

## FOREST LEGISLATION'S ROLE IN THE PROTECTION OF ROMANIAN FORESTS

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### Abstract

*In this article, we will analyze the main normative acts elaborated in the field of forestry from a historical and evolutionary perspective, with the aim of emphasizing their role and importance to the protection of Romanian forests. In order to ensure a consistent approach, we will briefly present the main forest laws adopted and applied in Romania, starting with the nineteenth century. The legal approach to the concept of forest protection implies presenting all the legal means offered to the individuals that are engaged in forest related social interactions with the purpose of protecting the social values that are closely connected to this good. The legal forestry mechanisms that ensure that these extremely important goods are lawfully protected have an essential role among forest protection instruments. The legal regulations that impact the forest fund include both the forest codes adopted in Romania and all the legal regulations relevant to the forest protection field and contained in numerous other normative acts.*

*The main methods used in tackling this subject were: the logical method, the historical method and the comparative method.*

*The current study attempts to outline evolution of the Romanian legislator's concern to regulate the forest social relations and to establish the basic rules of development, conservation and sustainable management of the Romanian forests. All together, we will highlight the tendencies of the historical periods in which these normative acts were adopted and applied.*

**Keywords:** *Public law, legislation, forest codes, forest protection, sustainable management, forestry.*

### 1. Preliminary considerations

The legal protection forests as legal assets are composed of a set of the legislative measures aiming to protect, conserve and manage. From this standpoint, the legal approach to forests' protection is the sum of legal means and instruments offered by the Romanian legal system to the individuals who possess subjective

rights and are engaged in social relations that aim to safeguard the social values that are closely related to this category of goods<sup>1</sup>.

Considering the complexity of the forest's function, the legal field comprises numerous judicial means that may be specific to the forestry or to other branches of law<sup>2</sup>.

The legal feature of forest protection can be distinguished and structured judging by the interests being served, namely it either serves the interests of the entire Romanian society or it serves private interests. A balance is needed between these two categories of interests, and this balance is generated by the importance of the historical, economic, social, cultural and political categories that concern the national forest fund.

Economic needs determine the adoption of the rules regarding the forest's exploitation and management, but there are other needs as well, such as social, historical, cultural or ecological needs, whose achievements depend on the adoption of appropriate protective measures.

Of course, in order to identify the legal dimension of forest protection, is necessary to deepen the law areas and reveal those legal means specific to certain branches of law that ensure the protection, conservation and management of the forest in its entire complexity. In the following, we will illustrate and analyze the forestry legal means used over time to this purpose.

## 2. Legal means of protecting Romanian forests

Firstly, we need to stress that the forests' legal protection is a concept that has wide-ranging valences precisely because of the importance given to the forests by the social process participants.

Sure enough, the importance of forest protection is also given by the global economic development as well as the political transformations phenomenon related to legal globalization, which is present in relations focused on this category of essential goods. The crucial significance of the forest and the complexity of its functions imply the existence and the establishment of a set of adequate protection means, which harmonize the economic, social and ecological field.<sup>3</sup>

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<sup>1</sup> Specialty literature established that there is a narrow interpretation of the concept of legal protection, which is assimilated to the notion of legal defense implying the legal means system used for the restoration of some violated rights; see, Zinveliu, I. (1971), *Legislația forestieră în România*, Ceres Publishing House, Bucharest, pp. 183.

<sup>2</sup> For details related to the need of forest protection, see, Lupan, E. (2009), *Tratat de dreptul protecției mediului*, C. H. Beck Publishing House, Bucharest, pp. 337-345.

<sup>3</sup> See details related to the forests functions in Dogaru, L. (2002), *Regimul juridic al pădurilor, "Petru Maior"* University of Țirgu-Mureș Publishing House, pp.18-21.

