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### Elements of the institutionalization process of the forest and pasture commons in Romania as particular forms of social economy

**Irina-Sînziana Opincaru**

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### **Elements of the institutionalization process of the forest and pasture commons in Romania as particular forms of social economy**

Opincaru Irina-Sînziana

University of Bucharest, Doctoral School of Sociology

#### **ABSTRACT**

Building on Garrett Hardin's concept "the tragedy of the commons" (Hardin, 1968), Elinor Ostrom's work (e.g. Ostrom, 1990) was the starting point of a wealth of studies and papers regarding common-pool resources all around the world. In Romania, the study of jointly-owned property (*devălmășie*) was of great interest for social scientists during the different political regimes of the country. The most prominent figure in the study of the Romanian commons before and during the communist regime was Henri H. Stahl (1958), who together with other Romanian sociologists (e. g. Caramelea, 1944, 2006) gave detailed monographic accounts of these organizational forms. After the 90', the topic faces a diversification of the theoretical frameworks, the commons being studied either from a sociological perspective (Vasile, 2006, 2007, 2008a, 2008b) or from a legal or policy perspective (e.g. Bouriaud, 2008; Sutcliffe et al., 2013). In the last 10 years, sociologists also started to research the Romanian commons in the larger framework of social economy, considering them among the entities for which comprehensive statistical socio-economic data was collected and analysed (Cotoi and Mateescu, 2013; Petrescu, 2013). My paper comes to complement this new trend and aims to identify and define the contemporary Romanian commons by reference to the general characteristics of social economy organisations. In order to achieve this and obtain a clearer view of the place of the commons in Romania's organisational environment, I aim to grasp some elements of the commons' institutionalization process after the fall of the communist regime. For this purpose I will use the theoretical framework of the new institutionalism (DiMaggio and Powell, 1983; Scott, 2001; Powell, 2007) to explore the process of reestablishment of the historical commons from three major perspectives: the legal framework available, the process of restitution of ownership rights (both collectively and individually) and the relationship between the commons and the public bodies. Also, I will make use of Laville's (Laville *et al.*, 2006) perspective of political embeddedness of social enterprises in discussing the public policies that contributed to the reestablishment of these organisations. These two objectives are to be achieved by analysing a database comprising 328 questionnaires applied to the presidents or other board members of commons all over Romania and various legal documents such as official legal texts, bylaws etc. Whenever the case will be to illustrate some specific situations, I will use examples of the commons from counties that I study in depth. I argue that the restitution process that lead to the reestablishment of the Romanian commons, a process that was marked by hardships, conflicts, misunderstandings or faults, deepened the scarce knowledge of the political actors, general public

and other stakeholders in regard to these organisations and perpetuated their unclear position in the organizational field.

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## I. Introduction

### I.1. Setting the stage

The study of the commons worldwide has Elinor Ostrom as a central figure. Her and her collaborators approach was built on criticizing Garret Hardin's concept, "the tragedy of the commons" (Hardin, 1968) by arguing that local communities are capable of managing in an equitable, non-destructive manner the natural resources they have on hand through various institutions of collective action, generally named "commons", which do not belong neither to the state institutions, nor are privately-managed (Bromley, 1992; Oakerson, 1992; Ostrom, 1990, 1992, 1999). From this point, a wealth of studies was focused on collecting and analysing empirical data on these institutional forms, which vary greatly across the globe, but have one major aspect in common, as Ostrom (1990, p. 13) put it: "'getting the institutions right' is a difficult, time-consuming, conflict-invoking process".

An important distinction is made in this case by Daniel W. Bromley (1992, p. 11) between "open-access resources" and "common property resources", where the first has as main characteristics the difficulty in excluding others from use and sub-tractability (Ostrom, 1999, pp. 278–279), while the latter involves an official guarantee for the joint-owners that they will be able to extract benefits from the property in the future, as long as the ownership is preserved. Thus, the common-property resources are characterised by that "There is a well-defined group whose membership is restricted; an asset to be managed (the physical distribution system); an annual stream of benefits (the water that constitutes a valuable agricultural input); and a need for group management of both the capital stock and the annual flow (necessary maintenance of the system and a process for allocating the water among members of the group of irrigators), to make sure that the system continues to yield benefits to the group." (Bromley, 1992, pp. 11–12).

In Romania, the study of jointly-owned property (*devălmășie*) was of great interest for social scientists during the different political regimes of the country. The most prominent figure in the study of the Romanian commons before and during the communist regime was Henri H. Stahl (1958), who gave very detailed monographic accounts of the Romanian villages' (*sate devălmășe*). His definition of the Romanian common contributes greatly to the understanding of this historical form of association: „The *obște* is an association of family households based on a territory jointly-owned in which the collectivity as such has prior and superior rights to the rights of householders, rights exercised through a single governing body called the *obște*". Another author worth mentioning here is Istvan Imreh, whose work "Everyday life of the Secklers 1750-1850" (1982) thoroughly analysed the common property regime in the Transylvanian villages and the conflicts between nobles and peasants. In his turn, Vasile V. Caramelia (1944, 2006) focused his attention to the commons belonging to former serfs in the Olt Country and his native village (Berevoiești, Muscel).

