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Experiences with New Forest and Environmental Laws in European Countries with Economies in Transition

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PREFACE

The focus of the International Symposium at Ossiach was the importance of new legislation that sets the fundamental conditions for protection of forest lands and for development of the forest sector in European countries with economies in transition. It was an important event in the expanding activities of the Research Group 6.13.00 on forest law and environmental legislation and the International Union of Forestry Research Organisations, IUFRO.

The Symposium was made possible by a joint effort of IUFRO and the Austrian Federal Ministry of Agriculture and Forestry. We wish to acknowledge the support from the Ministry which made a substantial financial contribution and facilitated the organisation of the meeting. Our thanks are directed in particular to Dipl.-Ing. Gerhard Mannsberger and to Dipl.-Ing. Günter Siegel from the Forestry Department of the Ministry as well as to the Director and Staff of the Vocational Training Center in Ossiach. The Secretary General of IUFRO, Dipl.-Ing. Heinz Schmutzenhofer, helped us during the preparation and showed his continuing interest in the work of our research group by attending the Symposium.

We thank the participants from European Countries with Economies in Transition for their commitment and the preparation of country reports. We acknowledge the support of the Forst Service International Group, the contribution of Dr. Bruno Kathollnig, Director of the City of Villach, and the presentations of the invited speakers, Dr. Stefan Wagner and Prof. Dr. Dennis C. Le Master.

The Symposium was a successful one. It has allowed a fruitful exchange among those who have a responsible position in public service and those engaged in academic teaching and forest research. A second symposium follows in September 1999, again in Ossiach. It continues the exchange of experiences in a rapidly changing legal environment and shall foster indepth discussions on the implementation of forest and environmental laws.

We thank Georg Iselin, Assistant at the Chair of Forest Policy and Forest Economics of the Swiss Federal Institute of Technology, for his help in preparing this report.

Franz Schmithüsen, Chairman of 6.13.00
Peter Herbst, Co-chairman of 6.13.00, European Region

WELCOME ADDRESS

On behalf of my Federal Minister for Agriculture and Forestry, Mag. Wilhelm Molterer and on behalf of myself I would like to extend my sincere welcome to all of you participating in this IUFRO Workshop at the Vocational Training Centre in Ossiach.

People, policy makers and politicians all over the world have become increasingly interested in and concerned about forests and issues related to forests since the early 1980s. Deforestation, conservation and use of genetic resources and biological diversity, the contribution of forests to reduce global warming, the fate of indigenous forest dwellers, international trade in forest products are among these subjects, which are no longer topics of interest only to scholars and professional specialists, but are being debated and discussed in the media, in policy and political fora, on the street, in schools and at home.

People are engaging themselves and their political representatives in actions aimed at the sustainable management of forests and wildlife, maintaining or enhancing the contribution of forests to economic development and employment generation, tree planting for re-greening of urban and rural areas, trade boycotts and defending the rights of local communities. All these activities are carried out on a scale never seen before.

Forests also occupied a prominent position in the international deliberations at the United Nations Conference on Environment and Development, UNCED, held in Rio de Janeiro in June 1992. The Earth Summit linked two concepts - environment and development. Achieving environmental protection with sustainable economic development requires both broad and deep environmental awareness. But while this proposition is hardly controversial, it is by no means simple. Or rather, its apparent simplicity is deceptive. The way in which human beings perceive their relationship with nature must take a giant step across a new threshold, as it has already been formulated at an UN-Conference, held 1988 in Toronto, and as it has been endorsed by UNCED.

A profound change in perception is a necessary condition for solving the problems we are facing: climatic change, deforestation, municipal and industrial pollution, the erosion of biological diversity, grinding poverty, unjust social institutions and international inequality. Human behaviour is responsive to and guided by human perception. Hence, changed norms of behaviour are clearly linked to change of beliefs and values - to a change of perception. And since our political institutions reflect our beliefs and values, genuine political institutions' change depends upon a change in perception. A change in perception is a prerequisite for getting effective measures - moral, social and technical - off the ground. As a purely practical matter of fact, governments and administrators only embark on concise action, which are mostly difficult and costly, if their constituents do understand why they must make the sacrifices that are necessary for preserving the environment.

Human population growth, resource depletion and environmental degradation oblige us to adopt a holistic and global point of view. Asking about human rights, we can readily say that humans have a 'right' to an environment that is healthy and that has its integrity. Such a right has not figured in the heritage of our past. For evidently

humans are helped or hurt by the condition of their environment and if humans have a right to life, liberty and the pursuit of happiness, then they have a right to the natural conditions that are necessary to produce it. This includes the basic natural givens - air, soil, water, functioning ecosystems, hydrologic cycles and so on. It may also include the environmental amenities since well being includes amenities as well as essential natural resources.

Forests rival oceans in their influence on the biosphere. They perform a variety of functions stabilising land, controlling flows of water, modulating local climate, providing the major reservoir of land biodiversity and supplying fibre and even food for people. In fact they play an essential role in the function of the biosphere as a whole. Forests are a part of a stable and wholesome habitat for people. But this habitat is threatened by a variety of causes as it has been again revealed by the reports prepared for the Intergovernmental Panel on Forests (IPF). There is no proof of a potential catastrophe. There will be no such proof until far too late to deflect the process. But the possibility is real and in the estimation of scientists the risks are high.

During the last decades we can recognise that the public has an increasing vital interest globally in forests as an essential element in the human habitat. Particularly new is the realisation that current trends threaten the continued existence of forests and that their loss implies an immediate irreversible destabilisation and impoverishment of the human circumstances globally. The time when forests were large in proportion to the demands placed on them has passed; forests are now threatened around the world by direct and indirect anthropogenic influences. Forests may not escape those influences. Worse yet, the destruction of forests is contributing to the acceleration of further disruption of living systems at the time when human activities and demands are increasing rapidly without evidence of any limit.

The adoption of guiding principles applicable to the conservation and sustainable development of all types of forests at the Rio Conference represents a first and important step toward progress. This is not enough, however. Based on the Forest Principles the Austrian government fully supports the idea, that their framers should organise an international convention on forests, which will provide the necessary policy and strengthened constitutional framework for international cooperation. Strong international institutions are needed to provide leadership on forest related issues, to manage international cooperation on forests, to assess the state of world's forest and to provide timely and credible reports on the progress towards the conservation and sustainable development of forests at regional and global levels.

In concluding I hope that the results and recommendations of that workshop will be a further contribution on the way to achieve the forestry related goals set up at the UN-Conference for Environment and Development.

Dipl.-Ing. Günter Siegel,
Forestry Department of the Austrian Federal Ministry of Agriculture and Forestry

Ossiach, 25 June 1998

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FRANZ SCHMITHÜSEN

1 Forest Law as a Regulatory Framework for Protection and Utilization of Forests

Economic and Social Context: The evolution of forest legislation in the European Countries shows that the understanding of how natural resources are to be used in a sustainable manner depends on a given economic and social context. The options that should remain open for the future, result from the changing perspectives and possibilities of different generations. The meaning of sustainable forestry is determined by local circumstances and their significance has considerably changed over time. Today sustainable management is understood as forestry practices which respect the naturally given potentials of the ecosystems and maintain the diversity of forests in their typical landscapes. They leave multiple options for an increasing production of wood, for protection of the environment and for recreation.[1]

Regulation of Forest Uses: Public provisions referring to forest uses over more than one generation are probably among the oldest forms of long-term environmental policies. Customary law, codified already in the 14th century, regulated forest uses in accordance with the demands and options of their times. An increasing number of forest and timber ordinances, issued from the 16th century onward, followed. Meeting local needs, long-term availability of raw materials and energy, and increased outputs through better forestry practices were the issues at stake. Legislation established the requirement of a continous flow of wood production, which meant stopping mere exploitation of what was available. It recognised the long-term nature of forests, and promoted the involvement of several generations in forestry activities. Increasingly it provided for planning and management, and for measures of regeneration and reforestation. Step-by-step forest laws introduced principles of renewable natural resources utilisation as a requirement for sustainability as we understand it today.

Regulation of Property Rights and Forest Tenures: Just as important is the fact that forest laws define ownership rights and access to forests for different user groups. With the favourable conditions of an expanding wood production and an expansion of the timber trade continuity and increase of supply required investment in forestry and this could not be achieved without security of forest tenures. Especially during the 19th century many forest laws had a tendency to restrict or abolish usufruct rights, and to transform collective tenure into clearly defined land ownership. In some areas, this has favoured the constitution of communal forests, whereas in others state forests were maintained. Private property rights were formally registered and forests still under collective tenure were divided among the users. Quite often a combination of tenures developed which is characteristic for the present ownership of forests in

[1] There is a considerable number of recent research publications and case studies which analyse the evolution of forest uses and sustainable resources utilization at national and local levels. For several European countries see for instance Arnould et al., 1997, and Cavaciocchi 1996; for Germany, Austria and Switzerland Schmithüsen 1998; for France Corvol 1987, Corvol et al. 1997, and Centre Historique des Archives Nationales, 1997.

European countries. On the whole, the laws distinguished between use and management rights according to which forests were a productive asset for generating profit and income, and other uses which were important to the population or certain user groups. Increasingly they recognised resource management aspects of public interests which primarily concerned protective values in mountainous areas.[2]

To establish a legal basis for uses and ownership has been a tedious, difficult and often conflictual process. Sovereigns and nobility claimed wood resources for operating mining industries, commercial salt production, glass-making factories and for ship building. They obtained juridical control over vast areas and created forest administrations in order to impose close supervision on communal and, to a lesser degree, on private lands. The growing influence of the state created tensions with peasants and villagers. To them, local uses were more important than government-promoted commercial wood production.

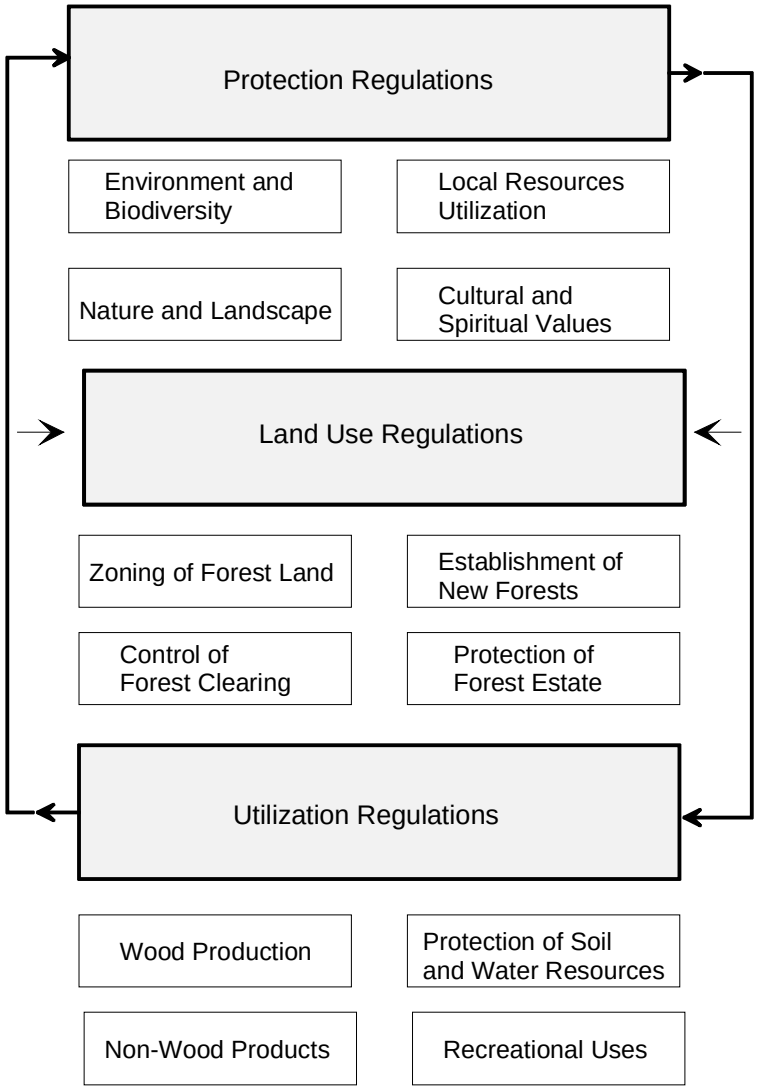
Regulation of Wood Production and Management: Forest laws have moved from local restrictions and usage rules to comprehensive provisions that organise and regulate sustainable wood production. The change was initiated by a new understanding of forests which could be used in competitive markets for industrial activities. Forestry and wood processing became production sectors for which a sustainable raw material flow was the prerequisite, and at the same time, the condition of business. This lead to a system of management which, yet unknown in other sectors, has kept its exemplary value. It is based on scientific models adjusting harvesting intensities to the long-term potential of forest sites, species, and age structure. The principle of sustainable wood production is implemented by applying these models over large areas in different forest tenure systems. In view of the public utility of forests, their uses and management are regulated to an extent which is uncommon in other economic activities. Legal requirements relate primarily to the protection of the forest cover, to minimum standards for management, and to measures contributing to increased productivity.[3]

Principal Elements of Forest Legislation: Many European countries have thus long standing experiences in sustainable forestry based on public policies and regulations. Forest laws balance private land ownership rights against the public interests associated with multiple forest uses as well as they determine specific management standards for communal and state forest tenure (Schmithüsen 1996). With regard to conservation and sustainable utilization of forests legislation provides different types of regulations (*Figure 1*). Protection regulations refer to measures on environment and biodiversity, nature and landscape protection, and restrictions associated with cultural and spiritual values. Land use regulations include zoning of the forest land, control of forest clearing, protection of the permanent forest estate, and the creation of new forests through afforestation. Utilization and management regulations determine responsibilities of forest owners with regard to sustainable production of wood and non-wood products, the protection of soil and water resources as well as public access to forests and recreational uses.

[2] The regulation of ownership and usage rights, and the conflicts between public and private interests determining the adoption of the Austrian forest law of 1852 are analyzed in Feichter 1992, 1996. The development of forest tenure in Spain is summerized by Rojas 1996.

[3] An overview of management issues that may be subject to regulatory measures is provided in FAO 1994.

Figure 1: Principal Elements of the Regulatory Framework for the Conservation and Sustainable Utilization of Forests



Source: Schmithüsen 1996, p. 38

2 Examples of New Forest Legislation in the European Region[4]

The last years have seen a rapid evolution leading to a revision of forest laws in all parts of Europe. The process of adapting legislation to new political, economic and social developments has gained considerable momentum.[5] Countries with new and amended laws range from Albania and Finland to Sweden and Ukraine *(Figure 2).* They include Denmark, France, Germany, Great Britain, Portugal and Spain. Major changes occure in the Central and Eastern European countries which are in the

[4] Section 2 and 3 are a revised and updated version of a paper published in: I Forum de Politicas Forestal 1996: 125-137; Centre Tecnnologic Forestal del Solsones, Solsona / Spain.

[5] A useful source providing information on current revisions of forest laws as well as on forestry related environmental and nature conservation legislation is the Internet Access to the Development Law Service of FAO*: http://faolex.fao.org/faolex_eng/index.html* This service provides the full text of laws and regulations that are relevant in the present context.

process of promulgating a profoundly modified legal network of forest, nature conservation and environmental protection regulations. The following examples show the variety of conditions under which the process of adapting the legal framework to the changing conditions of forest resources utilization occurs.[6]

Figure 2: Revision or Major Amendments of Forest Legislation 1990-1998

1990	*Belgium*	Flemish Forest Decree
	Croatia	Forest Act
1991	*Poland*	Act on Forests
	Lichtenstein	Forest Law
1992	*Albania*	Law on Forestry and Forest Polce
	Spain	Forest Law (Andalucia)
	Switzerland	Federal Law on Forests
1993	*Finland*	Forest and Park Service Act
	Sweden	Forest Act
	Estonia	Forest Law
	Slovenia	Forest Law
1994	*Spain*	Forest Development Law (Castilla y Leon)
	Latvia	Law on Management and Utilization of Forests
	Lithuania	Forest Law
	Ukraine	Forest Code
	Norway	Forest Law
1990-1994	*United Kingdom*	Guidelines and Rules
1992-1994	*Germany*	New Forest Acts in the 5 States on the territory of the former German Democratic Republic
1996	*Czech Republic*	Forest Act
	Denmark	Forest Law
	Finland	Forest Act
	Hungary	Act on Forest and the Protection of Forests
	Portugal	Forest Law
	Romania	Forestry Code
1997	*Bulgaria*	Law for the Restoration of Property of Forests and Forest Lands
	Poland	Law on Forests
	Russia	Forest Code of the Russion Federation
1998	*France*	Revision of Forest Law
	Norway	Revision of Forest Law
	Poland	Revision of Forest Act

Source: Conference of European Forest Ministers, Lisbonne 1998; National Reports. Other Country Information.

[6] The IUFRO Research Group Forest Law and Environmental Legislation (6.13.00) has published a considerable number of case studies on legal developments and regulatory issues at national and sub-national levels. For an overview on available contributions see Schmithüsen and Iselin, 1999: *http://www.waho.ethz.ch/ppo*

Belgium: The long process of preparing the Flemish Forest Decree, finally issued in 1990, stands for two tendencies in adapting forest laws to new realities (Lust 1996). It takes advantage of the possibility to formulate different forest policies for the regions of Belgium (Flanders, Wallonia and Brussels), as enacted by the Specific Act on institutional reforms of 1980. It is also an interesting piece of legislation in as much as its preparation involved a large number of stake holders and, in particular, local authorities, rural plannung entities and nature conservation groups.

Finland: Recent changes in legislation refer to a significant reorganisation of administration (Tikkanen and Vehkamaki 1996). The Forest and Park Service Act of 1993 establishes a state enterprise working under the Ministry of Agriculture and Forestry and, in matters of nature protection, under the supervision of the Ministry of Environment. The Forest and Park Service manages natural resources and other property under its competence in a sustainable and profitable way by taking into account protection and appropriate increase of biological biodiversity. Nature protection measures are carried out in accordance with the Nature Protection Act of 1971 and with determined operational and financial targets. Other duties refer to competences under the Fisheries Act of 1982, the Terrain Traffic Act of 1991, the Hunting Act of 1993 and the Outdoor Recreation Act of 1973. In addition to timber production, nature protection and national parks, the tasks of the new service relate to recreational use of public lands, to unemployment relief in Northern rural areas, and to caring for local traditions and cultural heritage.

France: The law Nr. 85-1273 on management, valorisation and protection of forests recognises formally production, protection and social utility as the principal objectives of national forest policy (Humbert 1996). The law is an important precision to the National Forestry Code of 1979 and consolidates previous legislation as in particular Law Nr. 63-819 adopted in 1963. It is also complementary to the French Nature Conservation Law of 1976 and its subsequent regulations. Following a recent governmental report on the national forest policy with important strategic proposals to valorise the forest resources potential (Bianco 1998) a revision of the forest law is in preparation.

Germany: The Federal Forest Act is a frame law and has not experienced major changes since its promulgation in 1975. Issues of resources protection and management are regulated by member state (Länder) forest laws and regulations. In the former Federal Republic of Germany most of the state forest laws have been adopted during the 1970's with subsequent amendments and modifications. After reunification new forest legislation has been prepared in the 5 states which had belonged to the territory of the former German Democratic Republic (Weber 1994). This process involved in particular a repartition of constitutional competencies, regulations with regard to the organisation of state forest services, determination rights and obligations of private and public forest owners, regulations referring to forest practices and sustainable management, and legal provisions dealing with applicable forest subsidies and compensations (Niesslein 1992). An important aspect in reorganising forest utilization has been the process of reconstitution of forest tenures by recognising private, communal and state forests as well as through privatisation of land held previously under cooperative forest properties (Sasse, 1996)

Great Britain: Changes in forestry activities are largely based on ministerial statements, policy declarations, combined with a system of legal restrictions, tax advantages, grants and extension. The presently relevant forest policy statement of the Government was written in 1991 and followed by a UK. programme on sustainable forestry, published in 1994 (Miller 1996). The Forestry Commission, established in 1919 by Act of Parliament, exerts considerable control over management decisions in both the private and state sectors. A set of guidelines drawn up by the Forestry Authority between 1990 and 1994 refers to forests and water, forest nature conservation, forest recreation, forest landscape design and to community woodland design. They contain prescriptive statements, that detail, for instance, forest design and management in order to minimise impact on water, or they are more of an advisory nature in connection with grant aid applications. The possibility to claim the cost of planting trees against tax relief has been abolished in 1988. It was the intention to offer an equivalent through grants to which conditions can be attached more readily than in the case of tax relief. The Woodland Grant Scheme provides for the possibility that farmers can get annual payments for 10, respectively, 15 years in order to compensate for loss of agricultural earnings. An interesting aspect is the role of forestry consultants many of which have passed examinations to become Members or Fellows of the Institute of Chartered Foresters. This implies that they are bound by the ethics and codes of behaviour of this professional institute and appear on the approval list of members in consultant practice.

Italy: Forest legislation is still determined to a large extent by regulations based on the Serpieri Forest Law of 1923 with subsequent amendments. There are, however, new developments in fields like nature and landscape legislation, rural development and special programmes for mountainous regions which have a considerable impact on forest management (Merlo and Petenella 1990). This refers, in particular, to the Nature and Landscape Law of 1985 (Legge Galasso) which provides for regional landscape plans with consequences for the role of forest land and its management. Another interesting development results from the growing impact of European Community regulations related to agriculture and from measures in favour of selected regions which are translated in specific plans and projects (Gajo and Marone 1996). Italy offers an example of a country in which forestry becomes more and more integrated into general land development schemes based on integrated planning and joint financial commitments under different programmes. Relevant regulations for forest resources management result increasingly from a broad range of environmental and primary sector regulations.

Spain: The Spanish basic law on the conservation of natural areas and of forest flora and fauna of 1989 has had an important impact in establishing state authority for the declaration and management of national parks (Rojas Briales 1992). It is also part of the process for redefining constitutional competences both between forest and nature conservation legislation as well as between national and regional entities. Several forest laws for autonomous regional entities are in the process of preparation or have already been adopted.

Sweden: In 1993 a new Forst Act has been promulgated (Svensson 1994, Thelander 1996). It replaces the act of 1979 which was in force with slight amendments during the 1980's. The new law is of considerable interest and the result of important changes in forest policy direction. An important aspect of the country's new forest

policy results from the fact that environment and wood production are now considered as policy objectives of the same priority and of equal weight in managing forest resources. Forest owners are responsible for environmental measures required on land used for timber production and have to bear the related costs. Costs for national parks and nature reserves are to be borne by the State. Extension services and the transfer of knowledge and know-how receive strong emphasis since forest owners have now greater responsibilities in forest resources management. Subsidies are restricted to improvements of the forest environment. On the whole the new law has been simplified in comparison with the previous one, is less restrictive and gives more freedom of action in land management.

Switzerland: After a long process of review a new Federal Law on Forests was adopted by the two chambers of parliament in 1991 (Schmithüsen 1995). As the previous law, which had been in force since 1902, it is based on a joint constitutional competence for forestry matters. The federal level has a frame competence, focusing on the protection of forest lands and on the protective role of forests in mountainous areas. The cantons are responsible for the implementation of federal regulations. They have also a fairly large domain of own competences, which include forest management planning, support to public and private forest owners, and organisation of the cantonal forest services. At present the cantons are in a process of revising their legislation and several cantonal forest laws have already been adopted.

Central and Eastern European Countries:[7] As of 1994 new forest legislation had already been enacted in Croatia, Poland, Slovenia, the tree Baltic States and Ukraine (FAO 1995, country reports). Since 1995 the Czeck Republic, Hungary, Romania and Russia have adopted new forest laws. The principal issues that have been dealt with in the new legislation are sustainable development of forests, privatisation and private forestry, forest management and utilisation, community forestry and law enforcement (Cirelli, 1999)

The task to create a new legal framework for forestry and environmental protection is undertaken within a fundamentally changed constitutional environment. It is determined by democratic decisions, by constitutional rights of the citizens and by a state of law which legitimises governmental intervention. Experiences are to be gained with regard to the implementation of the new laws and, at least in some countries, with the additional revisions in order to make legislation more workable. Economies in transition imply that wood production as well as services are subject to the rules of demands and supply and that sustainable forestry practices are only viable if they are determined by considerations of economic efficiency and profitable management. Public regulations will be operable if the forest owners are able to obtain immediate benefits from their activities and if they are compensated by for additional costs from user groups and the community. The new forest laws reflect to a considerable extent these frame conditions of forestry in a market economy.

[7] A recent overview on forest law developments in European Countries in transition to market economies is available in FAO Legal Papers Online Nr. 2 (Cirelli 1999) under *http://www.fao.org/Legal/default.htm* . For other country information and analysis of relevant issues relating to the process of adapting the forestry sector to a market economy see IUFRO 1992; FAO 1995; Ljungman, 1995; Schmithüsen ed. 1996

Poland: Among the countries in transition to a market economy, Poland has been among the first ones to adopt a fundamentally revised forest law. It replaced the former law on state forestry of 1949 and the law of 1973 regulating management of non-state properties. Both laws had been subject to numerous amendments and a project of a consolidated legislation had already been launched during the 80's (Partyka et al. 1990). The new law on forests, enacted by parliament in May 1991, refers to all forms of forest ownership and defines the principles of maintenance, protection and increase of forest resources as well as of forest utilization in the overall perspective of environmental protection and national economic development (Strykowski and Lonkiewics 1995). A key element in the new legislation are management plans, to be prepared for all types of property with the objectives to increase the productivity of forest resources, to ensure economic profitability and to provide environmental benefits. State forests have been maintained and should be managed under a regime of financial self-dependence. A forest fund has been established in order to compensate for variations in cost/revenue structures among different forest districts. A critical point in the law are provisions related to privately owned forests for which regulative measures are in force but not sufficient support in implementation is available. The Act on Forests has important relations to the nature protection law which has also been promulgated in 1991. A revision of the forest law has been undertaken in 1997.

3 Significant Trends in Recent Forest Legislation Developments

Evaluating Changes in Forest Legislation: The tendencies that become apparent from recent changes in forest laws and regulations in several European countries show a variety of approaches and may be judged from different point of views. Criteria which are relevant for an analysis on the advancement of legislation are in particular the following ones:

- *Consistency:* requires the compatibility of forest regulations with constitutional values and democratic rules, with national policies addressing land-use, economic development and environmental protection, and with international commitments and multilateral agreements.
- *Comprehensiveness* refers to the objectives of forest legislation with regard to forest protection and forestry development, to different types of forest tenures, and to the rights and responsibilities of various categories of forest owners.
- *Subsidiarity:* relates to the role of forests as national, regional and local resources. It also relates to the double nature of forests as private production means that may be used according to the decisions of land owners and as resources that yield numerous benefits to the community. Subsidiarity indicates to what extent public programmes support the activities of land owners.
- *Applicability:* refers in particular to the organisational framework of public forest administrations in relation to changing responsibilities and tasks, and to appropriate forms of participation of forest owners and interest groups in regulating forest uses and management practices. Coordination of competences among public entities is an important aspect in evaluating the applicability of new or amended regulations.

Adaptation of Legislation to Changing Social Demands: Changes in social demands towards forests are in itself nothing new. In addition to the production of wood and many other products, forests have always had great importance with respect to protective and sociocultural values. The actual demands are of a much diversified nature and specific within countries and at a given locality. They involve the production of goods and services of a distributive character. And they refer to interests in the very existence of forests, which have their foundation in the perception and the personal conviction of people. The potential for alternative uses, the variety of actual outputs as well as the values associated with their existence make the forests an important element of the rural and urban space. The capacity to satisfy present needs, but also those of future generations determine their social relevance and the objectives of sustainable management. It is this aspect, which gives a new dimension to the political debate on forests and forestry and to forest law developments.

Multifunctional Policy Objectives: The objectives of new laws are more diversified and comprehensive. Moving from a perspective which focused on wood as a sustainable resource, forest laws are now addressing a wider range of private and public goods and values. They acknowledge the equal importance of production and conservation. Their goals refer to the role of forests as multifunctional resources, to their economic potential, and to their importance in the environment. Increasingly they address the variety of ecosystems, the need to maintain biodiversity, and the preservation of forest lands for reasons of nature and landscape protection. Regulations on the management and utilisation stipulate the need to balance timber production, recreational uses and the protection of forests for soil and water conservation and against impacts from natural disasters. In accordance with the variety of ecosystems and local conditions management objectives refer explicitly to the role of forests as multifunctional renewable resources.

Transfer or Delegation of Constitutional Competencies in Forestry Matters: An important aspect in recent forest law developments are changes in the role of national, regional and local authorities. This refers foremost to constitutional competences in forestry matters. There is a trend to shift or delegate forestry competences to regional governments or to newly created autonomous state entities. Where the national level remains responsible for forest conservation and development sub-national entities become more strongly involved in policy formulation and implementation. A similar process occurs with regard to the relationships between governmental entities and local communities and associations by expanding their competences in forest management and land-use planning. These developments provide, all together, more opportunities for multi-level political decisions and for the negotiation of locally adapted solutions. They acknowledge the fact, that forests are of national concern as well as they are renewable resources of the rural and urban space. Transfer or delegation of competences allows for more participation of people in democratic decision-making processes in which they can express their specific interests and values associated with forest management and utilisation.

Regulative and Incentive Instruments: Regulative instruments keep their importance in particular with regard to protecting forest areas from uncontrolled clearings and from devastative exploitation. Regulations, which so far have restricted forest management decisions, are gradually replaced by joint management systems which

engage forest owners and public authorities on a negotiated and increasingly on a contractual basis. A critical review of existing incentives for afforestation, forest roads and cooperation of forest owners takes place with the aim to develop more output oriented systems and to develop more precise performance and impact criteria. New categories of incentives for silvicultural practices close to nature, multiple use management and promoting measures which sustain biodiversity gain importance. Compensatory payments to forest owners for the performance of specific tasks in the public interest became an important issue. On the whole, legislation on forest incentives is increasingly concerned with the determination of specific targets, more precise commitments of the beneficiaries and accountability on proven results in relation to the committed financial means.

Information and Process-Steering Instruments: With a shift to a more collaborative forest policy informational and persuasive instruments gain considerable weight in forest legislation. This refers to information and debate in parliament and in other political entities, to information and arbitration processes among different interest groups, and foremost to a continuos dialogue between forest owners and public authorities. New legislation thus provides for monitoring and evaluation systems which produce information on forest health, composition of forest stands, and on the impact of uses affecting forest ecosystems and biodiversity. There is also demand for information on the economic performance of forest enterprises and on the financing of services rendered to the public

Process steering instruments regulate in particular organisational structures and competences, as well as communication between governmental services and non-governmental organisations. This implies, for instance a legal framework for decision making procedures among public agencies, the designation of lead agencies, the organisation of public hearings, and for environmental assessment and evaluation procedures. It also calls for a distinction between competences related to investment and development versus those related to resources protection. There is an increasing tendency to separate more clearly the regulatory function of public forest services from their role as managers of forest lands.

Strategies to Support Forest Owners: New and amended forest laws show less regulation and control of communal and private forest owners in management planning, forestry operations and commercialisation of forest products. The shift to joint management responsibilities is probably favoured by constitutional emphasis on local government and strengthened institutional and financial capabilities of municipalities. New legislation focuses on setting frame conditions by defining minimum requirements and performance standards. It confirms forest owner rights in using services offered by the private sector and promotes contractual arrangements with third parties that benefit from sustainable forest management. Guidelines for best management practices and approvals by exception are increasingly used. In addition to incentives in order to increase forest production, new ones related to maintaining biodiversity and to nature conservation. Strategies of support consider more strongly measures in order to overcome structural deficiencies by stimulating research and technology transfer, more integration between forestry and other sectors of primary production, and more investment which increases the competitiveness of the wood industry sector in national and international markets.

Promotion of Silvicultural Practices Close to Nature: Legislation favours measures of silviculture close to nature and limits clear cutting. It provides for special authorisation of planting non-stocked areas with high potential for nature conservation. It requires information of how forest owners take care of conservation in felling plans. It stipulates environmental impact assessment of alternative silviculture and logging methods and the supply of monitoring information which demonstrates, that biodiversity is maintained. Public financial measures favour the conservation of broad-leaved forests and promote silvicultural measures for regeneration, tending and thinning in broad-leaved stands. There is a trend to promote a flexible form of resources management, which is not too intensive, relies on the site specific production potential and leaves options for future demands and values. Silvicultural practices close to nature are a modern form of management which safeguards the natural diversity and stability of the forests, and maintain at the same time future options.

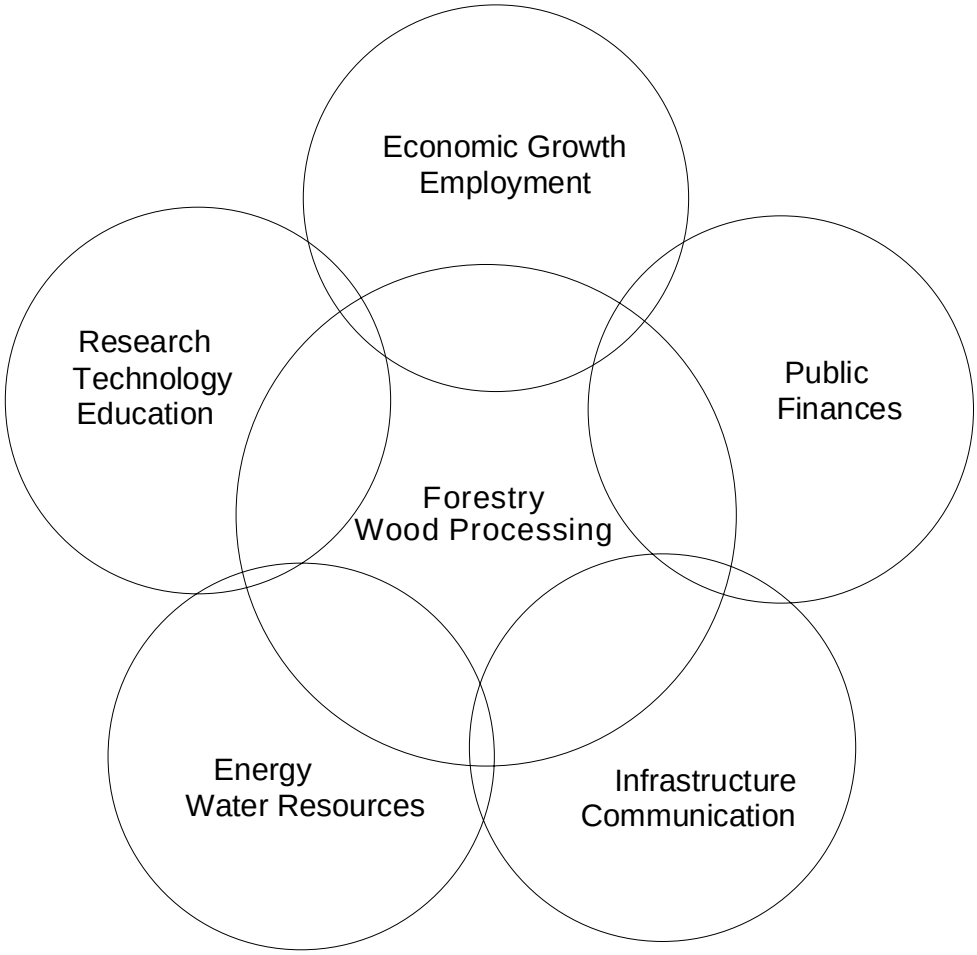
Proactive Legislation and new Approaches in Implementation: On the whole new forest legislation becomes proactive in the sense that it relies more systematically on incentive and monitoring measures. This implies more opportunities for forest owners and interest groups to get involved in decision-making and implementation. On the side of forest authorities it leads to greater importance of process-steering and to a shift from individual decisions and projects to comprehensive forestry programmes. Parliamentary and governmental decisions focus on broad objectives and on allocating the necessary resources. In accordance with the principles of new public management this leads to a new approach in implementing forest regulations. It implies precise demands on the tasks and services to be performed by administrations and public entities with more operational flexibility in managing human and financial resources. The allocation of financial resources in relation to specific targets based on global budgeting and/or service contracts is a new feature in public process-steering. It requires the development of criteria of financial controlling which measure efficiency (output/ input), effectiveness (attainment of objectives) and economy (real costs/ standard costs) based on best practices.

4 Linkages between Forest, Economic Development and Environmental Policies and Legislation

Forestry Related Public Policies and Legislation: The use of forests and forest land as well as the management of timber stands are subject to a network of public policies and legal provisions, which has expanded considerably during the last 20 years. A general matrix assessing the influence of external policies on the contribution of forests to sustainable development and environmental stability has been elaborated by de Montalembert 1995. It identifies broad cross-sectoral linkages and possible impacts on sustainable forest management with emphasis on macro-economic, social and industrial sector policies. An analysis of the policy context for the development ot the forest and forest industries sector in Europe as seen from an international perspective has been undertaken by Peck and Descargues in 1995/1997. Emphasis is put on policies that influence access to intermediate and end-use markets for wood and processed forest products. The prospects for access to raw-material supply, and possible impacts on the relationship between major competitors and alternative materials and products are examined.

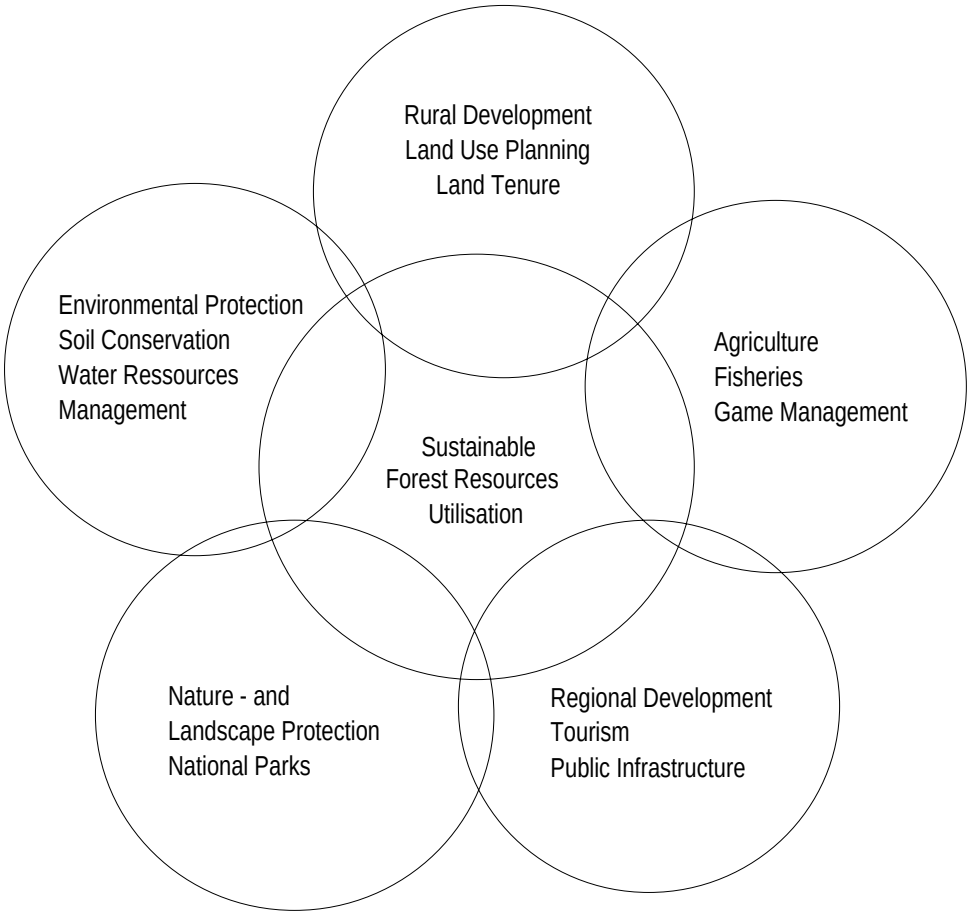
The development potential of forestry and wood processing industry is influenced by factors such as population growth, economic growth, liberalisation of trade, new markets for forest products and the short and long term production potential of the large forest regions. An important factor is the price of energy which influences the relationship between processed wood products and competing materials. Public policies and laws determining macro-economic trends are of considerable importance. This refers for instance to economic growth and employment, public finances, public infrastructure and communications, energy, research and technology development *(Figure 3).*

Figure 3: Public Policies with Important Impacts on Forestry and Wood Processing



Most European countries have created an increasingly complex network of public policies and legislation that address directly and indirectly forest conservation and sustainable forest resources utilization. This refers to cross-sectoral policies and laws that have emerged during the past 30 years such as on environmental protection, nature- and landscape conservation, land-use planning and regional development. It also refers to sectoral policies and laws that were adopted at an earlier stage but have been modified and amended considerably in the mean-time. This includes for instance regulations on agricultural development, water protection and use regulations, fishery, hunting and wildlife conservation and, of course, forest policy and legislation *(Figure 4)*:

Figure 4: Public Policies with Important Impacts on Sustainable Forest Resources Utilization



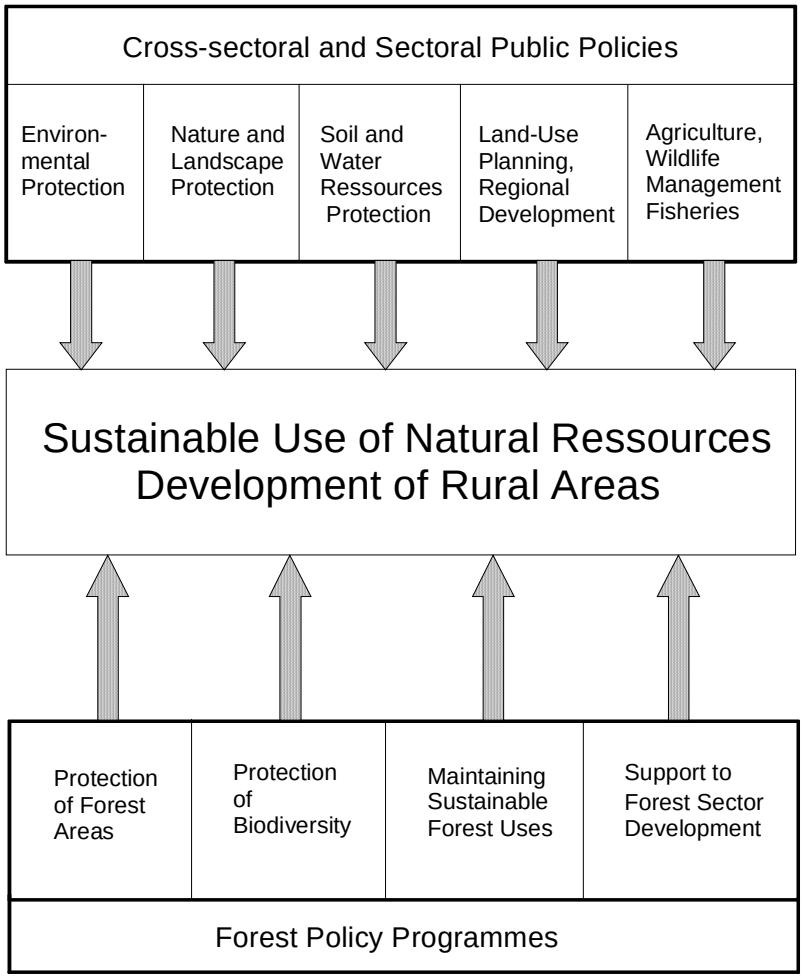
Policy and Legislation Networks: The complexity of public policy networks *(Figure 5)* leads to an increasing interdependence between forest laws, economic development laws and natural resources and environmental legislation (de Montalembert and Schmithüsen, 1993). It requires a thorough analysis of the compatibility of laws and regulations. The following aspects need attention:

- the implications of the expanding system of environmental and nature protection legislation on forest management;
- the degree to which the respective provisions support, or neutralise and obstruct each other;
- the scope for inserting in environmental protection laws specific provisions related to forest conservation and management;
- the impact of natural resources and rural development legislation on sustainable forest management;
- the need for modifications of forest management regulations in order to be compatible and to support such legislation.

