

**THE INTERNATIONAL ASSOCIATION
FOR
THE STUDY
OF
COMMON PROPERTY**



**Fifth Common Property Conference
REINVENTING THE COMMONS**

**24 - 28 MAY 1995
BODØ
NORWAY**



INTERNATIONAL
ASSOCIATION FOR THE
STUDY OF
COMMON
PROPERTY

CONFERENCE ORGANISERS

International Association for the Study of Common Property
Agricultural University of Norway
Høgskolen i Bodø
University of Trondheim

FINANCIAL SUPPORT

The conference organisers wish to thank the following for their financial support:

Danish Ministry of Foreign Affairs.
Norwegian Ministry of Foreign Affairs,
Norwegian Agency for Development Co-operation,
Swedish Agency for Research Co-operation with Developing Countries,
The Research Council of Norway,
Landsdelsutvalget for Nord-Norge
The Norwegian Association of Mountain Councils (Norges Fjellstyresamband)
Bodø Municipality
Nordland Fylke
The Norwegian Farmers Association

PAPERS PRESENTED
AT
"REINVENTING THE COMMONS"
THE FIFTH INTERNATIONAL CONFERENCE
OF
THE INTERNATIONAL ASSOCIATION FOR THE STUDY
OF COMMON PROPERTY
BY
SCHOLARS FROM EASTERN EUROPE
FUNDED
BY
THE RESEARCH COUNCIL OF NORWAY

Aas, 28 February 2018

Foreword

The V. World Congress of the IASCP was held in Bodø, Norway 24.-28. May 1995. The organizing committee had applied to the Norwegian Research Council (NFR) for funding of participation in the Congress of some researchers from Eastern Europe. The intention of this was to

1) introduce key persons to the network around the International Association for the Study of Common Property (IASCP), (today the name is the International Association for the Study of Commons (IASC)) and to

2) present to an international audience the recent experience of key FSU states in the matter of privatization of land.

In this report we present the 8 papers written by scholars from Eastern Europe awarded travel grants by the Programme for Eastern Europe in the Norwegian Research Council.

The collection of the papers was originally made as part of the report to NFR in the fall of 1995. This is a pdf-version, scanned from a copy of the 1995 collection.

Erling Berge,
Program Co-chair

TABLE OF CONTENTS	Page
Kenkmann Paul PRIVATIZATION IN ESTONIA	1
Rivza Baiba ATTITUDE OF THE CITIZENS TOWARDS THE PRIVATIZATION OF LAND IN LATVIA	11
Zile Roberts CHANGING OWNERSHIP AND THE SYSTEM OF PROPERTY RIGHTS IN LATVIA: RESTITUTION AND PRIVATIZATION - LEGAL, ECONOMICAL AND POLITICAL ISSUES.	21
Korzycka-Iwanow Malgorzata OWNERSHIP TRANSFORMATIONS IN POLISH AGRICULTURE	36
Chmielewski Piotr MOUNTAIN COMMONS IN TATRA	45
Novakovsky Leonid Ya. THE PARTICULARITIES OF LAND PRIVATISATION IN UKRAINE	66
Pribytkova Irina ATTITUDES TOWARDS PRIVATIZATION OF LAND AMONG UKRAINIAN PEASANTRY	71
Levina Tatiana COMMON LAND RENEWAL IN RUSSIA: PROBLEMS AND APPROACHES	80

1

**PUBLIC VERSUS PRIVATE PROPERTY:
OPINIONS OF ESTONIANS
AT THE TIME OF TRANSITION**

**Paper presented to the 5th Annual Common Property Conference
of the International Association for the Study
of Common Property**

Bodoe, Norway, 24 - 28 May, 1995

**Paul Kenkman
Department of Sociology
University of Tartu
Estonia**

Introduction

Intertwining of two lines of social changes is characteristic of the development of Estonian society during the entire XX century: technological and social changes making up modernization of the society, and political transitions in the broader context of European and world development, having certain specific social as well as economic consequences. The relations of property have undergone alterations due to both lines of changes while political turnover can be seen as the leading force in property changes, especially during the second half of the century. This also means that legal aspects of property relations have very strongly been subject to political situation, and, therefore, this part of the legal order has usually been contradictory.

Today Estonia, like the other Baltic countries - former Soviet republics - is in transition from state socialism to a market economy.

Under the Soviet rule, two types of property - state and collective - were institutionalized, the latter being represented by collective farms as one of the two versions of agricultural production (personal households of rural people were typically seen as a nonsufficient remains). This structure of property was established in the 1940s as a result of the incorporation of Estonia into the Soviet Union.

It is worth noting that by the end of the 1930s various forms of cooperation in production, and accompanying forms of common property were wide spread alongside the private property and continuously developing, 90 % of those cooperatives being constituted in agriculture (Arjakas et al., 1991, p. 280). Productive cooperation as well as various other forms of joint activities in several spheres of life were a characteristic

feature of the social situation in Estonia before 1940.

Strong centralization executed by the Soviet regime broke down the majority of these activities. Local communities as centres of economic and social life began to play a minor and nonsufficient role having typically neither independent position nor their own property. The inconsistency of this stagnating political and juridical system with the needs of economic and social modernization became unbearable in the 1980s when Estonia became the arena of experimenting with various ways of liberalizing of economy in the framework of the existing basic political and social institutions.

The whole situation began to change when Estonia re-established its sovereignty. Now systemic changes were introduced beginning with the political sphere. Two basic reforms can be considered as primarily important for the social dimension of property relations: restoration of private property and decentralization of the whole society's life. Privatization in Estonia can be divided into three main areas. Large-scale privatization organized by the Estonian Privatization Agency embraces enterprises with a balance value of more than 600,000 EEK. By now 7 stages of privatization have been carried out. Secondly, small-scale privatization (units with a balance value less than 600,000 EEK) includes mostly trade and service enterprises. Small privatization is organized by local authorities (county, village, and town governments) and it was in general completed in 1994. Privatization of dwelling space (apartments) is carried out by vouchers. This process started in the middle of 1994 and is now continuing.

Returning of illegally confiscated property (denationalization) including real estate (land, production and service enterprises, apartments) coincides with the above mentioned privatization activities. The privatization ideology in Estonia can be characterized as a full restitution of private property: property can be given back not only to its living owners and their direct successors but also to an unprecedentedly large circle of relatives.

Over-centralization of the whole life of the society has always been viewed as a major shortcoming of the state socialism. When the upbuilding of the new Estonian society began, movement from that centralization to a society with decentralized economic and social as well as political life was proclaimed as a leading goal. Anyhow, the abolition of the domination of state ownership has not brought about a serious strenghtening of the property of local communities. Certain political ambitions and preferences of the

new power elites have been resulted in a new centralization of power, and very often local authorities are lacking responsibility as well as material strength to direct the community life and to stimulate people's activities.

These are the conditions under which the attitudes and opinions of people concerning the public and private property have taken shape. No empirical research has been conducted in Estonia dedicated solely to this matter. Anyhow, there are studies which provide some relevant information. The following analysis is based on some of these studies, and primarily on a survey of the adult population of Estonia (N = 1009) in the framework of the Baltic- Nordic project "Social Change in the Baltic and Nordic Countries: A Comparative Study of Estonia, Finland, Latvia, Lithuania and Sweden during the First Half of the 1990s" coordinated by Professor Raimo Blom from the Department of Sociology of the University of Tampere (Alanen /ed./, 1993; Blom, Melin & Nikula /eds/, 1995 - the National Reports of the study are currently in print)¹.

Views concerning private property

Various studies carried out in the Baltic countries at the time of the current big economic and political changes have demonstrated that people accepted private property as an inevitable component of the new social order. Thus, on a survey conducted by H.-D. Klingemann in the three Baltic countries on the eve of decaying of the Soviet Union, 3/4 of the people agreed with the statement that economic problems could not be solved without introducing of private property (Klingemann, s.a., p.6). Another comparative survey gave evidence that value orientations of people have become favourable for economic innovations including transition to the private property in all three Baltic countries, the Estonians being more pragmatically oriented than the Latvian and Lithuanian population (Barnowe et al., 1992)

Why is privatization inevitable and how people see the outcomes of privatization? The Nordic- Baltic survey revealed that it is quite common to see privatization as the only way for rising the efficiency of production. Most people consider restitution of property as the best way of privatization, as the legal rights of former owners and their successors are best of all protected in this way. The Estonians are more apt to support

¹I want to express my warmest thanks to the Finnish colleagues who gave us the possibility to join the research team.

the restitution of property than the non- Estonian population although it would deepen social conflicts and juridical contradictions.

The results of the same survey indicate that approximately 80 % of the residents of Estonia have a right to privatize certain items, and every third family has some nationalized property (mostly farm and/or land) which now should be returned. Thus, for a considerable part of the people the restitution of private property is an actual problem, the solution of which is not always easy.

Opinions about ownership²

Table 1. *Attitudes towards the ownership (%)*.

Kind of activity	State Companies	Private Companies	Both
Police	90	1	9
Railroads	75	6	19
Power production and supplies	71	5	24
Postal services	70	9	21
Education	41	5	54
Bus traffic	35	13	52
Hospitals	31	9	60
Infrastructure services	29	18	53
Mass communications	26	11	63
Kindergarten	23	16	60
Banks	23	22	55
Industry	21	24	55
Agriculture	12	37	50
Department stores	7	50	43

Most people in Estonia (see Table 1) believe that the law enforcement institutions,

²This analysis was accomplished in collaboration with Mare Ainsaar, researcher of the Department of Sociology of the University of Tartu.

railways, electric power stations and postal services must be organized by state while less than 10% of the respondents consider it possible that these spheres can be the responsibility of private institutions.

Education, bus traffic, and medical care are the activities where the number of persons who consider that the state must bear the main responsibility considerably exceeds that of the supporters of private companies. On the other hand, agriculture and trade are the areas which are typically seen as the domain of private institutions.

Some statistically significant and socially meaningful gender differences appear here: in general men favor more private institutions as agents of providing basic social services while women are more often for state companies.

Estonians tend to estimate the share of private institutions in several spheres more highly than non-Estonians. This is seen best of all while considering manufacturing industry and the infrastructure, and also education and kindergartens.

Differences in the attitudes toward the ownership of various sectors of economy are especially remarkable if we consider various occupational groups. Thus, people employed as operators and working on assembly lines, and also those employed in elementary occupations as a rule favour state taking responsibility over important social spheres. Private firms are more favoured by managers, officials, and also by service and sales workers. It can be concluded that people with higher educational level and social status tend to see private companies as more preferred institutions in organizing important social services.

Opinions about the role of agents of social policy connected with various types of property

In the conditions which have been established by now in Estonia, attitudes toward various types of property can be revealed by examining the opinion of the role of social institutions based on different types of property in providing certain important and widespread social services. Four agents of social policy are taken into consideration in the Nordic- Baltic survey: the state, municipal authorities, private institutions, and the people themselves.

Opinions about the main responsibility over certain services - child, elderly and medical care, housing, and recreation - are provided in Table 2.

It is obvious that in general people's assumptions have been shaped by the former basic structure of social policy. The respondents say that medical care must be provided by the state, elderly care by the state as well as by municipal institutions, housing and child care should be the responsibility of municipalities, and people themselves must arrange their recreation. That distribution of opinions is consistent with the actual functions of various social institutions under the state socialism. It is fully understandable also that recreation is currently seen as the only sphere where private enterprises can have any significant role.

Table 2. *Opinions about the institutions which should bear the main responsibility over certain types of services (%)*

Type of service	people themselv.	private instit.	municipal institut.	the state
Child care	20	9	47	24
Elderly care	9	2	36	53
Housing	11	3	48	38
Recreation	42	20	27	11
Medical care	8	3	19	70

Men's and women's attitudes do not differ essentially here. Differences between the opinions of Estonians and non-Estonians are remarkable, especially in estimating whether people themselves or state and municipal institutions must take responsibility over certain services. Thus, 1/4 of the Estonians and only 1/10 of non-Estonians say that people themselves have to take the main care over their children; the corresponding figures concerning recreation are 3/5 and 1/7. To put it otherwise, the Estonians tend to rely on their own resources more often, and non-Estonians emphasize the role of the state and in most cases also that of the municipal institutions.

Discussion and conclusions

Establishing of new property relations is the most influential socio-economic component of the transition of the former Soviet republics from state socialism to a market economy being directly important to the overwhelming majority of the population. In Estonia it has taken the shape of the full restitution of private property. The proclaimed goals of the restitution were restoring of justice and reinforcing of the economic progress through creating the class of owners. But the real impact of restitution at the given stage of the overall social development appears to be more diversified. In some cases it has even led to a decline of labour productivity due to technological degeneration (Rajasalu, 1993, p.92), deepening of inequality. It has also acted as a basis of wide-spread alienation and stress (Kutsar and Trumm, 1993), and has created certain new injustice. The restitution of private property in Estonia has not been accompanied by sufficient changes in distribution of power between the basic levels of social organization. Local communities have not acquired the position which they had to occupy in order to stimulate people's initiatives and fulfil their social needs. Accordingly, common property has not obtained an adequate role, and seems to be seen mostly as a non-specific and not vitally important variant of the state, public, or non- private property.

The necessity of restituting the private property characterizes people's attitudes at the time of the transition. The whole body of data which are at our disposal confirm that at the given stage of societal change certain gap appears in the attitudes toward the private property and consequences of its restitution. Overall confidence in the necessity of private property is coexisting with some more or less enduring opinions on social policy based on the domination of public property and comprising expectations about the continuation of certain social guarantees and benefits which were possible in the conditions of the state ownership.

The new system of property relations is only taking shape. It can be seen that people favour the situation where such basic activities as defence and security, railways and postal services, and the production of energy are based on the state property while agriculture and trade can be in private hands. Here people with higher professional status, men, and the Estonians accept changes from public to private property more easily.

Data concerning the age dimension of the opinions about property relations were not

presented here. The results of the numerous studies revealing the changes in youth's attitudes and behaviour (Kenkmann and Saarniit, 1994; Saarniit, 1995) show that the Estonian youth outstrips the older cohorts both in using the new possibilities of economic activity and shaping the attitudes and opinions in the direction of self-centeredness and pragmatism which is consistent with the domination of private property.

Thus we see that the rejection of state ownership is a characteristic feature of the Estonian society in transition as well as the emergence of controversies connected with private ownership. It can be concluded that local communities would be the center of people's activities which would enable to overcome the inefficiency of the state property and also some appearances of new injustice and deepening social differentiation connected with the domination of private property. Broadening of locally centered activities of people would also mean the restitution of those varied networks of social ties and activities which were an important part of life in Estonia before 1940. It evidently calls for the broader institutionalization of common property in the societies moving from command economy to a market society.

REFERENCES

Alanen, Ilkka /ed./The Baltic States at a Crossroads: Preliminary Methodological Analyses. - Publications of the Department of Sociology, University of Jyväskylä, No 56, 1993.

Ariakas, Küлло, Mati Laur, Tõnis Lukas, Ain Mäesalu. Eesti ajalugu. - Tallinn: Koolibri, 1991 /Estonian History - in Estonian/.

Barnowe, J.T., G.T. King, E.Berniker. Personal Values and Economic Transition in the Baltic States. - Journal of Baltic Studies, 1992, Vol. 29, No 2.

Blom, Raimo, Jouko Nikula, and Harri Melin /eds/. Social Stratas and Occupational Groups in the Baltic States. - University of Tampere. Department of Sociology and Social Psychology. Social Change in Baltic and Nordic Countries - Project. Working Papers series, No 1, 1995.

Kenkmann, Paul, and Jüri Saarniit. Education and Shifts in Youth's Value Orientations in Estonia. - Val D.Rust a.o./eds/. Education and the Value Crisis in Central and Eastern Europe. - Frankfurt a.M. etc.: Peter Lang, 1994.

Klingemann, H.-D. Political Beliefs, Cleavages, and the Emerging Party System in the Baltic Republics of the USSR. - Berlin: Wissenschaftzentrum Berlin für Sozialforschung /s.a./.

Kutsar, Dagmar und Avo Trumm. Poverty Among Households in Estonia - Scandinavian Journal of Social Welfare, 1993, Vol 1, No 2.

Rajasalu, Teet. Eesti majandus 1993. aastal. - Tallinn: Eesti TA Majanduse Instituut, 1993 /Estonian Economy in the Year 1993 -in Estonian/.

Saarniit, Jüri. Eesti noorte väärtushinnangud läbi aegade. - Tallinn: Eesti Vabariigi Kultuuri- ja Haridusministeerium, 1995 /Value Estimations of Estonian Youth through Ages - in Estonian/.

Attitude of the citizens towards the privatization of land in
Latvia

Baiba Rivza - Latvian University of Agriculture

1. The process of land privatization has two aspects - its objective necessity and the subjective attitude of the population.

2. The point of view of the society about the fact, that the change of the property is necessary was created already before 1990, when on June 3 the Supreme Soviet the Republic of Latvia adopted the decision "On the Agrarian Reform in the Republic of Latvia ". Thus our investigations carried out in 3 different rural districts of Latvia during the late 80-ies proved that the attitude of the people was mainly positive. Regarding Latvians the positive attitude varied from 67.8 to 81.7 percent , but from 57.3 to 73.4 percent for other nationalities. 25.0 to 31.5 percent of Latvians were ready to start farming , 19.8 to 39.8 percent of the people of other nationalities. It was planned by the people of all ages.

3. While continuing the investigations regarding the problems of land privatization 658 people working in agriculture were questioned in all districts of Latvia. Approximately only every fifth of the inquired had a definite point of view about the privatization. The main reason was the contradictory character of law of privatization.

4. In January 1995 there were 56748 farms. There are two large groups of population in Latvia countryside at present-

1) real and potential land owners; 2) hired workers or the people having no land. There are parishes where 70 percent from the total number represent the second group. The attitude towards the land privatization of both groups is completely different. The potential land owners consider that the land privatization process is too slow. The second group - that it is too quick.

The last group say that the main reason is that old economical structures have been often destroyed in a very short time, but the development of new structures is too slow. The result is a high level of unemployment that reaches 20% in some rural districts in Latvia.

The people of the 2 groups questioned consider that an explanatory work as regards the official legislation bills has not been sufficient by the mass media.

There are many proposals as regards the improvement of the legislation.

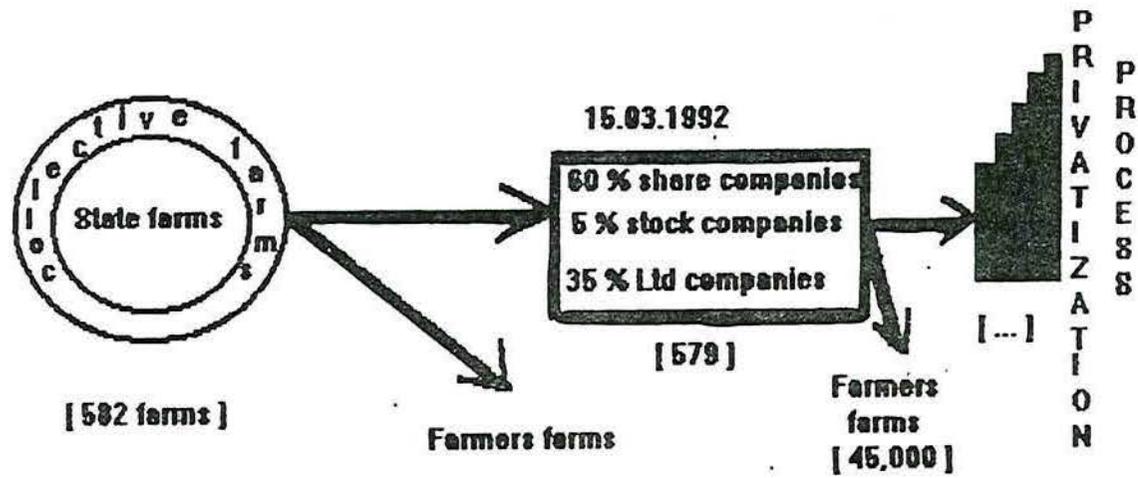


LATVIA AGRICULTURAL STRUKTURE
AND POLICY, 1918 - UP TO DAY

Period	Land reform	Rural development
I 1918 - 1940 The independence of the Republic of Latvia	<ul style="list-style-type: none"> • The establishment of individual farmsteads 	<ul style="list-style-type: none"> • <u>Private family farm</u> (about <u>275 thousand individual farmsteads</u>).
II 1940 - 1941 The soviet occupation	<ul style="list-style-type: none"> • Land ownership was restricted to 30 ha, with the remainder nationalised 	<ul style="list-style-type: none"> • The nationalised land was given to the land less and small farmers, with the first state and collective farms being established
III 1944 - 1990 The soviet occupation	<ul style="list-style-type: none"> • Land ownership was restricted to 20 ha. • 1948 - 1950 <u>The total forced collectivisation</u> 	<ul style="list-style-type: none"> • <u>The economical and physical liquidation of the land owners. The deportation best farmers to Siberia.</u> • The establishment of the large centralised state / collective farms: from 1000 to 7000 ha. • The establishment of personal home farms: <ul style="list-style-type: none"> - land 0.3 - 0.6 ha - cow - 1 - calf - 1 • The creation of a new large centralised settlement
Problems of the land reform: 1990.		
IV Up to day of the Republic Latvia.	Restitution or reform?	The individual farmsteads or villages? The evolution or the revolution? The rural part?

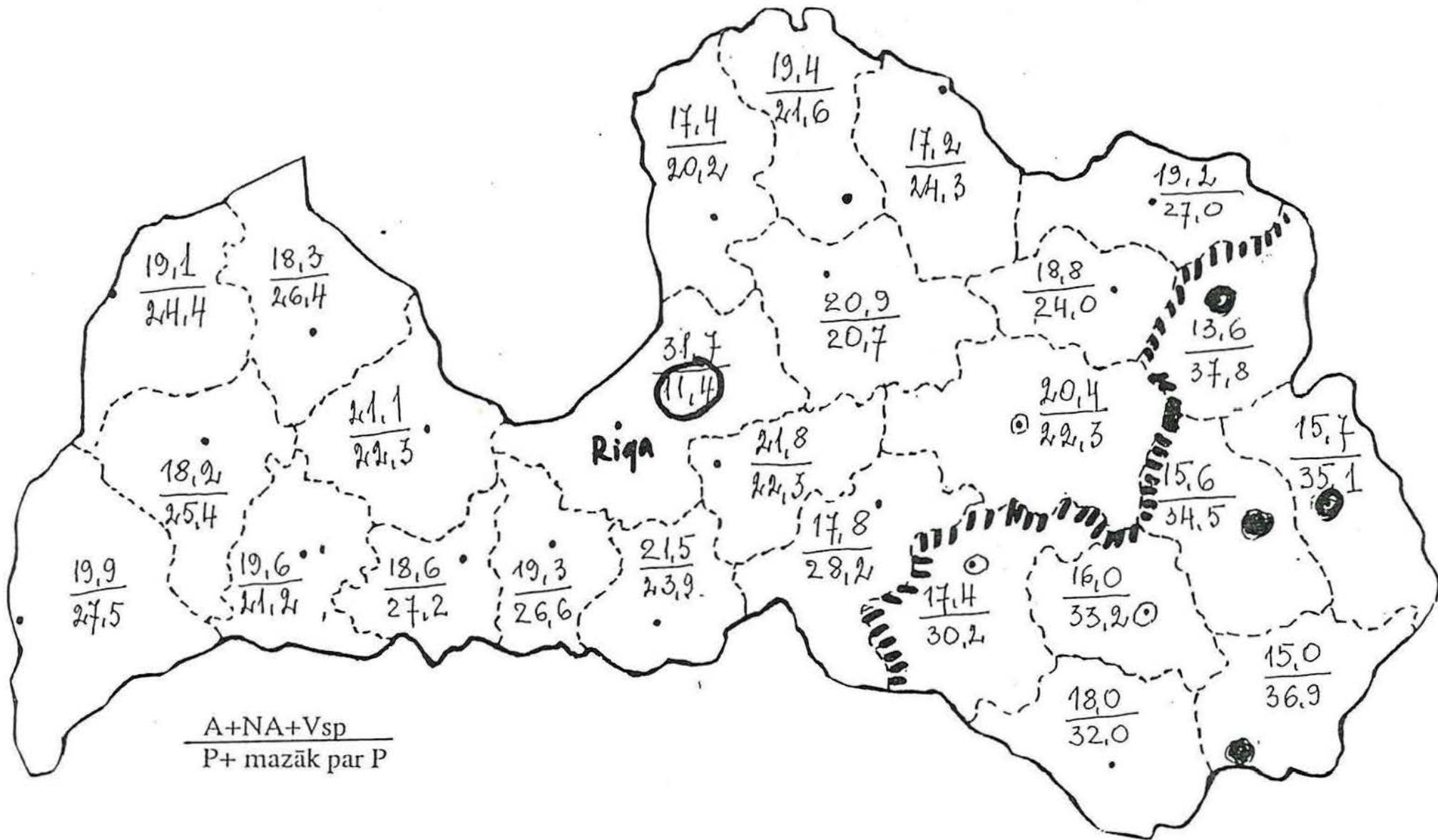
Groups of the farms	Nationality	+ —	+ +	—	#	0
I	L	43.3	25.5	10.0	21.3	0.0
	O	33.6	39.8	11.1	11.8	3.7
II	L	50.2	31.5	1.8	16.5	0.0
	O	37.5	19.8	8.2	34.5	0.0

AGRICULTURAL REFORM



ATTITUDE TO THE RURAL PRIVATIZATION PROCESS (%)

Evaluations	Manual labour workers	Specialists
Pozitive	<u>13.7</u>	13.7
More pozitive than negative	23.2	25.3
More negative than pozitive	28.1	34.3
Negative	<u>8.7</u>	10.2



1.attēls. Lauku iedzīvotāju sadalījums pēc izglītības līmeņa 1989.gadā, %
(15 un vairāk gadu vecumā)

**THE PERSPECTIVE FIELDS OF ACTIVITIES
UNDER THE INFLUENCE OF PRIVATIZATION PROCESS, (%)**

Fields of activities	Manual labour workers	Specialists
Forming of farms	20.4	15.3
Occupation with handicraft	2.9	3.4
Working in agricult. services	8.3	9.6
Going to towns	1.0	2.3
Retiring	8.2	9.1
Forming of private enterprises	3.4	6.1
Have not made up their mind	<u>10.7</u>	<u>10.1</u>

Outlook of future

of them

Locality	Number of familie	Having peasant farms	Having a cottage and plot of land for personal use	Without rights to land property
Stalgene	627	42 - 6.7 %	198 - 31.6 %	387 - 61.7 %
Dzimieki	221	5 - 2.3 %	16 - 7.2 %	200 - 90.5 %
Šalkas	57	1 - 1.8 %	19 - 33.3 %	37 - 64.9 %
Together	905	48 - <u>5.3 %</u>	233 - <u>25.7 %</u>	624 - <u>69.0 %</u>

Sidrabene p. - " Salgale "
May, 1993

Guarantee to job

During 1989 - 1991 the employed people - 100 per cent
In 1993 of them:

- 11.4 % - left the parish for another place of residence
- 16.0 % - formed a peasant farm
- 18.3 % - have a plot of land for personal use
- 13.7 % - found a job in the production structures formed lately
- 40.5 % - have found no employment up to now

of them 8.5 % - retired on a pension - receives a pension

31.9 %
unemployed { 23.4 % - have children under 16 - receives children allowance
 { 8.5 % - have no income

Changing ownership and the system of property rights in Latvia: restitution and privatization - legal, economical and political issues

R. Zile

Latvian State Institute of Agrarian Economics

Introduction

Problems and approaches in legislation of changes ownership and property rights in Latvia has been caused by political, legal and economical reasons, which were rather different from other Central and Eastern Europe countries (renovation of state *de jure*, the lowest ratio of native nation in the population of country among CEE countries). That is the reason, why, before analyses of current changes in ownership and property rights in Latvia, is necessary short return in history.

