinion qualify as an ICCA.

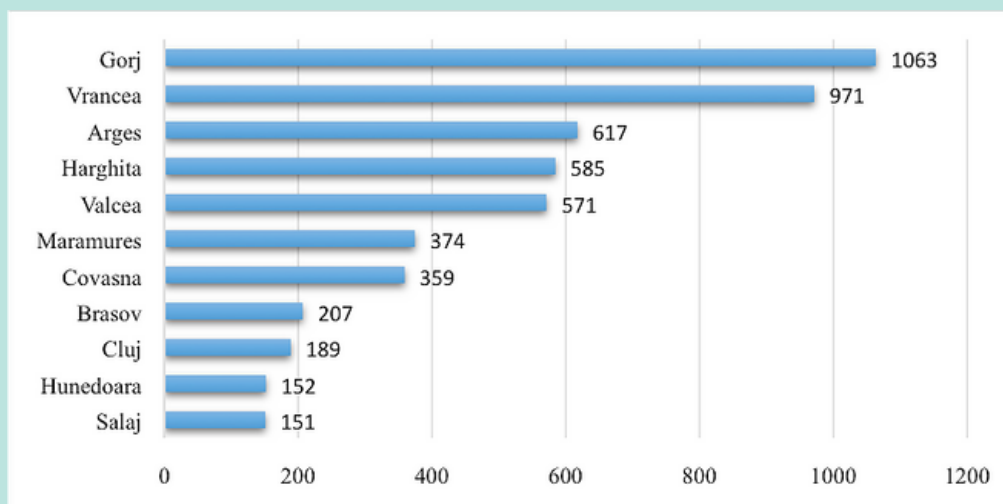


Tree nursery of Zetelaka composesorat and council members, president and forest administrator ©Stefan Voicu 2016, AE database

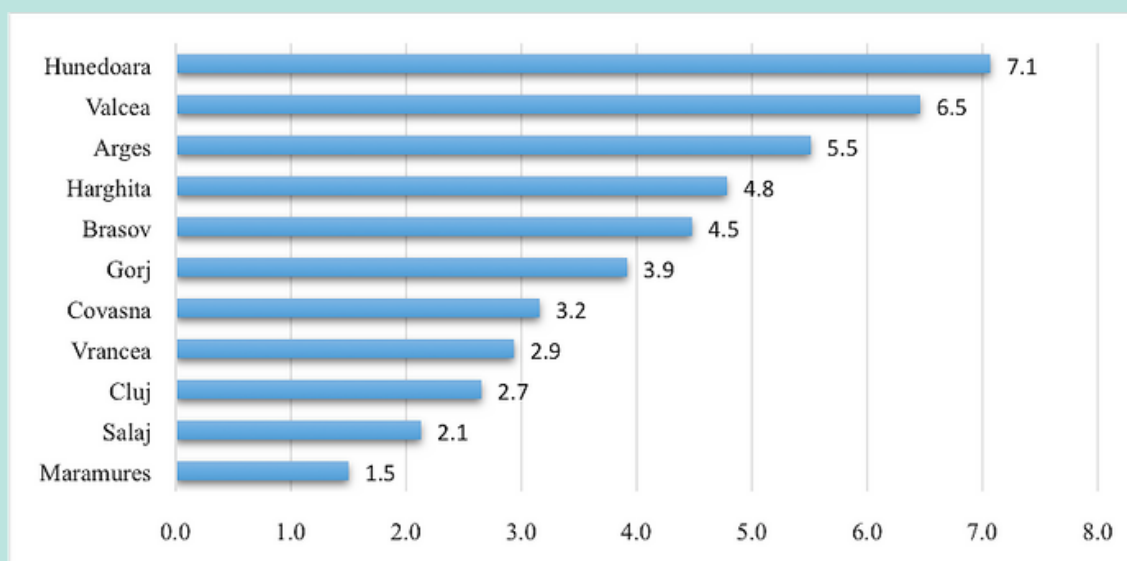
Results from AE survey: statistics on counties



Average surface of land for each common in studied counties (units: hectares). Source AE survey database 2016



Size of communities of rightholders. Average number of registered commoners per commons in studied counties. Source AE survey database 2016



Average surface of common land per each commoner in the studied counties (unit: hectares). Source AE survey database 2016

Distribution of types detailed in section 2.5. on counties:
 type 1: Vrancea
 type 2: Gorj, Argeş, Vâlcea
 type 3: Sălaj, Cluj
 type 4: Harghita, Covasna
 type 3+type 4: Hunedoara, Maramureş, Braşov
 *for spatial distribution consult map on p.21

3. Area case studies

3.1. Harghita County

Harghita county is located in Transylvania in the Eastern part of the Carpathians – the interior Arc. It features a large number of commons. Historically, the area had a large number of freeholders in the feudal period, being an area of borderguards endowed with property in exchange for their military service towards Austrian empress Maria Theresa. 47% of the county's forests are owned by composesorates, nearly 100.000 ha of forestland in total. They function as veritable village institutions, frequently sponsoring community activities and investing in community utilities. Nearly 20% of their revenues regularly go towards community investments, which include: warm water installations with solar panels (*composesorata* Mădăraș), gas installations (*composesorata* Ciucani), reparations and maintenance of roads, churches and schools, building of cemetery chapels (*composesorata* Văcărești, Racu, Lueta for example), and houses of culture, celebration halls. They usually sponsor cultural activities, such as small village orchestras, or fire brigades, they sponsor funerals or birth events, also provide monetary help in cases of fire damages to households, provide stipends for students.