After the 90', the topic faces a diversification of the theoretical frameworks, the commons being studied either from a sociological perspective (Vasile, 2006, 2007, 2008a, 2008b; Vasile & Mantescu, 2009) or from a legal or policy perspective (e.g. Bouriaud, 2008; Sutcliffe *et al.*, 2013). The works mentioned here focused on the description of momentous aspects of the commons' re-formation after the fall of communism – the weighty restitution process after more than 50 years

of state-ownership, the preservation of their main inherited characteristics (e.g.: distribution of shares and rights), the functional processes that they implement – using case-studies of particular regions. In the last 10 years, sociologists also started to research the Romanian commons in the larger framework of social economy, considering them among the entities for which comprehensive statistical socio-economic data was collected and analysed (Cotoi & Mateescu, 2013; Petrescu, 2013; Barna, 2014).

The subject of social economy (or the third sector) organizations, as well as the one of the organisations and groups that manage common goods, faced a significant growth in interest in the recent years, with both academics and public policy makers being interested in a better understanding and regulation of these spheres, at either national or international level. The generically named “social economy organisations” offer a wide range of services and goods, keeping as main objective of their activities the fulfilment of a social aim, meeting the needs and desires of their members and/or the community, and giving little interest to obtaining profits for investors or other shareholders. The social economy sector includes a variety of legal forms, such as associations, foundations, cooperative, social enterprises or mutual, all sharing in a higher or lesser extend the same functioning principles, but having as a core principle the primacy of the people and social objective over capital (Defourny *et al.*, 1999).

Defourny and his collaborators define the social economy as follows: “The social economy includes all economic activities conducted by enterprises, primarily co-operatives, associations and mutual benefit societies, whose ethics convey the following principles: 1) placing service to its members or to the community ahead of profit; 2) autonomous management; 3) a democratic decision-making process and 4) the primacy of people and work over capital in the distribution of revenues” (Defourny *et al.*, 1999, p. 16).

In a recently published article, Marthe Nyssens and Francesca Petrella (2015) compared Elinor Ostrom’s theory on common pool resources and the social and solidarity economy (SSE) organisations on three levels: ownership systems, the collective nature of the goods and services provided and the collective production of norms, identifying similarities and differences between the two. Throughout the paper the authors emphasise an important similarity of the two approaches in their acknowledgement of the fact that it is necessary to move beyond an economic perspective that includes only the state and the market, since in both cases, different organisational forms belonging neither to the state, nor to the private sector, prove to be efficient and productive. Similarities are also identified in regard to their aim to provide goods or services not for the market, but for the benefit of their members or communities and in regard to their management and governance practices done in a democratic manner.

Further, the points of divergence in the two approaches identified by the authors (Nyssens and Petrella, 2015) include the nature of the collective interest and the collective production of norms. In the first case, the commons mostly work for the interest of a well-defined group, mutually concerned for the good management of the joint-property that needs to continue to provide benefits to them. Social economy organizations on the other hand have a wider perspective regarding the collective interest they are pursuing, since their services and products are usually directed to the society as a whole and the decisions need to accommodate different stakeholders’ perspectives and to involve the state as a regulating and funding body.

My paper comes to complement this new trend and aims to identify and define the contemporary Romanian commons by reference to the general characteristics of social economy organisations<sup>1</sup>. For this purpose I aim to grasp some elements of the commons' institutionalization process after the fall of the communist regime in Romania and to explore the process of reestablishment of the historical commons from three major perspectives: the legal framework available, the process of restitution of ownership rights (for both individuals and institutions) and the relationship between the commons and the public bodies (both policy makers and local authorities). Throughout the paper I will use the theoretical framework of the new institutionalism (DiMaggio and Powell, 1983; Scott, 2001; Powell, 2007) and Laville's (Laville *et al.*, 2006) perspective of political embeddedness of social enterprises.

As several Romanian authors (Bouriaud, 2008; Vasile and Mantescu, 2009; Cotoi and Mateescu, 2013; Vasile, 2018) also pointed out, the reestablishment of the Romanian commons, through the lengthy and in several respects, unclear restitution process, was marked by chaos and confusion. My paper aims to enrich the work on this subject and contributes to the understanding of how policy, politics and public authorities influence local practices of natural resource management and the articulation of the organisational structures meant to fulfil this goal. I argue that the restitution process that lead to the reestablishment of the Romanian commons, as it was marked by hardships, conflicts, misunderstandings or faults, deepened the scarce knowledge of the political actors, general public and other stakeholders in regard to these organisations and perpetuated their unclear position in the organizational field.

## **I.2. Theoretical framework**

Institutions as a whole and their creation, development and interaction have been the main interest of social scientist for many years. Richard W. Scott, in his successive editions of the book "Institutions and organisations" (2001) explains and details the development of the institutional theory and the institutional perspectives shaped throughout history. The study of the institutional arrangements in the 19<sup>th</sup> had in its core Max Weber's well-known concept of bureaucracy, reflecting the organisational structure of society and the "iron cage" it creates by means of institutionalization. A wealth of studies both supported and criticized this theory.