Main facts of historical changes in ownership and property rights on natural resources are following:

- after first independence of the Republic of Latvia in 1918, reforms on land ownership had been based on nationalization of parts of the large scale landlord property and its distribution and selling to new farmers (the old farms were usually larger in size, for their history reaches as far back as the end of the 19th century)¹;
- from 1920 to 1937 was implemented the land reform during that decision-makers also got suggestions to make a changes in property rights which have been finalized in accepted Civil Law;
- after occupation of Latvia in 1940 all land was nationalized, property rights determined by Soviet legislation;
- 1949-1950 total collectivization (after it even land use rights under private farming was not allowed)²;
- till 1990 have been made lot of natural transformation of land (including new building on it), forest, water, which created additional difficulties for carrying out of the restitution;
- from 1990 Latvia started ownership and property rights reforms.

1. Main principles of ownership and property rights reforms.

1) Renovation of the first Republic of Latvia *de jure* created necessity of legitimization of ownership and property rights on the date of occupation and nationalization (according the Hague Convenience and other international treaties).

It cause restitution of former owners as a main stream in the process of changes ownership is characterized by high degree of restitution in previous physical borders of real properties.

2) Some exception in restitution from economical and political reason.

Process of changes in ownership is add with newly created legal base on privatization. In implementing private ownership of land, restitution to former owners is a key principle.

¹ The average size of the farms on end of reforms was 22 ha.

² Soviet rules did not provide even restricted rights on land to farmers as it was in some other post-socialist countries in Eastern Europe.

R. Zile

Latvian State Institute of Agrarian Economics

LASCP Fifth Common Property Conference 'REINVENTING THE COMMONS'. Bodo, 24-28.05.1995

Consideration of the interests of other rural people is also being taken into account. This is why much of the legislation has been based upon political compromise (more detail about implementation of this principle in chapter 2).

3) Big influence of the state in the process of solution of disagreement between previous and present ownership.

Mixing two processes: restitution and privatization created high social costs of the reforms, slow development of land market and decrease in value of real properties (examples of most common disagreement situations are given in chapter 3).

4) Return from very primitive Soviet type property rights to property rights defined by renewed Civil Law of Latvian Republic (1937).

Most substantial change in renewed Civil Law concerning property rights is rules which provide compulsory, but temporary splitting rights on real property (land and building);

5) Graduality of the ownership and property rights reform process

2. Changing ownership on agricultural land.

Latvian land reform in rural areas is divided into two overlapping phases: the first takes place between 1990 and 1996, and the second covers a period of 10 - 15 years, starting on January, 1993.

In the first phase all land petitioners, including former owners who possessed the land before Latvia was occupied in 1940, the present users, and the new land petitioners, submitted their requests for land allocations before June 20, 1991. All the district use land projects had to be developed and ratified in 1992.

In the second phase, which started after passage of the law "On Land Privatization in Rural Areas" (1.01.93), land users can obtain or renew (former owners) their land ownership rights. Both the most important and the most disputed item was listed as point 1 of 12 in the Law "On Land Reform in Rural Areas", where the priorities for satisfying land petitions were determined:

Priority number 1 is assignment of land to the former owner or his heir, *except* when on the former holding or part there are:

- Developed individual farms or subsidiary plots;
- Obtained or built residential homes;
- Situated environmentally protected objects, or historical, cultural, and archaeological monuments appointed by the Republic;
- Autonomously requested land;
- Land needed for test plots; or
- Situated construction, buildings, or orchards with production of social significance belonging to other owners (collective and state farms inclusive) with acreage defined by the regulations. Those who benefit from this priority must compensate the owner for his real estate value through mutual agreement.

Priority number 2 has been established in the following sequence:

- To expand existing individual farms and subsidiary plots if the petitioner has a residential home;

- To construct individual homes;
- To meet the needs of inhabitants;
- To legal entities (legal person); or
- The present users of land (usually former collective or state farm)

In the second stage, which started on January 1, 1993, ownership to land is established, based on the land survey documents; and a land market should begin. The guideline for the land reform was to create a framework of land ownership where, in most cases, the land user is the same person as the landowner.

On July 9, 1992 the Law "On Land Privatization in Rural Areas" was passed. It was a logical sequence to the Law "On Land Reform", adopted on November 21, 1990. The latter contained regulations for a gradual restructuring of legal, social and economic relations in the countryside regarding land use and ownership. It established the procedure for carrying out the land reform, defining the provisions for submission of land claims and complying with them, as well as regulations for restitution of landowners' rights.

The Law "On Land Privatization in Rural Areas" stated the former landowners' rights to their landed estate provided they had submitted their applications before June 20, 1991. However, there were some exceptions if the land had been allocated for a permanent use during the first stage of land reform.

The reason privatization in rural areas is being carried out in two parallel and closely linked, yet independent, directions is rooted in the establishment of collective farms in 1940 and 1949-1950. All land became state-owned with nationalization (without any compensation) in 1940. Collectivization happened in 1949-1950 when farmers were compelled to collect all non-land assets (machinery, livestock, buildings) into collective ownership. Formally each farmer was a part owner of all collective property. This is a background to the political decisions to reconstitute rights of landowners and to give rights to privatized non-land assets according to shares in the value in these collective farms.

The Law "On Land Privatization in Rural Areas" regulated the second stage of the land reform. Subsequently the law "On Privatization of the Agricultural Enterprises and Collective Fisheries" was passed; this law regulated the privatization of non-land assets. These two laws dealing with privatization are often in conflict. There were instances when Land Commissions had allocated land to the former owners or to new users (mainly for establishment of new individual farms), and the production units envisaged to emerge from former collective farms under privatization (most often livestock-farms) were left with no land. This means the operation of these units in future is impossible.

The Supreme Council has adopted several amendments to the laws with the goal of rectifying the errors. However, there have been several occasions when the aprinkis or pagasts authorities have disobeyed the court decision, thus violating the law, with no legal consequences.

R. Zile

Latvian State Institute of Agrarian Economics

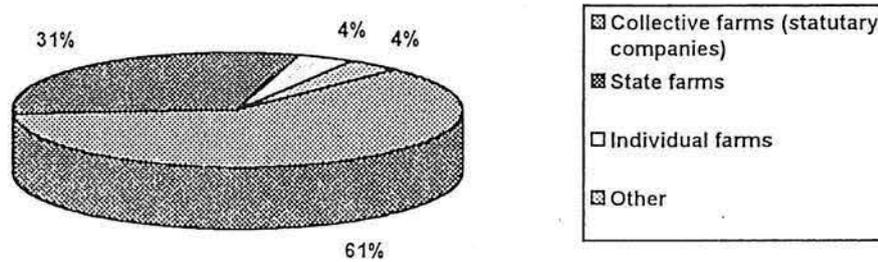
LASCP Fifth Common Property Conference 'REINVENTING THE COMMONS', Bodo, 24-28.05.1995

The Law "On Land Privatization" stipulates that the joint-stock or limited liability companies (the former collective farms) have the right to use the state-owned land on which they farm for 5 years. However, when a shareholder of a company wants to buy an asset such as a cattle-shed, he may lose the land on which it stands immediately, because in most cases former landowners' rights are restituted for this land immediately

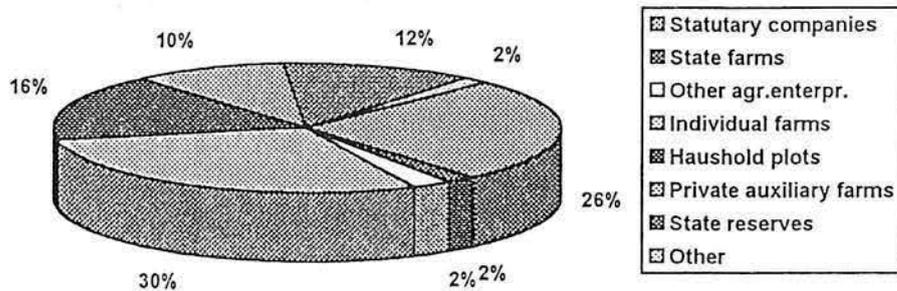
Due to objective and subjective reasons (symbolic land and property taxes etc.) there is not yet an effective land and rental market in Latvia . So it may often happen that a farmer full of entrepreneurial spirit, who buys, for example, a cow shed with 200 cows, has no real possibility for raising feed.

The structure of land users during last 4 years has changed substantially:

Graph 1: Agricultural land by users, 01.11.1990



Graph 2: Agricultural land by users, 01.01.1994



There is also a technical problem that hampers the establishment of ownership rights in the proper sense of the word. Though formally the Law "On Land Privatization" provides for the formalities connected with land ownership, only in December of 1992, a law on the establishment of the State Land Service was passed (it is under the command of Government and will have to deal with confirmation of ownership rights for people who are already given the land use rights according to the rule). At the same time the Law "On Land Title Register" was revived - it is under the

command of the Supreme Court, and its task is to register changes in ownership. In fact the offices of the Land Title Register were set up only after April 1, 1993, and the first land title was registered on May 31, 1993. It is envisaged that this registration process might take a lengthy time.

The main changes in legislation regarding ownership and property rights during land reform are reflected in annex Figure 1.

3. Some common problems in property rights during land reform

It seems that the major problem with property rights during agrarian reform will be the creation in the relatively short-run of a system of land titles conferring full property rights on all immovable property on land. During the 50 years when land was state owned, many nationalized buildings were destroyed. Over the same period many new buildings were constructed by the state, collective farms and individuals on land that was previously privately owned.³

These developments have contributed to many problems of an efficiency and equity nature in restituting of land to its previous owners. The classes of problems which are common in Latvia are outlined below, together with some approaches to their solution and short analyses of each.

The first common situation.

A village has been built on the former owner's land. This situation is illustrated in annex (Figure 2. A.) In the illustration the village occupies 80 % of the former title. The buildings may include: 1) apartment buildings; 2) privately owned houses; 3) collective farm owned family houses which are leased to members of a collective farm; 4) collective farm owned public needs buildings (for example, cultural clubs, movie theaters etc.)

There are at least three approaches to solving this problem.

1.1. Restitution to the former owner of the full area of his former land title and a restricted long term compulsory lease agreement between the owner of the land and of the buildings.

Such an agreement should include compulsory terms of the lease; minimum and maximum rent; first rights to buy any building sold by its owner or first rights to buy land sold by its owner.

The advantages and disadvantages of this approach are summarized as follows:

³The Soviet-time Constitution allowed three type of ownership: state, collective and individual. But individuals were allowed to own only personal consumption items - the family house was the biggest legal individual property unit.

R. Zile

Latvian State Institute of Agrarian Economics

IASCP Fifth Common Property Conference 'REINVENTING THE COMMONS', Bodo, 24-28.05.1995

advantages	disadvantages
<ul style="list-style-type: none"> - restitution is automatic, with no exceptions; - subdividing of former land titles is unnecessary (i.e. an subdivision is privately organized); - the process is judicially clear and relatively inexpensive. 	<ul style="list-style-type: none"> - the owners of buildings would not have an incentive to invest in property ; a usual consequence is a reduction in the value of the whole landtitle; - evaluation problems for determination of minimum and maximum rent; - no restriction on what will occur after the termination of the compulsory lease period (partly also a positive influence).

1.2. Creation of compulsory titles in the form of "tenancy in common".

This approach is a way of assigning to owners of buildings property rights in the land associated with buildings, perhaps best thought of as supplementary approach 1.1. beyond the term of the compulsory lease.

advantages	disadvantages
<ul style="list-style-type: none"> - the approach enables ownership rights, to be resolved in any situation, although with compulsory methods; - these would be more rapid creation of a market for land, including shares on landtitle. 	<ul style="list-style-type: none"> - the approach would be against the current Constitution, which allows land to be owned only by Latvian citizens; - an expensive property valuation system would be needed to resolve disagreements between owners of the land and the buildings.

1.3. Creation of new land titles for the owners of buildings, including partial restitution of former owners in case of existing nationalized buildings or free parcels of land and (this approach follows from current legislation).

All land under buildings and around them (like a parcel) will not be able to be restituted and the former owner will be able to get back the free part of the land on former title (annex Figure 2.A.), free neighboring land, but all the rest of the lost land (in the example 30 ha.) should be compensated by the state with vouchers, which can be exchanged for land, buildings, stocks etc. Parcel land in villages will be privatized to the owners of the building, if a person has rights to be the land owner or will be leased 'long term' from the state to a private person (if he or she is not a citizen) or legal entity.

An apartment building, which is owned by a former collective farm, mainly are privatized as "strata title", except the parcel, which will be owned by the state and leased on a long term to owners of the strata title. This is provided for in the law "On Privatization of the Agricultural Enterprises and Collective Fisheries".

R. Zile

Latvian State Institute of Agrarian Economics

LASCP Fifth Common Property Conference 'REINVENTING THE COMMONS'. Bodo, 24-28.05.1995

Former collective farm owned public buildings (including parcel of land) will be given to the pagasts, with compensation to their current owners.

advantages	disadvantages
<ul style="list-style-type: none"> - fewer compulsory lease agreements between private persons;⁴ - more equity among different interest groups. 	<ul style="list-style-type: none"> - expensive and complicated State Land Service work, including creation of many new titles; - opportunities for corruption, because of a possibility of clearly defining rules covering every case.

Variations to approach 1.3. in cases if:

- residential buildings outside villages, and
- nationalized residential buildings are fully or partly preserved.

If a privately owned family house has been built outside a village, the former landowner is restituted in his rights except on the parcel attached to the family house. At the same time, it is not clearly defined how long the family house owner will be able to keep the parcel use rights. There is an opinion that the private owner of a house should be compensated via the state by the owner of the land. In the case of new apartment buildings owned by a former collective farm or by a shareholder of this farm outside a village, the solution of problems will be similar to that for apartment buildings in the village.

If a building which was nationalized or confiscated is fully or partly preserved, according to legislation (mainly according to the law "On Denationalization of Living Buildings"), all former owners of land and buildings must be restituted on full previous title. However, for 7 years the restituted owner will not be able to break a hire agreement with the present lessee of the apartment. This restriction in restituted property rights creates distortions in the market value of apartments and residential buildings.

The second common situation.

Close to big cities, particularly to Riga, during the Soviet time, there have been built "family garden cooperatives" which consist of plots of land with a size of 0.1 - 0.5 ha. with invested capital in this state owned land including some capital buildings. The number of such gardens is about 36 000 in the Riga district alone.

The actual situation in that problem is as follows:

⁴Public opinion is that psychologically, in the postsocialism age it is easier to make a lease agreement with the state than with a private person.

- the former landowner is restituted on part of his land, which is free (see Figure 2, B.);
- all land after 1996 will be restituted except parcels of land on which there are capital buildings;
- the former landowner is still under pressure to choose compensation.

The solution to this problem is very unclear and there are many efficiency and equity issues not yet answered:

- 1) is land more efficiently used by a large number of handworkers, which produce mainly fruits and vegetables for self - consumption , than compared to land used by one farmer ?;
- 2) in the near future it may be uneconomic to grow fruits and vegetables in these gardens, rather it may be cheaper to buy them?;
- 3) do the interests of many people outweigh the interests of the former owner?;
- 4) is gardening more a hobby and relaxing, or is it a rebate in the "consumption basket" of gardeners?

Perhaps, the main argument in the solution of this problem might be the following: if a former landowner will not be restituted on all current garden land, then creating ownership amalgamation on these gardens, will create the same situation of ownership as in the case of immediate restitution. It seems that the problem of garden cooperatives is mainly a political problem, as in the Soviet-time to get a garden was some kind of privilege, and additionally for the government, compensation to one former owner landowner is easier and cheaper than compensation for hundreds of improved gardens.

The third common situation .

If on land, which is requested by a former owner in the first stage of land reform, there has been built a non-apartment building (for example, a 200 capacity cowshed, see Figure 2. C. in annex), then, according to the law "On Land Reform in Rural Areas", the Local Land Commission allocated land for this cowshed with acreage defined by the regulation (see above Priority). The next law - "On Land Privatization in Rural Areas" - has been more a turn to restitution, because of political changes. It includes, for example, such rules as former collective farms (companies) have no rights to use the land after 5 years, if this land is requested by the former landowner, who not later than after 5 years will get full restitution. It also creates a paradox situation, where the collective owner has more rights than the physical owner:

- when a shareholder of a company wants to buy an asset such as a cattle-shed (according to the other law - "On Privatization of the Agricultural Enterprises and Collective Fisheries"), he might lose the land on which it stands immediately, because in most cases the former landowners' rights are restituted on this land immediately.

There are several approaches to solve this problem during these 5 years and also later.

3.1. State-guaranteed rights for the former collective farm to use land around the cowshed for 5 years, with restitution of this land to the former landowner after this period.

This approach followed from current legislation. The problem arises when the cowshed is privatized by a shareholder of a former collective farm who is not the former landowner. There are possible ways of dealing with this problem:

3.1.1. The new owner of the cowshed immediately loses the land around the shed, because it will be restituted to the former landowner (the same land would not be restituted before 5 years if the shed was still owned by the former collective farm - this approach follows from current legislation).

advantages	disadvantages
- there is a high possibility that upon liquidation of the collective farm the cowshed will be sold to the landowner. In that case the land title including the rights to the building will be fully owned by one person. ⁵	- reduces the attractiveness of the shed to the owner and to potential owners; - reduction of livestock production.

3.1.2. The new owner (former collective farms shareholder) has the same 5 years use rights to the land around the cowshed as the former collective farm.

advantages	disadvantages
- if the shareholder wants to buy the cowshed, but the former landowner does not, that usually means that the shareholder as cowshed owner has a more efficient business plan for managing the shed; - would stimulate the process of non-land assets privatization; - enables existing cowsheds to be preserved for the future, when these sheds will be more efficient than small ones currently used by farmers.	- sometimes the main reason a shareholder buys a cowshed would be to get "some" rights in the future to the land around the cowshed. - short-term lease of land does not encourage maintenance and improvement of the cowshed and of the land around the shed. This could lead to a decrease in the value of the whole land title over 5 years.

3.2. Approaches to restrictions in property rights between former landowner and cowshed owner after 5 years:

3.2.1. compensate the cowshed owner and give the shed to the landowner.

⁵If a collective farm sells a cowshed in a public Dutch auction to another person, it creates the same situation as when cowshed cowshed is bought by a shareholder, but with more uncertainty in the future towards land use rights.

advantages	disadvantages
<ul style="list-style-type: none"> - would solve all land restitution problems without subdividing landtitles; - excludes motivation for a third person to buy the cowshed only to get "some" rights on land around the shed. - enables preservation of these sheds for the future, when they will be more efficient than small ones, which have been actually used by many farmers. 	<ul style="list-style-type: none"> - cowshed would lose its value, because landowners will often destroy the shed (this will occur, because he has no interest to carry out his first hand rights and buy this shed before, but is just waiting for his postponed rights) ⁶; - would create more complicated estimation comparison with land compensation. - encourages land owner to retain his "fully owned" land in order to get full rights to the shed land around the shed.

3.2.2. Compensation to landowner and subdividing of former land title.

advantages	disadvantages
<ul style="list-style-type: none"> - would increase value of cowshed and create more efficient milk production; - no need to estimate the value of buildings for compensation purposes. 	<ul style="list-style-type: none"> - would increase the number of exceptions in restitution and make the privatization process more complicated, partly by requiring subdivision of landtitles; - would create motivation for strategic behavior - that is buying cowsheds only for the purpose of obtaining property rights on the land.

3.2.3. Determination of compulsory lease agreement rules between owners of land and of shed.

This approach seems like a compromise, but at the same time looks like a postponing of a solution in property rights and the advantages and disadvantages are similar to approach 1.1..

4. Property rights development and problems .

General public opinion during Soviet occupation concerning property rights was considerable distorted. Politically and also psychologically in 1988-1990 approach to solve property rights problems, which was based on the theory of Marx - that land has no value itself, because it not a product of human labor. It created preconditions for the Latvian Soviet Parliament at the start of agrarian reform to pass rules which have established a preference for compensating those losing ownership rights to land over those losing ownership rights to buildings. These rules, partly embodied in legislation, created much uncertainty and made land reform a very complicated process. That is why the latest approaches in legislation, which are based on restitution of

⁶For the landowner there is no real opportunity to actually lease the shed for reasonable rent - livestock products, particularly dairy products, have difficult marketing problems and their production is unprofitable.

R. Zile

Latvian State Institute of Agrarian Economics

IASCP Fifth Common Property Conference 'REINVENTING THE COMMONS', Bodo, 24-28.05.1995

landtitle, are meeting with such equity problems. These equity problems may have been avoided, if agrarian reform had started on other principles.

Restitution should be the main equity instrument in continuation of the agrarian reform, because it is the only way to end in Latvia the results of occupation, socialism and colonization. Creation of new private property rights on the basis of present user rights for state owned property would mean legitimization of the crimes of the period of occupation (nationalization and confiscation of property, deportation of former owners etc.). This means also that restitution is an equity as well as a political decision.

Property rights of restituted and new owners have been determined mostly by renewed Civil Law (which firstly passed in 1937, and with little change was fully renewed in the summer of 1993) and by new reform legislation. One of the major tasks in property rights reform is to clearly define the rights of owners in cases, where Civil Law does not provide clear guidance due to circumstances arising after occupation. On the other hand, given the great uncertainties in Latvian agriculture at present, it may be wise for the government to remain detached, lest regulations be imposed which restrict response to later market changes.

Development of property rights in Latvia in last 5 years is useful to analyze through the six characteristics of interest in property rights that qualify their usefulness in economic exchanges. Those characteristics can be based on following descriptors:

Duration: length of time for which an arrangement holds; a period in which a right-holder can profitably invest in harvesting;

Flexibility: discretion to change use; ability to adapt to change; what can and cannot be done without consulting others;

Exclusivity: the strength of a right; the inverse of the number of persons who must be contacted to internalize enterprises such as fishing; freedom from disturbance; strength of acceptance by the community;

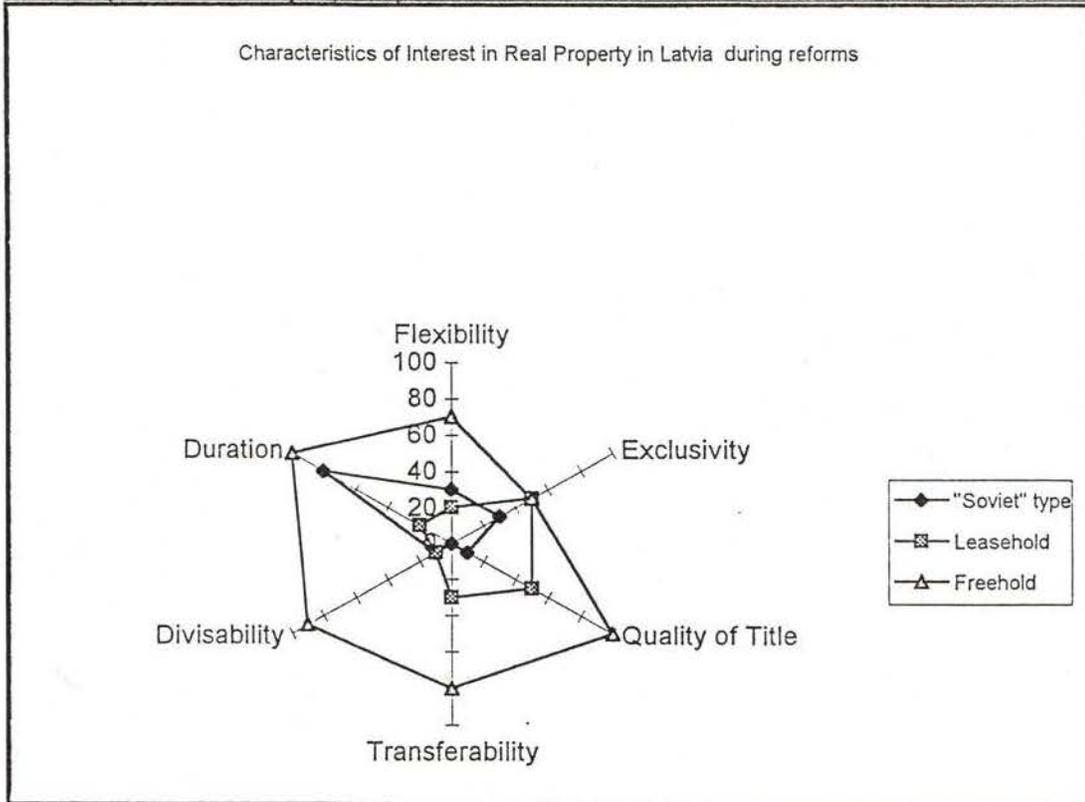
Quality of Title: legal protection and security provided by common law and registration systems; acceptance of title by others;

Transferability: ability to transfer to others: number of parties to whom a transfer can be made; and

Divisibility/Assemblability: ability to sub-divide; ability to aggregate; ability to share; ability to have joint holders; ability to assist transferability.

Each of these characteristics have been scored from 0-100. There are compared three systems of property rights on land in Latvia:

- Soviet time land tenure system (formally rights to use land);
- early reform time - leasehold land tenure system (1989-1990, first individual farms);
- freehold land tenure system (present situation after renovation of the Civil Law).