A centre piece of the expanding network of environmental and natural resources legislation is nature and landscape protection. Nature conservation is not limited any more to protecting endangered species and biotopes. It aims at the integration of nature and landscape protection in all aspects of resources development. It has

immediate and in many cases far reaching consequences for the status and use of various categories of forest lands as well as for current forestry practices. Whereas protecting of forests from clearing and maintaining biodiversity are common objectives of nature conservation and forest laws there may be considerable difference in regulating uses and management requirements. Legislation provides increasingly that forest management is subject to review and assessment with regard to nature conservation. It establishes a de facto, and in some countries a formal participation of conservation and user groups in decisional processes. Ecological and landscape inventories become an important source of information for public and private nature conservation organisations. The forest authorities are obliged to consider ecological and protection aspects with the same attention as they examine long and short term forest production, silvicultural and economic development objectives.[8] This again requires a process of consultation among governmental agencies that have competencies in regulating forestry matters, environmental protection, land-use planning and rural development. Without institutionalised co-ordination processes lengthy and costly delays in project planning and implemen-tation will occur.

Figure 5: Linkages Between Forest Policy Programmes and Other Public Policies



Source: Schmithüsen 1995, p.47 (modified)

[8] The research proceedings edited by Glück er al. In 1999 contain general papers and a large amount of country information on the implications of public policy networks on national forest programmes and forest management planning.

5 Forestry Related International Instruments[9]

A substantial expansion of international law on the environment and development has taken place during the last twenty years. Several agreements have been adopted to encourage countries to accept commitments towards a more sustainable use of natural resources. This has enabled governments to institutionalise world-wide and regional co-operation, and to establish confidence-building processes. The following overview considers legal instruments which are multilateral and refer, with one exception, to all types of forests.[10]

Legal Instruments Adopted Prior to UNCED: Some international instruments were adopted prior to the Rio Conference in 1992 (*Figure 6*). A common feature is that they focus on particular issues and problems and that most of them originated within specialised agencies of the UN. They refer to specific aspects of protecting biodiversity such as CITES, the Convention on International Trade in Endangered Species, and the Ramsar Convention which protects wetlands of international importance. Other agreements address cultural and social issues needing attention on a world wide scale such as the UNESCO Convention on the World Cultural and Natural Heritage and the ILO Convention concerning Indigenous and Tribal People. The International Tropical Timber Agreement refers to trade and forest resources utilisation and operates under the UN Trade and Development Conference.

CITES is intended to control or limit international trade on endangered species of wild fauna and flora. With very cumbersome and sophisticated procedures, endangered species of trees may fall under the regulations of this convention. Two problems with CITES are it addresses only those species that are endangered, and even then its approach is not comprehensive since it only refers to import and export of such species. The Ramsar Convention imposes on contracting parties the obligation to formulate and implement their planning so as to promote the conservation and wise use of wetlands within their boundaries. The biological relation between wetlands and forestry ecosystems is well known. And it is possible to think that by protecting wetlands, some forestry ecosystems will also be protected. But for practical purposes, this link is only implicit, and there is nothing in this legal instrument that addresses forestry issues directly.

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[9] An overview on the development of international environmental governance is given by Sand 1990. For processes and issues of the international policy network related to forests and forestry see for instance: Maini and Schmithüsen 1991, Tarakovski 1995, Humphreys 1996, Glück et.al. 1997. International initiatives following the Rio UNCED Conference and materials from the intergovernmental Forum on Forests (1995-1997) are documented in Grayson 1995 and Grayson and Maynard 1997. Documentation on the work of the Intergovernmental Forum on Forests is available on *http://www.un.org/esa/sustdev/iff.htm*

[10] A collection of texts of the legal instruments indicated in Figure 6 and 7 is available in Schmithüsen and Ponce eds. 1996.

Figure 6: Forest Related International Instruments Adopted Prior to UNCED 1992

- Convention on International Trade in Endangered Species of Wild Fauna and Flora, CITES, 1973
- Convention on Wetlands of International Importance, Especially as Waterfowl Habitat, Ramsar Convention, 1971/1982/1987
- Convention for the Protection of the World Cultural and Natural Heritage, UNESCO, 1972
- Convention Concerning Indigenous and Tribal Peoples in Independent Countries, ILO, 1989
- International Tropical Timber Agreement, 1983/1994

The emphasis of the UNESCO Convention is on the protection of natural and cultural heritage of outstanding universal value from the historical, aesthetic, ethnological, anthropological, scientific, geological or natural point of view. This instrument has a mechanism that enables the establishment of "recognised sites", which may receive support under the convention. As in the previous case, it is possible to think that by protecting sites of universal value, the international community may have the chance to protect some forest sites, but there is nothing in this legal instrument that addresses forestry issues in particular. The ILO Convention establishes the obligation for state organisations to develop jointly with interested peoples, a co-ordinated and systematic action to protect the rights of indigenous peoples, and to ensure their integrity. The ILO Convention contains provisions for the protection of land-use rights of indigenous peoples as well as their traditional knowledge base. Such protection is an important action and an indispensable prerequisite for sustainable uses of forests owned by indigenous communities.

Legal Instruments Adopted During UNCED: The 1992 UNCED Conference dealt with the environment and development from a global perspective and includes forests and forestry (*Figure 7*). Three legally binding instruments (conventions) were agreed to during UNCED. In addition the conference adopted two instruments specifically related to forests that are comprehensive by intention but not legally binding. There is at present a gap between the non-binding legal instruments on forest protection and management and the formal obligations from conventions with broader objectives. This situation makes it difficult to translate global objectives into consistent national policies on forests and to develop international collaborative efforts in the forestry sector.

Figure 7: Forest Related International Instruments Adopted by the United Nations Conference on Environment and Development, UNCED, in 1992

- Rio Declaration on Environment and Development

- Framework Convention on Climate Change
- Convention on Biological Diversity
- Convention to Combat Desertification

- The Forest Principles
- Agenda 21, Chapter 11: Combating Deforestation

UNCED Conventions with Implications for Forests and Forestry: The Convention on Biological Diversity establishes as objectives: "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding". Among the obligations of the Convention we can find many provisions, that are of relevance to forests: to develop national strategies, to undertake identification and monitoring of components of biological diversity, to establish systems of protected areas, to facilitate access to genetic resources, to provide access to technology and biotechnology, to protect the knowledge of traditional and indigenous communities, and to provide financial resources for developing countries. The fulfilment of these obligations is in many respects relevant to forests and forestry. The Convention does not address forestry-related issues in terms required by Chapter 11 and The Forest Principles. It does not take into account the multiple roles and values of forests, and in particular their productive development potential as renewable resources.

The objective of the Framework Convention on Climate Change is "the stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system". The Convention recognises the ecological role of forests as carbon sinks. In implementing greenhouse gas reductions, countries are encouraged to improve the conditions, either by increasing the amount of land under forest cover, or at least by conserving existing forest areas. The Convention to Combat Desertification puts emphasis on land uses, with special provisions for the problems of African countries. It refers in particular to the protection of traditional knowledge, and to trade practices that may cause desertification. As in the case of other conventions, forests are implicitly addressed by several provisions of the Convention, but there is no systematic consideration of them.

The three conventions contain provisions which recognise the need of financial resources to support activities under each convention. They emphasise the need to undertake research and development in order to understand the processes that lead to the achievement of their various objectives. At several occasions they recognise the interaction between trade activities and their objectives.

Non-Legally Binding Instruments on Forests Adopted at UNCED: During the preparatory phase and, even more, during the deliberations of the Rio Conference, it became evident that the problems related to the promotion of sustainable forest management and to stopping of the degradation of forests involve complex subjects and divergent interests. The causes of deforestation are many, and they occur at very different levels. They extend from small fractions of land, at individual localities, to macro-economic levels, where certain patterns of consumption and trade practices lead to increased deforestation. Also, the consequences are many, and occur at different levels. Some phenomena are both the causes and consequences of land degradation.

Chapter 11 of Agenda 21, and The Forest Principles (a set of non-legally binding statement of principles for a global consensus on management, conservation and sustainable development of all types of forests) recognise the environmental, social and economic importance of forests and forestry, and recommend dealing with them in a comprehensive manner. Both texts show, that the weight given by the international community to the forest has changed in qualitative and quantitative terms. They reflect the political will to approach issues in an integral manner which recognises the many uses, as well as the multiple values associated with forests. The principal limitations of Chapter 11 and the Forest Principles are they lack mechanisms to address the problems. They mention frequently the need for additional financial resources and technologies to support countries in their efforts to implement the recommendations. But there are no commitments to provide for financial transfers or to facilitate access to appropriate technologies. International co-ordination is advocated, but its implementation is left to the good will of governments and multilateral or bilateral agencies. There is a strong emphasis on exchange of information on global or regional forest developments, but again, adequate mechanisms, such as a conference of the parties, are missing.

International legal arrangements have to balance a wide range of divergent interests of governments and multilateral institutions. This is particularly true when dealing with forests and forestry, which involve environmental protection problems at a global scale, and at the same time, issues of economic and social development that are of considerable importance at national and local levels. The present state of affairs with regard to forest conservation and development indicates that the international community has not been in a position to provide consistent and operational arrangements to address global problems and to organise institutionalised co-operative efforts. Much will depend on the decisions to be taken by the Intergovernmental Forum on Forests and on future actions of the Commission on Sustainable Development of the United Nations.

The Need for Flexibility and a Phased Approach in Expanding International Co-operation in the Forestry Sector: International legal instruments have, at least in their initial stage, frequently the character of soft law, meaning that they are general on purpose and provide opportunities to individual countries to determine their own

approach in choosing appropriate solutions to common problems. They leave options with regard to implementation, instead of formulating precise and binding commitments. Apart from establishing legal certainty, international agreements have the role of providing working tools, that are flexible enough to accommodate competing interests, changing situations, and evolving scientific and technical knowledge. Mechanisms facilitating a gradual adoption of responsibilities, can thus produce concrete and implementable results on the long run.

Considering the diversity of forestry issues by ecological zones and different stages of economic development, a framework convention on forests is probably an appropriate alternative in order to achieve a more institutionalised level of international co-operation. It would allow for protocols with flexible regional arrangements, to be negotiated in accordance with the possibilities of the parties to accept commitments on sustainable forest practices.

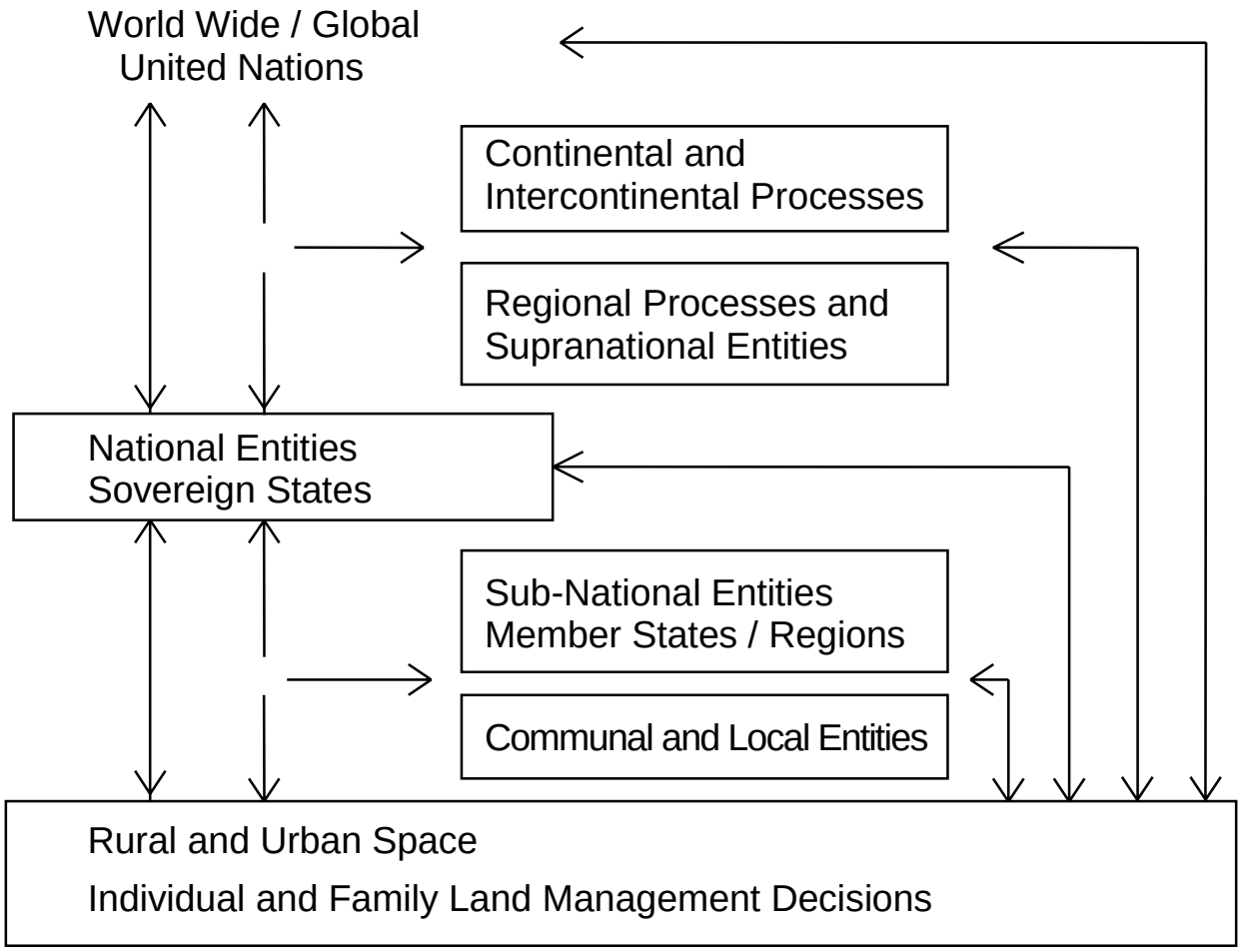
The development of international law on environment and natural resources utilisation is characterised by the establishment of enabling mechanisms. They support countries with a lower level of advancement in certain policy areas in order to agree step-by-step to the adoption of new instruments and to facilitate compliance with legally binding commitments. Such has been the case, for instance, with the Montreal Protocol, where a special fund was set up to finance projects addressing the reduction or phasing out of ozone depleting substances. Another mechanism to allow for gradually increasing commitments is the use of subsidiary instruments such as the Kyoto Protocol implementing the Climate Change Convention. This kind of approach appears to be highly relevant for strengthening international co-operation in forestry matters.

6 Impacts on Land Owners and Sustainable Forest Development

Multilevel Policy Networks: The commitments of international forest-related instruments have to be seen within the context of multilevel policy networks (*Figure 8*). They are initiated by national governments, which negotiate the framework of co-operation. At the same time, national governments are the principal addressee and agents for implementation. An increasing range of continental and regional processes involving multilateral and supranational entities form at present the international system. In part, they develop their own political and institutional dynamic; in part, they emanate from the work of UN agencies. International and supra-national agreements and instruments reflect primarily global or continental concerns. They have, however, immediate consequences for the development of rural areas, from which the problems originate and where the solutions and developments chances are to be looked for.[11]

[11] Problems of multi-level governance versus simple structures of centralisation or decentralisation are discussed by Benz 1999. He argues that policy-making in complex multi-level governance related to the formulation and implementation of forest policy programmes offers new opportunities to develop more consistent solutions that satisfy different social groups and policy actors. Obser 1999 analyses the interdependence of international, national and local initiatives of sustainable forest management focussing on criteria and indicators and related certification schemes in forestry.

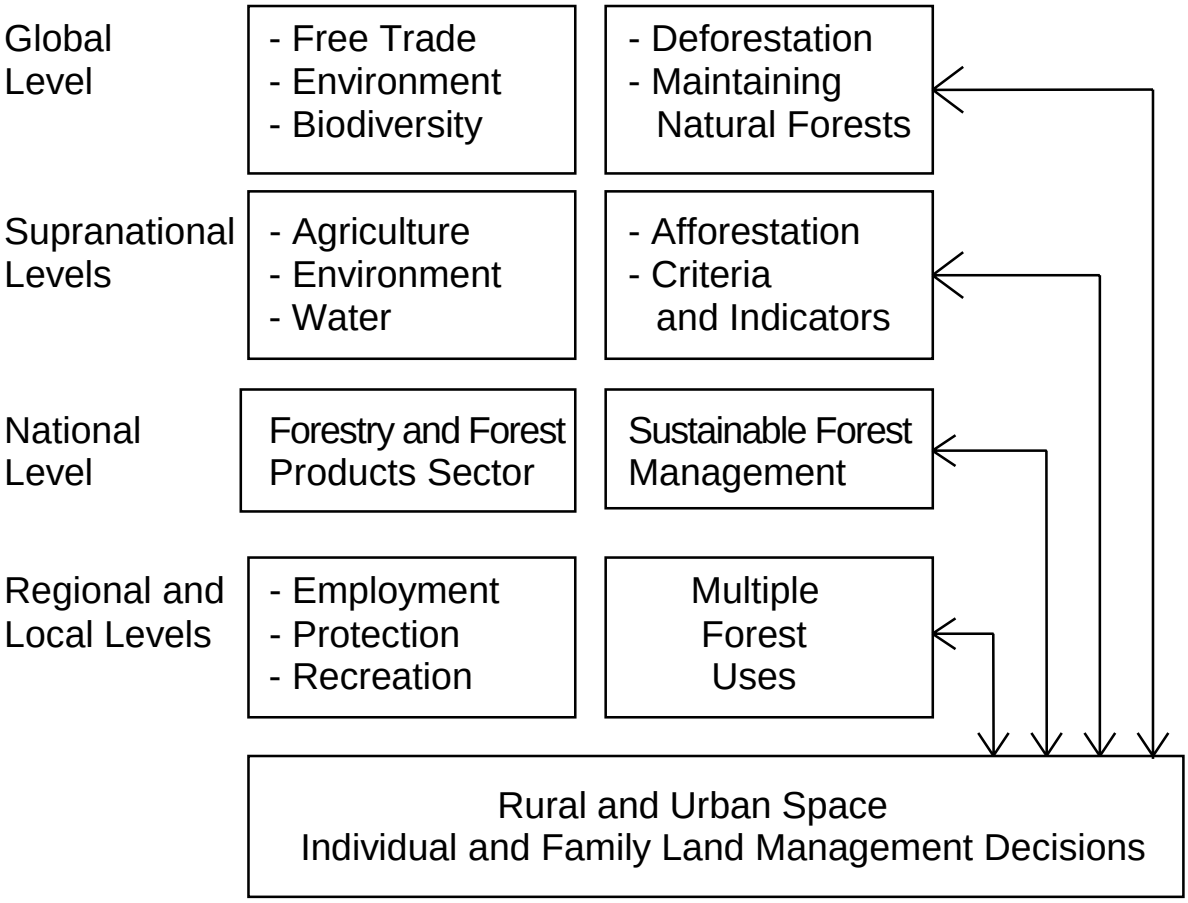
Figure 8: Public Decision Making and Decision Impacts within International, National and Local Networks



Major Policies Issues: The prominent issues at stake vary at different levels of the policy network *(Figure 9)*. At the global level free trade, environmental protection and biodiversity are dominant subjects. Forest-related aspects are increased industrial uses through access to new areas, reduction of large-scale deforestation, and maintenance of a minimum proportion of natural forests. At the supra-national level[12] major issues are structural changes in agriculture, and the protection of environment and of water resources. Afforestation of marginal lands and criteria and indicators for sustainable forest development are of importance. At the national level, emphasis is on forestry and wood processing as productive sectors of the economy, and on the regulation of forest management practices. At local levels multiple forest uses providing employment, protection and recreation are of immediate concern.

[12] The considerations of this paper are limited to international and global policy developments relevant to forests and forestry. The paper does not deal with supra-national aspects that are of importance to the countries of the European Region. This refers in particular to the Pan-European Process of the Ministerial Conference on Forests, to the increasing number of cross-sectoral and sectoral policies and regulations of the European Union having an impact on forests and forestry, and to the Alpine Convention and its Protocol on Mountain Forests. These issues need a detailed analysis to be undertaken at another occasion.

Figure 9: Major Forest and Forestry Related Issues within International, National and Local Networks



Consequences for Land Management and Family Decisions: National regulations induced by international agreements, as well as directly applicable provisions, for instance in the case of international and multilateral projects, affect primarily individual and family land management decisions. It is largely at this level, that the policy objectives have to be put into workable, socially acceptable and economical feasible programmes. The conservation and development of rural space, and the increase of its production potential is the pivot and the ultimate objective of the political networks addressing sustainable uses of lands and natural resources.

The envisaged solutions are in many cases of a cross sectoral and multisectoral nature. Issues, which are on the forefront of global or supra-national concerns, are superposing a national and local demand. The combined effects have to be assessed in relation to specific needs and potentials. The impacts on individual and family land management decisions are, in fact, incremental.

Role of Land Owners Facing Public Demands: For the forest owners the situation changes in as much as additional demands of user groups and public opinion arise and are gradually incorporated in laws and regulations. The public has contrasting views on forests as a means of production and as a particularly valued element of the physical and spiritual environment. A large proportion of the population considers forests as a space for leisure and outdoor activities. Even if forested areas in Europe have been intensively used during the past, they are perceived today by many

people as a manifestation of nature which is supposed to be largely free from human intervention. For many persons forests are important as a place of recollection, of contemplative reflection and of personal freedom. An increasing number of nature and environmental organisations articulate and promote the expectations and interests of the public.

Such developments need to be qualified in accordance with the constitutional rights of ownership. It is primarily the responsibility of the landowners to define the objectives of forest uses and to choose the management options which fits them best. It is up to them to decide to what extent they are able and willing to provide goods and services for which markets do not, or do not yet exist. In particular, private forest owners are barely in a position to carry the incremental costs of external benefits without compensations. Legislation has to balance the rights and obligations of landowners against those of individuals, user groups and the community.

Shift from Regulation to Joint Management Responsibilities: Sustainable uses of forests mean that the rate of resource consumption and the environmental impacts which follow from it are a constitutive part of management decisions. The use of forests is not a mobilisation of production inputs and consumption values without costs. Sustainable forestry requires re-investment or new investments to maintain and increase productivity and an adjustment of use intensities to the available potential. It needs a legitimate basis for arbitration between many economic and social interests. To enable public and private actors to accomplish these tasks has been the challenge to forest law in the past. It will remain the challenge of the future.

This implies a shift from state control of forestry practices to legislation which favours new forms of joint management involving forest owners, non-governmental organisations and public authorities. Legislation sets a frame for defining the requirements and performance standards of the parties concerned. It supports efforts to develop cooperative forms of decision-making and contractual arrangements with third parties. Guidelines for best management practices, procedures for mediation and the exchange of information constitute a substantial part of this framework. From the viewpoint of the authorities it puts emphasis on process-steering and more comprehensive implementation programmes. It supports negotiated activities on a contractual basis and reduces direct governmental intervention. And it requires a more precise determination of targets and evaluation systems in order to asses the outcomes and impacts of public policies.

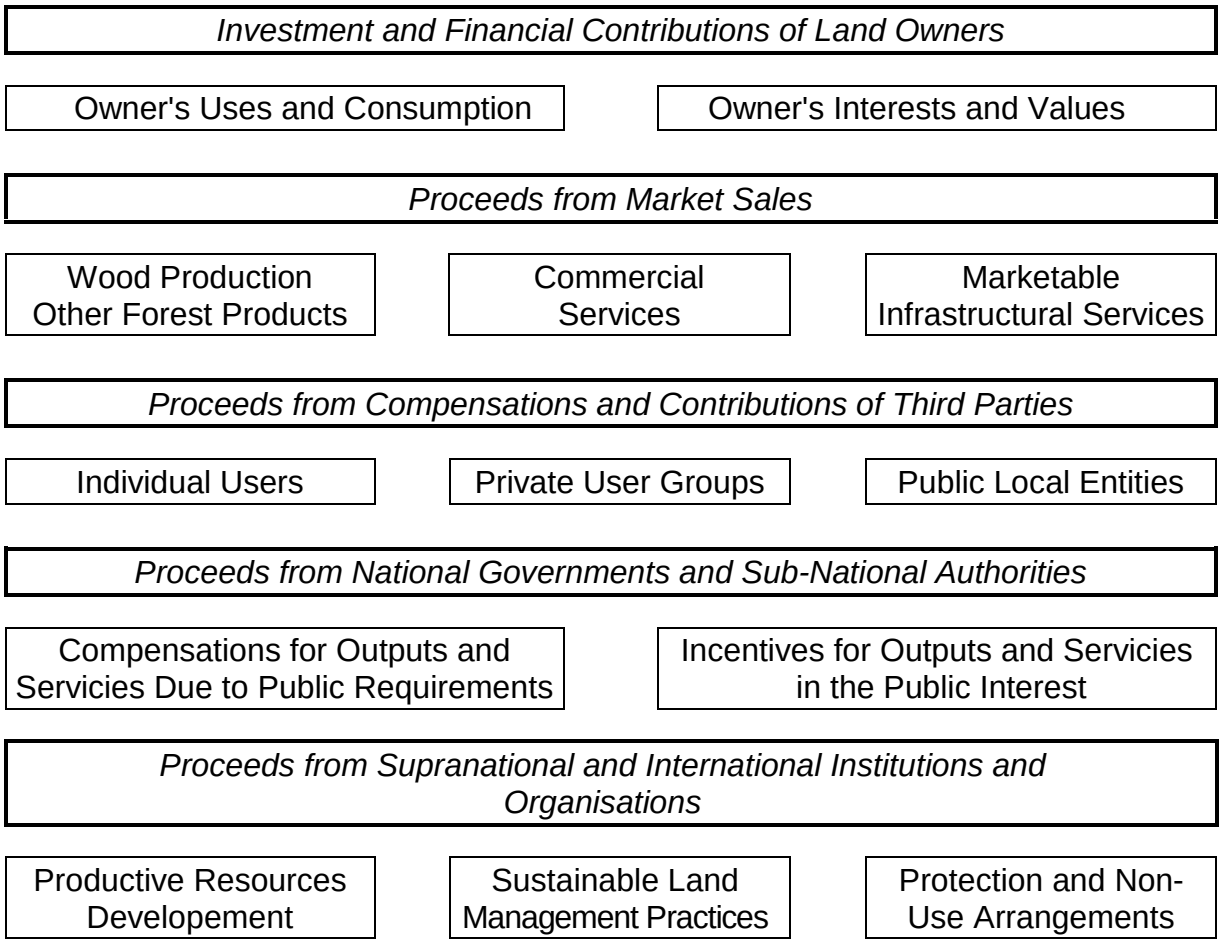
New Strategies in Forest Resources Management: The expanding policy framework on forest resources management - both in its multisectoral dimensions as well as in its relevance to different political levels - requires new strategies of the landowners, a high amount of process-steering on the side of public agencies and concerted decision-making on the side of the principal users and environmental groups. The following points are of particular relevance:

- Land-use decisions can only be made in relation to specific situations and combinations of interests.
- The primary responsibility for land management is with the forest owners; they are not obliged to provide external benefits beyond legal requirements.
- It is necessary to institutionalise the involvement of the relevant interest groups and of local public entities in land-management decisions and practices.

- Multifunctional forest uses need a balance between the commitments of user groups and public entities and the benefits which accrue to them.
- Sustainable forest management requires organised mediation and arbitration processes that are facilitated and legitimised by public process steering instruments.

Financial Arrangements for Multiple Forestry Outputs: Public policies and legal provisions that favour an adequate transfer of resources, are instrumental for generating a combination of private and public benefits and for developing the potential of the rural space. They allow for more interactions between land owners, immediate beneficiaries and public entities in accordance with the principle of subsidiarity (Schmithüsen 1996). Rural policies have to be concerned with multiple outputs and services from productive land management and natural resources conservation requiring different sources of financing (*Figure 10)*). In addition to market proceeds, this may include contributions from user groups, as well as incentives and compensations from different levels of the political community. Such an approach leads to a sharing of financial commitments, which is consistent with the economic realities of multiple-use forest land management.

Figure 10: Different Sources of Financing for Multiple Outputs and Services from Forest Land Management.



Source: Schmithüsen and Schmidhauser 1998, p. 103 (translated and modified)

Conclusions

Challenges to Research on Policy and Law Developments: For a long time, perhaps for too long, policy research has focused largely on forest programmes defining uses and management practices. This understanding developed in Central and Western Europe, where forest laws have existed over long periods and - in comparison with other continents - have initiated a high level of sustainable forest practices. Today preservation and uses of forests address a wider range of political concerns. The linkages between an increasing number of policy areas, the superposition of international and national political actors, and the increasing importance of sub-national and local entities are challenges to policy research on the role of forests in rural development. This refers, in particular, to implementation processes based on multiple transfers of financial resources, that are commensurate with different political goals for sustainable development. It also refers to public decision making processes involving third parties concerned and benefiting from the implementation of such goals.

Policy and Legislative Networks: Research needs arise with respect to new methodological approaches in order to deal with positive and negative impacts between sectoral policies on different land uses, cross-sectoral policies of environmental and nature protection, and regional development programmes. It is necessary to examine their effects not only at national or local levels. They have to be analysed within increasingly complex political networks, in which international and supranational legal instruments introduce or reinforce specific policy objectives. Research designs are required, that show the consequences with regard to changes in national policies, to the influence on public opinion, as well as to their impact on immediate land management decisions.

Process Steering Aspects Related to Multilevel Governance: Since international and supranational agreements rely to a large extent on implementation by national and sub-national policies, the distribution of public competencies, financial and administrative arrangements, and decision making procedures need particular attention. The role of land owners, local entities, non-governmental organisations, and public opinion are important research components. The same refers to shifts of responsibilities to the private sector, to bargaining processes and to contractual arrangements.

This requires case studies on public process steering instruments, which support negotiation, mediation and contractual arrangements in order to manage more sustainably the natural resources of rural areas. Such studies contribute to a better knowledge on the relationships between present and future resources potentials, as determined by benefits or outputs and investments or inputs within a common flow of financial transfers. It makes the discussion on the improvement of policy programmes, both in an international as well as national perspective, more substantial. Otherwise the pressure for more regulations as induced by international agreements will remain a series of demands, which complicate land management and contribute little to an improvement of living conditions in rural areas.

Evaluation of Implementation and Results: Empirical research on the evaluation of the impacts of existing policy networks and on the successes and failures, which

result from them, are of considerable interests. Major issues are the relevance, the implementation possibilities and the effective contributions of their various segments to sustainable resources utilisation in a given area. Objectives, instruments and provisions for financial resources transfers are among the key issues. Studies on implementation and results require an examination of programme outputs from public entities and non-governmental organisations with delegated competencies, and of the outcomes determined largely by the reactions of owners and land managers. The impacts have to be evaluated with regard to the improvement of living conditions, and to environmental and biodiversity conservation.

Abstract: In many European countries forest laws have been revised and amended in order to adjust to new social demands. Public policies addressing nature conservation, land use planning and renewable natural resources have produced legislation relevant to forests and forestry. National laws are increasingly influenced by international conventions and other legal instruments. The evolving regulatory framework reflects the growing importance of forests in sustainable development. It raises new issues with regard to the respective role of the public and private sectors, to the rights of land owners facing external demands, and to compensation arrangements between forest enterprises, user groups and public entities. It also calls for more efficient decision-making processes on sustainable forest resources management balancing local, national and global requirements.

Key Words: Forest Law; Natural Resource Legislation; Land Renure; Forest Management; Sustainable Development.

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FOREST LEGISLATION IN CONSTITUTIONAL STATES: AN AMERICAN PERSPECTIVE ON FOREST POLICY TOOLS

DENNIS C. LE MASTER

1 Analysis of Public Policies

Constitutional states are those in which the powers and duties of government as well as the rights of the governed are codified usually in a single document which is the antecedent of all laws. Many countries are of this kind, and so I would prefer to narrow the scope of this paper and confine it to democracies - governments of the people in which the majority rules - as well as countries with mixed capitalist, market economies. Hence, the title of the paper would be more accurately expressed “Forest Legislation in Constitutional, Democratic, Mixed Capitalist States.” Such states include most of the countries of North America and Western Europe as well as Australia, Japan, and New Zealand.

A “mixed capitalist economy” may be a term needing some clarification. Capitalism is an economic system that features “private ownership of capital and land and the predominance of the profit motive as a guiding force in a market system” (Oser 1963). Competition among producers prevails, although it may be less than perfect, and without government interference. Prices are formed in the interaction of supply and demand, and they guide production and distribution of goods and services. A “mixed capitalist economy” allows for some government ownership of property and production of goods and services as well as government intervention in markets. For example, government may own forest lands, sell timber from them, and allow recreational use by the public. Further, it may tax private sellers of timber and subsidize tree planting.

A public policy is a settled course of action with regard to an issue to be implemented by government. A public policy problem or issue normally precedes a public policy. In other words, a public policy is formed as a result of some precipitating cause, social in nature. A public policy instrument or *tool* provides the mechanism by which the policy is implemented.

Policy analysis has become a recognized field in government and academia in the United States. It is an applied discipline and can be defined as the systematic evaluation of: (1) the viability of alternative policies from several perspectives, (2) strategies for implementation, and (3) the consequences of adoption. Policy analysis can be contrasted from scientific analysis. The latter is directed toward answering one or more scientific questions, is discipline-oriented, and tends to be long-term in nature. The former addresses a public policy issue, is multi-disciplinary in nature, and usually has a short-term investigative scope.

A seven-step process is often used in conducting policy analysis, specifically:

1. Defining the problem;
2. Establishing evaluation criteria;
3. Identifying alternative policies;
4. Evaluating alternative policies;
5. Selecting the preferred policy;
6. Implementing the preferred policy; and
7. Monitoring and evaluating policy implementation.

This process is sometimes presented schematically as a circular flow diagram moving in a clockwise direction with feed back loops between steps 3 and 1, 4 and 1, 4 and 2, and 7 and 5.

2 Rationale for Public Policy in Constitutional, Democratic, Mixed Capitalist States

Several rationales for public policy exist, most involving some element of market failure. As presented in contemporary economic texts, market failure occurs when public goods are involved, where externalities exist, in the event of natural monopolies, and under conditions of lack of knowledge by consumers (Barron and Lynch 1993; Stiglitz 1993; Varian 1993). Public goods are goods that cannot be withheld from one individual without withholding them from everyone, like national defense, street lighting, and police protection. Externalities are descriptive of situations in which certain goods or services are produced or consumed by individuals, and as a result of that action, others incur costs for which they are not reimbursed - like someone downstream from a business firm that dumps pollutants into a water course - or receive benefits for which they do not have to pay - like the neighbors adjacent to a homeowner who landscapes and maintains a beautiful home. Natural monopoly occurs when the fixed costs of providing a good are very high relative to variable costs so average cost declines as demand increases. Lack of knowledge refers to situation in which information about a good or service is not available to consumers resulting in them buying either too much or too little.

A rationale for public policy can also exist when public consensus exists about social goals such as income distribution, education, and aesthetics. Goods and services that further such goals are often called merit goods. Public education is an example of a merit good, and it is provided in the U.S. because society feels a knowledgeable electorate is desirable and necessary in a democratic society.

Just as markets fail, so, too, can government fail. For example, significant problems with representative government exist that sometimes lead to government failure such as the disproportionate influence of organized or special interests, the conflict between regional interests and national interests, the short time horizons of elected officials caused by the election process, and the distortion that occurs in public policy debates when politicians posture to news media to gain public attention (Weimer and Vining 1992). Bureaucratic problems associated with government also exist including: (1) limitations in time and expertise necessary to review and monitor government operations, including how resources are used; (2) lack of competition and its effect on incentives to innovate; (3) difficulty in valuing output of many government services such as national security, law and order, and safety; and (4) inflexibility in personnel administration because of civil service protections and perhaps some affirmative action programs (Weimer and Vining 1992).

The point is neither the market system nor government intervention is the complete answer in effective allocation of resources or goods and services in a society. The best answer to a question of which is better, is “it depends.” And among those things upon which “it” depends are societal values and goals, the perceived degree of market failure, and the likelihood of success of government intervention.

3 Kinds of Government Intervention

Once a decision is made that government intervention in a market is desirable, the question that quickly follows is precisely how government should intervene. What policy should be used and what policy tool should be used for its implementation.

Merlo and Paveri (1997) note that there is a “substantial lack of attention to, or ignorance of, forest policy tools not to mention the policy tools mix ... ” A similar lack of understanding seems to attend the fact that the ways in which government might intervene in a market are comparatively small in number. For example, Le Master and Rans (1995) building on earlier work by authors such as Seneca and Taussig (1974), list six generic tools commonly used in the U.S. Merlo and Paveri, taking a global perspective, list six main categories of forest policy tools - juridical; public ownership and management; financial - economic; market (or “market - led”); trusts for conservation, amenities and recreation; and persuasion - with 19 subcategories. The forest policy tools of Merlo and Paveri are compared with those listed by Le Master and Rans in Chart 1. One of the six main categories of Merlo and Paveri, namely public ownership and management, and eight of the subcategories are the same as the six generic tools listed by Le Master and Rans. But there is more comparability than these numbers indicate.

Chart 1. Comparison of Generic Forest Policy Tools

Merlo and Paveri	Le Master and Rans
Persuasion Tools	
Non-legally binding international conventions	(Nothing comparable)
Extension	Public education
Information	“
Advice	Technical assistance
Cross compliance*	(Nothing comparable)
Market-Led Tools	
Prices, marketing boards, tariffs, duties	(Nothing comparable)
Negotiated management agreements and covenants	“
Negotiated international agreements	“
Auction of incentives	“
Marketing of environmental goods services	“

Merlo and Paveri	Le Master and Rans
Financial Tools	
(Nothing comparable)	Insurance programs
Direct compensation	Subsidies
Incentives and grants to production processes	"
Incentives and grants for innovation	"
Taxes and tax concessions	Taxation (policy)
Public infrastructure	(Nothing comparable)
Cross compliance *****	"
Trusts for purchasing or managing	
land for conservation, amenity values, or recreation	"
Juridical (Legal) Tools	
Legally binding international convention or treaty	(Nothing comparable)
Tenure rights	"
Regulation	Regulation
Public ownership and management	Public ownership or production

SOURCE: D. C. Le Master and L. E. Rans, *Forest Policy Issues in Indiana*, FNR-150 (West Lafayette, Indiana: Purdue University, Department of Forestry and Natural Resources, 1995); M. Merlo and M. Paveri, "Formation and Implementation of Forest Policies: A Focus on the Policy Tools Mix" in *Policies, Institutions and Means for Sustainable Forestry Development*, vol. 5., Proceedings of the XI World Forestry Congress, 13-22 October 1997, Antalya, Turkey.

***** Cross compliance is an indirect financial instrument which makes payments conditional on the adoption certain practices such as environmentally friendly forestry techniques.

Le Master and Rans assumed a closed economy while Merlo and Paveri operated under the assumption of an open one, with three of the subcategories of forest policy tools they listed being international in scope. If the two sets of authors operated under a common assumption in terms of whether the economy was closed or open, more comparability would have occurred. The point of the foregoing comparison is policy analysts working in different parts of the world at very different scales, have

substantial overlap in the policy tools they apply, and the reason is the number available is comparatively small.

Just as a soccer player can do only a few basic actions when the ball comes to him or her - pass, dribble, or shoot for a score - so, too, is government limited in what it can do when intervening in markets, including the markets for forest goods and services. The sources of these limitations can be historical and ideological, but a conceptual element seems also present. Indeed, there are only so many things a constitutional government can do, and they are treated below.

4 Forest Policy Tools in an Open Economy

A closed economy has been implied in the foregoing discussion, and an assumption of an open economy brings with it treaties, conventions, agreements, import tariffs (duties), and import quotas and export restrictions. While these institutions may seem to complicate an analysis of forest policy tools, further reflection finds them quite comparable to the tools already mentioned. Legally binding treaties, conventions, and agreements have the effect of regulation and prohibition as do import quotas and export restrictions. Tariffs are a tax, plain and simple, and non-legally binding agreements are effectively a means of information gathering and public education. In sum, forest policy tools associated with an open economy are the tools of closed economy with different names. Their advantages and disadvantages remain the same.

Property Rights as a Basic Policy Tool: A basic role of government is to establish the property rights or tenure framework for a society through various institutions. Note: property rights and tenure are interchangeable terms. This is no routine task because property rights directly affect decision making with regard to resource use, or in other words, the economic conduct of individual property holders, which in turn, determines their collective economic performance. Property rights also determine in a major way the economic actors within a society as well as the distribution of income and wealth (Libecap 1989).

Forest land tenure refers to the bundle (or collection) of property rights that define the range of claims a holder has to a parcel of forest land. Many different kinds of forest land tenure are possible as well as kinds of holders, including private e.g. held by private persons, public e.g. held by any level of government, or common property e.g. property held by members of a community with restrictions governing use (Schmithüsen 1996).

The tenure framework is a very basic and important policy tool of government. It can be used to promote economic development by providing a framework that encourages investment, production, and exchange as was the case in the settling of the American West in the early nineteenth century. Alternatively, it can be used to promote the interests of favored groups within a society, perhaps earning their political support.

A Mixture of Policy Tools: Merlo and Paveri stress the need in policy analysis to evaluate the mix of forest policy tools in an effort to achieve the optimum, or most appropriate, combination. They are correct, and for three reasons at least. First, no policy tool has been found to be wholly effective in the sense of a magic bullet that always hits the target to which it is aimed, like the “silver bullet” in the popular radio

and television program of a generation ago, *The Lone Ranger*. Some tools are better in addressing some policy problems, and some are better in addressing others.

