

Original Article

The Legal Regime of Forest Protection Curtains

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Abstract

The problem proposed to be treated in the following paper is the legal regime of land ownership on which there are going to set up forest protection curtains. Identifying the owners on whose land will be established the forest protection curtains and obtaining their consent represents a step without you cannot achieve forest protection curtain. This step could not be performed due to the unclear situations of land properties existing in the administrative units. On November 2, 2011, it was published in the Official Gazette, Law 213/2011 for amending and supplementing Law no. 289/2002 on forest protection curtains. This bill stipulates that the forest belt network forms the National system of protective forest belts, declared as a public utility.

Keywords: forest protection curtains; the procedure of expropriation, proprietary right.

1. Introduction

Forest protection curtains as they are defined in paragraph 23 of the annex to Law no. 46/2008 - Forestry Code [17], with the subsequent amendments and additions are formations with forest vegetation that are located at some distance from each other or from an objective in order to protect it against the harmful factors and/or to improve the climate, economic, aesthetic and health of the land [1, 3 5, 9].

The importance of forest protection curtains is undeniable [10, 14]. These have a major role in the protection of agricultural land against pests and harmful climatic factors and to improve weather conditions in the protected area, protection of soil under erosion, protection of communication and transport, especially against heavy snow falls, for dam protection against banks currents, floods, ice

and others, protection of communities and various economic and social objectives [2, 7].

Forest protection curtains can be, if necessary, publicly or privately owned and it represents the good national interest. The forest protection curtains network forms the National system of forest protection curtains. According to Law 213/2011, achieving the National system of forest protection curtains is declared by public utility [19].

2. Material and Method

The used material is represented by all the normative acts which regulate this area: Laws, Ordinances, Resolutions, and Orders, which will be presented in chapter Bibliography.

The research method consisted in studying the legislative framework – the national legislation in the field: Law 289/2002 amended and supplemented by Law 213/2011, Law no. 46/2008 - Forest Code, Law 18/1991 on Land Fund, the Civil Code, The Law on expropriation for public utility cause [13, 16, 17, 19].

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3.Results and Discussions

The need to set-up forest protection curtains is based on studies prepared by forestry research institutes (ICAS), whose services are purchased under public procurement law. The determined studies are a subject to approval for the Academy of Agricultural and Forestry Sciences "Gheorghe Ionescu - Șișești".

The preparation of technical-economical documentation for setting forest protection curtains is made by certified corporate law, whose services are purchased under public procurement law.

The implementation of forest protection curtains is based on technical and economic studies which include mandatory:

a) technical elements necessary for the forest protection curtains installation: orientation, width and spacing between forest belts, planting schemes, suitable species for afforestation, b) maintenance works till declaring the closure of massive state c) specific investment for each type of forest protection curtain and other necessary data d) identifying the owners e) floor plans for forest protection curtains f) cadastral documentation made in stereographic system projection 1970, approved by the Office of cadaster and real estate advertising in whose jurisdiction are situated the premises, with allocation of cadastral numbers. At the owners' request, for these buildings, land books will be opened, according to regulations [4, 12].

At the request of the National Forest Administration - Romsilva through its territorial forest structures, it will be noted in the land book that the agricultural land on which will be set-up the forest protection curtain is under afforestation.

Approving the technical-economic documentation for setting forest protection curtain is made by the technical-economical committee established at central public authority level which is responsible for forestry. Setting-up the forests protection curtains is mandatory for individuals and business owners whose areas were included in the documentation provided above.

Individuals or legal persons who agree and on whose agricultural land are set-up protective forest curtains remain the land owners of the land and established forest and they receive annually till the state of massive is closed a compensation of income loss amounting 10 times the average price of a cubic meter of standing timber, established by law, per hectare, corresponding to the area actually occupied by forest protection curtains [17].

Property owners will be notified concerning: a) the need, public utility and location of forest protection curtain b) the ability to express

the agreement to establish the forest protection curtain and will remain owners and receive compensation provided in art. 101 of Law no. 46/2008, as amended and supplemented, c) the possibility of triggering the expropriation proceedings to the utility public cause, if they do not agree [17].

Owners of property will be informed about the implementation of the National system of forest protection curtains by the specialized territorial structures of National Forest Administration - Romsilva by posting information on its website [6].

The written expression of the agreement by the owners of the property is made within 45 days of notification. The written consent is accompanied by a document proving the ownership.

In the situation in which property right holders don't express their agreement for carrying out the works, it will be launch the procedure for expropriation for the public utility cause, expropriate being the Romanian State, through National Forest Administration - Romsilva.

The lands on which are installed the forest protection curtains have a forestry destination management are introduced in forest management within 90 days after receiving the afforestation works [2, 11, 15].

The reception of the works to achieve the national system of forest protection curtains are made with the mandatory participation of: a) land owner, b) Romsilva representative; c) the specialized unit for afforestation execution representative.