On the land of a few composesorates there are famous tourist resorts (the Tușnad Baths or the Borsec Baths) and branded protected areas, such as the lake Saint Anna. Also some of the lands have important mineral water sources that were industrially exploited since 200 years ago and in time became large businesses (mineral water Perla Harghitei and mineral water Borsec). The Borsec brand for example bottles yearly 350 million litres of mineral water. The forests are considered to be highly productive, mostly consisting of coniferous essence (spruce and fir). Most composesorates own large pastures, around 1/4 of their lands.

Commons in Harghita are usually large. From the 40 researched composesorates, 5 are below 500 hectares, most are above 2000 ha and the largest is Zetea *composesorata* with over 10.000 hectares. Most composesorates own buildings in the villages, also machinery (for roads reparations, for agricultural work, for cleaning pastures) and a few have their own logging enterprise (for ex. Sântimbru, Merești), enabling them to create employment and to increase the value of sold timber.



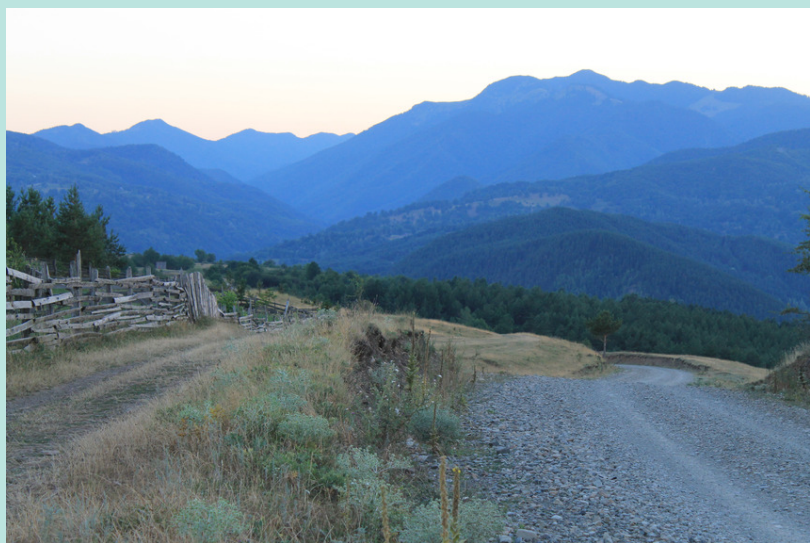
3.2.Vrancea County

The potential ICCAs of Vrancea, called *obști* are different from the rest of the commons across the Carpathians. Here, all the members have equal shares, only one share for each, and, implicitly, equal votes, corresponding to type 1. The rights are territory-based. Each inhabitant becomes member in the village obște at the age of 18, provided they reside in the village. If someone leaves the village to live elsewhere, he/she loses the right. If someone moves in the village, the person can become a member. The right to membership is non-inheritable, non-transmissible and non-alienable.

This specificity leads to veritably community-based institutions with social functions. Here, the commons invest large amounts of money, sometimes half of their revenues, in public utilities. Also, as a rule, they sponsor funerals and cases of extreme illnesses and surgery interventions that would otherwise be unaffordable for the members. Members in Viișoara village described the obște as an 'ultimate safety net'. By contrast to other areas of the Carpathians, the restitution of commons in Vrancea went very smoothly, without confusion and trials.

The system of equal rights distribution generates an important advantage, by avoiding confusion and quarrels regarding genealogies and inheritance, which persist in many of the other types of communities. The commons of Vrancea count a total amount of over 60,000 ha of forests and pastures, across 30 commons. They count roughly 1/3 of the total surface of forests of the county.

Main revenues come from logging. Pastures are not abundant. The forests of most obști are productive; preponderantly coniferous and over 80 years old; however, most land surfaces are prone to erosion and slides; the accessibility to the forest is problematic, most roads being broken; Vrancea is probably the only area of the Carpathians where logging is still done with oxen.



View of Vrancea Mountains ©George Iordachescu 2016, AE database

In total they count roughly 24,500 commoners.

The commons in the area are usually large, over 1000 ha. The largest is the obște of Tulnici with 13.000 ha.

The legend says that a medieval ruler from the 15th century, Stephen the Great, donated the land to the inhabitants of Vrancea for military merits. The legend is proudly recounted and featured in various local monuments, contributing to strengthening local identities and the bond between people and their mountains. Almost all villages in the area have their obște.

A few villages do not have an obște commons, either because the villages were relatively recently formed (Ploștina) or because they sold their property in the course of time (Bodești).

