

THE FOREST CODE OF 1910 APPLIED TO THE FORESTS BELONGING TO THE COMPOSSESSORATES AND THE RURAL COMMUNITIES

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Abstract: *One of the most important legislative measures that have influenced the economic and social life of Romania at the beginning of the XXth century was the Forestry Code of 1910. The application of its provisions to the management of the forests owned by communities of freeholders and subsequently to that of the compossessorates illustrated the invalid character of some provisions stipulated in this Act as related to the Romanian realities of those times. Understanding the concept of joint property as sui-generis indivisibility, revealed that the legislator had failed a correct usage according to the law, of the elements of the customary law.*

Key words: *The Forest Code of 1910, compossessorate, joint property, community, Olt Country, Vrancea Country.*

The forest has been the cradle of human communities in the Romanian area due to the fact of having fulfilled, according to Vintilă Mihailescu, the function of ‘*binding together, not only the complimentary relief units (...), but also the inhabitants who had been living here for thousands of years ...*’. The major influence this component of the geographic environment has had, over time, on the forms of social organisations is demonstrated by the fact that ‘*the architectural layout of our villages, their location on the ground, the interior management of the village lands, even the dominant note of our old village economy are to be considered in relation to the extent and nature of forests ...*’ [7].

Over centuries, until the modern era, the forest had been ‘*overwhelmingly sufficient*’ in the Romanian area in relation to people's

needs. The spectacular development of the timber industry at the turn of the XIXth and XXth century caused massive deforestations, which in certain areas led to the complete disappearance of some forests. Thus, people felt the need of ‘*close vigilance*’ in order to prevent ‘*the useless deforestation*’ of the forest stock; in other words, a forest code became a necessity meant to provide regulations for the rational exploitation of forests and to clarify, in terms of legal aspects, the status of the forests subject to the forest regime.

1. The Forest Code of 1910. Introductory aspects

The Forest Code of 1910 was one of the most important bills that marked the

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beginning of the XXth century, in the context of the regulation related domain, considering ‘*the decrease of the forest heritage*’ of Romania and given the ‘*predominant role of the forests in the country's overall economy*’. The presentation of the project of this bill for debate and approval took place during the meeting held on 23rd January 1910 in the Senate of Romania. On this occasion, Caton Lecca, the rapporteur, stated that ‘*the main target of the project under discussion*’ was ‘*the preservation and regeneration of the forests in the forest stock.*’ [6]. By this ‘*pravila*’ (code bills) whose role was to spare the forests, the legislator tried to prevent the predatory exploitation of the country's forest stocks and to replace the law of power specific to the big anonymous forestry companies with the force of law, reflected in the regulatory scope and power of the new statute.

The Forest Code of 1910 included a set of legal regulations and forest technical and management principles on the land, the crop, the exploitation, the protection and guard of the forests intended for forest use. The problematic sphere of the legislative act under discussion focused on a few principles. Thus, the exploitation of the forests subject to the forest regime could happen only on condition of compliance with the requirements of their sustainable management: the management plans (the ecological, forest and economic action plan of the exploitation), afforestation, financial securities (bond). Secondly, the legal decision-making structures become evident (Court, Tribunal, Court of Cassation) as well as the procedures which were to be followed at the moment when properties are assigned to the community freeholders and yeomen; these properties were to be transcribed into a (final) table or a special register; it was stipulated that ‘*the alienation of the properties made by one or more freeholders and yeomen of their*

individual right, can have no other effect than to attribute the same individual rights to the buyer previously attributed to the seller...’ [4, p. 31]. Thirdly, in order to show that the significant share in the joint property of the forests owned by freeholders and yeomen is recognized by the Forest Code, due importance and increased rigor are given to the procedures meant to establish the deliberative and executive structures of the organizational hierarchy of the community (the general assembly, board of directors, auditors, etc.); and as a later compulsory stage, the development of ‘the settlements’ (regulations) related to the management and operation of these entities is confirmed. Fourthly, by this law of regulating the status of the forests subject to the forest regime there were also stipulated the prerogatives of the vested forest bodies in forest management, surveillance and protection of forests with focus on forest crime monitoring and penalty, which is natural and necessary in terms of the ‘composition’ of the normative act.

