The Juridical Protection of the Forest in Romania

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Abstract

In the field of forestry, there have been numerous situations when the law did not apply, for various reasons (most important of them being corruption), which lead to the loss of over 60% of the forest area, since 1990 to the present day.

The article aims to point out:
- the current legislation in the field of forestry;
- the protection measures that must be adopted by the legislative and administrative authorities of the state, in order to stop the savage aggression against national forests;
- the deeds that are incriminated as crimes or contraventions and which is the difference between them in Romanian legislation;
- the legal provisions in some states of the world in the field of forestry;
- measures that must be taken by Romanian legislative and administrative authorities in order to harmonize Romanian legislation with the one of the EU in the field of forestry.

1. General aspects

The provisions of Romanian legislation, in the field of forestry, have created, in some degree, the judicial requirements in order to protect the forestry fund. However the real problem resides not in the existence of legal provisions, but in their application. Romanian specialists estimate that the forestry fund is in its darkest hour, as more than half of it was lost, due not to controlled exploitation, but as a result of forestry-related crimes.


According to Romanian legislation, the national forest fund includes the following surfaces, without taking into account who the proprietor is, or if there is public or private property: all the forests and the terrains that are intended for afforestation, the terrains that are intended for the cultivation, production or forest administration; the pounds, stream channels or other terrains intended for the forest or for unproductive purposes, that are part of the forest groups since 1 of January 1990, or included in such groups at a later date, according to the law, constitute, regardless of the nature of the right of property, the national forest fund.

In accordance with the stipulations of the Romanian Constitution, the Romanian Forest Codes admits the dual nature of the property rights and stipulates (at art. 3), that the national forest fund is either public or private property.

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Taking into consideration the utmost importance, that the forest fund has for the human beings, the Code also stipulates that the forest fund is of national interest, and also, that the right of propriety over the terrains that constitute the national forest fund is exercised according with the law (the Forest Code). In conclusion, regardless of the type of property (state or private owner), all the activities that are necessary for the improvement, maintenance and exploitation of the fund must be performed accordingly with the provisions of the law. The administration as well as the assurance of forestry services are compulsory, according to the law, for all forests, regardless the type of property, by the forestry district, excepting those that are included in the experimental bases of the Institute of Forest Research and Forestry Management (which are administered by the Institute). The management, as well as the forestry services are ensured by forestry districts, grouped in:

a) State forest districts – structural part of National Direction of Forests (Romsilva), which administrates the forests that are public property of the state and which are founded by it;

b) Private forest districts, which are founded, according to the law, by administrative units, individuals, juridical persons or associations that have the ownership of the forestry fund.

In other words, the forestry fund is governed by a unique forestry regime, at a national level, regulations that are similar with those of most European states.

For a better understanding of the classification of the ownership rights, the Forest Code (Romanian Forest Code, art. 7) states that according with the type of ownership, the national forest fund can be:

a) public property – forest funds that owned by the state;

b) public property – forest funds owned by territorial-administrative units;

c) private property – forest funds owned by private or juridical persons;

d) private property – forest funds owned by territorial-administrative units.

In order to prevent the illicit deeds, of authorities or private persons, that may diminish the Romanian national forest fund, the law stipulates that it is forbidden to switch the woodlands of the public domain of the territorial-administrative units into their private domain, by resolution of the local council, or of the county council, or of the General Council of the Municipality of Bucharest. The legal provision is necessary, because according to Romanian constitutional provisions, the state’s real estate, that are part of the “public domain” (including the forest fund), cannot be alienated in any way.

In order to avoid the decrease of the national forest fund, the law stipulates that it is forbidden to include to forests in urban areas. It is also forbidden the concession of the forest fund that is public property of the state. However we find hard to understand the provisions of art. 12 from the Forest Code, according to which the forest fund, public property of the territorial-administrative units, is managed by the private forestry districts from the National Direction of Forests. It would seem normal that the forest fund that is public property of the territorial-administrative units (which also belong to the state), should be administrated by state forestry districts and not private ones.

2. Functions of the forests

The importance of the forests for the society results also from the functions that the forests have. Specialists classify the functions of the forests in the following categories: alimentation, defense, production (economic), protection of water and soil, climatic and ecological, social, recreational and beauty [Nicolae Pătrăşcoiu, Tudorel Toader, Grigore Scripcaru (1987), Pădurile şi recreerea, Ceres Publishing House, Bucharest, p. 4].