A few villages have smaller surfaces, up to 400 ha, because of situations, such as land sales (Rugetu) or recent formation and struggles over property between villages over long periods of time (Prahuda, Vîlcani, Chebari).

In Vrancea, the villages are lined up on three river valleys (Putna, Năruja and Zăbala) and the forested mountains with

few pasture areas are clustered together to the western side, about 20 to 60 km away from the inhabited village areas. Only a few localities have their properties close to the mountain, Nereju, Tulnici and Hăulișca. The geographical distribution that does not follow a classical model of villages surrounded by forests and pastures posed a puzzle in the course of history: which mountains belong to which village? Sociologist Henri H. Stahl (1901-1991) explains the history of commons and the divisions of territory: initially, the whole mountain area was owned and used jointly by the whole Vrancea Country and, over time, because of growing grazing necessities, villages divided the mountains between them with a lot of struggle. The first division of the mountains between villages took place in 1755. Subsequently, another five division actions took place, the latest in 1840. As H.H. Stahl describes, the distribution criteria was the monetary contribution of each village at the “great trial of Vrancea” against a powerful landlord claiming its lands starting in 1801.

By the end of the nineteenth century, villagers’ access to their forests became more and more restricted as exploitation technologies improved and wood became a valuable commodity on the European market, needed as fuel for industry. During this period, several powerful foreign forestry companies, especially from Austria and Italy, struck deals with local elites for leasing and exploiting large areas of forest. In several villages, with the money yield, the old elites worked for the best of the community, building schools, village halls and communal baths (e.g. Vrâncioaia, Neculai Jăchianu). In others, the locals’ collective memory remembers elites who deceived people to sell their use rights, often for a pack of cigarettes (e.g. Nereju). The foreign companies ended their activity in Vrancea by the beginning of the First World War, leaving behind massive deforestation, a true ecological disaster. In the 1940s and later during the socialist period, Vrancea Mountains have undergone an ecological reconstruction, with forest plantations and stabilisation of soil against landslides.



House and family from Năruja, Vrancea county ©Maria Rădan 2005



Logging with oxen in Nereju, Vrancea county ©Monica Vasile 2007

In 1950 in Vrancea, like elsewhere in the Carpathians, the state nationalized all the forests, and the *obști* were dissolved. Locals' experiences during the communist period varied a great deal. Some people worked as wage earners within state structures. Others 'stole' wood from their former common property with the tacit acceptance of local authorities. A black market for wood arose alongside the legitimate market, facilitated by bribes paid to party officials. I found in my study of forest usage during the communist period that "having" and "owning" were not very important. More important was access and use, which were facilitated in many ways, both legal and illegal, usually involving state officials and corruption practices. Collective property rights were re-established in 2000 and a local industry of logging and sawmilling developed. Local logging companies were set up.

A troublesome issue for many interviewed presidents of *obști* was the interference of political issues in the affairs of forests, with dramatic consequences for the commoners, such as long lasting trials and economic problems.

A few commons declared that the most problematic issue is the dense regulations concerning both financial and forestry issues, leading to constant fear of mistakes and fines. Also, the fact that forestry roads are not owned by the commons, but by the municipalities, prevent the possibility of reparations.

A widespread consideration on the part of the councils was that most commoners do not have an understanding of what it means to manage a commons and thus the decisions they take in the general assembly are rather 'retrograde'.

however, Vrancea is the area where commons have most prominently a very communitarian and equalitarian orientation, and the commoners are most aware and involved, manifesting a strong attachment to the idea of commons.



Council of obște Ciliile Zboinei, Spinești, Vrancea ©George Iordachescu 2016, AE database

3.2.1. Case study 3: Obște Ciliile Zboinei, Spinești – a potential ICCA

The obște of the village of Spinești is frequently given as an example of a well working *obște* in the area.

In contemporary Spinești, the commons president is very popular and he was elected time and time again since the restitution of obște in 2000. The obște does not feature internal conflicts or various suspicions and disputes between the members and the council, as we found in a significant number of other obști.

It has 3447 ha of forestland and 100 ha of pasture from which 55 ha are subsidized with EU funds, and 1000 members.

Their forest is productive, preponderantly coniferous and over 80 years old. The council cares about sustainability and there is a pronounced discourse of stewardship of natural resources for future generations. The obște replanted 90 ha of forest in the last 3 years.

The profit made from selling timber and grazing subsidies is distributed to members and invested in the community. Approx. 50% of the profit of obște Spinești was invested in 1) rebuilding four forestry cabins, which are intended to be used as tourism facilities in the future; 2) rebuilding the village church; 3) building a celebration hall; 4) reparations and furniture for the school.

Future plans include extensive roads reparations. 50% was distributed to members, reaching a value of 150 euro/member/year. Wood is sold to commoners at preferential prices: firewood and construction timber (up to 3 cubic meters per member 50% below market price). Other benefits for commoners include support for difficult situations: funeral sponsorship of 250 euro/case, in one year approximately 15 cases; sponsorship for medical treatment in case of severe illness.

