

GENERAL ISSUES RELATING TO THE NEW FOREST CODE

Mircea Chebeleu, Ioana Camelia Chebeleu, Ramona Vasilica Bacter, S. Bartha*

* University of Oradea, Faculty of Environmental Protection, 26 Gen. Magheru St., 410048 Oradea;
Romania, e-mail: chebelemircea@yahoo.co.uk

Abstract

After the abandonment of legislative initiatives on a new Forest Code passed on the government or independent parliamentary initiatives, the entire political spectrum endorsed practically need drafting a new Forest Code Broad support was very important given that the Forestry Law Code is an organic law for its promulgation was necessary vote of two thirds of the total number of deputies and senators.

Key words: legislative initiatives, sustainable forest management, express prohibition, property

INTRODUCTION

In the Official Gazette, Part I, no. 238 was published Law 46/2008 new forest code of Romania. Law, which came into force on 27.03.2008 to iscat a whole series of discussions and controversies regarding the changes that this bill brings the old Forest Code - Law 26/1996. After the abandonment of legislative initiatives on a new Forest Code passed on the government or independent parliamentary initiatives, the entire political spectrum endorsed practically need drafting a new Forest Code. Broad support was very important given that the Forestry Law Code is an organic law for its promulgation was necessary vote of two thirds of the total number of deputies and senators. Law, in the version published in the Official Gazette, has a total of 139 articles, grouped into seven titles, as follows: General provisions (Articles 1-9), administration of national forest (Article 10-18), sustainable management of forests (Article 19 - 87), the sustainable development of national forest fund (Article 88 - 101), compliance monitoring and enforcement regime forest (art. 102 - 103), liability and sanctions (Articles 104 - 121), Transitional and Final (art.122 - 139). The draft law, submitted to public debate on the website of the Ministry of Agriculture, Forests and Development arouse a whole series of controversies regarding changes to the desirability of them. The new forest code requires a new definition of forest, namely land with an area of at least 0.25 meters, covered with trees, trees must reach a minimum height of 5 m at maturity under normal growing season. It introduced the concept of sustainable forest management, and listed a series of principles that underlie it: promoting practices that ensure sustainable management of forests, ensuring the integrity of forest fund and

a permanent forest, increasing the area of land occupied by forests, forest policy stable long term, ensure the continuity of appropriate legal, institutional and operational management of the forests; environmental priority objectives of forestry, increased role of forestry in rural development, promotion of fundamental natural type of forest biological diversity and ensure forest; harmonization of relations between forestry and other fields, helping owners of forests and stimulate their association; prevent irreversible degradation of forests as a result of human activities and environmental factors destabilize.

Article 7 of Law 46/2008 maintain the classification of national forest fund in the form of ownership, namely: the forest to the public, the forest of public ownership administrative-territorial units; forest to private individuals and legal entities. Forest private property of administrative-territorial units. Fund private forest ownership administrative-territorial units include woodland pastures, included in the private domain of administrative-territorial units, which, through the law, included in the national forest fund. They were introduced mentions express prohibition on land in the public domain of administrative-territorial units in private by their decision of the local council, a county council, and the General Council of Bucharest. Another novelty is related to the prohibition of forests in between. Article 10 paragraph. 1 Introduction obligation management and insurance services through the forest, authorized forestry detour, whatever form of ownership. Administration of public forests is a state by state forestry detours - Queen of the structure of the National Forests - Romsilva. Another novelty is related to the possibility of territorial-administrative units to establish in their own name ocoale private forestry - which function as autonomous of local interest only with specific forest. The same possibility is to recognize the new forest code and to individuals or legal persons who owned forest or associations formed by them. For the forest fund of private property of individuals and legal administration is carried out by private forestry detours, which operates similar associations and foundations, or under contract with other forest detours.

Mentioned detours above private forest can be both owners and their associations and can operate under the control of a forest above. Forest structures above acquire legal personality from the moment of entry in the Register's national manager of forests and forestry detours. Leadership and representation of legal fold forest are provided by the head of bounds forest, called or canceled by the unique local council or general assembly, where appropriate, with the opinion that central authority responsible for forestry.

Heads of forestry detours and forestry directors structures above activity must be at least 5 years and 8 years as engineers with higher education in forestry.

Article 15 paragraph. 1 established forestry incumbency registration of detours in the Register's national manager of forests and forestry detours, held at the central public authority responsible for forestry. Acquisition of legal personality to forest detours is conditioned by registration in the register mentioned above and drawing up of the status and the genuine form. Introduced the principle of territoriality forestry detours administration in ensuring that the forestry service, with the endorsement referred to in art. 16. 2 fold that the forest area which holds the majority in a city is obliged, upon request, provide the basic contract, the forestry service for all owners of forest in the town who have not established private forest surroundings. Article 25 forests included in the report of the functions that they fulfill, in 2 functional groups: Group I, which includes forests with special functions for the protection of water, soil, climate and objectives of national forests for recreation, protection of forests in national interest, group II, comprising officials of forest production and protection, which aim achieve mass of high quality wood and other forest products and, concomitantly, the protection of the quality of environmental factors. Owners of forests and forest fund manager of the public are bound Establishment fund conservation and regeneration of forests parent interest, non-taxable, educible fiscal regime and with fiscal reserves. The fund is available in the account manager or service forestry. A provision is extremely important that regarding to that public land property of the state not subject to the establishment of ownership or any dismemberment thereof.

