FOREST PROTECTION AND MANAGMENT

Apostolos Papaconstantinou, *Doctorate in Constitutional Law- Attorney in Supreme Courts*
Partner in the Law Firm: «AP. PAPACONSTANTINOU - G. KATROUGALOS – N. HLEPAS & ASSOCIATES»[1]

What are the basic regulations regarding the protection of forests and forest expanses?

The Constitution explicitly enshrines the protection of forests and forest expanses. In particular, the article 24 par. 1 provides: «Matters pertaining to the protection of forests and forest expanses in general shall be regulated by law. The compilation of a forest registry constitutes an obligation of the State. Alteration of the use of forests and forest expanses is prohibited except where agricultural development or other uses imposed for the public interest prevail for the benefit of the national economy. Furthermore, the article 117 par. 3 and 4 provides: «3. Public or private forests or forest expanses which have been destroyed or are being destroyed by fire or have otherwise been deed or are being deforested , shall not thereby relinquish their previous designation and shall compulsorily be proclaimed reforestable, the possibility of their disposal for other uses being excluded. 4. The expropriation of forests and forest expanses owned by individuals or by private or public law legal persons shall be permitted only in cases benefiting the State, in accordance with the provisions of article 17, for reasons of public utility; but their designation as forests shall not be altered».

The above constitutional provisions guarantee a high level of protection of forests and forest expanses. The alteration of the forest nature of these expanses is practically unfeasible, whether they constitute public or private property, except in extremely borderline cases where the public interest imposes such an alteration. In these cases, a critical issue is raised concerning the identification of the areas later designated as «forests» or «forest expanses». This issue is directly clarified via the mere Constitutional text which, following the Constitutional Revision of 2001, includes this identification in the form of an interpretative clause which accompanies article 24. According to this: «By forest or forest ecosystem is meant the organic whole of wild plants with woody trunk on the necessary area of ground which, together with the flora and fauna coexisting there, constitute, by means of their mutual interdependence and interaction, a particular biocoenosis (forestbiocoenosis) and a particular natural environment (forest-derived). A forest expanse exists when the wild woody vegetation, either high or shrubbery, is sparse».

The legal framework concerning forests and forest expanses is complemented by the provisions of the law 998/1979, as applicable after a series of amendments. These provisions specify the afore-mentioned constitutional definitions, establishing at the same time specific regulations on the protection of forests and forest expanses. These regulations are framed by the Decree-Law 86/1969 («Forestry Code»); some of its provisions continue to be applicable. It is noteworthy that, in Greece, there is not yet

1. Apostolos Papaconstantinou has taught Public Law for a series of years in Greek Universities, being at the same time in significant positions in the Public and Private sector.

an integrated Forest Registry which is a fact that results in increased uncertainty and insecurity on the forest nature of the areas outside urban planning.

What are the legal consequences induced by the forest nature of an area?

The forest nature of an area practically results in its utter bounding since alteration of the forest nature is not, in principle, permissible, while any destruction of forest vegetation and, therefore, change of forest nature entails severe administrative and criminal penalties to those causing them (articles 45-47 and 71, law 998/1979). The same applies in respect of areas declared as reforestable. Additionally, the (rebuttable) presumption of ownership to the State is applicable on forest expanses. Moreover, actual adverse possession at the expense of the State is not possible since 1915. Therefore, actual adverse possession at the expense of the State demands completion of its legal conditions before the year 1915 in order to be legally bounding (i.e. decisions of the Supreme Court of Greece 400/2011 and 102/2010). After all, fragmentation of a forest area is only legally accepted as a result of a permission issued by the Minister of Agriculture (article 60 par.1, Legislative Decree 86/1969), while its conveyance and relevant land registration based on the title of ownership is, in principle, not possible if not accompanied by a statement in accordance with which the State will not claim full ownership (see indicatively decision 1330/2008 of the Supreme Court of Greece).

How can we ensure certainty of whether an area is of forest nature or not?

As already mentioned Greece has not yet adopted a forest registry which, in many cases, results in serious doubts on whether an area is of forest nature or not. Furthermore, the above constitutional definitions have not yet pointed a way to settle the issue in a definite way. In many cases, the local forest services are termed with exaggeration of stringency when characterizing land as forest. In fact, this is independent of the time of possible existence of forest vegetation.

The law (article 14, law 998/1979) establishes a special administrative procedure for designating an area as forest or not. Specifically, the chief Forester rules, when requested, on the specific character of an area; however, his decision may be challenged before the Administrative Committees Resolving Forest Disputes, whose verdicts are brought before the competent administrative courts (Administrative Courts of Appeal) . Unfortunately, these procedures are often proven to be time-consuming.

