



Commons in Transition

CHANGE IN AGRICULTURAL LAND AND FORESTS PROPERTY RIGHTS DURING THE TRANSITION PERIOD IN SLOVENIA

ANDREJ UDOVC

Prague, 11-13 April 2003

Change in agricultural land and forests property rights during the transition period in Slovenia

Andrej Udovc,

Biotechnical faculty University of Ljubljana, Jamnikarjeva 101, SI-1000 Ljubljana

Abstract

The paper presents the process of denationalisation, as the biggest property right transformation process concerning agricultural land and forests in Slovenia during transition period. Although private property on agricultural land and forest existed, it was partly suspended during socialism. The denationalisation gave it back the importance of basic civil right. How this reflects in every days life is shown in second part of the paper on the case of proposed Regional park Trnovski gozd.

Introduction

Slovenia was even during socialism a country with existing and implemented limited private property rights on agricultural land and forests. Because of the similar property structure as in neighbouring Austria before the Second World War the 75% of all agricultural area was all the time operated by private farmers, who also owned the land. The agrarian reform, which happened after year 1945 first affected agricultural holdings which owned 45 ha of total agricultural or 25 ha of arable land. Later in 1953 the 10-hectare agrarian maximum was introduced. All these actions have resulted in compulsory expropriation for certain proportion of farmers as well as all landowners and Roman Catholic Church. And this was for the whole post Second World War considered as the biggest property rights violation in agriculture, what caused some very deep frustrations among certain Slovene farmers. But even the remaining property rights had only the relative importance. The best examples for this were forests, which were privately owned, but completely managed by the state companies. Forests products with exception of timber and right for hunting were public goods. The hunting was (and still is) exclusive right of the state, which was transferred, to hunting associations. Also the right for exploitation of own timber was restricted. The forest owners had to get the permission from the state forestry service which trees and how many were allowed to cut.

Nationalisation and denationalisation of agricultural land and forests

The expropriation and nationalization of land began after the end of the Second World War. The whole process embraced 25% of all agricultural land and 18% of all forests existing in the year 1946. The agricultural land and forests expropriation was made in three phases. Immediately after the Second World War the church, big landowners and overlords were expropriated, and some land was given to the people for colonisation. Than in the year 1953 the nationalisation of all land that was over the agrarian maximum of 10 ha followed. In the third step in the first half of the fifties, the land that was owned by agricultural cooperatives

and agrarian communities was nationalized. All this land became first state and later social ownership¹.

After the political change in 1990 at first the agrarian maximum was abolished and then the general law on denationalisation was passed in 1991. Its implementation followed in 1992 when necessary sub laws and commissions were established. Denationalisation was economic and political measure where economic aspect lies in restitution to former owners and their heirs and with this privatisation of former social property, which was formed during nationalisation of private property, also happened. Political aspect is in legally expressed wish to make good the injustice done by the former state.

The first step in the process of denationalisation was transformation of all socially owned agricultural land and forest into state ownership, which was then managed by Agricultural land and forests fund. Later this land is used for restitution in two ways:

- claimant may get back his original property in ownership and possession, if this is physically possible (not developed or in legal possession of some other physical or legal person with special interest – education, research, social security, army, ...), or
- claimant can get his original property only in ownership (full size or only part), when his original property lies within bigger consolidated plots.

If restitution in nature is not possible, then the claimant can get an indemnification in bonds issued from State restitution fund.

The most desired is restitution in nature (original property or substitute land from Agricultural land and forests fund).

The initiative to make a claim lies with the entitled claimant or their legal successor. The claimant also had responsibility to gather supporting documents from the cadastre, from the land registry, deeds, contracts of sale, and had to present these to the local restitution commission (there were different commissions for different kinds of property in each municipality). Also the commission itself might initiate a claim if it could establish a legal interest. The claimant had to demonstrate the legal grounds for the nationalisation, the right of recovery, and had to specify the form of restitution (in nature or in kind) The claimant also had to demonstrate their citizenship at the time of nationalisation, the relationship to the property, attorney, etc. All claims had to be lodged until 31. 5. 1993.

The committee on first level (community) had to determine the facts of the matter, and informed the interested parties. The committee then decided upon the property to be recovered by the recoverer, liability from restitution, and on terms for the implementation. At the end of the procedure a decree issued which ordered the execution of the decision. In the event of restitution, the effect was from the date of the decree.