3.3.Maramureș County

Maramureș county is situated in the northern part of Romania, historically part of the former Austro-Hungarian empire. To understand the historical dynamic of the commons in Maramureș, one has to understand the complex transformation of territory and the shifting boundaries. Under the Hungarian rule, the commons of Maramureș counted in 1885 a surface of 127,440 ha of forest (Bedö, Albert: Die wirtschaftliche und commerciale Beschreibung der Wälder des ungarischen Staates, 1885), the largest surface of commons in the whole of Transylvania at the time, being commons donated by medieval kings to lesser nobility (type 4). After WWI, from the territory of former Maramureș county, 1/3 stayed in Romania, called today the Historical Maramureș, and 2/3 went to Czechoslovakia in 1920, and to Ukraine at a later point. To make a more viable Maramureș county, in 1968 the Romanian state administration added other areas to the Historical Maramureș, added areas Tara Chioarului, Tara Lapusului and Tara Codrului. In these areas, before 1948 used to be smaller commons, of former serfs, there were no medieval cavalry/freeholders.

To date, what is called the Maramureș county counts 109 commons, with 30,101 hectares of forest restituted with law 1/2000, amounting to 15% of the total forested area of the county. Also, approximately 2000 hectares of pastures for which the commons receive subsidies. The forests are mostly deciduous, beech forests and they were heavily harvested during the socialist years. There is a significant difference between the commons in the northern part and the southern part.



By Herbert Ortner - Own work, CC BY 3.0,
<https://commons.wikimedia.org/w/index.php?curid=27152158>

In the northern part we find what are called the noble composesorates, the commons formed as a heritage of the noble families of Maramureș, descendants of *cnezi*, free landlords during medieval times, type 4. These composesorates tend to be larger than the others. For example, the following:

- Viseu de Sus -- 4524 ha, and 5000 ha not yet fully titled, 1900 commoners
- Petrova -- 3822 ha, and 190 ha not yet fully titled, 1130 commoners
- Săpânța -- 2053 ha, and 2500 ha not yet fully titled, 1200 commoners

In the southern part we find much smaller composesorates, frequently under 500 ha, and a few even under 100 ha. These commons were usually constituted as lands of former serfs, called *urbarialisti*, type. A few examples:

- Composesorat Mireșu Mare -- 259 ha 222 ha of pasture and 37 ha of forest, and 152 members
- Composesorat Curtuiuşu Mic -- 83 ha of forest, 123 members

The tendencies of these composesorates are the following: reduced participation, high levels of suspicion among the rightholders, low level of community investment. Litigation for restitution and establishing the rights of commoners are still ongoing in many cases. There is high variability among the different communities regarding the management and the revenues distributed towards commoners. The northern part of the area is well known for being a focal point for forest industry. It is home to big local companies, and it featured a lot of conflicts over resources. The Maramureş Mountains were the target of illegal logging accusations, even inside protected areas, and fights between local factions were reported frequently. A long trial went on for the composesorot of Borşa. The southern area features problems specific to small commons. They usually do not have enough power to negotiate lower prices for forest administration with the local forest districts, thus the expenses with guarding and administration of forests are very high. Also, they need to associate for contracting management plans. In the smaller commons, members tend not to participate and to leave most of the responsibilities on the shoulders of the

council. Property restitution went very slowly in the area featuring conflicts and lawsuits. Frequently, commoners are not aware of the historical origins of their commons, and only know scant information from official property documents. Usually in the area the monetary proceeds are not high, and the benefits distributed to members vary greatly from one place to another. Cca. 50% of all the communities do not have quorum for general assemblies. One of the northern commons, Viseul de Sus, which counts roughly 2000 members, relinquished the system of direct participation of all members and instead they adopted a system with 200 representatives, which allows for a lot of dissatisfaction and suspicion. There is a tendency towards excessive fragmentation of shares and increased internal inequalities. In some cases, the fragmentation of shares was reduced by families reaching agreements to give the rights to only one of all siblings, instead of splitting and registering all the heirs. Half of the commons in the area allocate firewood to their members and half distribute cash returns. 30% of the commons also invest part of their profit in community infrastructure.



Wooden barn in Petrova, Maramures ©Arryn Snowball 2016, AE database

4. Threats

4.1. Land grabbing and encroachment on the commons

The greatest threat to the commons are the attempts by corporations and conservation foundations to acquire either parts or entire commons, or to acquire rights inside the existent commons, enough to reach a majority of votes and further control the governance and reap the benefits.

By law, land held in commons cannot be divided, sold to outsiders, to people who are not members of the communities of rightholders, or to companies. Neither can rights-shares, 'quota-parts', be sold, or external members received as rightholders (see section 2.4 regarding legal provisions). However, various methods were found to twist the by-laws and persuade court juries to allow for such dispossession.