One of the renowned works that criticized Weber's institutional theory is that of Paul J. DiMaggio and Walter W. Powell, who "revisited the iron cage" (1983) and proposed the initial framework of the new institutionalism. In their perspective, the phenomenon of bureaucratisation is stabilized and used in almost all instances of the state's and market organisation, but the rationalities that drive organizations to become similar and homogenous are not anymore just efficiency and competition and diversify as the legal frameworks, public policies and professions continuously develop. These developments and changes are directly reflected in the organisations' structure, which become embedded in the social, cultural and political environment where they function (Powell, 2007). The authors coin the concept of an *organisational field*, which includes all the relevant actors that interact within a specified area, defined empirically by: increased interaction

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<sup>1</sup> Ideas contained in this paper were also presented in a very basic form at the XVI Biennial Conference, 'Practicing the commons: Self-governance, cooperation, and institutional change' of The International Association for the Study of the Commons (IASC), held in Utrecht, the Netherlands (Opincaru, 2017).

between actors; defined structures of hierarchy and coalition between organisations; more information available which needs to be processed by the actors and a shared feeling of appurtenance to a common area (DiMaggio and Powell, 1983; Powell, 2007).

DiMaggio and Powell (1983) identify three isomorphic processes that drive organisations part of an organisational field to become homogenous: coercive, mimetic and normative. *Coercive isomorphism* takes place when other organisations on which an organisation depends exert formal or in-formal pressures on the latter – new legal frameworks that need to be met, a specific organisational structure that a funding body requires or an invitation to collaborate *if* some conditions are met etc. *Mimetic isomorphism* reflects the interaction between organisations not as hierarchy, but as imitation of the responses to a changing environment, where some organisations tend to be more performing or seen as more legitimate than others and thus, get to be copied and serve as a model for the less developed ones. Lastly, *normative isomorphism* refers to the internal structure of an organisation and has professionalization as a main driver. Thus, individuals working in organisations, on similar positions, having similar educational backgrounds and being part of rather the same professional networks tend to have likewise reactions to different situations, changes and stimuli from the environment. Both old members and new entrants in an organisational field follow these isomorphic processes to integrate and to gain legitimacy.

In 2001, Scott takes a step further and defines three pillars of institutions: regulative, normative and cognitive, that have the role to offer stability and reason to social behaviour (Scott, 2001, p. 48). In his view, organisations become alike by complying to: 1) official rules, laws and possible sanctions (the regulative pillar), 2) accepted values, norms and roles (the normative pillar) and 3) shared conceptions about the environment and the necessary actions (the cognitive pillar). He too proposes the concept of “societal sector”, similar to DiMaggio and Powell’s “organisational field” defining the entirety of actors that make up a certain specialized sector (Scott, 2001, 2005; Powell, 2007).

Narrowing down the conceptual framework to the social economy sector Jean-Louis Laville, Andreia Lemaitre and Marthe Nyssens (2006) propose a new perspective of the concept of political embeddedness, which they illustrate by discussing the public policies that enabled the institutionalisation of the WISEs (work integration social enterprises) in Europe. Drawing from Karl Polanyi’s (2001) original concept of political embeddedness, that designates the integration of the economic activities in the political order, Laville and his colleagues use this concept in explaining the relationship and interactions between the social enterprises and the public authorities and the influence that each of these instances have on one another.

### **1.3 Methodological aspects**

The findings of this paper are based primarily on a database comprising 328 questionnaires applied by myself and other members of the research team during the year 2016 to the presidents or other board members of commons all over Romania. The database was the main result of an ample research project named „Associative Environmentality: the Revival of Forest Commons in the Carpathians”, based at the Institute of Sociology, Romanian Academy and supported by a grant of the Romanian National Authority for Scientific Research and Innovation, CNCS-UEFISCDI. In order to shed some light on specific legal issues regarding the commons, I consulted official texts of the

laws in force at particular times and a number of 20 legal statutes of commons in different regions in Romania, obtained by the courtesy of our respondents.

This research also had a qualitative component, which allowed the research team to collect through semi-structured interviews valuable information regarding the respondents' opinions, evaluations and understandings regarding the governance and management of their common and the economic, social and political eco-system where it functions. Whenever the case will be to illustrate some specific situations, I will use examples of the commons from counties that I study in depth.

The discussions lasted between 1 and 2 hours, covering themes such as the restitution process, assets, number and type of members, membership practice, division of property rights, relationship with authority / the state, regulations, attitudes towards the common resource, the decision making processes, the participation of members in the organization's management, members' benefits, involvement in community, attitudes towards the governing process.

Throughout the paper the name of the commons studied and their communities' was not changed, as the facts presented do not make the subject of sensitive information or one that is not openly available<sup>2</sup>. However, even if not confidential information<sup>3</sup>, the initials of the respondents will not be included, since the respondents often present collective decisions.

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<sup>2</sup> Following the logic presented by Monica Vasile in one of her papers regarding the *obște* in Vrancea Mountains (2006, p. 112).

<sup>3</sup> Anyone potentially interested in finding out who exactly are the people that form the Board of Directors of any association registered in Romania can do so by accessing the public National Registry of Associations and Foundations hosted by the Ministry of Justice at this link: <http://www.just.ro/registrul-national-ong/>.

