

LEGAL PROTECTION OF THE NATIONAL FOREST FUND

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***Abstract:** Forests represent the most important pillar of resistance of the ecological system, having an essential importance in the life of any people, as a factor of genesis, conservation and development of the national being. The benefits of the forest on the environment are the result of particularly important functions for the normal development of socio-economic activities. Forests are essential for economic development and for subsidizing all forms of life (human, animal, plant), having an important role as sources of goods and services.*

The legislation of a state must provide multiple guarantees that constitute a legal shield for the existence and development of the forest.

The legal sanctions established for committing certain crimes have the role of ensuring the security and integrity of the national forest fund considered national wealth, which must be protected.

***Keywords:** forest fund, guaranteed law, forestry, legal, protection, context*

INTRODUCERE

In order to achieve the functions of the forest, a set of means of protection to harmonize the sphere of economic, social and ecological interests is necessary. An important role within the means of protection of the forest fund is occupied by legal instruments.

The multiple functions [ecological, social and economic] of the forest suppose the establishment and existence of adequate means of protection. In this sense, the following theses can be established regarding the role of the forest: the forest ensures the continuity of the Romanian people in its geographical space, it contributes to humans' physical and spiritual health, it maintains a healthy atmosphere, it reduces climate hazard, it contributes to soil conservation through forest ecosystems, it regulates environmental systems and biodiversity conservation, etc.

Approaching the notions of "forest" and "forest fund", of their characteristics, presupposes their definition, as well as the study of the meanings and implications of their legal and legislative nature.

The national forest fund consists of all funds, land for afforestation, lands that serve the needs of culture, production or forest administration ponds, riverbeds, and unproductive land, included in forest management, regardless of the nature of the property right.

In this sense, our country has ratified several international normative acts that establish principles and guidelines for forest conservation and protection and their sustainable management, and has adopted numerous laws and other normative acts at national level.

The category of means of protection also includes the legal means specific to forest protection, these representing special legal norms contained in Law no. 46/2008 and other special laws, such as Law no. 171/2010.

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The purpose of establishing the means of protection is closely related to the character of good of national interest. Thus, law no. 46/2008 [forest code], establishes that the purpose of protection is to ensure the sustainable management of forest ecosystems.

The provisions of art. 6 of the Forestry Code stipulate that: The national forest fund is subject to the forestry regime (paragraph 1) and that the "vegetation" is subject to the technical forestry norms regarding the evaluation of the wood mass and the regulations regarding the circulation of the wood material.

This means that the legislator has as objective the protection of forests by the elaboration of the Forestry Code itself and the establishment of the forestry regime by law.

The set of special legal norms regarding forest protection is a distinct aspect of the legal protection of forests.

In this context, legal norms regarding the protection of forests are highlighted. They are ensured and exercised according to art.51 and art.52 of the Forestry Code, by the forestry personnel for the forest fund under its administration "against illegal logging, theft, destruction, degradation, grazing, poaching and other damaging acts", as well as against fires.

The security of privately owned forests is ensured by their owners, with the support of forestry bodies, police units and the Gendarmerie.

The set of means of legal protection of forests is part of the wider set of means of legal protection of the environment existing between them, intermediate categories, respectively those that involve the protection of the forest fund, land fund and nature in general. The notions of environmental

protection in general, of nature protection, of the land fund and of the forest fund are closely linked; there is a relationship from the whole to the part, in the sense that the notion of environmental protection includes the others, having a wider sphere, more comprehensive than these.

The analysis of the presentation of the legal means of protection also implies the revelation of some general aspects regarding the forest regime.

The forest is an element of the national forest fund that represents the land occupied with forest vegetation with an area of more than 0.25 ha consisting of an association of trees whose area represents 30% of the land area. In our country, the forest covers an area representing 27% of the territory.

The functions of the forest are both economic, social and ecological. The forest is an important source of raw materials, but also a factor with a special role in preserving and protecting the environment. The forest is a real barrier against arid climate, it provides the greatest water resources, it produces the oxygen necessary for life and purifies the air, serving both for grazing, hunting and recreation. In order for the forest to protect, it needs protection itself.