Beyond all these, the entry into force of the Forest Code of 1910 and ‘the confrontation’ of its provisions with the Romanian social realities of the early XXth century pointed out the invalidity, from a juridical point of view, of many regulations.

2. Social units: communities and compossessorates. Juridical manifestations

The communities of freeholders and yeomen and the forest compossessorates were social units characterized by consistency, objectivity and duration. The community constituted a form of archaic life, a socio-territorial entity with ‘*a lively whole*’ character and relative independence (autonomy) with self sufficiency, present outside the Carpathian arch, which bears the strong seal of the elements specific to the locally inherited laws. The forest

compossessorates were 'social units similar to the communities of yeomen and freeholders of the Old Kingdom', preserving the old forms of social organization, which from the legal point of view, were 'private institutions' created as a response to 'the need of using as a joint property the assets belonging to several individuals (compossessorate owners)' [3, p. 3].

The rural social units used to have for a long time, a juridical life of its own; they were 'law generators' which had been proved over time by the fact of being preserved intact just like every work which meant to last. They never accepted the role of simple 'scope' of the normative acts designed by the deliberative structures of the modern state. The application of the Forest Code of 1910 to the communities and compossessorates could prove that fact.

2.1. The village communities. Customary law and positive law

The core problem of the Forest Code of 1910 was to clarify in terms of positive law, the status of the forests owned by yeomen and freeholders in joint property. The legislator was forced by the economic realities of the time to follow the statutory need. Unfortunately, the legislator did not understand that the life of the village communities, cut and established according to the patterns specific to the customary law, 'responsible for a certain mentality and social psychology' [8, p. 215] contains, in its inner, plenty of meanings for juridical and accurate design with undeniable practical utility.

A renowned sociologist and lawyer known for his outstanding contributions to deciphering the archaic forms of social organization of the Romanian rural area, Henri H. Stahl, identifies the following sources of errors and inaccuracies in the Forest Code of 1910 with reference to the regulation of the legal status of forests

owned by yeomen and freeholders: the lack of a clarifying vision on the joint properties; the interpretation of joint properties as a sui-generis indivisibility; an inoperative procedure of the transmission of the ownership of properties within the community. Each of these aspects will be presented thoroughly below.

Joint property. The existence of this important institution of customary law could not be ignored by the legislator of 1910 as a significant part of the country's forest stock. Funds at the time were owned in joint property. However, Henri H. Stahl discloses the superficial character of approaching the concept of joint property in the Forest Code which results, on the one hand, in the absence of any references and regulations in the texts of laws of the time, with focus on the management of joint properties and, on the other hand, the ignorance of the prescriptions mentioned in the normative act according to the reality (the village of joint property) although 'it was called upon to decide and manage it'. In fact, the village of joint property was 'an association of family households, based on a territory ruled jointly where the collectivity as such has prior and superior rights to the rights given to the component households ...' [8, p. 25].

Therefore, the essential characteristic related to joint property, which is not capitalized by the Forest Code of 1910, refers to the rights of collective ownership, whose character is prevalent and anterior as compared with the individual property. The old juridical system based on the customary law, the individual had no other rights than as a member, a native of the community (the indigenous member of the village). In its original or absolute form, joint property was 'discovered' by Henri H. Stahl in 'the surviving remnants' of ancient forms of ancient social organisation preserved until very late in the villages of Vrancea County. It consisted in 'the unregulated and

egalitarian use of the common goods' [8, p.13]. A main component of the common goods, the forest, was exploited according to this principle. Thus, in the villages of Vrancea *'all the inhabitants of the village, members of indigenous families, but over eighteen' were entitled to own forests*' [8, p.216]. This was the archaic mentality, related to ownership, reflected by the customary law, which did not fit the principles of the modern law.