The committee could also decide if the property might or might not be restituted, (eg now in use by research or education institution, restitution would have significant negative impact on other interests, etc). In this event, compensation is payable in the form of bonds specially issued for that purpose. The level of compensation is regulated by the denationalisation law.

¹ The former Yugoslavia knew the so called social ownership, which was established to replace state ownership in time of self-management socialism. In this form of ownership legal persons: organisations and institutions (enterprises, state, municipalities, interest societies) had the right to manage this social owned property

Table 1: Number of claims and number of settled cases for agricultural land and forests until 30. June 2001

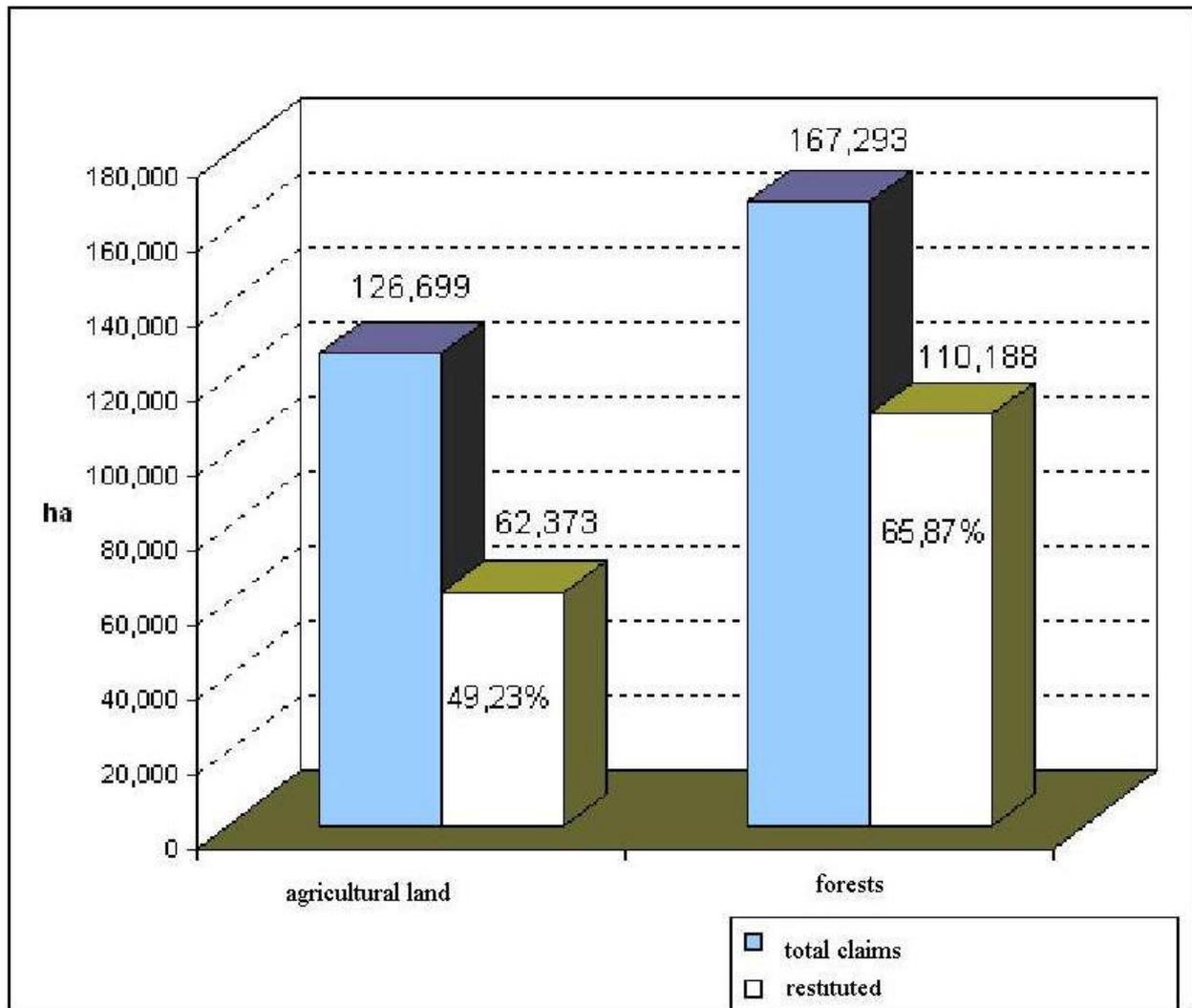
No. of claims	18,963
No of settled cases	22,050
a) granted in whole	16,501
b) granted in part	905
c) rejected	2,097
d) refused	1,398
e) stopped procedure	1,149

The table one shows the advance in denationalisation on the field of agricultural land and forests. The shown number of settled cases is higher then number of claims, because some claims were divided into more cases which were handled separately.