There were several cases in Romania of such sales, and several attempts, which were pushed back by communities after cumbersome trials. In the following, several such cases found through research will be given:

(1) One case is obstea Dobroneagu from Argeş, in which a part of the commons was sold to the timber corporation Holzindustrie Schweighofer, immediately after the restitution, in a window period in which the sales prohibition law was not in existence. It was a sale of 300 hectares of forest, and the president declared in 2016: "In the beginning we needed some cash to support the start up operations of our commons, so we decided this sale was beneficial."

(2) A controversial case revealed by national and local media was about the sale of an entire obşte in county of Vâlcea, obşte Turcinuri amounting to about 1000 hectares of forest and pasture, towards a company with international shareholders, for a price of 1,5 million euros. To seal the deal, the president of the obşte obtained the agreement of the general assembly of obşte. However, at a later point, the validity

of the sale contract was attacked in court by members of the obşte, and the contract was voided.

(3) In a case from Gorj county, in obştea Runcu, counting 5400 hectares, a company managed to become associated as rightholder and buy nearly 15% percent of rights from rightholders facing hardships and take control of the obşte. Fights and protests, reciprocal accusations of fraud and arson led to a very tense conflict in the community between rival groups of rightholders. few rightholders sued the company for voiding the decision, pursuing lawsuits for many years.

(4) In a case from Argeş county, obştea Rucăr, a foundation for conservation took hold of approximately 30% of the shares of this large obşte (over 8000 hectares) through a subsidiary company in 2014, and later on in 2017 another subsidiary was admitted as a member of the obşte. The admissions of the firms as members of the commons further paved the way for these firms to buy shares from the members who were persuaded to sell. In 2017, rightholders took the issue to court in order to cancel the rights of the subsidiaries of the Foundation, as illegally obtained. They won in the first court case. Further information in several sources[1]

[1] Iordăchescu, George. "Making the 'European Yellowstone'—Unintended Consequences or Unrealistic Intentions?" Environment & Society Portal, Arcadia (Spring 2018), no. 10. Rachel Carson Center for Environment and Society. doi.org/10.5282/rcc/8303 and in Romanian, an analysis article <https://www.nostrasilva.ro/evenimente/instanta-opreste-definitiv-acapararea-obstii-mosnenilor-rucareni-si-dambovicioreni-de-catre-societatile-conservation-carpattia/>

A common pattern is observable in the cases: the companies with interests persuade the councils, which modify the by-laws and persuade rightholders to accept the outsiders, or the sales, obtaining a decision of the general

assembly. Rightholders who do not agree with these decisions can attack the decision in court if they possess the awareness and the financial means to pursue such an action in court.

4.2. Legal and bureaucratic confusion

Many local actors involved in the governance of the commons mentioned in the AE survey that they perceive laws and legal provisions as the main threat. Problems arise from difficulties of fitting the commons and the community-based institutions that govern the commons into inappropriate legal and financial categories, which allows for confusion and mistakes. The problem of unfitting legal categories is very deep and it refers to the historical reliance of property law on roman and civil concepts, which attribute power to the individual owner, rather than the group or the territory, as in the germanic common law. Basically the legal concepts do not accurately and specifically reflect realities and regional differences on the ground, acting to twist, reduce and dilute such realities to inappropriate formal concepts. I will detail this in the following.

In Romania, from a legal point of view, the community-based institutions, *obsti* and *composesorate*, are considered non-profit associations.

Both notions of 'non-profit' and 'association' are inaccurate with regards to how the communities of rightholders function in reality. As it was shown throughout this report, the commons yield important profits. The surplus cash proceeds (profit) resulted after selling timber and receiving pasture subsidies is distributed to the rightholders, but the 'dividends' have to be fitted into other formal categories and denominations, from which a lot of confusion arises regarding taxation, and the institutions are rendered vulnerable. Moreover, the community-based institutions are not associations of land owners. The term association of owners has

a connotation of individualization, sends to the idea of a whole composed from smaller individual pieces; persons voluntarily coming together, owning a piece of land and deciding to put it together with others' for common management and governance. Or, in the case of *obsti* and *composesorate*, the entire commons is an undivided piece of land, and there is no correspondence between a certain piece of the common land and certain individuals.

Law and policy makers often have a reduced knowledge about the ways in which the commons and the rights 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 commoners navigate the bureaucratic density, being subject to legal provisions concerning pasturing, animal husbandry, laws concerning forestry, conservation and commercial enterprises, among others. All of these issues require expert knowledge from the part of the council, which is in some cases not even remunerated for their work. 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 that the state will proceed to a new nationalization. The recommendation in this sense might be financial and legal capacity building for council members, or training of local members about their rights and procedures. On the other hand, it is also necessary to train the law and policy makers.