## II. The reestablishment of the Romanian commons

### II.1. General considerations

Before approaching the main subject of this section, a few general considerations need to be made on the Romanian commons. In nowadays Romania, estimates show that the forest and pasture commons collectively manage around 14% of the forest surface in the country<sup>4</sup>. They are fully-fledged community organisations, officially registered as associations, democratically controlled and managed by their own members, while having a strong historical legacy. Commons all over the country valorise local resources by selling timber, receiving subsidies or by investing in tourism ventures and contribute with these revenues to the local development and to the well-being of their members.

Two different terms are used in Romanian language for forest and pastures commons: *obște* and *composesorat*, depending on the historical region where they functioned and were re-established. The process of formation and formalization of property rights in the Romanian commons in the 19<sup>th</sup> century until the installation of the communist regime was extensively analysed by Monica Vasile (2018) and in a lesser extend in other works (see for example Sutcliffe et al., 2013; Vasile & Mantescu, 2009), all of which I will summarize in the following. In the historical regions of Romania, commons have been legally recognized in the late modern period (around 1895) in relatively different ways, with specific particularities even in the same region. The villagers of the communities in Transylvania became collective owners and members of *composesorat* either by receiving the forests as a compensation for their guarding of the borders, or by purchasing properties from the state as joint-owners, or as a part of their entitlement to make a livelihood as free peasants, after the liberation from serfdom (1848). In Wallachia and Moldavia, the communities of free peasants, grouped in *obște* bought the lands or had access to common property and managed it in a collective democratic manner.

The two different denominations (*composesorat* and *obște*) basically express the same form of community-based organization for collective forest and pasture management, but some similarities and differences have to be highlighted. The *composesorat* is mostly present inside the Carpathian circle in the counties Harghita, Covasna, Hunedoara, Arad, Brasov, Salaj, Maramures etc., while the *obște* functions in the outside circle, in the counties Valcea, Gorj, Vrancea, Arges etc. (Vasile and Mantescu, 2009, p. 101). A similarity of these organizations is that the property title is on the association's name, as a legal form and the members, although proprietors, cannot specify where exactly is the surface of forest or pasture that they own, only that they own a certain amount which has attached a quantity of benefits (in kind or in cash) and the right to vote in the general assembly (Vasile, 2007, p. 115, 2008a, p. 58; Vasile and Mantescu, 2009, p. 101).

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<sup>4</sup> According to the data gathered in the framework of the project „Associative Environmentality: the Revival of Forest Commons in the Carpathians”

<sup>5</sup> According to the preliminary data gathered in the framework of the project „Associative Environmentality: the Revival of Forest Commons in the Carpathians”.

Moreover, in both forms, as a general rule, the property cannot be divided between members, nor sold to individuals or enterprises outside the association (Vasile and Mantescu, 2009, p. 100)<sup>6</sup>.

An important difference is to be made regarding the distribution of and access to property rights and shares. Thus, the *obște* has two major forms: equalitarian and non-equalitarian. The first case can be found in the most parts of Vrancea region - every individual over 18, resident of the village has an equal right to the products of the association (a share of wood or a sum of money) and an equal right to vote in the general assembly (Vasile, 2008a, p. 59; Vasile and Mantescu, 2009, p. 101). The non-equalitarian *obște* and the *composesorat* base their access to rights and shares on inheritance from their parents, sometimes based on the amount that the ancestors had (Chiburte, 2008; Vasile, 2008a, p. 59, 2008b, p. 79; Vasile and Mantescu, 2009, p. 101). In this case, someone becomes a member only after his/her mother or father passed away and the rights and shares are divided between siblings.

In 1948, the Romanian communist state decided that all the resources above and under the ground would be transferred into the state's ownership, including the large amounts of forests and pastures jointly owned by rural communities in the form of commons. Communities and individuals were thus deprived of their right to manage and own their properties. However, 52 years later and 11 years after the fall of the regime, a process of restitution of the collectively-owned forests was started and historical commons were re-established in most of the communities where they previously existed.

## II.2 The legal framework for the restitution of ownership rights

The first wave of restitution began with the *Law no. 1 of 11 January 2000 for the reconstruction of the property right on agricultural and forest land, requested according to the provisions of the Land Fund Law no. 18/1991 and of Law no. 169/1997*, also named the Lupu law. While previous restitution laws only allowed individuals to request their former properties, law 1/2000 entitled juridical entities to request their former surfaces. According to it, restitution would be made to the highest possible extend on the same sites that were historically possessed, with very few exceptions (e.g.: sites were forestry roads or works are in place, forest crops, scientific study reservations etc.).

The law states that former members of the historical commons and their hires are entitled to file a reconstitution request, but only one property title would be issued, having the common, a juridical body as owner and not exceeding in surface the one granted at the property reform in 1921. Furthermore, the property act would have attached a site sketch and a nominal list with all the requesting members, entitled to the property on the basis of ownership and inheritance documents that would attest their restitution right.

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<sup>6</sup> Recent research data lead us to discover that this non-alienation rule has been changed in some communities, even though the law specifically forbids it.

The forest land restitution (which also includes the corresponding pastures) had as main actors the National Forest Management (*Regia Nationala a Padurilor*) through its local branches - which were in charge with the delimitation and availability of the requested areas - and the local and county commissions set up by local authorities – responsible with the reconstruction of the property right, the validation and the issuance of the property papers. Lands would be effectively passed into the former owner’s property once the papers regarding the “placing in possession” (*punere în posesie*) would be finalised<sup>7</sup>. The issuance of the property title is not mentioned at this point and it doesn’t condition the status of the property’s ownership.