Joint property and indivisibility. The lack of an articulated, established juridical system with reference to the joint property, meant to satisfy the need for legislative regulations, was deeply felt on the legal status of *'the large and beautiful forests belonging to the freeholders'* have led the legislator to consider joint property *'a sort of individual property'*, a special ownership, unique in its way, which cannot be dissolved by the will of the parties: *'In fact, the law adopts an attitude of compromise, it does not openly declare either that the freeholders can be considered as owners of the joint property, or individual owners, unable to defend their rights and thus placed under protective custody and control of the state'* [8, p.212]. Giving up the right of individual ownership could be done only with prior consent of the state organisational structures, while providing for the right of preemption of the state for any act of sale. In conclusion, the description of joint property as sui-generis right of the indivisibility was the key of introducing a legal institution in the forestry code in order to simplify and facilitate the process of *'autonomisation of the rights'* in the community of freeholders and yeomen, so that each individual should have access to *'his/her right'*.

The Rights Register. According to the stipulations in the Forest Code of 1910 (art. 31-35), finding and deciding on the share rights incumbent to the freeholders and yeomen who own joint property and forests stock are the responsibility of the specially

established commission which sets that ruling on its entire operations through decision rights and a table of rights (as part of the decision). Naturally, the commission's decision may have been appealed in court (courthouse) by any member of the community who would have claimed denial of rights or greater rights than those set by the commission. After having gone through the procedural steps and the table of rights remained definitely set, it was transcribed in *'The Rights Register, either the yeomen's or the freeholders'*, which was kept in court. According to Henri H. Stahl, the aim of the new forest law was *'to establish clearly the adjudication of the rights each freeholder was entitled to own'* so that by the newly established Rights Register there was set up *'a regime in which the transmission of the rights could no longer be made than by inscriptions operations'* [8, p.213]; its role was to record accurately any change. Unfortunately, the Rights Register remained *'dead letter'* for the community of freeholders and yeomen of the Old Kingdom, as it was contrary to the real life specific to the local community where the customary law, much older than the forestry law had been deeply rooted in the behavior of the joint property owners and it had acquired an undisputed authority in their lives. By buying such *'rights'* and demanding enforcement of the Civil Code, the anonymous forestry companies would play an increasingly important role, not only economically but also in the process of dissolution of the village communities.

2.2. The forest compossessorates of Olt Country

To operate the forests stock in Olt County and elsewhere in the Carpathian mountains there have been set up over time, social units similar to the yeomen's and freeholders' properties of Moldavia and Wallachia. For a long time, the structure of these social units,

their economic and social activities as well as the relationships between the owners of joint property were governed in accordance with ancient local customary practice similar to a real system of customary law. Subsequently, due to the effects of special statutes, the juridical form of these social units was called *compossessorates*. After the creation of the Great Romania, the law no. 100/1923 enshrines the mandatory application of the Forest Code of 1910 in Transylvania too (subsequently, all over the country), therefore a uniform policy within the forest management subject to forest regulations was instituted. *'By extending the Forestry Code in Transylvania, all the compossessorates will be administered in accordance with Articles 29-54 of this law.'* [1]. This natural and necessary step in the context of concluding the unity of the Romanian state was meant to reconfigure in terms of legal and forest aspects the status of the compossessorates. The process was, however, a difficult and time consuming one, showing similarities and differences in relation to the communities of the Old Kingdom. Research, in terms of juridical manifestations, of the 81 compossessorates of Olt County (1939), conducted by Vasile V. Caramelea, highlighted the predominance of two consuetudinary systems (established by use or tradition) in this region: a) the genealogical consuetudinary system, a characteristic of the social units owned by the former landowners of Făgăraș; these social units were structured according to the biological relationship of the people who owned the joint property, sometimes replaced by a fictitious juridical relationship, however, presented as an effective relative of the respective family; b) the non-genealogical consuetudinary system, specific for the compossessorates owned by the former serfs. Those compossessorates were founded on a social relationship, on the principle of belonging to an old social class. The analysis of the two types of

