

Surname	HERBST	Ref.Nr.: 439
First Name	Peter	
Mailing Address	Wulfenstr. 15, A-9500 Villach	
Country	Austria	
Email	HP@net4you.at	
Phone Number	+43-676-5483095	
Fax Number	+43-4242-264048	

RURAL COMMON PROPERTY IN AUSTRIA

In the mountain valleys of Austria's South-Eastern Alps (province of Kärnten), common property is one of the prevalent categories of rural land ownership and therefore a major factor in land use planning and policy. Administration of these joint ownership structures has been institutionalised in 1853 already, and since 1950 their legal status has been that of corporations under public law ("*Agrargemeinschaften*", rural common property). A special supervising authority ("*Agrarbehörde*") has been installed as early as 1883, to safeguard sustainable management of the commons.

Approximately 30 % of the total area (more than 1/3 of the alpine pasture land, and 1/4 of the total area under forests) belong to the more than 3000 *Agrargemeinschaften* in that part of Austria.

1.) Historical Origins

Historically, rural common property in Austria can be traced back to either a settlement-related origin or an easement-related origin.

1.1.) Settlement-related Origin

Common management and use of rural property in nowadays Austria dates back more than 2000 years, to Germanic times. Forests, meadows, and alpine pastures were commonly owned by all, or groups of, inhabitants of adjacent villages

("Allmende"). The legal basis to maintain internal order under common ownership of land, was the customary law.

In 1871, when land records got rearranged in Austria, it was necessary to formally install these ownership rights and attribute them to specific bodies there. Wherever it seemed to be favourable, the commons were separated and distributed to all co-owners, according to their shares of rights; wherever this turned out to be unfavourable for ecological or economical reasons, the commons were regulated and became "*Agrargemeinschaften*". Such regulations specified the rights and duties of all members (share holders) and the organizational structure of each *Agrargemeinschaft*, provided a clear distinction of the scope of duties of the local communities (political self-governing bodies) on the one hand, and that of the *Agrargemeinschaften* on the other. The legal basis was the Imperial law on "separation or regulation of rural common property" (1883). This law was a skeleton law, where the Imperial law established a framework for detailed regional legislation – the same system as still applied today (cf. 2.1., below).

The settlement-related origin is still reflected in the names of that *Agrargemeinschaften*; in addition to their local place-name, they bear the annex "*Nachbarschaft*" (= neighbourhood), a medieval administrative unit.

1.2.) Easement-related Origin

Before 1848, most Austrian farmers were landless serfs of the local nobles. These serfs had to cover their demand for timber, fuel wood, hay and so forth from easements on lands which belonged to their masters. It was one of the consequences of the liberation of farmers in bondage and discharge of estates in 1848, that all such easements had to be redeemed by landed property, to an extent which covered the respective annual demands. Mainly because of the difficult terrain in mountainous areas, it was not possible to cover the demands of each entitled farm by exclusive allocation of an undivided, specific patch of land (forest, fields, pasture lands); the solution was to allocate large areas for common use.

Just like the former "*Allmende*", these commonly owned estates were regulated on the very same basis (cf. 1.1., above) and became "*Agrargemeinschaften*", too.

In almost all mountain settlements in Southern Austria, both types of commons exist parallel to each other. The *Nachbarschaften*, being the former *Allmende*, commonly

are small and located around and adjacent to the settlements, whereas the estates derived from former easements include large forests and alpine pasture lands.

2.) Managing the Commons

It is a common feature in the Southern Austrian alpine valleys that farms which own shares of *Agrargemeinschaften* do not own any private forests or pasture land, at all. Sustainable use of such ownership rights, therefore, is an essential precondition for survival of a considerable portion of the rural population there.

Although regulations and structures of these *Agrargemeinschaften* in most cases are over 100 years old (though regularly adapted), their macro as well as micro economic and cultural importance are out of discussion: on the one hand, huge areas of land which would be out of management because of their low economical value are being managed because they are commonly owned, on the other hand there are multiple synergetic effects of common management (as saving of time, labour and resources).