The legal means of forest protection are carried out according to the following criteria:

- according to the purpose pursued by the establishment of legal means, these may be legal means of quantitative protection of forests and means of qualitative protection of forests;

- according to the nature of the legal norm that serves the protection of the forest, the means can be: legal means of constitutional law, means of administrative law, means of criminal law, legal means of labor law;

- according to the form of the property, the means can be: general legal means, legal means specific to public property, legal means specific to private property;

- in relation to the functions performed by forests, the means can be: legal means that serve the protection of forests with special protection functions, legal means that serve the protection of forests with mixed functions, legal means for forest protection in general;

- according to the character of the means that achieve legal protection, we distinguish: legal means with reparing-repressive character, legal means with preventive character;

- from the analysis of the concrete purpose and the targeted field, the means regarding the protection of the forest fund and therefore of the forests, can be: means of protection against irrational logging, means of

protection against pollution, means of protection against diseases and pests, means of protection protection of the hunting and fishing fund.

Regardless of the means by which the protection of forests is achieved, they must guarantee the protection of the environment and the maintenance of the ecological balance.

Romanian legislation offers multiple guarantees to constitute a legal shield for the existence and development of the forest. The general legal framework of forest protection and development is constituted by the Forestry Code through Law no. 46/2008, as well as the relevant legislation, such as Law 171/2010 regarding the establishment and sanctioning of forestry contraventions.

Under constitutional law, a series of constitutional norms are considered incidents, such as those contained in art. 44 and art. 136 of the Constitution which provide that "the right to property is guaranteed", private property being guaranteed and protected equally by the law. It is also stipulated that "the property right obliges to respect the environmental protection tasks".

"Public property is guaranteed and protected by law, and belongs to the state or administrative-territorial units", thus stipulating the obligation of the state institutions to submit all the diligences necessary to maintain the integrity of the property and, implicitly, of the forest.

These constitutional norms regarding the forests find an express and special legislative consecration. Thus, the Forestry Code stipulates that the forest is part of the national forest fund and it is subject to the forestry regime. Thus, "the state, through the central public authority responsible for forestry, develops policies in the field of national forest fund and forest vegetation outside it, regardless of the value of property, and exercises control over how they are managed."

Regarding the forestry legal means, the Forestry Code states that the protection of forests is achieved in a special way by establishing the obligation to guard them, which is incumbent on forest owners, namely all the actions and diligences undertaken by the National Forest Directorate to prevent and combat illegal logging, theft, destruction, degradation, grazing, poaching and other harmful acts.

The subjects that have the obligation to guard are determined by the Forestry Code, they being all natural persons or legal persons who have tasks by which the guarding of the forest is concretely performed, as follows:

- The National Forests Directorate, "ensures and exercises the guarding of the forest fund it manages";

- The own staff of the National Forests Directorate;
- The police and the Gendarmerie units “according to their attributions under the law”;
- Other natural and legal persons.

The activities that are undertaken by the subjects that have tasks aimed at guarding the forests and the forest fund consist in:

- Adoption by the National Forests Directorate of all necessary measures to ensure security;
- Carrying out and fulfilling the guarding activities and procedures, and the execution of the guarding by the forestry personnel;
- Issuance, observance and application of fire prevention and extinguishing regulations by the National Forests Directorate and by natural or legal persons carrying out activities on the forest territory;
- Informing the population and their implementation by the National Forests Directorate;
- Participation in extinguishing fires of individuals located in forest areas subject to fires;
- Control, training and propaganda activities carried out by all competent bodies;
- Finding and effectively combating the deeds that constitute crimes and contraventions to the forest regime, as well as sanctioning the contraventions.

The legal nature of the security obligation, the content of which is complex, differs depending on the quality of the subject of law to which it belongs, as well as the nature of the incidental provisions.

The means of civil law serve to defend the property right over the forests. The civil legal means can be direct and indirect, depending on the legal basis that gives rise to them, respectively a real right or a right of claim.

The action in claim is the most energetic civil means of defending property, through which are all forms of property right, being a real action by which the owner of a property in illegitimate possession of another person asks the court to recognize his property right and the obligation of the defendant to return possession of the property.

The forest fund in general, and the forest in particular, find a particularly effective defense through the means of administrative law, under the category of which fall the legal norms that sanction the illicit deeds that constitute forest contraventions.