Second, a combination of policy tools seems to be most effective in addressing a public forest policy problem. For example, if forest management practices need improvement in a country, a combined approach of public education, landowner technical assistance, and regulation will likely achieve minimum acceptable performance standards, and if policy makers want to go beyond that, then financial incentives will probably be necessary.

Third, at any given time, a combination of forest policy tools is in place in a forested country to address a variety of forest policy problems. The U.S. experience is that this combination of tools often can be at cross purposes and confusing to landowners and the general public, the several financial incentive programs for tree planting being an example. Policy analysts are well advised to evaluate not only combinations of policy tools to address a particular public policy problem, but how these combinations would relate to existing, operational policy tools designed to address public policy problems of the past.

5 Market Facilitation And Market Intervention Policy Tools

Taking the lead implied in the paper by Merlo and Paveri, perhaps it is useful to distinguish between *market facilitation* (market-led) and *market intervention* forest policy tools. Market facilitation tools would be those that make the market function more efficiently, while market intervention tools would be those that interpose themselves between market forces to modify the functioning of the market.

The federal government in the U.S. has developed and implemented a variety of forest policy tools, and they can be easily placed within the categories of market facilitation and market intervention.

5.1 Market Facilitation Policy Tools

At least four policy tools developed and implemented in the U.S. with regard to forest resources can be characterized as facilitating the functioning of market forces.

Information gathering and dissemination: The federal government was authorized under the provisions of the McSweeney - McNary Act of 1928 (45 Stat. 699) to conduct “a comprehensive survey of the present and prospective requirements for timber and other forest products in the United States, ...” Later, under the provisions of the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476), a renewable resource assessment was authorized to contain, among other things, “an analysis of present and anticipated uses, demand for, and supply of the renewable resources ... and an inventory, ... of present and potential renewable resources, and an evaluation of opportunities for improving their yield ...” Resource inventories and assessments provide information to interested individuals and groups making them better informed in engaging in market transactions, and ultimately, making the market function more efficiently. This is its advantage, and its essential weakness is that there is no assurance that the information generated will be applied.

Public education: Public education programs are used throughout the world as a public policy tool. In forestry in the U.S., the Cooperative State Research, Education, and Extension Service (CSREES), working through the land-grant colleges and

universities, offers public education programs for various groups in the forestry community, using a variety of means such as publications, seminars, workshops, and field tours as well as distance-learning programs over the internet. Basic statutory authorities for these programs are the Smith-Lever Act of 1914 (38 Stat. 372) and the Renewable Resources Extension Act of 1978 (92 Stat. 349). The advantages of programs of this kind are that large audiences can be reached, participation is voluntary, and per-unit costs are comparatively low. The disadvantages are (1) public education programs tend to lack site specificity and (2) they feature no compliance mechanism. In other words, they presume the public will implement knowledge once it has been presented. Experience would indicate this is not always the case.

Technical assistance: Technical assistance programs for forest landowners are provided by the federal government under various statutory authorities, including the Smith-Lever Act, the Renewable Resources Extension Act, and the Cooperative Forestry Assistance Act of 1978 (92 Stat. 365). Generally, these programs provide direct, site-specific technical assistance to landowners. Their advantages are they are voluntary and provide site-specific technical information at comparatively low cost. Their disadvantage is that they contain no compliance mechanism, and so implementation remains at the discretion of the landowner.

*Research***:** The McSweeney-McNary Act also established a comprehensive research program in forestry, organizationally located in the USDA Forest Service. This program was updated and expanded by the Forest and Rangeland Renewable Resources Research Act of 1978 (92 Stat. 353). Research facilitates functioning of markets by providing new knowledge that can reduce uncertainty and risk, provide new technologies for more efficient manufacture of existing products or for new products that can substitute for older, more costly ones. Research is not always effective as a policy tool, however, because it is difficult to predict the timing of results, and they can be too costly or impractical to implement. Furthermore, research results are sometimes written in a style not readily understood by practitioners so their possible applications is not appreciated.

5.2 Market Intervention Policy Tools

Market intervention policy tools, again, are those used to either increase or decrease the production or consumption of targeted goods and services. Too much or too little of them is being produced or consumed than is considered socially desirable. Seven such tools are described below.

Insurance or "cushioning" programs: Forest insurance programs reduce the risks associated with ownership, risks due to such things as forest fire, insect infestations, disease epidemics, and wind damage. They are comparable to the crop insurance programs in agriculture which are "underwritten" or financially backed by the federal government and administered by private firms. The advantage of insurance programs is that they reduce risk, increasing investment incentives, and are voluntary and market responsive. Their principal disadvantage, as they currently exist, is a general lack of availability to forest landowners.

Resource protection: Resource protection programs are also used by the federal government to reduce the risk as well as the uncertainty of forest management. Examples of resource protection programs are sections 5 and 6 of the Cooperative Forestry Assistance Act of 1978 (92 Stat. 369) which provide for forest insect,

disease, and fire control. Earlier programs of this kind were contained in the Clark-McNary Act of 1924 (43 Stat. 653). The advantage of protection programs is the same as for insurance programs. Their principal disadvantage lies with their comparatively small scale in implementation and discontinuities in funding.

*Land Management Planning***:** Land management planning is considered a means to encourage integrated forest land management and use and compel a long-term perspective. The Forest and Rangeland Renewable Resources Planning Act as amended by the National Forest Management Act of 1976 (90 Stat. 2949) provides for national forest planning as well as sets planning standards and guidelines. The Cooperative Forest Assistance Act of 1978 authorizes the secretary of agriculture "to provide financial, technical, and related assistance to state foresters ... in the training of state forest resources planners, and in participating in natural resources planning at the state and federal levels." While land management planning accomplishes an integrated, long-term perspective, it is also (1) costly, occasionally beyond the financial capabilities of the agency doing it; (2) requires highly trained, skilled people; and (3) sometimes raises unwarranted expectations.

Regulation and prohibition: Regulation is directing allocation of resources by rules or orders issued by the executive authority of government. Such rules and orders have the force of law, and they can include a direct ban on an activity or practice of some kind, like for example, the "taking" of threatened and endangered species as specified in the Endangered Species Act of 1973 (87 Stat. 884), as amended. The advantages of regulation are: (1) it has a compliance mechanism, (2) it can be designed to be responsive to site-specific needs, and (3) it has demonstrated effectiveness in achieving minimum standards of performance. The disadvantages are: (1) its mandatory nature, (2) it raises the production costs of producers, (3) it is unresponsive to market forces, and (4) it is costly to enforce.

*Taxes and subsidies***:** Taxes and subsidies are opposite sides of the same coin, namely, financial incentives. A tax generally provides a financial disincentive for some kind of market behavior. The disincentive may be lessened by favorable tax treatment of some kind, frequently in the form of a reduced tax rate. For example, an *ad valorem* tax on forest land reduces the incentive to hold such property. But the negative impact might be offset if a lesser tax rate is applied than on comparative land if and when forest landowners prepare and manage their land according to an approved forest plan and keep their land under forest cover.

Subsidies are payments by government to private individuals or firms to engage in socially desirable behavior of some kind. The term "subsidy" has a negative connotation, citizens being skeptical about the benefits actually being received by society, and so many subsidies are called by other names. For example, "forestry incentive" and "cost-sharing" programs are currently used in the U.S. to encourage tree planing by landowners. "Private compensation for social benefits provided" has been suggested as a more positive and appropriate term for government programs encouraging forest landowners to provide certain environmental goods and services or access to land by various forest user groups.

The advantages of these two approaches are the direct incentives they provide and their market responsiveness. Further, subsidies are usually voluntary. The disadvantages are cost as well as the involuntary nature of some taxation programs.

Public ownership of resources or production of goods and services: Public ownership of forest lands is common in the U.S. at all levels of government, federal, state, and local. The National Forest System comprises 192 million acres of land, not all of which is forest land (USDA Forest Service). The federal government sells timber and grazing permits on these lands. Public ownership or production is direct government intervention in markets. Public ownership of forest lands can be defended because it provides a mix of market and non-market resources and long-time horizons that usually would not be provided by private land owners. This is its advantage, on the other hand, public ownership has the disadvantages of being relatively costly, subject to government funding vagaries, and being unresponsive to market forces.

Trusts for Amenity, Conservation, or Recreation Values: Public ownership of property in the U.S. has taken a different turn in recent years because of increasing recognition of the importance of comparatively undeveloped space in and around urban areas, often called “green space,” and understanding property ownership is a collection of rights to possess, enjoy, and dispose of it. These rights can be and increasingly are being delineated and exchanged. Hence, development rights to land are being sold by private landowners and purchased by governmental entities at some level and non-governmental organizations in the form of trusts, a variant of the policy public ownership policy tool, with the remainder of the property rights still residing with the private landowner.

It should be noted the foregoing tools have not been presented in random order. Instead, they are presented in an order intended to approximate an increasing degree of market intervention by government as well as relative cost. For example, public education and insurance programs tend to be much less expensive then government regulation of forest management activities, which in turn tends to be less costly than public ownership.

Conclusion

Effective forest policy in constitutional, democratic, mixed capitalist states depends, at least in part, on an understanding of the basic tools available. Public policies are implemented by public policy tools, and at least four market facilitation and seven market intervention policy tools are used in forestry in the U.S. domestic economy. Policy tools are frequently used in combination. Policy analysts are encouraged to examine not only combinations of policy tools to address a particular issue, but how these combinations relate to the existing network of operational policy tools to ensure they are not in conflict, that a concerted set of policies is in place.

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FOREST LEGISLATION IN A CONSTITUTIONAL STATE – THE EXAMPLE OF THE FEDERAL REPUBLIC OF GERMANY

STEFAN WAGNER

1 General Statements

In Germany, forest law is bound to a large number of constitutional requirements. One of the most important constitutional principles to be observed with all legislative and administrative activities concerning forest lands is the general principle of constitutionality. In the following, this principle's features and its significance for the further developement of forest law shall be described. The term "forest law" when mentioned in the following means all legislative and administrative acts that have any kind of impact on forestry.

Aspects and Significance of the Principle of Constitutionality: The principle of constitutionality is a fundamental principle in the German Constitution, it is the basis for all public acts and measures. Legislature is directly bound to the constitutional rights, i.e. the individual liberties guaranteed under the German Constitution. They define an individual sphere free of state interference. Consequently, the principle of constitutionality is designed to control and restrain governmental authority (Scheuner 1978, pp. 185 et seq.).
In addition to these substantial requirements for all state actions, the principle of constitutionality contains other general premises, such as the requirements of legal certainty and legal lucidity. Connected to these are the requirement of predictability of state action and the privilege of reliance on the stringency and continuity of state action. Finally, there is the principle of commensurability.
Substantive constitutionality is procedurally realized through the principle of the separation of powers. Additionally, there is the principle of legality of administrative acts and comprehensive judicial review by the courts against governmental interference and by the Constitutional Court to guarantee the constitutionality of all state measures.

Separation of Powers: The principle of the separation of powers is based on the desire to safeguard against any arbitrary state measures by separating the governmental powers and constituting a system of mutual checks and balances. However, separation of powers does not intend a strict segregation, but a complex system of functional interrelations and mutual dependances: On the one hand, legislation may delegate legislative power to administrative agencies to issue regulations. On the other hand, legislation may exert specific executive power by passing legal provisions in particular cases. Both, legislative and executive acts, are controlled by the judiciary (Badura 1986, D 48).
Legislative power means the power to promulgate generally binding legal provisions, whereas executive power is the power to execute the laws (Hesse 1991, notes 502 et seq.). Execution mainly means administration, performed by state authorities and agencies (Stern 1980, § 41 I). The judiciary is strictly separated from the other two branches of government, entrusted to independent justices and enforced by the courts, which are entirely separated from other governmental authorities (Stern 1980, § 43 I 4).

2 Structure of the Legal System

Constitutionality means governmental action within the framework of the legal order and the guarantee of the legal system being the framework and the basis of society. The legal system is founded on the Constitution and consists of legislative acts and provisions as well as regulations and ordinances passed by administrative agencies and local entities. All these levels of the legal system may bear upon forest law.

Constitution: The legal framework of society is based on the Constitution which defines the general form of government, protects individual rights and liberties, and determines the branches of government, the fundamental procedures (such as legislation) and the delegation of powers. The Constitution may only be changed in a special proceeding and has priority over all other legal provisions (Hesse 1991, notes 17 et seq.).
From a forest law point of view, the delegation of legislative power in the fields of timber management, nature conservation and game law is of particular importance: Federal legislature has to determine the framework within which the states have to develop and promulgate their own law. Accordingly, there exist federal as well as state laws concerning these fields of law. In this context, the constitutional right to property is of major consequence as it protects private forest owners from too extensive restrictions on timber management. However, it also stresses the social responsibilities connected to the property of real estate. The recent addition of environmental protection as a constitutional objective correspondingly obliges all branches of government to consider at all times the concerns of nature conservation and environmental protection at the enactement and enforcement as well as the interpretation of the laws (Murswiek, NuR 1996, pp. 222 et seq.).

Legislation: Laws are abstract and general provisions, addressed to a multitude of individuals in order to govern an indefinite number of cases. In terms of procedure, they must be passed by federal or state parliaments to which the power of legislation is granted under the Constitution. The number of laws which have an impact of forestry and timber management has grown in a very large scale, no longer comprehensible to a non-lawyer. Environmental protection law is becoming more and more important; the numerous acts, bills and regulations - including and modifying those of forest law - are supposed to soon yield into an integrated Environmental Protection Act (BMU 1998).

Delegated Legislation - Administrative Regulations: Under the provisions of the Consitution, legislature may authorize administrative agencies to issue regulations. This is one of the modifications of the principle of separation of powers, an interconnection of responsibilities. Regulations are generally binding legal provisions issued by executive authorities and therefore without the formal proceedings of legislature. Since the administrative agencies thus exercise original legislative functions, an explicit legal authorization is needed. Such an enabling law must be sufficiently defined, which means that legislature may not delegate unlimited legislative power. The enabling law has to prescribe and define the conditions and objectives for the employment of the authorization, as well as the possible contents of the regulation. Even though executive authorities are generally granted free discretion, it is still up to legislature to decide whether a legal provision needs to be issued or not (BVerfGE 56, p. 12; 78, pp. 272 et seq.).

Administrative regulations are of paramount importance for forest law, especially when they construe and design the states' environmental protection laws and their demands on timber management and agriculture. Their number has increased in all fields of law concerned, which is due to the also increased number of enabling clauses in the nature, water, soil and clean air conservation acts as well as the forest land acts. These clauses usually relate to the conservation and protection of ecologically valuable lands and areas. Also lately, authorities seem to be more willing to make use of enabling clauses. For instance, the number of nature reserves in Bavaria has doubled since the 1980ies. At the same time, the regulations have become more and more detailed and relate to a greater number of timber management techniques. Actually, the states' nature and water conservation agencies have begun to attempt influencing timber management as early as in the planning stages. This is clearly a departure from the former policy of restricting only very particular measures such as large-scale clear-cuttings and deforestations (Wagner 1996, pp. 75 et seq.).

Delegated Legislation - Municipal Ordinances: As opposed to administrative regulations, municipal ordinances are not required to meet the strict demands of enabling laws or clauses. Municipal ordinances are issued by city councils or local governmental entities and do not depend on any federal or state authorization, but are the consequence of the local entities' right to autonomy granted under the German Constitution.
The communities' right to legislative autonomy is restricted to matters and concerns subject to local resonsibility and jurisdiction only. Therefore, statutory regulations with any kind of relevance to constitutional rights must always be promulgated by state or federal parliaments, never by local governmental entities. The latter are nevertheless also bound to the proviso of legal authorization for all intervening measures and regulations. With respect to forest law, municipal nature conservation or zoning ordinances must therefore correspond with the large number of state and federal statutory provisions.
Municipal zoning ordinances and landscape planning have recently gained great importance for timber management: On the one hand, communities proceed to designate outlying districts as recreation areas, trying to influence the distribution of forest lands and open areas by issuing detailed afforestation provisions. On the other hand, the communities have lately been authorized under the newly amended Federal Zoning Act to prescribe and enforce compensation measures for the detrimental effects of construction activities on nature and the landscape. Compensation measures will usually be implemented on forest or farm lands with sufficient potential for an ecological development. These areas are also chosen for their relatively low market value in case that monetary compensations must be paid to the owners (Nies 1998, pp. 194 et seq.).

European Law within the Context of the German Constitution: In the course of the European unification, the legal order of the German Constitution is gradually being superimposed and substituted by the statutory provisions of the European Union. The transference of jurisdiction and governmental powers to the EU as well as the substantive and procedural general regulations for the harmonization of national and European laws are provided under Art. 23 of the German Constitution. In case of a conflict of laws, European legislation has priority over national law.
Unlike farming and agriculture, the EU has no authority to promulgate laws in the field of forestry and timber management. Still, an immeasurable number of European

statutes and acts have been issued, some of which have an excessive impact of forestry, for instance with respect to the protection of endangered species and ecosystems. They greatly influence national legislation as well as they define the scope of executive authorities in forest law (Schroeder, NuR 1998, pp. 1 et seq.).
Currently, the European directives on the "Protection of Birds" (Vogelschutz-Richtlinie) and the "Protection of Wildlife" (FFH-Richtlinie) are in the focus of interest. Both require great quantities of lands and prescribe an extremely high level of protection, without granting any significant discretion for modifications to national legislatures. In fact, both directives prohibit any kind of interference with the protected species and habitat in these areas - not even the necessary cultivation and utilization measures of due farming and timber management (Fisahn/Cremer 1997, pp. 268 et seq.).

3 Legality of Administration

Another element of constitutionality, governed under Art. 20 III of the German Constitution, is the tenet that all administrative acts must be in accordance with the laws and that all interfering administrative acts must have a legal basis ("Legal Proviso").

Legal Proviso for Interfering Acts: Pursuant to the prinicple of legal proviso, administrative agencies may only issue and enforce interfering acts when thus authorized by the law. Hence, the legal proviso absolutely requires a legal basis for all administrative acts and measures which impair individual and public rights and liberties. It does not matter whether the legal authorization is a federal or state law or a provision issued by executive agencies or local governmental entities, as long as the latter was correspondingly enacted in accordance with and on the basis of a federal or state law. Actually, many ordinances and regulations based on the nature conservation, forest lands or water protection acts contain a large number of clauses which may entail detrimental effects on timber management and which make a seemingly harmless ordinance a most powerful device.

Legal Proviso for Beneficial Acts: The general tendency to sharpen and intensify the environmental protection laws is accompanied by a policy of extended subsidizing in order to promote ecologically beneficial cultivation and utilization methods. This way, authorities manage to avoid conflicts and litigation while at the same time prompting farmers and forest owners to use ecological cultivation techniques on a voluntary basis. Recent environmental protection laws often give voluntary agreements combined with subsidies priority over interfering administrative measures.
It is still being disputed whether the tenet of legal proviso must be applied to beneficial administrative acts such as subsidizing certain cultivation techniques, which make a great part of the administrative activities in the field of timber law. Still, there is consensus that it is sufficient to provide for the necessary financial means within the state budget which in turn must be enacted as a law. Apart from that, administrative agencies enjoy free discretion - directed only by the principle of constitutionality and particularly the equal treatment clause, governed under Art. 3 of the German Constitution (BVerfGE 6, p. 282).

4 Constitutionality and Legal Certainty

Constitutionality means the enforcement of governmental powers within the framework of the legal order and consequently the protection of public and individual rights and liberties from unlawful state interference. Such are the conditions for the constitutionality of all statutory provisions, the lawfulness of administration and the protection of the people's reliance thereupon: The citizens' individual rights must be clearly defined so that everyone may arrange his or her conduct accordingly. It is this principle's objective to ensure the citizens' freedom of action. Legal certainty, therefore, requires a clear definition of all legal provisions, that is as well with respect to the wording as to the lucidity and stringency of the legal system as a whole. Moreover, stringency of legislature signifies continuity of legislative action, of the protection of people's reliance thereupon and especially the safeguard for all dispositions made in due reliance thereupon (Degenhart 1991, note 303).
How difficult it is to realize all these tenets can be seen by example of the provisions in the federal and state nature conservation acts on the protection of wetlands and other valuable ecosystems: While they practically claim absoluteness, they often collide with other tenets and values of the legal order. Unlike for instance nature reserve ordinances, most valuable ecosystems, especially wetlands, are immeadiately protected under the nature conservation acts with no need for any additional administrative action. Exceptions are hardly ever granted from so strict a protection provision, if at all, only in connection with compensation measures.
With respect to the principle of constitutionality, conflicts may arise in either of the three following constellations:
Clear definition of the provision: In general practice, it seems almost impossible to define the exact confines of a biotope - as well with regard to substantive requirements as to the actual boundaries of the protected area. Specialists in agriculture, forestry or nature conservation may still be able to find adequate criteria - although their evaluation standards will most probably differ widely. For farmers and forest owners, however, it is usually out of the question to allocate a biotope just on the basis of the wording of a statutory provision (OVG Muenster, NuR 1995, p. 301).
Clarity and stringency of the legal order: Known as an ecologically reasonable way of land use, especially when compared to intensive farming, afforestations are being subsidized on a large scale, and they are subject to far-reaching nature conservation planning activities. Even under the nature conservation acts, afforestations and due forestry are considered ecologically adequate. Nevertheless, the afforestation of wetlands or other ecosystems is generally impossible, because other nature conservation provisions prohibit any kind of alteration of the ecosystems, without leaving room for a discretionary decision and a balancing of interests. There may be no comparison of future ecological impacts of an afforestation, no consideration of the further development of the area at all (Wagner 1996, pp. 90 et seq.).
Privilege of reliance: Statutory provisions for the protection of ecosystems may even be the legal basis for a compulsory abolition of formerly admissible cultivation measures. They may, for instance, prescribe the removal of nonnative tree species or the premature conversion of forests for reasons of improvement of the ecosystem. Even though remedial payments for such interferences will be granted, these will usually not suffice to compensate for the forest owner's loss of reliance on the stringency of the legal order (Wagner 1995, p. 1250).

5 Principle of Commensurability

The principle of commensurability requires an adequate ratio of means and ends of governmental acts. In order to inquire into the commensurability of a particular act one must always consider all aspects of the specific case: the individual person concerned as well as the rights and privileges affected by the particular act. There are three fundamental features of commensurability: statutory provisions and administrative measures issued to promote certain legal objectives have to be suitable, the least intrusive means, and proportionate.
Governmental action must be suitable, that is, it must be fitting to achieve its object.
Furthermore, authorities always have to chose the least intrusive of all suitable means.
Finally, the suitable and least intrusive measure must be proportionate - the burden inflicted upon the individual addressee may not be out of proportion to the objective pursued, even if it is the least intrusive means. Governmental action may never be unreasonable for the individual person concerned (Wagner 1995, p. 1080).
Both, legislature and executive authorities are bound to the principle of commensurabilitiy, although on different levels: While administrative agencies are bound to the objectives of the legal basis they are acting upon, legislative bodies are empowered to freely determine their ends within the framework of the constitution and their general responsibility for public welfare. They are limited only by the consititutional rights and liberties which may be affected.

Suitability and Least Possible Intrusion: The criteria for suitablity with regard to legislative and administrative action differ as well. The suitability of administrative measures to achieve their ends can be reviewed and scrutinized in every respect by the courts. Legislative bodies, however, enjoy discretion: A law will only then be ruled unconstitutional for lack of suitability, when legislature has blatantly misjudged the further development and the repercussions of the law in question (Degenhart 1991, note 328).
Especially ordinances on water and nature protection or on forestry issued by adminstrative agencies affect highly relevant concerns of timber management. On the one hand, the agencies must comply with the requirements of the legal authorization they are acting upon. On the other hand, they need room to assess and estimate the possible impacts and effects of the provision to be issued. The area's or the species' need and worthiness of protection pursuant to the ends of the underlying environmental protection act must be determined, since the particular protection objective will define the admissable degree of future restraints on timber management. Lately, executive authorities tend to even subject areas and regions not needful nor worthy of protection to the jurisdiction of nature reserve and water protection ordinances.
The tenet of the least intrusive means does only apply to measures equally suitable. Therefore, the assessment and evaluation of the suitability necessarily bears upon the subject of the least possible intrusion. Only then must the least intrusive legal provision be chosen when it is as fitting and appropriate as the more rigorous. However, again, legislature is granted free discretion with respect to the assessment, limited only by the Consitution (Degenhart 1991, notes 329 et seq.).
In practice, the tenet of the least intrusive means has lost its importance: it has been generally accepted that the abstract endangerment of a species or habitat is a sufficient reason for the issuing of a nature or wildlife reserve ordinance. And abstract endangerment may be presumed as early as an alteration of the natural conditions of an ecosystem seems at least possible and is not yet prohibited under the law.

Proportionality: Proportionality is the third and most relevant feature of the principle of commensurability. A legislative or executive act which is both suitable to achieve its ends and the least intrusive means can still be inadmissible, when it is out of proportion, considering its objectives. At this point, a balancing of interests must be performed. The impact of the act in question on the individual person concerned has to be assessed in two steps: First, the affected legal rights must be valued by abstract standards in order to assess their general significance under the constitution. The second step is to estimate the individual consequences of the particular act.
The scrutiny of proportionality therefore consists of the general evaluation and the individual estimation of the colliding claims and prerogatives. Whenever public interests are concerned, they need to be assigned to their particular legal or constitutional basis. Legislature's objectives, as they are freely determined, are to be classified and related to the particular statutory provisions of the constitution. The administrative goals may be inferred either from the enabling law upon which the act is issued, or from the constitution. Colliding claims and interests have to be balanced and compensated, violations of constitutional rights to be kept proportionate: dogma of "practical concordance" (Hesse 1991, notes 317 et seq.).

6 Right to Judicial Review

The task of maintaining and protecting constitutionality, that is to safeguard individual rights and interests against arbitrary and unlawful state interference, is incumbent upon all branches of government. The judiciary being the "Third Power" has a distinctive role, however, as the courts have the duty and the power to review and adjudicate governmental acts. Administrative measures and regulations are subordinate to the federal and state courts' scrutiny, whereas legislative acts are subject to the jurisdiction of the constitutional courts.

Standard of Review, Standing: Judicial review of administriative acts is guaranteed under Art. 19 IV of the German Constitution as an individual right. In contrast to that, judicial review of federal or state legislature can only be granted by the constitutional courts. Consequently, Art. 19 IV of the German Constitution guarantees judicial review by the regular courts only against administrative acts and only to those who may rightfully claim a violation of his or her individual rights (standing) (BVerfGE 45, p. 334).
The possible injury to individual rights (standing) is an important requirement for filing an action against administrative acts and must be measured by the standards of substantive law: whenever substantive law grants individual rights, standing is provided under Art. 19 IV of the German Constitution. In case a third party wants to file a law suit in order to challenge a permission granted to another, the question of a possible injury to the third party's rights is of paramount importance. When enacting the legal conditions for a particular project (such as afforestation or deforestation) legislative authorities must therefore decide, whether the individual provisions should also provide third party privileges. Only then would a third party have the chance to seek judicial review under Art. 19 IV of the German Constitution against administrative acts addressed to another (BVerwGE 98, p. 118).
Legislature is granted free discretion to decide whether legal provisions should also involve third party privileges. However, of course the constitutional rights must be

considered at all times. When there is no third party privilege, they may give an immediate claim to judicial review.

Proceedings and the Principle of Efficiency of Judicial Review: Judicial review by the courts is generally guraranteed under the German Constitution. Legislature, however, is obliged to lay down the procedural rules. In doing so, legislature is again given free discretion, as the Constitution contains no particular rules for proceedings. The only prerequisite is to keep judicial review within the range of the individual, not to make it unreasonably complicated. Legislature is obliged to chose an efficient and fast mode of proceeding in order to protect the individual from being confronted with accomplished facts. Both, the suspensive effect of most legal remedies and the right to an interim order, are therefore indispensable under Art. 19 IV (BVerfGE 49, p. 340).
The principle of efficiency of judicial review is even more important where the citizens' constitutional rights are concerned. Recent constitutional court decisions have developed a mode of proceedings to safeguard constitutional rights, that is, not only the judicial but also the administrative proceedings must be efficient, because relief in court against interfering governmental acts often comes to late and is not effective. Consequently, the individual rights of the persons concerned must already be considered in the administrative proceedings, especially when substantive law does not provide for any definite evaluation standards (BVerfGE 53, pp. 62 et seq.).

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FORSTGESETZGEBUNG IM RECHTSSTAAT – DAS BEISPIEL DER BUNDESREPUBLIK DEUTSCHLAND

STEFAN WAGNER

1 Generelle Feststellungen

Die Forstgesetzgebung in Deutschland ist an eine Vielzahl verfassungsrechtlicher Vorgaben gebunden. Eines der wesentlichen verfassungsrechtlichen Prinzipien, das bei allen gesetzgeberischen und administrativen Aktivitäten, die den Forst betreffen, zu beachten ist, ist das rechtsstaatliche Prinzip des Grundgesetzes. Es soll im folgenden in seinen Grundrissen und in seiner Bedeutung für die Konstitutierung und Weiterentwicklung des Forstrechts dargestellt werden. Forstrecht ist dabei im Sinne aller für die Forstwirtschaft bedeutsamen Aktivitäten der Gesetzgebung und der gesetzesvollziehenden Verwaltung zu verstehen (funktionales Forstrecht).

Struktur und Bedeutung des Rechtsstaatsprinzips: Das Rechtsstaatsprinzip ist grundlegendes Ordnungsprinzip des Grundgesetzes. In materieller Hinsicht konkretisiert es sich in sachlichen Grundpositionen für staatliches Handeln. Geschützte individuelle Rechtspositionen werden vor allem in den Grundrechten der Art. 1 bis 19 GG festgelegt, an die der Gesetzgeber unmittelbar gebunden ist. Darin wird ein grundsätzlich staatsfreier Bereich individueller Freiheit anerkannt, in Abgrenzung und Trennung der Sphären von Bürger und Staat. Das Rechtsstaatsprinzip ist somit vor allem darauf ausgerichtet, staatliche Gewalt zu mäßigen und zu begrenzen (Scheuner 1978, S. 185 ff.).
Diese materiellen Grundpositionen für staatliches Handeln werden ergänzt durch allgemeine Prinzipien, vor allem die Gebote der Rechtssicherheit und der Rechtsklarheit und, damit im Zusammenhang, die Erfordernisse der Berechenbarkeit staatlichen Handelns, der Voraussehbarkeit und des Vertrauensschutzes; und schließlich das grundsätzliche Erfordernis der Verhältnismäßigkeit staatlicher Maßnahmen.
Materielle Rechtsstaatlichkeit wird verfahrensmäßig-organisatorisch durch den Grundsatz der Gewaltenteilung verwirklicht, dem organisatorischen Grundprinzip der Verfassung; damit im Zusammenhang durch den Grundsatz der Gesetzmäßigkeit der Verwaltung, durch umfassenden Gerichtsschutz gegen Akte der öffentlichen Gewalt sowie durch die Existenz einer Verfassungsgerichtsbarkeit, die die Verfassungsmäßigkeit staatlichen Handelns gewährleisten soll.

Das Gewaltenteilungsprinzip: Dem in Art. 20 GG festgelegten Grundsatz der Gewaltenteilung liegt der Gedanke der Begrenzung staatlicher Macht durch gegenseitige Hemmung und Kontrolle ("checks and balances") einzelner, voneinander getrennter Staatsfunktionen zugrunde. Jedoch bedeutet Gewaltenteilung nicht strikte Trennung der Funktionen, vielmehr bei zwar grundsätzlicher Unterscheidung ein System wechselseitiger Verschränkungen und Einflußnahmen in funktionaler Hinsicht: Der Gesetzgeber kann seine Befugnisse auf die Verwaltung delegieren (Verordnungsgebung), kann andererseits aber auch Verwaltungsfunktionen an sich ziehen (Maßnahmengesetze). Gesetzgebung und Verwaltung wiederum unterliegen in ihren Funktionsbereichen Eingriffen durch die rechtsprechende Gewalt (Badura 1986, D 48).

Der Begriff der Gesetzgebung wird im Grundgesetz nicht definiert; materiell bedeutet Gesetzgebung den Erlaß allgemeinverbindlicher Rechtsnormen, formell ist darunter eine staatliche Anordnung zu verstehen, die von den für die Gesetzgebung zuständigen Organen in dem von der Verfassung hierfür vorgesehenen Verfahren und in der hierfür vorgesehenen Form erlassen wird (Hesse 1991, RdNrn. 502 ff.).
Auch der Funktionsbereich der vollziehenden Gewalt wird im Grundgesetz nicht positiv abgegrenzt. Vollziehende oder exekutive Gewalt ist zunächst und vor allem die Verwaltung. Unter Verwaltung ist die Tätigkeit des Staates oder eines sonstigen Trägers öffentlicher Gewalt außerhalb von Rechtsetzung und Rechtsprechung zu verstehen (Stern 1980, § 41 I).
Funktionsmäßig und organisatorisch eindeutig von den anderen Gewalten unterschieden ist dagegen die Rechtsprechung. Sie ist unabhängigen Richtern anvertraut und wird durch die Gerichte als besondere, von der übrigen Staatsgewalt abgetrennte Behörden, ausgeübt. Diese bereits organisatorisch hervorgehobene Stellung der Gerichte im System der Gewaltenteilung wird im Verhältnis zum Bürger akzentuiert durch sog. Justizgrundrechte, z.B. Recht auf den gesetzlichen Richter, Recht auf Gehör oder Freiheit der Person (Stern 1980, § 43 I 4).

2 Aufbau der Rechtsordnung

Rechtsstaatlichkeit bedeutet staatliches Handeln im Rahmen der Rechtsordnung, aber auch generell die Gewährleistung der Rechtsordnung als eine Gesamtordnung des Gemeinwesens. Diese Ordnung wird konstituiert durch das Grundgesetz als Grundlage, durch das Gesetz als zentrales Ordnungsinstrument und durch die vom Gesetz abgeleitete untergesetzliche Ordnung, insbesondere Rechtsverordnungen und Satzungen. Auf allen Ebenen finden sich forstrechtliche Bezüge.

Das Grundgesetz: Die rechtliche Grundordnung des Gemeinwesens wird durch das Grundgesetz geschaffen, in dem staatsgestaltende Grundentscheidungen getroffen sind, die rechtlichen Grundpositionen der Bürger in den Grundrechten gewährleistet werden, die staatlichen Organe bestimmt und die maßgeblichen staatlichen Verfahren festgelegt sowie schließlich die bundesstaatliche Kompetenzverteilung geschaffen ist. Die Regelungen des Grundgesetzes können nur in einem besonderen Verfahren geändert werden und sie genießen Vorrang gegenüber allen anderen (einfachgesetzlichen) Rechtsnormen (Hesse 1991, RdNrn. 17 ff.).
Aus forstrechtlicher Sicht besonders bedeutsam ist in organisatorischer Hinsicht die Verteilung der Gesetzgebungskompetenzen, die im Bereich des Wald-, Naturschutz- und Jagdrechts eine Rahmengesetzgebungskompetenz des Bundes festlegt, innerhalb dessen die Länder ihre verbindlichen Gesetze zu erlassen haben. Eine zentrale Gesetzgebung für Gesamtdeutschland ist in diesem Sektor daher von vornherein ausgeschlossen. Aus dem Grundrechtskanon kommt vor allem der Eigentumsgarantie des Art. 14 GG große Bedeutung zu, weil sie die privaten Waldbesitzer vor zu weitreichenden Beschränkungen ihrer Bewirtschaftungsfreiheit schützen kann, andererseits aber auch die Sozialpflichtigkeit gerade des Grundeigentums betont. Damit korrespondiert die unlängst in das Grundgesetz aufgenommene Staatszielbestimmung Umweltschutz, die alle Gewalten verpflichtet, den Interessen des Natur- und Umweltschutzes beim Gesetzeserlaß, beim Vollzug der Gesetze und bei ihrer gerichtlichen Überprüfung in angemessenen Umfang zu berücksichtigen (Murswiek 1996, S. 222 ff.).

Gesetzgebung und Gesetzesbegriff: Gesetze sind in materieller Hinsicht abstrakt-generelle Anordnungen, die sich an eine Vielzahl von Personen richten und eine unbestimmte Vielzahl von Fällen regeln; sie müssen in formeller Hinsicht im grundgesetzlich vorgeschriebenen Verfahren durch den parlamentarischen (also vom Volk gewählten) Gesetzgeber erlassen werden. Das Gebäude forstlich relevanter Normen ist zwischenzeitlich auf beachtliche Größe angewachsen und für den Rechtsunkundigen kaum noch überschaubar. Zunehmend wichtiger wird das öffentliche Umweltschutzrecht, dessen Bestimmungen in absehbarer Zeit in einem bundeseinheitlichen Umweltgesetzbuch unter Einschluß (und Modifizierung) auch der bisher in den Waldgesetzen enthaltenen Vorschriften zusammengefaßt werden sollen.

Delegierte Rechtsetzung – Verordnungsgebung: Der Gesetzgeber kann unter den Voraussetzungen des Art. 80 GG seine originäre Befugnis zur Rechtsetzung an die Exekutive delegieren, indem er sie zum Erlaß von Rechtsverordnungen ermächtigt. Hierdurch wird der Grundsatz der Gewaltentrennung im Sinne einer Funktions-verschränkung im Verhältnis der Gewalten modifiziert. Rechtsverordnungen sind daher zwar (allgemeinverbindliche) Rechtsnormen, die aber von der Exekutive, und damit außerhalb des formellen Gesetzgebungsverfahrens, erlassen werden. Da die Exekutive mit dem Erlaß von Rechtsnormen materiell Funktionen der gesetzgebenden Gewalt wahrnimmt, bedarf sie dazu der ausdrücklichen gesetzlichen Ermächtigung. Diese muß hinreichend bestimmt sein, d.h. der Gesetzgeber darf der Verwaltung keine unbegrenzte Ermächtigung erteilen; bereits aus dem ermächtigenden Gesetz selbst muß hinreichend deutlich vorhersehbar sein, in welchen Fällen und mit welcher Tendenz von der Ermächtigung Gebrauch gemacht werden wird und welchen Inhalt die Verordnungen haben können (BVerfGE 56, 12). Soweit dem Verordnungsgeber Entschließungsermessen eingeräumt wird, darf dieses nicht so weit gehen, daß im Ergebnis dieser selbst darüber entscheidet, ob das Gesetz überhaupt zur Anwendung kommt oder nicht. Die Frage, ob für den fraglichen Sachbereich überhaupt eine Regelung getroffen wird, ist vorab durch den Gesetzgeber zu entscheiden (BVerfGE 78, 272 ff.).
Verordnungen der Exekutive haben im forstrechtlichen Bereich überragende Bedeutung, so vor allem zur näheren Ausgestaltung der Umweltfachgesetze und ihrer Anforderungen an die land- und forstwirtschaftliche Bodennutzung. Dabei ist eine Zunahme der Regelungdichte auf allen Ebenen zu beobachten: Quantitativ sowohl durch die zunehmende Bereitstellung entsprechender Verordnungsermächtigungen u.a. in den Naturschutz-, Wald-, Immissionsschutz-, Gewässerschutz- oder Bodenschutzgesetzen, die sich i.d.R. auf die besondere Inschutznahme ökologisch wertvoller Flächen beziehen, als auch durch die in deutlich stärkerem Maße zu erkennende Bereitschaft der Exekutive, von diesen Ermächtigungen auch tatsächlich Gebrauch zu machen - so hat sich z.B. die Zahl der in Bayern durch Rechtsverordnung ausgewiesenen Naturschutzgebiete seit Beginn der achtziger Jahre mehr als verdoppelt. Damit geht eine zunehmende Steigerung der qualitativen Regelungsdichte einher, d.h. die in den Verordnungen getroffenen Anordnungen werden immer präziser und beziehen sich auf immer neue Bewirtschaftungsmaßnahmen. So wird in den Wasser- und Naturschutzverordnungen von Seiten der Fachverwaltungen vermehrt versucht, bereits auf die Planungsphase der Waldbewirtschaftung Einfluß zu nehmen, was eine klare Abkehr vom bisherigen Konzept der Restringierung nur einzelner Maßnahmen wie großflächige Hiebe oder Waldrodungen bedeutet (Wagner 1996, S. 75 ff.).

Delegierte Rechtsetzung - Satzungserlaß: Die strengen Anforderungen an die Bestimmtheit gesetzlicher Verordnungsermächtigungen gelten nicht für den Erlaß autonomer Satzungen, das sind Rechtsnormen, die eine Selbstverwaltungskörperschaft aufgrund eines ihr verliehenen Satzungsrechts erläßt (z.B. Gemeinden). Hier werden keine Rechtsetzungsbefugnisse auf die Exekutive übertragen, vielmehr entäußert sich der Staat in begrenztem Umfang seiner Legislativfunktionen zugunsten autonomer Körperschaften, die diese Funktionen ihrerseits durch ihre demokratisch legitimierten Legislativorgane ausüben - bei Gemeinden z.B. durch den Rat. Die Reichweite der Satzungsgewalt ist begrenzt durch den Aufgabenbereich des Selbstverwaltungsträgers. Gewisse Einschränkungen ergeben sich allerdings aus dem Prinzip des Parlamentsvorbehalts für Regelungen in grundrechtswesentlichen Bereichen und aus dem rechtsstaatlichen Gesetzesvorbehalt für Eingriffsmaßnahmen. Im forstlich relevanten Bereich des gemeindlichen Satzungserlasses im bauplanungs- und naturschutzrechtlichen Sektor sind diese zudem durch eine Fülle gesetzlicher Rahmenvorgaben in ihrer Rechtssetzungskompetenz eingeschränkt.
Dennoch entwickelt vor allem die gemeindliche Bauleit- und Landschaftsplanung mehr und mehr zentrale forstliche Bedeutung: Einerseits durch zunehmende grünordnerische Aktivitäten der Gemeinden, die ihren Außenbereich verstärkt als Erholungs- und Naturraum für die Bevölkerung nutzen und hierbei satzungsrechtlich vor allem Einfluß auf die Wald-Flur-Verteilung mittels detaillierter Erstaufforstungsregelungen nehmen können. Andererseits durch die zum Jahresbeginn 1998 vollzogene Integration der naturschutzrechtlichen Eingriffsregelung in das Baugesetzbuch, wodurch die Gemeinden nunmehr in die Lage versetzt werden, den Ausgleich von Natur- und Landschaftsbeeinträchtigungen im Zuge von Bauvorhaben im Wege der Anordnung umfassender satzungsrechtlicher Maßnahmen durchzusetzen. Für Ausgleichs- und Ersatzmaßnahmen werden die Gemeinden (zwangsläufig) vor allem land- und forstwirtschaftliche Flächen heranziehen, die i.d.R. über ein ausreichendes ökologisches Weiterentwicklungspotential verfügen und - soweit Entschädigungen gezahlt werden müssen oder Übernahmeansprüche seitens der privaten Eigentümer bestehen - über einen nur geringen Verkehrswert verfügen (Nies 1998, S. 194 ff.).