Transferability of property rights is still legally restrict by subject of ownership on land - even after legal changes concerning that in spring 1995 (the owner of land can be: Latvian citizens and legal entities, where owners of at least 50 % of the fixed capitals are Latvian citizens, or where owners are foreigners from countries, which have bilateral foreign investment protection agreements with Latvia) and limited by technical obstacles (capacities of Land Title register and Land Survey services). Long term credit shortages, slow and weak development of mortgages, some rules in the process of alienation of real properties and unprofitability of property possession and managing are still breaking real property market (particularly in rural areas).

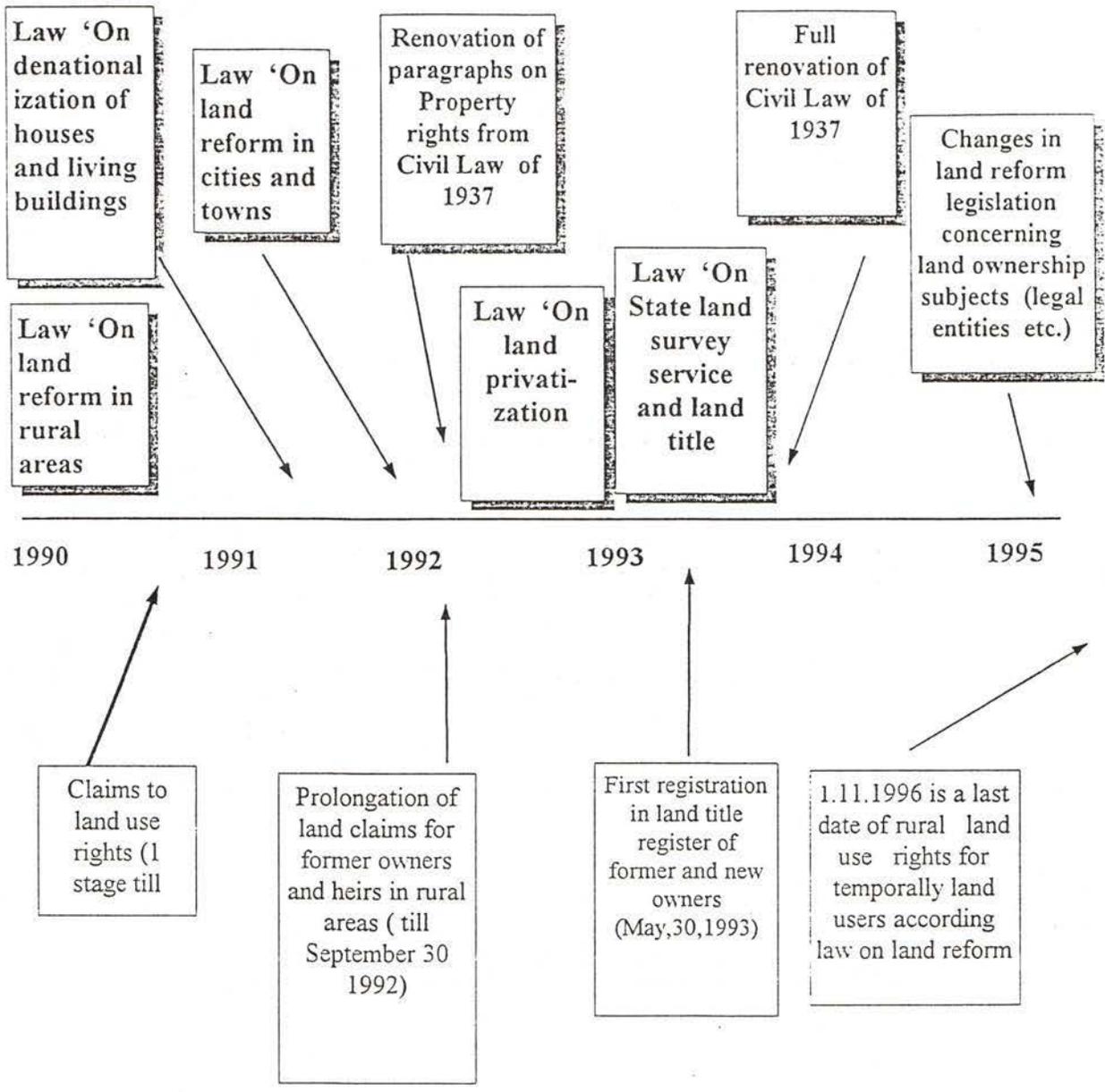


Figure 1
Dynamics of main legal reforms regarding ownership and property rights in Latvia

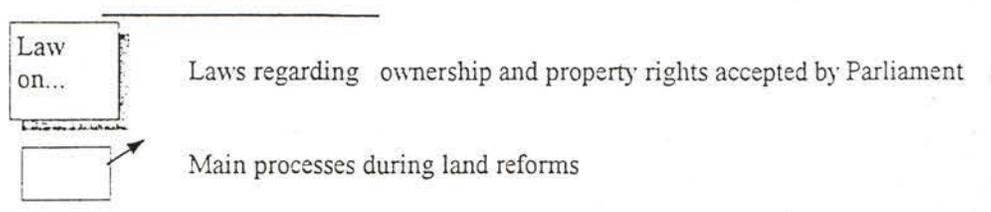
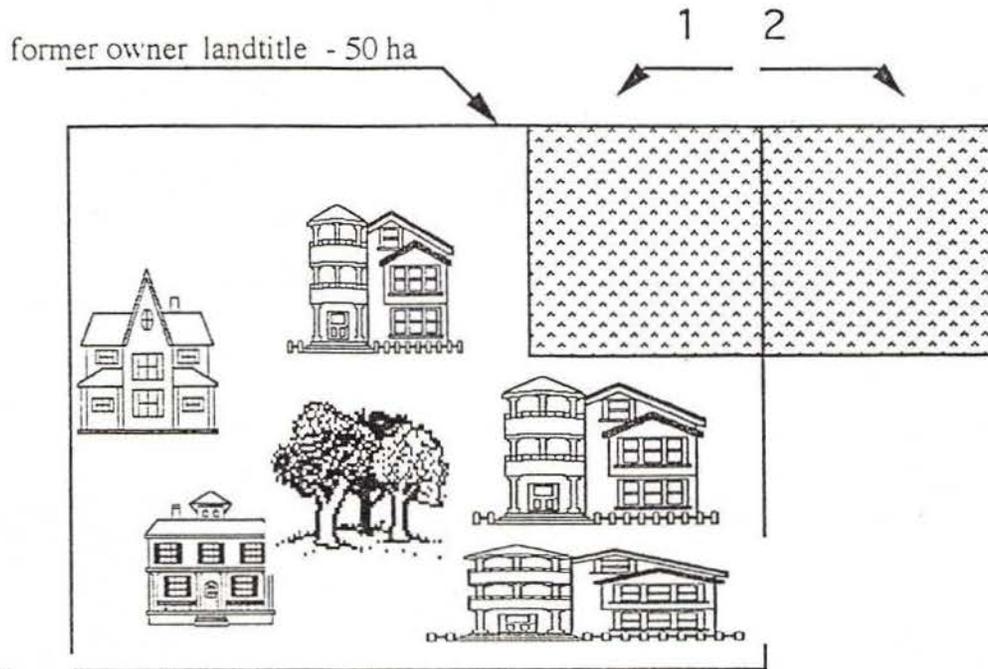


Figure 2

Examples of the common Situations and Problems in Property Rights during Land Reform

Fig. A. The case of Village



- apartments and other village buildings

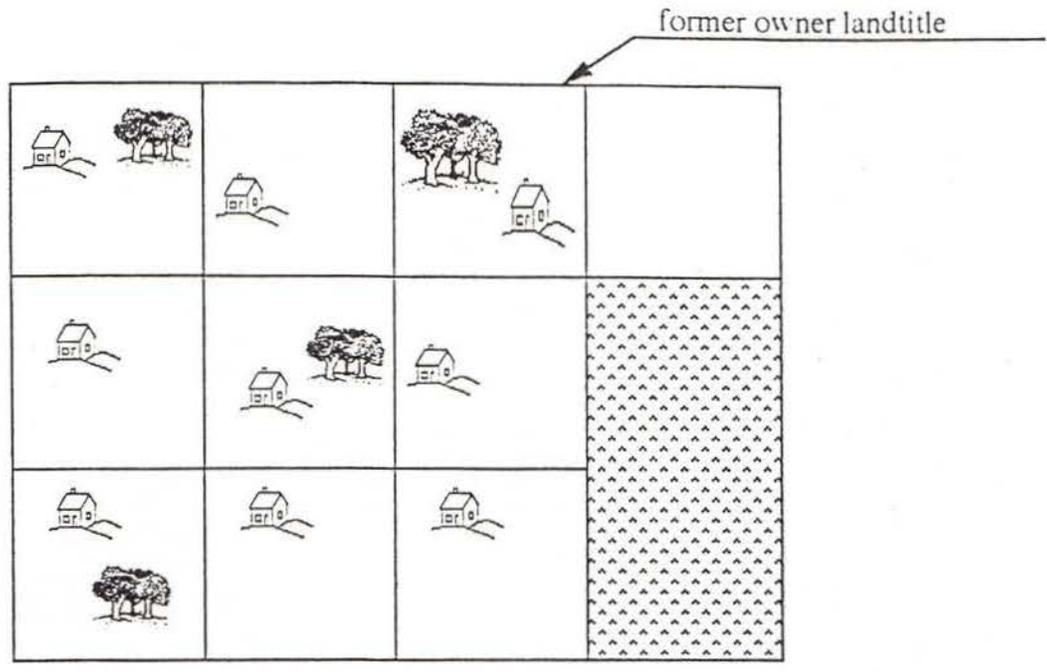


- allocated land for former owner from which:

1- part on former title, 10 ha;

2 - part on free neighbour land, 10 ha;

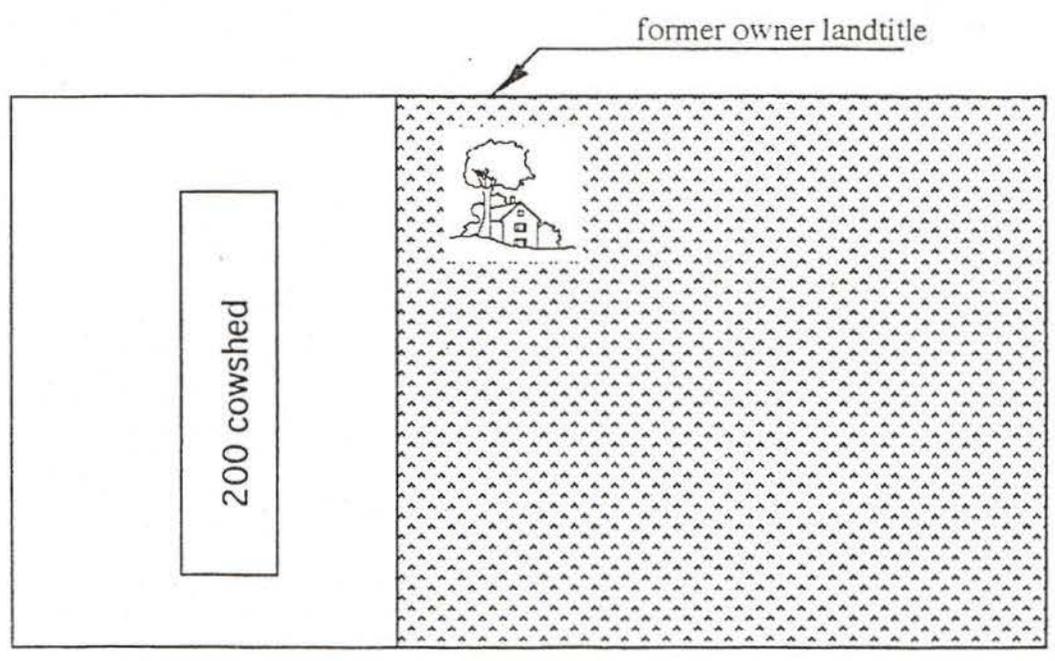
Fig. B. The Case of Family Gardens



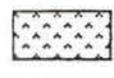
 - hobby gardens, 0.2 ha

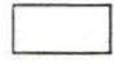
 - part of land which is free and might be restituted without exceptions

Fig. C. The Case of Cowshed



 - restituted owner residential house;

 - part of land which has been restituted immediately;

 - part of land which has been leased by state for former collective farm on 5 years

Małgorzata Korzycka-Iwanow
Professor, University of Warsaw

OWNERSHIP TRANSFORMATIONS IN POLISH AGRICULTURE (SELECTED ISSUES).

I. Introduction

During the period of communist regime, Polish agriculture retained domination of private ownership of land, whereby 3/4 of total arable land remained in private hands. The remainder was used mostly by State-owned farms and, to a lesser extent, by agricultural cooperatives.

The regional structure of farmland ownership in Poland is quite diversified. There exist regions with extreme comminution of farms and those where large, State-owned farms dominate. Structural transformations in farms depend mainly on the overall growth of the economy and, in particular, on the ability of people employed so-far in agriculture, to undertake employment in other sectors.

Polish intervening policy includes, besides actions bearing market type features, also those ventures which intend to improve agrarian structure. The key to structural changes taking place is found in the widely taken economic environment; however, current macroeconomic conditions do not stimulate changes in this respect.

II. Privatization of State-owned Agricultural Enterprises

Because of the special nature of State-owned farms, privatization in the State-owned sector has been vested with a special governmental agency, the Agricultural Property Agency of the State Treasury, established in the Law of 19th of October 1991 on disposing with agricultural real property of the State Treasury¹.

The Agency is a trust-type institution the purpose of which is to take-over and subsequently dispose with agricultural property owned by the State Treasury. The Agency implements its purpose mainly through restructuring and privatization of agricultural property of the State Treasury. Restructuring is effected by creating an environment which allows for reasonable use of the production capacities of a given Resource both by administrating such Resources as well as through creating of new farms or conducting agricultural development works. Privatization, in turn, is to be understood as altering of ownership relations through dealing in agricultural real property or organizing private farms on land formerly in possession of State-owned farms.

The performance of Agency's objectives within ownership transformations and organization of agriculture takes place within the general assumptions established for the State's agricultural policy.

¹ Journal of Laws No. 107 item 464, as amended.

In particular, the Agency is to conceive conditions which will allow to continue the creative growing of plants and breeding of animals, previously performed in specialized farming enterprises. To achieve this objective, the Agency establishes its companies for conducting creative farming and activities related thereto, or specialized pedigree breeding farms of the State Treasury.

The Agency is a State-owned legal person operating on national scale. Supervision over the Agency is performed by the Minister of Agriculture and Food Economy, to whom the President of the Agency reports.

The Agency is managed by a President, who represents the agency externally. The President is appointed and recalled by the Prime Minister. The Polish Parliament does not perform supervisory functions and is entitled only to consider the annual report of the Agency's activities submitted by the President. Moreover, Agency's President is appointed without any opinioning by Parliamentary Committees, which in turn are entitled to provides their opinions as to appointing of members of the Agency's Council. Members of the Agency's Council are appointed for a tenure of 4 years by the Minister of Agriculture in consent with the Minister of Finance, Minister of Ownership Transformations and Minister of Labor and Social Policy. The Law does not impose an appointing structure to the Council from among representatives of agricultural organizations or institutions; and it can be doubted whether simultaneous consent of four ministers will give a guarantee sufficient to assure professionalism of Council members².

The Agency's Council is an opinioning and advisory body to the President, consisting of 9 members, the role of which is in particular to opinion: 1) directions of Agency's activities, 2) regional directions of activities, 3) quarterly and annual reports of the Agency's President.

The Agency performs self-dependent financial policy based on an annual financial plan. The plans as well as main directions of allocating available resources are determined by the Agency's President in consent with the Minister of Agriculture and Food Economy and Minister of Finance.

The Agency derives its revenue from: 1) sums due on sale of real property owned by the State Treasury, 2) fees on title of administrating, use, rental fees and leasing of property within a given Resource, 3) profit derived from the operation of State Treasury's properties, 4) from other sources.

The Law entitles the Agency to draw short-term credits to cover its expenditures; on consent of the Minister of Finance the Agency may also procure long-term debt and issue debentures. Such authorization is fully understandable in light of the multi-billion debt of enterprises which are being taken over by the Agency,

Note that analysis of the law not provide any answer as to what agricultural system is to be built.

Therefore, it seems that the final result will depend much on the privatization technique to be applied, the law itself devoting more attention to land related issues. But, though the Law provides, vaguely, for the purposes of the Agency in dealing

² S. Prutis in: P. Czechowski, M. Korzycka-Iwanow, S. Prutis, A. Stelmachowski: Polish Agricultural Law in Comparison with Legislation of the European Union, Warsaw, p. 164.

with agricultural real properties of the State Treasury, much less can be concluded as to the manner in which new farms are to be established and, even more, how are new jobs to be created during the restructuring process³.

Any Resource of the Agency of Agricultural property of the State Treasury consists of the following real properties:

- 1) remaining in administration of State-owned entities;
- 2) remaining in the use or factual possession of natural persons, legal persons and other organizational entities;
- 3) included into the State Land Fund, established on the basis of provisions implementing agricultural reform;
- 4) property appropriated by the State Treasury pursuant to administrative decisions or on other titles.

The appropriation of property remaining within any of the above sources takes place in adherence to the established procedures, each leading to the physical transfer of a real property by way of a transfer and acceptance protocol prepared by the transferee and the Agency.

In case of State-owned farms, transfer is preceded by the founding authority's decision to liquidate the enterprise. The Law establishes an autonomous legal basis for liquidation of the enterprise, different than that provided for in the law on State-owned enterprise⁴, and in the law on privatization of State-owned enterprises⁵.

Liquidation takes place to transfer property of the liquidated entity to the Agency. The liquidation decision is adopted by the founding authority: 1) on its own initiative, 2) on joint motion of the enterprise director and Employees' Council, 3) on Agency's motion.

Factually, the decision depends on the Agency as its motion in obligatory, while in the remaining situations the decision to liquidate is adopted on Agency's consent.

On the date of the liquidation decision taken by the founding authority (Minister of Agriculture and Food Economy, or Voivod), the enterprise is deleted from the register of State-owned Enterprises. The enterprise is liquidated only as a legal person, while the organized property components are transferred by the founding authority to the Agency.

³ See: R. Budzinowski, Problems of Functionality of Agricultural Law During the Period of Transformation of the Economy. Ruch Prawniczy, Ekonomiczny i Socjologiczny, Edited by Wydawnictwo Naukowe Uniwersytetu Poznańskiego, No. 1 of 1995, p. 15.

⁴ Pursuant to the law on State-owned enterprises (unified text in Journal of Laws of 1960 No. 18 item 111) liquidation of an enterprise takes place because of its bad economic and financial standing.

⁵ Liquidation pursuant to the Law of July 13m, 1990 on privatization of State-owned enterprise (Journal of Laws No. 51 item 90 as amended), take place to privatize irrespectively of its economic and financial standing. The legal person is liquidated, but the physical existence of the enterprise is retained.

In case of State-owned agricultural enterprises, the Agency takes over both property of the State Treasury remaining so far under administration of the being liquidated enterprise (administration expires upon deleting of the enterprise from the register) as well as own property of the said enterprise. The founding authority transfers to the Agency the property as well as all claims and liabilities of the liquidated enterprise; the Agency, next, appoints a temporary administrator of the property and operates it employing principles provided for in the Law.

Legal importance of the process of taking over State-owned property by the Agency has to be emphasized once again. This is because the Agency is taking over not only the State Treasury's property components but also assumes all the rights and obligations related thereto in respect to the State Treasury and third parties. The performance by the Agency of its ownership title and other material rights of the State Treasury encompasses the property included in the Resource, i.e. the property which has been taken over by the Agency. The Agency has no right to exercise authority of the State Treasury until its takes over such property because there exists no structure which would allow for the Agency to assume the title by operation of the law, only.

Authority of the Agency in using of the State Treasury's property is based on the legal structure of a trust. A trustee is a person managing third party's matters in its own name. Thus, the Agency does not become the owner of the assumed property, but only a subject performing in its own name authority vested in it by the State authorities. The Polish legal system does not contain general provisions on trust relations⁶, so the legal relationship between the Agency and the State Treasury is determined solely in the provisions of the discussed here law. Legislator's will replaces the role of the owner and trustee with whom rights are vested, together with an obligation to act as a trustee. But, trusteeship does not determine which concrete rights in respect to defined entities are vested with the Agency. Performance of rights is vested on principles provided for in the law - substantiation takes place by transferring property to the Agency. This is because the Agency receives rights from trusteeship only in respect to property comprising a Resource of agricultural property of the State Treasury. The principle of substitution operates between the Agency and the State Treasury, by which property acquired by the Agency within its activities and included into a Resource, remains property of the State Treasury and not of the Agency as a legal person.

The performance by the Agency of ownership rights in respect to State Treasury's property takes place by way of two different legal regimes. The operation of property allocated for agricultural purposes takes place on principles provided for in the said law, while performance of ownership rights in respect to real property allocated for non-agricultural purposes takes place according to provisions of the Law of 1985 on Land Economy and Expropriation of Real Property⁷.

III. Disposing with the agricultural resources of the State Treasury

⁶ The notion of trust is known, e.g. in German law (Treuhand).

⁷ Unified text: Journal of Laws of 1991, No. 30 item 127, as amended).

The factual consequences of implementing the Law are generally reflected in the manner in which property comprising the Resource of Agricultural property of the State Treasury is being operated.

The Resources is assumed to be an interim organizational structure. The Agency is to rapidly and reasonably dispose of the Resource.

The Law provides for:

- disposing by use for agricultural purposes
- allocating of property for other purposes
- securing unused property against destruction or damage.

Agricultural use of the Resources comprises:

- 1) sale of real property
- 2) leasing of arable land
- 3) contribution of the property or any of its parts into a company
- 4) transfer into administration
- 5) issue into administration for a fixed term for purpose of use.

Arable land may be protected without altering its use in agriculture by fallowing it in economically justified situations.

The non-agriculture use of real property and other property components includes:

- free of charge transfer of land within a resource to State Forests organizations for afforestation; such transfer takes place on motion of the Agency, by decision of a regional general administrative authority;
- free of charge transfer of real property to the commune for infrastructural investment by way of an agreement executed between the Agency and a commune;
- developing of flats and property used for social, cultural and sports separated out of the Resource.

Development of the institution of a company is a new legal solution applied to the disposal of State-owned land. A separation should be made here between single-person companies of the State Treasury and of a company established by the Agency. Transformation of a State-owned agricultural enterprise into a single-person company of the State Treasury is performed by the Minister of Ownership Transformations after obtaining of an opinion of the Minister of Agriculture and Food Economy⁸. This type of transformation is the only case provided for in the Law, in which property of the enterprise before ownership transformation is not included into the Resource of the State Treasury. The commercial law company, which provides for transformation of an organized corporate entity without liquidation, have been introduced aiming at specialized plant cultivation and pedigree breeding enterprises - and should not be employed elsewhere. To organize such specialized enterprises,

⁸ Provisions of the Law of July 13, 1990 on privatization of State-owned enterprises (Journal of Laws No. 5, item 90, as amended) apply; however, it is not permitted to make shares in such companies available to third parties or to dispose with any such shares.

the Agency also uses the vehicle of single-person Agency companies. The Agency will either contribute the whole farm or its individual property components and, therefore, will hold shares (stock) of commercial law companies. The Law does not restrict the type of commercial companies to be established - i.e. the limited liability and joint stock solutions are both available.

Another new solution in disposing with real property of the State Treasury comprises appointing of an administrator operating an organized part of State Treasury's property in the Agency's name. Legal and natural persons made be appointed administrator. Mutual liabilities of the parties are set by the Agency by way of a contract executed as a notary deed.

Any sale of real property takes place through a civil law agreement which has existed in the Polish law since 1958. However, the law provides an novel and specific procedure for sale and setting of the price.

Real property to be sold are listed in an announcement published in a manner conventionally adopted in the given locality 14 days before commencing with the sale. If the approximate value of the real property exceeds the equivalent of 5000 q. rye, an announcement will also be required in centrally circulated press.

Sale takes into consideration preemptive rights provided for in the Civil Code. If no exercise of preemptive rights is eligible, an auction takes place. The auctions conducted by the Agency either as direct bidding or through a comparison of bids submitted in writing.

If justified by economic reasons, the buyer of an agricultural real property may be nominated on the basis of bids comparison, provide that preemption is given to farmers intending to expand their farms or to employees and employee companies of the liquidated State-owned agricultural enterprise, who intend to establish a farm.

No decision has been made as to priority of individual preferences (i.e. farmer or employee or employee enterprise of the liquidated State-owned agricultural enterprise). In practice, prospective buyer are recruited mostly from neighboring farms - farmers, or from former employees wanting to create a source of living.

Art. 30 of the Law provides for the starting auction price for the real property and its component parts; provided, however, that price of land is set 1) with consideration of market prices, or 2) by multiplying the approximate price of one hectare of land by price of one quintal of rye set with consideration of agricultural tax applicable for the date of the sales agreement.

State-owned organizational entities not possessing personality at law and State Forests receive property of the State Treasury within any Resource into administration. Such transfer takes the form of a decision adopted by the Agency on motion of the entities involved. Also, agricultural real property maybe acquired by State-owned organizational entities not possessing personality at law; and are obliged to notify the Agency thereof. Also, the Agency leaves real property in administration of any such entities.

Administration expires by decision of the Agency upon:

- 1) expiration of the time period for which such administration had been established (it may also be established for unlimited duration)

- 2) if the real property or its part ceases to be useful to the existing administrator;
- 3) if administration is performed contrary to routine business principles;
- 4) if provisions of the local spatial development plan make further use of the real property according to its current purpose impossible.

Property included into the Resource may be leased or rented to natural or legal persons. Natural or legal persons may be lessees. Terms of lease are agreed with the candidates who are selected out of a tendering procedure. Just like in the case of sale, preference is given to farmers intending to expand their farms or establish new farms, and to employee companies or employees of the liquidated entity who will establish a farming enterprise. If more than one bidder has preference rights, one who gives the best performance guarantee will be selected. Rent is defined in the agreement signed pursuant to the tender; statutory or contractual exempts from rental payments are allowed.

Initially, the Agency took over 1620 State-owned agricultural enterprises with a total surface area of 3,408,249 ha (end of March 1994) and 314,926 hectares of land from the State Land Fund. 78,902 ha were sold, in that 62,451 ha from former State-owned agricultural enterprises.