4.3. Sustainability, conservation and negative perceptions

The prevalent local conception of nature is that of productive resources, sustaining livelihoods, and with commercial value. Resource extraction and commodification have a strong legacy, dating back to the Austro-Hungarian Empire in the 19th century, enhanced during the socialist period through intense centrally planned extraction of forests. To date, the Carpathian forests and grasslands are abundant and diverse, being a hotspot for European wilderness, and local rightholders have a strong belief in their resilience and regeneration, which can lead to a lack of regard for sustainability. In certain areas with commons, reports and studies (e.g. Greenpeace 2017) have shown that high levels of undocumented logging is driven by business and political interests. However, such logging occurs by several powerful entrepreneurs and does not represent the interests of all the rightholders, whose rights are in fact being abused in such cases. A public discourse that gained prominence around 2015 is that Romania fosters unique natural beauty in danger of being destroyed by careless politics and corrupt local practices, particularly through illegal logging. Thus, the local communities' use of the land is increasingly regarded as lacking environmental care. These perceptions further inform policy and legislation promoting restrictions. When this view is applied indiscriminately, without consultation of the particular cases, it can be very harmful for those communities with good practices, which strive for balancing sustainability with making a livelihood.

[1]

<https://www.greenpeace.org/romania/GlobaI/romania/Illegal%20logging%20in%20Romanian%20forests%20in%202017-compressed.pdf>

Attitudes of rural dwellers towards wilderness and the free development of nature are mainly positive (Bauer and Mondini 2014).

However the existing protected areas and conservation initiatives, by government agencies and NGOs are perceived more ambivalently and are strongly associated with restrictions, 'conservation' being perceived as 'command and control' type of governance of resources, in competition with local rights.

The majority of rightholders' representatives declared for the AE survey that the inclusion of commons land into protected areas is a negative thing. The measures of conservation - restrictions to constructions, to logging, uncontrolled increase of wildlife, such as bears, non-intervention policies towards bark beetle infestations – all are seen as threats to local livelihoods. Therefore, trust in 'conservation' is reduced by experiencing unjust restrictions or lack of consultation from protected areas administrations. On the other hand, conservation practitioners also see local communities negatively, as greedy resource consumers, without regard for the environment. As a consequence, participation of local communities in conservation programmes is not desired and monetary compensations are seen as the way to offset community's interests in land.

The threat here is that local communities increasingly perceive 'conservation' as a top-down imposition from the government, working against their precarious livelihoods. A further threat is that the communities are indiscriminately seen as malign to the environment by conservation practitioners, NGOs and government. Negativity both ways leads to lack of cooperation and mutual understanding for common goals.

4.4. Internal conflicts

Another prevalent threat to the commons, and especially to the processes of governance and community participation, is high level of conflicts among rightholders or among commoners and council executives. These conflicts can be rooted in the social fabric of village life, being long-standing family feuds, or political quarrels, or distributional conflicts. In some of the commons we found political factionalism, which leads to sharp community cleavages, contestation and occasionally to open violence. A large percent of community institutions deal with official complaints and contestations from commoners. As part of their empowerment, a number of members file in complaints to state institutions (courts, control institutions) about the working of the commons management, which can lead to costly court trials. This might be an effect of low local enforcement of rules, and inefficient mechanisms for conflict resolution on a local basis, but it is also an effect of the broader context of lack of generalized trust in elites and frequent accusations of corruption and funds embezzlement. Romania is one of the countries with lowest measured level of interpersonal trust, this generating distrust towards associationism and working in groups. This means that conflict it is not necessarily a feature specific to the communities with commons, but to most rural Romanian communities.

However, the resurgence of this type of resource-related conflicts can also represent a sign of vitality, a sign of healthy contestation, a sign that commoners are voicing their opinions and don't take hierarchies for granted.



Village gathering in Harghita County ©Stefan Voicu 2016, AE database



Processing timber in Apuseni Mountains ©Monica Vasile 2010

4.5. Negative structural effects of rights distribution systems

The current systems of rights allocation systems, inherited from the past and formalized as such through legally registered documents, might pose several problems. Formalization is a common tool for states to document, legalize, and make legible land rights on the ground, and much is owned for the survival of Carpathian commons to the modern recognition and formalization of rights. However, scholars have leveled sharp criticisms against formalization of land rights, assessing its ineffectiveness, despite the best of intentions. Literature has shown how formalization can cause opportunistic behavior, cementing existing inequalities, often deepening processes of social exclusion and paving the way to local and global land grabbing.

As described previously, in Romania historical formalization of commons are relevant for the restituted commons of today. Despite the fact that in other parts of Europe liberal ideas of property took over state policies and commons were mostly enclosed and dissolved, the Romanian commons survived due to a process of formalization in favor of peasants, which by and large secured their common property rights, albeit in several cases it also enabled the commoditization of forests. In this process the customary ways of using the commons were transformed. Rights became personal inheritable shares, 'quota-parts', split between heirs, tradable inside the same community. This happened in most regions, excepting several scattered communities and the entire Vrancea region, where rights remained territory-based.

The personalization and inheritance of rights, coupled with tradability had a range of negative effects.

First it generated internal inequality. The domestic elites could acquire shares and monopolize the commons. Most commons had a cap in their by-laws to how many shares can one person buy (at 10%, 5% or less), but this cap could be increased or removed through the decision of the general assembly, which could fall prey to manipulation or factionalism, more broadly to power struggles. In areas where several families had traditionally more influence, such as the area of Argeş, the cap was entirely removed before 1948.