Verwaltungsvorschriften: Die Verwaltung ist im Verhältnis zum Bürger an die Rechtsordnung gebunden. Sie hat die Gesetze und die aufgrund der Gesetze ergangenen Verordnungen und Satzungen zu beachten und umzusetzen. Häufig lassen die für die Verwaltung maßgeblichen Rechtsnormen aber Entscheidungsspielräume offen: So geben Ermessensnormen den Behörden die Befugnis, bestimmte Maßnahmen zu treffen, schreiben ihr dies jedoch weder hinsichtlich des Ob noch hinsichtlich des Wie zwingend vor. In derartigen Fällen besteht häufig ein Bedürfnis nach einheitlicher Verwaltungspraxis, von der sehr oft umwelt- (hier insbesondere immissionsschutz-) und zuweilen auch forstrechtlich relevante Regelungsbereiche erfaßt sind, letzteres z.B. im Hinblick auf einen einheitlichen Vollzug der Kompensationsfragen im Rahmen der Eingriffsregelung. Gleiches gilt, wenn das Handeln der Verwaltung gesetzlich nicht geregelt ist, was in Teilbereichen vor allem auch der land- und forstwirtschaftlichen Leistungsverwaltung (Förderung, Subventionen) der Fall ist. Hier kann die im behördlichen Instanzenzug vorgeordnetet Behörde für die nachgeordneten Behörden allgemeine Richtlinien erlassen, die die Handhabung des Verwaltungsermessens steuern. Ein Bedürfnis nach einheitlicher Gesetzesanwendung kann weiterhin bestehen, wenn ein Gesetz auslegungsbedürftige unbestimmte Rechtsbegriffe enthält, insbesondere, wenn das

Gesetz in einer Vielzahl vergleichbarer Fälle zu vollziehen ist. Auch hier können Verwaltungsvorschriften ergehen, die das Gesetz in genereller Weise für die mit der Anwendung des Gesetzes befaßten Behörden interpretieren.
Verwaltungsvorschriften sind somit verwaltungsintern verbindlich, sie können jedoch, da sie keine Rechtsnormen mit Außenwirkung sind, keine unmittelbaren Rechte und Pflichten im Verhältnis zum Bürger begründen. Aus eben diesem Grunde sind sie auch für die Gerichte nicht verbindlich. Allerdings können Verwaltungsvorschriften unter Umständen mittelbar Bindungswirkung auch im Verhältnis zum Bürger entfalten: Denn hat sich die Verwaltung einmal auf eine bestimmte Handhabung der Gesetzesauslegung oder des ihr zustehenden Ermessens festgelegt, so bindet sie sich hierdurch selbst im Verhältnis zum Bürger, der dann gegebenenfalls einen Anspruch auf Gleichbehandlung im Rahmen gleichförmiger Verwaltungspraxis aus dem Gleichheitsgebot des Art. 3 GG hat (Maurer 1996, § 24 RdNrn. 2 ff.).

Gemeinschaftsrecht in der Rechtsordnung des Grundgesetzes: Die Rechtsordnung des Grundgesetzes wird im Zuge der europäischen Integration zunehmend überlagert durch das Recht der Europäischen Union. Die Übertragung von Hoheitsrechten sowie die formellen und materiellen Rahmenvorgaben der Harmonisierung des nationalen mit dem gemeinschaftlichen Recht sind in dem neugefaßten Art. 23 GG umfassend geregelt. Grundsätzlich kommt dem Gemeinschaftsrecht im Kollisionsfall Vorrang gegenüber dem innerstaatlichen Recht zu. Obwohl der Europäischen Union anders als bei der Landwirtschaft eine umfassende Kompetenz zur Regelung forstlicher Materien fehlt, hat sich im Laufe der Zeit ein kaum überschaubares Konglomerat gemeinschaftsrechtlicher Maßnahmen und Rechtsetzungsakte mit zum Teil weitreichendem forstlichen Bezug, so z.B. im Bereich des Arten- und Biotopschutzrechts, entwickelt, der maßgeblichen Einfluß sowohl auf das Normsetzungsverhalten des nationalen Gesetzgebers als auch auf den Handlungsspielraum der vollziehenden Verwaltung im Bereich des Forstrechts entwickelt hat (Schröder 1998, S. 1 ff.).
Im Mittelpunkt des Interesses stehen diesbezüglich gegenwärtig die gemeinschaftsrechtlichen Richtlinien zum Schutz der Vogelwelt (Vogelschutz-RL) und zum Schutz der wildlebenden Tiere und Pflanzen und ihrer Lebensräume (Flora-Fauna-Habitat-RL), die die Land- und Forstwirtschaft mit z.T. exorbitant hohen Flächenforderungen konfrontieren und - ohne daß der nationale Gesetzgeber hier über nennenswerte Spielräume verfügt - ein sehr hohes Schutzniveau normieren, das im Kern jede negative Beeinträchtigung der in den festzusetzenden Gebieten vorkommenden schützenswerten Arten auch durch Maßnahmen der ordnungsgemäßen Land- und Forstwirtschaft verbietet (Fisahn/Cremer 1997, S. 268 ff.).

3 Gesetzmäßigkeit der Verwaltung

Als Element der rechtsstaatlichen Ordnung des Grundgesetzes legt Art. 20 Abs. 3 GG den Grundsatz der Gesetzmäßigkeit der Verwaltung fest, der insbesondere den Vorbehalt des Gesetzes umfaßt.

Gesetzesvorbehalt für Eingriffsakte: Nach dem Grundsatz des Vorbehalts des Gesetzes darf die Verwaltung nur dann belastende Maßnahmen ergreifen, wenn sie dazu durch Gesetz ermächtigt ist. Dieser Grundsatz verlangt daher zwingend eine gesetzliche Grundlage für die in die Rechte Einzelner oder der Allgemeinheit

eingreifende Verwaltungstätigkeit (Hesse 1991, RdNr. 201). Die unmittelbare Ermächtigung zum Erlaß eines Eingriffsakts kann dabei durchaus in einer Norm des untergesetzlichen Rechts, insbesondere in Rechtsverordnungen, enthalten sein, doch muß diese dann ihrerseits auf ein formelles Gesetz zurückgehen. In der Praxis finden sich gerade in den Rechtsverordnungen, die auf der Grundlage der Naturschutz-, Wald- und Wassergesetze erlassen werden, eine Vielzahl (zusätzlicher) staatlicher Eingriffsakte, die sich auf die Bewirtschaftungsfreiheit der Waldbesitzer auswirken, und die ein auf den ersten Blick harmlos anmutendes gesetzliches Regelwerk im Vollzug zu einem scharfen Schwert machen.

Gesetzesvorbehalt und Leistungsverwaltung: Umstritten ist dagegen, ob der Vorbehalt des Gesetzes auch für den gesamten Bereich der Leistungsverwaltung anzuwenden ist, der für die Forstwirtschaft von außerordentlicher praktischer Bedeutung ist. Aufgrund der fortschreitenden Vergesetzlichung auch dieses Bereichs verliert die Problematik jedoch an Aktualität. Allgemein wird es als ausreichend angesehen, wenn die entsprechenden Mittel im Haushaltsplan, der in Gesetzesform ergeht, bereitgestellt werden. Im übrigen unterliegt die Verwaltung bei der Vergabe ihrer Mittel allgemeinen rechtsstaatlichen Bindungen, vor allem dem Gleichheitssatz des Art. 3 GG, der bei der Regelung der Leistungsvergabe durch Verwaltungsvorschriften eine Selbstbindung der Verwaltung bewirkt (BVerfGE 6, 282). Der gesamte Bereich der Leistungsverwaltung wird für die Forstwirtschaft zunehmend wichtiger, denn der allgemeine Trend zur Verschärfung der Umweltgesetze geht einher mit einer deutlich breiteren Streuung finanzieller Fördermittel mit dem Ziel, umweltschonende Bewirtschaftungsformen zu fördern. Die Behörden versuchen hiermit, eigentumsrechtlichen Streitigkeiten aus dem Wege zu gehen und die Landwirte und Waldbesitzer zu umweltgerechtem Wirtschaften auf freiwilliger Grundlage zu bewegen. In der neueren Umweltgesetzgebung werden solche freiwilligen finanziellen Absprachen vermehrt bereits als vorrangiges Instrument des Verwaltungshandelns eingestuft.

4 Rechtsstaatlichkeit und Rechtssicherheit

Rechtsstaatlichkeit bedeutet Ausübung staatlicher Gewalt im Rahmen der Rechtsordnung und damit Schutz einer rechtlich gesicherten Sphäre des Bürgers gegenüber dem Staat. Dies bedingt die Verfassungsmäßigkeit der Gesetze und die Gesetzmäßigkeit der Verwaltung, vor allem aber auch Rechtssicherheit: Die Rechtssphäre des Bürgers bedarf der hinreichend sicheren Abgrenzung, sie muß klar und verläßlich sein, so daß der Normadressat sich in seinem Verhalten hierauf einrichten kann. Schutzzweck dieses Verfassungsgebots ist es, für den Bürger Dispositionssicherheit zu gewährleisten: Rechtssicherheit bedingt daher zunächst Bestimmtheit der Norm, d.h. hinreichend klare Fassung ihres Wortlauts, aber auch Klarheit, Überschaubarkeit und Widerspruchsfreiheit der Rechtsordnung. Und es tritt eine zeitliche Komponente hinzu: Widerspruchsfreiheit und konsequentes Verhalten des Gesetzgebers bedeutet Kontinuität gesetzlichen Handelns, Schutz des Vertrauens des Bürgers in die Beständigkeit der Rechtsordnung, vor allem Schutz seiner in berechtigtem Vertrauen getroffenen Dispositionen (Degenhart 1991, RdNr. 303).
Wie schwer dies teilweise für den Gesetzgeber umzusetzen ist, belegen die Biotopschutzvorschriften der Naturschutzgesetze, die in ihrem Absolutheitsanspruch sehr weit reichen und dabei häufig mit anderen Wertungen der Rechtsordnung

kollidieren. Anders als beim verordnungsrechtlichen Schutz z.B. von Naturschutzgebieten sind viele Biotoptypen auf feuchten und sehr trockenen Standorten unmittelbar gesetzlich geschützt, ohne daß die Behörden irgendwelche weiteren Abwehrmaßnahmen ergreifen müßten. Beeinträchtigungen dieser Biotope sind nur in ganz seltenen Ausnahmefällen denkbar, und auch dann nur im Verbund mit Ausgleichsmaßnahmen. Unter dem Aspekt der Rechtssicherheit treten hier Praxiskonflikte in drei typischen Fallkonstellationen auf:
Bestimmtheit der Norm: Die inhaltliche und räumliche Abgrenzung der Biotope bereitet in der Praxis fast unüberwindbare Schwierigkeiten; gilt dies schon für Fachleute aus dem Bereich der Land- und Forstwirtschaft und des Naturschutzes (hier liegt die Ursache allerdings häufiger in unterschiedlichen fachlichen Bewertungsansätzen), so ist es für die Landwirte und Waldbesitzer oftmals vollkommen ausgeschlossen, anhand des Gesetzeswortlauts die Flächen verläßlich zuzuordnen (OVG Münster, NuR 1995, 301).
Klarheit und Widerspruchsfreiheit der Rechtsordnung: Die Erstaufforstung wird als naturschonende Art der Bodennutzung - gerade im Vergleich mit der landwirtschaftlichen Intensivnutzung - finanziell stark gefördert und ist auch Gegenstand umfangreicher naturschutzplanerischer Aktivitäten. Erstaufforstung und ordnungsgemäße Waldbewirtschaftung werden vom Naturschutzgesetz zudem als naturgerechte Bewirtschaftungsmaßnahme angesehen. Dennoch ist die Aufforstung von Biotopen rechtlich praktisch ausgeschlossen, weil die speziellen Biotopschutzvorschriften jegliche Veränderung der Artenzusammensetzung untersagen, und zwar ohne Raum für Abwägungsentscheidungen zu lassen, ohne daß eine Gegenüberstellung der ökologischen Folgewirkungen möglich ist und ohne daß die sukzessive Entwicklung der Biotope mit in die Prüfung eingestellt werden kann (Wagner 1996, S. 90 ff.).
Vertrauensschutz: Die Biotopschutzvorschriften können Rechtsgrundlage sogar für die zwangsweise Umkehr bis dahin zulässiger Formen der Waldbewirtschaftung sein, etwa soweit sie die Beseitigung nichtheimischer Baumarten oder die Verpflichtung zum Umbau von Waldbeständen vor Hiebsreife aus Gründen der Biotopoptimierung betreffen. Hierfür ist zwar aus eigentumsrechtlichen Gründen in aller Regel ein finanzieller Ausgleich zu leisten, jedoch kompensiert dieser den erlittenen Vertrauensverlust hinsichtlich der Beständigkeit der gesetzlichen Vorgaben im allgemeinen nicht (Wagner 1995, S. 1250).

5 Übermaßverbot und Verhältnismäßigkeitsprinzip

Diese für Gesetzgebung und Verwaltung geltenden Prinzipien verlangen Verhältnismäßigkeit zwischen den Auswirkungen staatlicher Maßnahmen und deren Zielsetzung. Das Verhältnismäßigkeitsprinzip ist stets in Bezug zu setzen zu konkret betroffenen Rechtspositionen, es muß also immer klargestellt werden, wem gegenüber, in bezug auf welche Rechte und rechtlich relevanten Interessen eine staatliche Maßnahme unverhältnismäßig erscheint.
Klarheit ist zunächst hinsichtlich der einzelnen Elemente des Verhältnismäßigkeitsprinzips herzustellen; gesetzgeberische oder gesetzesvollziehende Maßnahme müssen geeignet, erforderlich und angemessen sein:
Geeignetheit ist gegeben, wenn die Maßnahme geeignet ist, den mit ihr angestrebten Zweck auch tatsächlich zu erreichen.
Erforderlichkeit bedeutet, daß unter mehreren für die Verwirklichkung des angestrebten Zwecks in Betracht kommenden, gleichermaßen geeigneten Maßnahmen

die den Bürger am geringsten belastende Maßnahme zu treffen ist: Prinzip des geringstmöglichen Eingriffs.
Angemessenheit muß schließlich auch für die mit dem geringstmöglichen Eingriff verbundene Maßnahme gegeben sein. Die durch die Maßnahme hervorgerufene Belastung des Bürgers darf, auch wenn sie den geringstmöglichen Eingriff darstellt, nicht außer Verhältnis zu dem damit verfolgten Zweck stehen, sie darf nicht unzumutbar sein (Wagner 1995, S. 1080).
Hiervon ausgehend gelten für den Gesetzgeber und die Verwaltung teilweise unterschiedliche Kriterien. Ein unterschiedlicher Ansatz gilt zunächst bereits für die Bewertung des Eingriffsziels: Während der Verwaltung hier die Ziele ihres Handelns durch die der Maßnahme zugrundeliegende gesetzliche Regelung vorgegeben sind, kann der Gesetzgeber grundsätzlich die Ziele seines Handelns im Rahmen der verfassungsrechtlichen Vorgaben autonom bestimmen; im Einzelfall konkret betroffene Grundrechte können hier jedoch engere Schranken ziehen.

Geeignetheit und Erforderlichkeit: Unterschiedliche Kriterien gelten auch im Bezug auf die Geeignetheit von Gesetzen und Maßnahmen der Verwaltung. Während die Geeignetheit von Maßnahmen der Verwaltung, einen angestrebten Zweck zu erreichen, im Grundsatz voll überprüfbar ist, wird dem Gesetzgeber hierbei ein gewisser Prognosespielraum zuerkannt: Ein Gesetz wird nur dann wegen mangelnder Geeignetheit für verfassungswidrig erklärt werden, wenn deren Beurteilung durch den Gesetzgeber auf einer offensichtlich fehlsamen Prognose der künftigen Entwicklungen und Auswirkungen des Gesetzes beruht. In einem forstlich hochrelevanten Übergangsbereich bewegen sich die von der Exekutive erlassenen Rechtsverordnungen insbesondere des Naturschutz-, Wald- und Gewässerschutzrechts, bei denen die Verordnungsgeber sich einerseits an den Vorgaben der gesetzlichen Ermächtigungsnorm orientieren müssen, andererseits aber auch über gewisse Prognose- und Beurteilungsspielräume bei der Normsetzung verfügen. Hier stellt sich häufig die Frage, ob die zur Inschutznahme vorgesehenen Flächen überhaupt geeignet sind, den besonderen gesetzlichen Schutzzweck zu erfüllen (Frage der Schutzwürdigkeit), was vor allem deshalb bedeutsam ist, weil sich an den besonderen Schutzstatus regelmäßig besondere Eingriffsbefugnisse knüpfen, mit denen die Forstwirtschaft weitreichend eingeschränkt werden kann. Die Tendenz geht de lege ferenda dahin, die Exekutive zu ermächtigen, auch aktuell nicht geeignete Flächen unter Entwicklungsgesichtspunkten in den Geltungsbereich von Naturschutz- oder Wasserschutzgebietsverordnungen miteinzubeziehen (Degenhart 1991, RdNr. 328).
Bei der Prüfung der Erforderlichkeit einer Maßnahme muß zunächst beachtet werden, daß das Erfordernis des geringstmöglichen Eingriffs nur im Verhältnis gleichermaßen geeigneter Maßnahmen gilt. Damit aber wirkt sich ein Beurteilungs- und Prognosespielraum des Gesetzgebers in der Frage der Geeignetheit notwendig auch auf die Prüfung der Erforderlichkeit aus: Auf die geringer eingreifende Maßnahme ist der Gesetzgeber nur dann zu verweisen, wenn diese zur Erreichung des angestrebten Zieles ebenso geeignet ist wie die intensiver eingreifende Maßnahme - in der Beurteilung der Geeignetheit aber besteht wiederum gesetzgeberischer Spielraum. Im übrigen wird die Bewertung der Erforderlichkeit vor allem bestimmt durch den für die in Frage stehende Maßnahme vorgegebenen Zweck, der bei Maßnahmen der Verwaltung wiederum durch die einschlägige gesetzliche Regelung vorgegeben ist. Demgegenüber ist für die Erforderlichkeitsprüfung von Gesetzen der vom Gesetzgeber - im Rahmen der Verfassung - autonom zu

bestimmende Zweck maßgeblich. Da sich die Erforderlichkeit z.B. einer Naturschutzgebietsausweisung schon mit dem Vorliegen einer nur abstrakten Gefährdungslage der dort vorkommenden Arten begründen läßt, kommt diesem Prüfungspunkt in der rechtlichen Praxis keine zentrale Bedeutung mehr zu; denn eine abstrakte Gefährdungslage ist in ständiger obergerichtlicher Rechtsprechung stets schon dann anzunehmen, wenn einer Änderung der natürlichen Gegebenheiten aufgrund der bisherigen Rechtslage keine wesentlichen Hindernisse von Seiten der Behörden entgegengesetzt werden könnten (Degenhart 1995, RdNrn. 329 ff.).

Angemessenheit: Den dritten und in der Praxis bedeutsamsten Schritt im Rahmen der Verhältnismäßigkeitsprüfung bezeichnet die Frage der Angemessenheit (Proportionalität): Auch die an sich geeignete und erforderliche Maßnahme ist unzulässig, wenn sie außer Verhältnis zu dem mit ihr verfolgten Zweck steht. Hier ist nun Raum für die eigentliche Güterabwägung eröffnet. Dabei sind auf Seiten des betroffenen Bürgers die Auswirkungen der in Frage stehenden Maßnahme in grundsätzlich zwei Schritten zu bewerten. Es sind zunächst in einer abstrakten rechtlichen Bewertung dessen Rechtsgüter und rechtlich geschützte Interessen in Ansatz zu bringen; hierbei ist auszugehen von ihrer grundsätzlichen (abstrakten) Bedeutung. Anschließend an diese abstrakte Bewertung ist die Intensität des konkreten Betroffenseins durch die fragliche Maßnahme zu ermitteln.
In die Angemessenheitsprüfung sind also die abstrakte Bewertung und die konkrete Beeinträchtigung der kollidierenden Rechtsgüter und Interessen einzustellen. Vor allem für die betroffenen öffentlichen Interessen ist stets deren normative Zuordnung anzustreben; dabei sind insbesondere die Handlungsziele des Gesetzgebers, die dieser ja zunächst autonom festsetzt, verfassungsrechtlich einzuordnen, nach Möglichkeit zu bestimmten Verfassungsnormen in Bezug zu setzen. Die Handlungsziele der Verwaltung sind aus dem Gesetz, wo dieses Handlungsspielräume eröffnet, aber auch aus dem Grundgesetz abzuleiten. In der konkreten Fallgestaltung sind kollidierende Rechtsgüter in Ausgleich zu bringen und Grundrechtsbeeinträchtigungen verhältnismäßig vorzunehmen: Grundsatz der "praktischen Konkordanz" (Hesse 1991, RdNrn. 317 ff.).

Anwendungsbereich des Verhältnismäßigkeitsprinzips: Die Verpflichtung, eine im Einzelfall verhältnismäßige Maßnahme zu treffen, setzt die Möglichkeit, eine Entscheidung zwischen unterschiedlichen Maßnahmen wählen zu können, voraus. Auf der Ebene der Verwaltung gilt daher das Verhältnismäßigkeitsprinzip grundsätzlich nur für Ermessensentscheidungen, während im Bereich der gebundenen Verwaltung hierfür regelmäßig kein Raum ist. Allerdings besteht auch bei der gebundenen Verwaltung regelmäßig die Möglichkeit, im Rahmen von Ausnahme- oder Befreiungsregelungen von der eigentlich vorgesehenen Rechtsfolge abzuweichen und auf diese Weise eine (wenngleich eingeschränkte) Güterabwägung vorzunehmen. Nur wenn diese Möglichkeiten bei der gebundenen Verwaltung gesetzlich nicht vorgesehen sind, kann auch das Gesetz seinerseits gegen den Grundsatz der Verhältnismäßigkeit verstoßen und damit verfassungswidrig sein.
Vorrangig bedeutsam wird das Verhältnismäßigkeitsprinzip gegenüber Eingriffsmaßnahmen des Staates vor allem im Grundrechtsbereich. Soweit also privates Eigentum betroffen sein kann, erfordert die grundgesetzliche Eigentumsgarantie bei allen gesetzgeberischen und administrativen Maßnahmen eine umfassende Abwägung der staatlichen Handlungsziele mit den gegebenenfalls betroffenen rechtlich geschützten Interessen der Grundeigentümer.

6 Rechtsschutzgarantie

Obwohl die Wahrung der Rechtsstaatlichkeit, also der für den Rechtsstaat wesentlichen, rechtlich abgesicherten Sphäre des Bürgers gegen die staatliche Gewalt, allen staatlichen Organen obliegt, kommt der Justiz als dritter Gewalt dabei eine besondere Bedeutung zu. Ihr obliegt die letztverbindliche Kontrolle aller Akte staatlicher Gewalt, insbesondere die Kontrolle der vollziehenden Gewalt (über die Verwaltungsgerichtsbarkeit), aber auch die Kontrolle der gesetzgebenden Gewalt über die in der Ordnung des Grundgesetzes mit besonders weitreichenden Befugnissen (vergleichbar nur dem Supreme Court der USA) ausgestattete Verfassungsgerichtsbarkeit.

Akzessorietät zum materiellen Recht: Das Gebot umfassenden Gerichtsschutzes gegen die öffentliche Gewalt ist, was die Verwaltung betrifft, in Art. 19 Abs. 4 GG verankert, und hierbei als selbständiges Grundrecht ausgestaltet. Die Gesetzgebung wird demgegenüber nicht als öffentliche Gewalt in diesem Sinne betrachtet, so daß Rechtsschutz unmittelbar gegen (förmliche) Gesetze allein über die Verfassungsgerichtsbarkeit gewährleistet wird. Art. 19 Abs. 4 GG gewährleistet also Gerichtsschutz gegen die Maßnahmen der Verwaltung, allerdings nur für denjenigen, der in seinen Rechten verletzt ist (BVerfGE 45, 334).
Ob eine Rechtsverletzung vorliegt, bestimmt sich nach dem maßgeblichen materiellen Recht: Soweit dieses subjektive Rechte verleiht, greift die Rechtsschutzgarantie des Art. 19 Abs. 4 GG ein. Bedeutsam wird dies vor allem bei Klagen eines Dritten gegen einen für den Adressaten günstigen Verwaltungsakt. Denn wenn der Gesetzgeber die Voraussetzungen für die Erteilung einer Genehmigung für ein bestimmtes Vorhaben (z.B. Erstaufforstung, Waldrodung) normiert, so steht es grundsätzlich in seiner Entscheidung, ob die einzelnen Erfordernisse auch den Schutz von Dritten bezwecken können, so daß diese unter Umständen klagen können. Art. 19 Abs. 4 GG setzt somit Schutznormen voraus (BVerwGE 98, 118).
Begrenzt nun der Gesetzgeber für bestimmte Genehmigungen die Klagebefugnis, so bringt er damit zum Ausdruck, daß es sich hierbei nicht um Schutznormen handeln soll. Dies ist grundsätzlich zulässig: Der Gesetzgeber kann den Umfang materieller Rechte, deren Verletzung die Rechtsschutzgarantie eingreifen läßt, bestimmen, jedoch nur im Rahmen der Verfassung; Schranken ziehen hier vor allem die Grundrechte (z.B. das Eigentumsgrundrecht des Art. 14 GG): Denn gerade die Verletzung von Grundrechten, über die der Gesetzgeber nicht verfügen kann, löst die Rechtsschutzgarantie des Art. 19 Abs. 4 GG aus.
In der Ausgestaltung von Gesetzen zu Schutznormen auch für Dritte ist der Gesetzgeber also grundsätzlich frei; er hat dabei jedoch seinerseits die Grundrechte zu beachten, die andererseits dann, wenn Schutznormen fehlen, unmittelbar zur Klage berechtigen müssen.

Verfahrensordnungen und Gebot des effizienten Rechtsschutzes: Art. 19 Abs. 4 GG fordert, daß der Rechtsweg zu den Gerichten eröffnet wird. Die nähere Ausgestaltung dieses Rechtswegs obliegt dem Gesetzgeber. Er kann hierbei grundsätzlich nach seinem Ermessen handeln, denn eine bestimmte Ausgestaltung des Rechtswegs ist grundgesetzlich nicht vorgegeben. Als äußere Grenze ist nur zu beachten, daß die Inanspruchnahme von Rechtsschutz dem Einzelnen nicht unzumutbar erschwert wird. Der Gesetzgeber muß eine Verfahrensgestaltung wählen, die effizienten, dabei insbesondere auch rechtzeitigen Rechtsschutz sichert. Dies bedeutet vor allem auch Schutz vor der Schaffung vollendeter Tatsachen; grundsätzlich durch Art. 19 Abs. 4 GG verfassungsrechtlich gefordert ist daher die

aufschiebende Wirkung von Rechtsbehelfen sowie die Möglichkeit vorläufigen Rechtsschutzes (BVerfGE 49, 340).
Gesteigerte Bedeutung erlangt das Gebot effektiven Rechtsschutzes vor allem dort, wo es um den Schutz von Grundrechten geht; gerade die neuere Rechtsprechung des Bundesverfassungsgerichts hat hier den allgemeinen Gedanken der grundrechtssichernden Verfahrensgestaltung entwickelt, wobei neben der Ebene der Rechtsprechung vor allem auch das Verwaltungsverfahren ins Blickfeld gerät: Denn der nachträgliche gerichtliche Rechtsschutz gegen Akte der öffentlichen Gewalt gewährleistet häufig keinen hinreichend effektiven Grundrechtsschutz. Gerade dann aber muß bei der Ausgestaltung des Verwaltungsverfahrens den Grundrechten Betroffener verstärkt Rechnung getragen, und dies insbesondere dann, wenn das materielle Recht keine hinreichend klaren Beurteilungsmaßstäbe bereithält (BVerfGE 53, 62 ff.).
In aktuellem Bezug geht es dabei auch darum, Lücken im Rechtsschutzsystem zu schließen. Als Beispiel sei die sog. vorbeugende Unterlassungsklage gegen Verwaltungsakte genannt, die noch nicht ausgesprochen sind, deren dauerhafter Nichterlaß indessen aus Gründen der Dispositionsfreiheit des Betroffenen verbindlich festzustellen ist. Ein weiteres Beispiel ist die sog. Normerlaßklage, mit der ein Einzelner ein möglicher Anspruch gegen die Verwaltung auf Erlaß einer materiellen Norm (Rechtsverordnung, Satzung) mittels verwaltungsgerichtlicher Klage durchsetzen kann. Neuerdings erlangt Art. 19 Abs. 4 GG auch Bedeutung gegenüber Gesetzesvorhaben, die auf eine zu weitgehende Beschleunigung der Verfahren zu Lasten sorgfältiger Entscheidungsfindung, wirksamer Rechtsverteidigung und fairer Verfahrensführung abzielen (Degenhart 1991, RdNr. 349).

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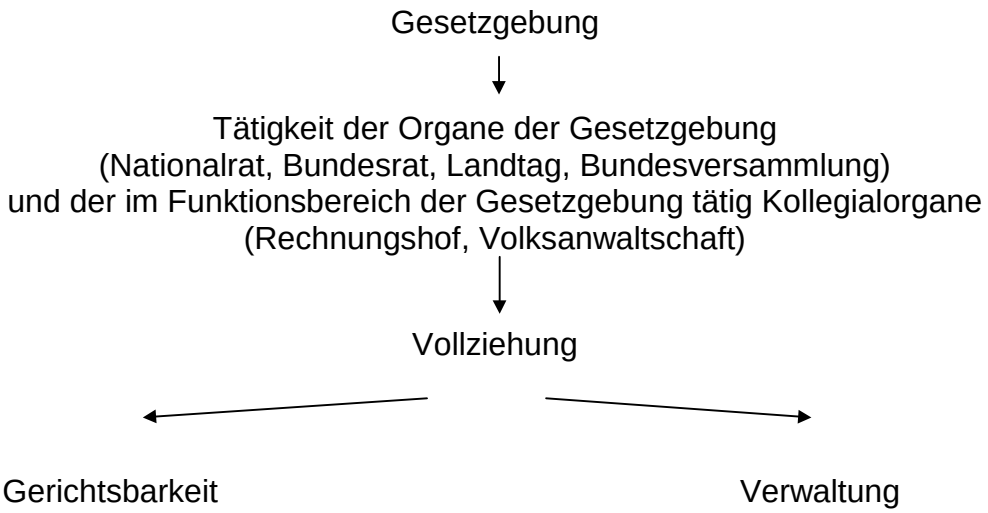
VERFASSUNGSRECHTLICHE GRUNDLAGEN UND FUNKTIONSGRUNDSÄTZE DER ÖSTERREICHISCHEN VERWALTUNG

BRUNO KATHOLLNIG

Die Verwaltung als Staatsfunktion: Das österreichische Bundesverfassungsgesetz unterscheidet zwischen den drei „klassischen“ Staatsfunktionen: Gesetzgebung, Gerichtsbarkeit und Verwaltung. Die Gesetzgebung erläßt jene (formellen) Gesetze, die von der Gerichtsbarkeit und der Verwaltung anzuwenden und zu vollziehen sind.

Begrifflich ist zu unterscheiden zwischen

- materieller Gewaltenteilung: die Unterscheidung zwischen Gesetzgebung, Verwaltung und Gerichtsbarkeit nach inhaltlichen Kriterien (Staatsfunktionen),
- organisatorischer (formeller) Gewaltenteilung: die Unterscheidung bestimmter Organe der Gesetzgebung, Verwaltung und Gerichtsbarkeit,
- personeller Trennung im Sinne von Inkompatibilität / Unvereinbarkeit.



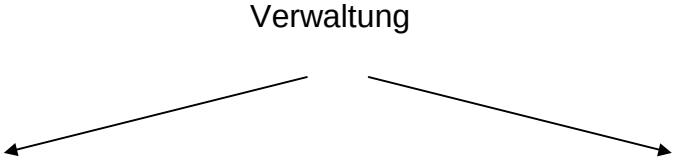
Tätigkeit der Richter und ihrer Hilfsorgane

Tätigkeit von Staatsorganen, die weder zur Gesetzgebung noch zur Gerichtsbarkeit gehören: oberste Organe des Bundes (BPräs; BReg, BM) und der Länder (LReg und einzelne Mitglieder), gemeinsam mit den nachgeordneten Beamten und Vertragsbediensteten im öffentlichen Dienst + andere Verwaltungen, vor allem die Selbstverwaltungen der Gemeinden

Die Weisungsgebundenheit: Der Verwaltungsaufbau in Österreich ist durch hierarchische Strukturen gekennzeichnet. Die Verwaltung steht unter der Leitung der obersten Verwaltungsorgane des Bundes und der Länder. Das Ausdrucksmittel dieser Leitungsbefugnis ist die Weisung.

- Weisungen sind verwaltungsinterne Anordnungen von übergeordneten an unterstellte Verwaltungsorgane zur Regelung verwaltungsinterner Angelegenheiten.

Das Weisungsprinzip ist auch im Bundesverfassungsgesetz grundsätzlich festgelegt, Ausnahmen von diesem Grundsatz können nur durch Verfassungsrecht begründet werden.
Die österreichischen Gemeinden, daher auch die Stadt Villach, gehören zu diesen Ausnahmen, da sie Selbstverwaltungskörper sind. Innerhalb der Verwaltungsorganisationen der Selbstverwaltung herrscht aber wiederum das Prinzip der Weisungsgebundenheit der nachgeordneten Organe. So sind z.B. Beamte der Gemeinde an Weisungen der zuständigen leitenden Gemeindeorgane, z.B. des Bürgermeisters, gebunden.



Hoheitliche Verwaltung

Der Staat tritt als Träger von Befehls- und Zwangsbefugnissen in Erscheinung. Typische Akte der Hoheitsverwaltung sind z.B. die Erlassung von Verordnungen und Bescheiden, die Erteilung von Weisungen sowie die Ausübung von unmittelbarer behördlicher Befehls- und Zwangsgewalt.

Nicht-hoheitliche Verwaltung
(=Privatwirtschaftsverwaltung)

Der Staat wird als Träger von Privatrechten tätig. Typische Maßnahmen nicht-hoheitlicher Verwaltung sind vor allem der Abschluß von privatrechtlichen Verträgen und die Ausübung von Besitz und Eigentumsrechten durch den Staat bzw. die Verwaltungseinheit.

Die Gemeinden: Jedes österreichische Bundesland gliedert sich in Gemeinden. Eine Gemeinde in Österreich ist eine Gebietskörperschaft mit dem Recht auf Selbstverwaltung und zugleich Verwaltungssprengel. Hat eine Gemeinde mehr als 20.000 Einwohner, kann ihr auf ihren Antrag hin ein eigenes Statut (Stadtrecht) verliehen werden. Villach hat dieses Stadtrecht im Jahr 1932 erhalten. Im Gegensatz zu jenen Gemeinden, die kein eigenes Statut haben, ist das Gebiet der Stadt nicht nur ein normaler Verwaltungssprengel, sondern auch politischer Bezirk. Das bedeutet, daß die Stadt Villach zusätzlich die Agenden einer Bezirksverwaltung zu besorgen hat.
Unter Selbstverwaltung der Gemeinden versteht man die Besorgung öffentlicher Aufgaben, einschließlich hoheitlicher Aufgaben, durch die österreichischen Gemeinden (neben Bund und Ländern). Die Gemeinden sind dabei, soweit sie im „eigenen Wirkungsbereich“ handeln, gegenüber den staatlichen Behörden des Bundes oder Landes weisungsfrei; sie unterstehen allerdings der staatlichen Aufsicht.

Daneben besteht ein „übertragener Wirkungsbereich“, in dem die Organe des Selbstverwaltungskörpers funktionell als Behörden des Bundes oder Landes tätig werden und den übergeordneten Behörden des Bundes oder Landes gegenüber weisungsgebunden sind.
Die österreichische Bundesverfassung regelt die territoriale Selbstverwaltung der Gemeinden ausführlich (Artikel 115 bis 120 B-VG). In Österreich sind die Rechtsstellung und die Kompetenzen der Länder, verglichen mit anderen Bundesstaaten, eher bescheiden. Demgegenüber besitzen die österreichischen Gemeinden eine vergleichsweise starke Position und bilden gewissermaßen eine dritte Ebene im Bundesstaat.
Trotzdem dürfen wesentliche rechtliche Unterschiede zwischen diesen beiden Typen von Gebietskörperschaften nicht übersehen werden:

- Die Gemeinden haben keinen Anteil an der gesetzgebenden Gewalt (diese wird von Bund und Ländern ausgeübt) und der Gerichtsbarkeit. Sie sind lediglich Träger der Verwaltung. Allerdings besitzen die Gemeinden ein selbständiges Verordnungsrecht, womit sie ein Gesetzgebungsrecht im materiellen Sinn besitzen. Es gilt auch für die Gemeinden der im Bundesverfassungsgesetz festgelegte Grundsatz der Gesetzmäßigkeit der Verwaltung.
- Auch im Bereich der Hoheitsverwaltung besitzt die Gemeinde keine ursprünglichen, sondern lediglich von Bund oder Land abgeleitete Aufgaben. Auch die in den eigenen Wirkungsbereich fallenden Aufgaben der Gemeinde sind entweder dem Vollzugsbereich des Bundes oder jenem der Länder zuzuordnen.

Zusammenfassend kann man sagen, daß eine Gemeinde eine qualifizierte Form dezentralisierter staatlicher Verwaltung darstellt.

Die Gemeinde als Selbstverwaltungskörper: Eine Gemeinde besitzt: Rechtspersönlichkeit mit dem Recht auf Selbstverwaltung. Als Träger der Selbstverwaltung besitzt die Gemeinde einen eigenen Wirkungsbereich, in dem sie

- weisungsfrei ist,
- ein Instanzenzug, d.h. ein ordentliches Rechtsmittel gegen ihre Bescheide an Verwaltungsorgane außerhalb der Gemeinde ausgeschlossen ist

Auch für den eigenen Wirkungsbereich der Gemeinde gilt aber der Grundsatz der Gesetzmäßigkeit der Verwaltung.
Die österreichischen Gemeinden haben ein verfassungsgesetzlich gewährleistetes subjektives Recht auf Selbstverwaltung. Wird einer Gemeinde eine Aufgabe vorenthalten, die zum eigenen Wirkungsbereich der Gemeinde gehört, wird dieses subjektive Recht verletzt.
Die Rechtsposition der Gemeinde umfaßt aber nicht auch das Recht auf eine bestimmte inhaltliche Gestaltung der die Aufgaben des eigenen Wirkungsbereiches regelnden Rechtsvorschriften.

Der eigene Wirkungsbereich der Gemeinde: Dieser wird im österreichischen Bundesverfassungsgesetz mit einer Generalklausel umschrieben: Der eigene Wirkungsbereich umfaßt alle Angelegenheiten, die

- im ausschließlichen oder überwiegenden Interesse der örtlichen Gemeinschaft gelegen und
- geeignet sind, durch die Gemeinschaft innerhalb ihrer Grenzen besorgt zu werden.

Im Bundesverfassungsrecht sind in Art. 118 Abs. 3 B-VG beispielsweise (demonstrativ) Angelegenheiten aufgezählt, die jedenfalls zum eigenen Wirkungsbereich gehören. Die Bundesverfassung bestimmt zusätzlich, daß der einfache Gesetzgeber (Bund oder Land) bei Regelung einer Materie genau zu bezeichnen hat, welche Agenden von der Gemeinde im eigenen Wirkungsbereich zu besorgen sind.
Dazu zählen beispielsweise:

- Bestellung der Gemeindeorgane unbeschadet der Zuständigkeit überörtlicher Wahlbehörden
- Regelungen der inneren Einrichtungen zur Besorgung von Gemeindeaufgaben
- Bestellung der Gemeindebediensteten und Ausübung der Diensthoheit
- örtliche Sicherheitspolizei, örtliche Veranstaltungspolizei
- örtliche Marktpolizei, Gesundheitspolizei, Sittlichkeitspolizei
- örtliche Baupolizei, Feuerpolizei
- örtliche Raumplanung
- Verwaltung der Verkehrsflächen der Gemeinde

In Angelegenheiten des eigenen Wirkungsbereiches hat die Gemeinde das Recht, ortspolizeiliche Verordnungen zur Abwehr unmittelbar bevorstehender oder zur Beseitigung bereits bestehender Mißstände, die das örtliche Gemeinschaftsleben stören, zu erlassen. Es handelt sich dabei um ein selbständiges (gesetzesergänzendes) Verordnungsrecht. Solche Verordnungen der Gemeinden dürfen aber nicht bestehende Gesetze oder Verordnungen des Bundes oder Landes abändern.

Zum eigenen Wirkungsbereich gehört auch das Recht der Gemeinde, als selbständiger Wirtschaftskörper tätig zu sein. Eine Gemeinde darf im Rahmen der allgemeinen Gesetze Vermögen aller Art besitzen und wirtschaftliche Unternehmungen betreiben

Die staatliche Aufsicht: Die Gemeinden sind zwar im eigenen Wirkungsbereich weisungsfrei, unterliegen aber der Aufsicht von Bund oder Land (Art. 119 a B-VG). Diese Aufsicht ist auf die Kontrolle der Rechtmäßigkeit der Gemeindeakte beschränkt. Nur auf dem Gebiet der Gemeindegebarung erfolgt zusätzlich eine Überprüfung nach den Kriterien der Sparsamkeit, Wirtschaftlichkeit und Zweckmäßigkeit. Die Gemeinde hat im Aufsichtsverfahren Parteistellung und kann gegen diese Aufsichtsmaßnahmen selbst Rechtsmittel bis hin zu Beschwerden an den Österreichischen Verfassungsgerichtshof oder Verwaltungsgerichtshof erheben.

Der übertragene Wirkungsbereich der Gemeinden: Neben dem eigenen Wirkungsbereich gibt es für die österreichischen Gemeinden den übertragenen Wirkungsbereich. Hier ist die Gemeinde Verwaltungssprengel und besorgt staatliche Verwaltungsaufgaben im engsten Sinn. Ausführendes Organ des übertragenen Wirkungsbereiches ist der Bürgermeister. Je nach Zuordnung ist der Bürgermeister somit funktionell entweder Bundesbehörde oder Landesbehörde und untersteht dabei der Weisungsgewalt der übergeordneten Bundes- oder Landesbehörde (bei Städten mit eigenem Statut, wie Villach, ist dies meist die Landesregierung oder der Landeshauptmann).