Resources of the Agency comprise (end of March 1994) 2,223,245 ha (61% of all land), in that 2,066,052 has in farms administered by temporary administrators and 157,193 ha in farms managed by administrators. Also:

- 1,191,087 ha were leased
- 12,951 ha were let into use (by former employees)
- 80,474 ha lie fallow
- 132,349 ha are used by pensioners and retirees within non-contractual use, or await disposal.

Together with the property assumed from liquidated State-owned agricultural enterprises, 186,184 employment contracts were assumed. In result of restructuring of such enterprises, total employment decreased by 88,613 persons.

In conclusion, the form of disposing with Resources of the Agricultural Agency of the State Treasury depends principally on economics. Sales comprise only a small portion of all transactions; because of limited financial resources of prospective buyers and reprivatization claims filed by former owners. Lease agreements form the bulk of transactions. Therefore, it seems purposeful to develop a framework lease agreement which would better consider the interests of agricultural activities performed within the lease structure.

IV. Opinions of farmers relating to ownership transformations in State-owned agriculture (based on research studies)⁹

⁹ Based on research conducted in 1992 and 1993 ordered by M. Ralaj Foundation:

Tasks vested with the Agricultural Property Agency of the State Treasury were from the onset implemented in a climate of contradictory opinions as to their purposefulness and enacting in time. From the very beginning this was an organizationally, economically and specially difficult maneuver; moreover, because it was taking place during a period of overall systemic transformations, mounting recession and "difficult" money.

The hope that agricultural property resources taken over by the Agency will serve to expand (or create from grass-roots) family farms has not been fulfilled, as yet. Farmers become interested in land of the former State-owned farms only when those are adjacent to land already in their possession. Those few who are interested, often have difficulties in receiving credits at preferred rates for purchase of land or current assets when the whole farm is under lease.

Employees of liquidated enterprises were disinterested in ownership transformations, afraid of losing jobs and having just a vague picture of an uncertain future. Its not just the 8-hour working day habit, but simply lack of cash needed to acquire an ownership title, what makes them reluctant.

The team of Dr. Saluda conducted research in former State-owned farms which underwent four different privatization processes. One was purchased as a whole entity (are rare event) by a private person from Warsaw., Another farm was taken over by a company with foreign equity. Two other were taken over by: employee company and certain foundation the purpose of which is to assist the unemployed. Though material for comparison is inadequate, the latter two forms are proving to be most effective.

Those who are working state that now their work has a purposes. In the post-State-owned farm housing settlement, where people established an employee company, a new group emerged, i.e. shareholders. Even though prospects of dividend are distant, they already today identify themselves with their company more than before. There are no longer families which would dwell on unemployment allowance, any more. But, such situation is not common; these companies are few, and post-State-owned farm villages are often in a dramatic situation.

It's not easy to provide a single answer to which took place recently with State-owned farms. Everyone agrees that existence of socialist giants, continuously subsidized and "reorganized" had to come to an end. But, some voices are heard that we have light-heartedly destroyed a great wealth achieved by two generations of Poles.

Liquidation of State-owned farms by privatizing after bankruptcy has been viewed negatively both by interested parties as well as by the economists. This route often leads to sell-off of property (mainly of machines and stock) below its market value.

1) research of B. Sa'uda's team from the W. Kêlrzyñski Research Center in Olsztyn assessing situation in five selected post-State-owned farm housing settlements

2) expert opinion of Prof. J. Hozer team at the Polish Economics Society in Szczecin on transformation of large-area farms.

Published in Pamiêtnik Instytutu M. Rataja, No. 1, Warsaw 1994.

Conclusions of Prof. J. Hozer's team point to the issue of restructuring properties of State-owned farms without regional or up-dated commune level plans of developing agriculture. Hence, communes without such up-dated general and specific plans cannot become partners to the Agency.

Unemployment among former State-owned farm workers is both common and serious (many of those people have already lost their right to unemployment allowances). Buying on credit has become there a commonplace procedure. Alcohol abuse is widespread; therefore, social workers pay allowances in "goods tickets" or use the money to directly pay bills of the unemployed.

Do employees of former State-owned farms have any ideas for their own future? Some of them wait passively, till the time when they again will be needed by the land they live on. Others, however, have left their jobs and make a living in services or trade. There is a relations between level of activity and distance to the nearest town - the closer the better.

Such "own recipes for life" are few. Even preferred credits would not be a great help - lack of education and deep conviction that someone else should care immobilize those people. A defensive majority of them are nostalgic about the good old State-owned farm times and dream of full time jobs.

Piotr Chmielewski
Institute of Sociology
University of Warsaw

MOUNTAIN COMMONS IN THE TATRAS

The Tatra mountains, with their characteristic climate, tourism and culture was discovered in Poland at the end of the ^{nineteenth} ~~twentieth~~ century and has since become one of the most famous places in the country. The present size and intensity of tourism has reached the limit of the tourist capacity of the Tatra mountains (A. Marchlewski 1982). Since recently, a tourist wishing to go deeper into the valley (or higher in the mountains) has had to pay a small fee to the representatives (situated in every valley of the Polish Tatras) of the Tatra National Park. Although the fee is actually small, in this manner the Tatras lost their character of a public good for the Polish tourist and took on the characteristic of a toll good. In wandering around the western part of the Western Polish Tatra Mountains, at the entrance to these valleys, a tourist comes across an information board which informs them that they are on territory which is the property of the **Forestry Community Authorities of 8 Villages in Witów**. A community of natural resources of course implies something other than public or toll goods - common-pool resources. In turn, while purchasing milk and eggs from the farm-mistress, renting a private mountain cab for trips around the area or paying rent for a vacation apartment, our tourist reaches the conclusion that for a relatively small area, he has come across a specific concurrence of fundamental types of goods, such as common-pool resources (commons), public goods, private goods and toll goods (V. Ostrom and E. Ostrom 1991). Furthermore, if we endow our tourist with a "sociological imagination", one can imagine the great intensity of important problems linked with the diverse activities of man in his natural and social environment.

The object of the author's particular interest is the mentioned institution, the Forestry Community in Witów. The Forestry Community Authorities of 8 Villages in Witów cultivates close to 3,100 hectares of forested land and other real estate (precisely 3099.9649 hectares) located primarily in the Chochłowa and Lejowa valleys in the region of the Witów and Dzianisz villages in the western part of the Western Polish Tatras. The scope of the Community's activities covers approx. 15% of the entire area of the Polish Tatras, that is, of the Tatra National Park established in 1954. The Community consists of 2,100 members, residents of the eight villages: Witów, Dzianisz, Chocholow, Ciche, Koniówka, Podczerwone, Czarny Dunajec and Wróblówka. These villages lay at the foot of the northern Western Tatras in the Czarny Dunajec valley stream. They are all, basically, located on the road which links Kiry and Koscielisko with Nowy Targ. The villages have been in existence for a few hundred years, making up centres of mountain folklore and Tatra Highlands culture where history meets the present.

Having lived in difficult conditions for centuries, the inhabitants of these villages (just like other mountain groups from all over the world) developed a specific culture resulting from geographic isolation, severe living conditions and persistent and characteristic forms of farming such as shepherding and animal husbandry tied to the natural environment. One of the most characteristic traits of this culture is the capacity of Tatra mountain folk to independently resolve their own

problems. The 175 year existence of the Forestry Community, its changes and its history provide the best example of this capacity.

It is the author's intention to describe and analyse the Forestry Community in Witów. The following considerations are behind this intention: (1) Cognitive and descriptive, because the Community phenomenon is very interesting and entices one to analyse its rules and the regulations of activity. (2) Didactic, because an analysis of the Community indicates that all successful attempts to build a social order cannot be based exclusively on one type of institutional solutions. This fact is ~~not~~ unnoticed in post-communist transformation societies because two alternatives appear to dominate: both are radical and naive. They situate the transformation potential only (or even exclusively) in the institution of the market or the institution of the state, thus omitting the adaptive character of change and its specific, not only universal, aspect. A necessary element of a successful social transformation, however, seems to be the self-governing capabilities of society. (3) Normative, because the analysis of the Community illuminates the problem of the projected institution. This consideration should answer the question of how institutions influence an individual's choice. Institutions provide the basic structure of social order, bringing individual rationality into harmony with the rationality of the collective. Institutions are tools used to resolve the dilemmas of collective activity (P. Chmielewski 1994).

The new institutional approach (E. Ostrom 1991; R. Oakerson 1992) was used in this investigation of the Forestry Community, described both on the conceptual level and in terms of the Institutional Analysis and Development framework. Based on a few levels in the theoretical dimension (formal models, theories, frameworks), the IAD provides an exceptionally promising perspective for the development of an empirically grounded theory. This approach assumes that "(...) individuals find themselves in repetitive situations affected by a combination of factors derived from a physical world, a cultural world, and a set of rules" (E. Ostrom, R. Gardner, J. Walker 1994; 25).

1. The Physical World of the Tatras

Located in the Western Carpathian mountains, the Tatras make up the highest group of mountains, not only in the Carpathian curve but in the entire area between the Alps and the Caucasus and the Urals. The northern slopes of the Carpathians and Tatras are in Poland. Geographically, the Tatras are divided into Western and Northern. From the latter, the High Tatras, consisting of granite, and the White Tatras, consisting of limestone and dolomite, can be distinguished. In turn, the Western Tatras consist of a metamorphic scale (gneiss, amphibolite and slate) and two granite belts. From the structural point of view, the Tatras are a combination of three parts of different geographical construction and distinct landscape.

The Tatras, a mountainous alpine mass, stretches along the border between Poland Slovakia for approx. 57 km. in length and a width of approx. 18 km. Their entire surface area is approx. 780 km. sq.. Naturalists consider the Tatras to be a "miniature of the Alps" which, although they are almost 70 times smaller, contain all that can be found in the Alps. These mountain ranges have a similar complex covering and very diversified sculpture in which forms created in sub-tropical climates and in very cold climates, by a glacier, are maintained. (K. Trafas 1985; 4) The Tatras are Alpids (young mountains), the uplift of which occurred in the tertiary period. The highest peaks in the entire Tatra range are in the High Tatras (Gerlach - 2,654 m. a.s.l., Lomnica - 2,632 m. a.s.l.,

and Lodowy Szczyt - 2,630 m. a.s.l.). The highest, and practically inaccessible part of the Tatras (steep ridges) covers an area of approx. 340 km. The Western Tatra mountains are rounded and clearly lower (the highest peaks are Bystra - 2,248 m. a.s.l. and Starorobociański Wierch - 2,176 m. a.s.l.). These mountains, however, cover the largest area (approx. 400 km. sq.) The lowest mountains and those which cover the least surface are the White Tatras, standing opposite the main slopes of the High Tatras which rest entirely on Slovak territory. There too, is the greater part of the High Tatra and Western Tatra mountains. Only 180 km. sq. of the High and Western Tatra mountains are on Polish territory (therefore, less than 25% of their total area).

The Tatras have an alpine climate. The temperature clearly drops as the height increases (theoretically, by 0.6 degrees C for every 100 m rise). The average temperature in January is -9 degrees C at 2,000 m. a.s.l., and the average for July (the warmest month in the Tatras) is 7 degrees C. A frequent phenomenon which occurs particularly during a sunny winter is significant temperature inversion (even by 10 degrees C.). Snow cover in the Tatra often lasts for 8 months, and on shaded mountain slopes there are small fields of permanent snow. The Tatras are characterised by a high level of precipitation (a yearly average of 1,500 mm), half of which is snow fall. Strong winds often blow in the Tatras, the most troublesome of which for the Tatra people and trees is the wind blowing from the south, warm fohn winds.

The formation of the Tatras and their climate is linked with the flora and fauna which grow there. The Tatras are characterised by a large wealth of plant life compared to other Carpathian ranges. Approximately 1,300 plant species grow here, 2,350 of which are mountain and alpine species. Of the latter, seven endemic species which contain tertiary relics, Tatra saxifrage and Tatra larkspur, have been maintained.

The Tatra plant life is characterised by a clear layered composition, allowing for six levels of plant growth which can be distinguished, including a selection of species as the height of the mountain increases above sea level (J. Nyka 1972; 11, 12). The first, is the plateau level (cultivated fields), which reaches 1,000 m. The next two are forest levels. The lower sub-alpine forest level (reaching 1,250 m) is a beech-fir tree forest or fir-spruce tree forest. The upper sub-alpine level is predominantly fir trees, reaching 1,500 m. a.s.l. The upper border of the forest, in addition to dwindling fir trees, has also Ćel'sk willows, Carpathian birch, Mountain Ash and stone pine. The next, and fourth level reaches 1800m. This is a sub-alpine level of dwarf mountain pine (a shrub-like type of pine tree), diminishing progressively with the increase in the height of the mountains from thick growth to increasingly smaller clusters of shrubs. The fifth level (alpine), reaching 2,300 m., forms the mountain pastures. These are mountain meadows covered in grass of flowering herbs which until recently was a place of intense pasturage. The final peak level, with a clear predominance of rocky formation, emerges in full form only in the High Tatras. More than one hundred species of flowering plants grow along with the lichen (often crustaceous lichen) which dominates here.

In the forested levels of the Tatras live animals such as: deer, roe-deer, wild bore, fox, lynx and wildcats. The least numerous, yet the most destructive of the Tatra forests is the wandering bear, the total of which is evaluated at a few dozen. The higher level is the domain of species which do not emerge in the lower lands, such as the ground hog (in the lower part of the pastures) or maintain goat which lives in the pastures and peaks and meet here with ermines. Of the alpine

species of birds, the golden eagle deserves particular attention. Only a few pair of this species live in the Tatra peaks.

The Tatra are surrounded on all sides by depressions (valleys) at the level of 500 - 700 m. From the south at the foothills of the Tatra is the Kotlina Popradzko-Liptowska (Valley). From the east is Kotlina Spiska. From the north and the west is the Kotlina Orawsko-Nowtarska. The latter constitutes a significant part of the Tatra Podhale which interests us.

The Podhale is a long valley of various depths which lies between the Tatras in the south and Beskid mountains in the north (at a height of 700 - 1000 m), stretching from east to west across an area of approx. 57 km. and from the south to the north across an area of approx. 26 km. In addition to the above mentioned Kotlina Orawsko-Nowotarska (500-650 m), the other parts of the Podhale are: Rów Podtatrzański (800-900 m), Pogórze Gubalowskie (1,200 m) and Działy Orawskie (700-800 m). Kotlina Nowtarska has a gravel bed, left by a glacial river. It created the largest cold valley in Poland, characterised by the frequent appearance of mist, thermal inverses and temperatures which fall to -50 degrees C. Not much better climatic conditions appear in the relatively flat area of Rów Podtatrzański bed (often misty, cold, damp). The Podgórze Gubalowski which is on a higher level is warmer (with mountain slopes facing the north) and the lower, but more sunny Działy Orawski of Podhale.

The mountain folk called Podhalans live in Podhale. Their life is the most tightly linked with the Tatras. This existence, which seems to result from natural conditions, is not, nor ever was, very easy. In the opinion of geographers, in the past thousand years climatic and orographical conditions have not undergone significant change in the Tatra mountains (M. Klimaszewski 1970: 28). Despite the conditions which are so unfavourable to man (the vegetation period in the Tatras lasts from 0 - 140 days), Podhale has long been settled by populations engaged above all in animal-husbandry, shepherding and forestry.

2. Culture, Institutions and the Social Order

In analysing the culture, the basic principles of the social order of Podhale and the institution of the Forestry Community in Witów, one cannot ignore the historical dimension. This is for two mutually linked and complex reasons which are both specific and general. The first forces us to take into consideration the fact that culture of mountain folk is the result of complex processes, at work until somewhere at the end of the seventeenth and start of the 18th century. The institution of the Forestry Community itself -- although somewhat younger -- has almost two years of stormy existence behind it. At this moment one can call on the reasons or general regularities concerning the relations of history and the institution. These regularities create one of the most fundamental and commonly accepted assumptions of new institutional analysis (R. Putnam 1993; 7, 8). This is the assumption of the role of history in the human process of building the institution and the role of the institution in the understanding of history.

“History matters. It matters (...) because the present and the future are connected to the past by the continuity of a society’s institutions. Today’s and tomorrow’s choices are shaped by the past. (...). Institutions are the rules of the game of society

or, more formally, are the humanly devised constraints that shapes human interaction. In consequence they structure incentives in human exchange, whether political, social, or economic. Institutional change shapes the way societies evolve through time and hence is the key to understanding historical change. (...). Informal constraints come from the cultural transmission of values, from the extension and application of formal rules to solve specific exchange problems, from the solution to straightforward co-ordination problems. In total, they appear to have a pervasive influence on the institutional structure. Effective traditions of hard work, honesty, and integrity simply lower the cost of transacting and make possible complex, productive exchange. Such traditions are always reinforced by ideologies that undergrid those attitudes. Where do these attitudes and ideologies come from and how do they change? The subjective perceptions of the actors are not just culturally derived but are continually being modified by experience that is filtered through existing (culturally determined) mental constructs" (D. North 1993; vii, 3, 138).

Despite the unwelcoming environment, in the Tatra valleys one can find traces of human activity from the Neolithic and Bronze Ages and also from the Roman period. The name "Tatra" appeared for the first time in 1086 in King Henry the IV's document. From the historical point of view, the creation of mountain culture in Poland (and in Podhale) is linked with two long-term and complex processes. The first of these processes is described as internal feudal colonisation, probably beginning in the 12th century (in Poland, feudalism flourished in the 13th - 16th century) and reaching Podhale from the north. The second process, perhaps somewhat later (the earliest historical source indicating its existence is from the 14th century), is the process of Walachian migration, along the length of the Carpathians, from the east to the west.

Before beginning with the characteristics of the above processes, it should be stressed that the entire Podhale region, as well as the northern slopes of the Tatras, as unsettled land was, in accord with the regulations of the law at that time, the property of the prince or king of Poland. At the start of the thirteenth century, Podhale, in an act of monarchical favour, was given to one of the wealthy Malopolska houses. Its representative, the Cracow voivod Teodor, obtained the privilege to locate Germans in Podhale from Henryk Brodaty (a Wroclaw, Cracow and Wielkopolska prince) in 1234. While dying, Teodor offered Podhale to the Cistercian order which took it into possession in 1238. After one hundred years the Cistercians gave up the land (remaining only in a few towns) and Podhale again returned to the crown treasury. For administrative purposes, the Podhale region was established as a *starostwo* (district) of Nowy Targ in 1350, and somewhat later, at the start of the fifteenth century, a second district of Czorsztyn was established in Podhale. In this manner, the Tatra valleys and forests were exploited by the Nowy Targ the *starosta* (district head) and by people authorised by him. Independently of the *starosta*, the King gave various people habitation rights (for the foundation of new settlements) and special privileges, making possible the extraction of raw minerals. In brief, the villages of Podhale were still inhabited in the seventeenth century, either on the basis crown conferment or of the Nowy Targ *starosta*.

The process of feudal colonisation in Poland was composed of fundamentally planned colonisation and a less important spontaneous peasant colonisation on territories not yet populated. The first, predominant form, was organised by Kings, dukes, the church and knights. These colonisation processes indicate that there was a tendency toward the rationalisation of the economy as early as

the twelfth century. Economic historians characterise this planned colonisation movement and the settlement system which accompanied it in the following manner:

“The feudal lords began to reform farming on their property in the aim of drawing the maximum benefits. Their model could have been the monastic latifundia, organised by monks coming from the West, on the land that had been given to them. This tendency of increasing property returns, which occurred also in duke’s estates, placed more emphasis on exploiting the area of forests to the least degree possible. (...). This was chiefly a border forest, formerly protected from cutting for reasons of national defence. (...). From the second half of the thirteenth century, colonisation development began in the unpopulated regions of Podgórze Karpackie. (...). Cultivation of the forested regions was counted on for profits in the later future. The reforms introduced by large estates were not limited to this type of enterprise; they aimed also at increasing incomes through intensified farming in the already existing villages. To this end, already in the first half of the thirteenth century, in addition to establishing new villages based on German law (“from scratch” - as it was then called) the law was also transferred to already existing villages, grouping a few small villages into one and undertaking fundamental organisational changes.” (B. Zientara, A. Maczak, I. Ihnatowicz, Z. Landau 1965; 88, 89)

The introduction of German law to the villages (habitations rights) meant the introduction of new rules of social order based on the legal regulations of the western feudal system. The name of the peasant allotment, *lan* originates in the German word *Lehen* (feudal). The lan (in Podhale usually describe as a *role, i.e. farm*) created farming units and not a measurable area of assigned land. The size of the lan varied according to the type (quality) of soil (the worse the soil, the greater the area of the farming unit). Furthermore, the lan did not constitute a cohesive whole, but was usually made up of a few parts which included soils of various quality. In the villages which were being inhabited, a classification of lands was initially made on the basis of their quality, dividing the earth into three (or more) types of soil (*niwy*), which was then divided into individual lans. The organisational changes were also connected with the introduction of regular three-field rotation. In each of the soil, winter crops were cultivated, then spring crops and finally, in the third year the soil was left to fallow and used as a collective pasture for the village cattle. This three-field (and collectivist) rotation system demanded what was called a field constraint (everyone, regardless of their social rank, was forced to simultaneously cultivate the land in the same manner). As a whole, a village had the right to the use of the state forests (for putting animals out to pasture and the consumption of a defined amount of wood). The village also had collective (commune) land (for pastures, forests, peat, etc.). The representative and at the same time the vassal of the lord in the village, was the *soltys* (village administrator). His vassal responsibilities (military service, mail and packages, symbolic levies and lodging the visiting lord) were returned with a breadth of privileges which constituted all the dimensions of his social position. The *soltys* usually had an inn and a mill, the exclusive right to brew beer, collected a special levy from the village crafts-people and property fees (in kind and money) for the lord and kept 1/6th of the total for himself. The *soltys*, representing the lord in the village courts, usually received one third of the fines and court fees.

The internal colonisation process developed, basically, from north to south. We say basically because the villages which are presently at the foothills of the Polish Tatra mountains were also partially established by Germans coming from the Spisz region in the south-east, as indicated by the names of some of the villages (for ex., Waksmund or Szaflary). It appears that in the 14th - 15th century, a mixing of the Polish population from the north and the German population from the south occurred. As a result, the German population was Polonised (as indicated by the decline of German and increase of Polish names in the sub-Tatra population).

The second settlement process in the Tatras we mentioned had its roots in the east. From the east (probably from Siedmiogród) in the Western Carpathians came a population of Romanian-Baltic ^{Albanian} origin. This is indicated by the presence in the Podhale dialect, of loan-words from the Romanian and Albanian languages, as well as by the numerous similarities in the elements of belief systems, music and material culture (K. Dobrowolski 1938). Groups of incoming shepherds in the mountain plateaus and pastures occupied the high peaks of the Tatras. Through burning down the forests, they created new, artificial pastures.

“With the passage of time, some of these shepherds settled in the forested peripheries of farming villages and some began farming. Due to this, conditions arose for the process of the biological, economic and cultural crossing of two waves of settlers. (...) In Podhale, this was at its height in the second half of the 16th century and the first half of the 17th century (...). In the villages which emerged at this time, primarily a system of forest allotment arose. The total area of these settlements covered only a relatively small number of hectares, averaging from less than a thousand to a few thousand in total. The organisers of these villages were almost exclusively peasant-soltys’, who’s legal-farming situation was based on mediaeval models of German law. The economic order of these villages, however, was clearly composed of an agriculture and shepherd economy. (...) It is characteristic that two economic systems were combined: agriculture, based on regulations of German law, and shepherding, described in later settlement documentation as ‘Walachian law’.” (K. Dobrowolski 1960; 35, 36)

In most general terms, the culture of Polish mountain folk (including those from Podhale) was the specific result of processes of the mixing of agricultural cultures and shepherding culture. The first, assimilated many elements of the language and culture of the shepherd nomads (ideational and material). The latter, however, gradually adapted to the settled life style and the foothill agricultural culture, conducting shepherding and animal husbandry.

The Walachian law of habitation was basically a modification of the “German law”. These modifications resulted from another type of basic economic activity of the settling shepherds. Walachian law accelerated the process of moving from nomadic life to agricultural farming. This law was the specific result of the action of political authorities interested in tying “unconstrained nomadic shepherds” to one permanent place (preferably settling them in villages). This allowed for the imposition of greater property fees and made their exaction easier. In addition to these planned activities of the authorities, settlement processes and the gradual movement of the pastoral population toward agriculture, to a large extent was supported by “(...) its natural population growth, connected with the decreasing amount of pastoral lands. This was a strong factor which

broke the stubborn tradition and unwillingness to change their life style." (K. Dobrowolski 1930; 13, 14.)

It should be clearly emphasised that the above presented types of organisational changes of villages settled according to German law apply primarily to Polish low-land territory and Pogórze Karpackie. On its southern border, in southern Malopolska in the territory of the foothills and mountains, the situation is somewhat different. It reflects, in a clear manner, the necessity of adapting general and fundamental legal-organisational solutions (regulation of German law) to the demands of a diversified natural environment. The villages settled in Podhale according to German law carry the name of either "soil villages" or "forest allotment villages", and the closer to the foothills of the Tatras, the more often the latter occurs.

"A village of forest allotment villages with settlements winding like a chain along the path of the Carpathian rivers along the length of the mountain valleys presents a uniform settlement stretch which reaches across a distance of almost twenty kilometres today. This reflects the progress of agricultural settlement from the Vistula lowlands and mountain valleys into the depths of the mountains, toward water sources and processes of these settlements becoming more dense through history as a result of a population growth." (M. Dobrowolska 1976; 124)

In addition to the spatial order, there are a few differences worthy of note between the soil villages and the forest allotments in Podhale. Studies on specific villages (referring to mediaeval cadastral books and maps) indicate that one of the most important differences is the absence of the field constraint in the forest allotment villages, which in the soil villages was connected with the three-field rotation system, which was the basis of agricultural activity in these villages. In this system, until the start of the 19th century, every three years the main fields lay fallow. The cause of this type of activity was not only a deficiency of fertiliser but the rules determined by tradition according to which (and not only in Podhale), after having yielded crops the earth should rest.

It is important to note that the field constraint often functions in the Tatras even today, where the narrow fields "encourage" co-operative activity and the subordination of individual behaviour to the collectivists needs (for example, the use of given soil after harvesting for a communal pasture).