From the vast category of the forest protection legal means, the forestry legal instruments, which are meant to ensure the legal protection of these goods, have a focal role.<sup>4</sup> Still, regardless of the means by which the legal protection of forests is achieved, they must guarantee the protection of the environment, its development and its sustainable management. Obviously, the whole set of forests legal protection means relates to a wider set of legal means of legal protection of the environment.<sup>5</sup>

### 3. The regulation of forest protection through forest law

The Romanian forestry legislation adopted over time provides numerous warranties that constitute a legal shield around the existence, continuity and sustainable development of Romanian forests. The Romanian lawmaker has been regulating this matter and establishing the basic rules according to the concepts of management, conservation and the sustainable development of forests. On the other hand, social, economic and judicial evolution, have also influenced the forestry laws, highlighting the tendencies of the historical periods they were applied in, the structure of property law and the subjects of forestry law.

The most important collection of forest legislation includes basic and representative normative acts which have been edited starting with the 19th century and are still being applied in Romanian territories. In this context we will mention the following: The Forest Order for Bucovina, The Normative Act issued by the Emperor Joseph II in 1786, the Romanian Forest Codices of 1881, the Romanian Forest Code from 1910, the Forest Code from 1962, the Forest Code from 1996 and the Forest Code from 2008 that was amended and republished in 2016.

We will start with the Forest Order for Bucovina<sup>6</sup>, a normative act that has been mentioned in the doctrine as the oldest Romanian forestry Code and has often been called The Forestry Ordinance of Joseph II. The law of 1786 is the first forestry legacy of Bucovina that synthesizes scientific knowledge serving the purpose of efficiently managing the forests of Bucovina, insisting on clear and

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<sup>4</sup> In this respect, our country has ratified several international normative acts which establish the principles and the guidelines of forest preservation and protection and its sustainable management and has also adopted several laws and normative acts aiming to further harmonize the legislation with the community's legislation.

<sup>5</sup> Moreover, the concept of environmental protection, the idea of nature's protection and of forest domain, are closely linked related, with the notion of environmental protection comprising the others, the latter having a wider, more comprehensive range.

<sup>6</sup> For details, see, Dogaru, L. (2008), *Codul silvic român-prezentare evolutivă*, 2<sup>nd</sup> edition, Risoprint PublishingHouse, Cluj-Napoca, pp. 13-20; Gheorghe T Kirileanu, Gh., T. (1908), *Cel mai vechi cod silvic românesc: Orânduiala de pădure pentru Bucovina dată de Împăratul Iosif al II-lea în 1786*, RSR PublishingHouse, Bucharest.

efficient regulation in the field of cutting and regenerating of Bucovina's forests. The old Bucovina Forest Code includes a system of general principles and rules which regulated forest management. Of course, one can notice that at that time, the Bucovina forest legislation was given in the interest of the dominant social class, as it stipulated, among other things, that the property right to the forests belongs solely to landowners who can claim the forests from other people and from village communities.

This early forest law includes: general principles relating to the forest's preservation, maintenance and rational exploitation; rules related to the requirement of tree marking; rules on the transmission of obligations and also on the legal liability in the field of forestry. Furthermore, the notion of forestmanagement planning was introduced for the first time and the threats to the forest were analyzed, with the prohibition of activities affecting the integrity of the forest (for example: grazing in forests was prohibited as well as the location of settlements in the immediate vicinity of forests). Moreover, these laws also strictly stipulated the rules for the management of communal and freeholders' forests.

The final part of the forest law mentions the actions that constitute forestry misdemeanors, investigation techniques of delinquencies and their punishment. At the same time, one can notice that the choice of the punishments was reliant on the social status and on the author's guilt, but also on the amount of damage sustained.

Although the application of the rules contained in this forest law is questionable, its importance mainly resided in the democratic nature of the period the forest code's enforcement, the law's statement of reasons being a genuine commandment addressed to those who have a responsibility in this respect.

