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Common-pool resources in Central Europe: Case study of forestry in the Slovak Republic

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Abstract

Forests are one of the most typical long-enduring common pool resources all around the world. Forests were effectively managed not only as a private property, but as a common resource too for centuries also in the region of Central Europe, including the area of the present Slovak Republic. At the present time, forests cover more than 40 % of area of the Slovak Republic and they are considered to be one of the essential and most important components of the environment and one of the greatest nature treasures.

One of the most important problems of forest policy and legislation as well as forestry practice is the issue of forest property rights. The paper analyses the origin and history of common property of forest resources in the region of Slovakia in the past. Due to the fact that the forest property regimes have significantly changed from the one to the other especially in the 20th century, the changes in ownership structure and common property of forest resources in the 20th century in the region of Slovakia are discussed – social, political and economic reasons for the institutional changes in forest property rights regimes are covered in the paper.

As common property of forests is still a relevant type of property regimes in the Slovak conditions, the present legal status of common property of forest resources in the Slovak Republic is analysed. Moreover, the present problems of management and use of common property of forest resources in the Slovak Republic arising from the conflicts between interests of the forest owners (local communities) and interests of the society (the State) in the field of nature/environment protection are discussed.

Key words: forestry, property rights, property regimes, common property, management of forests, Slovak Republic

1 Introduction

Forests are one of the most typical long-enduring common pool resources all around the world. For many centuries, forestry was an issue of great importance and forests were effectively managed not only as a private property, but as a common resource too also in the region of Central Europe, including the area of the present Slovak Republic (SR).

In Slovakia, origin of forest management dates back to the 13th century when the Hungarian king Bela IV issued the king's decree dealing with the duties of the Badin foresters in 1250 and, moreover, provisions forbidding hunting and fishing in Tatra sub-mountain areas in 1265. The first regulations for saving of forests appeared in 1573, known as the Maximilian Forest Order. Especially significant for forestry practice in Slovakia was the edition of Theresian Forest Order in 1769 – at that time probably the most progressive piece of forestry legislation in whole Europe. Subsequently, the first legal provision dealing with management of forests according to the forest management plans was issued in 1879.

Nowadays, forestry has achieved recognition as a global issue and sustainable multi-purpose forestry has become the government's policy in many countries. In the Slovak Republic, at the present time, the area of forests is over 2 millions hectares – forests cover more than 40 % of its area and they are considered to be one of the essential and most important components of the environment. Forests also represent one of the greatest nature treasures. The importance of forests in the environment is anchored in the Constitution of the SR and in the general Environment Act.

2 Forest property regimes in the Slovak Republic

Property rights are defined by characteristics that deliver certain powers to the owner of the right. For many natural resources, including forest resources, well-defined property rights do not exist as they are non-exclusive – there are common property rights or open access rights in which ownership is either non-existent or ill-defined. Thus, forests can be considered to be a typical example of common-property goods – they are non-excludable and indivisible in consumption.

All forest lands on the territory of the SR are owned by the state, legal entities and private persons. Beside state-owned forests, the common forest property is another very important type of forest ownership in Slovakia. According to the Constitution of the Slovak Republic, originating from 1992, the Slovak economy shall be based on the principles of a socially and ecologically oriented market economy where everyone shall have the right to own property. Property rights of all owners shall be uniformly construed and equally protected by law. Expropriation or enforced restrictions of property rights may be imposed only to the necessary extent and in public interest, based on the law and in return for adequate compensation. It means that all kinds of ownership are equal by law and thus all forest owners have equal rights and duties.

2. 1 Historical origin of forest common property

Forest common property in the area of Slovakia, at that time belonging to the Austrian-Hungarian Empire, originates from the 18th century when Austrian empress Maria Theresia in 1767 had issued special decree on the land ownership of Hungarian noblemen and their serfs. According to this decree, the Hungarian serfs were able to manage certain area of agricultural and forest land – they held such land; however the legal owners of the land were only their noblemen. What the serfs had to do for exchange was to fulfil certain duties, such as to provide the noblemen with labour force, perquisites or directly money.