Soil villages were also characterised by having common community land (particularly meadows, pastures and forests). These community lands and the communal organisational solutions associated with them do not occur in the case of mountain forest meadows or in allotment villages. The latter, for example, did not have a collective pasture. The grazing area for the cattle was located on the private property of the owner of the given *lan*. Communal pastures and communal forests were located exclusively within separate lans or clearings as communal family lands. These lands were usually located higher on the mountain slopes, in more remote parts of the *lan*, indicating the clear influence of the environmental-technological attributes on legal-organisational solutions. Evidence of this can be found outside of Podhale as well. An expert on eastern Malopolska, in which the communal community exceptionally bound to grain and pastoral farming dominated until the start of the 19th century, notes that:

"In contrast to the plains, in the mountainous terrain of eastern Galicia the rule is that of individual holdings (although it seems here that there is often indication of collective holdings of the "large family" type). In typical forested surroundings, when the farms were established primarily on cleared forest plots, the community unit was come across relatively rarely." (R. Rozdolski 1936; 8, 9)

One can then, it seems, speak of the exceptionally important influence of environmental and technological factors on institutional development. This, however, is only one group of attributes forming the relationship between people. Without great difficulty, one can also show that the influence of the environment is only part (although a very important part) of the whole history. In organisational solutions, often a very important role is played by traditional institutional rules. This is also clearly visible in the Tatras. The soil village system ~~was~~, as we recall, was brought to Podhale by Germans from Szpisz and spread across the southern side of the Tatras. Furthermore, Polish settlements in Podkarpacie adapted the forest allotment villages system. Polish settlers penetrating into Orawa with this system, met in this part of the Carpathians with almost the same environmental conditions of the soil village system in some valleys, and with the forest allotment village system in neighbouring valleys. On the Polish side of the Tatras as well, soil and forest allotment villages exist side by side (a good example of this are the villages of the Community we are interested in).

As already indicated, the soil villages had always a few common grounds among them. They consisted primarily of pastures, meadows and forests. Of exceptional importance was the fact that:

"The right to use collective land was based on the possession of land in one of the farms. All of the farms participated basically equally in benefits drawn from the collective land. Not the amount of individual farms in whose possession the given *lan* was located, but the land surface area (farm, house) was the guiding rule, determining the amount of the rights to profit from the collective land. If, therefore, land A. was owned by three farmers, and land B. was owned by 6 farmers, then the latter would have only those rights which the owners of land A have. This general theoretical principle, maintained in the tradition until today, is undoubtedly the result of a primary assumption that for every farm in the soil village there belongs an ideal piece of community land. The practical implication of the above rules appeared, however, in mainly in cases where the area of the collective land was small in relation to the needs of the population of the given settlement. This concerned the pastures to a lesser extent and the forests to a greater one." (K. Dobrowolski 1935; 56, 57)

In addition to the local community, other types of communities occurred in Podhale which had the traits of corporate groups. Ethnologists call these "secondary kin groups", indicating that in Podhale, "because blood relations occurred (lineage or patronymic), the ideology of the village community was unable to dominate the family form" (S. Szykiewicz 1976; 476-480). In these cases, related families created specific local social units. Two kinds of blood relations can be distinguished in Podhale: peasant serfs and much more lasting *soltys* family relations, the remainder of which can still be found today. This second type of organisation occurs above all (but

not only) in village fiefdoms or in the clearings, as a good example of customary law. It was linked with special land conferment and other privileges for the *soltys* of the settled villages.

“The *soltys*, predominantly of peasant origin, (...) had personal freedom and the highest rank in the social hierarchy of the village. They could settle a certain number of tenants on their lands as a work force. Personal freedom was linked with land given to the *soltys*. If the descendants of the first *soltys*’ moved to other villages and settled on land occupied by peasant ‘serfs’ and ‘hard workers’ (*laboriosi*), they would lose their hitherto existing personal freedom and become serfs of the patronymic authorities. In these conditions a certain development tendency, characteristic for the majority of Podhale *soltystwo*s occurred. It was manifest in: a. the division of the *soltystwo* among male descendants, b. in the fact that a male peasant from the neighbouring village was not allowed to settle in the *soltystwo* through marriage, and in marrying either distant relatives born on the *soltystwo* property or with women from the neighbouring villages. Because of this, as time passed there emerged a concentration of families in a few dozen farms which had the same surname” (K. Dobrowolski 1973; 66, 67).

As a result of the principles of endogamy in the *soltys* settlements, in many villages there were families with the same surname, connected by strong economic links. In the villages which interest us, for example, in the nineteenth century we meet with this type of phenomenon. In Ciche (a forest allotment village), the Miêtus family dominates (31 home) and there are additionally only 4 families with other surnames. In Podczerwony, there are two branches of related families: 10 Podczerwiński’s and 17 Lej’s and five other surnames. In the Wróblówka village of 16 families, 10 of are the Bobek family. In Chocholów, however, there are only 8 families of Zych’s in 46 farms, which indicates that the social position of the first *soltys* degraded early (cited from: K. Dobrowolski 1966; 231).

We will look now at the economic correlates of the feudal social order, while at the same time recalling the ecological specificity of the area. Podhale is located in the first ~~main~~ economic region of Malopolska distinguished by historians, in the mountainous Carpathian region (A. Podraza 1970). It is characterised by very low agricultural development, caused by the unfavourable formation of the land, with worthless mountain clays and short vegetation periods. This means that the crops are not very productive. The region has a significantly lower percent of arable land in the entire acreage than in other areas of Malopolska. In the second half of the eighteenth century, cultivable land covered approx. 42.7% of the entire acreage in the mountain region, of which the percentage of arable land brought 25% of the total. The forests, however, constitute 34.1% and the pastures and meadows, 22.1%. The low agricultural development is also confirmed by the sowing structure in which oats dominated (80%).

The environment of the region, significantly limiting the possibility of farm cultivation, also caused the marginal development of large-farm economy (only approx. 10% of the cultivated land was held by large owners, primarily small large-farms). In this area of the absolute dominance of oats and poorly developed large-farms, pastoral animal-husbandry and forestry were of great importance. Their significance varied, however, because of the differences in the spheres of production organisation. Animal-husbandry, with its low merchandise value, did not play a

significant role. It was basically conducted in peasant farms. They grazed mainly sheep in the mountain pastures. These pastures were used not only by the villages which were in direct proximity of the Tatras such as Dziańisz, Witów or Chochołów, but also those which lay further away, such as Podczerwone or Czarny Dunajec. The number of sheep in the specific villages could differ, but the average number kept in mountain villages was a few hundred. One of the inspections in the middle of the eighteenth century counted, for example, 11,035 sheep in the Nowy Targ *starostwo*, owned by Podhale peasants, for which a levy of 12 gr. was paid for each sheep.

As much as the pastoral economy was the domain of peasant farms, forestry was above all in the hands of large properties interested in the exploitation of the forests.

“The absolute majority of the forests in the Carpathian lands was in the hands of large property owners, although it should be noted that in comparison with other areas, the percent of forest in the possession of peasants was relatively high. (...) forests made up for 82.1% of the entire productive large properties, and only 20.1% of the productive peasant property (H. Madurowicz, A. Podraza 1957; 101).

It should be recalled that in connection with the settlement policy of the state, crown property had a significant share of these large properties. The share held by the crown was particularly large in the forests in the mountains and foothills (just as here there was a high percentage of crown villages). The average size of the *starost* was significantly greater in the south than in the remaining regions of Malopolska. This fact has a lot of interesting consequences, linked with the economic, political and social aspects of forest ownership. This author does not hesitate to risk the claim that the forests at this time were a form of good which could create more social tensions and conflicts in this region than the cultivated lands. Particularly in Podhale. A lot of peasant rebellions provide evidence of this (particularly serf peasants). Some of them the historians describe as uprisings. They were the result of general and local conditions.

The feudal system, with its complex structure, created a multiplicity of dependencies between various social groups, defined in legal and binding categories, creating a defined structure of incentives. Were we to treat the process of feudal colonisation as economic rationalisation, the changes in the environment in which the process occurred would imply changes in the strategic choice of the main actors and as a result, changes in models of interaction. These changes were not always peaceful or amicable in character.

We begin with the reminder that after feudalism flourished in Poland (in the 13th-16th century) the dominant type of farming became the large-farm and serf form (16th-18th century), which was based on the large export of wheat to western countries. This victory of large-farm and serf farming was accompanied from the start by signs of failure. Its external indications were, for example, the ruin of cities as industrial and trade centres, as well as the *de facto* return to natural economy. The institutions dominating in Poland at this time:

“Severely limited free access to the market, fought price liberation, supported the naturalisation of production for domestic needs, discouraged investment of both money and in kind, tolerated monetary chaos, etc. (...). That which lead to the

actual regress of the market economy in Poland was the calculated development of its trading relations abroad. They were based on the exportation of grain primarily and the importation of primarily processed goods. (...). The persistence of this system of relations in Poland was based mainly on the fact that in the long run a systematic improvement of the terms of trade would occur. From year to year the noblemen producing grain and transporting it to Gdansk, for a bushel of rye, for example, could buy more cloth, wine, arms, trinkets, etc. The prices of the majority of imported goods systematically fell in relation to the price of grain. The next generations of these specific 'large-farm entrepreneurs' thus learned that without having to calculate, invest or be innovative, without developing market activities (and even limiting it within the country) they could automatically expect better and better conditions every year. That only bad crops or foreign invasions could disturb this" (J. Beksiak 1994; 13, 14).

It is important to add to that which was said above that in this situation the owner of a large-farm could increase his income primarily through intensification and development of the farm's production, which in practice meant that the existing rules were often broken and the burdens on the direct producer were increased (increase the number of serf days or, simply, exalt property fees in cash or in kind). These burdens, therefore, took on the character of obligatory rent payments through labour (northern Malopolska) or rent payments in money (in the form of permanent land fees or leasing for services) on mountain or foothill terrain (A. Falniowska 1957; 174). More innovative "entrepreneurs" could also increase their incomes by, for example, extending the acreage of manorial land (which often meant the same as displacing the peasants from their land). The reaction to this kind of activity took on various (more or less violent) forms.

We now return to Podhale where cultivated large-farm farming existed to a small extent and the income from it was but a drop in the sea of feudal incomes. Basic income came from forestry for which a leasing system was commonly used on crown territory and created incentives for ruinous exploitation of the leased natural resources (forests, meadows, raw materials) and disregard for the serf population. At this time, the export of grain in Poland achieved its greatest volume around 1770. Once this turning point was reached, however, a dramatic collapse of the market and drastic decrease in the price of grain occurred. The fall could be the result of the emergence on the western market of American, Prussian and Russian grain. The reaction of the nobility to this situation was to compensate for the lost profits through increasing the export of wood.

The change in strategy meant a change in the rules of exploiting forests, and in turn, changes in social patterns of interaction. *Starosts* and other leasees of crown forests not only increased the cuttings, but attempted to limit the customary right of peasants to exploit the forests, refusing them the right to cut wood for their own needs (building and burning). Besides a fairly common rent payments in money, rent payments through labour were also maintained (both in the purely serf villages and in the "mixed" ones). The peasants were only obliged to do various jobs connected with forestry. The peasant population did of course undertake production or wood treatment independently (particularly saw mills or carpentry). This made them tend to more energetically defend their rights.

The people of Podhale used various forms of defending their rights, attempting at the same time to change the working rules. One of the methods of resistance of a village toward manorial lords was to bring complaints to the district authorities. These complaints were often brought by the majority or even the entire groups (of villages) of a given *starostwo*, which decreased the costs of the legal process effecting every village. In 1767, for example, a complaint against abuses by the *starosta* was made by at the district office by 36 villages of Podhale (including all seven of those which later joined the Forestry Community in Witów). Another form of resistance was the refusal to meet obligations forced upon them and determining them independently. The massive action of peasants was a subsequent method of battle with the *starostwo*'s jurisdiction in the crown lands. In exchange for the take over of the group of pastures and meadows, the peasants conducted collective invasions on manorial land.

“Another object of frontal attack by the village on the manor was the forests, the source of construction and firewood, which the manor's policies attempted to appropriate for their own use. The peasants, calling on the privileges granting them the right to clear the forests did not wait in the processes for a sentence, and undertook massive cuttings” (A. Owsinska 1957; 420).

Finally, it is important to recall here the Podhale uprisings which exploded from time to time (17th-19th century) and an equally active form of looking for justice in the form of redistributed compensation, that is, robbery. The robbers organised themselves into small mobile groups called “associations” in Podhale.

Of course the above form of resistance against the imposition of new rules of social order (which, furthermore, often underwent arbitrary changes), do not negate the fact that in the said territory rent payments in money dominated at the end of feudalism. This fee was not at all small. In the Wróblówka village, for example, land fees from farms were 157 zlp. at that time, for an average of 54 crown villages in the foot-hills and 107 zlp 15gr. for one serf farm (A. Falniowska 1957; 210). It appears to result from this that owning small field on the weak “oat” Podhale soil must have had to find income from sources other than farming.

“The sale of products from animal-husbandry farming, forestry, wood industry and fabric became the main source of income for the mountain and foothill populations in the Malopolska area. In addition to this, however, attention should be brought to other important, although certainly not popular ways of earning income in the sub-alpine villages. We are thinking here of the departure of peasants from this territory for paid labour, to the low-land farming areas of Malopolska and to other regions of the country” (H. Madurowicz, A. Podraza 1957; 139).

We add that in the subsequent century, this migration is joined by the phenomenon of emigration (which is exemplified perhaps best by the example of the Polish quarter of Chicago).

With their own true sense of humour, the mountain folk speak about the climate in Podhale in the following manner: “Ten months of winter, and all the rest is summer.” This saying is a characteristic but also an accurate parable of the Podhale mountain culture. This culture is exceptionally rich, at once multi-dimensional and unique. This is certainly why everyone

recognises the Witkiewicz "Zakopane style" inspired by the traditional Podhale architecture. This is why the Tatra (Podtatrzańska) music can be heard in both Paderewski and Szymanowski. This culture was created in raw conditions which demanded a great effort from man. Not only natural, but economic and social as well. The mountainous Podhale culture is a culture built hand in hand with nature. This is a culture of work and effort. But at the same time, it is a culture of well-deserved relaxation and above all reflection and prediction. This culture can be better understood while reading S. Witkiewicz or K. Tetmajer where one hears the mountain dialect. The legends and tales of Podhale are full of reflection, opinions and choices made. It is an image of the mountaineer's cognitive map, the manner of thinking, knowledge and ideas which are at the command of the individual. Earlier, we brought attention to the fact that the characteristic trait of Podhale mountain culture is the ability to individually resolve their own problems (whether they be individual or concern the entire society). This capacity seems to be the result of reflection which is strongly linked with the feeling of freedom, dignity and the responsibility of man for his actions. The fundamental values of the Podhale mountaineers.

3. The Institution of the Forestry Community in Witów*

Following the first partition of Poland, the Podhale *starostwo*, until then the administrator of the Tatra crown lands, became the property of the Austrian emperor (16 of August 1773). These goods entered the Austrian Chamber of Finance. The goods were administered by the Chamber Headquarters (Prefecture) in Nowy Targ, and direct supervision of the forest was conducted by forestry officers located in Poronin.

The Austrian authorities, in accord with Joseph the 2nd's doctrine of bureaucratic absolutism, using the so called "Jacobine reforms", attempted to rationalise the economy on Tatra terrain.

"In connection with this, they began to regulate and limit the traditional rights of permission, law and servitude. This caused many conflicts with authorities and the first forced evictions. At the same time, the Prefectural Chamber began to afforest some of the Tatra territories. Administration of the dispersed areas proved to be a serious problem for the Chamber in Nowy Targ. This too is why the decision was made to circumscribe the Chamber forests which they intended to obtain through land exchange. The precise measurements of the forests, mountain pastures and fields were prepared as well as a map with a table of measurements. Before long, however, in 1811, because of financial difficulties with the imperial treasury, it was decided that the Chamber lands would be sold. (...). At that time, in order to make the sale easier, the Tatra and sub-Tatra terrain was divided into four sections: Szaflarska, Bialczyńska, Zakopiańska and Witowska" (J. Roszkowski 1993; 118).

In May of 1819, "Witowska section IV" was bought in an auction in Lvov by count Jan Pajęzkowski. It is from this moment that the history of the Forestry Community in Witów begins.

* Thanks to Stanisław Solarczyk, the Forest Inspector of the Forest Community in Witów, for his help and giving me access to documents and material concerning the Community.

Pajłczkowski bought the lands "in the dark", on the basis of a map and counting on many profits. When the contract of sale was verified in Vienna in September of 1819, he went to Czarny Dunajec in order to see, as the formal owner, his property which was called "The Lands of Czarny Dunajec and adjacent areas" or "The State of Czarny Dunajec and adjacent areas" (that is, the seven said villages).

As the owner of this Dominion he obtained the services of the feudal serfs and the serfs as his own. The entire surface of the "State" was 24,400 Austrian *morgs*. They consisted of "manorial" land (state), therefore forests (6,176 *morgs*) and "rustic" land (peasant) settled mainly by the peasant serfs. On the basis of the imperial decision at the time of sale, however, the use of this land was clearly reserved for the serfs. They were, however, to suffer levies and duties to the new owner, just as they had done earlier for the Austrian treasury (and still earlier for the King or Nowy Targ *starostwo*). Hence, the only actual "easy" subject of transaction was the "manorial" land (state), that is, the forests (to presently become the property of the Community).

As the new owner, Pajłczkowski, however, was obliged to be in charge of executive and judicial offices (manorial). These were linked with the costs connected with maintaining the manorial administration and forest administration, including easements for the rights of the population, participation in maintaining the churches in Czarny Dunajec and Chocholów and other expenses. Not one large-farm remained where he could live. The rickety agriculture and forests which lay high in the mountains without any kind of road must have powerfully disappointed him. In addition - as the voice of tradition says - while making clearings to the forests, his peasants on the borders of Witów (where the manorial land began) refused to accompany him any more for fear of rebels roaming in the woods.

We still do not know if it was cold economic calculation, or fear of the wilderness of the new acquirement which influenced the decision of the new owner to withdraw from undertaking his own enterprising (he paid half of the purchase price). In any case, he began to get the peasant to buy his lands from him. In this manner they freed themselves from serfdom and all responsibilities of servitude which they owned the owner of the "Dominion". Thus they became at once free people and proprietors of the forest. The peasants decided to make use of the occasion and to buy the offered lands, in order to "free themselves and their descendants from serfdom and servitude - and in order to have their own forests which made up the fundamental material of their farms. They agreed to give Pajłczkowski the demanded 12,000 Zlr., and to themselves pay the second half of the sale price in instalments to the treasury in Nowy Sącz, thus they bought the goods for a total of 17,750 Zlr. and 30 *krajcary*" (J. Brzysiak 1959; 9).

In proceeding with the sale, the peasants began their activity from establishing "boundary rules" which are reflected in the present Community Statute (1966). They decided that all of the peasant serfs from the seven villages (Ciche, Czary Dunajec, Chocholów, Witów, Dzianisz, Wróblówka and Podczerwone - with the Koniówka village) would buy into collective use, but only those who lived in the so-called farms (rola), half-farms (półrola), homes (zagroda) and quarter-farms (ćwierćrola). The residents of the so-called "soltys farms" in Chocholów, Podczerwony, Wróblów and the "landless" from Dzianisz were the only ones excluded from the Community. Their exclusion from the purchase was grounded in the fact that they were relatively free people and had had the right to collect firewood and lumber for construction from these forests for a long time. This right

60

guaranteed them the privileges still given by the Polish kings in the colonisation period and the right which the Austrian government recognised. For similar reasons, the so-called "meadow-dwellers", that is, individual peasants settled in the forests on the fields, were also excluded. For other reasons, the so-called "cottage-workers and landless peasants" living in these villages were excluded, as well as the so-called "priests' serfs" of Czarny Dunajec. The first were refused because they had neither homes nor land. The latter, because they had never had any rights in these forests.

Another group of rules established by the "serfs" prior to the act of purchase were regulations defining the benefits and costs which are called payoff rules. The buyers decided that all farms in the seven villages would take an equal share in the purchase, whereas, while buying everyone would buy that part of the forest and entire property which he had in the farm in which he lived and farmed or that part of the land he had in other farms. The entire price of the purchase, therefore, was divided by the buyers into equal parts into farms which in every village equalled a total of 76 and 1/4. Next, the so-called "dziesiętnicy" (tax collectors) went from farm to farm and collected money from specific peasants, taking note of the numbers of the houses that had paid. In this manner, all of the farms participated equally in the purchase and the specific peasants contributed money proportionally to their share in the given farm property. After collecting the entire sum necessary, the problem of putting the very act of purchase into implementation emerged.

The peasant serfs could not at this time be proprietors of registered lands (the so-called register, the national books), hence they were unable to complete the transaction. In order to evade this law, they presented their countryman from Czarny Dunajec, father Józef Szczurkowski, the Bóbrka (near Krosno) parish priest.

"Clergy had the right to obtain these lands, which is why the peasant wanted their friend and countryman to buy these lands in his name, but for them, for which they were to give him an award for having obtained the property, hence Father Szczurkowski was to give them a receipt 'that all of the income from this estate and individual freedom will be theirs' - that is, he was to give the peasants, as the real proprietors, all of the statements and accounts from the income" (S. Solarczyk 1993; 2).

Szczurkowski took the money from the 83 peasants, but cheated them and obtained the goods as his own exclusive property. When the peasants found out about this, they went to the provincial authorities with a complaint. Szczurkowski left the goods then to his nephew who, as a lawyer, arranged it so that the suing peasants began to face financial ruin. Making use of the dispute between Szczurkowski and the peasants, the next registered owner of the lands became baron Kajetan Borowski in 1826. Tired of the unyielding peasants in their battle to regain their land, he left the lands to his brother Bieronim after 13 years.

We add that the administration of Kajetan Borowski has become a classic example -- given in history texts -- of the persecution of the peasant serfs. In the opinion of historians, the many years of brutal conflict which Borowski conducted with "the serfs" to a large degree lead to the outburst in 1846, the Peasant Uprising. In an armed surge of 300 Tatra mountain folk from Chochłów

against the oppressive feudalism and the Austrians, peasants from Ciche, Dzianisz and Witów also participated. The peasants from Czarny Dunajec, however, were against them.

There is no room here for a recounting of the entire conflict or listing the subsequent owners of the manorial goods. As a result of the complaint made by the mountain folk to the imperial seat in Vienna, after long-term processes and procedural conflicts, the Supreme Court in Vienna, annulled all illegal documents in 1865 and returned the property to the commune as a legal subject. The goods were presently registered in the name of the commune two years later. This meant that the commune was listed as the owner of the lands and not the individual peasants, as the actual owners. It is important to recall that the commune, as a legal subject, did not take part in the purchase at the start of the entire issue (seeing no interest in this, nor having the necessary financial capacity). This registration brought on more processes and procedural conflicts. For the commune considered the peasants to be the owners of the lands and gave them wood from the forests and other forest products for free, whereas, the state administration recognised this economy as wasteful and introduced forest administration of the forests by special administrators, many times suspending the commune administration. In turn, the peasants continuously demanded that the lands be returned, not recognising the commune in the register.

In this manner, The Forests of 7 Communes, were collectively used until 1919 when the communes physically divided the property on the agreement of its users and owners. The division was confirmed by the Powiat Court in Czarny Dunajec in 1922. From this time, the communes (villages) achieved their own area of forests and the rest was considered the property of the peasants, the descendants of those who had bought these forests. These very peasant-descendants decided about the issues of the Community, and the communes executed the administration only in their absence (this was forced on the communes by the state authorities).

The next radical change in the administrative structure of the 7 Commune Forests occurred in 1955. In 1954 in place of approx. 3,000 communes, approximately 9,000 communities established. The District National Council became the organ of territorial authorities ("the corner stone of socialist democracy") with the Presidium as the executive and managerial body. In this situation, the co-owners ran into the problem of how to eliminate from the process of managing the Community forests, representatives of the district council presidiums who were unauthorised to make decisions. As it turned out, the mountain folk also managed with "the corner stone of socialist democracy". In recognition of the fact that the district properties and communes are considered to be state property and also indicate the clearly distinct character of the Community property (as the collective exploited property of a certain group of people), the members of the community - just as their grandfathers and fathers earlier - managed the property that had been given back to them as their own, and introduced their own appointed administration through entirely authorised persons.

In 1956, the authorities expressed their agreement that the collective property be transferred by the communities to the authorised persons in the specific 8 villages. The district authorities in Nowy Targ decided to have the administration manage the property of the authorised 8 villages, which this administration the authorities established among themselves in the form of Forest Committees from the specific villages. At the head of the Committees are their Leaders. The Leaders make up the Board. The property of the Community, formerly called the 7 Forests District (Community) in

Witów (and even earlier, 7 Communes), adopted their present name, the Forestry Community of 8 Authorised Villages in Witów. Despite the transfer of the property to the Community in administration, the authorities decided that the change in the registration of this property would be made at a later date. The Forestry Community successfully became autonomous. For example, as a result of the seven corrections introduced to the statute in 1976 and accepted by the territorial state administration authorities, the Community resigned from having to come to an understanding with (that is, consult with) the state territorial authorities on issues which are important to the Community. Those, for example, such as the election of a Leader, his deputy and the secretary of the Board, or necessary approval of the National Council Resolutions by the state administrative organ. This leads us to the problem of rules organising the Forestry Community activity.

At this moment we note that from the historical point of view the Community was successful in maintaining its existence and performing in a productive (even obstinate) but also flexible manner, established self-governing policies. The role of culture, reflective choice and ideas of responsibility and freedom, appear to be incredibly important elements in the designed institution of collective activity. This is why, it seems, in documentation and letters concerning the Community, one often meets the opinion that is it "one big inheritance and a great treasure for only authorised persons - inherited from their ancestors, constituting the material basis of their existence, both present and past - both themselves and their descendants" thus their history "should above all recognise those who are authorised, such that those who use the forests can duly judge their sacrifice and suffering of their fathers for themselves and their descendants in obtaining these forests, so that they know how to respect this inheritance and not bring it to ruin" (J. Krzysiak 1959; 4, 25).

Bibliography

Beksiak, Janusz. 1994. "O restauracji kapitalizmu w Polsce" (The Restoration of Capitalism in Poland). In: *Pięć lat po czerwcu* (Five Years After June), Jan Winiecki (ed.), pp. 11-32. Warsaw.

Chmielewski, Piotr. 1994. *Nowa analiza instytucjonalna. Logika i podstawowe zasady* (New Institutional Analysis. Its Logic and Basic Principles). "Studia Socjologiczne", no. 3-4, pp. 216-253.