2.1. The function of alimentation

From prehistoric times until present day forest has been an inexhaustible source of aliments for both animals and humans, by:

- the game (stags, bison, bears, dears, rabbits etc.);
- fruits and other vegetable;
- large variety and number of wild birds that live in the forests. It seems that Romanian forests host [I. Milescu (1990), Pădurile şi omenirea, Ceres Publishing House, Bucharest, p. 89] over 1035 species of wild birds.
2.2. The function of defense

Even if this function is specific to a distant period of time in human existence, it is still mentioned in the legislation of some countries (for example the French Forest Code). According to Nicolae Furga, “the natives can take care of themselves, as they have many monasteries in the forests that can serve them, if needed, as shelter replacing the citadels”.

2.3. The function of production (economic)

Due to its rich forests, our country had, since the earliest times, a flourishing wood industry. In 1926 the round wood processing factory from Nehoiu was the largest in Europe, at that time period.

After 1990, due to the lack of rigorous control and an inappropriate industrial policy, wood exploitation has exceeded the power of production that the forests have. There have been large deforestations and large quantities of logs were sold to export, obtaining a very low price for best quality wood.

2.4. The function of water and soil protection

The forests represent a basic component of the living environment. The forest has a decisive role in ensuring soil stability, in the improvement of clime factors and of hydrological stability, as well as in purifying the atmosphere.

2.5. The climatic and ecological function

This function can be defined, without fear of exaggeration, as the function that ensures the survival of the human species and of the animals on Terra. Ecology has been defined as the science that studies the interaction between living creatures and surrounding environment [Ion Orescu (1999), Ecologia, Mirton Publishing House, Timisoara]. The term of “ecology” is attributed to Evans Haechel, in 1866, and is conceived, in present, as an intellectual preoccupation [Jean Paul Delèage (1991), Histoire de l’écologie – un science de l’homme et de la nature. La Decuverte, Paris, p. 8] for the artificial or natural elements that condition the human life [Valer Teuşdea (2000), Protecţia mediului, Fundaţia România de Mâine, Publishing House, Bucharest, p.5].

2.6. Social, recreational and beauty function

The forest has always been a source of recreation and unrivalled beauty. Constantin Giurescu, in his work “History of the Romanian forests” wrote: “Amongst the happiest hours of my life are those that I spent in the forest”. The same author has also notified the harm that human beings are continuously causing to the forest.

3. Legal regulations of the forest domain

We consider that the stipulations of Romanian forest legislation, including the special norms with criminal character, but also the general criminal law, have failed in creating the judicial conditions in order to defend the forest fund and the forest vegetation against crimes and offenses.

In Romania there was, and still is, a real state of danger for the surrounding environment, caused by the unprecedented aggression on the forest, starting with the year 1990 and continuing still, today, in 2012. Specialists consider that in this time period the Romanian forest was, and still is, in its darkest period. Each year 10-16 million hectares of forest are lost, causing an irreversible damage to the surrounding environment.

3.1. The legal framework of forest related crimes

The criminal actions that might harm, directly or indirectly, the forest fund and the forest vegetation that is not included in the forest fund are stipulated and sanctioned as crime, by the Forest Code, art. 106-114, as follows:

- the reduction of the national forest fund surface, without respecting the legal provisions (the sanction is prison from 6 months to an year or fine);
- the change of destination for the objectives that were removed from the national forest fund (prison from 6 month to an year or fine);
- the occupation, without right, partly or entirely, of surfaces from the national forest fund (prison from 6 months to 3 years or fine);
- cutting, breaking, damaging, removing from the roots, without right, of trees, seedlings, shoots from the national forest fund or from the forest vegetation situated outside of the fund, is sanctioned as follows:
  a) with prison from 6 months to 4 years or with fine, if the value of the prejudice is at least 5 times greater than the price of a cubic meter of wood, at the date when the act was discovered;
  b) with prison from 6 months to 4 years, if the value of the prejudice is smaller than the limit stipulated above, but the criminal act was committed at least twice during one year and the cumulated value of the produced prejudice exceeds the limit stipulated at paragraph a);
  c) with prison from 2 years to 6 years, if the value of the produced damage is at least 20 times greater than the average price of a cubic meter of wood, at the date when the act was discovered;
  d) with prison from 4 to 16 years, if the value of the produced damage is at least 50 times greater than the average price of a cubic meter of wood, at the date when the act was discovered. The penalties from paragraphs a)-d) can be increased by 3 years, when the crimes were committed in one of the following circumstances: by two or more persons together; by a person that carries a weapon or a narcotic or paralyzing substance; during night time; in the forest that is situated in protected natural areas of national interest.