Andere Organe der Gemeinde, wie der Gemeinderat oder der Stadtsenat, können in diesem Bereich nicht tätig werden. Im Rahmen des übertragenen Wirkungsbereiches muß die Gemeinde an überörtlichen Aufgaben im Bereich der Bundes- und Landesvollziehung mitwirken. Die übertragenen Aufgaben hat sie ausschließlich im Interesse des Bundes oder des Landes auszuführen.
Villach ist eine Stadt mit eigenem Statut und besitzt eine gewisse Sonderstellung unter den Gemeinden. Vor allem unterscheidet sie sich dadurch, daß sie im übertragenen Wirkungsbereich auch die Agenden einer Bezirkshauptmannschaft zu besorgen hat, somit zugleich Bezirksverwaltungssprengel ist.

Die Organisation der Gemeinde: Das österreichische Bundesverfassungsgesetz sieht für die Organisationsstruktur der österreichischen Gemeinden eine Art parlamentarisches System vor, bestehend aus:

- Gemeinderat als allgemeiner Vertretungskörper, der von den Bürgern (Hauptwohnsitz in der Gemeinde) nach einem Verhältniswahlprinzip zu wählen ist;
- Gemeindevorstand als „Gemeinderegierung“, der vom Gemeinderat nach dem Proporz zu wählen ist (Anspruch auf anteilige Vertretung nach Maßgabe der Stärke der gewählten Parteien); in einer *Statutarstadt wie Villach* wird der Gemeindevorstand als Stadtsenat bezeichnet;
- Bürgermeister: Dieser wird in Kärnten direkt von den zum Gemeinderat Wahlberechtigten gewählt.
- Das Gemeindeamt: In den österreichischen Statutarstädten wird das Gemeindeamt als Magistrat bezeichnet und wird als Hilfsapparat der zuvor erwähnten Organe verstanden. Zum Leiter des inneren Dienstes des Magistrates ist ein rechtskundiger Verwaltungsbeamter als Magistratsdirektor zu bestellen. Der Bürgermeister und die Mitglieder des Gemeindevorstandes sind im eigenen Wirkungsbereich dem Gemeinderat verantwortlich. Auch der Gemeinderat ist dem Prinzip der Gesetzmäßigkeit der Verwaltung unterworfen.

Der Gemeinderat ist oberstes Organ der Stadt Villach. Er besteht derzeit aus 45 Mitgliedern. Der Gemeinderat wird alle sechs Jahre gewählt.

Der Magistrat: Die Bezeichnung „Magistrat“ ist ausschließlich Städten mit eigenem Statut vorbehalten. Der Magistrat hat alle Geschäfte der Stadt - sowohl im Bereich der Hoheitsverwaltung, als auch im Bereich der Privatwirtschaft - zu besorgen und stellt den Hilfsapparat der Stadt dar. Der Magistrat ist in Geschäftsgruppen aufgegliedert. Das Gesetz sieht als Minimalgliederung folgende Unterteilung vor:

- Geschäftsgruppen
- Unternehmungen
- Kontrollamt

Weitere Unterteilungen sind ausdrücklich als zulässig erklärt. Grundsätzlich sieht die Geschäftseinteilung des Magistrates eine dreistufige Aufbau- oder Linienorganisation vor:

Geschäftsgruppe → Abteilung → Dienststelle bzw. Betrieb oder Unternehmen.

Der Vorstand des Magistrates ist der Bürgermeister. Ihm unterstehen die Bediensteten der Stadt. Vorgesetzter aller Bediensteten ist der Magistratsdirektor. Ihm obliegt die Leitung des inneren Dienstes. Der Magistratsdirektor muß Jurist sein und muß für die Gesetzmäßigkeit der Verwaltung sorgen.
Durch Verordnung setzt der Bürgermeister die Gliederung und die Geschäftseinteilung des Magistrates fest. Dabei werden die Geschäfte des eigenen und des

übertragenen Wirkungsbereiches nach ihrem Gegenstand und nach ihrem sachlichen Zusammenhang auf die einzelnen Verwaltungsstellen (Dienststellen) aufgeteilt. Dieser Geschäftseinteilung muß für den Bereich des eigenen Wirkungsbereiches der Stadtsenat zustimmen. In der Geschäftsordnung des Magistrates (= Verordnung des Bürgermeisters) wird die Vertretung des Bürgermeisters und der Mitglieder des Stadtsenates durch den Magistratsdirektor, die Geschäftsgruppenvorstände und andere Bedienstete geregelt.
Die momentane Struktur des Villacher Magistrates ist vorerst durch drei Geschäftsgruppen charakterisiert: die Allgemeine Verwaltung, die Bauverwaltung und die Finanzverwaltung. Die Allgemeine Verwaltung und die Bauverwaltung sind jeweils in vier Abteilungen gegliedert. Diese Geschäftsgruppen unterstehen der Magistratsdirektion, die wiederum für einen Teilbereich die Funktion einer vierten Geschäftsgruppe besitzt.
In der Stadt Villach gibt es vier „gemeindeeigene“ *Betriebe*, und zwar den Stadtgarten, den Wirtschaftshof, die Entsorgung und die Kläranlage, sowie drei *Unternehmen*, nämlich das Wasserwerk, das Bestattungsunternehmen und das Plakatierungsunternehmen. Die Betriebe sind der Bauverwaltung, die Unternehmungen der Wirtschaftsverwaltung zugeordnet. Die Unternehmungen der Stadt üben eine auf Gewinn gerichtete Tätigkeit aus.
Bei der Stadt Villach sind derzeit ca. 1.000 Bedienstete angestellt. Diese sind für die Verwaltung der Stadt und die „Versorgung“ von ca. 57.000 Einwohnern zuständig.
Nur ein Bruchteil der Bediensteten ist mit Behördenarbeit beschäftigt. Der Großteil der Bediensteten erfüllt Dienstleistungsaufgaben, die für ein funktionierendes, modernes Gemeinwesen einfach lebensnotwendig sind. So versteht sich der Magistrat in der heutigen Zeit nicht so sehr als Verwaltungsapparat bzw. Verwaltungseinheit, sondern viel eher als effizientes Dienstleistungsunternehmen, wobei die Aufgabenerfüllung durch die Bediensteten vor allem durch Bürgerorientierung geprägt wird.

Exkurs Forstrecht: In Österreich liegt der Erlaß forstrechtlicher Bestimmungen in Gesetzgebung und Vollziehung beim Bund.

Sämtliche forstrechtlichen Bestimmungen zielen darauf ab,

- den Wald flächenmäßig zu erhalten,
- die Produktionskraft des Bodens und die Nutz-, Schutz-, Wohlfahrts- und Erholungswirkungen des Waldes nachhaltig zu sichern und
- bei der wirtschaftlichen Nutzung des Waldes vorzusorgen, daß Nutzungen den künftigen Generationen vorbehalten bleiben.

Diese Ziele werden nicht nur durch hoheitliche (Gebote, Verbote, Bewilligungen, Aufträge etc.), sondern auch durch privatwirtschaftliche Maßnahmen verwirklicht.
Die Stadt Villach in ihrer Funktion als Bezirksverwaltungsbehörde ist, sofern nicht Abweichendes bestimmt ist, die Forstbehörde erster Instanz. In diesem Zusammenhang obliegt ihr insbesondere das Überwachen der sich aus den Rechtsvorschriften und den behördlichen Anordnungen ergebenden forstrechtlichen Pflichten (Forstpolizei) und das Feststellen der für die Gesetzesvollziehung relevanten tatsächlichen und rechtlichen Verhältnisse (= Fachaufsicht).
Daher sind die Forstbehörden ermächtigt, jeden Wald zu betreten, Forststraßen zu befahren, Auskünfte vom Waldeigentümer, seinen Forstorganen und Forstschutz-

organen zu verlangen, Messungen vorzunehmen und Untersuchungsmaterial zu entnehmen.
Werden die forstrechtlichen Bestimmungen mißachtet, ist dem Verpflichteten von der Forstbehörde die umgehende Herstellung des rechtmäßigen Zustandes (einschließlich der erforderlichen Sicherungsmaßnahmen) mit Bescheid aufzutragen. Ist Gefahr im Verzug, können entsprechende Maßnahmen auch unmittelbar angeordnet werden und nötigenfalls gegen Ersatz der Kosten durch den Verpflichteten durchgeführt werden. Gleichzeitig kann auch ein Verwaltungsstrafverfahren wegen einer Verwaltungsübertretung eingeleitet werden.

Beispiel für ein verwaltungsrechtliches Verfahren bzw. forstrechtliches Verfahren - Das Rodungsverfahren: Der Waldeigentümer oder der sonst Berechtigte hat nach forstrechtlichen Bestimmungen den Antrag auf Rodungsbewilligung bei der Forstbehörde einzubringen. Die Forstbehörde hat nun zu prüfen, ob ein öffentliches Interesse an der Rodung vorliegt, und wenn dies der Fall ist, ob das öffentliche Interesse an der Walderhaltung überwiegt. Berechtigte und die an die Rodungsfläche angrenzenden Eigentümer sind Verfahrenspartei. Gemeinde und Behörden (z.B. Agrarbehörde) kommen Anhörungsrechte zu. Vor der Entscheidung über den Rodungsantrag hat die Forstbehörde eine mündliche Verhandlung durchzuführen. Sind die Voraussetzungen erfüllt, hat der Antragsteller einen Rechtsanspruch auf die Erteilung einer Rodungsbewilligung. Diese Bewilligung erfolgt in Bescheidform, wobei die Forstbehörde zu begründen hat, warum die Rodungsbewilligung erteilt wird. Die Rodungsbewilligung kann auch unter Bedingungen und Auflagen erteilt oder befristet werden. Wird der Bescheid rechtskräftig, muß ihn die Forstbehörde binnen zweier Wochen dem Bundesminister für Land- und Forstwirtschaft vorlegen. Ist seiner Ansicht nach die Interessensabwägung bei der Rodungsbewilligung mangelhaft erfolgt, kann er gegen den Bewilligungsbescheid Amtsbeschwerde an den Österreichischen Verwaltungsgerichtshof erheben.

THE LOCAL COUNTIES IN AUSTRIA - CONSTITUTIONAL PRINCIPLES (SUMMARY)

BRUNO KATHOLLNIG

The Local Counties in Austria: Every Austrian Federal State is divided into Counties. The County is a territoral corporate body entitled to self-administration, while being at the same time an administrative local district. Every piece of a State must form part of a County.
A County with at least 20.000 inhabitants shall, at its own request, be awarded its own charter by way of State legislation.
Villach got conferred its own charter in the year 1932.
Contrary to the other Counties a town with it's own charter shall perform besides its local administrative duties also those of the District administration.
The self-administration by the Counties means the handling of public duties, including also the souvereign functions (beside the Federation and the States).
Compared to the States the Austrian Counties obtain a powerful position at government level. But there exist important legal differences between the States and the Counties:

- The Austrian Counties have no legislative powers and don't participate in jurisdiction.
- They're only executive bodies or administrative organes.
- The Counties are entitled to issue on their own initiative ordinances within their sphere of competence and on the basis of the law.

The principle of „legality of administration", laid down by the Constitution has also validity for the Counties.
Summing up, it may be said, that the Counties represent a qualified form of decentralized governmental administration.

The Counties as Self-Governing Bodies: A County has legal status and is entitled to self-administration by the Constitution.
As executive body entitled to self-administrating the County has it's own sphere of competence. Within this own sphere of competence the County is free from instructions; a legal redress to administrative authorities outside the County is excluded.
With respect to its performance in its own sphere of competence a right of supervision pertains to the Federation and to the State over the County.
Also for the own sphere of competence the principle of „legality of administration" has to be applied by the Counties.

The Own Sphere of Competence of the Counties: The own sphere of competence comprises all matters which concern exclusively or preponderatly the local community as personified by a County, and suited to performance by the community within it's local borders.
The legislation shall expressly specifically matters of that kind as being such falling within the County's own sphere of competence.

A County ist guaranteed official responsibility for example for performing the following matters:

- appointment of the local authorities, not with-standing the competence of selection boards at a higher level
- settlement of the internal arrangements for performance of the County functions
- appointment of the County staff and exercise of the official responsibility over them
- local public safety administration; local events control
- local market police; local sanitary police; public decency
- local building police; local fire control
- local environment planning
- administration of County traffic areas, local traffic police.

In matters of its own sphere of competence the County is entitled to issue on its own initiative local police ordinances for the prevention or elemination of nuisances interfering with local community life.
Non compliance can be declared as an administrative contravention.
Such ordinances may not violate existent laws and ordinances of the Federation and the State.
The County is also an independent economic entity. It ist entitled, within the limits of the laws of the Federation and the States, to posses assets of all kinds, to acquire and to dispose of such at will and to operate economic enterprises. It is entitled to manage it's budget independently within the framework of the constitutional finance provisions, and to levy taxation.

The Assigned Sphere of Competence: Beside the own sphere of competence exists also the assigned sphere of competence. It comprises those matters which the County, in accordance with federal or State laws, must untertake at the order and in accordance with the instructions of the Federation or of the State.
The business of the assigned sphere of competence is performed by the Mayor, in matters of federal execution he is bound by instructions from the competent Federal authorities, in matters of State execution by instructions from the competent State authorities. To them the Mayor is responsible. Other authorities of the County can't work for the assigned sphere of competence.

The Organisation of the Counties: The authorities of the County shall in every instance include:

- the County Parliament, being a popular representative body to be elected by those entitled to vote in the County,
- the County Board, in towns with their own charter, called the Town Senate
- the Mayor, in Carinthia elected directly by those entitled to vote in the County
- the County Administration.

The business of the Counties is performed by the County Administration, that of towns with their own charter by the Magistrate.
A civil-servant with legal training is appointed to take charge as Magistrate Director of the Magistrate's internal services.

CHARACTERISTICS AND ANALYSIS OF IMPLEMENTATION OF THE NEW FOREST LAW IN THE REPUBLIC OF BULGARIA

NICKOLA STOYANOV

1 Overview on Forest Law Developments

In the period from the Liberation from the Turkish yoke (1878) until the beginning of the 1950s legislation concerning forests in Bulgaria has been abundant. In this period six laws were elaborated (developed) and implemented for the forests. In the six laws from this period new methods were accepted concerning the administration of forests, and new ways were established for their rational management. All of this had the purpose to make forestry enterprises more profitable and to conserve the forest for constant and uninterrupted use.

With respect to ownership and property, the laws divided the forests into state, municipal and private. Nevertheless, problems about property rights of forests and forest lands did not find a complete solution. In this period, there were many legal arguments about the property of forests and forest lands between private persons and the state or between private persons and municipalities. Nationalisation (1946-1951) changed the status of the forests with respect to ownership. In the Law of 1958 (the seventh law for the forests), the questions about ownership were solved in a totally different way – all forests and forest lands were considered as national property.

Since the beginning of the transition from centralised planned economies to market economies, forestry specialists began to elaborate drafts for new forest legislation. In the period from 1990 until 1997, more than ten variants for a Law for the Forests and for the Law on Restoration of the Property of the Forests and Forests Lands of the Forest Fund were elaborated. These draft projects were prepared with the help of specialists from the Committee of Forests, the Union of Bulgarian Engineers of Forestry, the University of Forestry, the Forest Research Institute, the Union of Private Owners of Forests etc. None of these drafts was accepted.

In 1997 – eight years after the beginning of political and economic changes – the Bulgarian Parliament accepted new forestry laws. They are the Law for the Restoration of the Property of the Forests and Forest Lands of the Forest Fund (LRPFFLFF) and the Law for the Forests (LF). The drafts were developed by a small group of specialists from the Committee of Forestry and were debated in Parliament without further discussion among forestry specialists and scientists. Remarks on the Laws for the Forests by scientists and highly qualified forestry specialists were later included in order to correct the draft laws. After that, the laws were formally adopted.

The constitutional framework concerning the Laws for the Forests in Bulgaria are the following:

- All forms of ownership are equipoised or counterbalanced;
- All forests and national parks of national importance identified by the law are state property;
- The state inventory must be managed according to the interests of all members of society;
- Property is divided into private and public ownership;

- Private property is inviolable;
- The ways of use of state and community property are ruled by separate law;
- The Republic of Bulgaria is obliged to provide for the protection and the reproduction of environment, resource sustainability, the biodiversity of living nature and the rational uses of the resources of nature;
- The land in Bulgaria is a main source of national wealth and is protected by the state and the society.

These principles are written in the basic law of the country, the Constitution of the Republic of Bulgaria, and are preeminent over all other laws, including the Law for the Forests.

Regulations for the implementation of the Law for the Forests were accepted in the beginning of 1998. Nevertheless, work for completion of the whole regulations are not yet finished. Specialists from the National Management Board of Forests, from Regional Management Boards of Forests, from State Forestry Enterprises, and scientists from the University of Forestry and the Forest Research Institute work on new instructions, rules, orders, samples of documents, which are necessary for the implementation of the new Law.

2 Characteristics of the Law for the Restoration of the Property of Forests and Forest Lands of the Forest Fund

Through the LRPFFLFF, the questions for the restoration of the property are decided. The right of property for the forests and the forest lands will be restored to Bulgarian physical and juridical persons from which they have been nationalised after 1946 or to their inheritors. According to this law, the right for property on the forests and the forest lands will be restored in their present state by locality, area and boundaries if they are known by the date of their nationalisation. A condition for restoration of property on forests and forest lands is the existence or possibility to reestablish the physical boundaries. If it is not possible to restore the property in the real boundaries, the former proprietors or their inheritors will be compensated with other forests or forest lands from the state forest fund (in cases where the forests are exceptional state property).

The LRFFLFF provides that the owners of forests and forest lands can only be Bulgarian physical and juridical persons, in the latter case for instance the state, monasteries, churches, mosques, schools, co-operatives, and municipalities. Foreigners cannot acquire the right of property on the forests and forest lands of the Forest Fund in Bulgaria. They can acquire the right of property only by inheritance according to the law. In this case they must sell or give as a present the inheritance to Bulgarian physical or juridical persons to the municipality or to the state.

The restoration of property for the forests and forest lands will be accomplished by special land commissions. These land commissions exist and restore the property on agricultural lands. The work began in 1991 and is not yet finished. The staff of these commissions will include specialists of forestry (engineers of forestry). The right of property is proven by written documents. According to the requirements of the Bulgarian legislation these are: notary and legal statements; notarized written agreements; management maps and management plans before nationalisation. The

deadline for submission of requests for restoration of the property of the forests and forest lands was November 1998, i.e., one year from the coming of the law into force.

The owners whose properties are restored are obliged to register it with one of the state forestry enterprises. They must manage their forests and forest lands according to the requirements of the Law for the Forests, the Law for the Protection of the Nature, the Law for the Hunting and other specific laws concerning the forest and their conditions and environment. Six months after the deadline for submission of requests for restoration of the property, the specialists from land commissions must elaborate maps with the boundaries of all kind of properties.

In the process of the restoration of property of forest and forest lands they have to solve the following problems:

1. The restoration of the private property in the forests will encompass about 480,000 owners with absolute area of about 590,000 ha. The proprietors and their inheritors are mainly interested in the management of their forests for profit and the benefits that they might extract from them. In the present economic state of the country, for many of the proprietors these forests will become the major or sole source of income.

2. The restoration of the property in the real boundaries will infringe upon the administrative units of the existing forestry enterprises. In order to create the conditions for proper management of private forests, when the ownership is restored in real boundaries, it would be most expedient for the possessors to be directed to administration of the state forestry enterprises for management of their forests or to create co-operatives, under the control and professional advice of forestry specialists.

3. The lack of documents for proving the property of former owners will not allow restoration of all private property of forests and forest lands, and this will be a cause of conflicts between former owners or their inheritors and the authority.

4. The lack of skilled specialists for carrying out the restoration of forests and forest lands and the lack of experience in restoration will probably not allow to accomplish this process in an efficient manner.

5. The restoration of the property of the communities will be a very difficult task. In the past (before nationalisation) the property of the forests and forest lands of the communities was about 56% of all forest lands. Most of them were given to the communities from the state in order to satisfy the needs of citizens for fire wood or building materials, according to the existing Law, without documents. They are not in fact a community property, but many of communities would like to obtain ownership and will make efforts to prove this right in different ways. This will also lead to conflicts.

3 Characteristic of the Law for the Forests

The LF was also adopted in December 1997. Instructions for implementation of the Law were adopted in April 1998. The structure of the LF is the following:

Chapter One – General Provisions

- Part I – Forest and Forest Fund
- Part II – Property
- Part III – Changes in the Forest Fund

According to Article 2, a forest is land occupied by tree vegetation with an area larger than 1 decar (1000 square meters). The Forest Fund is each territory without the boundaries of populated areas defined by building and regulation plans, intended for forests and embracing forests, bushes, lands for afforestation and non-wood production lands. The forests according to their functions are divided into three categories: forests with mainly wood production and environmental creating functions, protective and recreational forests and forests in protected territories.

The second part of the first chapter is devoted to property. Ownership rights for property on forests and lands of the Forest Fund in the Republic of Bulgaria belong to the physical and juridical persons, to the state and to the municipalities. According to Article 7, the forests which are exceptionally state property are: the forests in the protected territories, defined by special law (Law for the Protected Territories); the forests belonging to the 200-meter zone along state boundaries; the forests in zones of strict protection of water, the forest shelter belts; the forests for protection of different engineering or technical buildings; seed production plantations; and geographical plantations. Article 11 of the Law for the Forests regulates that the owners of forests have to use their right of property in a way, which does not violate the state of the art and does not cause damage to other owners of forests and to lands of the Forest Fund or to society. In the third part of this chapter, the rules for excluding from and for including areas of the Forest Fund are established.

According to the rules of the second chapter, the following patterns of management of forests are established:

- First level: Ministry of Agriculture, Forests and Agricultural Reform; National Administration of Forests;
- Second level: Regional Management Boards of Forestry, whit 17 units;
- Third level: State Forestry with 176 units.

The activities and objectives of the National Administration of Forests, the Regional Management Boards and the State Forestry units are listed and described. The main activities and objectives of the National Administration of Forests are:

- The organisation of the Forest Fund;
- The reproduction of forests within the Forest Fund;
- The uses of forests and lands within the Forest Fund;
- The protection of forests within the Forest Fund;
- Building within the Forest Fund in accordance with the corresponding department;
- The financing of activities within the Forest Fund.

The Regional Management Boards of Forest accomplish the organisation, coordination and the control of activities related to:

- The reproduction of forests within the Forest Fund;
- The uses of forests and lands within the Forest Fund;
- The protection of the forests and forest lands within the Forest Fund;
- Constructions within the Forest Fund.
- The collecting of means and the financing procedures within the Forest Fund.

The functions and objectives of State Forestry Units are the same as the functions and objectives of the Regional Management Board of the Forests. They are subordinate to the National Administration and Regional Management Boards of Forests. The implementation and elaboration of forest management projects, plans and programmes are regulated in the second part of chapter two. In the last part, requirements are established for specialists who want to work at all levels of management and in the various forest units.

In chapter three the following issues are addressed: the production of reproductive materials from forests; the ways of controlling the origin and the quality of seeds and seedlings; the rules for introduction of tree and shrub species; the activities concerning the creation of new forests and erosion protection; the different categories of thinning and felling, and the main rules for carrying out such activities; the requirements for forest fellings and reforestation of forest lands.

The uses and the ways of their accomplishment are set forth in the fourth chapter. The utilisation of wood in Bulgarian forests may be carried out in the following manner: through paying stumpage prices; through auction or competition; through negotiations with potential users and through concessions. The uses in state forests will be accomplished by companies, firms, and organisations which may be private, state, or mixed. They are obliged to follow the requirements of the Laws.

In chapter five, sanitary control, protection and administrative control of forests and forest lands are clarified. These activities will be of special importance at the lowest

management level, e.g. the State Forestry units. The sixth chapter is devoted to the rules and the order for building in the forests.

Chapter seven concerns financing of forestry activities. The financing of forestry activities is accomplished through means accumulated in the special national fund “Bulgarska gora” (“Bulgarian Forest”) at the National Administration of Forests. The incomes to the National Fund “Bulgarska gora” are received from different charges (for uses from the state forests, for issuing permits or documents, for export of forest products, etc.), from selling of seeds, seedlings and other forest products and inventory of forestry enterprises, from donations, wills and sponsors, from the state budget, etc. The means from the National Fund “Bulgarska gora” may be spent for: creation of forests and erosion protection within the Forest Fund; giving assistance to private owners; implementing thinning, sanitary and reproductive fellings; protection and control of forests; building within forests; hunting and fishing activities; research and training activities, etc.

In the eighth chapter, penalty instructions and the amount of penalties are given. The penalties for different violations are from 20,000 to 500,000 BGL (20 to 500 DM).

Additional Instructions and definitions are given connected with the implementation of the Law for the Forests. They concern the following terms: “lands for afforestation within the Forest Fund”, “non-wood production lands in the Forest Fund”, “geographic cultivations” and “uses of wood”. Instructions for Implementation of the Law for the Forests specify, explain and expand the legal texts. According to the Instructions for Implementation of the Law for the Forest, the National Administration of the Forests will elaborate about 46 different rules, orders and other documents which are necessary for the application of the law.

Several documents such as the instruction for Incomes and Expenditures and for the order of working out, application and accounting of the National Fund “Bulgarska gora”; the instruction for fellings; the instruction for licences for the forestry specialists etc. have already been adopted. Other documents such as the instructions for valuation of forests, for methods for reforestation, for utilisation of wood, and for forest protection and control activities within the forests are in preparation. Due to the large number of documents the specialists from the National Administration of the Forests have a difficult task. The scientists from University of Forestry and from the Forest Research Institute play an active role in this process.

The main problems in implementing the Law for the Forests are the following:

- The elaboration of the large number of instructions requires considerable time. The delay in issuing instructions will lead to difficulties in implementing the Law.
- The use of a large number of documents will be difficult for specialists of forestry, because they need time to get familiar with the documents and possibilities of interpretation.
- The establishment of a new organizational structure of forest management may lead to conflicts among staff at different levels. The organizational structure will be connected with changes of forest ownership, which are not clear yet. The time for establishing a new organizational structure is shorter than that for the restoration of the property.
- There is a transition from present business structure of management i.e. forest enterprises and companies for harvesting and selling the timber with 100% state

share to new commercial structure, according to the Trade Law, with some share of private capital participation.

- The implementation of the Law for the Forest and of the new Law for Protected Territories may lead to conflicts between the National Administration of Forests and the Ministry of Protection of Environment.

4 Conclusions

Forest legislation in Bulgaria is complex. Eight years after the beginning of the transition to a market economy, the Bulgarian Parliament has passed new laws for the forests. This is the beginning of new period for forestry in Bulgaria. Moreover new forest related legislation has been adopted such as in particular: Law for Protected Territories, Law for Hunting, Law for Fishing, Law for Medicinal Herbs. The implementation of the whole set of laws connected with forests and forest lands will lead to an improved protection and management of forest resources

Abstract: Since 1990, the Bulgarian economy, including the forestry sector is in a transition from centralised planning to a market economy. A Law for the Restoration of Property on the Forests and the Forest Lands and a Law for the Forests were accepted in 1997. According to these laws, changes will occur in the regulation, organisation and practices of management in the forests, at different management levels and by different groups of forest owners.
According to the Law for the Restoration of the Property of Forests and Forest Lands of the Forest Fund, about 15% of the forest area in Bulgaria will be restored to their owners or to their inheritors. These owners are physical persons, municipalities, schools, monasteries etc. The size of the average private ownership is about 1 ha. The area of forest management has changed from several decares to 1000 ha. The small average ownership size and the large number of owners will require further establishment of new forms of forest management.

The Law for the Forests regulates the following issues: ownership of forests and forest lands; organisation of management of forests and forest lands; the reproduction of forests; the uses of forests and forest lands; the protection of forests and forest lands; building in the forests; financing of forest management, and administration and penalties for violation of the law. Further experiences will be required on the organisation and management of forestry in Bulgaria in implementing the new legislation.

CROATION FOREST LAW AND ENVIRONMENTAL LEGISLATION

IVAN MARTINIC

1 General Aspects

Many challenges face countries trying to increase their economic growth rates. The Croatian economy is approaching and adapting itself to the institutions and trends of developed countries with market economies. In such circumstances, each segment of the economy tries to achieve a favourable position in the overall economy. Its success depends on the quality of its strategic orientation, which is determined in part by identification and attainment of a set of appropriate targets.

Nowadays, nearing the end of millennium, Croatian forestry is increasingly affected by the changed significance of the ecological, social and economic functions of forests. The economic importance of forest exploitation has been decreasing, and comprehensive forest sanitation operations cause additional expenses in managing damaged forest stands. In such circumstances, only a well-conceived forest policy can provide for implementation of all social and political tasks along with carrying out responsible market and production-oriented forestry activities.

The forests are one of the basic natural resources of Croatia. They are characterised by good preservation of their natural characteristics. Forestland includes several vegetation zones with a great variety in natural conditions and biodiversity. In the continental part of the country over 50 forest communities have been described, and in the Mediterranean part over 20 communities with many endemic plants exists.

The Croatian forestry sector, with over a two-hundred-year tradition of sustainable forest management, should focus on a sound environmental forest management in general, incorporating special treatment for particularly valuable natural features and promoting biological diversity. By signing the Rio Declaration, six Strasbourg and four Helsinki ministerial resolutions, the Republic of Croatia has committed itself to a sustainable management with special regard to protection and conservation of forests.

Forestlands cover 43.5% of the land base of the country. Having 0.51 hectare of forest per capita, Croatia may be considered a European country with a significant forest area. The State owns 82% of the forest land, and private owners, 18%. 84% of the forestland is covered with forest vegetation, while the rest includes different classes of non-covered land. In terms of production or commercial potential, it should be emphasised that a large part of the forest area is situated in the Karst region (42%).

According to forest type and stocking, 53% of the forestland is covered by high-valued forests, 31% are coppice forest, and 11.5% are different degraded forest forms (maquis, garrigue and brush wood). The remaining area is covered by cultures and plantations. Growing stock amounts to almost 300 million cubic meters (m^3), with an annual volume increment of 8.8 million m^3 and annual fellings of approximately 6 million m^3. Forests are categorised by their primary function into commercial, protective and special purpose (scientific, recreational, etc.).

According to the Nature Conservancy Act, 746 facilities in Croatia are protected, of which 332 cover 447,192 ha, or 7.31% of the total area of Croatia.

Forest damage in the Republic of Croatia is almost equal to the European average. Forest condition, according to the ICP survey in 1995, has worsened in relation to previous years. The damage was recorded in 34% of the Croatian forests. An increase has occurred in damage classes 3 and 4.

2 Recent Forest Policy Development

The basic principles of the Croatian forest policy are ecosystem management along with the preservation of the natural structure and diversity of forests and continuous maintenance of stability and quality of industrial and generally useful forest functions. One of the general objectives of the National Forest Policy is sustainable development, and so annual felling is always below the annual increment.

In the last several years, numerous acts have been passed containing regulations relating to forestry and other activities concerning forests and forestland, as well as the sustainability and biological diversity of Croatian forests. The most important ones are: Forest Act (1990, amended in 1993), Forest Seeds and Forest Plants Act (1992, revised in 1993), Nature Conservancy Act (1994). Forestry and other forest activities are also influenced by the following laws: Environmental Protection Act (1994), the Law on Water (1995), the Law on Hunting (1994), the Law on Fire Protection (1993), and the Law on Physical Planning (1994).

The changes and amendments to the Forest Act passed in September 1990 made the legal prerequisite for a successful forestry development. The most significant provisions of the new law are the following:

- Forests and forestland within the Croatian territory are owned by the state for the most part;
- In order to provide unique management of forests and forestland within the Croatian territory, one forest economy area has been established for which one forest-economy base has been established;
- A single state forestry enterprise for managing state-owned forests and forestland has been established;
- Each enterprise and other legal entities pay a pre-set fee for the use of forest functions of general benefits.

The key objectives of the Forest Act are:

- Enhancement of multipurpose and economically sustainable use of forests,
- Protection of forests,
- Rehabilitation of degraded forests and increase of afforested areas,
- Re-establishing private forests,
- Upgrading the role played by protective forests, especially in the Karst region.

The basic goals of forest management are:

- To ensure stability of the forest ecosystem;
- To conserve and improve non-market functions of forests (ecological and social);
- To promote advanced and sustainable management and utilisation of forests and forest areas in such a manner and to such an extent as to conserve their

biological diversity, productivity, regenerative capacity and vitality in order to fulfil, now and in future, their basic economic, ecological, and social functions at both local and global levels without harming other ecosystems.

With the purpose of a sustainable forest management, the Forest Act explicitly forbids uprooting of trees and clearcutting, cutting of trees in young forest stands and plantations, as well as any damage to trees and forests. In the same way, with a few exceptions, it forbids browsing, nibbling, eating acorns, gathering and taking away leaves, moss, forest fruits and medicinal herbs as well as exploiting humus, sand, stone, etc. Forests and forestland, as assets of general importance, have the privilege of special protection and are utilised under the conditions and in the manner regulated by the Forest Act. They are subject to a Forest Management Plan approved by the Ministry of Agriculture and Forestry.

State forests and forestlands are managed by a State Forestry Enterprise "Hrvatske šume". "Hrvatske šume" was established in 1991 in compliance with the Forest Act. For the first time in Croatian history, a state enterprise has been responsible for managing all the state and public forestland under control of the Ministry of Agriculture and Forestry. Private owners manage their forests conforming to the regulations prescribed in the Forest Act and in compliance with the Forest Management Plan. Management of commercial forests is based on successive regeneration felling for even-aged and selective felling for uneven-aged forests. Management practices in non-exploitable and protective forests are either limited or forbidden.

Based on a decision made by the Ministry of Agriculture and Forestry, a regulation was passed that involved changes to the regulation on forest management. The regulation contains specific national and regional guidelines for drawing up regional forest management plans. Regional forest management plans have been drawn up for all forests in the Republic of Croatia regardless of the type of ownership (2,458,000 ha). The plan includes all actions relating to regeneration, reforestation and the preservation of biological diversity of Croatian forests. A forest management plan is valid for 20 years, and a revision is made after 10 years. This regulation provides an increase in production, utilisation and marketing of all forest products.

3 International Agreements and Conventions

The Republic of Croatia is the signatory state of the following international agreements and conventions:

- General Declaration on Protection and Conservation of European Forests
- Convention on Biodiversity
- Convention on Climate Change
- Declaration on Environment and Development
- Ecological and Developmental Program until 2000

Helsinki Resolutions--

- General Guidelines for the Sustainable Management of Forests in Europe (H1)
- General Guidelines for the Conservation of the Biodiversity of European Forests (H2)
- Forestry Co-operation with Countries with Economics in Transition (H3)
- Strategies for a Process of Long-term Adaptation of Forests in Europe to climate Change (H4)

Strasbourg Resolutions--

- European Network of Permanent Sample Plots for Monitoring of Forest Ecosystems (S1)
- Conservation of Forest Genetic Resources (S2)
- Decentralised European Data Bank on Forest Fires (S3)
- Adapting the Management of Mountain Forests To New Environmental Conditions (S4)
- Expansion of the EUROSILVA Network of Research on Tree Physiology (S5)
- European Network for Research into Forest Ecosystem (S6).

4 Croatian Forestry Institutions

The government bodies responsible for forestry are: Ministry of Agriculture and Forestry, Department for Forestry and Hunting; Ministry of Finance; Ministry of the Interior; Ministry of Science and Technology; State Directorate for Protection of Nature and Environment; relevant councils of the Croatian Parliament; and local administrative authorities.

Apart from government bodies, there are a number of non-government associations relating to the conservation of biological diversity and management of forests, including: Croatian Forestry Association, Croatia Academy of Forestry, Croatian Ecological Association, Croatian Biological Association, Croatian Genetic Association, "Green Action", Croatian Movement of Friends of Nature "Lijepa naša" and others.

"Hrvatske šume" p. o. Zagreb - "Croatian Forests": A State Enterprise for the Management of Forests and Forestland in the Republic of Croatia, Inc. Zagreb: Management of state forests is with "Croatian Forests", a state enterprise for the management of forests and forestland in the Republic of Croatia, Inc. Zagreb. "Croatian Forests" consists of a directorate, with its headquarters in Zagreb, 16 forest administrations, and 171 forest stations. It includes more than 10,000 employees, a forest area of 1,991,537 ha, almost 278 million m^3 of growing stock, an annual volume increment of 8.1 million m^3, about 4.9 million m^3 of annual allowable cut, and annual regeneration and yearly care of about 50,000 hectares of forest.

Research and Education: In Croatia, the following institutions have been established for scientific and educational purposes: the Faculty of Forestry at the University of Zagreb, which is celebrating its 100th anniversary this year, Forest Research Institute in Jastrebarsko, Institute for Forestry at the Institute for Adriatic Culture and Land Reclamation of Karst in Split and Centre for Scientific Work at Vinkovci.

Financial Instruments: According to the Forest Act, the general objectives and organisation of public intervention in the forestry sector and a new financial mechanism were introduced. The latter was the obligation for all forest owners to invest 15% to 20% of their income from wood sales for reforestation of existing forests and an additional 3% for the afforestation of new forest land. All commercial and industrial companies have an obligation to pay a fix tax of 0.07% of their turnover to finance multiple benefits of forests, restoration of degraded forests in the karst area and forestry research. In 1996 the total investment amounted to USD 20 million. On account of utilisation of natural resources, however, the State Forestry Enterprise must pay to the local authorities the tax of 2.5% of the income realised through the sale of wood from its territory.

5 Forest and Environmental Legislation

The first regulations related to sustainable management and the conservation of biological diversity in Croatia appeared as early as the 18th century. As mentioned above, the principles of sustainability and conservation of biological diversity are a constituent part of every legal act in forestry, while regulations on environmental protection contain guidelines for the conservation of biological diversity. Croatia has a long and rich legislative tradition in the field of forest management and natural forest regeneration.

Since its independence in 1991, the Croatian government has been making great efforts to develop and implement functional and efficient ways of nature conservation. Thus forests and forestland, as resources of general importance, have the privilege of special protection and are utilised in the manner regulated by the Forest Act. The intent of the Forest Act and the Nature Conservancy Act is to conserve nature in forestland. The Croatian government, therefore, specified the provisions in the Forest Act 1990 (revised in 1993) by which forest owners have the obligation of conservation and sustainable utilisation of forest resources in their regular forest management. Based on that, they are committed to perform all the necessary activities in order to regenerate forests. It includes seeding and planting, reforestation, conversion into high-valued forests and improvement of conditions, clearing, forest guarding, etc. Thus forestry practices based on ecological principles are provided.

6 Nature Conservancy Act (1994)

Nature preservation in Croatia is taking a leading role over other European countries. Today, it boasts that 7.31% of its area is protected within the network of national parks or by some other form of environmental protection, and it intends to double this area in the near future. Protected areas include: national parks (7), strict nature reserves (29, nature parks (6), special reserves (69), forest parks (23), important landscapes (28), natural sights (72), horticultural sights (114), protected plant species (44), protected animal species (380). Industrial utilisation of natural recourses is forbidden in national parks.

The protected areas are determined by Article 3 of the Act:

> The protected areas interesting for the Republic of Croatia and consequently protected under this Act are the following: national parks, nature parks, strict reserves, special reserves, park forests, significant landscapes, natural monuments, architectural park monuments, plant species and animal species.

The said protected areas are classified as follows: (1) international significance, (2) national significance and (3) local significance. National parks and nature parks are proclaimed by the State Parliament under a special Law. Strict reserves, special reserves, park forests, significant landscapes, natural monuments and architectural park monuments are proclaimed by Regional or Town Councils upon approval of the State Directorate for Protection of Nature and Environment (a13).

Plant and animal species are proclaimed protected by the manager of the State Directorate for Protection of Nature and Environment on scientific basis and taking into consideration the opinion of the minister of agriculture and forestry (a13).

The protected areas are managed by public institutions as provided by Article 17. Public institutions for managing national parks and nature parks are founded by the

Government of the Republic of Croatia and those responsible for managing other protected areas are founded by Regional and Town Councils (a17).

The funds required for financing the activities of these public institutions are provided from: (1) the income earned from utilisation of protected areas, (2) State budget or district budget and (3) other sources in compliance with the Law (a18).

In order to implement a co-ordinated program of protection, maintenance, promotion and utilisation of national parks and nature parks, the government establishes the Nature Protection Council with the representative of the Ministry of Agriculture and Forestry as one of the members. (a35).

7 Environmental Protection Act (1994)

The general provisions of the Environmental Protection Act are defined by Article 1:

> The present law regulates environmental protection, in view of preserving the environment, reducing risks to human health and lives, ensuring and improving the quality of life, to the benefit of both present and future generations.

Environmental protection ensures integral preservation of environmental quality, protection of natural communities, rational use of natural resources and energy in the environmentally most acceptable manner, as the basic condition for a healthy and sustainable development.

The basic goals of environmental protection are subject to achieving sustainable development defined in Article 2:

- Permanent preservation of authenticity, natural communities, biodiversity and preservation of environmental stability
- Preservation of quality of both living and non-living nature and rational use of nature and its resources
- Preservation and restoring of cultural and asthetic values of landscapes
- Environmental state promotion and assurance of better living conditions.
- Article 3 deals with achievement of environmental protection goals to be achieved by:
- Predicting, monitoring, preventing, limiting and eliminating adverse environmental impacts
- Protection and physical planning of particularly valuable environmental segments
- Preventing unacceptable environmental risks and threats
- Encouraging the use of renewable natural resources and energy
- Encouraging the use of environmentally most-acceptable products and of the best environmental production technologies
- Co-ordinating environmental protection and economic development
- Prevention of environmentally risky interventions
- Restoring damaged parts of the environment
- Developing awareness of the need for environmental protection through education and promotion of environmental protection
- Passing legal regulations on environmental protection
- Informing the public of environmental state and its participation in environmental protection
- Connecting environmental protection systems and institutions of the Republic of Croatia with international institutions.

Definitions of environment, its quality and ecological stability are given in Article 5 of this Act:

> Environment represents natural surroundings: air, soil, water and climate, plant and animal world, in the totality of their mutual interaction and cultural heritage as a part of the man-made environment.
>
> Environmental quality is the state of environment expressed through physical, chemical, esthetical and other indicators.
>
> Environmental stability is the environment's capacity to accept changes caused by external impacts and keep its natural properties.
>
> Environmental risk is the probability for a given intervention to directly or indirectly cause damage to the environment or threaten human lives and health.
>
> Environmental threat is an excessive risk, which, due to the high degree of probability of an event occurring or to the extent of possible environmental damage, requires specially prescribed measures.

The co-ordination of the economic development and the requirements of environmental protection are the subject of Article 8 of this Act:

> In view of achieving economic development co-ordinated with the needs of environmental protection, as well as expert and scientific basis for regulating respective issues, the government establishes the Environmental Protection Council, constituted of scientific, expert, public and other officials.
>
> The Council provides opinions, suggestions and evaluations of co-ordination between solving issues of environmental protection and economic development and of documents passed by the government and the Parliament.