Dobrowolska, Maria. 1976. "Rola środowiska geograficznego i procesów osadniczych w kształtowaniu różnicowań kulturowych" (The Role of the Geographic Environment and Settlement Processes in the Formation of Cultural Differences). In: *Etnografia Polski. Przemiany kultury ludowej* (Polish Ethnography. Changes in Folk Culture), Maria Biernacka, Bronisława Kopczyńska-Jaworska, Anna Kutrzeba-Pojnarowa, Wanda Paprocka (ed.), pp. 90-141. Wrocław.

Dobrowolski, Kazimierz. 1930. *Migracje wołoskie na ziemiach polskich* (Walachian Migration to Polish Lands), Lvov.

Dobrowolski, Kazimierz. 1935. *Najstarsze osadnictwo Podhala* (The Oldest Podhale Settlement), Lvov.

Dobrowolski, Kazimierz. 1938. *Elementy rumuńsko-balkańskie w kulturze ludowej Karpat Polskich* (Romanian and Baltic Elements in the Folk Culture of the Polish Carpathians), Warsaw.

Dobrowolski, Kazimierz. 1960. *Studia nad kulturą pasterską w Karpatach północnych. Typologia wędrówek pasterskich od XIV-XX wieku* (A Study on Pastoral Culture in the Northern Carpathians. A Typology of Pastoral Wanderings Since the 14th-20th Century). "Wierchy", vol. 29, pp. 7-51.

Dobrowolski, Kazimierz. 1966. *Studia nad życiem społecznym i kulturą* (A Study on Social Life and Culture), Wrocław.

Dobrowolski, Kazimierz. 1973. *Teoria procesów zwiolowych w zarysie* (Sketched Theory of Spontaneous Processes), Wrocław.

Falniowska, Alicja. 1957. "Dynamika form i wysokość renty feudalnej w królewskich ziemiach Małopolski Zachodniej" (The Dynamics of the Form and the Level of Feudal Annuities in Crown lands of Western Malopolska). In: *Studia z dziejów wsi małopolskiej w drugiej połowie XVIII wieku* (A Study on History of the Malopolska Village in the Second half of the 18th Century), Celina Bobinska (ed.), pp. 57-250. Warsaw.

Krupiński, Józef. 1959. *Geneza państwa i polityki leśnej reprezentacji w Tatrach* (The Origin of the State and Forest Policy Representation in the Tatras). (Witold)

Marchlewski, Andrzej. 1982. "Obecne tendencje w turystyce tatrzańskiej a problem zagrożenia obszaru Tatrzańskiego Parku Narodowego" (Present Tendencies in Tatra Tourism and the Endangerment to the Tatra National Park). In: *Zachowanie walorów przyrodniczych a pojemność turystyczna górskich parków narodowych w Polsce* (The Conservation of Natural Qualities and the

Touristic Capacity of Mountain National Parks in Poland), Kazimierz Zabierowski (ed.), pp. 67-78. Warsaw-Cracow 1982.

North, Douglass C. 1993. *Institutions, Institutional Change and Economic Performance*. Cambridge.

Nyka, Józef. 1972. *Tatry* (The Tatras), Warsaw.

Oakerson, Ronald J. 1992. "Analyzing the Commons: A Framework." In: *Making the Commons Work. Theory, Practice and Policy*, Daniel D. Bromley (ed.), pp. 41-59. San Francisco, California.

Ostrom, Elinor. 1991. *Governing the Commons. The Evolution of Institutions for Collective Action*. Cambridge.

Ostrom, Elinor, Roy Gardner, James Walker. 1994. *Rules, Games and Common-Pool Resources*. Ann Arbor.

Ostrom, Vincent and Elinor Ostrom. 1991. "Public Goods and Public Choices: The Emergence of Public Economies and Industry Structures." In: *The Meaning of American Federalism. Constituting a Self-Governing Society*, Vincent Ostrom, pp. 163-197. San Francisco, California.

Owsinska, Anna. 1957. "Masowe wystapienia chlopów w królewskich ziemach na terenie woj. krakowskiego" (Mass Peasant Movements in the Crown Lands of the Cracow Voivodship). In: *Studia z dziejów wsi malopolskiej w drugiej polowie XVIII wieku* (A Study on the Malopolska Village in the Second Half of the 18th Century), Celina Bobińska (ed.), pp. 401-441. Warsaw.

Podraza, Antoni. 1970. "Rola gospodarcza Malopolski w okresie od XVI do XVIII wieku" (The Role of the Malopolska Farm from the 16th to the 17th Century). In: *Kraków i Malopolska poprzez dzieje* (The History of Cracow and Malopolska), Celina Bobińska (ed.), pp. 33-49. Cracow.

Putnam, Robert D. 1993. *Making Democracy Work. Civic Traditions in Modern Italy*. Princeton, New Jersey.

Roszkowski, Jerzy M. 1993. "Sprawy wlasnoscione a ochrona przyrody w Tatrach. Niektóre aspekty zagadnienia" (Private Ownership of Land and Environmental Protection in the Tatra Mountains. Some Aspects of the Problem). In: *Ochrona Tatr w obliczu zagrozen* (The Endangered Nature of the Polish Tatra Mountains), Włodzimierz Cichocki (ed.), pp. 117-128. Zakopane.

Rozdolski, Roman. 1936. *Wspólnota gminna w b. Galicji wschodniej i jej zanik* (The Commune Community in Former Eastern Galicia and its Disappearance), Lvov.

Solarczyk, Stanislaw. 1993. *Historia Wspólnoty Leśnej Uprawnionych 8-miu wsi w Witowie*. (The History of the Authorised Forestry Community of 8 Villages in Witów). Witów.

STATUTE The Authorised Forestry Community of 8 Villages in Witów, based on legislation from 29.06.1966 on farming cooperative land /Legislative Journal Nr. 28, 3.07.1963, par.169/ and Administration of the Ministries of Agriculture, Forestry and the Lumber Industry from 28.04.1964 on the issue of establishing the Company Statute for the farming of Community land /Ministry of Industry on 21.04.1964 no.33 par.145/. 1966. Nowy Targ.

Szynkiewicz, Sławoj. 1976. "Rodzina" (Family), In: *Etnoografia Polski. Przemiany kultury ludowej* (Polish Ethnography. Changes in Folk Culture), Maria Biernacka, Bronisława Kopczyńska-Jaworska, Anna Kutrzeba-Pojnarowa, Wanda Paprocka (ed.), pp. 477-501. Wrocław.

Trafas, Kazimierz (ed.). 1985. *Atlas Tatrzańskiego Parku Narodowego* (Atlas of the Tatra National Park), Zakopane-Cracow.

EXTRACT From decree of 8 authorised communes; Czarny Dunajec, Ciche, Chocholow, Dzianisz, Witow, Podczerwone and Wroblowka. Lvov 9 September 1870 No.: 6336/S. 1959. Witow.

Zientara Benedykt, Antoni Maczak, Ireneusz Ihnatowicz, Zbigniew Landau. 1965. *Dzieje gospodarcze Polski do 1939* (The History of the Polish Economy Until 1939), Warsaw.

CHARACTERISTIC FEATURES OF LAND PRIVATIZATION IN UKRAINE

Leonid Ya. Novakovsky Dr.econ., professor

The politics of state monopoly of land which has consistently been carried out for several decades only in two countries - the former Soviet Union and Mongolia, has been functioned not only as counter-measure against finding solutions to populations' dietary problems but has as well caused a decrease of cultivated land area and accelerated soil degradation.

In Ukraine, for instance, during the last decades transition of big land areas from using for agricultural purposes to agro-industrial production facilities, has caused a decrease of the area of cultivated land by 12 thousand hectares annually. Oddly enough, decrease rates of soil humus content reached a constant value and became more and more noticeable. Thus during a twenty-year period from 1960 to 1980, this important indicator of soil quality fell from 3.5 per cent to 3.2 per cent. and kept falling in following years.

In our country, the effectiveness of use of agricultural land remains low. Furthermore, application rates of manure and mineral fertilizers have as well decreased sharply in recent years. Crop rotation systems have been destroyed in the process of re-distribution of land and importance of counter-measures against erosion been diminished. The factors mentioned above will certainly cause a noticeable reduction of agricultural production, if no actions to improve this situation are taken in the nearest future.

In addition to necessary measures of common economic character, acceleration of rates of de-nationalization and privatization of basic means of production has to become a powerful stimulus for stabilizing the situation in the sphere of agriculture and for forming up fundamentally different relations between agricultural producers, state administrative bodies and structures of the market .

As far as our knowledge goes, the mankind has not been able to propose anything better than the private property system, as means to reach personal freedom and independence. Many people realize that in agricultural production process the most basic freedom is expressed by a set of property rights on self-produced output, i.e. the factual right to manage own farm production, independently on forms of ownership of farming land and other means of production.

Nobody will object to the statement that land should be managed by real owner who holds a large interest in his undertaking. It becomes possible only if the land is in private hands. Only a real master-owner is vitally concerned in the success of his enterprise and caretaking of the land belonging to him. Only the real owner is interested that his property will pass over to his inheritants in good condition and unspoiled by mismanagement.

We have experienced ourselves how forced collectivization of peasantry, the only legal system thrust upon all farmers making the state ownership the sole possible type of ownership of everything and particularly of land, has resulted in loss of enterprising spirit and mastering skills. The state had no one sack left for alternative approaches and the land was refused protection and deprived of caretaking. There is only one possible way to change this situation - by means of fundamental reformation of ownership relations. Pursuant to the provisions of "Land Reform Act" of March 15, 1991, Ukraine has definitely made its choice.

It must be underlined that the manifold of forms for land ownership is a complicated category or term, particularly for such a country as Ukraine where in the course of three generations land resources have exceptionally been owned by state. That's why ~~the~~ our Parliament which in 1990 adopted the first Land Codex of Ukraine as a sovereign state arrived at a conclusion that at present it would not be reasonable to give way to various types of ownership besides the state monopoly.

Anyway, the scope of rights of land users was extended. Usufruct right to land use was made heritable for all Ukrainian citizens, and for agricultural and forestry producers this right became permanent, i.e. with no time limits. Land tenure which had not been allowed before was legalized.

Necessity of promotion of different types of land management, first of all organization of farms and remarkable extension of individual auxiliary parcels of land, has been supported during this reform throughout the country. These efforts have resulted in increase of the number of farmers from 82 to 32 000 during a four-year period. The share of land in private use increased from 6.1 to 14 of the total area of agricultural land. At the time being, our farmers produce 40 per cent of the whole agricultural production.

The process of privatization of the land fund in Ukraine was launched after a special act on types of land ownership which was adapted in January 1992. Pursuant to the provisions of this act, a alternatives to the state ownership were introduced, called private and co-operative (collective) forms.

The second, revised concept of land privatization was enacted as "revised Land Codex" and it is based upon the following principles: land plots must be allocated to Ukrainian citizens only for the agricultural production purposes, in accordance with the fixed size standards and free of charge, with the exception of areas exceeding the standard average size of a land share.

Under this law, the size standards of parcels are fixed as follows:

- * the average land share for farmers, members of co-operative agricultural enterprises and share holding companies is established from 8.0 hectares in eastern regions to 1.8 hectares in Western Ukraine;
- * the size of auxiliary (supporting) individual parcels must not exceed 2 hectares;
- * the size of plots given for construction purposes (dwelling houses and other related facilities), is 0.25 hectares in the countryside, 0.15-0.25 hectares in larger settlements and 0.10 hectares in towns;
- * for horticultural produce, applicants can be given an area up to 0.12 hectares, to build summer cottages the upper limit is fixed to 0.10 hectares and for garage building to 0.01 hectares.

The farm size is determined not only as the size of allotments allocated to people free of charge. Also the size of farming area either privatized or exploited according to usufructuary's rights is regulated. Generally, one person owns no more than 50 hectares of cultivated land and 100 hectares of the total area, but in marginal districts with bad nets of communication, the size of allowed cultivated land property will reach 100 hectares. At the same time, areas transferred to owners exceeding the accepted average size, will cost standard price for a land unit. At present this price is 280 US \$ per one hectare of cultivated area. The size of leased plots is not standardized.

In addition to privatization of agricultural lands, people are given property rights to purchase areas which are occupied under uncompleted state-owned buildings and gasoline stations. This is valid as well for juridical persons not having shares belonging to the state.

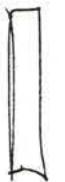
Non-nationalizing of enterprises and living houses which has been carried out already for four years, has sharply focused on the need of privatization of not only the land covered by dwelling houses, uncompleted state buildings and gasoline stations, but as well non-agricultural constructions in general. It seems unreasonable to transfer property rights on enterprises, houses, shopping centres, catering and public service establishments from the state to private ownership without touching questions of land ownership. This is how governmental bodies act just now. Proposals for amendments aimed at extension of allocated plots not only to citizens but also to juridical persons, are filed in for discussions in the Parliament.

Privatization of individual auxiliary parcels and areas under agricultural buildings and other agriculture-related facilities under permanent exploitation, was assumed the easiest category to legalize for private use. Over 13 million people are having this kind of plots.

It was planned to privatize this land in the course of 1993 by introducing a simplified registration system for legalizing of property rights. In order to a decision to be made, for citizens it was necessary to put in a written application and to confirm the size of their plot. After that, within a month the final decision should be taken by the authorities and a certificate on the owner's rights sent to the applicant. These rights would imply the purchase and sale of plots, giving as presents, exchange, transfer by inheritance, etc. For changing the legal status of ownership for other types of plots, a six-year moratory was declared.

Seemingly the process of land privatization at its starting point should be widely supported by this part of population who actually are land users. In spite of such a promising outlook, nothing happened in 1993. 1994 was very quiet, too. By the end of the first quarter of 1995, hardly about one third of these plots became privatized. Many bars to this wished development can be pointed out, but the main reasons for delay are two.

For the first, up to 2/3 of citizens did not send in their applications in due time. By their opinion, the current system of land use is highly satisfactory and guarantees effective use of land. Sensation of fear is spreading among country people; many are afraid of possible raise of taxes on their land property. Very few are interested to alter the basic rights of ownership, i.e. they do believe there is not a word of truth in what authorities say about equality of various types of land ownership.



land should remain as is

For the second, state executive bodies have not been able to co-ordinate their activities to solve problems linked to financing of the land reform process. Unsufficient educational work has been done, and lack of information about necessity of keeping within the time limits determined by Parliament (the deadline is fixed to January 1, 1998), has made this uphill task even more difficult.

Land privatization for organizing private farms has created mixed feelings among the rural population which in many cases have resulted in conflicts and confrontations between workers of collective (state) farms and private farmers.

As the category of private farmers will mainly be formed up not by workers of those traditionally large-scale state and collective farms of industrial character but will consist of other groups of population, there is no ground for allocating plots of standard average size to everybody free. Only those who work on their farms and are directly related to agricultural production, should be provided areas free of charge. Applicants belonging to other layers than "farmers proper", are going to purchase their land by paying fixed prices for it.

Until March 1995, land in Ukraine was inexpensive (20 US \$ per one hectare of cultivated land) and the regulations allowed to obtain up to 100 hectares of agricultural land; in some cases even the same size of cultivated land for the same price. In this way private farmers were given priority to purchase new lands, over workers in semi-industrial state-owned farms and co-operative rural enterprises. Hot debates took place, and particularly in regions of limited land resources they could result in quarrels and physical acts on vengeance.

In March 1995, the Ukrainian Government adopted a methodology for monetary land assessment. In accordance with these regulations, the average value reaches 3600 US \$ for one hectare of cultivated land. It gives us a possibility to standardize the prices which in reality provide us information for establishing buying-selling relations for land properties.

The most difficult task of the land reform in Ukraine has been the basic alteration of property rights at large-scale collective and state farms and other state-owned big rural enterprises. We have been trying to introduce a transition solution before the final implementation of the proper private ownership system become actual. This alternative is called collective ownership. In this connection a new category of "average land share size" was created there a group of people who were entitled to having legal rights at their principal "shares", was given agricultural area of fixed size to be managed under conditions of extended land use rights. People who are willing to leave a state farm and establish their own ones are guaranteed this right by the law.

As for the size of shares, implementation of the land reform according to the law has not been counteracted by local and regional authorities. Still, concerning groups of rural population who should be entitled to obtain property rights on land allotments, the question has become a subject of endless debates and argument.

According to the issued legal acts, allotments can be obtained by all persons working in agricultural sector, incl. retired people (former workers in the sphere of agriculture and residing in the area), as well as present and former workers/retired persons providing social services to the local population.

The very last statement proves difficult to be accepted. In this connection two questions are raised:

* For the first, why people who get their main income from their place of employment in schools, at hospitals, at local village councils, etc., should be included into the group of people having property rights to allotments (shares). The main source of income for a farmer is his own work on his land, isn't it?

* And for the second, by which reason also people who are not members of above-mentioned collectives should be given the same rights of purchasing shares from collectively owned land allotments?

In order to resolve this dilemma, proposals have been moved to give the land share property rights only to those who are or used to be members of physical rural enterprises, mainly

state agro-industrial companies. This proposal will be put into practice by introducing a revised "land pie" concept.

Personification of the land that has been transferred from the state to the collective ownership, will be another important taking. It is high time we abandoned the well-known "as-a-matter-of-course" hypothesis implying that the average size of allotments can be characterized just in terms of accounting. It does mean that farmers whose property rights are based on collective farming must be provided certificates issued by public authorities which prove that average-sized plots principally belonging to them are located on a really existing territory and have both fixed size and price. Preparations for issuing this kind of certificate are going forward.

During the period from 1992 to 1994, land privatization measures were taken in 1/4 of all state-owned rural semi-industrial enterprises, and in 1995 the progress has been remarkable.

Even if so, we learn by experience how complicated the privatization process is. Obviously implementation of land reforms can be neither deliberately pushed ahead nor the brake put on its natural course of development.

71

**The Fifth Annual Common Property Conference
of IASCP**

Bodo, Norway, 1995

**Attitudes to privatization of land
among Ukrainian peasantry**

Irina Pribytkova-Ukraine

Introduction.

All agricultural reforms in Russia were inspired "from the top" and started at a moment when the powers that be began to realize through stress of circumstances that it is impossible "to live like that any longer". All agricultural reforms in Russia came to an end in counter-reforms as a rule. In a peasant country land question infringed upon the interests of a vast majority of people. In dramatic withstanding the winners were those who held power. Every land reform always is a conflict of interests of different social groups in the village. And the main ones are peasantry and authorities at all levels. Their interests, expectations, resources, level of unity, notion about property rights and its firmness have a great influence on the process of agricultural reform.

To understand all collisions of the current moment and to forecast the most probable way of the changes in land ownership system it is necessary to find answers to the following questions:

- ⇒ What are the attitudes towards land privatization and the different forms of rural economies among diverse social groups of Ukrainian villagers today?
- ⇒ What is the present understanding of property rights and their protection by the peasantry?
- ⇒ Does land privatization conducted in Ukraine "from the top" correspond to the interests of the peasantry?
- ⇒ Does the design of land privatization answer to its realization?
- ⇒ What is the level of peasant's trust in the authorities intention to change property rights?

The Author makes an attempt to answer these questions using the results of sociological polls of Ukrainian peasants and the analysis of the statistical data obtained.

I. Land Reform and Farm Restructuring in Ukraine

The forced collectivization of peasant's farms in the 30-ies in the USSR generated in the village a marginal class with double psychology neither peasants, nor workers; on the one hand - the owners of microfarms, and hired workers of state agricultural enterprises - on the other hand. Forming of peasantry, its psychology, motivation for labour, morals was going on during several generations in the context of "depeasantization" of the village. Alienation from property and produced output turned peasantry into hired workers - farm-hands. Being a producer, a peasant has lost a lawful right to have a free hand in handling the output of his activity. It was usurped by the state-monopolist, independent both of its producers and its consumers.

Many collective farms, set up on the basis of bringing together the farmer peasant farms, were later transformed into state agricultural farms. The majority of these were losers and existed only due to yearly state subsidies.

The same situation was happening in the collective farm sector. Nonefficiency of the organization forms of agricultural production, existing from the thirties, was more and more obvious, and the necessity of reforming the property relations in the agricultural sector became more urgent. This need was recognized by all public groups of the country - peasants, intelligentsia and the ruling elite.

But the choice of the model of reforming which would correspond to the interests of all the public groups and peasantry, first of all, is not provided till now. The interests of different social groups are not concorded and the subjects of these interests can't formulate them exactly and in the most unambiguous manner.

The process of land reform and farm restructuring in Ukraine, as in many other former command economies, has proven more complex than originally anticipated, and results to date are more modest than initially expected.

The administrative command system has left the heavy legacy in the agricultural sector in Ukraine. Dependence of producers on centrally allocated and supplied inputs; lack of procedures for the interface between producers and consumers; subversion of financing systems and credit policies; loss of an allocative role of prices and their transformation into accounting conveniences; shortage of storage capacity in rural areas and their concentration in cities; suppression of individual initiative and personal interests of peasants in highefficient labour - this is far from being a complete set of starting conditions for land reform and farm restructuring in Ukraine.

These difficulties are not overcome till now. New problems, such as macroeconomic instability, continuing high inflation, political and legal uncertainty, sexennial moratorium for sales of privately owned land and as result - lack of land markets and many others, added to old problems. In 1994 Ukrainian land reform and farm restructuring find their realization in the creation of shareholding farms but not beyond it. Very little restructuring of farms has taken place. The transfer of ownership has so far resulted in a new but essentially unchanged collective sector, comprising the former collective and state farms. It looks like the traditional soviet agricultural model.

The results of sociological polls indicate that participants in the land reform and farm restructuring (managers, employees, specialists, private farmers) do not have a clear view of the situation that will carry the process of land reform in Ukraine naturally beyond the creation of shareholding farms. At present many members and employees, having rights to land and asset shares, have received them "on paper". There is no clear mechanism for creation of new production units other than shareholding large farms or the individual family farms. Besides that not many employees decide to leave the collectives and create new business units. Much of the rural population at present is poorly informed about their rights and options, and farm managers also report a need for more information.

There is an opinion that it would be undesirable to have land presently in collective ownership reregistered in corporate ownership within existing farms. This would be equivalent to expropriating the land rights of employees and members, and would not solve the problem.

II. The problems of land privatization and change of ownership forms in peasantry's interpretation

The present paper is based on results of two extensive sociological surveys carried out in Ukraine in 1994 under conducting of the Author. The objective of study has been to investigate

the peasants opinion of land privatization, their attitudes to different forms of property, including private plots, public sentiments and expectations, readiness for changes, life plans of peasants.

The first survey was undertaken in the framework of Norwegian-Ukrainian project "Agricultural development and Social changes in Ukraine". 190 workers of the state farm "Voikowsky" were interrogated by questionnaires "You and your interests". There was the pilot research sociological poll conducted by the method of random selection, participating in this procedure was every third working in the state farm.

The share of young people was relatively not large: to 20 years old there were 8.6% and 20-29 years old-22.5%. So only every third respondent will be able to work before retiring on a pension for 35-40 years. Meanwhile just this contingent will determine to a considerable extent success or failure of agricultural reform in the near 20-30 years. Therefore in the course of another sociological poll conducted in three provinces of Central Ukraine (Cherkassy, Vinnitsa, Kirovograd) 640 young villagers 20-30 years old were interrogated by means of special questionnaire. Their opinions, judgements and appraisals were used as the basis for conclusions presented in this paper.

II.1. The Attitudes of peasants to different forms of rural economy

The attitudes more than two thirds of respondents (69.8%) are positive to collective farms. The most devoted them are farm managers (84%) and agricultural specialists (74.5%). Farm employees regards to them are more restrained: only 67.9% of their number supported collective forms of rural economy. The main its opponents are naturally private farmers. They have taken their choice allready and only reaffirmed their adherence to individual family farm. As a whole only 12.2% of respondents, or every eights participant of the poll, were against collective farms and every fifth could not define his position.

Private farming has many advocates in a country-side. Only every fifth respondent has a negative attitude towards individual sector of agriculture, and every fourth did not answer to this question. Thus more than a half of respondents (59.2%) keep up the farming.

But only one fourth of respondents answered in the affirmative to question about their personal intention to become a farmer and the others three quarters (73.2%) have rejected such perspective.

A low level of providing with such inputs as fertilizers, herbicides, fuel, machinery and spare parts, and financial difficulties are in opinion of 44.9% of respondents in the lead among obstacles limiting the individual farming. The next in order reason of modest accomplishments in the operation of new privatized agriculture is unwillingness of authorities to help farmers (it was pointed out by 17.7% of respondents).

Such impediments as an uncertainty in future of individual family farms or lack of self-motivation were called by 16.7% and 10.8% of respondents correspondingly. Extremely negligible part of respondents (4.4%) has defined as a hindrance, standing in the way of successful operation of new privatized agricultural, incapacity of the very peasants for self-dependent farming.

Only 3.4% respondents believe that the negative appraisal of individual farming by public opinion is the main obstacle for broadening of this form of agriculture.

II.2. The peasants' opinions about privatization of land used by collective and state farms

Every fourth participant of a sociological poll in Central Ukraine is radically oriented concerning the land privatization: 23.2% of respondents think it is necessary to privatize all land which is used by collective and state farms. Approximately the same number (26.0%) consider that only partial land privatization will be expedient. The largest part of respondents (33.6%) look with favour on privatization lands only of non-profitable farms. And at last every sixth (17.1%) is sure that it is necessary to preserve "status quo" and to leave the former order of land use. So according to their attitudes the peasants may be divided into radical (23.2%), moderate (59.6%) and conservative (17.1%).

Let us look how the Ukrainian peasants act when they decide the land question for themselves personally?

II.3. The Intentions of peasants for land privatization

So to be or not to be a landowner? That is the question!

Every second respondent (42.1%) volunteered a firm wish to realize his landowner rights. Every third had not such intention, every fourth did not decide this question.

But when asking about quantity of land, they are ready to take as private property, 91.7% of respondents have given answers: 37.4% (every third) expressed their wish to privatize up to 0.5 ha; 23.8% (every fourth)-up to 1.0 ha; 11.6% (every tenth)-up to 5.0 ha; and 10.6% (also every tenth) would like to take more than 10 ha. And only 8.3% over-modest respondents have kept silence.

Apparently final lucidity of peasant's mind about land privatization is not reached for the present. In spite of the abundance of potential owners, more than a half of them (55.9%) did not privatize the land used in their subsidiary household plots. The part of those, who has realized this operation (42.9%), corresponds the share of respondents answered in the affirmative concerning their intentions of being land-owners.