Internal tradability also paved the way to the possibility of selling externally, through various maneuvers. Also, partible inheritance meant the excessive fragmentation of shares, especially for families with many children.

The image shows two pages of a historical document, likely a land register or share ledger, with tables of rightholders' shares from before 1948 in Hunedoara county. The tables are organized into columns with headers in Romanian, including 'Numele', 'Cantitatea', 'Domeniul', 'No. de acte', 'No. de copii', 'No. de copii', 'No. de copii', and 'No. de copii'. The entries list names of individuals and their corresponding shares or land parcels. The document is handwritten and appears to be a historical record.

Tables with rightholders shares from before 1948, Hunedoara county ©Monica Vasile 2016, AE database

Inheritance of rights/shares often meant exclusion of young people from the decision-making process and a concentration of decision power in the hands of the elders – as sons will usually inherit only after the death of their parents[1].

Inheritance and the granting of rights to the 'person', rather than to the 'place', generated delocalization of rights, especially in the contemporary context of rural exodus (village population numbers almost halved in the 1970s, the years of socialist industrialization). The rights to the commons were personal rights and this meant that the restitution process after 2000, which emphasized the 'return to the old order', granted rights to the commons to persons who migrated out of the villages, having nothing more to do with the land or with the use of the commons. In these cases, these members only get a cash dividend and their right is disembedded from the actual use of the land or from any physical experience of the land. In the cases of commons where the benefits from the commons are not monetized, but commoners only share into portions of firewood, obviously the 'absentee' members of the commons (city dwellers) concede their rights to their village-based relatives.

In some cases the 'absentee' members participate in the commons assemblies, but in most cases not. However, the fact that the community of commoners is composed of members from outside might turn into an advantage in the long run, especially if the village community is prone to depopulation. An influx of opinions and supporters from the wider network might therefore represent a plus, on the conditions that these non-local members do participate.

[1] Sometimes the younger generation acquired portions of these rights by endowment when they married and even women as part of their dowry if there was nothing else to be given.



Fishing on the Naruja River, Vrancea County ©Maria Radan 2005

5. Recommendations

5.1. Overview

The Romanian commons have made a fresh start twenty years ago. They are forms of ownership and use based on the principle of participatory governance, which grant rights to local dwellers. Albeit fraught with various forms of malfunctioning, and facing different pressures, the existence of mountain commons is beneficial in the current context, ensuring a connection between the local communities and their surrounding territories of life, and rights which are not easy to commodify. It is important that the ownership of communities is protected by law. However, it should be noted that the law is vulnerable. As shown in the previous chapters, there are ways to bend the law towards various misappropriations. Also, there have been attempts to change the laws in favor of opening commodification, through initiatives of elected members of the parliament supporting various interests (according to national media).

The first and most important recommendation is to enhance the recognition of the Romanian commons as viable forms of ownership and governance, and to further their integrity, whether in the name of rural development, or nature conservation or halting rural depopulation.

As we have seen in this report, throughout history, the rights and the shares in some of the commons were concentrated more in the hands of some of the commoners, as these tendencies stemming from intra-community power struggles and unequal access exist all over the world. In this sense, in order to further inclusiveness of all commoners, a recommendation is to **promote the values of equality, collectiveness and democratic participation** within the communities. Placed in an area with great natural potential, with increased resourcefulness,

depend only partially on the natural resources for livelihoods, the Romanian commons from an ecological point of view are in a good state of conservation at the moment. However, some communities focus on extraction and are engulfed in conflicts featuring illegal logging accusations.

It is noticeable that different from other commons across the world, and also different from the older Romanian commons, the contemporary commons do not emphasize the duties of the commoners towards the commons, and do not promote work in common, being centered around a common revenue flowing from rights, not on a common practice or use. Involvement of commoners in the form of work, as a duty of cooperation in practice might be beneficial for creating more engagement and transparency. Furthermore, the communities of commoners should be helped out to solve their internal conflicts.

The commons are not the only type of property over mountain forests and pastures, but one form among others - state property, private individual property and municipality property (*păduri comunale*). Commons, *obști* and *composesorate*, are the least known and comprehended at the level of policy makers and public. They are usually put in the same bag with individual private owners and treated as such. This lack of public awareness and knowledge about the commons triggers negative consequences and thus **any action concerning the commons should start with raising awareness about the systems of rights and benefits from commons, also the various existent types across the country, at the level of political actors and the general public.**

5.2. Capacity building, dialogue

No new regulations should be promoted, because changes create more confusion. emphasis should be put on practices, and on how the existent legal provisions can be implemented in a beneficial way.

It is often the case that institutional and political decision makers are familiar with a limited number of commons, sometimes only one community, or one type of commons, and model their thinking on the perception of that unique case, disregarding their variety.

Dialogue should be promoted and enhanced between institutional decision makers and communities of rightholders, also among the latter. Public campaigns should be organized for promoting the recognition and benefits of commons. Decision-makers and conservation practitioners should be informed about the diversity of commons in Romania, of their organizational systems, range of actions, benefits distributed towards communities.