The first framework law regulating and ordering the forestry relations in the Old Kingdom was promulgated in June 1881, being the first law on the forestry field that emerged after more than two decades from the Union, reflecting the needs of the Romanian society in that time. The Romanian Forest code from 1881<sup>7</sup> is largely inspired by the French Forest Code from 1827, mainly due to certain Romanian politicians at the time (for instance, The Minister of Finance, I.C. Brătianu and the King Carol I). The opening part of the forest law presents the legal enforcers responsible with the exertion of forestry control and enforcement of the forestry code itself, following the norms that provide that the forests are submitted to the forestry regime. Although the law provides a guarantee for the safeguard of the Romanian forestry property, it still leaves freedom to the individuals, especially to the association of forest owners, further determining the devastation of the forests.

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<sup>7</sup> Promulgated by the King Carol I, on June 19, 1881, was based on the Law for the Protection of Monastic Forests from 1843, it remained in force for 30 years.

On a more positive note, The Romanian Forest Code introduced the notion of "forestry regime" for the first time, requiring that any forest owner is free to request the submission of his forest or forests to this forestry regime. At the same time, the Romanian legislator requested the set-up of forest management plans, without which the forest exploitation was prohibited, and which had to take protection and preservation into account. In Title II of The Forest Code, the issue of deforestation was also approached, having been introduced in Romanian code as an inspiration from the French Code.

Although the deforestation of the forests that are subject of the forestry regime, it is not strictly prohibited, the Romanian legislator allows it only after the issue of a reasoned opinion, the landlords having the right to cut forests that were not subjected to the forestry regime with some restrictions.

Towards the end, The Code specifies that the actions that constitute forest crimes are the ones being committed in the forests subjected to the forestry regime. However, from our point of view, the final provisions that establish the sanctions for forestry crimes are objectionable, as they set up a single penalty regime for different types of fault and different levels of severity, resulting in the lack of logical grading of the punishment and discrimination created by the Romanian legislator at that time. However, both the conditions and the criteria of determining whether a fact is a forest crime and the estimate of civil damages hold great interest. Finally, we appreciate that the forest law of 1881, represented a step forward for the Romanian society, despite it being often criticized, especially by the foresters of its time. Subsequently, the Regulation for the application of the Forest Code of 1881's provisions, regarding the forests submitted to the forestry regime, promulgated in April 1885, tried to correct certain formulations and defects of this code, which was first amended in 1887.

Although the code of 1881 is criticized from different perspective, we welcome the appearance and the content of its provisions, reflecting the democratic ideas of the Romanian legislator at the time. While the Code of 1881 has been disapproved by many, we believe that both the appearance and the content of its provisions were welcomed as it reflects the democratic ideas of the Romanian legislator from that period.

Chronologically, we also mentioned the Forest Code of 1910, which repealed the Forest Code from 1881, and which has undergone several modifications, its application being extended in 1921 and 1923 to all the Romanian provinces, i.e. to the Old Kingdom as well as Bessarabia, Bucovina and Transylvania. The Forest Law of 1910 has abolished the Hungarian forest law of 1879, the Austrian law for communal forests of 1897 and the Austrian forest law of 1906 in Transylvania and Bucovina. The new Forest Code has repealed the Russian forest law from 1776 Bessarabia.

The purpose of the Forest Code from 1910 is believed to have been to halt the degradation of forests and to establish a system that could ensure the preservation of the Romanian forest fund.

This Forest Code attempted to limit the exceptions from the forestry regime by creating certain omissions that would provide opportunities to the achievement of class interests. However, the historians of the time appreciated the modern character of this forest law, especially due to the measures meant to ensure the exploitation and the sustainable development of the Romanian forests. The provisions of this law also aimed to extend the category of subjects responsible for the violation of the forest code, as well as the application of sanctions in order to ensure the punishment of the perpetrators and the compensation for the damages caused. Also, in order to prevent an uncontrolled exploitation and the cease the deforestation process, the forest law established a lot of strict rules.

The Forest Code of 1910 established new trends regarding the individualization of property of the forests belonging to the associative forms of property while also regulating the institution of the preemption law in the forest field.

A distinct chapter is devoted to the protection of State forests as well as to the police of the forests. The forest crimes and the forest misdemeanors, as well as the penalties applied are thoroughly referred, with the purpose of stopping degradation of Romanian forests.