We must state as a whole that the forming of the attitudes to land privatization among young countryfolk is not yet completed at present. That is why the realization of their attitudes is the cause of to-morrow but not to-day.

II.4. The peasants and the individual household plots

Practically every Ukrainian peasant has got an individual household plot. It is that small field allowing him to preserve the feeling of master and on which he could notwithstanding remain an owner. Probably this is the reason of a very small number of those respondents who had low opinion of household plots-only 5.2%.

The land in individual household plots is held primarily in a mixture of two traditional forms of tenure: usership and lifetime inheritable possession, and also as privately owned land, which in itself is a considerable step forward from total state ownership of land only three years ago. The proportion of leased land in household plots is negligible.

The most part of respondents consider individual household plots as a basis of private farms if fertilizers, herbicides, fuel, machinery, spare parts are available at a low or moderate prices. This point of view was expressed by 41.6% of respondents; 16.3% of them think that

transformation of individual household plots to private farms is possible only under condition of strenuous and honest labour; and 14.6% of respondents are sure that such transformation is absolutely impossible. Every fourth participant of the poll had evaded this question.

Employment at individual household plots was and remains now the important component of way of life of Ukrainian peasantry. And in contrast to a private farming as a form of agriculture, employment at individual household plots is not an object of choice. Probably this circumstance is a reason of perception private farming by some respondents as a certain undesirable alternative to traditional and sanctioned by public opinion rural way of life. At any case only 7% of respondents look at a farmer lot as a life perspective for their children. And as it is generally known all of us wish nothing better than bright future for own children.

II.5. The peasants' notions about the right of property

The rights and obligations of owner are written down in legislative laws of Ukraine-the Law "On types of ownership on land", the Law "On payment for land", the Law "On private farms", the Law "On priorities of social development of village and agricultural industrial complex in national economy of Ukraine" and a number of others regulating the implementation of agricultural reform as a whole, and land reform in particular.

When questioning the peasants it was found out, that every third (34.9%) is acquainted with some of them. And only 30% of respondents have confirmed without any reserves their knowledge of laws. But profundity of this knowledge leaves much to be desired: only 15.3% of respondents have read the text of Laws. The great bulk of them (41.2%) heard about adopting law on radio or TV; 12.4% of respondents heard on the radio when the Law was adopted by Supreme Soviet of Ukraine; 10.0% know about them from the members of their family or neighbours; another 10.0% watched Supreme Soviet meeting on TV; 8.5% of respondents have learned about the content of law from administration of their collective farms; 6.6% of them heard about these laws from the representatives of administration. A quarter of respondents did not answer the question about sources of information.

It is supposed that the content of law, regulating current and future relations of property, remained outside the attention every fourth respondent.

So only as for 15.3% of respondents we may be pretty sure that they personally got acquainted with the legal basis of reform. And then we come to the conclusion that the peasants do not know the rights and obligations of the owner very well, and their judgement about privatization are based mainly on common sense and not the knowledge of current laws.

This conclusion is especially true in relative to ordinary farm employees: only 25.7% of their number are acquainted with a content of laws and only 12.5% read their texts. More versed in land legislation are the farm managers at all levels: 65% of them know the content of laws and 54.5% read their texts. Apparently this is one of the reason explaining the most high part those who had privatized their individual subsidiary plot among managers (65.0%) while only 42.9% ordinary farm employees took this decisive step, realizing their right of landowner.

What are the notions of village youth about institution of ownership, its potentialities and restrictions?

So two thirds of potential landowners (65.4%) suppose that the land privatization provides the right to work on their land by themselves and unconditionally to have a free hand in ordering produced output. Every third (29.7%) thinks that he can transfer land to the possession of his children or another relatives as inheritance. Every seventh (14.3%) is convinced in his right to

lease land. Every twelfth (8.0%) intends to exercise his right of landowner by creating of agricultural production cooperative with another owners. Only 5.0% of respondents assume that they could sell their land.

These are the ideas of the peasants about the rights of landowners which they acquired automatically if they privatize land. To a certain extent they illustrate superficial knowledge of content of laws, regulating the land reforms in Ukraine. The results of sociological polls show that not all peasants know, apparently, about the moratorium of six years on sale land or lack of mechanisms for restructuring at the farm level, exiting collectives with land and asset shares and creating of a new production units.

II.6. The level of peasants trust to authorities

The success of land reform in Ukraine depends on many circumstances and one of special interest is the extent of peasants faith in "purity of designs" of reformers starting the restructuring of Ukrainian agriculture "from the top". The historical experience acquired by the peasants in the sphere of interaction with powers may be rather an obstacle than the source of enthusiasm in the process of transition from collective to private land ownership.

Who is able to deprive the peasants of ownership rights? Who is able to prevent them to possess and to use the privately owned land? The peasants answers are a very telltale. A half of respondents (52.1%) suppose that ownership rights are immovable and nobody can take them away. But expectations of another half of them are not so optimistic: 16.6% of respondents consider the state to be the main expropriator; 11.6% of them see the local authorities in this role; 6.4% of respondents do not trust to labour collective; 5.3% of their number regard that farm administration can take their ownership rights from them.

All social groups of contemporary village youth, and the managers - in the first place, think the state is not to be trusted.

So 17.3% of ordinary farm employees, 18.1% of specialists and 20.0% of managers give the state a role of the principal expropriator. But the harmony of their opinions comes to an end, and gives up the place to mutual distrust when the conversation turns on the "enemy number two". 12.9% of ordinary farm employees and 12.3% of specialists discover the threat to their ownership rights in a position of local authorities, and 10.0% of managers think that the general meeting of labour collective is able to deprive them of ownership rights. However, 10.3% of specialists are prone to distrust to this collective body though the ordinary farm employees have given it a vote of confidence. The conflict of interests is available.

Where the peasants are going to find protection in case of the violation their private property rights?

The level of right-consciousness among young villagers is not high. Every third (33.3%) respondent announced that he will not apply to any instance and go round the departments, he will protect his property on his own at any price. We can only guess what possible means he is going to use. Another every third respondent (32.9%) will take his cause into court; 7.5% of respondents expect to receive help of militia; 5.6% of peasants will seek for intercession in the village council; 3.1% are going find protection at the local authorities; 2.7% will apply to collective farms managers. Every seventh respondent do not answer this question.

The most high level of right-consciousness is demonstrated by managers: every second of them intends to seek protection of their property rights in the court. It is quite explicable since just managers know the laws better than others. As for specialists they prefer to resort to the

help of militia, every tenth of them believes in efficiency its efforts. Fighters from "people's volunteer corps", who are going to assert the property rights on their own, are present in equal parts at all three social groups of rural youth (39.0% of every of them).

III. Public sentiments of rural youth

Economic difficulties of transition period exerted influence upon frame of mind and emotional attitudes of peasants, their evaluation of prospects and expectations. The half of respondents either could not or did not want to assess the quality of life in the near future. Only a quarter of them expressed the optimistic belief that the life will become "a little easier". And 8.8% of respondents are firmly convinced of essential improvement of life standart. But pessimists who are not sure of future were not so numerous: only 3.3% of respondents have assumed that life in the nearest five years will considerably be worst. The rest 12.7% think that nothing will change neither for the better nor for the worse.

Nevertheless vague perspectives do not prevent 42.6% of respondents to keep their presence of mind and belief in successful overcoming of economic crisis. Only 22.7% of their number express their anxiety and uncertainty in future, a dread to lose a job, waiting another famine. Every third respondent live with today, showing patience and soberness of mind, not giving way to despair but also not making plans which can be not implemented.

Optimists are more often met among managers, and living with today-among ordinary farm employees. The specialists are more often prone to pessimistic perception of future. Estimating the personal perspectives in a nearest future, representatives of all social groups: managers, specialists and employees, have showed restraint and embodied healthy conservatizm: 45.2% of ordinary employees and 38.5% of specialists are not planning any changes in the near 2-3 years. And 40.0% of managers are not going to change anything in their life at all. The most of them link the future of their children with the village but they would like them to work in social services such as medicine, education, trade, public utilities and so on. Managers and specialists prefer their children to work abroad, and employees think that it will be good for their children equally to work in the city or to go abroad.

It is necessary note that in decision of vital questions the most of rural youth manage without any assistance. More than a half of respondents (53.0%) announced that they cope with life problems on their own. Every third rely on parents and every tenth-on relatives and friends. Rural youth do not cherish the illusions concerning the state and society, only 2.2% of respondents expect to receive their maintenance.

It is to be supposed that a very low level of confidence in the state institutions and public organization is a definite result of the historic experience of our peasantry. Being the main producer the peasantry has no rights (only obligations), has no access to taking decisions, has no a free hand in ordering the farm produce and at last is a small bolt in the gigantic administrative command mechanism controled by beauracratc machine up to now. It is doubtful whether this state machinery will help its obedient and dutiful citizens.

IV. Conclusion

1. The design of land reform and farm restructuring in Ukraine consisted in transfer of agricultural land and assets to private ownership and the creation of more productive strongly market-oriented private commercial farms. But the process of reform in Ukraine does not reflect a clear commitment to private ownership of land and assets, initial accomplishments in the reform have been modest.

The total result of land reform today is the creation of shareholding farms. They are a minimally reorganized new collective agriculture, the procedures for further restructuring at the farm level are inadequately developed. Frequent changes of legislation have created a sense of uncertainty about the future course of reform.

2. The most peasants keep the adherence to collective farming. But private farming has many advocates in a country-side as well: more than a half respondents keep up this new form of agriculture. Nevertheless only every fourth of them answered in the affirmative to question about his personal intention to become a farmer.

3. The attitudes of the peasantry to the privatisation of land, used by collective and state farms, show a certain restraint. According to their attitudes the peasants may be divided into radical (23.2%), moderate (59.6%) and conservative (17.1%). But when discussing this problem in relation to their own enterprise, almost every second respondent volunteered a firm wish to realize his landowner rights. It must be stated that as a whole the forming of the attitudes to land privatization among young countryfolk is not yet completed at present. That is why the realization of their attitudes is the cause of to-morrow but not to-day.

4. In spite of all vicissitudes of life the Ukrainian peasants nevertheless are the owners, realizing their master's rights at the individual household plots. Employment at subsidiary household plots was and remains to-day the important component of way of life of Ukrainian peasantry and is not an object of choice in contrast to private farming. The vital interests of Ukrainian peasants are bound up with their household plots which demonstrate stability and efficiency during their whole history.

5. The level of right-consciousness of rural youth is not high. The respondent's answers illustrate a superficial knowledge of the laws, regulating the land reform in Ukraine. The peasants do not know the rights and obligations of the owner very well and their judgement about privatization are based rather on common sense than the knowledge of current laws.

6. Two thirds of potential owners suppose that the land privatization provides the right to work on their land by themselves and unconditionally to have a free hand in ordering produced output. And only a few of them intend to exercise their right of landowner by creating of agricultural production cooperative with another owners.

7. Only a half of respondents suppose that ownership rights are immovable and nobody can take them away. But expectations of another half of respondents are not so optimistic: they think that it is easy to be deprived of property rights by the state, local authorities, farm administration or a general meeting of labour collective. In case of the violation of their property rights only every third will apply to a court, and every tenth to militia. Every third announced he will protect his property on his own.

8. The main mass of peasants coming across everyday difficulties and necessity to overcome them lives with the interests of today not making any radical plans for future. Four out from ten respondents are sure in successful going out of crisis; every fifth is looking in future with

apprehension of unemployment, famine or another disasters; every third lives with today. Optimists are more often met among managers, and living with the interests of today - among ordinary employees. The specialists are more often are prone to pessimism.

9. Under conditions of vague perspectives young peasants do not plan any radical changes in their life but when it is going about the future of children, the scope of possible life prospects has quite a variety. This information shows dissatisfaction of peasants with their status and way of life on the one hand and reflects substantial potential of their social mobility - on the other.

10. In decision of vital questions the most of rural youth manage without any assistance. More than a half of them announced that they cope with the problems on their own.

Common Land Renewal in Russia: Problems and Approaches

Tatiana Levina - Russia

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. CONTENTS AND PROGRESS OF LAND REFORM.....	3
III. LAND USE PLANNING (LAND MANAGEMENT).....	9
IV. LEGISLATIVE FRAMEWORK OF LAND RELATIONS.....	10
V. LAND CODE PROJECT: RESTORATION OF COMMON LAND POSSESSION.....	14
VI. CONCLUSION.....	18
REFERENCES	

I. INTRODUCTION.

Russian Federation is the owner of vast land resources. Its total area accounts for 1709.7 million hectares or 17 million square kilometers of which 222.0 million hectares are agricultural lands (13.0 %), the remainder being covered by forests (0.8 billion hectares), water, marshes, towns, cities and wastes. Almost 60 percent (131.6 million hectares) of agricultural lands is classified arable lands and 30 percent (65 million hectares) is pastures [8].

A low level of agricultural development and tillage of agricultural lands depend on complicated natural and climatic conditions. More than

80% of agricultural lands in Russia are situated in the risky agricultural zone. Cultivated lands cover a small portion (7,7 percent of the total area) and are remote from populated areas which makes mechanized tillage of lands and harvesting extremely difficult, in addition the practical agricultural measures and the organization of the field works are hampered. Thus, 24 percent of all the arable lands contours, 65 percent of grasslands contours, 53 percent pasture contours are less than one hectare in size; 5.8 percent of agricultural croplands are wetlands and bogged-up lands, 18.7 percent of these lands have above normal acidity; 13.3 percent of plowlands are saline, 9.9 percent soils are stony and require agrotechnical and ameliorational improvements.

The situation of crisis in the economy of Russia created in mid-80th negatively affected the status and use of land. Free of charge land use, the absence of proper measures for agricultural cropland, economic protection against taking the lands for the needs of industrial development, transportation and other non-agricultural needs, absence of economic interest in the growth of agricultural production among peasants, have resulted in the situation where some valuable agricultural lands were taken out from agricultural uses and some arable lands were turned into shrubbery and scrub. Because of these reasons, during the 25 year period before the land reform on the territory of the former Soviet Union, 20 million hectares of lands were removed from agricultural production.

During the same period the acceleration of the processes of wind and water erosion, breaking of positive balance of soil humus content, ground pollution with chemical pesticides, herbicides, nitrates, etc. had been observed. According to the data of scientific researches, as a result of erosion, 3 billion tons of fertile layer of soil were lost annually responding to the loss of 38 - 40 million tons of nutrients from fertilizers, and exceeded annual volumes of the fertilizers supply for agriculture. Accretion of gullies is up to 26 thousand kilometers per year, and the shortage of the production from the eroded lands amounts 40 million tons of forage units. For the last 25 years, absolute content of humus in the soils of Russian Federation has decreased 0.4% on average. A negative balance of humus

has formed in traditionally agricultural regions: North Caucasian, in Volga region, Central Black Soil region. [1]. Negative processes in land use have led to the decrease of agricultural production and to aggravation of the food supply problem.

The situation found in land use was conditioned by following main reasons:

- the presence of an exclusive state property in land, i.e. its monopolization and absence of the right of private landownership;
- almost absolute centralization of land resources management and realization of land use problems preferentially by the upper levels of the state power;
- absence of sound land policy of the State in the areas of legislation, finance, rural human settlement;
- lack of proper legal basis and economic mechanism of land legislation implementation, lack of economic methods for land resources control, fully-fledged land use planning authorities.

The above mentioned reasons, as well as the necessity of perfection of Russian economy have resulted in the radical changes in land relations and land reform performance.

II. CONTENTS OF LAND REFORM AND ITS PROGRESS.

The main goal of land reform is restitution of land to its owner, and on this basis improvement of land use and increasing the effectiveness of agricultural production. In connection with this goal, the main purposes of land reform might be as follows:

1. Liquidation of state property monopoly over land, and the development on this basis of multistructural (multiform) farming, different forms of landownership land use patterns and land economy.
2. Guaranteeing to every citizen a right to own and use land subject to the rules and regulations of the State.
3. Transfer land resources management responsibilities from central planners

to the local authorities and owners.

4. Guarantee of priorities of land and environmental protection.

These purposes were the key-factors in land policy of Russia since the beginning of land reform and these form the basis for the implementation of corresponding political, legal, economic, organizational, technological and other measures.

From the beginning of land reform in November, 1990, a set of laws, decrees, and resolutions was issued which represented a major shift in Russian land policies. First, the right to private ownership of land was established. Second, a foundation was put in place whereby restructuring of state and collective farms and the establishment of private family farms were encouraged.

Establishment of private property in land.

By the beginning of land reform more than 94,6 percent of agricultural lands was in collective and state farms use (see Table 1). Following 1917, the State steadily usurped all rights to the ownership of land. Beginning the late 1920's, individual farmers were organized into collective farms and each collective member formally continued to hold shares. State farms were developed as state enterprises staffed by employees. By the 1980s the two types of farms were actually indistinguishable. About 12.500 collectives averaged 6.600 hectares and similar number of state farms averaged 9.000 hectares.

Private sector agriculture was permitted on the household plots of collective members, employees and urban residents. Personal use by citizens (personal subsidiary farms, collective gardens and collective kitchen gardens) covered 4.3 million hectares, including 3.9 million hectares of arable lands (1.4% of its total amount). Plot size varied generally between 0.2 and 0.5 hectares. Individuals did not own these plots but were granted use rights by local councils of People's Deputies. Use rights were virtually inheritable.

Table 1.

DISTRIBUTION OF AGRICULTURAL LANDS IN RUSSIA IN ACCORDANCE WITH LAND USERS (before Nov. 1, 1990).

Unit: million hectares

Titles	Total Land Area	(%)	Agricul- tural Land	(%)	Arable Land	(%)
1. Lands of collective farms	139.9	(8.2)	86.7	(38.5)	58.8	(44.3)
2. Lands of state farms and other agricultural enterprises	507.7	(29.7)	126.1	(56.1)	71.8	(54.0)
3. Lands of the interfarm agricultural	0.5	(0.03)	0.4	(0.2)	0.3	(0.2)

enterprises						
4. Lands in personal use						
of working people	2.6	(1.2)	2.4	(1.2)	1.5	(1.1)
5. State reserve and						
forestry organizations	1019.2	(59.7)	7.0	(3.1)	0.2	(0.2)
6. Other land users	39.6	(2.2)	2.2	(0.9)	0.2	(0.2)

TOTAL	1709.5	(100.0)	224.8	(100.0)	32.8	(100.0)

The legal basis of land reform in Russia was established by the Laws "On Land Reform" (1990), "On Peasant (Family) farm" (1990), "Land Code of the Russian Federation" (1991). The Constitution of the Russian Federation and its subsequent amendments state the juridical rights of individuals, collectives and legal entities to own land as a private property, but with the limitation that land could be resold within a period of ten years except back to the State.

To enforce the state land policy, the Law of the Russian Federation "On Payment for Land" was adopted in October 11, 1991. The Law provides methodology for determining sales price, land tax and lease payments (for state land leased to private persons), using regional coefficients and technical measurements. The absence of free land market has resulted in the introduction of the land evaluation by establishing the so called normative value of land. The land value was calculated as 50 times the land tax payment.

Another Law "On the Rights of Citizens to Acquire as Private Property and Sell the Parcels to Conduct Subsidiary Farming and Datcha Operation, Horticulture and Private Housing" was passed in December 1992. Legal restrictions on the resale of land were removed for small land parcels in the above categories. The procedures for such land transactions were laid out in Council of Ministers Resolution "On ratifying the Procedures for Buying and Selling Land Plots by Citizens of Russian Federation", No.503 (May 30, 1993).

The Presidential Decree "On Regulating Land Relations and Development of Agrarian Reforms in Russia" (October, 27, 1993) has become a significant step to develop property rights in land. This decree eliminated moratoria on resale of land, underlined state support for the concept of private property in land, and reiterated the right of land owners to lease and mortgage their land.

Collective and state farm reorganizing. Creation of private farms.

Initially the legal basis of this complicate process was provided by the Law "On Peasant (Private) Farm" (November, 22, 1990) and it was elaborated in Land Code of April 1991. In the end of 1991, the next two documents were issued. There were the Presidential Decree "On Urgent Measures for Implementing Land Reform in RSFSR" and the Resolution "On the Procedures for Reorganizing the Collective and State Farms" that changed status of agricultural enterprises and determined the procedures of the reorganizing these farms and privatizing their lands. Under this basis workers on

collective and state farms got abilities to exit those farms with their shares of land and property and to begin private farming.

These collective and state farms were subject to reorganizing into any of the following forms:

- as associations of peasant farms (land and other assets would be distributed among farm members and operated by individuals or groups of individuals as a independent enterprises);
- as collective farms (property is owned jointly, but shares are not delineated);
- as a state farms, but property rights passed from the state to the farm;
- as a joint stock companies or limited liability societies in which members' share of land and other assets are determinate, but not phisically identified and the farm continues to operate as a collective;
- as a agricultural cooperatives, though this form is not well defined in the guidelines and does not appear to differ appreciably from latter.

By April 1993 as a consequence of the implementation of land reform, 16.183 collective, state and other farms under the jurisdiction of the state have been transformed into 9.000 Farmers' Associations, 5.600 joint-stock agricultural companies, 1.700 agricultural cooperatives , 8.700 agricultural farms of other types[6]. At present virtually all state and collective farms have been involved into the process of changing of their organizational status, and approximately 80 % of agricultural lands has passed from the state to these farms. But in fact, there are not significant changes in management and operations of the re-registered enterprises.

During 1991 on the basis of the Article 14 of the Law "On Land Reform " a special land fund was created for the redistribution of land and allocating the plots for prospective private farmers. This fund has been formed on the basis of non-conforming landuses, non-effective landuses, as well as non-valuable landuses, and wastes.¹ The acreage of this special fund is not to be constant. Its dynamics depends on ending of rights in land as a result of "improper" use or other infringements, in some cases peasants refuse to operate in land parcels which had been distributed to them before . All these lands are subject to the taking into the above mentioned fund. By the beginning 1995 this fund was totally equal to the acreage of 28.8 million hectares. As at present, it comprises 13.4 million hectares of agricultural lands.

The local authorities determine the standard farm sizes² and farm ceilings in accordance with local density of population and farm type. Standard farm sizes are distributed free of charge. However, farmer-beneficiaries who acquire landholdings over the established standard farm size have to pay for the excess.[4]

Thus, redistributing process has resulted in the creation of 278,1 thousand peasantry farms by Jan.1.1995 with the total area of 11,833 million hectares and average sizes of 39 hectares.³ By present, 5.2 % of the total area of agricultural lands and 6.1 % of the total area of arable lands of Russia are in operation of peasantry farms. Two-thirds of these farms

¹ The lion's share of this fund are former under-utilized and unutilized lands of collective and state farms.

² Standard farm sizes vary from 0.5 to 150 hectares. For instance, it is 5 hectares in Krasnodarsky kraï (Black Soil region) and 2 hectares in (Far Northern region).

³ This figure includes land in property and in lease altogether.

have been created by the exiting of workers from collective and state farms with their share of land and other assets.

Moreover, tribal agricultural units have been organized in the Ural area, in Eastern and Western Siberia regions, in the Far Eastern region and in the Northern region. By Jan. 1, 1994 there were created 0.8 thousand units of tribal possessions with the total area of 72.0 million hectares, including 2.1 million hectares of agricultural lands. Its size varies from 12,000 to 305,000 hectares of lands [5]. Now these units have the legal status of peasantry farms.

Since 1991, land use management bodies have completed the transfer of the lands of rural settlements into the jurisdiction of 84,000 rural Councils of People's Deputies and . By March, 1995 they have in their disposal the lands of 149,900 settlements with the total area of 34.6 million hectares of land, including 22.7 million hectares of agricultural croplands. These transferred agricultural lands had been allocated in following way:

- for personal subsidiary holdings - 2379.8 thousand hectares, including 2273.2 thousand hectares to local residents,
- for horticulture, fodder and grazing - 6105.8 thousand hectares,
- 3078.7 thousand hectares has been leased to agricultural enterprises,
- the rest of these lands (more than 2% of total area) is unclaimed.

Thus, by the present all the agricultural lands of Russia have practically been subjected to land transformation charges (see Table 2).

Table 2

CHANGES OF LAND FUND OF RUSSIAN FEDERATION 1990 - 1994

Unit : million hectares

LAND CATEGORY	Nov.1 1991	Jan.1	Jan.1	Jan.1
		1993	1994	1995
Lands of agricultural enterprises and citizens	639.1	620.3 ¹	656.6 ²	667.7
Land under the jurisdiction of urban, settlement and rural administrations	7.4	36.2	38.0	38.6
Land for industry, transportation, communication and other non-agricultural purposes	16.0	18.2	17.8	17.6
Preservation lands	17.4	20.7	26.7	
Forestry lands	895.4	878.3	843.3	838.6

¹ Decrease mainly due to transfer lands to urban, settlement and rural People's Deputy's councils .

² Increase due to turn over some deer pastures to agricultural enterprises

LAND CATEGORY	Nov.1 1991	Jan.1	Jan.1	Jan.1
		1993	1994	1995
Lands for water resources	4.0	18.1	19.0	19.3
Land reserve	130.2	117.8	108.3	100.6
TOTAL	1709.5	1709.6	1709.7	1709.7

III. LAND USE MANAGEMENT(LAND USE PLANNING)¹

Main mechanism of land resources management in Russia has become land use planning. By the beginning of land reform, the development of land use planning bodies, changing their functions with the aim of solving the tasks connected with the land reform performance is suggested.

For realizing the uniform state land policy in the course of land reform in Russia, state land use planning bodies were established headed by the Committee of Russian Federation on Land Resources and Land Use Management (Russian Land Committee). There are 86 Republican territorial, provincial and regional committees, 2,500 municipal and district committees (councils) on land reform and land resources within the territory of the Russian Federation. This system also includes 75 scientific research organizations on land use planning, Russian Center for Information Provision of Land Reform, Scientific Research Institute of Land Monitoring and the Institute of Agricultural Aerasurvey Research and its branches.

Land use planning bodies system carries out a wide spectrum of different functions integrated in implementation of land reform :

- surveying
- monitoring
- cadastration (evaluation, registration, titling, land inventory)
- land taxation
- implementing the state programs
- participation in working out the legal provisions of land relations
- working out republican, provincial, regional, and local land use management projects
- land use control

III. LEGISLATIVE FRAMEWORK OF LAND RELATIONS.

Legal framework is a crucial prerequisite of the successful reformation of land relations. At present the basic legal framework of land reform is not yet finalized. Recent Land Code (1991) has almost expired while the Presidential Decree "On Regulating Land Relations and Development of Agrarian Reforms in Russia" (October, 27, 1993) was issued and the Civil Code has been passed in late 1994.