90 days were granted from the date of the law’s entry into force for ad-hoc committees to be formed and request to the court in whose territorial jurisdiction the land is located the authorisation for an associative form of forest management and exploitation. In support for their applications, committees would also present the certificate issued by the local commission to validate their request and an authenticated bylaws, which had to include their structure, management bodies, forestry exploitation practices, the rights and obligations of the members, responsibilities, sanctions, dissolution, and other specific provisions. Moreover, the law required that the forestry exploitation plan to be made in accordance with the bylaws of the associative forms admitted by the Romanian state legislation between 1921 and 1940. Upon verifying the documents submitted, the court would decide the granting of the status of *legal person*. An important mention made here is that the law specifically states that the forested surfaces jointly-owned should remain indivisible for the duration of their existence.

From this point, successive new laws or government ordinances were passed in order to amend this first law and ease some of its misunderstandings and flaws. Thus, the government’s emergency ordinance 102/2001<sup>8</sup>, passed in June 2001, stated that associative forms would only receive those surfaces for which restitution requests were submitted by former members or their heirs, but no more than 20 ha/former member and if one has no legal successor, his/her shares would be passed into the state’s ownership. In July 2002, the law 400/2002<sup>9</sup> was passed and fully sanctioned the previous ordinance and also brought two major changes. First, it stated that all forestry exploitation should follow the current forestry legislation, and not only the old statutes, as law 1/2000 foresaw. Secondly, former members of the historical associative forms or their heirs should now organise themselves in an association authorised by the court, according to the current law. By that time, Romania had a specific legal framework for associations and foundations – the *Government Ordinance no. 26/2000 on associations and foundations*.

In full swing of ongoing restitution processes, a new major property law was passed, meaning to modify yet again much of what had been already done. This was the *Law no. 247 of 19 July 2005*,

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<sup>7</sup> Two different types of documents are issued in Romania for owners: the *placing in possession*, issued by the local authorities, that certifies the name of the owner and the limits and placement of his/her property and the *property title*, issued by the Cadastral Office, the definitive property document, like the ID of the land surface.

<sup>8</sup> Emergency Ordinance no. 102/2001 for amending and supplementing Law no. 1/2000 for the reestablishment of the ownership right over the agricultural and forest lands, requested according to the provisions of Law no. 18/1991 and Law no. 169/1997, as well as amending and completing the Law no. 18/1991, republished

<sup>9</sup> Law 400/2002 approving the Government Emergency Ordinance no. 102/2001 for amending and supplementing Law no. 1/2000 for the reestablishment of the right to property on agricultural land and forestry, requested according to the provisions of the Land Fund Law no. 18/1991 and Law no. 169/1997, as well as amending and completing the Law no. 18/1991, republished

*on the reform of property and justice, as well as some adjacent measures* (Title VI) which opened restitution for the whole surfaces collectively owned by the commons (not just the ones accounted for by the members and without a limit) based on collective property titles from before 1948 or other documents that certified the right of property. The 247/2005 law reinforces the requirement of indivisibility of the joint-property by specifically mentioning that members cannot alienate any part or the totality of their shares and the commons as juridical persons cannot alienate the whole or any part of the surfaces they own.

The legal framework focuses almost exclusively on the restitution process and does not pay much attention to the further organization and functioning of such commons. The law provides that organization and functioning be done according to each commons' by-laws, locally formulated and legalized by legal experts, notaries and courts of law. Since 2002, the commons' status of association was enforced and recognized, but at that point more than 80% of them were already established as "associative forms" or "legal persons", with the specific aim to manage the forest fund, taking into account their historical heritage and characteristics, but with no reference to a definite legislation regarding their functioning. Commons thus relied on their individual bylaws to organise and structure their activity, which included only minor differences from that of a regular association.

As both laws foresaw, in order to gain the statute of juridical person, the commons were required to present the court authorised bylaws, which should respect the one they had before nationalization, between 1924 and 1948 and the current legal conditions. It is no surprise that, given the just 90 days available to put together the whole paperwork (sometimes for quite a lot of former members or heirs), most of the commons used a slightly amended version of the old bylaws. By 2016, 16 years after their reestablishment, 59% of the commons consider their bylaws still functional and almost 30% consider them outdated. Moreover, 32% of the commons made changes to their bylaws (with 4% of them making substantial changes), usually regarding new areas of activity, the board's structure or other minor adjustments. The bylaws are regarded as the main reference act for their activity, and are often presented as not harmonized with certain areas of legislation – e.g. the fiscal code or the forestry legislation.

### **II.3 The restitution process – facts and figures**

As mentioned briefly above, the Romanian commons included in our study were re-established in their majority (68%) during the year 2000<sup>10</sup>, shortly after the promulgation of Law 1/2000. Only 17% of the studied commons were re-established between 2001 and 2004 and an even smaller percentage of them (15%) during and after the year 2005. Thus, most of their property, over 65% of the total, was returned under the first restitution law, the rest of the land - especially the pastures - being returned under Law 247/2005.