compossessorates specific to Olt County leads professor Caramelea to an extremely interesting remark, presented under the following formula: *'a juridical system – a social class'*. This formula reflected, apart from the strong influence of the customary law, the perpetuation of some social differences which came out as a consequence of the way of getting into the possession of one's own property. *'The estate of a category is an ancient joint property renown as the possession of some free people; or, the estate of another class was acquired following the segregation process after the abolition of serfdom. The juridical systems based on the local customary laws are subjected to the same rapports.'* [2, p. 4] Such customary laws had within the compossessorates of Olt County, a special regulatory force, which were responsible for their organisation and management. Against such a well articulated legal background, the provisions of the Forest Code could hardly be integrated. This explains that almost three decades after the Forest Code was introduced in Transylvania, the compossessorates of the former serfs, for example, did not stop employing the customary law similarly to their ancestors (number of chimneys, the family, the accommodation, the household, the house number, etc.), which were seen as compulsory customary law imposed under the sanction of excluding them from the annual table of rights in case of disobedience. The thorough enforcement of this local customary law was made with a purpose, always pursued and well defined: the transmission of the heritage of the compossessorate as a whole to the following generations.

The juridical regime created according to the customary law had, after the application of the provisions of the Forest Code, a special consistency also regarding the decision and transmission of the rights within the compossessorate. Within the non-genealogical system, the heritage belonged

to the compossessorate both at present and in the future, its members acquired only the right to use it. The regulation which refers to the fact that every compossessorate owner should possess only one right is unassailable and the total or partial alienation of one's right is forbidden. The regular payment of taxes and participation to all the common duties ensured continuity in using one's right and made every compossessorate owner avoid the sanction of cutting his/her rights off the annual table which regulated the individual rights as part of the whole possession. Consequently, many compossessorates which were managed according to the non-genealogical system preserved a well founded structure. On the other hand, the genealogical system was characteristic to the former landowners of Făgăraş and it mostly employed the unequal levels of holding the heritage setting the privilege of having benefits and making decisions. *'Contrary to the units of former serfs which, by the non-genealogical inheritance system, gave rights a character of stability, the compossessorates of the former landowners continuously change and divide the rights of the co-owners of joint property due to their genealogical consuetudinary system.'* [2, p. 26].

Unlike the freeholders' communities in the Old Kingdom, the compossessorates of Olt county applied the dispositions of the Forest Code of 1910 thoroughly with reference to the obligation of doing work of reforestation on the exploited cutting area, establishment of nurseries, leasing hunting rights, etc. In this respect, there is a certain discipline acquired over time, which is also due to the effect of applying the Hungarian laws in managing the forests (until 1918). In conclusion, the Forest Code of 1910 was just a partial response to the pressing need of regulation in the area of forest management and preservation. Its shortcomings are related to the the lack of understanding of the principles specific to the customary law, which had had a leading

role in the local communities and the compossessorates for a long time.

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ANNEX 1

The list of the communities of Vrancea mentioning the number of the young people who entered the folk groups and their corresponding rights (Gh. Serafim, 1938); Source: Henri H. Stahl, *Contribuții la studiul satelor devălmașe românești*, vol. II, 1959.