In 1848, as a result of the bourgeois revolution in the Austrian-Hungarian Empire, the serfdom was abolished and former serfs were compensated for previous duties provided for their noblemen – they got certain portion of pastures and forest land to their hereditary possession. The only special issue was that these serfs were not single owners of the land – the single legal owner was the group of families living in neighbourhood. Each family disposed of specific ideal share of this common property according to the amount of duties its members were previously obliged to fulfil for the noblemen.

In 1850s, the communities of farmers were allowed to buy smaller portions of land in order to consolidate area of land they owned. Later in the 19th century, the shareholders of common property might be not only the local farmers, but also other inhabitants living in the village, including craftsmen or protestant parishes. Finally, in 1898, the act specifying legal status of common property was issued in the Hungarian part of the monarchy – the common property was defined as a form of indivisible property owned by the group of local inhabitants and their heirs in a form of ideal portions (so-called land association, in Slovak “urbar association”).

The institution of common property as a special type of ownership of pastures and forest land, formed as it was described, has survived in the area of Slovakia up till now. The legal act from 1898 has been valid in Slovakia till 1995, when new Act on Land Associations was introduced. However, in the 20th century, the forest ownership structure including common property of forest resources has been significantly changed.

2. 2 Changes in ownership structure in the 20th century

At the end of the 19th century, the 15 % of forests in the area of Slovakia belonged to the state (the Royal chamber), another important owners of forests were private owners (especially members of aristocracy families), the church (especially the Roman Catholic church), the municipalities and also the land associations.

In 1918, the independent Czechoslovak Republic was created – at that time, the area of forests in Slovakia was 1.7 mil. hectares (forest coverage of 34 %). In 1920, the forest ownership structure was as follows:

- state forests: 19,3 %,
- private forests: 39,2 %,
- church forests: 5,2 %,
- municipal forests: 11,9 %,
- forest common property: 24,4 %.

This forest ownership structure was a result of legal changes in 1919 and 1920, according to which the forest holdings belonging to the Royal family as well as forest holdings of aristocracy owners larger than 250 hectares were legally confiscated and then re-allotted to the state-owned companies or individually chosen private owners for the purposes of the land consolidation (till 1938, more than 758 000 hectares of forest land were confiscated, from which 45 % were re-allotted).

In 1939, when the independent Slovak Republic was created, the area of forests in Slovakia was 1.5 mil. hectares (forest coverage of 38 %). The forest ownership structure was as follows:

- state forests: 26,3 % 384 000 hectares,
- private forests: 35,2 % 513 000 hectares,
- church forests 3,3 % 48 000 hectares,
- municipal forests 10,4 % 152 000 hectares,
- forest common property: 23,5 % 343 000 hectares,
- other type of ownership: 1,3 % 19 000 hectares.

In 1945, after liberation of the former Czechoslovak Republic, the area of forests in Slovakia was 1.6 mil. hectares (forest coverage of 33 %). The forest ownership structure was as follows:

- state forests: 17 %,
- private forests and forest common property: 54 %,
- church forests: 6 %,
- municipal forests: 13 %,
- other type of ownership: 10 %.

This forest ownership structure was a result of legal changes in 1945 – 1948, according to which the forest holdings belonging to the Germans, Hungarians and fascist collaborationist as well as forest holdings of private owners larger than 50 hectares were legally confiscated – as a result of this, in 1948, more than 75 % of forest land were in the state ownership.

The significant change in forest common property occurred in 1949 when all forest holdings in common ownership (together with the municipal forest holdings) were legally expropriated

without any compensation. In fact, the land associations administering forest common property were allowed to manage their forest land (“to use” their forest land) till 1958 when all property rights together with the management rights were simply handed over to the state forest enterprises. Thus, at the end of 1980s, more than 99 % of forest land was in the state ownership.