In the whole country, the successive restitution laws lacked a structured vision of the process and were applied more or less rigorously by the responsible local committees, as one of our respondents' sums up: "In Romania there are chaotic laws, as they wanted. Each forest piece had

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<sup>10</sup> I assimilated here all the commons that declared to have been re-established before and during the year 2000, since that was the most important milestone in their existence.

its map, why did they not give it? "(46 years old, forest engineer). However, the restitution proved to be smoother in Transylvania, since the region had an important advantage in the existence of Land Books before the period of nationalization, which facilitated the whole process of recognizing and claiming the old properties.

A number of problematic situations regarding the restitution process have been reported during the research, with varying recurrence, including: difficulties in returning land on old sites, litigation with public authorities for the complete reconstruction of the property right, delays in issuing the property title for the requested and returned areas and, last but not least, a relative anxiety of the interviewed representatives on Romania's legislative stability. I will treat each of these issues separately in the following.

The actual land restitution was a chaotic process, made either by taking into account the old sites (*vechile amplasamente*) of the claimed areas, or in order, area near area or according to the available and unrequested areas. For example, in the case of the common in Brăduț, Covasna County, the whole process of restitution lasted almost 2 years, because the Forest District had already assigned to someone else the areas claimed by the common, and complex steps were needed to clarify the situation and assign the surfaces on the old site. Another special case is also found in Covasna County, represented by the common "Imreh Albert" Păpăuți from Zagon, to which 600 hectares of forest have been returned to the old site, but they were totally deforested while the land was owned by the state.

Despite presenting clear records of ownership, 42% of the commons analysed declared a total area of 30.718 hectares that has not been returned to them so far and will not be returned. The first 10 largest unreturned areas encountered are over 1000 hectares each. An interesting case is the one of the Association of Owners Remained in Indivision - Laros from Ojdula (Covasna County), where the unreturned areas (1929 ha) belong to the territory of Vrancea County, being allocated to it at the moment of creation of the counties in Romania following the administrative-territorial reform of 1968 and being later claimed and attributed to the communities in Vrancea. The President of the Laros Association, who has been in office since its reestablishment, reported the major litigation triggered by this situation, which also involved international courts, without success. Such litigations regarding the property rights and their restitution are reported by most of the commons' directors or presidents interviewed, either with the town hall (39%), with the National Forest District (17%), with the County Council (10%) or with another common (13%).

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

The lack of ownership titles is not just a legal issue, of formal recognition of the right of ownership, but it directly influences the activities of the association. Thus, pasturelands, which accounts for the largest part of land for which no property titles have been issued, risks no longer being eligible

for grazing subsidies from the state. Representatives of the commons in this situation have consistently expressed their concern about this issue, from the perspective of their ability to manage their pastures, but also from the perspective of diminishing the financial resources of the structures they manage.

The whole process of restitution, sometimes inconsistent and unreliable, caused anxiety among our respondents. 19% of them believe that the incomplete restitution of property rights is the biggest problem of the common they manage. The Romanian legislative system and the idea of a new nationalization represent the greatest fear 22% of the respondents have in relation to the common. This is how one of them (48 years old, forester) expresses his fears: "I am afraid of this democracy in Romania. I do not know how properties are guaranteed..." And his is not the only one.

Recognition of members' property rights was an important step in the process of restitution of the collective property. The commons in Romania account<sup>11</sup> for about 400.000 members, according to an estimation made by Monica Vasile (2018) on the same database, around 15-20% of the total population of each county analysed, according to the 2011 census. As the law stated, all over the country the heirs of the former members, who wished to claim their rights, presented to the local committees a series of documents demonstrating their right to request the restitution, the shares of their predecessors being equally divided between them. In 59% of the commons studied, all the heirs were inscribed in the new membership table, regardless the time when they made the claim, and in 17% of the cases, only the members that provided documentation at the moment of reestablishment are on the table.

In the region of Transylvania, an important advantage was represented by the existence of the Land Books, in which the co-owners of each common were inscribed so that the reconstruction of the tables was in most cases possible and smooth. However, the entanglement and complexity of inscriptions to be deciphered proved to be an extremely difficult task in a number of cases (see for example Vasile, 2018). In most cases, member tables and shares owned by them have been updated with the re-establishment of the commons. However, in other regions, such as Wallachia, the tables containing the names of former members were kept as private records of each common and we encountered several cases where it was lost or destroyed in the 50 years' time of the communist regime, aggravating the retrocession process.

More than half of the commons analysed were able to identify and record all the successor of their former members, having no share undistributed and 34% of the commons only have a few shares unclaimed. In this case, the shares either passed into the common estate or were shared with the other members, a situation expressed with amusement by the president of Olves Common, in Zăbala commune (56 years old, farmer): "You can find an orphan monkey, but never an orphaned fortune."

#### **II.4 The commons' relation with the public authorities**

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<sup>11</sup> The total number of members may vary, given that sometimes a person may have shares in several commons, especially in the case of neighbouring villages.