The idea of sustainable management of forests and pastures is a many centuries old tradition in the Austrain Alps. It is in the commons-related legislation, however, where this idea was first laid down, reaching back as far as to 15th century regulations. Today's clear legal basis and strict system of law enforcement reflect the overall significance attributed to appropriate management of our *Agrargemeinschaften*.

2.1.) Legal Basis

All regulations related to *Agrargemeinschaften* are found in the respective Austrian Federal skeleton law and detailed legislation of the provinces (Federal states) based on the framework established there. Regulations comprise the appropriate and orderly management and use of commons by a majority of owners, and also the procedure of dissolution of *Agrargemeinschaften*.

Agrargemeinschaften are legal persons under public law. The law defines a "*Agrargemeinschaft*" as group of all owners of estates where ownership of the estates as such is directly connected to and results in ownership of fractional shares of the commonly owned land (tenancy in common, "*Stammsitzliegenschaften*"). Direct personal ownership of shares is a second option, however, very uncommon.

Legally, there is a reciprocal connection between the land and the owners: The commonly owned land is considered to be the passive, the corporation under public law the active component of the management system governing the Austrian commons – each side directly depending on the other, as no such corporation is possible without related land, and vice versa no land of that special legal form without related corporation.

2.2.) Internal Administration

Agrargemeinschaften are decentralized corporations under public law and thus self-governing. It is their legal obligation to sustainably manage their commonly owned lands. Administration and management of *Agrargemeinschaften* is performed through their executive bodies which are the

- Plenary Assembly
- Management Committee
- Headman

2.2.1.) Plenary Assembly

All shareholders (owners of *Stammsitzliegenschaften*) are members of the Plenary Assembly, which is the central body of their *Agrargemeinschaft* and holds regular meetings, at least annually. Decisions usually are taken by open votes counting the numbers of shares as votes; in few cases the number of heads is counted, which might distinctively differ from the numbers of shares held by the respective representatives. The voting system – just like all other issues governing the internal administration of each *Agrargemeinschaft* – is laid down in the respective regulation instrument ("*Generalakt*", see 3.1., below).

Rights and duties of the Plenary Assembly include

- election and dismissal of headman, deputy headman, treasurer and other members of the management committee, as well as two auditors,
- alienation, leasing or encumbrance of commonly owned parcels,
- mortgaging commonly owned parcels,
- admission of new shareholders by approval of alienation of shares to non-members,
- moves for modifications of the regulatory instrument,

- decisions on all issues which are not explicitly assigned to the management committee or the headman.

It is the right of the overruled minority to file an appeal to the supervising authority within a short statutory period (usually 8 days). In case the authority considers the appeal to be well founded, the decision is quashed.

2.2.2.) Management Committee

The Management Committees typically consists of a headman, a deputy headman, a treasurer, a secretary and further members (depending on the total number of shareholders and special demands of the *Agrargemeinschaft*).

The Management Committee is responsible for proper business management of the economic entity "*Agrargemeinschaft*". Proper business management includes conservation and sustainable management of the commonly owned assets.

2.2.3.) Headman

Rights and duties of the Headman (or Deputy) include

- authority to represent the *Agrargemeinschaft* (even if it might be ostensible only)
- direction of the business management
- enforcement of orders and directives, as well as internal decisions (by the plenary assembly or the management committee)
- drawing up of the annual account, in cooperation with the management committee
- all necessary measures to make shareholders timely contribute according to and within the range of their duties (money payments, non-cash contributions, labour).

2.3.) Law Enforcement

Agrargemeinschaften are self-governing bodies; basically they are entitled to decide all their internal matters autonomous and self-responsible. Still, they are subject to supervision by a special supervising authority, the *Agrarbehörde*, to safeguard sustainable management of the commons.

This special supervising authority had been installed as early as 1883, when over-exploitation and even devastation of commonly owned lands had reached intolerable extents.