The results of the Romanian Mountain Commons Project should be widely disseminated among practitioners and decision-makers.

For the commoners themselves, the council members, and all community rightholders, dialogue should be promoted. Also meetings between communities from different areas should be encouraged and workshops organized, in which facilitators should encourage constructive discussions on a broad range of topics, focused on exchange of practice experience and best practice models.

Financial and legal capacity building for commoners should also be facilitated, in order to overcome the legislative hurdles. Rightholders and members of executive councils of commons should be made aware for possibilities of funding, especially about projects promoting sustainability and conservation, to enhance a sustainability mindset. In addition, methods for good participation and mediation for conflict resolution should be made available for communities.

Also, at the level of commoners who are not involved in the executive councils, training for local members about their rights and procedures of participation.

5.3. Enhancing participation

One of the problems often mentioned by the commons representatives is lack of participation of commoners at assemblies, their lack of interest and understanding, especially regarding the smaller commons that face difficulties. Members of the commons boards could benefit from training, advice and direct support about how to better advertise the assemblies, how to prompt the members to participate. This can also be done by gathering examples of various methods from across the country. For example, some commons organize an event, often a grill after the assembly, so more members are likely to join; or, some send brief summaries of the yearly activity together with the invitation to

assembly per post, so that members become interested in the issues to be discussed. Also, it would be timely to campaign in the communities with commons about the importance of participation, in order to raise rates of participation and awareness of rights and obligations. A recommendation in that sense might be to facilitate access of the commons to external observers at commons assemblies, also to advisors regarding financial and administrative issues, and external conflict resolution advisors. here it is advisable that the advisors and observers should be competent and knowledgeable about commons across the country, not just anyone.

5.4. Changing internal rules, improving governance

It would be necessary to provide assistance for shaping the internal by-laws of the commons, based on **dialogue** between different community-based institutions obști and composesorate.

Following the negative effects inherent to the rights systems, a recommendation is **informing the communities about potential changes they can operate to the by-laws**, in order to 1) level up inequalities 2) increase the localization of shares, to 3) reduce the fragmentation of shares and 4) to reduce the possibility of internal commodification. Solutions can be found within the by-laws already existent, as some communities across the country have taken up internal decisions leading to such changes:

- 1) to level up inequalities, some of the communities introduced equal votes in the general assemblies, regardless of shares; or increased the level of community investments, lowering the distribution of individual benefits
- 2) to offset the effects of delocalization, coupled with decreasing fragmentation, some of the communities do not admit the division of shares among siblings, and advise them to reach an agreement to favor the sibling who resides in the village;

or do not offer individual monetary benefits, only community benefits, and use-based benefits, such as use of pasture and quantities of firewood

- 3) for reducing the commodification of shares and also as a mechanism of leveling inequalities, some communities directly prohibited internal commodification; or devised the rule that the commons institution first buys the shares and then divide them up equally among all commoners

- 4) in the inheritance-based models, it is usually the older generation holding the rights. however, to allow the younger generation to participate, some communities favor a system of donation of shares between parents and children.

Commoners who express complaints about the effects of by-laws, should be made aware of such possibilities which were applied in other regions. Facilitation and advice should be offered, but by no means the changes of the by-laws should be top-down imposed, because each local situation is different and communities should be helped to reach the best decisions themselves.



Working in the commons forest, Nereju, Vrancea County
©Monica Vasile 2007

5.5. General recommendations

By no means should legislation on commons and legal provisions affecting commons be changed. **The problems do not lie principally in how the laws are formulated, but in how they are implemented and enforced on the ground.** There is an **over-regulation** and confusion stemming from changing successive legal provisions, so this should be avoided.

it is recommended that any policy-measures targeted towards the commons should involve experts and take into consideration research evidence, and thoroughly apply this knowledge, avoiding stereotypical thinking or imitation - measures borrowed from countries which are very different. Also, policy measures and should take into consideration the variability of commons across geographical areas within Romania, therefore design place-specific measures and actions, after being previously informed about the local situation and after assessing the potential concrete outcomes of such actions and measures.

The measures recommended target the practice of commons, and their interaction with other institutions.

The improvements needed in the working of the existent land commons are the following:

- encourage generational renewal, involving youth as much as possible
- raise awareness among rightholders about opportunities and threats, about admissions of external persons and commercial firms, which are prohibited and contrary to the spirit of the commons
- to enhance democratic participation
- to deliberate effectively
- to reduce conflict
- to promote transparency in the works of the councils
- to increase collective work for and on the commons - take care of the land
- to ensure fair and equal access to land and forest
- to ensure fair redistribution of proceeds
- to improve sustainability of practices
- to enhance the awareness for sustainability among commoners
- to enhance identity related to land and emotional bonds to place
- to reduce and prevent commoditization and alienation of shares



Common broadleaved forests of obște Runcu, Gorj County
©Stefan Voicu 2016



Cheese produced at the sheepfold on the commons in Vâlcea County, Tara Lovistei ©Arryn Snowball 2016

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