No.	Name of the village	Name of the community	Number of the young people who entered the folk group	Number of the young people who entered the folk group and have one right
1.	Nerej	Monteorul	387	387
2.	Nerej	Lapoșul	725	725
3.	Spulberul	Lapoșul	447	445
4.	Spulberul	Tojanul	462	462
5.	Paltin	Furu Mic	640	632
6.	Vâlcani	Simionul	96	96
7.	Prahuda	Tojanul	221	221
8.	Năruja	Lapoșul de Sus	494	491
9.	Nistorești	Dealul Secăturii	521	505
10.	Nistorești	Munțișoarele	544	525
11.	Herăstrău	Dealul Secăturii	282	282
12.	Herăstrău	Veghiul lui Bucur	268	267
13.	Văsui	Dealul Secăturii	256	239
14.	Spinești	Dealul Secăturii	522	509
15.	Spinești	Zboina	509	509
16.	Hăulișca	Plostina	263	257
17.	Păulești	Novesele	370	359
18.	Coza	Chetricelile	279	275
19.	Tulnici	Macradeul	523	520
20.	Negrilești	Păișelele	862	862
21.	Bârsești	Giurgiu	434	432
22.	Topești	Giurgiu	333	332
23.	Poiana	Mușă și Vetrila	266	263
24.	Prisaca	Căbălașul de Sus	70	68
25.	Valea Sării	Pietrosul	418	415
26.	Colacu	Fruntea cea Mare	181	172
27.	Poduri (Colacu)	Căbălașul de Jos	158	158
28.	Părosu (Tichiriș)	Dealul Negru	425	425
29.	Vidra (Tichiriș)	Tisarul	496	495
30.	Burca (Vidra)	Vârful Măgurii	75	75
31.	Voloșdani	Verdele	279	273
32.	Găuri	Condratu	734	734
33.	Poduri (Valea Sării)	Marcu	275	275
34.		Orbu	175	175
35.		Chitacu	150	150
36.		Tudora	172	172
37.		Toader	150	150
38.		Gogoncea	155	155

ANNEX 2

Table mentioning the names of the members with the respective rights in the forest compossessorate called 'Piscurile Comorilor' of Grid commune, Făgăraș county (Extract).

No.	First name and family name	Address			Number of rights	Number of votes
		Commune	House number	County		
1.	Gheorghe Gh. Boeriu	Grid	1	Făgăraș	1	1
2.	Erofteiu B. Boeriu	Grid	2	Făgăraș	2	2
3.	Popa Stan	Grid	3	Făgăraș	2	2
4.	Drăghiciu B. Ana	Grid	4	Făgăraș	1	1
5.	Drăghiciu I. Gheorghe	Grid	5	Făgăraș	5	5
6.	Drăghiciu Nicolae	Grid	6	Făgăraș	6	6
7.	Boeriu N. David	Grid	7	Făgăraș	9	9
8.	Boeriu B. Petru	Grid	234	Făgăraș	7	7
9.	Popa I. Iacob	Grid	9	Făgăraș	3	3
10.	Drăghiciu Leonte	Grid	10	Făgăraș	4	4
11.	Drăghiciu Erofteiu	Grid	11	Făgăraș	5	5
12.	Modorcea S. Ioan	Grid	13	Făgăraș	2	2
13.	Boeriu I. Gheorghe	Grid	14	Făgăraș	5	5
14.	Boeriu G. N. Maria	Grid	15	Făgăraș	3	3
15.	Popa D. Petru	Grid	17	Făgăraș	1	1
16.	Popa Rosalim	Grid	19	Făgăraș	1	1
17.	Popa D. Andrei	Grid	18	Făgăraș	1	1
18.	Popa Emilian	Grid	20	Făgăraș	4	4
19.	Popa A. Maria	Grid	21	Făgăraș	2	2
20.	Popa Solomon	Grid	22	Făgăraș	1	1
21.	Bârsan Gh. Ana	Grid	23	Făgăraș	4	4
22.	Popa Gh. St. Gheorghe	Grid	25	Făgăraș	2	2
23.	Modorcea Gh. Ana	Grid	27	Făgăraș	3	3
24.	Mihăilă Gheorghe	Grid	29	Făgăraș	5	5
25.	Modorcea Aurel	Grid	30	Făgăraș	4	4