According to the 16th annual Report about progress in denationalisation from 18-11-2001, which was prepared by Slovene government, the denationalisation and restitution is finished in about 49% of cases regarding agricultural land and 66% cases in regard to forests (see picture 1).

Table 2: Total claimed and settled property

	claimed		settled		ratio	granted		not granted	
property	ha	Value Mio DM	ha	Value Mio DM	restituted/ claimed	ha	Value Mio DM	ha	Value Mio DM
Agricultural land	12,670	1,234	6,237	607	49.23%	5,396	526	841	82
forests	16,729	559	11,019	368	65.87%	10,109	338	909	30



Picture 1: Denationalisation of agricultural land and forests

In the case of agricultural land and forest there is no general limit on the area restituted, but for certain period (1998 – 2000) there was a moratorium on restitution of the agricultural land and forests to the religious organisations and communities (the main claimant is Roman catholic church). This became a subject to passionate political debates in late nineties. End even that the amended Law on denationalisation was passed in 2000, the problem is not resolved until today, what shows a case of restituting nationalized forests back to church within Triglav national park. The public opinion was so heavily against it, that at the end Ministry of agriculture changed its decision and send the claim back to the local restitution commission for the renewal of the procedure. The main demand, backed up by Ministry of Environment, from the public was that property within national park must stay in public property.

Generally the perception of the restitution process was positive, and in case of agriculture considered fair when land was restituted to active farmers.

Table 3: Ways of denationalisations for agricultural land and forests way of restitution

	agricultural land		forests	
	ha	%	ha	%
Compensatory property (given in ownership and possession)	56.41	0.09%	5.02	0.00%
State restitution bonds and shares	9,547.57	15.31%	802.58	0.73%
Compensation in receipt	24.32	0.04%	0.91	0.00%
Compensation in cash	45.96	0.07%	3.50	0.00%
Co-ownership	5,503.80	8.82%	4,964.90	4.51%
Restitution in ownership and possession	34,435.05	55.21%	93,080.89	84.47%
Only restitution of ownership (no possession)	4,346.04	6.97%	2,236.79	2.03%
Total restituted	53,959.14	86.51%	101,094.58	91.75%

Agricultural land and forests fund

In the year 1993 the Agricultural Land and Forests Fund of Republic of Slovenia (land fund) was established, with the goal of managing all state owned agricultural land and forests and as primal source for restitution of agricultural land and forests in nature. Today the Land fund administers 300,000 ha of forests, and 140,000 ha of agricultural land (of which 50% is high mountain pastures - very low value land). All former socialist farms (today mostly joint stock companies) lease the land they operate from it, as well as almost 22,000 small farmers which lease small land units (average area is 1.2 hectares). The cca. 50 large enterprises have land units of between 5000 ha and 20,000 ha.

The Land Fund also buy and sell land in support of land policies aimed at consolidation, prevention of fragmentation and the promotion of agriculturally viable units. It is also supporting the restitution process. The net result is that the private/public balance in the agricultural land sector has not changed much through the transition period, and while restitution is increasing fragmentation, the Land Fund is actively trying to prevent the worst excesses.

Agricultural land and forests private property rights today

Slovenia has a long history of physical planning where rural space was considered as kind of social good in the way that the countryside has to provide an appropriate environment in which Slovenes may spend their leisure, as well as resources for food production. The same goes for forests. The proof for this can be found even in Slovene legislation, which regulates agricultural land and forests. Beside above-mentioned restrictions (hunting, free access) also the transactions with agricultural land and forests are strictly regulated. So each intended transaction either with agricultural land or forest must be put forward to the local office of the Ministry of agriculture for check up. They check the price, whether the prebuy rights of certain interest groups were respected (co owner, leaseholder, first neighbour, other local farmer, land fund, municipality, local agricultural enterprise) and if the potential buyer has a status of the farmer.