¹ "Land use planning" is the former name of the state land use management bodies.

During the last two years some approaches to the development of the land relations had elaborated, but all of them were considered as unacceptable by different political groups and in the long run had been rejected. For example, the Land Legislation Foundations project that had passed the third hearing in Supreme Council of RF in July, 1993 had been rejected by President's team because of too cautious involvement of the market relations and vast numbers of restrictions on property rights by the State.

In a year, governmental Land Code project and alternative version of "Law on Land" prepared by democratic fraction "Choice of Russia" were examined in the first hearing in the State Duma simultaneously. The discussions had shown the urgent need to work out another Land Code version on the compromise basis regarding the next main principles:

- to consider the land not only as property right object (real estate object) but simultaneously as natural resource and object of managing, in the certain cases as a main production facility, i.e. to find the "gold measure" in coordination of civil and land legislation;
- to draw a line between the competencies of the State and its subjects in the field of the land resources management, since the Constitution stipulates their joint competence in the sphere of land legislation;
- to define closed concrete list of cases, methods, limits and consequences of the state intervention in property rights realization by citizens and juridical entities for land possession, use and management, if it doesn't contradict to environmental protection and it doesn't violate rights of others;
- to contain the list of lands that are not subject to transfer to the private property in any case;
- to stipulate the cases and the procedures of the compulsory ending of the right on land (compulsory purchase, confiscation) in the cases of infringements of legislation and use by the methods resulted in the soil degradation and the environmental aggravation;
- to lay down sufficient mechanism of transactions on land parcels and land shares, to establish the proper procedures of the beginning, realization and protection of property rights;
- to lay down regulations on the management of land resources in the federal property, in the property of the subjects of the Russian Federation and in the municipal property;
- to reflect state policy on the problem of further implementation of land reform.

On the basis of above mentioned projects new Land Code has been worked out. The latter differs considerably from previous versions and contains certain additional articles and conceptions:

- - possession, use and management of the plot in the joint landownership;
- - married couple's joint landownership;
- - sub-landlease;
- - the order of purchase-selling of land parcels, land shares and rights on land lease;
- - land auctions;
- - land parcel and land shares exchange;

- - the transfer owned plots to the initial capital of production associations as shares of members;
- - progressive land taxation;
- - planning and zoning of territories;
- - public control in the field of the land use and land protection;
- - common land possession;
- - suburban zoning , et cetera.

Simultaneously some regulations of the proposed Land Code are very controversial. Most intensive discussions are aroused with regard to following matters of principle:

- introducing of 5-years moratoria on the selling of land parcels by agricultural enterprises and farmers while the moratoria on the mortgage of these land is lacking;
- abolishment of common property on land in the agricultural enterprises;
- significant shortening of rights on land share disposal while the reorganizing of collective and state farms is carried out (the owner of the certain share is obligated to put this share into share capital of new formed agricultural enterprise or to create an own family farm within period of six month. in other cases he will loss the ownership rights);
- prohibition on land privatization while the state and municipal enterprises are subject to the privatization;
- prohibition on land ownership for legal entities in the urban area;
- introducing of progressive taxation of transaction income if the alienated land parcel has been owned in terms less than 5 years;
- prohibition of foreigners' landownership even in the case of inheritance;
- retention of the inheritable possession title and indefinite (permanent) use title¹.

Generally, the Land Code project have been elaborated on the base of succession of the acting legislation and in accordance with Constitution and Civil Code of the Russian Federation. Unfortunately, unstable macroeconomic environment, continued lack of full political consensus, hard pressure of powerful agrarian lobby that is a strong proponent of state property in land exercises negative influence on the elaboration of this document. It seems to be ambiguous due to a large numbers of limitations and prohibitions of property rights.

New version of the Land Code is in draft stage and it is expected to be presented to the Parliament in June 1995. The completion of this legislation, acceptable to all agencies involved, may take longer. In addition, forthcoming parliamentary election may be a reason to delays in the adoption the prepared document by the State Duma.

¹ See Annex 2.

IV. LAND CODE PROJECT: RESTORATION OF COMMONS

The Article 105 Chapter 10 of the Land Code project stipulates the institution of common land possession for purposes of agriculture, deer-breeding, fur-farming, hunting and fishery, with the appreciation of the traditions and customs of the aboriginal populations. Under the Land Code project the subjects of the Russian Federation, i.e. republican, regional (oblast), territorial (krai) and other bodies, which subordinate to the State, will be furnished with the power to define certain regimes of common land ownership /or possession/ or use in the process of the land allotment among the tribal, Cossacks, religious and other communities and societies for their renewal.

The common tribal possession is a special question. The study of this phenomenon seems to be very interesting. Moreover, the problems that land use planners will be faced under these circumstances, are subject to investigate. Now we can find this kind of possession that is not legally defined, but in operation in the marginal regions of Russia, mainly in the Far North regions and districts equated with them in Siberian and Far Eastern mounted territories. This area covers an enormous part of Russia accounting 11.2 million square kilometers, or 64 percent of total area of Russian Federation.

Initially, we must to describe physical and socio-political environment in which the tribal land use exists. Concerning the climatic and geographic conditions this area includes tundra, forest tundra and taiga natural landscape zones. These zones are characterized by severe climate, permafrost, low soil productivity, relative scantiness of wild life and vegetation and wide diversity of natural factors from north to south, and from east to west. Containing large reserve of biological resources these territories differ from others because of their over-sensitivity to human interference. Reindeer-breeding, fur-hunting, fishing and sea-hunting are historically formed activities of aboriginal populations. Reindeer moss pastures resources which cover 319.4 million hectares present the unique feed base for agricultural producing in this marginal area. Thus, reindeer breeding have most importance for food supply of the local population. By present, 74 % of the world total number of the domestic reindeers accounting approximately 2.23 million heads are concentrated in the Russian Federation.

Intensive industrial development of the northern territories and taking the lands for the purposes of mining have led to decline of the acreage and quality of these valuable pasture lands. Simultaneously administrative methods of agriculture management have resulted in increase of total number of reindeers without due consideration of natural factors. The overgrazing has become the next reason why the widespread degradation and loss of reindeer pastures grows from year to year. Since 1965 loss of these lands accounts 23.3 million hectares. The total area of reindeer pastures that have become degraded is 103.0 million hectares[9]. As a consequence, reindeer herds have been diminished in number and production has decreased considerably.

Natural resources dispersal on the enormous territories had impact on the formation of extensive patterns of its use and habits and ways of the native populations. According to official data there are 30 minor peoples in this area, including Nenets, Evenks, Saami, Eskimos, Khantys, Mansys, etc. As above mentioned, migratory herding is the only suitable agricultural use of this area because of its extremely severe climatic conditions and environmental sensitivity. This kind of land use can be identified like pastoral nomadism whereby extended families (tribes) wander with their herds through tribal territories that serve them as pasture lands. In the case of transhumance in Siberian and Far Eastern mounted territories the herds migrate between two climatic zones that have very different conditions of mountains and lowlands. "The insecurity involved in existence in marginal regions forces the groups to be strongly

tied together in order to protect grazing and water rights. The leadership of the group, therefore, demands strictly observed loyalty on the part of group members, while the leader gives patronage and protection. The individual families are principally equal. Social differentiation is the result of a process of superior position of permanently settled cultivators with whom nomads avoid integration by means of a special code of honor and closed marriage circles." [Kuhnen, 1982, p.22]

Characteristic feature of tribal agrarian system is that the right to use for grazing area was in the hands of the tribes, while the animals belonged to the individual families. The tribal territory was divided into patrimonies that was possessed by individual families belonged to this tribe. Head of the family had power to lease his patrimony lands, to permit or not permit access to it for outsiders (if even they were the members of his own tribe), to allocate this land between his family members, to bequeath it. "Of course, this allocation was not absolutely permanent. On certain occasions, the row-hide tent was moved from the traditional summer camp place even into territory of the other tribe possession. But generally, the natives consider themselves as the owners of the ancestral estate, and every one can show exactly the bounds of his territory and no less than the bounds of the territory in the possession of his tribe." (Podecrat, 1932). The hard conflicts concerning on the protection of the right to possess had been observed from time to time.

Certain regime of tribal land use existed until early 30-ties. During the collectivization tribes had been organized into large collective and state farms, whereby the tribal land possession had been formally eliminated. But there were hardly accessible localities where tribal possession remained in force illegally up to present days.

During the period after collectivization the land resources management had been provided by state land use management bodies. Their activities included land use regulation on the basis of land use management projects. Those projects determined boundaries of season pastures, the locations of central buildings, calving places, corrals, arranged the routes of each herd migration, established the terms and orders of priority in use of the certain parcels of pasture lands. The collective and state farms had been obligated to implement these projects.

These arrangements had the positive impact on the conditions of life of natives and the productivity of the herds. Due to proper land use system the production process was organized in rational way, the pasture tracts had become more compact, the routes of the season migration had been reduced¹, and the social infrastructure conditions had been improved. Unfortunately, as above mentioned, administrative directions to increase the number of reindeer heads have led to overgrazing process and to degradation of reindeer pastures. While the common lands restoration the land use management bodies face the complicate problems of the redistribution of land to the new formed communities. This process includes surveying, cadastration, land use arrangement works, as well as, the land protection.

The efforts to transfer the responsibilities of land resources management from upper levels of the state power to the local authorities and owners, have led to the manifestation of complicated combinations of legal, technical, social and environmental problems. In the case of common land resource management the situation intensifies, as it is a question of the restoration of common land ownership after a long period of usurpation by the State. The abeyance in common land management increases, due to absence of proper legislative framework, which is a crucial prerequisite for successful decision-making. We can identify the situation in the legislative provision of common land resources

¹ In certain cases the total length of migration route accounted approximately 1.000 kilometers.

management as a legal vacuum. There is no one acting regulation adopted at the state level, though it seems to be obvious that common land resources have to receive different, if not special, treatment.

Some aspects are considered in relative legislative acts such as the Federal Law "On the particularly preserved scenery territories" adopted in Feb. 15, 1995. These particularly preserved territories, i.e. national parks, state environmental preserves, unique monuments of nature, history or culture etc., in the certain cases, are traditional residences of aboriginal populations. The Law stipulates land use regime of latter, i.e. formation of "special areas within the borders of national parks for extensive common use of the natural resources by native population, i.e. traditional trades and crafts, hunting, fishing and others, under certain agreements with the management authorities."

The uncertain position of the Government forces the local authorities to display initiatives in the creating of the regulations for these purposes. For instance, recently the project of the Law "On Territories in the Traditional Use of Native Minor Peoples of the Northern Region" that is prepared by the Association of Minor Peoples of Northern Region stipulates the procedures of common land allocation, land use regime, creating of reserve land fund for the purposes of development and land management regime. The latter should be carried out by the communities in accordance with their regulations.

Thus, the lack of legislative framework have led to the uncertainty in the further progress in the formation of the common land management.

VI. CONCLUSIONS.

The analysis above enumerated features shows that land reform in Russia has a quite radical character, but, unfortunately, political instability of our society, rapid changeover in Government, absence of a very strong political will to enforce land reform realization, combined with the crisis of Russian economy, have had negative effect. There is essential difference between the land reform proclamation and what success really has been achieved.

As regard to restoration of commons in Russia, the investigations of this phenomenon are at the initial stage. But the development of this interesting process makes us to ask some discerning questions: 1) is the society as a whole interested in the commons, and 2) are the commons viable in the exist economic and sociopolitical conditions. It seems clear, that in the case of the renewal of the commons in the Northern territories this phenomenon indicates strong tendency in the consciousness of minor peoples to follow the traditional way of life. But it seems clear, also, that society as a whole is interested in this process, because it can be a tool for the recovery of agriculture of this marginal area and solving of the wide range of the ecological and social problems. The survival of commons depend in the high degree on the governmental adoption and support of the concerning agencies at the all levels. The critical and prime need is the state legal provisions of this process.

REFERENCE

1. Varlamov A.A., Volkov S.N. Increasing of land use effectiveness. Moscow: Agropromizdat, 1991.
2. Decree of President of Russian Federation No.2162 "On enforcement of state land use control and land protection under land reform implementation".

Moscow, December 16, 1993.

3. Kuhnen, F.; Man and land. Deutsche Welthungerhilfe, German Agro Action, 1982.

4. Podecrat, A.G. Feature article of the administrative and economic system of the Far Northern region. Moscow, 1932.

5. Legislative Acts collection on Agrarian Reform in the Russian Federation. Moscow: Soviet Russia, 1991.

6. Materials of Seminar of the authorities of the Republican, territorial, regional, provincial and autonomous formation committees on land resources and land use planning. January, 12-16, 1993.

7. National Report on Land State and Land Use in the Russian Federation. Moscow: Committee of Russian Federation on Land Resources and Land Use Planning, 1993.

8. National Report on Land State and Land Use in the Russian Federation. Moscow: Committee of Russian Federation on Land Resources and Land Use Management, 1994.

9. Staff appraisal report of the World Bank No. 12711-RU. Land Reform Implementation Support (LARIS) Project. May 24, 1994.

Author's address

Ph.D. student Tatiana Levina
State University of Land Use Management
Novgorodskaya, 19-26.
Moscow, 127572.
Russia

tel.(095) 4092140
fax (095) 4092149

RUSSIAN FEDERATION
LAND REFORM IMPLEMENTATION SUPPORT (LARIS) PROJECT

MAJOR LAWS, DECREES, RESOLUTIONS
PERTAINING TO LAND REFORM

CONSTITUTION

The Constitution, Dec. 12, 1993. Approved by referendum, it recognizes private, state, municipal and other forms of ownership over land, all with equal status under the law. Previous moratoria on land sales are abolished.

LAWS

1. On Land Reform, October 23, 1990, with changes December 27, 1990, reintroduced the concept of land ownership in Russia.
2. On Peasant Farms, Nov. 22, 1990 with changes Dec. 27, 1990, established a legal framework for private family farms.
3. On Ownership in the RSFSR, Dec. 24, 1990. The basic document dealing with property rights, including rights in land. Elaborated and refined in subsequent legislation.
4. The RSFSR Land Code, April 25, 1991. Defines the basis of land ownership, use and disposition. A revised version was prepared by the Supreme Soviet in 1993, but never approved by the President. Most of the Land Code was pronounced invalid by a Presidential Decree on Dec. 24, 1993. The Federal Assembly is responsible for preparing a new land code.
5. On Payment for Land, Oct. 11, 1991. The law provides methodology for determining sales price, land tax and lease payments (for state land leased to private persons), using regional coefficients and technical measurements.
6. On the Rights of Citizens to Acquire as Private Property and to Sell Land Parcels to Conduct Subsidiary Farming and Dacha Operations, Horticulture and Private Housing Construction, Dec. 23, 1992. Eliminated sales moratoria for small land parcels (generally less than 0.5 hectares) in the above categories.

PRESIDENTIAL DECREES

1. On Urgent Measures for Implementation of Land Reform, No. 323, Dec. 27, 1991. Provides for the destructuring of state and collective farms and the creation of a state reserve fund of land for reallocation of agricultural land to private users.
2. On Regulations for Determining Norms of Free Transfer of Land to Private Property, No. 218, March 2, 1992. Procedures for determining land share entitlements for state and collective farm workers and other individuals applying to establish private farms.
3. On Procedures for the Sale of Land Parcels during Privatization of State and Municipal Enterprises, No. 631, June 14, 1992. Establishes procedures for sale or long-term lease of land beneath state and municipal enterprises undergoing privatization.
4. On Additional Measures for Allotting Land Parcels to Citizens, No. 480, April 23, 1993. Reinforces earlier decrees for allocation of land to private owners. Sets out operational guidelines for the allocation process.
5. On Certain Measures to Support Peasant (Private) Farms and Agricultural Cooperatives, No. 1139, July 27, 1993. Laid out steps to support the further development of private farms and private farmer cooperation.
6. On Regulation of Land Relations and Development of Agrarian Reform in Russia, No. 1767, Oct 27, 1993. Eliminates restrictions on the sale of land, and reiterates the right to mortgage land. Greatly simplifies the procedure for registration of land by eliminating the need for surveys as part of land titles. Establishes a simplified "Certificate of Title" as the basic land registration document. Reiterates the mandate of the State Land Committee to administer the land registration system. Identifies structures as well as land in the concept of real estate.
7. On Tax Payments for the Sale of Land Parcels and Other Operations in Land, No. 2118, Dec. 7, 1993. A system of fees established for land transactions, land inheritance, and land grants tied to existing income tax rates.
8. On the State Land Cadastre and Registration of Documents of Rights in Real Estate, No. 2130, Dec. 11, 1993. Calls for establishment of a unified property registry (land and structures) and gives responsibility for such registration activity to the State Land Committee.
9. On Strengthening of State Supervision over the Use and Protection of Land During Implementation of Land Reform, No. 2162, Dec. 16, 1993. Establishes penalties for inappropriate use of land.
10. On Introduction of Land Legislation of the Russian Federation in Accordance with the Constitution of the Russian Federation, No. 2287, December 24, 1993. Declared invalid large portions of the April 1991 Land Code, the 1990 Law on Land Reform and removed description of land auction procedures from Decree No. 1767 of October 1993.

96

GOVERNMENT RESOLUTIONS

1. On Supporting the Development of Peasant Farm, No. 9, Jan. 4, 1991. Introduced measures to facilitate the establishment of private family farms.
2. On Procedures for the Reorganization of Collective and State Farms, No. 86, Dec. 29, 1991. Set out procedures for reorganization of state and collective farms including joint stock companies and limited liability partnerships.
3. On Determining the Size of Land Tax and Normative Prices for Land, No. 112, Feb. 25, 1992. Outlined an administrative approach to assess land values by region.
4. On Land Monitoring, No. 491, June 15, 1992. Mandated the State Land Committee and the Ministry of Ecology and Natural Resources to monitor the use of land.
5. On Perfecting the Implementation of the State Land Cadastre in Russia, No. 622, Aug. 25, 1992. Specified the principles for operating and maintaining the State Land Cadastre with primary responsibility to the State Land Committee.
6. On Procedures for the Privatization and Reorganization of Enterprises and Organizations of the Agro-Industrial Complex, No. 708, Sept. 4, 1992. Reiterated and elaborated procedures for reorganization of state and collective farms and introduced a specialized privatization program for food processing and agro-service enterprises.
7. On Affirmation of Principles for Compensation of Loss of Ownership, Land Use, and Land Leasing and Associated Loss of Agricultural Production, No. 77, Jan. 28, 1993. Established procedures to compensate land owners and lessees for damages to soil or agricultural production caused by third parties or in cases of land seizure on the principle of eminent domain.
8. On the State Program for Monitoring Land in Russia in 1993-95, No. 100, Feb. 5, 1993
9. On Affirming the Procedures for Approval of Land Purchases and Sales of Small Land Parcels, No. 503, May 30, 1993. Laid out operational procedures for the free sale of small land parcels as called for in the December 1992 Law in this area.
10. On the Procedures for Exercising State Control over the Utilization and Protection of Land in the Russian Federation, No. 1362, December 23, 1993.
11. On the Experience of Agrarian Transformation in Nizhny Novgorod Oblast, No. 324, April 15, 1994. Approved the results of the Nizhny Novgorod farm restructuring pilot project; called for establishment of a regional training center in Nizhny Novgorod to prepare specialists to carry out farm restructuring work; and ordered the elaboration of regulations and procedures governing the process of farm restructuring by June 15, 1994.

(a) **Sobstvennost'**

Nature of Title: Equivalent to ownership

Term: Effectively in perpetuity

Granted to: Citizens (but not foreigners) as: (a) individuals or (b) Joint Collectives - where each member's land is not separately identified and (c) Share Collectives - where each members land is separately identified.

Entitlement/Price: (i) Former farmworkers and all members of their households, farm pensioners and professionals eg. doctors in rural settlements receive an average share of agricultural land calculated by reference to the total available in a district free of charge. More land may be bought at a "normative" price per hectare, 50 times the land tax, subject to an upper limit of area set locally.
(ii) Plots for houses and associated use in rural areas, according to the local "norm" free of charge.
(iii) Plots for gardening and stock-rearing previously granted transferred to ownership free of charge, plots newly granted on marginal agricultural or waste land according to local "norm" also free of charge.
(iv) House plots in cities and settlements are charged for but payment may be waived for certain categories of people eg. pensioners

Conditions: (i) May be passed on by inheritance but not by gift.
(ii) Agricultural land acquired free of charge may not be sold for ten years from date of temporary certificate of ownership, precluding any realistic mortgaging. (This condition has been amended to allow sale)
(ii) Land must be used for the purpose for which it was granted. A change of use or failure to meet certain productivity targets on agricultural land could lead to forfeiture.
(iv) May not be transferred or assigned to foreigners.

(b) **Pozhiznennoe Vladenie**

Nature of Title: Inheritable possession for life.

Granted to: As for *Sobstvennost'*.

Term: Life but capable of being passed to heirs and successors.

Entitlement/Price: Alternative to *Sobstvennost'* at the claimant's option, free of charge.

Conditions: (i) Title may not be sold but may be leased though not subdivided.
(ii) Must be used for the purpose assigned.

(c) **Arenda**

Nature of Title: Lease

Granted to: (i) Citizens.
(ii) Foreign Citizens.
(iii) "Stateless" persons.

- (iv) "Juridical" persons.
- (v) Foreign States, Foreign "Juridical" persons and International associations and organizations with or without Russian and Foreign participation.

Term: (i) Short-term 5 years for grazing livestock, mowing for hay, market gardening & State and Social needs.
(ii) Long-term up to 50 years (purposes not specified).

Entitlement/Price: No area limits specified but subject to availability. Rent not to exceed the land tax.

Conditions: (i) Right to grant leases is restricted to the state except for: (a) those temporarily unable to work or on active military service, students and minors until the age of majority, and (b) collective and other cooperative agricultural enterprises and joint-stock companies, for terms not exceeding five years.
(ii) Use restricted to purpose stipulated in lease.
(iii) Lease may be inherited for remainder of term if lessee dies before expiry of lease.
(iv) Lessees of the state have a right to buy at some later date.

(d) **Indefinite or Permanent Use (Bezsrочноe Polzovanie)**

Nature of Title: Effectively use in perpetuity.
Differs from Sobstvennost' in that rights cannot be inherited or sold. Appears to apply to the sites of buildings and not to agricultural and undeveloped land.

(e) **Temporary Use (Kratkosrochnoe Polzovanie)**

Nature of Title: Short lease.

Granted to: Citizens, enterprises, institutions and organizations.

Term: Not exceeding 3 years except certain categories of people eg. pensioners, and for reindeer breeding and stock ranching for which limit is 25 years.

Rent: Not specified by law, set by local authority, in some cases free of charge.

Conditions: Use only for purpose for which granted.

ORGANISING COMMITTEES

PROGRAMME COMMITTEE

Norway

Associate Professor **Erling Berge**
Department of Sociology and Political Science,
AVH
University of Trondheim, N-7055 Dragvoll
tel.: + 47 73 59 17 21; fax: +47 73 59 15 64
e-mail: erling.berge@svf.unit.no

Associate Professor **Audun Sandberg**
Høgskolen i Bodø, N-8002 Bodø
tel. + 47 75 51 73 10 fax: +47 75 51 74 57
e-mail: audun.sandberg@isv.hsn.no

Associate Professor **Alf Haakon Hoel**
NFH/University of Tromsø

Research Fellow **Trond Vedeld**
Norwegian Association for Development Research
NORAGRIC, Agricultural University of Norway,
Ås

Denmark

Assoc. Research Professor Dr. **Elisabeth Vestergaard**
Department of Ethnography and Social
Anthropology, Aarhus University

Iceland

Professor **Gísli Pálsson**
Department of Anthropology, University of Iceland

Sweden

Deputy Director **Carl Folke**
The Beijer Institute
The International Institute of Ecological Economics
The Royal Swedish Academy of Sciences,
Stockholm

Finland

Dr. **Kaisa Korpijaakko-Labba**
Nordic Saami Institute, Kautokeino, Norway

HEAD OF ORGANISING COMMITTEE IN BODØ

Associate Professor **Bjørn Sagdahl**
Høgskolen i Bodø,

Conference secretary **Trond Kristiansen**
Høgskolen i Bodø, N-8002 Bodø, Norway
tel.: +47 75 51 73 16 switchboard +47 75 51 72
00
fax: +47 75 51 74 57
e-mail: Trond.Kristiansen@isv.hsn.no

CONSULTING MEMBERS

President of IASCP, Professor **David Feeny**
McMaster University, Hamilton, Canada

President-elect of IASCP
Professor **Margaret A. McKean**
Duke University, Durham, U.S.A.

IASCP Secretary/Treasurer **Charlotte Hess**
Indiana University, Bloomington, U.S.A.

Professor **Svein Jentoft**
University of Tromsø, Norway

Dr. **Jacques Weber**
CIRAD, Paris, France

Research Fellow **Are Knudsen**
The Christian Michelsen Institute
Fantoft, Norway

SECRETARIAT

Conference Secretary
Anne Utvær, Executive Officer
Centre for Sustainable Development
Agricultural University of Norway
PO Box 5001, N-1432 Ås, Norway
tel.: +47 64 94 93 80; fax: +47 64 94 93 81
e-mail: anne.utvaer@sbu.nlh.no

Dr **Ragnar Øygard**, Director
Centre for Sustainable Development
Agricultural University of Norway
P.O. Box 5001, N-1432 Ås, Norway
tel.: +47 64 94 93 86; fax: +47 64 94 93 81
e-mail: sburo@sbu.nlh.no

CONFERENCE BANK ACCOUNT

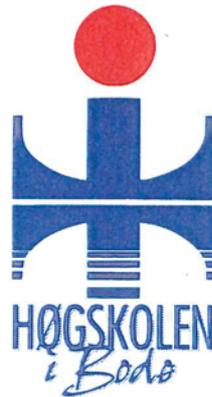
The International Association for the Study
of Common Property
Account no 82100475304
Sparebanken NOR
Kirkegaten 18
0153 OSLO, Norway



INTERNATIONAL
ASSOCIATION FOR THE
STUDY OF
COMMON
PROPERTY



NLH
AGRICULTURAL
UNIVERSITY OF NORWAY



UNIVERSITETET I TRONDHEIM
DEN ALLMENNVIITENSKAPELIGE HØGSKOLEN
INSTITUTT FOR SOSIOLOGI OG STATSVITENSKAP

LANDSDELSUTVALGET

(Omfatter Nord-Norge og Namdalen)