Expropriation procedure

For each immobile subject to expropriation, the expropriate establishes a technical-economic documentation that includes: a) cadastral documentation, b) confirmation that the property owner has not consented;

At territorial-administrative unit level is drawn up the site work plan containing expropriated buildings and cadastral numbers assigned, approved by the Office of Cadaster and real estate advertising.

The plan of the work location accompanied by a summary including owner name, property address, building area address, building surface, cadastral number, number of land registry and offer of compensation is made to the public knowledge by the expropriation committee by displaying at the respective local council, where it will be displayed until the completion of expropriation, and by posting on the expropriate own website.

Based on the documentation provided above, the Government approves, by resolution, the initiation of the expropriation procedure,

commissioning in expropriator management of all defined properties in terms of the location working plan on each territorial unit, the total amount of estimated damages by the expropriator based on an evaluation report prepared by authorized assessors and terms as it turns to expropriator [4, 9].

Within 5 days from the entry date of the Government decision on expropriation, the expropriator calls by decision of the head of R.N.P. - Romsilva a verifying commission of properties ownership of expropriated estates and of expropriation in each administrative-territorial unit where expropriation is done. Proof of ownership right on expropriated estates is made by any means permitted by law, including in areas where there aren't land books, depending on the method of acquiring rights – conventional, judicial, legal, and successional.

The Commission consists of 5 members, as follows: a) a legal advisor of Forestry Department - chairman b) mayor of administrative unit - member; c) 3 representatives of Romsilva of which one with legal studies - members. The constituted committee can work valid in presence of at least three members. Decisions of the Commission will be taken by a majority vote of the committee members [8, 19].

To obtain compensation, the owners of buildings subject to expropriation submit within 10 days after disclosure to the public, a written request and authentic statement of acceptance of the compensation amount. Within 30 days of the documents submission is sent to the properties owners to indemnify to the bank account indicated by them.

If the documents were not filed in time or if the owners cannot be identify, the compensation for the expropriated property will be put in an interest bearing account and will be deliver to the people who prove their ownership.

The compensation shall be issued only to holders of property rights proved by authentic documents and/or irrevocable judgment.

In the situation in which buildings to be expropriated are the subject of an inheritance and successors are not known or cannot present a succession certificate, if the succession procedure is open, the compensation will be registered on the account of the apparent heir. Assuming that the succession procedure is not open, a representative of the expropriator is entitled to request the opening of the succession and the amount representing the compensation will be recorded in a separate account on behalf of apparent heirs [13, 19].

Compensation will be issued only to successors who will prove that with the certificate of inheritance or with a final judgment

If the owner or one of the right owners in competition disagrees with fixed compensation, the amount representing the compensation shall be consign on behalf of the holder or, where appropriate, of the holders [3, 11, 21].

The compensation will be released following a request in these sense , accompanied by an authentic statement of acceptance of the amount of compensation determined by the committee decision or, where applicable, a judgment call for fixing the amount of final and irrevocable compensation .

The establishing decision of compensation shall be informed to the applicant and other holders or, where applicable, apparently holders displaying the extract at the local council in whose area the expropriated property is situated and displays the statement on the expropriator website [9, 20].

The dissatisfied expropriator with the amount of compensation mentioned above may appeal to the competent court within 30 days of the date on which it was announced the ruling. Also, anyone who is entitled to compensation for property expropriation may appeal to the competent court within three years from the judgment date determining to the local council under the same conditions [2, 5, 9, 18].

When calculating the amount of compensation, the experts and the court will report at the time of the ownership's transfer.

Later than 90 days from the date of the committee judgment, the expropriator makes by bank or cash transfer, the compensation payment to holders of real rights over expropriated estates or their register.

Estate's transfer of private property into public property of state as operating as the date of payment of compensation for expropriation or, where appropriate, the date of the deposit.

Individuals and legal people's acts and businesses true which they prevent setting up forest protection curtains is a contravention and is punished with a fine from 300 lei to 1,200 lei, if the form in which it occurs is a more serious offense punishable by law as a crime.

4.Conclusions

Until now possibilities for setting up forest protection curtains were very low due to lack of cadaster, of owners records from the administrative-territorial units. The main causes identified are:

- Ignorance of the administrative - territorial unit owners;
- Lack of cadastral plans to record owners;
- Succession debate of unmade heritage;
- Repeated selling of land, without the owner's registration local level;
- Owners residing out of the country or unknown residency.

Moreover, agricultural land owners are very reluctant to the action of setting up forest protection curtains due to land property division, constraints on properties access , in some cases the fear, unreasonable, that by setting these curtains the owners will lose their ownership right on the respective lands.

It is hoped that by declaring a public utility the forest protection curtains, moving to expropriation for public utility, and the establishment of National Forest protection curtains will be able to solve this problem particularly important.

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