Attempt is also punishable at this type of crime.

- grazing in the forests or the forest surfaces where this is forbidden, is sanctioned as follows:
  a) with prison from 3 months to 3 years or with fine, if the value of the damage is at least 5 times greater than the average price of a cubic meter of wood, at the date when the crime is discovered;
  b) with prison from 1 to 5 years or with fine, if the value of the prejudice is at least 20 times higher than the average price of a cubic meter of wood, at the date when the crime is discovered;
  c) with prison from 2 to 7 years or with fine, if the value of the prejudice is at least 50 times higher than the average price of a cubic meter of wood, at the date when the crime is discovered.

The maximum punishment mentioned above can be increased by 3 years when the crime was committed in one of the following circumstances: during night time; in the forest situated in protected natural areas of national interest.

- theft of trees that are brought down or ruptured by natural phenomena or trees, seedlings or shoots that were cut down or removed from their roots, from forests, protection forest belts, degraded terrains that have been improved through works of forestation and from the forest vegetation outside the national forest fund, as well as any other specific products of the national forest fund is crime and sanctioned as follows:
  a) with prison from 6 months to 3 years or with fine, if the value of the stolen wood material is of 5 to 20 times higher than the average price of a cubic meter of wood;
  b) with prison from 6 months to 3 years, if the crime was committed at least twice during a year, and the cumulated value of wood material exceeds the value mentioned at paragraph a);
  c) with prison from 2 to 6 years, if the value of the stolen wood material is of 20 to 50 times higher than the average price of a cubic meter of wood;
  d) with prison from 4 to 16 years, if the value of the stolen wood material is 50 times higher than the average price of a cubic meter of wood.

The maximum of the mentioned punishments can be increased with 3 years when the crimes were committed in one of the following circumstances: by two or more persons together; by a person that carries a weapon or a narcotic or paralyzing substance; during night time; in the forest that is situated in protected natural areas of national interest.

The formulation from the legal text of this crime stipulates: “any other products that are specific to the national forest fund”, suggests that the legislator took into account other goods, except wood material, such as forest fruits. De lege ferenda we suggest that it is necessary, for the legislator, to clearly specify what kind of goods are envisaged by the law.

- the destruction or the degradation of the forest or of the protection forest belts by fire (punished with prison from 3 months to 3 years or with fine). The crime is stipulated in the incrimination rule with an aggravating circumstance: “if it had as result the occurrence of a disaster, situation when the punishment is life imprisonment or prison from 15 to 25 years and the prohibition of some rights”.

- the use, without right, or contrary to legal regulations of special marking devices, which lead to the occurrence of a prejudice with valued 5 times higher than the average price of cubic meter of wood (the punishment is prison from 6 months to 3 years or with fine).
-counterfeiting of special marking devices (punished with prison from 1 to 5 years).
-failure in executing the works of reforestation and of completion of the natural regenerations in the period stipulated in the Forest Code (punished with prison from 1 to 3 months or with fine).

The law stipulates an aggravating circumstance for all the crimes mentioned above, namely when the crimes are committed by forestry staff.

The crimes that have a lower social danger are considered contraventions, according to the law.

We consider that it is necessary to place into the Romanian Constitution, the fundamental obligation, for all the private and legal persons, to conserve and protect the forest fund.

4. Conclusions

The unprecedented aggression against the forestry fund puts the environment at great risk. As a result, even if after 1990 Romania radically diminished industrial pollution, the pollution is being considered at a medium level. The forest ecosystems have the capacity of retaining and neutralising pollutants (sulphur dioxide and trioxide, fluorine compounds, it fixes and metabolizes sulphur dioxide as well as other toxic substances). Protection of the forest funds can only be achieved through a unbending enforcement of the legal provisions.

References

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