In 1991, the process of restitution of original property rights has started. As a result of this, the present structure of forest ownership is shown in Table 1. Moreover, the total number of non-state forest owners as well as the number of forest owners who managed their forest land individually in 2001 is shown in Table 2.

Table 1: Present structure of forest ownership in the Slovak Republic

<i>Type of ownership</i>	<i>Area of forest land (ha)</i>		<i>Share (%)</i>	
	<i>ownership</i>	<i>real use</i>	<i>ownership</i>	<i>real use</i>
State	811 935	1 146 259	42,1	59,4
Private	282 839	119 938	14,6	6,2
Common	470 900	443 636	24,4	23,0
Municipal	190 502	167 813	9,9	8,7
Church	66 642	48 253	3,4	2,5
Cooperatives	3 208	4 793	0,2	0,2
Unknown	104 666	-	5,4	-
Together	1 930 692	1 930 692	100,0	100,0

Source: Report on forestry in the Slovak Republic 2005

Table 2: Overview on the number of non-state forest owners in the Slovak Republic in 2001

<i>Type of ownership</i>	<i>Owners</i>				<i>Management</i>	
	<i>amount</i>		<i>area</i>		<i>individually</i>	<i>leased</i>
	<i>number</i>	<i>%</i>	<i>ha</i>	<i>%</i>	<i>number</i>	
Private	44 511	91,81	123 126	14,66	42 625	1 886
Common	3 000	6,19	459 227	54,67	2 723	277
Municipal	330	0,68	199 070	23,70	288	42
Church	633	1,31	57 723	6,87	510	123
Other	6	0,01	818	0,10	6	0
Together	48 480	100,00	839 964	100,00	46 152	2 328

Source: Report on forestry in the Slovak Republic 2002

3 Forest common property in the Slovak Republic

Forest common property is the most important type of ownership in the Slovak non-state forestry sector. At the present time, there are 2 791 land associations managing forest common property – 1 455 of them does not dispose of legal personality while 1 336 of them are land associations created as legal persons.

3.1 Legal status of land associations

After 1990, the set of legal acts dealing with the restitution of property rights on agriculture and forest land to the original owners was enacted. The one of the most crucial acts in this sphere was the Act 181/1995 Coll. on Land Associations – the basic piece of legislation regulating the historical type of common property. This act comprises provisions on the creation of land associations, their legal status, management and dissolution as well as provisions on the rights and duties of the individual members of land associations.

According to this Act, the term “land association” means association of owners of shares of common property of pasture and forest land – the members of such associations are all co-owners of common property. Their rights and duties are administered according to the respective provisions of the Civil Code. Such land association is entitled to manage common property of pasture and forest land according to the respective legal provisions (e.g. Forest Act).

The shared co-ownership of the common property is indivisible – the rules of dividing of individual shares of common property have to safeguard the proper management of forest land. The rights and duties of individual shareholders result from the size of their shares on the common property. The members of the land associations (the individual shareholders) may transfer their shares together with the respective rights and duties only under specific provisions established in the Act on Land Associations.

There are two different types of land associations – the first one is the land association without legal personality, the second one is the land association with legal personality. The land association without legal personality are based on the free association of physical persons who are the owners of shares of common property – such land association is created by the registration of the list of at least two thirds of the common property shareholders. Then, the shareholders have to notify the competent county forest office that administers the register of land associations and to elect their authorized representative.

The land associations with legal personality are based on the contractual association of physical persons who are the owners of shares of common property – such land association is created by the registration of the agreement on creation of the land association with legal personality. Such land association is also listed in the register of land associations administered by the competent county forest office.

The land association can be dissolved only in specific cases that are listed in the Act on Land Associations (one of them is transformation of the land associations into the business corporation, another one is the case when there is only one shareholder of land association left, yet another one is the dissolution based on the decision of the plenary assembly of land association).