From a comparative point of view, the Forest Code of 1910 included new provisions regarding the level of punishment and their individualization while also incriminating new forest crimes. From our point of view, the adoption and the voting of this code corresponded with the international legislative trends, this being formulated in the idea of a forest reform.

The Forest Code from 1962<sup>8</sup> answered to the political imperatives of the socialist period and was marked by the tendency to empty the content of private property right on forests and forest lands or to limit its character. Being of constitutional kind, the provisions of the Forest code stipulated that all the forests and lands with forest vegetation are to be public property and part of the national forest fund. Undeniably, the transition of all the private forests into public property of the state was done with the violation of the principle of private property. The Forest Code of 1962 responded to the needs of legislative harmonization with the legal texts in force, having socialist, economic and legal principles at the origin of its elaboration, as it was the concept of unitary legal regulation of the forest management regime.

Representing a framework law which included the general rules for the management, conservation and forest fund protection, the Forest Code from 1962

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<sup>8</sup> Adopted by the Law no. 3 in 1962, was published in the Official Gazette no. 28 December 1968.

included forestry rules which provided the legal regime for the circulation of goods representing the national forestry fund, as well as the rules on its management and protection. Starting from the general rules, regarding the law subjects to the main real rights through which the forests administration and the legal regime of the forest lands' circulation was done, The Code also contained the legal rules on the management, conservation and protection of the forests' fund and of lands covered with forest vegetation. It also included important rules regarding the circulation of wood materials, as well as those that provide for the acts that constitute misdemeanors and forestry crimes, primary aiming to protect the Romanian forests.

We feel that the provisions of this forest law have achieved the objective pursued by the legislator, in terms of an efficient administration, management and exploitation of Romanian forests during its application. Its elaboration also represents the subordination of the Romanian forests to a unitary regime for the purpose of its sustainable protection and development, as well as insurance towards the preservation of this valuable financial source in the state heritage, by establishing a severe control and punishment regime.

The Romanian Forest Code of April 1996<sup>9</sup>, was the first forest code after the communist period and after the Romanian Revolution of 1989. The main objective of this forest law was to adapt the forest legislation to the new realities, namely, to recognize the form of private property over forests and lands with forest vegetation, and to subordinate all Romanian forests to a protection and conservation regime, appropriate to the international environmental protection rules and principles. The notion of national forestry is introduced, stating that it contains both public and private property forests. It is noted that, all the activities that are carried out in relation with the category of goods represented by the forests, will be preceded by the prevention phase against their degradation. Like the previous laws, this code also includes a lot of rules on the administration, conservation and management of the forests, considering the rational and sustainable criteria. It also stipulated forests sanctions, for those types of actions qualified as forest crimes as well as the legal liability that could be set up, based on the nature of the legal rule infringed. Certainly, from the provisions of this framework law stems the Romanian legislator's concern for the preservation, protection and sustainable development of the forest fund, in order to maintain the multiple and complex functions of the Romanian forests. Aiming a difficult objective for that historic period, the Forest Code in 1996, was set in accordance with the national and with the European forest policy at that time<sup>10</sup>.

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<sup>9</sup> Adopted by the Law no. 26 of 4 April 1996, expressly abrogated the Law no. 3 of 1962, being also subject of successive modifications and additions.

<sup>10</sup> To be seen, Mircea Duțu, *Tratat de dreptul mediului*, 2<sup>nd</sup> edition, C. H. Beck Publishing House, Bucharest, 2008, pp. 372-374.