Competencies of that authority include:

- declaratory decisions on the existence of a certain *Agrargemeinschaft*, of shares and ownership relations
- procedures of regulation or separation of *Agrargemeinschaften*
- settlement of disputes among the shareholders or among the *Agrargemeinschaft* and single shareholder(s)
- examination of the legality of decisions taken by the *Agrargemeinschaft*, including possible cancellation of illegal decisions
- approval of alienation or encumbrance of commonly owned parcels
- approval of mortgaging commonly owned parcels
- approval of alienation of shares

A typical intervention of the supervising authority would be to notify shareholders who infringe on the management plan about suspension of their use rights for a limited period; property of any illegally harvested goods remains with the *Agrargemeinschaft*.

3.) Procedures of Regulation and Separation of Commons

The basic preconditions for sustainable management of commons are clarification and clear determination of the legal and economical relations within the *Agrargemeinschaft*, but also regarding their external relations.

To achieve the necessary level of clarification, with respect to the commons, the Austrian law provides two main instruments: regulation, and separation.

3.1.) Regulation of Commons

The goal of such regulations is to clarify and determine - in a legally binding way - the administration and use of the common property, based on the overall principle of sustainability.

Regulations necessarily consider the basic right of all shareholders to sustainably use their common property, however, limited by and in relation to extent and ratio of their shares. Because of their historical origins, *Agrargemeinschaften* have to fulfil a

variety of functions, but foremost to enable farmers' subsistence in the harsh conditions of Alpine mountain valleys. Coverage of basic needs of all shareholding estates has to be provided for, based on forest as well as pasture management plans. It is an essential outcome of each regulation that shareholders are granted the right of use (jointly with or independently from other users) of their common property in a sustainable way, i. e. within the frames of annual allowable cuts and bearing capacities.

The procedures of regulation of a certain *Agrargemeinschaft* are opened by the supervising authority by official notification, either ex officio or following an application of at least e.g. one tenth of the shareholders (the minimum requirements are subject to inhomogeneous provincial regulations). The initial step is to estimate the sustainable yield of all parcels commonly owned by the *Agrargemeinschaft* under revision, followed by the determination of shares and holders. After that, management plans are established and approved.

The procedures of regulation are closed by the supervising authority by official notification of adoption of the regulation instrument ("*Generalakt*"), which regularly consists of the regulation documents, maps of parcels and catalogues of assets, the list of shareholders and their respective shares, evaluation and management plans as well as the Charter of the respective *Agrargemeinschaft*.

Management and administration of each *Agrargemeinschaft* are entirely based on their respective regulation instruments.

3.2.) Separation of Commons

The Austrian law regulates two possible procedures to separate *Agrargemeinschaften*, namely

- total dissolution of an *Agrargemeinschaft*, or
- separation of one or more shareholders from the *Agrargemeinschaft* which continues to exist amongst the remaining shareholders.

Separation of commons is inadmissible in cases when

- the practical management of the commons is jeopardized by such operations, or
- the supervising authority objects by putting forward macro or micro economic, or cultural considerations.

In any case, separation takes place by allotment of parts of the commonly owned land to the leaving parties, according to the relative value of their shares. Compensatory payments are permissible in exceptional cases only.

4.) Use of Income

As mentioned above, *Agrargemeinschaften* are an important economic factor in the rural areas of the Austrian Alps. It is therefore only logical that considerable income is being generated from that commonly owned areas.

Basically, any income generated from managing the commons has to be re-invested in conservation and possible improvement of the common property (*Agrargemeinschaft*).

The Plenary Assembly might, however, adopt the distribution of income to the shareholders according to the shares held. Recently, enforcement of a 25 % capital yield tax has caused serious problems in that respect.

5.) Conclusions

Rural common property in Austria has been managed under the same regulatory and institutional regime, based on a continuously adapted legislation, for more than 140 years now. Over so many decades, it has been possible to identify and to learn from many an undesirable development, and to (re)act accordingly. It is because of such proper management, based on clear and consequently enforceable regulations, that rural commons in Southern Austria never have been in better ecological nor economic conditions in historical times, than today.