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

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

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

### **III. Romanian commons as particular forms of social economy**

The social economy sector in Romania has enjoyed in the last ten years the attention of the academic scholars, which researched and documented either various aspects of its history and functioning (Lambru, 2012; Lambru and Petrescu, 2012, 2017) or relevant types of organisations (Lambru and Petrescu, 2014, 2016). Since 2015 Romania has its first law of social economy (L219/2015), which regulates the sector and allows organisations to get a certificate of social enterprise, but foresees no fiscal or other benefits<sup>12</sup> for these entities. The law follows the European definition of the social economy, stating that: "Art. 2 (1) The social economy is the set of activities organized independently of the public sector, whose purpose is to serve the general interest, the interests of a non-patrimonial community and / or personal interests, by increasing the employment of the vulnerable groups and / or the production and supply of goods, services and / or execution of works. (2) Social economy is based on private, voluntary and solidarity initiative, with a high degree of autonomy and responsibility, as well as limited distribution of

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<sup>12</sup> Initially, in the first months of the implementation of the law and its norms, having the social enterprise certificate was a condition for those organizations that wanted to access a special funding line dedicated to social economy enterprises - "SOLIDAR - Support for strengthening the social economy", part of the Operational Program Human Capital. In february 2018 only less that 200 organizations were registered as a social enterprise and no Romanian common.

profits to associates.” The 3<sup>rd</sup> article of the law, specifically mentions at the letter c) the associations that were established and function according to the current legislative framework. At this point, a new layer is added to the juridical environment of the Romanian commons – are they or are they not part of the social economy sector<sup>13</sup>?

Including the contemporary forest and pasture commons of Romania in the social economy sector needs to be done considering some particularities of their form of association. I will continue the discussion from two perspectives. First, from a conceptual perspective, keeping in mind Defourny’s definition and principles of the social economy and the analysis done by Nyssens and Petrella (2015), and secondly from the national legal perspective, using the recent legal framework of social economy in Romania.

The Romanian commons are organized as associations, or in some ways, associative forms (as the first restitution law foresaw) that obtain high revenues through economic activities, which consists an important argument in including them in the social economy sector. Their revenues come mainly from the direct exploitation of their natural resources – forest and / or pastures. The quality of the resources held and the possibilities of capitalizing on them decisively influence both the welfare of the common and the benefits distributed to the members and the community in which they function. According to a recent Romanian report (Kivu *et al.*, 2017, p. 96), these organisations register the highest economic activity rate among the Romanian NGOs - 48% in 2015, with little variation over the years (Barna, 2014; Kivu *et al.*, 2017). More than half (55%) of the commons included in our sample obtain their financial resources through harvesting the wood and selling it further, while little over 10% through various subsidies received for their pastures or the grazing fees charged.

In connection with the necessity of the commons to obtain revenues, there lies their perceived duty towards their members, that expect (and sometimes demand) to be granted their benefits, according to their shares, either in kind or in cash. The service to their members is always placed ahead of the profits obtained. In almost equal percentages, Romanian commons distribute either a wood quota to their members (27%) or an amount of money (30%). 20% of them offer both wood (usually for fire) and a sum of money, and 10% give their members the possibility to choose between the two, but only very few commons offer no benefit whatsoever. However, this reality of the commons’ functioning contradicts both the associations’ law (OG 26/2000) and the social economy law (L219/2015) in Romania, which demand that the distribution of profits to associates to be limited, the latter even setting a limit of 90% of the profits, amount that has to be reinvested in the fulfilling of the organisation’s social aim and the statutory reserves.

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<sup>13</sup> Several ideas and aspects presented in this paper have a collective source, since I participated in extensive formal and informal discussions regarding the place of the commons in the social economy sector (usually advocating for an affirmative answer), both with my colleagues at the Institute of Social Economy (part of the Civil Society Development Foundation, Romania) and with Monica Vasile. Even though the commons were treated as part of this sector in several NGO reports published in Romania over the years, this question is not yet settled among scholars and practitioners and more time will probably pass until a definitive answer will be accepted.

Looking at those percentages, one might think that being a member of a common brings quite a profit to a household, but the reality is quite different. In the case of the commons that distribute firewood, the average yearly quota is of 2 cubic meters / hectare, while a small household needs 6-7 cubic meters per winter and large households that have a wood-based heating system need around 18 cubic meters. When it comes to the cash benefits, the average yearly amount is around 250 RON (aprox. 50 Euro) / hectare, with a maximum of 1200 RON (aprox. 250 Euro), which again, in most cases, don't add to an important part of an individual's revenues. According to an estimation made for the Vrancea region, around 5% of a household's yearly earnings come in kind or in cash from the common (Vasile, 2015). Given these facts, a new point to explore is - using Polanyi's (2001) concept - is the commons' economic activity one aimed at improving the associates' profits or is it better named *provisioning*? The next point might add some clarity to this issue.

In the distribution of benefits, the community as a whole isn't omitted either. The commons, as the SSE organizations, devote their attention to the community's welfare and its sustainable development. Commons all over Romania support their local communities either occasionally through sponsorships or through large-scale investments (around 22% of their annual revenues). Investments include: restoration or renovations of local churches, road repairs or construction (sometimes in partnership with other neighbouring commons or the local authorities), the construction or renovation of the festivities halls in the cultural house of the village, the construction of mortuary chapels, purchases of agricultural machinery for community use, the renovation of the local dispensary, the purchase of bulls or rams of races, and the construction of fountains or wells. In addition to the direct support to their community, the commons also have a preferences to keep most of their businesses at local level, especially when it comes to the wood harvesting companies that provide the timber extraction services needed – 72% of the commons analysed use either the services of their members' enterprises or other local logging companies.