Currently, the Forest Code of 2008 (Law no. 46/2008)<sup>11</sup> updated and republished in 2018<sup>12</sup>, as well as related legislation<sup>13</sup> is the general legal framework for the protection, conservation and sustainable development of the Romanian forests. This forest law aims to set up the general framework rules for the development and sustainable management of the Romanian forests, in order to improve the environmental and living conditions, without regardless of the holder of the ownership of forests<sup>14</sup>. In order to identify the content of the notion of legal protection of the forest, we recall the rules by which the Forest Code provides that the national forest fund is subjected to the forestry regime, consisting of legal, economic and forest technical norms, stipulated by the central public authority responsible for forestry and which exercise the control over the application of this regime. From the analysis of this text of the law, we conclude that the Romanian legislator's main objective is the protection and conservation of forests, precisely judging by the elaboration of this forest law and by the establishment of the forestry regime. This gives the legal norms that make up the forestry regime an imperative nature, at the same time delineating the notion of this term in technical and in forestry terms. The obligation to comply with the forestry regime is stipulated in imperative terms for all the forest holders, without considering the form of the property right. At the same time, the new legal provisions in the field of the control and enforcement of the forestry regime are in accordance with the European regulations regarding the obligations of forest owners.

Being the main legal source in the forest field, the contemporary Forest Code provides that all types of activities related to the forests are to be preceded by the precautionary phase and the prevention of the forest degradation and destruction, as well as the damage to the integrity of the forest fund. A novelty that was introduced by the New Forest Code regards the development and sustainable management of the forests<sup>15</sup>, and the preservation of the biodiversity of forest ecosystems through sustainable management measures. The introduction of sustainable development and forests management concept expresses the need for a new approach to the development of Romanian forests, by recognizing the

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<sup>11</sup> Republished in the Official Gazette, no. 611 of 12<sup>th</sup> August 2015.

<sup>12</sup> By Law no.230 of 2018, published in the Official Gazette no. 693 of 8 August 2018.

<sup>13</sup> Regarding the regulations related to the Forest Code, see, Anca Ileana Dusca, *Dreptul mediului*, 2<sup>nd</sup> edition, Universul Juridic Publishing House, Bucharest, 2014, pp. 137.

<sup>14</sup> About the forests' legal regime established by the Forest Code, see, Mircea Duțu, Andrei Duțu, *Dreptul Mediului*, edition 4, C. H. Beck Publishing House, Bucharest, 2014, pp. 348-353.

<sup>15</sup> For details on the concept, principles and on the purpose pursued by sustainable forest management and development, see Ion Machedon, *Silvicultura și dezvoltarea rurală*, Tridona Publishing House, Bucharest, 2003, pp. 105-122 and Valeriu Enescu, *Silvicultura durabilă*, Agris Publishing House, Bucharest, 2002, pp. 137 and following.

importance of the forests' quality and their services, through the awareness of the benefits and of the functions they fulfill<sup>16</sup>.

In the context of sustainable forest management, certain legal provisions regarding the forest management, forest biodiversity conservation, forest regeneration and protection and to insurance of forests' integrity<sup>17</sup> are stipulated. Also, the Romanian Forest Code stipulated the main principles underlying the sustainable development and the management of Romanian forests, principles that have been formulated and established at a global level<sup>18</sup>.

Obviously, a distinct aspect regarding the legal protection of the forests is represented by the set of special rules stipulated for their defense, in which the legal norms related to the forests' protection are emphasized, safeguard that is ensured and exercised by the forest owners, according to the legal provisions<sup>19</sup>. It is noted that, the forests' protection is achieved in a special way, by imposing their guardianship for forest owners, with no distinction being made between the safeguarding of public or of private property forests. It is also established that, the forestry staff in the exercise of these attributions is assimilated to the staff with duties involving the exercise of public authority. At the same time, for the purpose of the forests' protection, certain obligations for the prevention and extinguishing of forest fires are stipulated on behalf of forest owners, on behalf of forest institutions (which provide the management and forest services), as well as on behalf of prefects, mayors, local and county councils and competent authorities in the field of civil protection of the environment. The content of the guarding obligation is represented by all the actions undertaken by the forest owners for the purpose of guarding and protecting of the aforementioned, with the specific support of the police. As for the repression of forestry crimes, the new Forest code contains special rules for sanctioning the deeds that affect the forestry regime and the integrity of the forest fund. At the same time, The Code stipulates that the

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<sup>16</sup> The sustainable forest development can be defined as the rational development that meets the needs of the present without compromising the ability of future generations to meet their own needs in a fair manner.