3.2 Organisation and administration of land associations

Land associations are decentralized self-governing bodies, however, their organisation and administration depend on their legal status. Land associations without legal personality are in fact just the associations of physical persons represented by one authorized representative – because of this, there are not any special provisions on their organisation and administration and they perform their activities according to the general provisions of the Civil Code.

On the other hand, the land associations with legal personality are typical corporations with special management bodies established in accordance with the provisions of the Act on Land Associations. The central management body of such land association is the plenary assembly of all shareholders – its rights are as follows:

- approval of the agreement on creation of the land association, its changes and supplements,
- approval of statute of the land association,
- election and dismissal of members of the executive committee and supervisory board,
- decisions on the management of the common property,
- approval of the annual financial statements,
- decisions on the profit distribution,
- decisions on dissolution of the land association.

The main executive body of the land association with legal personality is the executive committee lead by the elected chairman as a legal representative of the land association. The supervisory board is the central control body of the land associations – it consists of at least three members (majority of them must be from the group of shareholders of the land association).

3.3 Management problems of land associations

It was already mentioned that land associations are entitled to manage their forest common property in accordance with the respective legal provisions of the Forest Act. Land associations are obliged to manage their forests according to the rather strict forest management plans – they must protect forest land and forest stands, utilise them rationally and improve them permanently, systematically and in accordance with the advanced biology, technology and economic knowledge. Moreover, they must ensure the proper management of their forests by the professional foresters with required education and experience in order to manage all forests in a sustainable way. The control of their forestry practice is performed through a system of the state administration bodies (the central authority of forestry state administration is the Forestry Section of the Ministry of Agriculture, the local authorities of forestry state administration are district and county forest offices).

Shareholders of land associations are concerned about the implementation of legislation in order to balance the position of state-owned forests and non-state forestry sector. Forestry

legislation, originating from the 1970s, was created in connection with the state ownership of forests. Even nowadays, the forestry policy is mostly influenced by the strong professional level of state forestry sector. It is necessary to deal with the questions of economic and legislative rules of mutual co-operation between both groups of professionals (Šálka, 1997).

The real economic situation of land associations managing forest common property in Slovakia is very different and depends mostly on the real size of the forest common property – their average area is approximately 200 hectares, however the smallest land associations dispose of 30 – 40 hectares of forest land while the largest ones of 4 500 – 5 000 hectares. In the case of large land associations, the economic situation resulting from the management of forests is rather positive – such land associations perform their activities in favourable conditions benefiting from active business policy, fast and effective reaction to the customer needs, functional and simple organization structures, effective and operative decentralized management, low overhead costs. On the other hand, the management of small land associations is economically ineffective and thus without good perspective – they suffer from weak market position, high dependence upon services provided by contractors and lack of highly qualified staff (Kolenka, 2000, Hajdúchová, 2001).

However, the most significant problems of management and use of common property of forest resources in Slovakia arise from the conflicts between interests of the forest owners (local communities) and interests of the society (the State) in the field of nature protection. The major source of conflict between forestry and nature protection in the SR is in the issue of types and size of protected areas. The Act 543/2002 Coll. on Nature and Landscape Conservation designs the system of complex nature and landscape preservation based on five levels of protection with different categories of protected areas. Protected areas cover more than 23 % of the SR territory.

Due to the fact that protected areas are in many cases connected to the forest ecosystems, it is obvious that forest land is the most important land use category in all categories of protected areas. Average forest coverage in protected areas reaches 74 %. Out of 2 millions hectares of forest land, more than 44 % fall within one of four higher levels of protection.