Furthermore, a particular convergence point between the commons and the social economy organizations is their autonomy and independence from the state, being controlled by their members for their members and entering agreements with third parties only as long as these principles are to be observed. However, as several authors pointed out (Bouriaud, 2008; Cotoi and Mateescu, 2013), third parties are heavily involved in the actual management of the forest owned by each common. Current forestry legislation in Romania foresees that the wood harvesting can only be achieved within the limits and conditions imposed by the forestry arrangement of each area and with careful supervision of the Forestry Office to which each common is assigned. The Forestry District (Ocol Silvic) is one of the most important actors in the wood harvesting processes: it approves the annual wood quota for each forested surface, supervises the cuttings, manages the public selling auctions and it's responsible of the good administration of the forests, all in the name of the sustainable management of the forested areas. A Forestry District can be either state-owned or private and the latter can be established independently by an association of owners if some conditions are met, which I will not detail here. More than half of the commons in the country (56%) opted to be part of a private Forestry District, usually independently managed by an associations of commons or forest owners. The main advantage of being part, establishing and/or managing a Private Forestry District is that of the decision-making power of the commons on the quality and cost of the forest management services they receive.

When it comes to the decision-making process, the commons, as the social economy organizations, are democratically controlled by their members, who are empowered and encouraged to get involved in setting up the functional and operational policies of their organizations. Commoners and members or, in some cases, the beneficiaries of social economy organizations, can candidate and be elected as councillors, regardless their gender or status, and if elected they become accountable to the other members for their actions and decisions about the future of their organization. A necessary point that needs to be made here is that, in the case of the majority of the Romanian commons (58%), voting in the General Assembly is tightly connected to the amount of shares that each members has (e.g, 1 share – 1 vote, 10 shares – 10 votes, sometimes with a maximum cap). In this situation, members with a larger number of shares have a greater power of decision. In order to ensure a fair trial, in most cases (90%) members holding less than 1 share are entitled to participate in the decision-making process with 1 vote. For different reasons, including the uncertainty of the distribution of the property rights or the simplicity of the system, 41% of the Romanian commons opted for a 1 man – 1 vote system.

Clear divergence points between the commons and the social economy organization appear in regard to the principle of voluntary and open membership, a core value of any social economy organization, being a cooperative, an association or a mutual society. Taking the example of a cooperative or a credit union, these organization are purposely designed to be open to all those that could make use of their services and adapt to the membership requirements, disregarding any possible types of discrimination, on any basis. On the other side, the commons all around Romania, as historical institutions with very strict rules and regulations on membership, can be seen as almost completely closed associations, where members get to become members based on their legacy and have little to no options for exiting the joint-property without lowering his or her wealth<sup>14</sup>.

When it come to their own identification, 35% of the respondents consider that a common is mostly similar to a community-aid organisation and 26% see the common more like a cooperative, and only 16% of our respondents think that the common is quite similar to a for-profit company. Even if not thoroughly acknowledged by themselves or by the public, forest and pasture commons all over Romania, in their re-established organizational form of association, share much of the basic values and principles of the broader sector of social economy, being faithful in their organizational practices to such virtues as self-help, self-responsibility, democracy, equality, equity and solidarity. Commons can be regarded as an important part in the structure of the third sector, having a significant role in the development of the local communities where they function and an important contribution to the lives of their members.

#### **IV. Concluding remarks**

From the very beginning, the reestablishment of the Romanian commons was marked by a two-sided relationship with the state. On the one hand, by the legal provisions adopted, the Romanian state acknowledged their historical legacy and inherited characteristics of a collective property and

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<sup>14</sup> As mentioned before, several cases discovered during fieldwork contradict the general rule.

most of all aimed to protect their estate by formally forbidding the lands' estrangement. But, on the other hand, as it was seen in the facts exposed above, the devil stands in the details.

The successive restitution laws, put into practice at local level, lacked a structured vision of the process and were applied more or less rigorously by the responsible committees. Starting with the confusion related to the commons' organisational form, continuing with the liberty to put together their own statutes that would enlist their functioning principles and ending with a rather chaotic enactment of each legal provision, the contemporary commons of Romania were reborn in a grey area. Facing the urgency of the legal reestablishment, forced to respect both new legal provisions and the prerequisites of their historical legacy, these organisations were put in the situation to model themselves by old patterns, but in a totally new political environment.

The Romanian commons are now at the crossroads of various organisational fields, without being able to fully integrate into one or another. By their current activity of wood harvesting and sale, the commons belong to the forestry world, being in constant interaction and sometimes competition with other stakeholders of the sector. However, by their functional and organisational traits, being membership organisations, fully accountable to their associates, with a long history that offers legitimacy, the commons belong to the third sector or even more specifically, to the social economy sector. Which model do they follow best from the two worlds remains an unanswered question and major point to be addressed in future research endeavours.

Through my paper I aimed to contribute to the understanding of how policy, politics and public authorities influence local practices of natural resource management and the articulation of the organisational structures meant to fulfil this goal. In my opinion, the restitution process that led to the reestablishment of the Romanian commons, still unfinished after 18 years of its inception, marked by hardships, conflicts, misunderstandings or faults, deepened the scarce knowledge of the political actors, general public and other stakeholders in regard to these organisations and perpetuated their unclear position in the organizational field.

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