Regarding the nature protection, the popular opinion within administration is that the nature protection sites and some functions of forests (hunting, recreation, environment protection, ...) should be a public good or at least the private property rights should be to some level restricted. This opinion can be backed up with a view of one state secretary at Ministry of Environment who stated that the state's role in this area (i.e. legal restriction of private property rights) is legitimate as 'the Slovenian way of life is invested in public property and goods' and 'only the legal backing is binding on local communities and individuals' (Tavzes, 2001).

Nevertheless, increasingly private investors have an interest in as little regulation as possible, so the State Secretary's statement highlights the dissonance between views of popular opinion within the administration and the reality. The traditional view of 'social ownership' - popular accessibility with even the right to roam on private property has been "sacrificed at the altar of private ownership." This land is increasingly being fenced off to public access. The new owners are now claiming to be entitled to compensation for any visitor damage (Skoberne, 2003).

(Example: Hunting rights - By law, no hunting rights can be allowed privately, however, some large landowners are now claiming their right to allow hunting on their land.)

The clashes between these competing logics are revealed in nature conservation, agricultural land and forestry legislation that are compulsory on state or private land.

The importance that full or restricted private property rights have in agriculture and forestry we were also able to observe in the research project we did in area of proposed regional park Trnovski gozd. In the survey we asked different stakeholders (local elite, state elite) about their perception of different legislation concerning agriculture and forestry, which in some way restrict the private property rights. Respondents were asked to evaluate the impact of each on 1-5 point scale. The results are shown in the tables 4 and 5.

Table 4: The influence of relevant laws on agriculture - the averages on 1-5 point scale (local elite)

Agriculture	Municipality		Regional state offices/institutions		NGOs/professionals		N	\bar{x}
	N	\bar{x}	N	\bar{x}	N	\bar{x}		
Law on agricultural land	(6)	3.2	(5)	3.6	(3)	2.7	(14)	3.2
Law on forests	(5)	2.4	(4)	3.8	(4)	3.0	(13)	3.0
Law on agricultural land and forest fund of RS	(6)	3.5	(6)	3.8	(3)	3.0	(14)	3.5
Law on denationalisation	(6)	2.7	(6)	3.5	(4)	2.8	(16)	3.0
Law on ownership of enterprises transformation	(5)	2.4	(6)	3.0	(4)	3.5	(15)	2.9
Law on agricultural cooperatives	(4)	3.0	(4)	2.8	(2)	4.0	(10)	3.1
Law on the protection of environment	(6)	2.5	(4)	3.2	(3)	3.0	(13)	2.8
Law on the protection of nature	(6)	2.3	(5)	2.8	(4)	2.8	(15)	2.6

Table 5: The influence of relevant laws on forestry - the averages on 1-5 point scale (local elite)

Forestry	Municipality		Regional state offices/institutions		NGOs/professionals		N	\bar{x}
	N	\bar{x}	N	\bar{x}	N	\bar{x}		
Law on agricultural land	(6)	2.7	(3)	2.7	(4)	2.2	(13)	2.5
Law on forests	(6)	3.7	(4)	4.2	(5)	3.4	(15)	3.7
Law on agricultural land and forest fund of RS	(6)	3.5	(3)	4.3	(4)	3.5	(13)	3.7
Law on denationalisation	(6)	3.5	(4)	4.0	(5)	2.8	(15)	3.4
Law on ownership of enterprises transformation	(6)	2.5	(4)	3.5	(5)	3.8	(15)	3.2
Law on agricultural cooperatives	(4)	2.3	(3)	2.3	(2)	3.0	(9)	2.2
Law on the protection of environment	(6)	2.8	(3)	3.0	(4)	3.2	(13)	3.0
Law on the protection of nature	(6)	2.8	(4)	3.0	(5)	3.2	(20)	3.0

According to average estimates three laws (Law on agricultural land and forest fund of RS, Law on agricultural land and Law on agricultural cooperatives) have affected agriculture the most (above average: 3.1-3.5). The impact of legislation on forestry turned out to be higher than its impact on agriculture (Table 5). Besides the two most influential laws (Law on forests, Law on agricultural land and forest fund of RS), the forestry has been above average influenced by Law on denationalisation and Law on ownership of enterprises transformation due to the fact that after the Second World War, the forest which belonged to Catholic church and landlords was nationalized and have been in accordance with Law on denationalisation given back to former owners. Even though that the process of denationalisation has not been finished yet it has considerably affected the national management of forest.