According to the Act 543/2002 Coll. on Nature and Landscape Conservation, the landowner is obliged to tolerate the restrictions of nature protection established by this Act. If ordinary use of his land is limited because of such restrictions, he shall be indemnified. Such indemnification is not applicable in the case of land owned by the state or in the case of private protected areas declared by the will of the landowner. Nowadays, there is a significant number of forest owners who may ask for the indemnification due to the restrictions established by the nature protection legislation on land use in protected areas. Non-state forest owners own more than 54 % of forest land located in national parks, 66 % of forest land located in protected landscape areas and almost 40 % of forest land located in other so-called small-scale protected areas. It means, that the forest owners of more

than half of forest land located in protected areas may ask for such indemnification. To solve this problem, it is necessary to provide sufficient financial means for indemnification of landowners of protected areas or, on the other hand, to match interests of nature protection and economic possibilities of the public finance. The Government authorities shall consider the fact that landowners might be given the possibility to exchange their land in protected areas for state-owned land outside such areas (see Šulek, 2002, Šulek – Šálka, 2004).

Management of forests in protected areas shall be different from so-called ordinary management of forests – it shall be oriented towards the fulfilment of the functions of special-purpose forests. Management of forests in protected areas is different according to the level of protection. In protected areas in the 2nd and 3rd level of protection (especially in protected landscape areas and national parks), the legal provisions established by the Nature and Landscape Conservation Act enables to perform ordinary forestry measures with following restrictions:

- environmental-friendly or close-to-nature silvicultural and forest protection measures shall be applied,
- rotation and regeneration periods shall be lengthened,
- age and spatial structure of forest stands shall be managed so that the biodiversity can be preserved or improved.

From the forestry point of view, these nature protection restrictions are not that complicated as they comply with the traditional principles of close-to-nature forestry that are typical for the Slovak forestry. The situation is considerably different in the forests located in protected areas in the 4th and particularly in the 5th level of protection (especially in nature reserves) where legal provisions established by the Nature and Landscape Conservation Act directly ban carrying out any forestry measures, including preventive silvicultural and forest protection measures. Even if carrying out such measures is planned in approved forest management plan, the forest owner has to ask responsible body of the nature protection state administration for permission to execute these measures. Due to this complicated process, forest ecosystems in protected areas in the 4th and 5th level of protection are, in many cases, left without any care and their condition is not very suitable (e.g. in certain cases such forests were destroyed due to problems with bark beetles when forest managers were not able to do anything against it due to the restrictions of nature protection). Resulting from this, neither production (economic) functions nor nature protection functions of these forests are really fulfilled. Thus, it is necessary to harmonize the forestry legislation and nature protection legislation in the sphere of restrictions of management measures in protected areas (what “has to be done” according to the forestry legislation and “what is not allowed to be done” according to the nature protection legislation).

Another problem in the field of management of forest common property in protected areas is connected to the process of forest certification. Nowadays, in the SR, both well-known forest certification schemes – FSC as well as PEFC are being used. The existence and use of these certification schemes in forestry has already brought a number of extensive discussions on the role of certification in forest management and nature protection. While the FSC has already received endorsement and active commitment from a wide range of respected environmental NGOs, the PEFC is rather preferred by non-industrial private forest owners around Europe (Paluš 2000). This fact represents the differences defined by the principles of both certification systems for the forestry practice. More homogenous and, from the nature protection point of view, stricter rules apply to the forest owners managing their forests according to the FSC standards. On the other hand, PEFC accepts the present state of national and regional rules and regulations and thus allows the forest owners to a certain extent to apply the methods and practices, which are most suitable for a given region and which respect the local conditions. As the PEFC Guidelines for Forest Management Planning and Forest Management practices represent some recommendations and can be used on a voluntary basis, they do not have to necessarily follow the regulations for nature protection.

4 Conclusion

Land associations managing the forest common property are significant type of forest ownership in the Slovak Republic – they manage almost 0.5 mil. hectares of forest land. Their present situation and condition results from the major changes in forest ownership structure in the 20th century as well as from the new economic conditions appearing in Slovakia after 1989. In order to manage such common property in a sustainable way, it is necessary to consider diverse values and interests of various stakeholders by means of multi-professional teamwork of experts, inter-agency co-operation, public participation, and settlement of controversies concerning land-use alternatives through negotiation.

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