Article 14 provides the basic principles for implementing the environmental protection and, among other things, states:

> When passing environmental protection strategy, programmes, intervention plans and regulations; when issuing permits, clearances, approvals, or when implementing financial policy, control or other environmental protection measures, co-operation between and joint activity of state administration bodies and local governing and self-governing units is essential.

The public right to be informed and to participate (public character and participation) is stipulated by Article 17:

> Citizens have the right to timely information on environmental pollution, on the measures undertaken and on the relating free access to the data on environmental state, in compliance with the present Law and other regulations.

The assessment of the impact of industrial activities on the environment (for example, construction of production activities) and the obligations of the participants in the assessment procedure are provided by Article 26 of this Act:

> The government determines interventions requiring environmental impact assessments, the contents, deadline and manner of elaboration of environmental impact assessments, the manner of passing the evaluation of and resolution on the intended intervention, the manner of informing the public, and sets the term for and manner of public participation in decision-making, rights and liabilities of the participants in the procedure, programme and manner of checking qualifications of the legal person elaborating the studies and prescribes penal stipulations for the contravention of regulation provisions.

Financing of environmental protection is the subject of Article 60 of the Act:

> The funds for financing environmental protection are ensured by the state budget, the budgets of local governing and self-governing units, and from other sources, in compliance with the Law.
>
> These sources are used for the preservation, protection and promotion of the environmental state, in compliance with the Environmental Protection Strategy and Environmental Protection Programmes and with the consent of the basic bearers of the fund sources.

Article 71 defines cases in which legal entities and individuals are fined for breaking the law concerning the environmental protection. The fines are to be paid in the following cases:

> Unless it undertakes, without delay, measures for averting the threat and preventing further damage to the environment, and unless it so notifies the Environmental Protection Inspector or any other relevant inspector.
>
> Unless it undertakes measures for preventing aberrations from the use of machinery and equipment in the production technology or aberrations from production technologies.
>
> Unless it elaborates the Restoration Programme for Abating Environmental Damages within the deadline set by the government, i.e., unless it implements it.
>
> The fines for such violations of law range from $ 8,000 – 12,000.

8 Forest Act, 1990, 1993

8.1 Definition of Forest, Forestland and Forest Purpose

According to Article 4 of Forest Act, the forest is the land cultivated with forest trees in the form of a stand covering an area of more than 0.1 ha. Forest nurseries, windbreak belts, avenues of trees and parks in urban sites are not classified as forests. Forestland is the land grown with forest or land estimated as most suitable for cultivating forests owing to its natural features and economic conditions. When a doubt or dispute arises regarding the assessment of a particular land overgrown with trees, the local self-governing authorities have the competence to decide whether it is to be considered a forest or forestland and if the forest or forestland covers the area of several self-governing units the decision is to be made by the Government of the Republic of Croatia.

Forests are categorised by their primary function into production forests, protective forests and special purpose forests (a5). Production or commercial forests are used primarily for production of wood and other forest products, and protective forests are primarily used for the protection of soil, water flows, erosion, villages, industrial and other facilities and property.

Special purpose forests are:

- forests and forest segments registered as facilities for forest tree seed production
- forests representing special aesthetic rarity or particular scientific or historic significance (national parks, nature parks, reserves, etc.)
- forests intended for scientific research, educational training, or military requirements
- forests intended for recreation.

The forest is proclaimed a protective forest by the local self-governing authority, at the proposal made by legal entities or at personal initiative. If the forest covers the area of two or more districts, Regional Councils make the proclamation of a protective forest upon receiving mutual consent.

The Ministry of Agriculture and Forestry proclaims special purpose forests intended for scientific research and educational training at the proposal of the interested scientific organisations and other legal entities. The Government of the Republic of Croatia proclaims forests intended for defence purposes at the proposal of the Ministry of Defence and upon receiving the opinion of the Ministry of Agriculture and Forestry.

The management of forest and forestland is stipulated by Article 16 of the Forest Act.

The Republic of Croatia owns forests and forestland within the territory of the Republic of Croatia, excluding forests and forestland owned by individual persons.

In order to carry out the activities of managing state-owned forests and forestland, by this Act the Parliament of the Republic of Croatia establishes the State Forestry Enterprise.

Some state-owned forests and forestland, not managed by the State Forestry Enterprise, can be managed by other legal entities under exception circumstances if they meet the requirements set by the Forest Act.

8.2 Special Social Interests in Managing State-Owned Forests

The realisation of special social interest in managing forests and forestland can be achieved by:

- Implementing measures for providing forest sustainability and reforestation, apart from ecological balance, in compliance with the provisions stipulated by the Forest Act
- Protecting forests and forestland as well as preserving general forest functions by taking care of forests, protecting them from diseases and forest pests, fire and construction of different facilities in the forests and on forestland by stipulating special conditions for getting building licences, etc.
- Determining special interests when separating forests or forestland from a district forestry
- Giving consent in accordance with the forest management base for the territory of the Republic of Croatia, the base for managing local governing units and programmes for forest management
- Organising surveillance of the implementation of the district forest management base, the base for managing local governing units and programmes for forest management
- Appointing part of the members of the Managing Board of the State Forestry Enterprise
- Providing funds for biological reproduction and forest protection
- Approving the statute of the State Forestry Enterprise
- Appointing and dismissing the manager of the State Forestry Enterprise.

8.3 Management of Private Forests

The owners manage private forests and private forestland in compliance with the provisions stipulated by the Forest Act. Forest owners have the obligation to provide forest protection and reforestation as specified by the Forest Act. The management of private forests and private forestland is based on the programme for forest management (a36). If forest owners do not carry out the measures or activities specified by the programme for forest management, the State Forestry Enterprise becomes responsible for implementing these measures and activities. Due to the lack of appropriate funds and financial supports or subventions, a considerable part of private forests has been left with no programmes for forest management.

Management of Protective Forests and Special Purpose Forests: In accordance with Article 38 of the Forest Act for protective forests and special purpose forests, adequate forest management and forest reforestation and regeneration should be provided in compliance with the purpose for which the forests were proclaimed and so as to meet the requirements of the Act for proclaiming protective forests and special purpose forests.

8.4 Restrictions Relating the Use of Forests and Forestland

Construction Works in Forest: In accordance with Article 48 of the Forest Act, only facilities required for forest management can be built in the forest or on the forestland as well as facilities proposed by the regional planning of the local self-governing unit. Such regional planning can propose the construction of facilities for the needs of infrastructure, sport, recreation, hunting and defence in the forest or on the forestland, but only if due to technical or economical reasons it is not possible to plan such constructions outside the forest or forestland.

The regional office in charge of forestry activities takes part in the development of the regional planning. When setting the conditions for developing the plan, the State Forestry Enterprise, i.e. the legal entity that manages this forest or forestland, specifies the conditions for the construction of facilities in the forest and within a 50-m belt surrounding the forest. Before starting the preparations of technical documentation for the construction of the facilities in the forest or on forestland, the approval of the Ministry of Agriculture and Forestry must be provided as it contains the conditions that must be observed when developing the technical documentation.

Property-Rights Relations: Article 55 of the Forest Act states: State-owned forests and forestland cannot be estranged except in cases provided by this Law (i.e., reallocation and land consolidation) During reallocation and land consolidation procedures of forests and forestland, forests and forestland can be replaced with agricultural land and the other way round and state-owned forest and forestland can be replaced with private forests and forestland (a66). In accordance with the Article 57, state-owned forests and forestland, except forests and forestland managed by the State Forestry Enterprise, can be transferred to another legal entity with or without any payment provided that no changes of purpose or way of management are made.

For ceded rights or limited rights concerning the forests and forestland in case of proclaiming a protective forest or special purpose forest, or in cases of temporary use of a forestland, the State Forestry Enterprise has the right to a compensation in compliance with the Forest Act. Thus it maintains the level of its work conditions. The State Forestry Enterprise can use the compensation received for ceded or limited

rights regarding the forests and forestland only for biologic forest reproduction of for purchasing forests or forestland within two years at the latest (a58).

If the forestland is picked out for the construction of facilities for protection of floods and if this is estimated as a matter of general importance for which the construction programme has been approved by the Republic of Croatia, the compensation is determined in compliance with the Act on Waters.

The State Forestry Enterprise, legal entities and citizens whose forest is proclaimed protective forest or special purpose forest, if their rights regarding the forest and forestland are limited by this proclamation, have the right to a compensation equal to the amount for which their income from this forest has been decreased, or equal to the increased expenses for its maintenance

Financing Forest Management: The funds required for forest management are provided from revenues of the State Forestry Enterprise. The base for setting these funds is the income realised from wood sales and at a rate of 20% in even-aged forests, 15% in uneven-aged forests and 15% in the forests growing in the Karst region. The State Forestry Enterprise sets aside an additional 3% of the value of sold wood for purchasing of forests and forestland, for reforestation of damaged forests, fire protection, construction of forest roads, etc. Private forest owners provide funds for the costs of developing and implementing the programme for private forest management from the income earned from wood sales as well as from forests and forestland income tax.

All enterprises and other legal entities dealing with industrial production in Croatia, except the State Forestry Enterprise, pay a fee for the general use of forests amounting to 0.07% of total revenues. These fees are paid on a special account of the State Forestry Enterprise, and these funds are used exclusively for financing scientific and research programmes, protection and improvement of forests on Karst, etc.

9 Discussion

9.1 Forestry and Other Economy Sectors

Due to its influence on the quality of human environment and sustainability of biological diversity, the forest is protected in Croatia by the Constitution of the Republic of Croatia, Declaration on Environmental Protection in the Republic of Croatia, Forest Act, Nature Protection Act, Environment Protection Act, etc. Due to the requirements for economic development, the purpose of forests is often changed. In view of this, foresters are particularly concerned about forest crops in regions of Croatia poor with forests and in the surroundings of big towns, as well as about the change of the purposes of forests and forestland having high ecological and economic value.

When a forest is used for the construction of roads, oil and gas pipelines, transmission lines, hydro-electric power plants and similar things, after passing the usual legal procedure, the result is always a permanent loss of forest, a substantial change of ecological conditions in the area, and a lower quality of the environment. In order to take back at least part of the forests lost due to such development, a several times larger area of forest crops must be established young stands have considerably lower ecological and economic value. Of course, the cost for raising a new forest must be paid by those who caused the loss of the forests and forestland.

The compensation paid today for a change of forest purpose or for the loss of forestland are neither adequate nor sufficient for raising new forests. Therefore, in order to provide the environmental protection in Croatia, investors should be obliged by the revised Forest Act and new amendments to the Forest Act to pay compensation for lost ecological, social, and economic forest functions in the amount required for cultivating new forests. It is relatively simple to get compensation for the lost economic or timber function, but a demand for compensation aimed at re-establishing the lost forest functions of general benefit cause big dilemmas and amazement.

Today, the legal departments of the largest state companies (electric power supply, water supply, oil industry, mining industry and road communications) share the opinion that change of forest purpose is settled by compensation for the forest functions of general benefit at a rate of 0.07% of the total revenues of all industrial entities, which is the only compensation prescribed by law. Indeed, it is only partial compensation for maintenance and development of the functions of a stable forest ecosystem, and it is only symbolic compared to the actual costs required for cultivating a new forest or for re-establishing all its functions.

If forestry did not take care of the forest functions of general benefit with its own resources, the environment in Croatia would be in a much worse condition. The same thing will happen if funds are not provided for raising new forests in terms of compensation for the lost forests.

9.2 Forestry and Nature Protection

The goals set by law and those met in practice are very much the same relating to nature and environmental protection on one hand and sustainable development and forest management on the other. There are almost no disagreements between these activities. For the realisation of most nature and environmental protection goals, other activities, such as energy production, mining, road construction, and so forth present a much more serious obstacle than forestry.

From the point of view of foresters, the latest requirements of the institutions for environmental protection for an additional increment of protected areas is not acceptable. When this applies to spreading the area of national parks and nature parks, for forestry it means a decrease of production forests as well as income, which cannot be neglected in the Croatian model of self-financing forestry. The use of natural resources is forbidden in national parks and nature parks, and consequently these protected areas are excluded from the regular forest economy.

A problem by itself is the lack of money for implementing numerous measures aimed at nature and environmental protection. As the planned measures are not implemented as they should, the protection programmes are only partly realised without achieving the established goals of protection. Indeed, this problem has resulted in some protected areas regressing in terms of the desired level of ecological and social functions. Unfortunately, the public institutions in charge of nature and environment protection rarely employ forest experts.

9.3 Financial Incentives

Unfortunately, the deficiency of Croatian forest policy is particularly conspicuous in the form of lack of financial support, favorable tax treatment, and credit as well as lack of technical aid and consulting. Private forest owners, minor enterprises, forest contractors and others ask for the same kind of support. From the economic point of

view, funds should be directed to the activities producing direct economic benefits (acquiring environmentally friendly forest mechanisation, construction and maintenance of forest roads, development of programmes for managing private forests, etc.). Outright grants should be directed to the activities of biological forest reproduction because it is very difficult to cover these costs from regular sources. The most important activities are the cultivation of forests on areas devastated by fire, anti-erosion and fire protection measures, thinning of young stands and logging.

In 1997 Croatia was granted a credit from the World Bank for implementation of the Coastal Forest Reconstruction and Protection Project to address: a) the reconstruction of coastal forest damaged in war and by fire, b) control of forest fire, including establishing an operation centre, measures for fire protection and measures for fighting the fire, c) supporting activities, including GIS research and development, monitoring and assessment of the development of project activities. The Ministry of Agriculture and Forestry is in charge of the project activities. The goals of the project are: 1) to establish an efficient system of forest fire control, 2) to reforest and protect forest stands in the coastal region and to improve the appearance of the landscape with the purpose of revitalisation of tourism, 3) to restore the ecological function of forest stands and their natural regeneration, 4) to develop managment and protection of the coastal ecosystems, 5) to increase employment.

9.4 Measures to Promote Sustainable Forestry and Preservation of Biodiversity

The Republic of Croatia undertook to develop the strategy of biodiversity protection during 1997. The Department for Protection of Natural Resources of the Ministry of Culture of the development of the National Strategy for Protection of Biodiversity.

Croatian forestry and hunting started immediately developing their own concept of biodiversity protection since these activities are directly connected to nature and utilisation of natural resources. The first step was to set up a special working group for forests and hunting with the charge of drawing up a strategy and action plan for the protection of the Croatian ecosystems.

Unfortunately, the National Strategy for Protection of Biodiversity was late with respect to the Strategy and Program of Regional Planning of the Republic of Croatia through which construction of future energy facilities was planned on many protected natural areas. Such plans are a great threat to the conservation of biodiversity. A discussion supported by valid arguments and a closely reasoned agreement could overcome the current conflict between the Strategy for Protection of Natural resources and regional planning for energy development in Croatia.

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DIE RECHTLICHE REGELUNG DER FORSTWIRTSCHAFT IN DER TSCHECHISCHEN REPUBLIK

MARTIN CHITRÝ UND JIRÍ STANEK

Die rechtliche Regelung der Forstwirtschaft auf dem Gebiet der Tschechischen Republik hat eine sehr lange Entwicklung hinter sich. Die ersten historisch belegten rechtlichen Regelungen der Bewirtschaftung von Wäldern reichen bis ins 14. Jahrhundert (1379) zurück, auch wenn diese Regelungen nur ein begrenztes Gebiet betrafen oder, als Teilbestimmungen, Bestandteil anderer Rechtsvorschriften waren. Die erste moderne abgeschlossene Kodifizierung ist das kaiserliche Patent Nummer 250 von 1852, mit welchem das Forstgesetz für den österreichischen Teil des damaligen Österreich-Ungarn herausgegeben wurde und das, mit gewissen Anpassungen, bis Ende 1960 auf dem Gebiet der heutigen Tschechischen Republik galt.

1. Grundbesitz

Die Tschechische Republik besitzt eine Fläche von 78.864 km2, d.s. ca. 7.886 tausend ha. Davon sind ca. 4.280 tausend ha (54%) landwirtschaftliche Nutzfläche und ca. 2.630 tausend ha (33%) Waldboden. In der Tschechischen Republik kann Boden Gegenstand von Privateigentum sein, d.h. daß nicht nur der Staat Boden besitzt, sondern auch natürliche Personen (Bürger), Gemeinden und andere juristische Personen. Das Eigentumsrecht aller Eigentümer hat den gleichen gesetzlichen Inhalt und genießt den gleichen gesetzlichen Schutz.

Der Grundbesitz ist durch die Verfassung, das Bürgerliche Gesetzbuch und durch weitere Gesetze geschützt, z.B. durch Gesetz Nummer 229 aus dem Jahr 1991, über die Regelung der Grundbesitzverhältnisse und der Eigentumsverhältnisse in bezug auf anderes landwirtschaftliche Eigentum (Bodengesetz). Der Grundbesitzer ist innerhalb des gesetzlichen Rahmens berechtigt, Boden zu halten, zu nutzen, die Erträge und den Nutzen des Bodens zu genießen und über den Boden zu verfügen. Neben dem Eigentümer dürfen andere Personen nur aufgrund eines Vertrags mit dem Eigentümer den Boden nutzen.

Der Grundbesitzer ist Eigentümer der auf dem Grundstück wachsenden Waldbestände. Durch die Ausübung des Eigentumsrechts dürfen die Rechte anderer Personen, gesetzlich geschützte allgemeine Interessen, sowie Umwelt und Natur nicht geschädigt werden. Eine Enteignung oder zwangsweise Einschränkung der Eigentumsrechte ist nur im öffentlichen Interessen, auf gesetzlicher Grund und gegen Ersatz möglich.

Als Bestandteil der Umwelt ist der Boden durch besondere Gesetze geschützt. Das Gesetz Nummer 334 von 1992 schützt die landwirtschaftliche Nutzfläche, d.h. landwirtschaftlich genutzte Grundstücke, Ackerboden, Hopfengärten, Weinberge, Gärten, Obstplantagen, Wiesen und Weiden. Das Gesetz Nummer 289 von 1995 (Forstgesetz) schützt den Waldboden, den dieses Gesetz als „Grundstücke zur Erfüllung der Funktionen des Waldes“ bezeichnet. Zu diesen Grundstücken gehören nicht nur Grundstücke mit Waldbewuchs, Waldschneisen und unbefestigte Waldwege bis zu einer Breite von 4m, sondern auch weitere Grundstücke wie z.B. befestigte Waldwege, Grundstücke, die sich über der Baumgrenze befinden, Wildweiden, kleinere Wasserflächen und weitere Flächen, sofern sie mit dem Wald zusammenhängen oder forstwirtschaftlichen Zwecken dienen.

2. Eingriffe in Grundbesitz und gesetzliche Einschränkungen

Ein Eingriff in Eigentumsrechte am Boden darf nur auf gesetzlicher Grund erfolgen. Eine Enteignung ist nur im öffentlichen Interesse aus folgenden Gründen möglich:

- Realisierung von Bauten, die dem Gemeinwohl dienen,
- Schaffung von Hygiene-, Sicherheits- oder anderen Schutzzonen und Schutzgebieten sowie Gewährleistung der Bedingungen für diese,
- Schaffung der Bedingungen für den notwendigen Zugang zu einem Grundstück oder Bauwerk,
- Schaffung der Bedingungen für die Erstellung oder den ordnungsgemäßen Betrieb von Einrichtungen des staatlichen Umwelt-Überwachungsnetzes.

Das öffentliche Interesse an einer Enteignung aus diesen Gründen muß in einem Enteignungsverfahren, in dem der Grundstückseigentümer seine Einwände vorbringen kann, nachgewiesen werden. Einige Gesetze enthalten Bestimmungen über die Einschränkung von Eigentumsrechten. Das Gesetz Nummer 114 aus dem Jahr 1992 über Landschafts- und Naturschutz bestimmt, daß jeder verpflichtet ist, die aus diesem Gesetz hervorgehenden Einschränkungen bei der Nutzung der Natur und der Landschaft zu dulden. Das Gesetz erwähnt in diesem Zusammenhang jedoch keine eventuellen Entschädigungen für diese Einschränkung.

Später erlassene Gesetze, z.B. das Landwirtschaftsgesetz oder die Novellierung des Wassergesetzes enthalten bereits eine Bestimmung darüber, daß dem Grundstückseigentümer eine Entschädigung von Verlusten zusteht, die durch gesetzlich angeordnete Bewirtschaftungsweisen entstehen bzw. auch eine Entschädigung für eine nachweisliche Einschränkung der Eigentumsrechte. Auch das Gesetz Nummer 289 von 1995 (Forstgesetz) enthält eine Bestimmung, der gemäß einem Waldbesitzer das Recht auf Entschädigung von Verlusten zusteht, die durch eine Einschränkung der Bewirtschaftung des Waldes entstanden sind. Dieses Recht besteht gegenüber demjenigen staatlichen Organ, welches die Einschränkung angeordnet hat. Das staatliche Verwaltungsorgan kann daraufhin die Entschädigung auf diejenigen Personen abwälzen, in deren Interesse die Einschränkung angeordnet wurde.

Das Forstgesetz bestimmt des weiteren, daß Besitzer von Schutzwäldern oder Wäldern mit besonderer Funktion verpflichtet sind, die aus dem Forstgesetz oder aus anderen Rechtsvorschriften hervorgehenden Einschränkungen bei der Bewirtschaftung dieser Wälder hinzunehmen. Gleichzeitig bestimmt dieses Gesetz freilich auch, daß den Eigentümern dieser Wälder ein Ersatz der erhöhten Kosten zusteht, sofern diese wegen der eingeschränkten Bewirtschaftungsweise entstehen. Die Waldeigentümer haben dieses Recht jedoch bisher nicht zu nutzen gelernt.

3. Das Forstgesetz

Seit dem 1. Januar 1996 gilt in der Tschechischen Republik das Gesetz Nummer 289 aus dem Jahr 1995, das Forstgesetz. Zweck dieses Gesetzes ist die Bestimmung der Voraussetzungen für die Erhaltung des Waldes, für die Pflege und Erneuerung des Waldes als nationaler Reichtum und als unersetzlicher Bestandteil der Umwelt.

Als wichtigste Begriffe definiert das Forstgesetz insbesondere:

- den Wald als Waldbewuchs und dessen Umfeld sowie die Grundstücke, die für die Erfüllung der Funktionen des Waldes bestimmt sind,
- die Funktionen des Waldes als Beiträge, die mit der Existenz des Waldes zusammenhängen und die sich auf produktive und außerproduktive Funktionen beziehen
- den Waldbewuchs als Waldbäume und -sträucher, die in den gegebenen Bedingungen die Funktionen des Waldes erfüllen,
- die Bewirtschaftung des Waldes als Erneuerung, Schutz, Erziehung von Waldbestände, sowie die Erfüllung der Funktionen des Waldes gewährleistende Tätigkeit.

Das Forstgesetz bestimmt des weiteren die Grundstücke, die der Erfüllung der Funktionen des Waldes dienen (Waldgrundstücke und übrige Grundstücke) sowie deren Schutz.

Das Recht der allgemeinen Nutzung des Waldes hat in der Tschechischen Republik Tradition. Jeder darf den Wald auf eigene Gefahr betreten, gleichgültig wem der Wald gehört, d.h. ob der Wald staatliches Eigentum, Gemeindeeigentum oder in Privatbesitz ist. Jeder darf dabei Waldfrüchte und Reisig für den eigenen Bedarf sammeln. In diesem Umfang ist das Recht der allgemeinen Nutzung des Waldes kostenlos. Eine Umzäunung von Wäldern zur Grundstücksabgrenzung oder zur Einschränkung des Rechts der allgemeinen Nutzung des Waldes ist gesetzlich verboten.

Das Forstgesetz enthält ferner folgende Regelungen und Definitionen:

- Einteilung der Wälder in Kategorien (Wirtschaftswälder, Schutzwälder, Wälder mit Sonderfunktion),
- Wirtschaftliche Regelung der Wälder und Forstwirtschaftsplanung,
- Pflichten der Waldeigentümer bei der Bewirtschaftung des Waldes,
- Lizenzpflichtige Tätigkeiten in der Forstwirtschaft,
- System der Organe der staatlichen Forstverwaltung und ihrer Zuständigkeit,
- Sanktionen (Strafgelder) für Verletzungen des Forstgesetzes.

4. Realisierung der politischen Absichten in der Praxis - Motivation und Förderung

Im Jahr 1994 verabschiedete die Regierung der Tschechischen Republik die Grundsätze der staatlichen Forstpolitik. Eines der grundlegenden Instrumente zur Realisierung der staatlichen Forstpolitik ist das Forstgesetz. Dieses Gesetz enthält nicht nur generelle Bestimmungen über die Forstwirtschaft, sondern auch weitreichende Bestimmungen über staatliche Förderungsmassnahmen.

Der Staat fördert die Forstwirtschaft durch Dienstleistungen oder durch finanzielle Förderung. Die finanzielle Förderung dient insbesondere folgenden Zwecken:

- Schutz und Pflege des Waldes,
- Maßnahmen zur Wiederaufforstung immissionsgeschädigter oder durch andere anthropogene Einflüsse geschädigter Wälder,
- Maßnahmen zur Gewährleistung der außerproduktiven Funktionen des Waldes,
- Unterstützung von Waldeigentümerverbänden und Unterstützung der gemeinsamen Bewirtschaftung kleinerer Wälder.

Im Jahr 1997 gab der Staat über das Landwirtschaftsministerium ca. 400 Mio. Kronen für die Förderung der Forstwirtschaft aus.

Die Forstwirtschaft wird außerdem aus dem Staatlichen Umweltschutzfonds sowie aus anderen Quellen unterstützt. Gegenstand der Immobiliensteuer sind nur Wirtschaftswälder; Wälder der Kategorien Schutzwald und Wald mit Sonderfunktion sind von der Immobiliensteuer befreit.

5. Umweltschutzgesetzgebung

Nach 1990 wurden in der Tschechischen Republik mehrere bedeutende Gesetze zum Schutz der Umwelt und ihrer Bestandteile erlassen. Zunächst das Umweltschutzgesetz Nummer 17 von 1992. Dieses Gesetz definiert die Grundbegriffe und legt die Grundsätze des Umweltschutzes und die Pflichten natürlicher und juristischer Personen beim Schutz und bei der Verbesserung des Zustands der Umwelt sowie bei der Nutzung der natürlichen Ressourcen fest: Das Gesetz geht dabei vom Prinzip der nachhaltigen Entwicklung aus.

Am umfangreichsten ist das Gesetz Nummer 114 von 1992, über den Natur- und Landschaftsschutz, dessen Zweck der Beitrag zur Erhaltung und Erneuerung des natürlichen Gleichgewichts, zum Schutz der Vielfalt der Lebensformen, der Werte und Schönheit der Natur und zu einem verantwortlichen Umgang mit den natürlichen Ressourcen ist. Dieses Gesetz betrifft auch die Forstwirtschaft in bedeutender Weise, insbesondere indem:

- alle Wälder den sog. wesentlichen Landschaftselementen zugeordnet werden, die gegen Beschädigung und Zerstörung geschützt werden müssen. Für alle Eingriffe, die zur Beschädigung eines wesentlichen Landschaftselements führen könnten, muß zuvor die verbindliche Stellungnahme der staatlichen Umweltschutzbehörde eingeholt werden,
- die Umweltschutzbehörden an der Erstellung und Freigabe der Forstwirtschaftspläne beteiligt sind, um eine ökologisch angemessene Bewirtschaftung der Wälder zu gewährleisten,
- die verbindliche Stellungnahme der Umweltschutzbehörden auch bei der Rodung oder Aufforstung von Grundstücken über 0,5 ha, beim Bau von Forstwegen und Hangstraßen sowie Forst-Meliorationssystemen erforderlich ist,
- die absichtliche Verbreitung geographisch fremder Tier- und Pflanzenarten (d.h. auch Waldpflanzen) nur mit Genehmigung der Umweltschutzbehörden möglich ist.

Zu den Gesetzen, die den Umweltschutz betreffen, gehören des weiteren das Gesetz zur Bewertung des Einflusses von Bauten, Tätigkeiten, Technologien und Produkten auf die Umwelt (Nummer 244/1992 Gbl.), das Gesetz zum Schutze der Luft (Nummer 309/1991 Gbl.), das Abfallgesetz (Nummer 238/1991 Gbl.), das Wassergesetz, das Gesetz zum Schutz des landwirtschaftlich genutzten Bodens und selbstverständlich auch das Forstgesetz.

6. Konflikte zwischen dem Forstgesetz und dem Umweltschutzgesetz

Das Forstgesetz ist so konzipiert, daß ein Ausgleich zwischen den Interessen der Waldeigentümer an der Nutzung des Waldes als ihrem Eigentum und den Interessen des Staates an der Erhaltung des Waldes als öffentlichem Gut und bedeutendem Bestandteil der Natur erzielt wird.

Konflikte zwischen den durch das Forstgesetz und den durch die Umweltschutzgesetze geschützten Interessen treten nicht auf. Es treten jedoch Konflikte mit bestimmten durch Umweltschutzverbände vertretenen Ansichten auf, die sich um eine regionale Erweiterung kleinerer geschützter Gebiete oder Landschaftsschutzgebiete ohne Berücksichtigung der Grundstückseigentümer in den betroffenen Gebieten bemühen. Diese Streitfälle müssen dann durch die Forstverwaltungsbehörden und durch die Umweltschutzbehörden geklärt werden.

7. Gesetze in Verbindung mit der Forst- und Umweltschutzgesetzgebung

Den Umweltschutz und somit auch den Schutz des Waldes betrifft auch das Gesetz Nummer 282 aus d.J. 1991 über die Tschechische Umweltschutzinspektion und ihre Zuständigkeit im Bereich des Forstschutzes. Durch dieses Gesetz wurde die Tschechische Umweltschutzinspektion als staatliche Verwaltungsbehörde, die dem Ministerium für Umweltschutz der Tschechischen Republik untersteht, gegründet. Die Umweltschutzinspektion wacht über die Einhaltung der Rechtsvorschriften und Beschlüsse in bezug auf die Erfüllung der Funktionen des Waldes als Bestandteil der Natur. In bestimmten Angelegenheiten überschneidet sich die Zuständigkeit der Umweltschutzinspektion mit der Zuständigkeit der Forstverwaltungsbehörden, die dem Landwirtschaftsministerium unterstehen.

Der Umwelt - und Naturschutz und der Schutz des Waldes ist in der Tschechischen Republik durch ein komplexes System von Rechtsvorschriften geregelt, die ihren Zweck gut erfüllen und die vergleichbar sind mit ähnlichen in den Ländern der Europäischen Union geltenden Vorschriften.

FINANZIELLE UNTERSTÜTZUNG VON FORSTBETRIEBEN IN DER TSCHECHISCHEN REPUBLIK NACH FORSTGESETZ 1995

JIRÍ BARTUNEK,

1 Informationen über die Forstwirtschaft

Die Waldfläche des Landes ist 2,6 Mill. ha (davon 67 % im Staatseigentum), der Anteil der Bewaldung beträgt 33,3 % mit 0,25 ha Wald je Einwohner, die Baumartenverteilung ist Fichte 55 %, Kiefer 18 %, Eiche 6 % und Buche auch 6 %. Im Jahre 1996 war die gesamte Rohholznutzung 12,6 Mill. m3, die durchschnittliche Umtriebszeit ist derzeit 115 Jahre. Die künstliche Walderneuerung beläuft sich auf jährlich 30 tausend ha, mit einem Anteil an Nadelbäumen von 68 %. Der Holzzuwachs pro ha Waldboden liegt bei 6,8 m3, wobei nur 4,8 m3 genutzt werden. Im Jahre 1996 war der Anteil von Zufallsnutzungen 40 %, wobei zwei Drittel durch Eisanhang und Wind verursacht wurden.

In den letzten Jahren war der Beitrag der Forstwirtschaft der Tschechischen Republik am Inlandsbruttoprodukt 0,6 %. Sie beschäftigt 0,8 % der Arbeitskräfte, der Investitionsanteil an den Gesamtinvestitionen ist 0,3 %. Der durchschnittliche Lohn ist im Vergleich mit dem gesamtstaatlichen Durchschnitt um 20% niedriger. Im Jahre 1996 stiegen die Kosten der forstlichen Produktion an, bei gleichzeitiger Verringerung der durchschnittlichen Holzverwertung. Bei Nadelholz sanken die Preise im Vergleich mit 1995 um 4 %, bei Faserholz um 5 %.

2 Rechtsgrundlagen der finanziellen Unterstützung

Mit der Verabschiedung des neuen Forstgesetzes im Jahre 1995 wurde eine Rechtsgrundlage für Finanzunterstützungen von Forstbetrieben geschaffen. Öffentliche Finanzen, die nach diesem Gesetz aus dem Staatsbudget der Forstwirtschaft zugewendet werden - also eine direkte Unterstützung von Forstbetrieben - gliedern sich in zwei selbständige Teile, d.i. in Entschädigungen und Unterstützungen. Außerdem, ermöglicht das Forstgesetz, indirekte ökonomische Unterstützungen an Waldbesitzer zu leisten, z.B. die Befreiung von Liegenschaftssteuern und die Finanzierung von bestimmten Dienstleistungen und Wirtschaftsmaßnahmen.

Ein Ersatzanspruch steht einem Waldbesitzer zu, falls alle Bedingungen, die durch das Forstgesetz festgelegt sind, erfüllt werden. Es handelt sich um die Entschädigung im Falle einer Einschränkung von Waldbesitzerrechten aus Gründen der Durchsetzung öffentlicher Interessen. Man leistet Ersatzleistungen vorzugweise bei:

- Einschränkung der Waldbewirtschaftung und Waldbeschädigung z. B. durch die Errichtung von Gebäuden und technischen Vorrichtungen,
- Einschränkung der Waldbewirtschaftung, die das öffentliche Interesse erfordert,
- Anpflanzung von Meliorations - und Befestigungsholzarten,
- Zulassung von Waldbeständen für die Samengewinnung auf Initiative der Forststaatsverwaltung,
- Meliorationen und Wildbachverbauung auf Waldgrundstücken,
- Durchführung von Maßnahmen in Schutzwäldern und in Wäldern mit Sonderfunktionen, die von der Forststaatsverwaltung vorgeschrieben werden.

3 Direkte und indirekte Unterstützungen

Ein Waldbesitzer erhält eine direkte Unterstützung auf Grund einer Staatsforstverwaltungsentscheidung. Diese Unterstützung wird für Sicherung von Waldwohlfahrtwirkungen oder für die Umsetzung von Zielen der Staatsforstpolitik angewendet. Die Rahmenregelung für diese Unterstützungen sind ein Teil des Forstgesetzes (§ 46). Die Regierung erlässt jedes Jahr Einzelentscheide und verbindliche Regeln, die als Beilage im Staatsbudget festgehalten sind.

Finanzunterstützungen werden namentlich vorgesehen für:

- ökologische und die Natur schonende Technologien bei der Waldbewirtschaftung,
- Bestandeserziehung bis zum Alter von vierzig Jahren,
- Erhöhung des Anteils an Meliorations - und Befestigungsholzarten in Waldbeständen,
- Maßnahmen zur Erneuerung von Waldbeständen, die durch Immissionen geschädigt wurden, und von Waldbeständen, die durch anthropogene Einwirkungen absterben,
- Maßnahmen für die Erneuerung von Waldbeständen, die eine ungeeignete Struktur oder Ersatzstruktur haben,
- Aufforstungen in Berglagen,
- Forstschutz,
- Maßnahmen zur Sicherstellung von Außerproduktionsfunktionen des Waldes,
- Forstschutz gegen Insektenschädlinge und Maßnahmen gegen außerordentliche Einflüsse und unvorsehbare Umstände, die den Wald gefährden und die finanziellen Möglichkeiten seines Besitzers übersteigen,
- Unterstützung von Vereinigungen der Waldbesitzer und der Waldbewirtschaftung in vereinigten Wäldern von Besitzern mit geringen Waldflächen,
- Ausarbeitung von Forsteinrichtungsplänen.

Die indirekte ökonomische Unterstützung umfaßt vorzugweise folgende Maßnahmen:

- Befreiung von der Liegenschaftssteuer für Wirtschaftswälder, die unter erheblichen Immissionseinwirkungen stehen und für Schutzwälder und bei Wälder mit Sonderfunktionen (§ 10),
- Kostenersätze für die Bearbeitung von Regionsplänen der Waldentwicklung, von Forsteinrichtungsplänen für Kleinbetriebe (sog. forstwirtschaftliche Entwürfe) und Forstinventuren (§§ 23, 26, 28),
- Kostenersätze für Meliorationen und Wildbachverbauungen in Wäldern, sofern die Maßnahmen im öffentlichen Interesse sind (§ 35),
- Kostenersätze für die Tätigkeit eines Forstwirtes, sofern die Staatsforstverwaltung darüber entscheidet (§ 37).

4 Umfang und Zweck der Unterstützungen

Der Umfang direkter und indirekter ökonomischer Unterstützung der Waldbesitzer kann mit Angaben des Jahres 1996 belegt werden: In diesem Jahre wurden hierfür insgesamt 882 Mill. K aufgewendet. Nach Forstgesetzbestimmungen umfaßten die staatlichen Verpflichtungen im Jahre 1996 Teilersätze von Kosten für die Anpflanzung minimaler Anteile an Meliorations- und Befestigungsholzarten (11,5 Mill. K), Kostenersätze für Maßnahmen im Forstschutz, die von Staatsforstverwaltungsorganen angeordnet wurden (0,23 Mill.K), Kostenersätze für Meliorationen und Wildbachverbauung in Wäldern, die auf Beschluß von Staatsforstorganen im öffentlichen Interesse durchgeführt wurden (170 Mill.K), Kostenersätze für die Forstwirttätigkeit in Kleinforstbetrieben mit ausgearbeiteten Forstwirtschaftsentwürfen (73, Mill.K).

Im Jahre 1996 wurde für die Aufforstung von Landwirtschaftsgrundstücken ingesamt 27,3 Mill. K geleistet, es wurde 650 ha aufgeforstet (im Jahre 1995 war es 570 ha für 24,5 Mill.K, im Jahre 1994 300 ha für 13,4 Mill.K), wobei 77 % dieser Finanzmittel für die Aufforstung landwirtschaftlicher Privatgründe bestimmt waren. Der Einsatz dieser Finanzmittel verfolgte das Ziel, den Anbau von landwirtschaftlichen Produkten zu dämpfen.

Zweckgebundene Unterstützungen von Forstbetrieben wurden in den Jahren 1994 - 1996 für genau definierte Leistungen zuerkannt, wobei die Finanzmittel erst nach Durchführung der Arbeiten ausbezahlt wurden. Der Umfang dieser Unterstützung war wie folgt :

Unterstützung (in Mill.K.) Jahr	1994	1995	1996
Beseitigung der Folgen außergewöhnlicher Einflüsse auf die Waldbewirtschaftung	329	220	174
Waldbesitzer bis zu 250 ha	89	191	149
Bildung, Beratungsdienste, Forschung	21	22	75
Außerproduktionsfunktionen des Waldes	392	438	273

Die Unterstützung der Beseitigung von Folgen außergewöhnlicher Einflüsse für die Waldbewirtschaftung wurde für Waldbau in Wäldern, die von Immissionen beschädigt wurden, in Schutzwäldern und in ausgewählten Wäldern mit Sonderfunktion bewilligt. Ihr Umfang betrug im Jahre 1996:

		in Mill K.
Bodenvorbereitung	185 ha	0,4
Walderneuerung	2.314 ha	90,7
Bestandesschutz	7.634 ha	23,7
Umzäunung von Pflanzungen	753 km	44,2
Läuterung	8.085 ha	25,0
Durchforstung	2.819 ha	6,6
Düngung und Kalkung	1.373 ha	7,3
Waldbestandesrekonstruktion	130 ha	1,3
Forstproduktionstechnologien, die ökologisch schonend sind	350 000 ha	2,2

5. Gewinn und Rentabilität

Zu den Angaben über den Umfang von Finanzunterstützungen der Forstbetriebe ist es notwendig, noch eine Information über den Gewinn beizufügen. Im Jahre 1996 sank das Niveau dieser Kennziffer im Vergleich mit den vorhergehenden Jahren erheblich:

Gewinn pro ha Waldboden in Kronen vor der Versteuerung:

Jahr	Staats-	Gemeinde-	Privat-Wälder	Insgesamt
1994	360	167	167	301
1995	293	148	588	292
1996	77	223	405	90
Finanzunterstützung im Jahre 1996	0	49	469	136

Aus dieser Statistik geht hervor, daß die Gewinnhöhe durch Finanzunterstützung erheblich beeinflußt wurde. Ohne diese Unterstützung wäre der durchschnittliche Wirtschaftserfolg ein Verlust in Höhe 57 K pro ha Waldboden. Angaben über das Jahr 1997 waren zur Zeit der Bearbeitung dieses Beitrages nicht zur Verfügung. Man schätzt, daß dieser Verlust ohne Finanzunterstützung 64 K pro ha ausmachte und daß er im Jahre 1998 wahrscheinlich 72 K pro ha Waldboden betragen wird.

Im Jahre 1996 wurden bei der Beurteilung der Forstproduktionsrentabilität folgende Relationen zwischen Nutzungshöhe und Kostenaufwand festgestellt (Bluflovský 1997):

Holznutzung in m3/ha	Kosten pro ha Waldboden	Rentabilität
3,0	Waldbau (Np) = Holznutzung (Nt)	0
3,5	Np < Nt um 7 %	3,4
4,0	Np < Nt um 15 %	8,0
4,5	Np < Nt um 18 %	10,0
5,0	Np < Nt um 25 %	14,4

Aus der Ungleichmäßigkeit der Entwicklungstendenzen von ökonomischen Input - Output der Forstbetriebe geht deutlich die Gefahr hervor, daß durch die fehlende ökonomische Rentabilität bei einem bedeutenden Teil des Waldvermögens negative Folgen für die Sicherung der erwünschten Qualität der Forstproduktion entstehen werden.