According to settled case-law of the Council of the State: «The Chief Forester's and relevant committees' decisions on the nature of a specific area as forest or not must be specially reasoned on the grounds of the morphology of the territory, the type, composition, density and particular characteristics of the vegetation. This reasoning may be supplemented by other data in the folder » (C.o.S. 681/2011, 1156/2009, 2959/2006, 2997/2003 etc). All decisions of the Chief Forester and the Committees concerning the forest nature of an area are irrevocable (see C.o.S. 681/2011, 1518/2010, 3627/2003 κ.ά.). Furthermore, the supreme administrative court of the country has regulated, in its settled case-law, regarding the areas declared as reforestable, that «each deforested forest area, whether public or private, shall be declared compulsorily as reforestable under the mere objective observation of the existence of the conditions laid down in the afore-mentioned constitutional provisions. Exception of the obligation to reforest an area is only possible if the forest or the forest area had been deprived of their forest character

before the 11th of June of the year 1975 due to a legitimate cause and not as a result of arbitrary and illegal human activity; reverse of the situation created is, consequently, rendered impossible. However, the decision for reforestation must be fully reasoned as regards the designation of an area as forest or not; reasoning may be supplemented by other data in the folder» (C.o.S. 2452/2010, 2405/2009, 291/2009, 666/04 etc).

How does the jurisprudence of the courts implement the rules on the protection of forests and what are the corollaries of the development of investment projects?

A key feature of the jurisprudence of the Council of State is the recognition of priority to the protection of the environment[2]. This tendency is by all means dominant in the protection of forests and forest expanses which practically lies in the core of the protection of the natural environment. In some cases, the strict application of the rules for the protection of forests results in the adoption of inclement solutions and disproportionate burdens of property in a manner that is, in fact, inconsistent to the right to property (article 17 of the Constitution and article 1 of the First Protocol of ECHR). The Administration often characterizes at ease an area as forest, despite the fact that its forest nature has been altered many decades ago. When applying the principle «once a forest, always a forest», the Council of the State tends to prefer solutions not always compatible with the rules of the protection of property. Exceptions are found as regards those areas that have been deprived of their forest character for a legitimate cause, before the entry into force of the Constitution in 1975. In recent years, the case-law produced by the Council of State is also more flexible regarding the installation of electricity-production from Renewable Energy Resources establishments, as is the wind and photovoltaic parks. In these cases, it enables the development of such activities in forests and forest expanses[3].

It is worth noting that the law 3900/2010 (article 47) transferred competence over matters relating to the designation of areas as of forest nature or not and declaration of areas as reforestable from the Council of State to the Administrative Courts of Appeal, while it has equally provided for the legal ability to exercise appeal before the Council of State against decisions of the Administrative Courts of Appeal. The Administrative Courts of Appeal are expected to comply with the jurisprudence of the Council of State. In addition, it is likely that a lag period of adjustment may appear until the familiarization of the Administrative Courts of Appeal in these areas is achieved. This is certainly a legislative choice, which will probably lead to even greater deceleration in the judicial settlement of their affairs and will exacerbate the lack of security and legal certainty.

What are the prospects for improvement of the jurisprudence of the Courts in this field?

The financial crisis that emerged in recent years has rendered more widely accepted the idea that the development of investment projects requires decrease of the severity

2. See *Apostolos Papaconstantinou,* The article 24 of the Constitution as the legal-political tension field in the recent case-law of the Council of State, Law and Nature site 1997, pp.573 and, recently, Judicial Activism and Constitution. The example of the environmental jurisprudence of the Council of the State, Environment and Law 2006, pp 222 et seq., The environmental Constitution :Modern aspects, Environment and Law, vol.3/2011.

3. See indicatively CoS3816/2010, 1508/2008 etc. On these issues see Apostolos Papaconstantinou, The legislative regime foe renewable electricity resources, www.nomosphysis@org.gr (July2004), Georgios Papadimitriou/ Apostolos Papaconstantinou, Reformation of the legislative framework for the A.P.E. and configuration of best practices, particularly for wind parks, www.nomosphysis@org.gr (July 2004).

of the jurisprudence of courts in this area. This jurisprudence tends to be, ultimately, proven to be a competitive disadvantage in comparison with other European countries. Furthermore, it is not possible to consider as reserved any areas that have been practically deprived of their forest nature for decades. It is, however, required that their investment management is consistent with the need to ensure a high level of protection of the natural and, in particular, the forest environment. The proper direction of the final choices demands, in this case, strict compliance with the principle of sustainable development which imposes a balance between the socio-economic development and the environmental protection[4]. The Supreme Administrative Court will be the main instructor regarding this evolution by adopting, on necessity, a renewed approach of law and value weighting in this area. Finally, it is noted that the integration of Forest Maps in preparation, according to the provisions of the law 3889/2010, will inaugurate the required security and certainty of law in this area and, therefore, will allow easier development of investment projects.

4. For the principle of sustainable development see *Apostolos Papaconstantinou*, Social Democracy and welfare state in the Constitution of 1975/1986/2001, 2006 publ. Ant. N. Sakkoulas, pp 1163et seq., Sustainability and sustainable development as constitutional values : Interpretive, regulatory and jurisprudential aspects of the environmental Constitution, Environment and Law 2007, pp.536 et seq., Judicial Activism and Constitution. The example of the environmental jurisprudence of the Council of the State, Environment and Law 2006, pp 222 et seq., The principle of Sustainable Development, Administrative and Public Law Review 2002. pp. 580 et seq..