The special law in the matter is Law no. 171/2010 regarding the establishment and sanctioning of forestry contraventions, which establish the facts that constitute contraventions to the forestry regime, grouped

according to the degree of social danger that it presents, sanctioning them differently, accordingly.

For certain deeds that constitute forest contraventions, the Environmental Protection Law no. 137/1995 republished, in 2002, provides harsher sanctions, taking into account the functions of the forest from an ecological perspective.

When, by committing a deed, the forest values are seriously harmed, the protective efficiency is achieved in the sphere of action of the criminal legal instruments.

The means of criminal law suppose the most severe sanctioning regarding the legal responsibility, due to the higher degree of social danger that some deeds qualified as crimes show.

The institution of criminal liability for deeds that harm forest social values is in line with the unitary legal framework established regarding the regulation of the forest legal regime of forest fund management, which is justified regardless of the form of ownership over forests in order to capitalize on ecological and socio-economic functions for the benefit of present and future generations.

Consequently, the legislator provided that certain deeds that infringe the forest fund and its management, should constitute forest crimes, establishing them in the Forest Code, which has a special legal character in relation to the common law in the matter, respectively, the criminal Code.

The sanctions established for committing the crimes provided by the Forestry Code have the role of protecting the national wealth. It is a crime, under the conditions of the Forestry Code "Reducing the area of the national forest fund without complying with the provisions of the code". It is also a crime, depending on the amount of damage or the number of material actions, to cut or uproot, without right, trees, seedlings, or shoots from the national forest fund or from lands with forest vegetation ". It is a crime "to graze in forests or forest areas where it is prohibited."

In the sphere of forestry crimes, along with those mentioned by the Forestry Code, we also find the crimes regulated by Law no. 171/2010 with the amendments and completions of Law 134/2017 according to the provisions of the Environment Law, those who own forests or forest vegetation outside the forest fund, regardless of title, have the following obligations:

- Not to reduce the forested surface of the lands with forest vegetation, of the existing junipers and meadows, except in the cases where the law allows it;
- To exploit the wood mass only within the limit of the forest's

possibility, according to the forest arrangements;

- To respect the forest regime;
- To take measures for forest conservation with special protection functions;
- To exploit the forest resources, the hunting and fishing fund, within the limits of the regeneration potential;
- To exploit the pastures rationally, to take measures for their development and restoration;
- To notify the competent authorities regarding possible accidents or activities affecting forest ecosystems.

In terms of sustainable development and management of forests, the meaning of "sustainable" must be interpreted as a rational development, made in such a manner that it can be maintained continuously for a long time, namely, sustainable.

CONCLUSIONS

The concept of sustainable forest management was promoted for the first time worldwide in a definite and pertinent way, in the concept of concerns and documents on the concept of sustainable development at the World Conference on Environment and Development in Rio de Janeiro in 1992 when a series of related programs, declarations and conventions were adopted.

Sustainable management means the management and use of forests in order to maintain and improve biodiversity, productivity and regenerative capacity, health and the ability to perform ecological, economic and social functions, without causing damage to other ecosystems.

Sustainable forest management is a means to ensure the sustainable development of forests, which involves two major actions, namely the protection of existing forests and the development of forest heritage.

At the Helsinki Conference from 1993, the General Declaration on the Protection of Forests in Europe was elaborated, in which some general principles on sustainable forest management were formulated, as follows: the principle of biodiversity conservation, the principle of improving forestry technologies, the adoption of policies and regulations. new environmental, harmonization of general centers with local ones, protection of natural forest ecosystems, intensive treatments with natural regeneration, re-establishment of ecological and economic objectives on functional groups and subdivisions and increasing the share of species with long-lived growth.

For the purpose of sustainable forest management, the following directions of action are mainly established: establishing indicators and criteria specific to sustainable forest management, increasing the area of forests and forest fund, conserving the natural diversity of forests, ensuring health and forest functions, developing scientific research in the field.

Starting from the fact that forests are the richest reservoir of biological diversity, and the reduction of their extent or genetic diversity would affect other components of forest ecosystems, the obligation of mankind is to be the custodian of all forest species on earth.

Sustainable forest development and management requires the partnership of all nations of the world, the only one capable of ensuring a balanced and efficient global economy.

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