6 Beurteilung der öffentlichen Finanzierungsmassnahmen

Derzeit werden die Wirtschaftsschwierigkeiten einer großen Zahl von Forstbetrieben durch die Zahlungsunfähigkeit vieler Rohholzabnehmer erhöht. Diese wird besonders durch den unkonsolidierten Zustand am inländischen Holzmarkt verursacht. Es zeigt sich als außerordentlich nötig, von Flächenfinanzunterstützung aller Forstbetrieben, die um diese Unterstützung ersuchen und entsprechende Kriterien erfüllen, abzugehen. Vordringlich ist dagegen eine individuell abgestuften Unterstützung von Forstbetrieben, deren Möglichkeiten, Forstgesetzbestimmungen wegen des Mangels eigener Finanzquellen zu erfüllen, begrenzt sind. Der differenzierte Zutritt zur Leistung

von Staatsunterstützung für Forstbetriebe bedeutet aber keine Ausschließung eigenwirtschaftlicher Forstbetriebe von der Möglichkeit, eine Finanzunterstützung für einen konkreten Zweck, wie dies das Forstgesetz bestimmt, zu erhalten. Nötig ist vorzugsweise, solche Tätigkeiten der Forstbetriebe zu unterstützen, die im öffentlichen Interesse zu sichern sind und die nicht unter verbindliche Forstgesetzbestimmungen fallen. Mit einer ökonomischen Differenzierung darf man nicht Ansprüche von Waldbesitzern auf den Ersatz erhöhter Kosten bzw. auf Entschädigung einer Eigentumsbenachteiligung bei der Durchführung von Maßnahmen, die von Staatsforstverwaltungsorganen im öffentlichen Interesse angeordnet werden, einschränken. Dies betrifft Ansprüche auf den Ersatz erhöhter Kosten der Bewirtschaftung in Schutzwäldern und in Wäldern mit Sonderfunktionen, Ansprüche von Waldbesitzern mit Waldflächen kleiner als 50 ha, Ansprüche auf den Ersatz von Kosten für die Erstellung von Forsteinrichtungsplänen für kleine Betriebe sowie für die Tätigkeit von Forstwirten.

Zusammenfassung

Die direkte Finanzunterstützung von Forstbetrieben gliedert sich nach dem Forstgesetz vom Jahre 1995 in zwei selbständige Bereiche, d.i. in Entschädigungen und Unterstützungen. Außerdem ermöglicht das Forstgesetz auch die indirekte Unterstützung von Forstbetrieben. Entschädigungen kommen in Betracht, wenn es um Einschränkungen von Eigentumsrechten eines Waldbesitzers auf Grund öffentlicher Interessen geht, z.B. bei der Errichtung von Gebäuden und technischen Anlagen oder bei der Änderung der Waldbewirtschaftung. Eine finanzielle Unterstützung von Forstbetrieben kann auf Grund einer Entscheidung der Staatsforstverwaltung im Falle der Sicherung von Wohlfahrtwirkungen des Waldes oder von Zielen der Staatsforstpolitik erfolgen. Eine solche Unterstützung ist z.B. möglich für den Einsatz von Technologien der Forstproduktion, die ökologisch schonend sind, für die Beseitigung von Immissionsschaden, für die Aufforstung im Gebirge, für die Unterstützung von Waldbesitzervereinigung, sowie für Forsteinrichtungspläne. Die indirekte Unterstützung umfaßt vorzugsweise Steuerfreiheit von Liegenschaften im Falle von Wäldern, die durch Immissionen geschädigt sind oder den Kostenersatz für die Verfertigung von Regionsplänen der Waldentwicklung.

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FOREST LAW AND ENVIRONMENTAL LEGISLATION IN HUNGARY

TAMAS SZEDLAK

1 The Legislative Process of the New Hungarian Act on Forests and the Protection of Forests

From a central European perspective, a special momentum has occurred in connection with global and pan-European forest protection and conservation. In several countries in the region with economies in transition, the heritage of more than 200 years of sustainable forest management has been safeguarded during the current period of social and economic transition. As a result, sustainable forest management is interpreted now in a broader sense than ever before, and while recognizing that wood production is, and should remain, a basic element of forestry as a source of sustainable development, the importance of other forest functions has increased, and the forests are now seen, as sources of biological diversity, ecological stability, human well-being, and cultural, spiritual and aesthetic values.

Hungary has 1.7 million hectares of forest cover (19% of the land area), and the state decided to keep more than 50% of it, mostly semi-natural and natural forests, in public ownership, with the aim of preserving biodiversity and providing a wide range of forest goods and services for society through multiple-use forestry. At the same time, an equally important task was to establish an economically and professionally sustainable private forestry which contributes to rural development. These tasks called for a transformation of the legal and institutional framework. Reformulating the nation’s forest policy was a long and difficult process which culminated in the new Act on Forests and the Protection of Forests, passed in 1996 by the Hungarian Parliament.

2 The Main Influences in the Legislative Process

International background:

- UN conventions, recommendations, principles, declarations
  - UNCED Earth Summit 1992, Rio de Janeiro,
  - UNCSD IPF Session 1995, New York,
  - UNFAO COFO Session 1995, Rome,
  - UNECE ICP Forests Monitoring Programme 1987, Geneva,
- OECD regulations and recommendations 1990, Paris,
- OSCE recommendations 1993, Montreal,
- Pan-European Ministerial level Resolutions 1990, Strasbourg, 1993, Helsinki.
- EU regulations and recommendations 1966, Bruxelles

Historical legal sources:

- first comprehensive Hungarian Forest Act 1879,
- Forestry Act of 1935 which also regulated nature protection,
- Act on Forests and Wildlife Management, 1961

New, simultaneous challenges:

- market economy oriented rules,
- regulations concerned with private forest property
- new ecological challenges

Answers, legal tools:

-implementation of criteria and indicators for sustainable forest management adapted at the pan-European level,

-comprehensive and compulsory forest management planning and supervision system (State Forest Service),

-National Forest Database (permanent monitoring, observing and evaluating activity)

Harmonization:

- in different fields:
  - with international regulations, recommendations,
  - with different internal interests:
    - needs of society,
    - environmental and nature protection,
    - forest owners,
    - forestry managers,
    - forestry administration
- on different levels:
  - national,
  - regional,
  - local management unit

3 The Basic Idea of the Act on Forests and the Protection of Forests

“Forests are the most complex natural (ecological) systems occurring on land, the existence of which - following from their impact exercised on the environment - is one of the fundamental prerequisites of sound human life.
In addition to their dominant role played in the protection of arable soil, atmosphere and climate, in the regulation of quantity and quality of waters, forests

- define the character of landscapes, enhance the environment,
- provide physical and mental recreation,
- reserve diversity of animal and plant life,
- as a renewable natural resource, produce raw materials, energy carriers and food, beside continuously improving the status of the environment.”

“The present territory and condition of our forests were evolving in the course of several centuries of human activity. Due to their regional sporadicity and to the environmental hazards affecting them, we can expect the indispensable survival, protective impact and products (yields) of forest biocoenoses only in case we treat them professionally and protect them from harmful influences, excessive exploitation and misuse, if we ensure the diversity and proper harmony of their animal and plant life, the dynamic and natural unity of the forest biocoenosis.”

“The maintenance and protection of forests serve the interest of the whole society, its welfare services are due to all human beings, therefore forests should be husbanded only in harmony with the common interest."

Bearing in mind all these things, the Hungarian Parliament created the Act No. LIV of 1996 on Forests and the Protection of Forests.

There was some harmonization among the three important Acts, which have fundamental effects on forests and the whole environment or nature. These Acts were prepared and negotiated at the same time in order to be harmonized. But, of course, there were some collisions among different interests. The order of their being passed by Parliament indicate their influence on the others:

- Act No. LIII of 1996 on Nature Conservation;
- Act No. LIV of 1996 on Forests and the Protection of Forests; and
- Act No. LV of 1996 on the Protection of Game, Game Management and Hunting.

The Objective and Principles of the Act on Forests and the Protection of Forests are as follows:

§1 The objective of the Act on Forests and the Protection of the Forests is: a) to facilitate forests as an ecological community (biocenosis) and habitat subject to natural factors and human influence, as an indispensable part of the natural environment, and at the same time, as a regenerating natural resource that can continuously survive and thrive; b) to define the framework within which the foregoing objectives can be jointly implemented; and c) to ensure the creation of harmony between the long term survival of forests and proprietary and forestry interests.

§2(1) Forests should be used or exploited in a manner and at a rate, which allow the prospects of forestry to endure for future generations (hereinafter: sustainable forestry), so that the forests preserve their biological diversity, naturalness, fertility, capability to regenerate, and viability; furthermore, that they satisfy the criteria of defence and economy in harmony with the requirements of society, and fill in their role serving the purposes of nature and environment conservation, health and welfare, tourism, research and education.
(2) The provisions of this Act shall be applied in harmony with the provision of separate legal rules pertaining to the conservation of nature, conservation of arable land, the conservation of soil, plant protection, and furthermore to the exercise and utilization of hunting rights.
(3) In case of forests located in nature conservation areas, the provisions of this Act shall be applicable together with the deviations included in the Act on the conservation of nature.
(4) In case of state-owned forests constituting a part of the treasury assets, the provisions of this Act shall be applicable together with the provisions of the Act on the public budget pertaining to the administration of treasury assets.

§3(1) In the interest of extending the national forest stand and also in order to improve the condition of the environment, the state supports the plantation of new forests and the maintenance and conservation of existing forests.
(2) In the case of the state-owned forests, the state arranges the performance of its tasks specified under (1) above in accordance with the provisions of a separate act, more strongly enforcing the public interest.
(3) In order to enforce the public interest in the forestry sector, the state operates an institutional system capable of performing the tasks set forth in this Act.
(4) In order to ensure the professional character of the forestry activities, the state supports joint forest management by forest-owners.

4 Titles to Land: Statutory Basis, Definition and Protection, Scope of Titles, Ownership and other Interests in Land

(With reference to the paragraphs of Act on Forests and the Protection of Forests: §6-10, definitions; §13-14, ownership; §15-22, primary purpose of forests; §50-52, other interests; §65-71, utilization of forest land; §72, reforestation in case of utilization of the forest land; §73, determining the branch of cultivation of the forest; §74-75, Section IX, division of the forest land; §76-85, utilizing the forest land for the purpose of transportation and visiting the forest; §95, forest authority. Act on Nature Conservation: §7/2/d and 7/3, changing titles to land; §39, other interests on the land. Act on Game Management and Hunting: §3-5, rights to hunting on the fields and land ownership; and §15-18, leasing.)

The arrangement of land ownership started in 1991 by Act XXV (and II/1992) on about 733 thousand hectares. The change of ownership has not happened yet on 222 thousand hectares during the last seven years. The main reason is the delaying of hand over of the former cooperative fields to the members of cooperatives as proportional property. The forestry authority does not have the official function to accelerate this process.

Table 1. Smallholder structure change, 1996-1998

		1996.I.1.	1998.III.31.	4/3
		1000 ha		%
1	Individual farming	22	43	195
2	Common farming	31	40	129
3	Former closed gardens*		3	
4	All individual forest manager	53	86	162
5	Joint forest tenure	41	85	207
6	Other economic association	11	21	190
7	Former cooperatives	121	56	46
8	Forest cooperatives	7	13	185
9	Other new cooperatives	39	67	171
10	Common agent		39	
11	All associated forest managers	219	281	128
12	All active structure (4+11)	272	367	134
13	Before association	137	144	105
14	Disordered property	294	222	75
15	Non functioning structure(13+14)	431	366	84
16	All private forest(12+15)	703	733	204
17	Number of forest owners (thousand)	117	285	243
18	specific forest estate (ha/owner)	2,3	1,3	56

*former specific category

5 Definition of Forest Land and of Forest Managers

In case of forest land, the forest authority determines the branch of cultivation. For example, during forest management planning of a forest situated on a grassland, the authority can change the latter category into forest, considering the definition of forest land (§8). In case of afforestation, the afforestation plan must contain all the necessary information for branch of cultivation changing after the first planting year.

§8(1) In the application of this act, the forest land shall be: a) an area of one thousand and five hundred square meters or more covered with wood, including also land with spontaneous reforestation and land temporarily utilized, together with the glades and fire strips located in it; b) an area of one thousand and five hundred square meters or more on which forest plantation (seed sowing, planting of saplings, propagation) was performed; c) the area of a tree plantation of one thousand and five hundred square meters or more covered with tree species not indigenous to the natural environment of the country for the period of a production cycle, and not exceeding thirty years, planted without applying state subsidy and after the enactment of this Act (hereinafter: tree plantation).
(2) In case of tree plantations, only the provisions pertaining to the rules of forest planning, forest planting, forest records and protection against harmful effects shall be applicable from among the provisions of this Act.
(3) In case of forest land smaller than five thousand square meters and surrounded by a real estate registered in a cultivation sector other than forestry, the rules pertaining to forestation shall be applicable.

§13(1) states in the application of this Act, the forest manager shall be the forest owner or the lawful user performing forestry activities (hereinafter: forest manager). The forest managers and their data shall be registered by the forest authority, namely, the State Forest Service. Tasks of the forest manager cover all part of obligations.
(4) In case of a physically contiguous forest land owned by several owners, the owners: a) shall, if the conditions set forth by the Minister in an order exist, and on the basis of the resolution of the forestry authority, conduct joint forestry activities on it and assign a forest manager to perform these tasks; and b) shall. in the absence of forest manager, bear joint and several liability for the performing of obligations related to the conservation and maintenance of forests.
(5) In the absence of any contrary provisions of legal rules, the state subsidy available for forestry activities can only be claimed by a forest manager registered by the forestry authority. The rights and obligations, set forth in legal rules, resolutions of the authorities or the court, and specified otherwise in contracts, due to and binding the forest manager shall not effect the proprietary rights and obligations of the owner of the forest land.

6 Interventions and Statutory Restrictions on Property

(§14, Section III, rights and obligations of the forest manager; §23-31, Section VII system of forest planning and administration; §58-64, forest usufructs; §69, forest land withdrawal; §69, temporary utilization §70.)

One of the main preconditions is that the forest manager be registered by the forest authority. The forest authority has a control over forest management through the application of an annual forest management plan. All the activities in the forests have to be registered at the forest authority, the forest inspectorate. The forest inspector

takes into consideration the forest management plan (ten years in reach) and makes a decision about the annual plan of work. All the subsidies and contributions depend on the forest authority.
§59(1) states: The exercising of the forest usufructs may not damage or endanger the forest surface and subsurface waters, the soil, the afforestation and the forest biocoenosis.
(2) The forest manager may exercise the forest usufructs under conditions set forth in this Act. In case of forests located in a nature conservation area, the preliminary consent of the nature conservation authority is required for licensing the exercise of the forest usufructs. In this case, the two authorities, forestry and nature conservation, have to be collaborating in order to be able to keep the deadline of judgement of the application which is 30 days.

7 Scope of the Forest Law and Definition of Forests

§4(1) This Act shall be applicable to: a) forests, their living and inanimate components, their area, and the land physically contiguous to them ensuring the survival of the forest biocoenosis; b) trees, rows of trees, groves and timbered pastures (hereinafter together: forestation) located in external areas; c) fixed facilities directly serving silvicultural activities (hereinafter: forestry facilities).
(2) This Act shall not be applicable to the following areas covered with trees: a) collection of live trees in internal areas (arboreta); b) public parks; c) farm, manor and farmstead forestations; d) areas located outside forest blocks and serving to produce Christmas trees, ornamental branches, wild fruits and twigs; e) afforested areas serving for the disposal and utilization of waste water, waste water sludge and liquid manure; f) forestation constituting an appurtenance of road, railway, and other technical facilities, g) groves in the bed of rivers, on river shallows, furthermore, if it qualifies as an independent land section, in the bed of streams, channels, and forestations bordering these.

Definition of a forest: §5 provides that in the application of this Act, a forest shall be an ecological community (biocoenosis) formed of arborescent plants of the species determined in an order by the Minister of Agriculture (hereinafter: Minister) and of the associated living beings including its soil, irrespective of whether the growing stock or another components of the biocoenosis is temporarily missing.

8 Realization and Translation of Political Ideas Into Action: Enforcement Measures, Incentives and Subsidies, and other Legal Provisions

(Act on Forests: §13/5, rights and obligations of the forest manager; §14, section III, system of forest planning and administration: the planning structure of conducting the forestry activity; §23, the district forest plan; §24-25, the operational plan; §26-28, the annual forestry plan; §29-30, section IV, forest plantation and forestation; §34-39, ordering forest plantation and forestation in the public interest; §40, section V, afforestation, forest cultivation, and the transformation of the forest structure; afforestation; §41, forest cultivation; §42, supervision of the completed afforestation; §43, transformation of the forest structure; §44, section X, professional management of forestry works, guarding of the forest; §86-89 and §90-91, respectively, section XI, forestry administration; §92, rules of procedure; §93-95, responsibilities of the Minister; §96-97, responsibilities of the state forestry service; §98, National Forestry Board; §99, section XII, forest maintenance

contribution, forestry penalty and forest protecting penalty; §101, forest maintenance contribution; §102, forest penalty; §103, forest protecting penalty,)

The introductory provisions state in §3(1) that in the interest of extending the national forest stand and also in order to improve the condition of the environment, the state supports the plantation of new forests, the maintenance and conservation of existing forests.

§92(1) The various tasks of administration and authorities related to forestry administration shall be performed by: a) the Minister, b) the National forestry authority, and c) the regional organ of the national forestry authority, the State Forestry Service.

There is an Executive Order 29/1997(IV.30.) by the Minister of Agriculture on the Act on Forests and the Protection of Forests to ensure the necessary legal background for the realisation of political ideas.
As was mentioned in the second question, the forest authority takes overall control of forestry activities. The forest inspectorates supervise, and if case of need, contribute to the process of annual management planning for the private forest managers and the state forestry as well.
The annual budgetary plan is a part of annual forest management plan. The annual budgetary plan consists of the payment obligations derived from forest maintenance contribution and interim payment in advance, and the paying off means equivalent of forest maintenance works and paid forest maintenance contribution in advance. The subsidies for the forestation, nursing of young stands and cleaning depend on the tree species and their origins.

9 Scope and Reach of Nature Conservation and Environmental Protection Laws: Effects and Impacts on Management and Preservation of Forests

(Act on Nature Conservation: §2-3, §7(2)d, §16, habitat protection, §32-33, §72. Act on Forests §62-63, wood-felling and cutting, collecting of forestry propagation stock, utilization of forest land considering the rules of nature conservation; §66, 68, 70, visiting the forest land for the purpose of recreation and sports in case of nature conservation; §80/1, §81/c-d, rules of procedure; §93/2, §48/4, forest on nature reserve area.)

9.1 Effects of Nature Conservation on Forests

Biodiversity and usage of indigenous species: The Act on Forests and the Protection of Forests states in §4(f) that a “living organism” means species, subspecies and varieties (hereafter referred to jointly as species) of micro-organisms, fungi, plants and animals. §4(i) defines “biodiversity” as the multiformity of flora and fauna, including the genetic (introspecific) diversity and the multiformity of the various species, their communities and natural ecosystems. Pursuant to paragraph §8(2) “native organism” means any wild creature which lived or still lives in the natural geographic region of the Carpathian Basin in the last two thousand years, and not as a result of introduction (intentional or not).
The Act contains regulations for preserving and enhancing biodiversity and about obligatory usage of indigenous tree species. However, statutory basis exists to use subspecies and varieties and using up the results of forestry research. It is not possible to prohibit the use of subspecies or varieties of an indigenous tree species

in order to produce better quality and greater quantity wood in forests situated in protected natural areas, and even they should be promoted in order to increase the biodiversity.

Restriction of the preparation of the soil and burning of residues in cutting areas: The Act states in §33(2) that burning of residues in cutting areas and ploughing shall be avoided in forests situated in protected areas. Although the conditions of these activities were drafted in other acts, this Act contains unconditional restrictions. In a particular case, these two activities might be performed by permission of nature conservation authority. It should be noted that the successfulness of the transformation of the forest structure decreases with inflexible rejection of forest management tools.

Choosing of tree species for reforestation in a nature protected area: There is explicit direction in choosing of tree species for reforestation in §33(3). In protected natural areas, reforestation shall be exercised exclusively with native tree species in a species composition typical to the habitat type and using nature-friendly methods. In this case, there is no possibility for examination. The effects will probably appear during execution of the national reforestation programme, considering the case of extreme sites, it will be a hard task to create intentions to reforestation, without indigenous species.

Restriction of logging during the growing season: According to the §33(4) logging during the growing season in forests situated in protected natural areas shall only be executed in exceptional and justified cases (e.g., for purposes of plant protection) with the approval of the nature conservation authority. This clause means that the decision about exceptional and justified cases shall fall within the competence of nature conservation authority.
The idea of growing season being used as the basis for planning logging operations needs refinement. Limiting logging to a time outside of the growing season may have the effect of increasing cost of forestry.

Harvest restrictions: §33(5) restricts the use of the use of clear-cutting in protected natural areas to: a) clear-cutting may only be authorised in forest stands not being able to naturally regenerate or consisting of non-native species and being of a maximum block size of 3 hectares; and b) the block size of final cutting following gradual reforestation must not exceed 5 hectares. §33(6) specifies that the permitted size of final cutting or clear-cutting areas determined under paragraph (5) sections a) and b) may be exceeded in exceptional cases for purposes of plant protection, to ensure survival of natural regeneration or for nature conservation reasons.
§33(7) states that in forests that consist of non-native tree species which are located in protected natural areas, efforts shall be made to establish close to natural conditions by replacing, complementing, restructuring such forest stands, by changing the tree species and by regulating the species composition, thus, eliminating monocultures. Consequently, restructuring of non-native forests is an unconditional nature conservation interest. In these cases, an exemption should be given to the restriction on clear-cutting above 3 hectares.
§33(8) requires that, with the exceptions specified under paragraphs (6) and (7) above, final cutting may only be executed when forests have approximated their biological maturity. Accordingly, clear-cutting may be used for restructuring and for ensuring the survival of naturally regenerated native trees. A broader examination of

the effects of this provision is not possible because the Ministerial Order and Executive Decree are under preparation.
The Act prescribes in §36(1) that nature conservation management techniques, restrictions, prohibitions and all other liabilities applying in protected natural areas shall be laid down in the provision of law declaring protected status.
(2) “Nature conservation management” means any activities aiming at surveying, registering, conserving, guarding, maintaining, displaying or rehabilitating protected natural values or areas.
(3) A management plan shall be made for each protected natural area, which shall oblige every person engaged in activities in the area. The management plan shall be revised every ten years.
(4) The Minister shall provide by decree for the preparation, content and approval of the management plan and for the person in charge of preparing it.
Considering that the above mentioned decree has not been published yet, there is a great responsibility upon the forest authority to keep the nature conservation interests and forestry interests in a sustainable manner.

9.2 Collision Between Regulations in Forest Laws and Environmental Protection Legislation

As was mentioned earlier, the Act on Forests and the Protection of Forests and the Act on Nature Conservation were passed at the same time, and the Act on the General Rules of Environmental Protection was passed a year earlier (Act No. LIII of 1995). In this way, there is a good harmonization between the Act of Forest and the Protection of Forests and the Act of Environmental Protection.
A more important question is the connection between the Act of Forestry and the Protection of Forests and Act of Nature Conservation. A general opinion among the “field” foresters is the Act of Forest and the Protection of Forests too “green” from the traditional forestry viewpoint. The traditional viewpoint is that the first rule on nature protection was born in the scope of Act on Forests in 1935. Hungarian foresters have spoken about sustainable forestry at least since 1961 with passage of the Act on Forest and Wildlife Management. Essentially, the word “long lasting” has the same meaning as “sustainable”.
The main emphasis is on the possibility of the long-term or sustainable - forestry, because there is a very important claim to various forest products and closely connected with this is a fundamental demand by those who make a living on the forested area. Another important aspect, especially considering elevated levels of carbon dioxide in the earth’s atmosphere, is that the half of air-dried wood is carbon. In this way, forest products can contribute to carbon storage and be a substitute for use of products made from fossil fuels.

9.3 Other Relevant Regulations Concerning Forest Law and Environmental Legislation

(Act No. LV of 1996 on the Protection of Game, Game Management and Hunting: §27, §75-80, §83(e); Executive Ministerial Decree 29/1997(IV.30) for Act on Forests and the Protection of Forests)

Finally, I would like to give my experience of the past two years. In my opinion, the legislative process of the new Act on Forests and the Protection of Forests is a good example of successful implementation and harmonization forest management and environmental protection activities.

Summary

Hungary is one of several central European countries, whose political and economical systems have changed. The centrally planned system was replaced by a market economy. Since 1990, forestry has been adapting to a market economy. Cooperative forests have been given back to their former owners, and part of the state forest has been privatized together with some technical services and wood processing plants.

These changes are coinciding with changes in the international community on environmental and forest policy. In accordance with increasing public awareness of environmental issues, non-wood-producing functions of forests have a higher priority, and sustainable forest management is interpreted in a much wider context, in which conservation of biological diversity and sustainable development of the natural and human environment are equally important criteria.

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REVIEW OF THE FOREST AND ENVIRONMENTAL LEGISLATION IN LATVIA

LIGITA PUNDINA AND JANIS DONIS

1 Forestry Related Legislation

Latvia has a legislation system that is based on a mix of legislation of Soviet times, the previous Republic, and the current Republic. Some laws have been revised two or more times since restoration of independence. This Paper gives an overview on the main forest and environmental legislative acts in force in Latvia, followed by a summary of their discrepancies and imperfections.

Ecological rights in the Latvia are an important legal issue which helps to maintain and protect land, forests, waters, plants, etc. Ecological rights have a very integrated character and contain norms of different branches of rights. Therefore looking on forestry-related legislation, one has to take environmental protection legislation into account.

Table 1: Basic Legal Acts Related to Forest Sector

Forest Acts	Environmental Acts
Law on Forest Management and Utilization	Law on Environment Protection
Law on Utilization of State Forests	Law on Particularly Protected Nature Territories
Law on Hunting	Law on Protected Belts
Set of regulations issued on the basis of these laws by Cabinet of Ministers	Set of regulations issued on the basis of these laws by Cabinet of Ministers

2 Forest Legislative Acts

The Law “On management and utilization of forests, 1994” is the main forestry act which describes basic principles of forest management, utilization and protection. The object of the law is forest-covered and non-covered lands awarded for use or into property for the needs of forestry (Forest Fund). Main goals of the law are:

- to provide protection of the forest as an ecosystem and renovation of forest as a resource.
- to regulate basic principles of forest management and utilization.
- to protect the rights of forest managers and users.

It is written in the law that forest utilization restrictions depend only upon forest ecology and economic factors not on who has forest utilization rights. There is, however, a number of statutory differences for private and state forests in other legislative acts.

Maintenance of forest cover is described in the sections that regulate principles of the forest management, utilization, regeneration and protection. The law prescribes three categories, depending upon the economic and ecological significance of individual forests. More detailed descriptions are given in the regulations titled “On forests inclusion into categories and selection of particularly protected forest areas, 1994.” These regulations determine how Latvia’s forests are divided into categories and how particularly protected forest areas are selected.

Category I – protected forests:

- forests in the nature reserves, national parks and nature-restricted areas (in compliance with lists approved in legislation acts and other normative acts);
- anti-erosion forests in 1-5 km wide belt along the Baltic Sea and the Gulf of Riga following natural borders of erosion-endangered soils;
- green zone forest parks (urban forests), forests around all Latvian cities, forests within cities administrative borders and forests adjacent to cities.

Category II forests – restricted management forests:

- forests in the protected landscape areas and green zone forests (suburban forests)
- forests around largest Latvia’s cities and ecologically unfavorable cities (environment protection forests)
- forests in those forestry supervised territories that are located at the Baltic Sea and the Gulf of Riga and are not included in category I

Category III forests – commercial forests – are the rest of the forests of Latvia.

In forest category II and III can be singled out the particularly protected forest areas – forest groves, forests on valley slopes, forests along banks of rivers and lakes, etc. There are totally 26 different titles.

Final Felling Regulations, 1996 and Intermediate Cutting Regulations, 1996 were developed to execute Latvia’s international commitments on sustainable forest management, to increase amount and value of wood obtained from unit of area, to increase ecological stability and stability against unfavorable environmental conditions and to determine a unified forest management and utilization procedure. These regulations set restrictions for utilization rights depending upon forest protection category (subcategory and kind of particularly protected forest area).

In these regulations are followed the principle found elsewhere in environmental protection legislation – the strongest management restriction should be observed. For instance, if in the restricted management forest there is identified a particularly protected forest area with a stronger cutting restriction, this stronger restriction should be observed.

Utilization of State-owned forest is regulated by the Law on Utilization of State Forests, 1995. Application of the law relates only to state forest fund. The objectives of this law is to preserve and enlarge national forests as a guarantee of forest cover and to provide a legal basis for ecological properties protection and utilization in relation to forest resource utilization. Under this law, the Latvian Government ensures execution of principles provided by international agreements binding upon Latvia in the utilization of state forests. This law restricts the procedure of alienation of protected and restricted management forests.

3 Law on Environmental Protection, 1991

This act provides an “umbrella” for environmental protection. Its objective is to create a mechanism governing interactions between human society and nature, ensuring environmental protection, a productive economy and the people’s right to enjoy a high quality environment. Basic principles of the law are ensuring favorable life environment, coordination of society’s economic and environmental interests, coordination of territorial, national, state and international interests in environmental protection and natural resource utilization. Thus, the law regulates natural resource utilization and the requirements for environmental protection.

The object of the law is environmental protection, including nature resources: land, subsoil of the earth, soil, water, atmospheric air, flora and fauna, and particularly protected nature objects and territories. Forest are treated as renewable natural resources.

The law determines that natural resource utilization are included in the branch of environmental protection laws. Therefore the aforementioned law “On forest management and utilization” is to be included as such. If a forest, as a renewable natural resource, is managed by the State Forest Service competence, then the competence of Ministry of Environment Protection and Regional Development (mainly) in forest environmental protection and utilization is to elaborate and submit to the Cabinet of Ministers proposals on national significance nature reserves, national parks, regional nature protection complexes (systems), establishing of cultural and historical and other particularly protected territories and objects.

In the chapter on nature protection, the law defines particularly protected territories. The procedure of management and utilization is further regulated by the law “On Particularly protected natural territories”. The law “On environment protection” determines that the state especially protects endangered and rare species and biotopes both in the national and international scale, in order to fulfill obligations of international agreements in which Latvia is a participant. However, the biotope is not an object of the law “On Particularly protected nature territories.” One could conclude that protection of biotopes, likewise the legal protection of particularly protected forest areas currently in the legislation, is an unsettled issue.

The goal of the law on Particularly Protected Nature Territories, 1993 is: to determine basic principles of the particularly protected nature territories and an order of their establishing, ensuring of existence, procedure how these territories are managed and controlled. The aim is to unite state, international and regional and private interests in protecting natural territories establishing, preservation, maintenance and protection. Objects of the law are particularly protected nature territories (hereinafter referred to as protected territories). Protected territories are divided into the following categories: nature reserves; national parks; biosphere reserves; nature parks; nature monuments; nature preserves, and protected landscapes areas. Nature reserves, national parks and biosphere reserves are established by the Parliament by passing a law. Protected landscape areas, nature preserves, nature parks and nature monuments are established by the Cabinet of Ministers. Nature preserves (nature restricted areas), nature parks and nature monuments, which are significant for nature preservation in the relevant territory, can be established also by local governments.

The law provides that for every protected territory, regulations should be developed to ensure its protection and to not admit decreasing its value. Protection and utilization regulations of the protected territories define necessary, admissible and prohibited activities. There are general plans for protected territories protection and utilization, and they are approved by Cabinet of Ministers. Individual protected territories protection and utilization regulations are elaborated for each protected territory on the basis of peculiarities of the particular area and the objectives of establishment. Protected territories with various aims can be divided into functional zones. They have different protection and utilization regulations.

The law states that the landowner or user has the right for tax relief or any other privileges stipulated by the law, if observing protected territory protection and utilization regulations that cause an economic loss to him. Losses caused to the owner due to the restrictions of utilization rights upon establishing particularly protected forest compartments are envisaged to be covered also by the Cabinet of Ministers regulations “On inclusion of forest into categories and selection of particularly protected forest areas.” In the State Forest Service there is no information that the state had compensated the owner for restrictions of such utilization rights. The problem might be in the fact that particularly protected forest compartments (areas) are not coordinated with the protected territories categories which are envisaged by the law “On particularly protected natural territories”. The legal protection regime of these areas is unclear likewise biotopes, which are not objects of the law “On particularly protected nature territories.”

In protected territories, the land property rights of the former landowners or their descendants can be restored and the land can be given to the property of physical and legal persons only, if these persons undertake to observe protected territories protection and utilization regulations and nature protection plan. In this case a special entry is made in the resolution on granting of the land in property, by securing utilization rights restrictions in the land book. To note, in compliance with the civil law, utilization rights restrictions can be set only on the basis of the law or agreement, and forest utilization rights restrictions are set in laws on forest management and utilization.

The law says that in establishing protected territories in Latvia, recommendations of international conventions and international environment protection organizations should be taken into account. The *Regulations of General Protection and Utilization for Particularly Protected Nature Territories, 1997* set a general order of particularly protected nature territories and of the admissible and forbidden kinds of activities.

The major restrictions of utilization are in the *nature reserves*. Nature reserves are untouched by human activities where uninterrupted operation of natural processes is ensured to protect and investigate rare or typical ecosystems and their components. In the nature reserve territory the following functional zones can be determined: core zone, restricted zone and buffer zone.

National parks are vast localities characterized by natural formations of outstanding national significance, little-changed landscapes and culture landscapes of untouched human activity, diversity of biotopes, abundance of cultural and historical monuments and peculiarities of cultural environment. Functional zones can be determined in the national park territory, if needed for nature protection, recreation, educational and scientific purposes.

Biosphere reserves are vast territories where one can find landscapes and ecosystems of international significance. The target of establishing biosphere reserves is to ensure preservation of nature's diversity and to promote sustainable social and economic development of the territory. The following zones can be determined in the biosphere reserves as follows: natural restricted area zone (one or several), landscape protection zone and buffer zone.

Nature preserves (nature restricted areas) are territories representing nature complexes which are little changed by human activities or are changed to different extent, deposits of rare or endangered wild plants, culture landscapes which are unique or characteristic for various Latvia districts, places of exceptional beauty. In nature restricted areas economic or other kinds of activity are permitted that do not contradict the goals and tasks of establishing the given reserve and envisaged by individual protection and utilization regulations and nature protection plans.

Nature parks are territories representing natural and cultural historic values for a definite locality and suitable for society's recreation and education. Functional zones can be determined within the territory of nature parks, if it is needed for nature protection, recreation, educational and scientific purposes. Clear cutting and reconstruction cutting are forbidden in nature park forests.

In *protected landscape areas (localities),* if needed, functional zones can be determined. Protected landscape localities are territories with greater area than nature restricted areas and are distinguished by a peculiar and multi-sided landscape. Sustainable economic activity not harming nature is permitted. In protected landscape localities any activity is forbidden that changes culturally and historically established landscapes, landscape elements of ecological and aesthetic significance and culture environment peculiarities, and diminishes nature versatility and ecological balance or promotes environment pollution.

Nature monuments are separate, lonely standing formations of nature: trees, dendrological plantings, caves, springs, valleys, rocks, water falls, stones and other rarities having scientific, cultural, historic, aesthetic or ecological value. As protected geologic and geomorphologic nature monuments are determined detrition of bedrock, subsoil fresh water and mineral water springs, big boulders, as well as typical or rare relief forms. Regulations enumerate specific activities forbidden in the nature monument territory.

4 Law on Protective Belts 1997

The law on environment protection under the objects of special nature protection provide for protective zones of various importance. The law on protective belts defines them areas the task of which is to protect different types (both natural and artificial) of objects from undesirable outer influence and exploitation or to protect people from harmful impacts of any object.

The object of this law is to provide for and protect different types of protective belts and zones, determined in laws and other normative acts. The law sets the following types of protective belts and zones:

- Protective belts for environmental and natural resource protection;
- Exploitation protective belts are set along both transportation, communication and other lines, as well as around objects ensuring operation of various state services;
- Sanitary protective belts are set around objects requiring higher standards of sanitary safety;
- Safety protective belts, whose purpose is to ensure human safety from high risk activities.

Protective belts for environmental and natural resource protection are established around objects and territories of importance from the perspective of environmental and natural resource protection and rational utilization. Their purpose is to diminish or eliminate anthropogenic negative impacts on objects for which protective belts have been established. There are the following types of protective belts for environmental and natural resource protection:

- Protective belts along the Baltic Sea and Gulf of Riga;
- Protective belts along water reservoirs and water courses;
- Protective belts (protection zones) around cultural monuments;
- Protective belts around places for drinking water taking;
- Protective belts around health resorts;
- Forest protective belts around cities (green zone forest parks).

In cases where several types of protective belts overlap, stronger requirements and the larger minimal width are valid. All restrictions on utilization rights become valid upon their being entered into the land book.

5 Comments on Presently Occuring Problems

In Latvia, like in many places in Europe, natural resource legislation is related to environmental protection legislation. This refers fully to forest legislation and in particular with regard to important forest environmental protection requirements that are relevant in forest management and utilization regulating acts. Sources of ecological rights can be divided into two groups: a) legislative acts regulating the protection and use of separate natural resources laws such as the laws “On forest management and utilization,” and “On state forest utilization”, and b) legislative acts regulating all natural environments, where economic activities are restricted or forbidden such as the laws “On environment protection,” and “On particularly protected nature territories”. However, norms regulating forest environmental protection are rarely coordinated with environmental protection legislation. For example, legal protection of biotopes and particularly protected forest compartments is currently an unsettled issue in the legislation. The problem lies in the fact that the mentioned specifications (terms) are not coordinated with the protected territory categories envisaged by the law “On particularly protected nature territories” and therefore not being objects of the law “On particularly protected nature territories.” Another example is the coastal area of the Baltic Sea (see Table 2).

Table 2: Example on Coastal area of the Baltic Sea

Protected Belt along Baltic Sea and Gulf of Riga	*Anti-erosion Forest*
Main goal of area	
Reduce impact of pollution on sea	
Maintain anti-erosion function of forests	Prevent soil erosion
To prevent development of erosion	
Protect coastal landscape	
To ensure balanced and long-lasting use of the coastal nature resources including recreational and tourism resources	
Criteria and indicators for establishment	
Dune protection belt: At least 300m wide starting from line where is uninterrupted vegetation	Up to 1-5 km wide belt on soils threatened by erosion
Restricted management belt up to 5 km taking into account natural conditions	
Methods for marking out elaborated by	
Ministry of Environment coordinating with Ministry of Traffic	State Forest Service? (not clearly defined in laws)

The mutual non-conformity of the acts can be settled by applying the principle that if there is a stated contradiction between general and special norms of rights covered by normative acts, the general norm of rights is effective as far as it is not restricted by a special norm of rights. If a contradiction between the norm of general rights and that of special rights occurs, the norm of general rights shall apply as long as it is not restricted by the norm of special rights. Norms of special rights in relation to forest protection categories are contained in the law “On forest management and utilization” and on that basis the Cabinet of Ministers issued regulations.

Such a situation causes problems in application of restrictions set forth by the forest legislation. Due to Civil Law, paragraph 1082, the restrictions on property utilization rights are set by law, by court resolution, or private will through testimony or agreement. The restriction can relate to both granting of some rights to other persons, or the owner abstaining from the exercise of certain rights of utilization. Since social interest is mainly related to utilization of the property, then the major part of the property restrictions relate to the rights of property utilization. Restrictions on property utilization rights are especially dominating in society’s public interest, for instance, by preserving the forest as a large renewable wealth of Latvia’s nature. However, restrictions are to be interpreted in a narrower sense. With this is

connected the presumption of property inviolability. Any restrictions should be proven by the one in whose favour these restrictions exist, in this case, by the state. Until any concrete restrictions is proven, it should be assumed and acted in such a way, as if such a restriction does not exist.

Thus, in the legislation by defining restrictions on utilization rights, requirements of legal technique should be observed, otherwise their application becomes problematic. One could refer to State Forest Service, local government or forest inventory specialist rights to determine a particularly protected forest area. Other cases occur if by means of a lower level normative act issues are regulated which are compulsory not only for the relevant state institution. For instance in compliance with Cabinet of Ministers equipment law the state institution can substantiate its concrete action towards outside by Satversme (Constitution), law or regulations rather than instruction or suggestions.

The forest is one of the most common and important biogeocenosis (ecosystems) in Latvia, where united in one complex are land, subsoil, trees and other plants, animals and waters. These objects are dependent upon each other and only their common coordinated protection is preservation of forests guaranteed as an important ecosystem. Therefore in an ideal condition forests as a renewable natural resource would be subordinated to nature resource legislation, but forest nature object protection systems would be established and coordinated with environmental protection legislation.

To conclude, the main problems in Latvia at the moment in the field of forest and environmental protection legislation are:

- Insufficient co-operation among state institutions responsible for environmental protection,
- Lack of clear motivation for protection of specific territories, as well lack of real (economical) mechanisms for providing it, and
- Insufficient cooperation among interest groups (state-society-individual).

AN OVERVIEW OF NEW FOREST AND ENVIRONMENTAL LAWS IN POLAND

KRZYSZTOF KACZMAREK AND SLAWOMIR WENCEL

1 Relevant Legislation

Laws in force on forestry and the protection of the environment and nature are:

- The Forest Law of 28 September 1991 (updated on 24 April 1997);
- The Protection of Nature Law of 16 October 1991;
- The Environmental Protection Law of 31 January 1980 (updated on 29 August 1997);
- The Protection of Arable and Forest Land Law of 3 February 1995; and
- The Land Development Law of 7 July 1994.

The most important issue in forestry in Poland today is reprivatization of forest holdings, a process that is still under much political discussion. The scale of returning forests to former owners amounts to 4,891 thousand ha or 56% of the total forest area in Poland.

2 Titles to Land: Statutory Basis, Definitions and Protection

Forms of forest ownership in Poland are of two general types:

1) Public Forests: owned by--
   a) The State Treasury: which are managed and used by--
      i) Panstwowe Gospodarstwo Lesne “Lasy Panstwowe” (State Forest Enterprise or ‘the State forests”) supervised by the Minister of Environmental Protection, Natural Resources, and Forestry;
      ii) Nature protection units (national parks);
      iii) Organization units controlled by other ministers or voivodes as well as by Angecja Wlasnosci Rolnej Skarbuy Panstwa (the State Treasury Agricultural Agency).
   b) Local governmental administration units (communes)
2) Private Forest Ownerships: owned by--
   a) Individuals;
   b) Community common land, land that is the property of a village or part of a village;
   c) Agricultural collective farms and agricultural cooperatives that manage the land and use it free of charge;
   d) Other legal bodies, e. g., churches and religious organizations, social organizations, political parties, labor unions, and companies.

The amount of land under the various ownerships is summarized in Table 1. There are about 900,000 private forest ownerships in Poland, and their average size is 1 ha.

Table 1. Forest Ownership in Poland, 31 December 1997

Ownership Type	Amount (in thousand hectares)	Percent
Public Forests		
The State Treasury	7,205	82.1
State Forests	6,881	78.4
National Parks	177	2.0
Other	147	1.7
Communes	77	0.9
Subtotal	7,282	83.0
Private Forests		
Individuals	1,397	15.9
Common land	68	0.8
Collective farms	12	0.1
Other	20	0.2
Subtotal	1,497	17.0
Total	8,779	100.0

The Forest Law defines an owner of the forest as a “natural or legal person who owns the forest or is granted a perpetual usufruct of the forest as well as a natural or legal person or an organization without a legal status which owns the forest in a natural way and uses, manages or leases the forest.” Forests owned by the State Treasury with the exception of

- National parks;
- of the Agencja Wlasnosci Rolnej Skarbu Panstwa (The State Treasury Agricultural Agency;
- or perpetually leased in accordance to separate regulations;

are managed by the State Forests. Among other things, the State Forests run the forest economy, manage forest land and other real estate (as well as movable property connected with the forest economy), draw up a register of the property of the State Treasury and determine its value. As an organization of the state, the State Forests do not possess separate legal status, but represent the State Treasury with respect to the property it administers.