Table 6: The influence of relevant laws on agriculture/forestry (state elite N=7)

Law	\bar{x} note
Law on agricultural land	2.7
Law on forests	2.8
Law on agricultural land and forest fund of RS	1.6
Law on denationalisation	1.2
Law on ownership of enterprises transformation	2.2
Law on agricultural cooperatives	2.5
Law on the protection of environment	2.9
Law on the protection of nature	3.1

Also the comparison of this tables show the above mentioned dissonance between views of the administration and the local populations how the restrictions on private property rights influence agriculture and forestry.

Table 7: Percentage of answers on opinion whether is it now easier/more difficult to assert individual rights and to perform public functions on agricultural land than it was in the past? (local elite)

Agricultural land	to assert property on	to manage	to sell/buy	to perform public functions on	to carry out ecological programs on	to control the use of
easier	45.0	40.0	40.0	20.0	25.0	35.0
the same	5.0	15.0	20.0	25.0	20.0	25.0
more difficult	30.0	35.0	20.0	40.0	30.0	30.0
don't know	20.0	10.0	20.0	15.0	25.0	10.0
Total	100.0	100.0	100.0	100.0	100.0	100.0

According to the opinion of local elite it is now easier to assert individual rights and to control/to monitor the use of agricultural land than it was in the past. But, by the same token, it is now more difficult to perform public functions and to carry out ecological programs on agricultural land than it was in the past. Mayors/municipality officials believe that it is now easier as it was in the past to assert property rights on agricultural land, to manage it, and to trade with it while it is more difficult to exercise public functions on agricultural land. In contrast to this group of the respondents, the representatives of NGOs and respected local professionals believe that it is more difficult than it was in the past to assert property rights on and to manage agricultural land. At the same time they believe that it is now easier to control the use of agricultural land.

Conclusions

Denationalisation as process of re-establishing private property rights, as one of basic human rights, in post socialist era has served two purposes: economical, when through restituting property to former owners, also privatisation of social ownership was done, and political with legally expressed wish to make good the injustice done by the former state.

But the legal process didn't necessary brought with also the total social change. Although the paying back the old injustices was broadly supported by general public, it was also heavily debated in cases when people who are not active farmers got back substantial peaces of land.

The higher level of esteem for individual property rights has also introduced higher expectations of private owners for unrestricted disposal of their property on one side, and feeling of higher limitation for public accessibility of the same resources (especially for forests) on the other side, what is not completely unfounded. Namely often are public and collective interests marginalized on favour of private ones (especially in field of nature conservation) due to some significant gaps between existing legislation and existing rights in practice.

Literature

Interview with R. Tavzes, state secretary at Ministry of Environment, Physical planning and Energy, 2001

Interview with P. Skoberne, advisor at Ministry of Environment, Physical planning and Energy, 2003

UDOVC, Andrej, BALDWIN, Richard. The institutional environment of land market in Slovenia. *Zb. Bioteh. fak. Univ. Ljubl., Kmet. (1990)*, 1997, no. 69, p. 147-156.

BARBIC, Ana, UDOVC, Andrej, MEDVED, Andrej. Sustainable agriculture in protected areas planned Regional Park Trnovski Gozd, Slovenia. IN: ZELLEI, Anett (ed.), GORTON, Matthew (ed.), LOWE, Philip (ed.). *Description of agri-environmental policies in Central and Eastern European Countries : Sustainable agriculture in Central and Eastern European Countries (CEESA) : project under EU 5th framework programme contract No: QLK5-1999-01611*. Newcastle: University of Newcastle, 2001, p. 178-224

Government of RS. 16. report on realisation of Denationalisation Act.

http://www2.gov.si/zak/Pre_akt.nsf/2699ff1a57aee4b2c1256616002a1d99/e7614cd62ef77b6ec1256b03003914c4?OpenDocument

Law on agricultural land. Official Gazette of republic of Slovenia, No. 59, 1996

Law on Forests. Official Gazette of republic of Slovenia, No. 30, 1993