Another novelty is related to the inability forestry division of property under the limit of 1 ha. Where the opening of a series because of the number of heirs creates the possibility of failure provision mentioned above, constitute a legacy for / of heir / inheritors, at least 1 ha, with payment by the sult / people for whom / which was formed legacy. Reducing national forest fund area, the final removal is permitted only to achieve the objectives of national interest, declared of public utility under the law. Can be removed permanently from the national forest, only provided them compensation, without reducing the area of forest fund and advance payment of monetary obligations, only the land needed for the expansion or the following objectives:

- a) needed operation following mineral resources: coal, rocks useful aggregate mineral ores and mineral water;
- b) of tourist accommodation tourism, religious establishments, objective social, sports and medical, construction of hydro local sources of drinking water;

c) homes or holiday houses, only the forest fund private property;
d) targets installed in the forest fund before 1990, contained in forest pledges into force on 1 January 1990, the category "occupations and litigation."

Compensation is done with a physical field that has five times the amount of land that is permanently out of the forest fund, and the area of land given in compensation can not be less than three times the land area subject to removal from the forest fund.

Land to which the compensation must be just outside the national forest fund, but bordering it, seven of woodland.

If the minimum area of land to which the compensation is more than 20 hectares, it may not be limitrophe forest fund, but should be compact. You can not do with land compensation in alpine and subalpine zone. Final removal of forest land fund in order to build houses or holiday homes, can be achieved only provided the building and the land on which they are placed are owned by the same person and the maximum that could be subject to final removal from the forest, including construction, access and fences, is more than 5% of forest area property, but not greater than 200 m². Changing the target destination built on land that was subject to final removal from the national forest sooner than 5 years to repeal the order determined minister or government approval and make the initial state land out of the forest fund at the expense of the beneficiary approval. Requests for removal permanent or temporary occupation of land from the forest, with the consent of the owner and favorable opinion of fold forest that provides management and forestry services, where appropriate, the National Forest - Romsilva, where forest land fund property Public state and territorial sub-units specialty of the central authority responsible for forestry, is approved: the head of the central authority responsible for forestry, land for up to 10 meters, with the possible deployment of territorial jurisdiction leaders sub-units specialty the central authority responsible for forestry, up to 1 ha area; government proposal to the central authority responsible for forestry, the area over 10 hectares.

Article 45. 5 establish a right of pre-emption of state in the purchase of forests which constitute enclave in the forest fund public ownership of the state or bordering it, the price and on equal terms. A whole new chapter is the development of consciousness on the forest. Are provided, in the introduction of education is mandatory, some notions regarding the conservation of forests, and the role and importance within the biosphere and mankind life in general. The entry into force of the law is repealed Law no. 26/1996 - Forest Code, published in the Official Gazette of Romania, Part I, no. 93 of May 8 1996, with subsequent amendments; Government Ordinance no. 96/1998 on the regulation and administration of the scheme

forest fund National forest, republished in the Official Gazette of Romania, Part I, no. 122 of February 26 2003, with subsequent amendments; Government Ordinance no. 81/1998 on measures to improve the afforestation of degraded lands, published in the Official Gazette of Romania, Part I, no. 313 of 27 August 1998, approved with amendments and completions by Law nr.107/1999; art. 4-9 of the Government Decision no.

Regulation 954/2002 on the approval procedures for establishing concrete forest management and distribution of material resources and financial sources due to natural persons and legal entities for forests on their property and that given by state forestry structure, based contract, as well as their obligations, published in the Official Gazette of Romania, Part I, no. 686 of 17 September 2002, as amended, no. 139/2005 on the management of forests in Romania, published in the Official Gazette of Romania, Part I, no. 939 of 20 October 2005, approved with amendments and completions by Law no. 38/2006 with subsequent amendments.

CONCLUSIONS

New Forest Code is a very important law, and its adoption is a positive deal for a series of problems faced by forest area. But does not contain any chapter of principles, objectives, which would allow an interpretation and application of a complete forestry legislation. It can not be considered a new beginning, a new regulatory framework, but seems mostly an update of the old code, neprevazand change to the legal foundation of a genuine reforms. In the political environment, especially in opposition, already accredited to the idea that Law 46/2008 is a "code transition" whose fate is to regulate the legal relations of forest to the thinking of principles that would then constitute the foundation of legislation with everything new and innovative.