<sup>17</sup> In order to ensure the integrity of the national forestry fund, according to art. 34 and 35 of the Forest Code, the following are forbidden: actions aiming for the establishment of ownership rights over the public property of the state; the division below 1 ha of forest ownership; reducing the area of the national forest fund.

<sup>18</sup> The principle of promoting the practices that ensure the sustainable management of the forests; the principle of ensuring the integrity and permanence of the forest fund; the principle of increasing the area of forests land; the principle of adopting long-term stable forestry policies; the principle of the ecological objectives of forestry and the increase of its role in rural development; the principle of ensuring an adequate level of legal, institutional and operational continuity in the forests management; the principle of the forest biodiversity; the principle of harmonizing the relations between forestry and other areas; the principle of support for forest owners; the principle of preventing irreversible degradation of forests.

<sup>19</sup> Considered a "devilish servitude", the grazing in forests, in forest protection curtains and perimeters for improving degraded land, is strictly prohibited, except in cases of force majeure.

illegal acts which cause damages to the forest fund, constitute misdemeanors or forestry crimes, establishing in this respect the sanctioning regime.

We can say that, from the legal provisions of the New Forest Code, one can notice the Romanian legislator's intention to ensure the preservation and the protection of the forest, its use and rational exploitation. However, the part of this forest law has proved to be an extremely difficult one, both as a result of the property restructuring process in our country, as well as the implementation of the European Union provisions and the correlation between the Romanian forestry law and the communitarian law, the conformity of the national forestry policy with the European policy on the sustainable development of the forests<sup>20</sup> and also with regards to the ecological standards imposed on a global level.

### References:

1. Aggeston, F., Pulzl, H. (2018), *Coordinating the Uncoordinated: The EU Forest Strategy*. Forest Journal, MDPI, 9/125, pp. 1-3;
2. Kirileanu, Gh., T., *Cel mai vechi cod silvic românesc: Orânduiala de pădure pentru Bucovina dată de Împăratul Iosif al II-lea în 1786*, RSR Publishing House, Bucharest, 1908;
3. Dogaru, L. *Regimul juridic al pădurilor, "Petru Maior" University of Tîrgu-Mureş Publishing House*, 2002;
4. Dogaru, L., *Codul silvic român-prezentare evolutivă*, 2<sup>nd</sup> edition, Risoprint Publishing House, Cluj-Napoca, 2008;
5. Dusca, A., I., *Dreptul mediului*, 2<sup>nd</sup> edition, Universul Juridic Publishing House, Bucharest, 2014
6. Duţu, M., *Tratat de dreptul mediului*, 2<sup>nd</sup> edition, C. H. Beck Publishing House, Bucharest, 2008;
7. Duţu, M., Andrei Duţu, A., *Dreptul Mediului*, edition 4, C. H. Beck Publishing House, Bucharest, 2014;
8. Enescu, V., *Silvicultura durabilă*, Agris Publishing House, Bucharest, 2002;
9. Lupan, E., *Tratat de dreptul protecţiei mediului*, C. H. Beck Publishing House, Bucharest, 2009;
10. Machedon, I., *Silvicultura și dezvoltarea rurală*, Tridona Publishing House, Bucharest, 2003;
11. Zinveliu, I., *Legislația forestieră în România*, Ceres Publishing House, Bucharest, 1971.
12. European Commission: *A new EU Forest Strategy; For Forests and the forest-based sector*, COM (2013) 659 Final; European Commission: Brussels, Belgium, 2013.

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<sup>20</sup> Aggeston, F., Pulzl, H. (2018), *Coordinating the Uncoordinated: The EU Forest Strategy*. Forest Journal, MDPI, 9/125, pp. 1-3; European Commission: *A new EU Forest Strategy; For forests and the forest-based sector*, COM (2013) 659 Final; European Commission: Brussels, Belgium, 2013.