3 Interventions and Statutory Restrictions on Property

Forests constituting property of the State Treasury are supervised by the Minister of Environmental Protection, Natural Resources, and Forestry, and forests that are not such property are supervised by a voivode or by a director of the governmental local administration unit.

By means of agreement, a voivode can entrust his supervisory duties, including issuing administration decisions of the first stage, to the director of the Regional Directorate of the State Forests. By means of agreement, a director of the governmental local administration unit can entrust his supervisory duties, including issuing administration decisions of the first stage, to the director of a local State Forest district. The director of the Regional Directorate of the State Forests and the director of a local State Forest district can perform duties entrusted to them by a voivode or a director of the governmental local administration unit after funds for the given purpose have been provided by those who have delegated the task.

Forest management in forests constituting nature reserves and parts of national parks shall abide by principles and regulations of nature protection law.

In order to provide common protection of forests, forest owners are obliged to control and maintain balance in forest ecosystems, enhancing the natural immunity of forest stands, and in particular to:

- Provide preventive and protective conservation safeguarding the forest from fire;
- Prevent, detect and eliminate pests and their excessive proliferation; and
- Protect forest soil and water.

Should the above obligations be neglected in forests that are not State Treasury property, the forest owners' tasks shall be at the discretion of a governmental local administration official who shall specify them in an official decision.

Forest owners are obliged to maintain constant conservation of forests to provide continuity of forest use, and in particular to:

- Maintain forest vegetation (forest stands) and natural swamps and peat bogs;
- Restore forest vegetation (forest stands) within two years after logging and within five years after damage caused by fire and other natural disasters;
- Conserve and protect the forest (including protection from fire);
- Restructure the forest stand when it does not meet the objectives of forest management included in a forest management plan or an administrative decision;
- Use the forest in a rational way, providing for its continuous and optimal functioning by ensuring that: (a) wood is removed within the limits of the productive capacity of the forest; and (b) raw materials and by-products are obtained in a way that secures biological reproduction of the forest and protection of ground cover.

The modification of a forest into arable land is permitted only in case of individually justified needs of the forest owner. The decision on developing the forest into arable land shall be issued:

- In the case of forests owned by the State Treasury, by the director of the Regional Directorate of State Forests in response to the application of the local forest district director;
- In the case of forests that are not owned by the State Treasury: (a) by a governmental local administration official in response to an application of an forest owner for forests up to and including 10 ha, and (b) by the voivode in response to the application of an owner of forests greater than 10 ha.

Wood taken from the forest is subject to marking. It is the forest owner's obligation to mark the wood. Wood obtained from a forest that is not State Treasury property shall be marked by the governmental local administration official, who will issue a document to the owner certifying the legal origin of the wood.

4 Public Access to Forests

Forests owned by the State Treasury, with exception of the those covered in items 1 and 2 below, are accessible to the people.

1) A permanent admission ban applies to the following areas

- Young forest stands up to 4m high;
- Experimental areas and forests producing seeds;
- Wildlife sanctuaries;
- Headwaters of rivers and streams; and
- Areas in danger of erosion.

2) The director of the local State Forest district can impose a temporary ban on admission to forests owned by the State Treasury in case of:

- Loss or substantial damage to trees and decaying undergrowth;
- Fire danger; and
- Work under progress dealing with tree harvesting or forest protection.

Forests owned by the State Treasury are available for picking fruits of the undergrowth for:

- Individual use; and
- Industrial purposes, if an agreement on picking fruits of the undergrowth has been concluded with the local State Forest district, and the director of the local State Forest district has not refused to sign an agreement because picking fruits of undergrowth would endanger the forest environment.

An owner of a forest that is not property of the State Treasury has the right to deny admission to the forest by posting an appropriate sign.

Traffic by motor vehicle, carriage and motorized bicycle in the forest is permitted only on public roads and on forest roads marked by signs allowing such traffic. This does not apply to disabled persons using vehicles adjusted to their needs. Horseback riding is allowed only on roads indicated by the forest inspector. Parking of vehicles is allowed on forest roads only in places marked for this purpose. This regulation does not apply to person on duty or conducting forestry work.

Holding sporting events or public events of any sort in the forest requires the permission of the forest owner.

It is forbidden in forests to pollute soil and water; litter; dig; destroy mushrooms and mushroom spawn; destroy or damage trees, bushes and other plants; devastate equipment, objects of economic, recreation or technical use, and signs and signboards; pick fruits of undergrowth in places marked as forbidden; move and collect bedding; graze cattle; bivouac or camp; pick eggs or take nestlings; frighten, chase, and kill wild animals; set dogs free; and make noise or to use a horn except for an emergency. Regulations forbidding digging and destroying mushrooms and

mushroom spawn do not apply to forest management activities, and regulations forbidding frightening, chasing and killing animals, setting dogs free, and making noise do not apply to hunting.

In forests and on midforest areas, as well as within 100m from the forest edge, it is forbidden to behave and act in a way that may pose a danger, especially to:

- Light a fire in different places than places selected for this purpose by the owner of the forest or the director of State Forest district;
- Use an open flame; and
- Burn the outside layer of the soil and remains of plants.

5 Scope and Reach of The Forest Law

Definition of Forest Land: The Forest Law defines the principles of preservation, protection, and growth of forest resources as well as basic rules of forest management linked to environmental protection and the economy of the country. These regulations apply to forests regardless of their ownership.

Under the Forest Law, the following definitions are used. A forest is land which:

1. Has a compact area of at least 0.10 ha covered with forest vegetation—trees, bushes, and undergrowth—or temporarily devoid of it and (a) is selected for forest production, or (b) constitutes a nature reserve or part of a national park, or (c) is registered as a monument of nature;
2. Is related to the forest or is used for forest management activities such as buildings and structures, drainage systems, forest division network, forest roads, land under power lines, forest nurseries, log yards, as well as parking areas and recreation objects.

Forest management concerns in management and use of forests, forest protection and silviculture, maintenance and enlargement of forest resources and stands, game management and game animal economy, harvesting—with the exception of purchasing—wood, resin, Christmas trees, stump wood, bark, needles, game animals, and the fruits of undergrowth as well as sale of all those products, and using other non-productive functions of the forest. Sustainable forest management is an activity to develop forest structure and to use it in a way and rate which ensures preservation of the forest biological diversity and abundance, high productivity and regeneration potential, vitality, and ability to perform both at present and in the future, all important functions: protective, economic, and social, at local, national, and global levels, without harmful impact on other ecosystems. A forest management plan is the basic document prepared for forests owned by the State Treasury, containing a description and evaluation of forest condition as well as objectives, prescribed tasks, and methods of forest management. A simplified forest management plan is a plan prepared for forests not owned by the State Treasury and of at least 10 ha in size, which includes a general description of the forest or the land selected for afforestation as well as specifying the main purposes of forest management. A nature protection program is a part of a forest management plan, containing a thorough description of nature condition, tasks needed for nature protection, and methods for their implementation. It refers to the territory in a State Forest district**.**

Objectives and Principals Forest Management: Sustainable forest management is based on the forest management plans or the simplified forest management plans and is focused on the following purposes:

- To maintain forests and their beneficial influence on climate, air, water, soil, environment for people's life and health, and ecosystem balance;
- To protect forests, particularly forests and forest ecosystems that constitute natural fragments of the local nature or forests of particular significance due to their: (a) variety of nature, (b) preservation of forest genetic resources, (c) landscape quality, and (d) ability to meet certain scientific needs;
- To protect soil and areas that are in particular danger of pollution or damage and areas of considerable social significance;
- To protect surface waters and underground waters, retain the integrity of river basins, in particular on watershed areas and on areas supplying water to underground lakes; and
- To produce wood, raw materials, and non-timber products, based on principles of rational forest management.

Forest management is based on the following principles:

- Common protection of forests;
- Consistent conservation of forests;
- Continuity and balanced use of all forest functions; and
- Enlargement of forest resources.

Forest Promotional Areas are functional areas of ecological, educational, and social importance, their functioning to be determined by a consistent economic and protective program prepared by the respective director of the Regional Directorate of the State Forests. For each individual Forest Promotional Area, the general director summons the scientific-social council in the area responsible for projects and their implementation.

In order to promote sustainable forest management and protection of the forest, the general director of the State Forests has the right to establish Forest Promotional Areas by decree. Forest Promotional Areas are comprised of forests under supervision of the State Forests. Forests that belong to other landowners can be included in Forest Promotional Areas provided the owners have applied for inclusion.

Protective Forests: forests shall be classified as"protective forests" if they:

- Protect the soil from getting washed away or prevent the ground from subsiding or rocks from collapsing and avalanches;
- Protect surface and underground water reserves and maintain the hydrological balance in the water basin;
- Limit the occurrence and expansion of shifting sand;
- Are permanently damaged as a result of industrial activity;
- Constitute seed forests, habitat for wild animals, or is an area of which the vegetation is threatened;
- Is of particular scientific and nature significance or is essential for the defense and security of the country;

- Are located (a) with the administrative borders of a city and within 10km from administrative boundaries of cities with over 50 thousand inhabitants, (b) in protection zones around spas or health resorts, (c) in the upper belt of mountain forests.

Forest management in forests constituting *nature reserves or parts of national parks* is based on regulations of the nature protection law. Forest management in forests registered as nature monuments requires consultation with the conservator of monuments in the province with respect to regulations on culture protection and musea.

6 Realization and Translation of Political Ideas into Action: Incentives, Subsidies And Taxation

The Forest Law stipulates that the State Forests (Lasy Panstwowe) shall be granted *subsidies* for assignments indicated by the administration, in particularly for:

- Purchase of forests and lands for afforestation and recultivation as well as purchase of other forest land in order to preserve its nature quality;
- Implementation of the national project to enlarge forest areas as well as the related project for conservation and protection of young forest stands;
- Development and protection of forests in danger;
- Making regular, global inventories of forests, updating information about forest resources, and maintaining a database on forest resources and forest condition;
- Preparing projects of protection of forest nature reserves managed by the State Forests, including implementation of the project for protection of selected species of flora and fauna;
- Providing funds for educating society about forests through creation and managing Forest Promotional Areas, designing paths for nature walks, etc.

Under the Forest Law, it is also possible for private forest owners to receive financial *subsidies* from the state budget or the State Forest budget. Subsidies can be granted for such activities as:

- Sanitary and preventive treatments of pests endangering the existence of the forest, to be at the expense of the respective State Forest districts;
- Forest development, improvement, and protection when the tree stand has to be rebuilt or reconstructued and when identifying the culprit is impossible such as the case of damage caused by gases and industrial dust or in case of fire or other nature disasters caused by biotic or non-biotic factors, to be financed by funds from the state budget;
- Afforestation of land whose owners or users have been granted perpetual usufruct, who have applied for a subsidy which has been approved by the board of governmental local administration, to be paid through funds from the state budget;
- Preparation of simplified management plans for forests not property of the State Treasury, which are owned by individuals or communities, to be prepared at the voivode’s request and at the expense of the state budget;

- Inventory of scattered forests up to 10 ha in area that are not the property of the State Treasury, to be prepared at the voivode's request at the expense of the state budget;
- Seedlings of trees and bushes in particularly justified cases, after application by the owner of the forest that is not the property of the State Treasury and approval has been given by the governmental local administration.

The state budget for 1998 includes expenses for forestry amounting 156,771 thousand zl ($46,109,000), which is an increase to the anticipated expenses for forestry in 1997 by 53%. (Editor's note: the Polish currency is the zloty which is abbreviated zl. While the exchange rate to the U.S. dollar used here is approximately 3.400, the current exchange rate on January 2,1999 is 2.705.) In the budget of the Ministry of Environmental Protection, Natural Resources, and Forestry, the amount of 60,275 thousand zl ($17,727,000) has been allocated for implementation of tasks provided for in the Forest Law.

Task	Amount (in thousand zl)
Purchase of forests	1,500
Afforestation	48,000
Reforestation of areas damaged by natural disasters such as fire	5,500
Managing nature reserves and protection of flora and fauna	1,200
Inventory of forest resources	4,000
Supervision of private forests within national Parks	75

In the 1998 budget for the voivodes, funds totaling 21,476 thousand zl ($6,316,000) have been allotted to finance tasks provided for in the Forest Law, including:

Task	Amount (in thousand zl)
Afforestation of unarable land not property of the State Treasury	3,254
Works resulting from the "National Afforestation Program"	731
Other tasks, mainly supervision of forests not belonging to the State Treasury	14,160
Forest development	3,058
Other	273

In general, 81,751 thousand zl ($24,044,000) have been allocated in 1998 from the respective budgets of the Ministry of Environmental Protection, Natural Resources, and Forestry and the voivodes to accomplish the tasks provided for in the Forest Law.

Forest Taxation: All forests are subject to taxation with the exception of (a) areas unrelated to forest management, (b) land under resorts, construction, or recreation, and (c) land excluded by administrative decision from forest administration and

allocated to non-forest purposes. Forests with trees less than 40 years old, and those in the monuments register are also excluded from forest taxation.

The basis for forest taxation is the number of conversion hectares, determined by the area of prevailing tree species in the forest as well as the stand quality classification for the main species of trees, which results from the forest management plan or the simplified forest management plan. The forest tax per one conversion hectare per fiscal year shall be the money equivalent of 0.20 cubic meters of wood calculated on the basis of the average sale price of wood in the first three quarters of the year preceding the fiscal year.

The forest tax for the fiscal year for protective forests, forests which are part of nature reserves or national parks, and forests which are uncovered by any forest management plan or simplified forest management plan, shall be the money equivalent of 0.30 q of wheat per one physical hectare of forest as determined in the land inventory.

7 Scope and Reach of Environmental Legislation

The *Environment Protection Law* establishes principles for protection and rational control of the environment and preserving its quality, in order to provide current and future generations with favorable life conditions and the capability to use environmental resources. Environment is defined in the law as the combination of natural elements, in particular the earth’s surface, soils, minerals, water, air, flora, and fauna as well as the landscape either in its natural condition or transformed by human activity. Environmental protection is defined as the activity preserving or re-establishing balance in the environment. Environmental protection takes the following forms:

- Rational influence on the environment and managing nature resources in accordance with the principle of sustainable development;
- Prevention of harmful impacts on the environment which cause its destruction, its pollution, change in its physical qualities, or change in the elements of nature; and
- Restoration of elements of nature to their natural condition.

Arable land of high quality and forest land cannot be designated for other purposes than agricultural and forest use. This rule can be waived only in particularly justified cases that have been defined in regulations.

Organizations and individuals who use the land are obliged to protect the earth from erosion, mechanical devastation, and pollution from toxic substances. and if their individual activities are related to agriculture or forestry, they are obliged to use proper cultivation methods. Organizations and individuals who use the land and operate in the field of agriculture or forestry shall apply chemical and biological substances directly to the soil in such quantities and in such ways that they do not disturb the natural balance in the environment, do not cause soil and water pollution, do not do harm to fauna, flora, and ecosystems or cultivation conditions.

The administration of forests and other organizational units operating in the field of forestry as well as owners of forest land that is not State Treasury property, have the obligation to manage their forests efficiently and rationally, keeping them in balance with nature and of appropriate environmental quality.

Protection of nature under the *Nature Protection Law* is to be understood as the preservation, proper use, and renewal of resources and nature elements, especially vegetation and wild animals as well as nature complexes and ecosystems. Nature is protected to:

- Maintain ecological processes and promote the stability of ecosystems;
- Preserve species diversity;
- Preserve the geological heritage;
- Provide continuity of existence of species and ecosystems;
- Create a proper attitude of human society toward nature; and
- Restore the appropriate condition or resources and elements of nature.

Protection of nature takes the following forms:

- Establishing nature parks;
- Recognizing selected areas as nature reserves;
- Establishing landscape parks;
- Designating areas of protected landscape;
- Introducing protection of wildlife and plant species; and
- Introducing protection of other individual sites through recognition of: (a) monuments of nature, (b) scientific sites, (c) ecologically developed land, and (d) nature-landscape complexes.

Items one through four above constitute a national system of protect areas. This system is a combination of compatible spatial forms of nature protection.

Any activities taking place within the territory of a national park are to comply with the nature protection law, and nature protection has priority over all other activities. Nature reserves situated on the territory owned by the State Treasury shall be supervised by organizational units of the State Forests and, in particular, by the directors of the State Forest districts.

Arable land, forests, and other landed properties situated within borders of landscape parks are in economic use. On territories of State Forests located within borders of landscape parks, nature protection tasks are performed by the director of local State Forest district in accordance with the project on landscape park protection included in the forest management plan.

Management of wildlife and plant resources should provide for their continuity, their possible abundance, and maintenance of genetic diversity. These tasks are to be implemented by (a) protection, preservation, and rational management of natural vegetation complexes such as forests, peat bogs, swamps, meadows, dunes, salt pans, and water shores as well as other habitats for plants and animals; and (b) reproduction and expansion of endangered species of flora and fauna, protection and reproduction of habitats of unique animals, and protection of migratory routes of animals.

In national parks and nature reserves, protected species of flora and fauna are either under strict protection or limited protection when there is either no human interference or when there is human influence on ecosystems, by conducting protective, cultivating, and curable treatments.

8 Other Relevant Regulations concerning Forest and Environmental Legislation

The protection of forest areas under the *Protection of Arable and Forest Land Law* means:

- Restricting their designation for purposes other than forest management and use;
- Preventing degradation and devastation of forest areas, damage to forest stands, and deterioration of forest production from activities unrelated to forest management;
- Restoring the economic value of the forest land that has lost its forest features as a result of activities unrelated to forest management; and
- Enhancing the economic value of forest lands and preventing decreases In their productivity.

Designation of forest land for other purposes requires the permission of the Minister of Environmental Protection, Natural Resources, and Forestry in the case of State Treasury land and the permission of the respective voivode in the case of other public land. A person who has been permitted to exclude forest land from production is obliged to pay the basic fee and annual fees as well as a one-time compensation in case of premature forest stand fall. Payment of the basic fee and annual fees for exclusion of the forest land from production in case of a protective forest is 50 percent higher than regular fees and payments.

EXPERIENCES WITH NEW FOREST AND ENVIRONMENTAL LAWS IN THE SLOVAK REPUBLIC

VIERA PETRASOVA AND JOZEF MINDAS

1 Property Rights and Restitution of Ownership

Everybody in the Slovak Republic has a right to property. This right is laid down in the Constitution of the Slovak Republic (SR), which is the principal law of the country. In compliance with the Constitution adopted 1 September 1992, the right to property has equal legal application and protection for all owners. A property owner, within legal limits, is entitled to posses, use, dispose and benefit from his property. The ownership can be complete or limited. Inheritance is guaranteed. Property can be expropriated only when it is in the public interest and with fair compensation. Regarding SR state land, enforcement of the law is usually indirect through independent legal entities that have particular competencies. They accomplish their competencies in the fulfillment of their tasks. The state usually entrusts some competencies, especially right of disposal and control, to its top organs within the government.

The state had not interfered in the right to property in the SR until 1920. In that year, based on a political decision, the ownership of lands was modified in favor of domestic land owners. The first law on land registration was created in 1927. In compliance with this law, a system of legal records on land ownership was established. Further changes in land ownership occurred after 1945. They dealt with confiscation of land which was the property of traitors and land which was the property of German and Hungarian minorities as well as termination of the land reform adopted in 1920. Regarding forestry, these changes affected almost 400,000 ha. of forest land which is equivalent to 20% of the present forest land area. The process of restitution was started after 1991. The laws enacted after 1948 set a priority on the use of land over the right to property. Therefore the process of reprivatization in the SR is in fact the restoration of property rights.

The transformation of owner and user rights to forests of the SR is governed by Act No. 229/1991 on modification of property owner’s relations to the land and other agricultural property and in the wording of later regulations, Act No. 306/1992, amended Act No. 138/1991 on the property of municipalities and in the wording of later regulations, Act No. 282/1993 on redress of past wrongs to churches and religious communities, Act No. 330/1991 on land modifications and the arrangement of land ownership and in the wording of later regulations.

On 31 March 1998, 82,778 people requested restitution of their ownership and user rights in compliance with the foregoing acts. The affected land area was 934,053 ha., while the total area of SR forest land is 1,987,909 ha.

By the end of March 1998, 15% of all request or claims were settled, representing restitution of ownership and user rights for 768,453 ha.

Ownership rights were restored to 2,953 owners deprived of their lands after 1945. This was 8.27% of the total claims settled. The area of forest land restored was 56,130 ha. representing 7.30% of the area of forest lands claimed.

The property of 2,741 communities with 426,944 ha. at issue, represents a substantial proportion (55.56%) of the total area settled. It is followed by the property of 262 municipalities with 182,621 ha at issue (23.76% of the total area settled) and 535 religious communities with 52,281 ha at issue (6.80% of the total area settled).

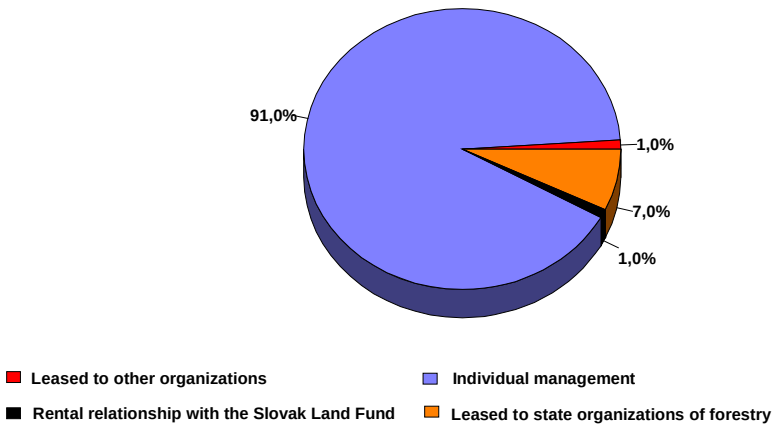
The user and ownership rights were restored for 32,167 private owners (38.86% of the total number of claims settled). The area of restituted lands is 104,779 ha.

There are still 47,063 claimants whose claims have not been settled (56.85% of all claimants). The area of land involved is 165,600 ha. (17.73% of the total claimed area).

Forms of tenure of the forest land restored to their former owners are presented in Figure 1. The trend in reprivatization of forests is illustrated in Figure 2. The slight drop in the area of reprivatized forest land in 1997 resulted from corrections in the records on forest land ownership.

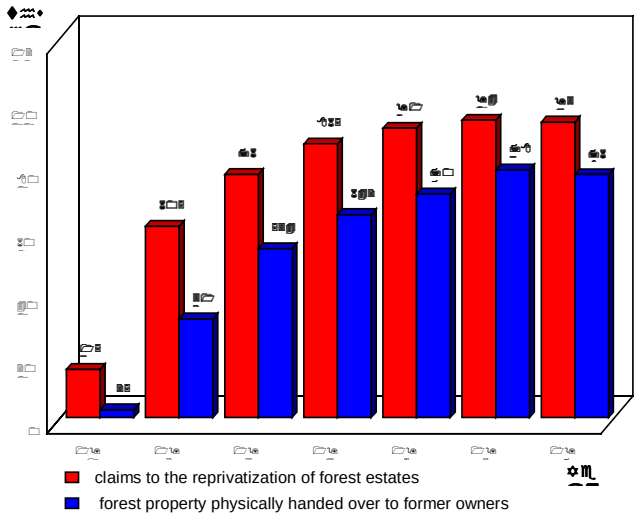
Forms of management of reprivatized forest lands.
State to December 31, 1997, area = 768.5 ths ha

Figure 1



Trend of the reprivatization of forests
(in ths ha)

Figure 2



Source: Les 4-02

It is obvious from the comparison of the data for particular years that the highest number of claims were settled in 1995 (13,435 claimants involving 65,427 ha.), but the greatest amount of land area was restored in 1992 (299,699 ha. for 2,498 claimants). It was largely influenced by the restoration of property to communities.

2 Land Fund and Restrictions to Land Fragmentation

A Slovak Land Fund was established to administer agricultural lands owned by the state and to carry out restitution (indemnification) by providing compensatory lands. The Fund also deals with the reprivatization of ownership relations being ensured by the organs of state administration as well as with renewal of ownership in the land register. The activities and competencies of this fund are set forth in Act No. 229/1991 on land, Act No. 330/1991 on land modifications, Act No. 92/1991 on large privatization and others. Regarding the forestry sector, the task of the Slovak Land Fund is to represent unknown owners in administrative and legal proceedings as well as in renewal of records in the land register. Forest land of unknown owners is being administered by state organization of forestry. The Slovak Land Fund leases the land to natural persons or legal entities to conduct forestry and agricultural activities.

There are valid legal restrictions on the fragmentation of land holdings. They relate to agricultural and forest lands outside built-up areas of municipalities. In cases of land smaller than 2 ha. arising as a result of purchase, inheritance or decisions of the court, an acquirer should pay particular payment. Many controversial decisions on land fragmentation issues are being made by the court. The court can decide, for example, in favor of the acquirer of the lands that were not fragmented. The lands will acquire heirs with the best predisposition for management of these lands. The court will decide about obligations of the acquirer to settle inheritance issues with other heirs. Further restrictions refer (relate) to the change of the kind of agricultural and forest land for the purpose of building construction, recreation or other purposes. In this case the investor is obliged to pay transfers to the State Fund for the Protection of Agricultural Fund if agricultural land is concerned or to the State Fund of Forest Improvement if forest land is concerned. The public interest is preferred in the construction of highways. In this case, the owner must be compensated appropriately for being dispossessed of his land.

3 Forest Law and Policy Developments

The tradition of forest legislation in the SR dates back to the 15th century. Since this time, forests and their production and public-beneficial functions have been protected by forest acts against potential exploitation.

A high level of protection and management of Slovak forests is ensured by current acts, namely *Act No. 61/1977 and Act No. 100/1977 on the management of forests and state administration of forestry*. Forests are defined by the law as one of the greatest treasures of the SR and as a principal component of the environment. They can provide a sustainable source of timber for the national economy. Because of all the functions forests perform, it is necessary to protect forest lands and the tree species growing on them. The obligation to care for forests in a planned way in terms of their improvement and to manage them according to the principles of progressive biology, technology and economics is contained in the acts. These acts were amended recently.

A main reason for the *amendments after the year 1991* was a problem in the area of forest ownership because some forest owners had been deprived of their rights to manage and get benefits from their own forests after 1948. This right was handed over to state forestry organizations. Substantial amendments of the acts addressed the following issues:

- Modification of the administration of forest lands owned by the state,
- Obligation to pay transfers to the State Fund of Forest Improvement as a result of excluding forest land from the forest land resource base,
- Changes in applying silvicultural systems in the preferred order of shelterwood system, selection system and clear-felling system,
- Cancellation of obligations for conversion of low forest to high forest,
- Modification of obligatory data for forest management plans (working plans) and spatial arrangement of forest, and others.

Though the acts were adopted in the 1970s and have been amended, they still do not harmonize with other legislation in the SR. For example, they do not solve the issues of the competencies of state administration of forestry and the environment as well as the specific position of public benefits of the state enterprises of forestry. At the same time, the forest act under preparation should solve other issues not covered by the acts mentioned, such as monitoring and an obligation to provide information about the situation in forestry, position of forest management as a basic tool of state forest policy, ensuring (securing) sustainable development of forests and rational utilization of their functions, and the position and competence of the organization for administration of state-owned forest property, its employees and other issues.

Fulfilling the tasks of *state forest policy* that follow from the acts are being controlled by the organs of state administration of forestry. The organs are part of territorial units of state administration. The Ministry of Agriculture of SR, Forestry Section is the central organ of state administration. Its tasks are aimed at developing and implementing projects for the development of forestry and game management in compliance with the principles of state forest policy, at drafting proposals for legal regulations and issuing instructions for their implementation. It also cooperates with other branches of government, with forestry and entrepreneurial bodies interested in natural resource and environmental issues. It hears and decides cases stipulated by special legal regulations.

The principles of state forest policy were adopted in the SR in 1993. They express the guaranty of the Government of SR to assist forest owners in effective protection and improvement of forests for personal as well as public benefit.

Another tool of the enforcement of state forest policy is forest management. It represents a methodical regulation aimed at preparing forest management plans in compliance with the principles of state forest policy. The owner is obliged to observe the presumptions contained in the working plan.

A special supportive fund, the State Fund for Forest Improvement, has been established. It is the institution that, in accordance with the Act No. 131/1991, ensures funding for activities supported by the state to reach strategic forest policy goals. The fund also subsidizes activities supplying certain public benefits and ecologization of forest activities.

4 Environmental Law and Policy Developments

In 1994, the Slovak National Council ratified *"The proposal of a strategy, principles, and priorities for a state environmental policy"* which provides for analysis of state environmental policy and establishes basic principles and goals in three time horizons. The following goals were formulated for forests and forest management:

Strategic long-term goals:

- Elimination of synergic impacts of injurious agents on forest ecosystems and increasing the resistance potential of forest tree species,
- Optimization of logging and the density of the forest transportation network for regeneration of natural forest stand composition and utilization of logging systems that enhance forest regeneration.

Strategic medium-term goals:

- Reforestation of approximately 60-80 thousand ha. of the least productive land, insect-damaged meadows and pastures, remote and unproductive plots, etc.,
- Assessment of the implementation of environmental measures included into the Strategy and Concept of State Forest Policy in the Slovak Republic (Decree No. 9/1993 of the Government of SR), the Strategy and Concept of the Development of Forestry in the Slovak Republic (Decree No. 8/1993 of the Government of SR).

Short-term goals:

- Prioritization of the reforestation of plots in areas with extremely damaged environments,
- Implementation of the Strategy and Concept of State Forest Policy in the Slovak Republic and the Strategy and Concept of Development of Forestry in the Slovak Republic, finalization of forest management plans (FMP) as worked out and approved in the years 1992-1993, in accordance with the materials mentioned above, as well as amendments of the regulations on management,
- In accordance with state environmental policy, work out and apply a proposal of the act of the Slovak National Council on forests and state administration of forestry.

The most important law in environmental legislation that significantly affects forest management is *Act No. 287/1994 on nature protection*. At present there are 7 national parks and 16 protected landscape areas that are predominantly situated on forest land, and they have particular degrees of protection. Although the environmental benefits of forest ecosystems will increasingly predominate over wood-producing ones, wood as a raw material, as well as from environmental viewpoint, will continue to be demanded in the future. According to available data, 95% of the total protected area (650 387 ha.) of national parks and protected landscape areas are situated on forest land. This is 35% of forest land base of the SR, and if protection zones in national parks are added, the ratio is 46.5%, a very high proportion.

Direct implementation of the goals relating to forests of the state environmental policy was worked out in the National Strategy of Biodiversity Conservation and the National Environmental Action Programme. The National Environmental Action

Programme is one of the first programme documents on the condition of the Slovak Republic following the Environmental Action Programme for Central and Eastern Europe that was approved by the Ministerial Conference for Environment held in Luzern in 1993. Its implementation was a matter of discussion of the Pan-European Environmental Ministerial Conference held in Sofia in 1995.

National Environmental Programme (NEP, 1996) was worked out mostly from data provided by particular ministries. It is divided into 10 sectors, of which sectors E and F directly relate to forest management. The *E sector* is aimed at *Care about Nature and Landscape and Territorial Development.* This sector deals with the general plan for a supraregional territorial system of ecological stability, approved by the government, with classification categories for degrees of protection for all of the SR as well as for provision of territorial systems of ecological stability of lowlands and hollows, revitalization of disturbed environment, especially with regard to 9 areas in very bad condition and endangered areas. *The programme of eliminating damage to forest stands due to anthropogenic impacts, especially air pollution* (8.86 thousand mil SK by the year 2010 or $241,601,221 US, using current exchange rates), under the direction of the Ministry of Agriculture is one of the most costly long-term ones. This sector includes implementation of the project on biodiversity conservation which is supported by the World Bank at $2.3 mil US.

The *F sector concerns Protection and Rational Utilization of Bedrock Environment, Soil and Forest* and concentrates on reduction of soils being endangered by soil erosion due to land regulation, on the implementation of the Strategy and Concept of State Forestry Policy in the Slovak Republic and the Strategy and Concept of Development of Forestry in the Slovak Republic. A substantial part of financial means of the sector is contained in recovery measures in disturbed forest ecosystems and in measures for afforestation of lands unsuitable for agriculture (9.125 thousand mil SK or $248,827,443 US). Another costly measure under the direction of the Ministry of Agriculture concerns an elaboration and implementation of a project for eliminating synergic impacts of injurious agents on forest ecosystems and increasing the ecological stability of forests (for which the anticipated budget is approximately 5 thousand mil SK by the year 2010 or $136,343,804 US). Expected funding necessary for the sector reach 17.56 thousand mil SK or $478,343,805 US.

The most important problem in the management of forests in relation to the sector of environment is management of forests in protected areas. On one side there are interests that promote forest protection and the reduction of or even prohibition of management activity, with the aim to preserve forests in their original state and to let them develop spontaneously. On the other side there are interests in the forestry sector that are responsible for forest condition, for the management and improvement of forests. Unfortunately, the conflicts between these two interests often have undesirable effects.

Present legislative modification of the *relations between nature protection and management of forests* is not perfect. Requirements on forest owners and forest users that follow from the Act on nature protection sometimes conflict with obligations laid down in forestry legislation.

The Act on nature protection does not perfectly solve the question of compensation for detriment due to different required regimens in the management of forest and does not grant equal rights to state-owned property and privately owned property. The owner (administrator, renter) of forest land has greater costs applying more

environmentally friendly silvicultural systems that are not included in the forest management plan or usually used in given conditions. The Act puts restrictions on use of traditional systems of managing forest lands which results in lower forest production (wood, game management products). According to the area of a territory and management regime, the greatest restrictions are in declared national parks or in protected areas and nature reservations.

The author and proposer of the Act, namely, the Ministry of Agriculture, did not take into account the impact of the restrictions on the state budget. An executive regulation capable of determining *in an enumerative* (quantitative) *way* the value of the detriment to property, is still lacking. In the relationship of reduction of routine management of a state organization, the main institutional right for granting equal consideration of all the kinds of properties is disclaimed.

In the state administration of forestry and environment in relation to the approval process of forest management plans, this Act causes considerable problems (long and duplicitive processes and adjudication). The state administration of forestry should have priority in approving of forest management plans according to valid legislation that is responsible for the observance of legal norms related to the management of forests.

The Act includes a provision on the competency of organs of state administration when it introduces a system of subordination of all administrative dealings by agreement or position of the organ of state nature protection. This system increases the administrative demands of acts (demands on professional employees, funding, and prolongation of activities). The organs of nature protection can express their interests within the framework of the approved process in developing forest management plans. Similar problems follow also from an endeavor “to provide consistent protection of nature by excluding selected parts of land resources and putting them under the administration of the sector being competent for nature and landscape protection as it follows from strategic objectives of the National Strategy of Biodiversity Conservation in the Slovak Republic.” This requirement is not real. Its implementation would lead to sharp conflicts in opinions, professional polarization, as well as to a possible lessening of the level of management of the areas concerned.

State support for forestry from the Department of Environment is implemented through a supportive fund. The State Fund of Environment concentrates funding, redistributes it, and ensures effective utilization in the interest of conservation and environmental protection. Subsidies for smaller regional activities, such as building forest parks, trails in forests, events aimed at ecology, etc., have been provided from this fund. Since 1 April 1998, the new *Act No. 69/1998 on the State Fund of Environment* has been in effect. Finances provided form this fund can be returnable on non-returnable. Financial support from this fund does not provide a basis for a legal claim. Funds can be used to support forestry activities aimed at obtaining the state environmental policy goals, environmental education, training, research, information gathering, monitoring, etc. They can also be used to compensate for losses due to restrictions on customary management of property as specified *in Act No. 287/1994 on nature and landscape protection for non-state forest lands*. Money from the fund can be used for revitalization of forests damaged by air pollutants as well as to purchase lands that have areas eligible for protection because of their special natural qualities.

UKRAINIAN FOREST LEGISLATION DEVELOPMENT IN THE TRANSITIONAL PERIOD

BY ARTEM TOROSOV

The Ukraine has diverse natural, social, and economic conditions. Forestry objectives as well as economic, social, and ecological demands are often unique in the different regions of the country. Ukrainian forests are national resources. They have ecological, aesthetic, and educational functions. Their potential for exploitation is limited, and hence, they are object of national protections.

More specifically, forests are objects of legal environmental protection. Forest regulation must provide for rational use, protection, conservation, reconstruction and possible increases in productivity. Such regulation will permit meeting the needs of the economy in terms of wood production and other forest products. It will also enhance water and soil protection, climate regulation, and other forest benefits. A fundamental change in the political, social, and economic conditions of the Ukraine in the context of its general ecological condition makes it possible to improve forest relations in the country. The Ukrainian Parliament has adopted several major legislative acts since 1991, regulating land, forest and water relations, conservation and use of territories, and objectives of nature reserve stocks.

The Forest Code, adopted in 1994, is the main forest law. Forestry relations are also regulated by legal normative acts promulgated by the Cabinet of Ministers of the Ukraine. New normative documents are now elaborated, and existing ones are revised to make them correspond to the Forest Code. The Ministry of Environmental Protection and Nuclear Security is the main state management body in the field of natural resource conservation and use. The State Committee of Forestry is the main state management body in forestry.

According to the Forest Code, all forests are the property of the state. This condition is justified firstly:

- by the long period associated with forest growth;
- by the predominance of ecological significance for forests over their economic significance as sources of natural resources; and
- by the need for forest resource conservation and systematic accumulation which is in the interest of both current and future generations.

The condition of state ownership is also justified by the inadequate cultural standards of forest use, which tolerates wasteful approaches in the uses of forests and nature as a whole; and the lack of a good control mechanism for rational, sustainable natural resource use.

In addition, forest legislation confers the right of individuals to have small forest plots for private use and to engage in forest management activities on them consistent with state instructions (regulatory standards). These forest owners have the right of first use of forest products yielded on the plots as well as right to the profits from the sale of the products.

The Forest Code regulates development of forest uses; provides for forest protection, conservation, rational use, and forest reconstruction; promotes skilled forest management; and establishes payments for the use of forest resources. The Code

assigns blame and penalties for violation of forest laws and regulations. Participation of persons, unions, civil committees, and self-administration bodies in forest protection, conservation, use, and reconstruction is provided for. In general, the Forest Code secures regulation of forest relations under current social and economic conditions. It is oriented toward an increase of forest resources, nature conservation, maintenance of forest biological potential, based on application of scientific knowledge.

The system of forest administration and management has considerable meaning for the Ukrainian forest estate. The largest part of the estate (72%) is under authority of state forestry agencies. The rest of the estate is administered by agriculture (24%) and other enterprises (4%). Forestry administration has two levels: the State Committee of Forestry and state forestry unions in 22 regions and regional forestry directives in 3 regions. The principle of State property is realized by Parliament and the national government, by local governments, and by the agencies of forest governmental control. In this connection, besides economic activity, the State Committee of Forestry and its local units are authorized by the Forest Code to manage forest utilization, restocking, conservation, and protection.

The forestry sector functions in the current regime as producer and distributor of forestry commodities according to plan. As a producer and distributor of forestry commodities it is part of the Ukrainian social and economic system, and somewhat peculiar because of its relative stability in annual physical yields. Therefore, when fundamental changes in forestry legislation are proposed, it must be recognized that it is impossible to change that part of the social and economic system without changing the whole system itself. The forestry sector cannot be analyzed properly as an isolated, self-regulating institution. The entire social and economic fabric of the country must be considered. Therefore, inertia exists in forestry administration in the Ukraine, which is indicative of the current realities of the transition period in the country.

We also know that mechanical transfer of market regulators to the Ukrainian economy, which work well in countries with market or transition economies, can have negative impacts. The Ukrainian forestry sector is not ready for a major transition for both economic and social reasons. Therefore, market innovations must be carefully introduced, and the legal and institutional experiments of countries with market or transition economies must not be automatically copied. In particular, fundamental qualitative changes in the natural conservation area require a stable political, social, and economic environment.

Interactions of state administration bodies at different levels are a serious current legislative problem in the Ukraine, directly affecting economic relations in the forestry sector. The need for its improvement is apparent in the Forest Code. Despite the legitimacy of state ownership of forests and woodlands, reform in the management of this property is desirable. It is evident that the forestry sector must be developed upon a new economic foundation together with other segments of the economy. However, the duration of the transition period in forestry is also dependent upon solving the contradictions between the state as forest owner and the state as forest manager. The self-administration bodies must regulate their relations with forest users according to legislative mechanisms of administrative and territorial regulation and the tax system. The forest administration functions must be put on specialized state structures.

Thus a legal case for forest protection and use in the Ukraine has been established. In addition, the following propositions are to be developed:

- Formation of a clear system of laws, rules, decrees and manuals that regulate relations between human society and forest ecosystems;
- Payment for forest resource use and development and implementation of a penalty system for forest resource damage caused by deliberate or wanton action or willful neglect;
- Integration of departmental normative acts on problems of flora and fauna, forests, natural and reserve fund conservation, to develop uniform and generally accepted principles of nature use.

To realize the whole complex of legislative, organizational, and economic transformations needed to work in a market economy, a certain evolutionary period is necessary to form a new State system. Artificial acceleration of the process will only be destabilizing. The evolutionary approach to the political, social, and economic development of a society requires gradual creation of a suitable economic and legislative environment. The legislative base is critical because it should provide a tangible and systematic process for transition to the market economy.

In this connection, two features of the Forest Code must be mentioned. The first is that it is “conservative,” containing legislatively fixed goals, tasks, and functions of forest administration. The second feature is operation of the system of state administration bodies in the context of the existing economic and legislative base, which directly affects economic relations of the forestry sector. This feature of the Code must respond in time to all changes in the political, social, and economic life of the country, which will entail adjustments from time-to-time to perfect the legislation, putting it in accordance with the current situation. When young, independent states are formed, this process is normal, and in the case of the Ukraine will require the constant attention of both state administration bodies and forest researchers.

The necessity of further improvement of nature preservation legislation and of forming the economic and legislative base of forestry is the result of two conditions: the Ukraine is a state with a transition economy; it is also a country that is in a rather bad ecological condition. Ukrainian forests are important ecological and strategic resources. Therefore improvement of nature preservation legislation in the forestry sector is of interest to both the Ukraine and the European Community. It is especially important given the geopolitical situation of the Ukraine and the attention paid in the world to ecological resources.

ANNEXES

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