Ministry of Environment, Waters and Forests
National Agency for Environmental Protection

CARAŞ-SEVERIN ENVIRONMENTAL PROTECTION AGENCY

No.: 5575/15.06.2023
To: BUCHAREST COURT
Bucharest, Unirii Boulevard, number 37,
Sector 3 Administrative and Fiscal Litigation
Regarding: Section
Doss 1520/3/2023
Subject: cancellation of administrative document email - average opinion no. 1/2022

MISTER PRESIDENT,

Signed by the Agency for the Protection of the Environment Caraş Severin, with headquarters in R i str. Petru Maior, no. 73, Caraş-Severin county, Fiscal code 3228748, through legal representative Executive Director Mihai Dănut CEPEHA,pursuant to the provisions of art. 14andArt. 17 of Law 55/2004 in conjunction with the provisions of art. 205 et seq. C. Proc. Civ, in legal terms, we formulate:

GREETING

to the summons request filed by the Agent Green Association, and, considering the factual reasonsand of law invoked by the undersigned and based on the evidence that will be administered, we request you:

Mainly:

1. admit the exception of the nullity of the summons request, the lack of active procedural quality and of representation,
2. admit the exception of the inadmissibility of the action based on the provisions of art. 7 of the Law **no.**554/2004,
3. to admit the exception of the lack of interest of the plaintiff and the abuse of right on the part of This
4. to reject the request for suspension of environmental approval no. 1/ 2022, as being, on o partly groundless and illegal and, on the other hand, done with malice,
5. to order the granting of court costs,

In subsidiary to reject the summons request as unfounded and unfounded, for the following:

STATEMENT

Preliminary specifications:

Forest management, according to Law no. 46/2008 - Forestry Code, republished, with amendments and subsequent additions, is a basic study in forest management.

This study is drawn up, for the state-owned forestry fund, by specialized institutes, it is valid for 10 years or 5 years and is approved by order of the minister.

Therefore, it follows that the civic facilities are drawn up for the entire public property of the state regardless of whether we are talking about protected areas or not.

The entire management of the forest fund is done on the basis of forestry facilities. According to the definition in Law 46/2008 - Forestry Code, republished, with subsequent amendments and additions, forestry management represents*"the basic study in forest management, ecologically based, with technical-organizational, legal and economic content",*forest management being mandatory according to this special law. Without forestry facilities, forest management would be impossible. Thus, art. 19*FROM*The forestry code provides:

"Art. 19.- (1) The way of managing the national forest fund is regulated by forestry facilities, which constitute the basis of the specialized cadastre and the title of state property for the forest fund that is the public property of the state.

(1[1])Registration of the forest fundin thethe centralized inventory of goods in the public domain of the state, as well as its updating, up to the registration in the integrated cadastre system, is done, by the care of the central public authority responsible for forestry, based on the provisions of the updated forestry facilities with the entrances/exits approved by legal documents.

(2) The goals of forest management are established through forestry management, in accordance with the ecological and social-economic objectives and with respect for the right of ownership over the forests, exercised according to the provisions of this code."

The forestry management ensures the management of the forests towards their state of maximum polyfunctional effectiveness, in accordance with the multiple ecological functionsandsocial-economic aspects of forestry, based on the concept of functional zoningandpromoting the systemic concept in forest management,as well as the protection of forests against diseasesandpests.

According to art. 21 of the Forestry Code*"(1)The elaboration of the forestry arrangements is done in accordance with the provisions of the territorial development plans, approved according to the law.*

(1[1])Elaboration of forestry arrangements for the forest fund included in natural protected areasmakes it consistent with the provisions of the management plans approved according to the law or with the minimum conservation measures of the overlapping protected natural areas, Within the appropriate assessment, an integral part of the environmental assessment procedure for the forestry facilities and is harmonized by placing them in specific functional categories and the proposal of appropriate technical solutions.

(2) The development of forestry facilities is done under the coordination and control of the central public authority responsible for forestry".

The suspension of the environmental permit and the complete restoration of the forestry as claimed by the petitioner would have the effect of ceasing the activity of the National Directorate of Forests-Romsilva, with consequences and economic, social and environmental problems that are difficult to evaluate and impossible to repair, especially since forests are included in the national security law.

- According to art. 1 of the Technical Norms regarding the development of forestry facilities, modification *their provisions and the change of the land use category from the forest fund,* approved by OM no. 766/2018, the stages of developing a forestry plan are:

1. the pre-notification meeting of the design theme - the I planning conference, with the participation of: the project manager and the expert who ensures the technical control for the forest planning works, hereinafter referred to as the CTAP expert, from the authorized specialized unit; the head of the forestry district that provides the administration or forestry services, the representatives of hierarchical structures superior to him and, as the case may be, the owner;
   the administrator of the protected natural area, in the situation where it is partially or totally established above the forest fund the representative of the county or regional structure for environmental protection;
   the representative of the central public authority responsible for forestry or, as the case may be, of its specialized territorial structure;

2. reception field works, which are carried out in the last year of application of the forestry management or in the following year(s), if the forestry management has expired, with the participation of:
   -the project manager, the designer and the CTAP expert from the authorized specialized unit;
   -the head of the forestry district that provides the administration or forestry services, the representatives of hierarchical structures superior to him and, as the case may be, the owner;
   the representative of the central public authority responsible for forestry or, as the case may be, of its specialized territorial structure;

3. the meeting to review the technical solutions - the II planning conference is organized after the reception of the field works, with the participation of:
   - the project manager, the designer and the CTAP expert from the authorized specialized unit
   - the head of the forestry district that provides the administration or forestry services, the representatives of the hierarchical structures above him and, as the case may be, the owner
   - the administrator of the protected natural area, in the situation where it is partially or totally established above the forest fund;
   - the representative of the county or regional structure for environmental protection;
   - the representative of the central public authority responsible for forestry or, as the case may be, of its specialized territorial structure;

4. analysis and approval of the forestry management in the technical commissionofapproval for forestry from the central public authority responsible for forestry.

Thus, in relation to the present case, for the forestry management drawn up for the forest fund administered by the Valliug Forestry, the following stages were carried out in its development:

on 17.06.2020, the preliminary meeting of the Design Theme took place (Conference I of planning), with the participation of representatives of the central public authority responsible for forestry and of the county authority for environmental protection. In the minutes of this meeting (no. 2235 of 17.06.2020), on special issues, it was mentioned that "the designer will consult the management plans approved by order of the minister and will propose measures to manage the stands in accordance with them ";

the works for the collection of field data were carried out in 2020, ending with the CTE Minutes no. 248 / 06.05.2021;

on 09.03.2021, there was a meeting to review the technical solutions proposed by the developer of the arrangement, (II Conference on forest management), completed with Minutes no. 598 / 09.03.2021;

The Caraş Severin Environmental Protection Agency issued Environmental Notice no. 1/06.06.2022;

The forestry management of the Valiug Forestry Ring was approved by the Technical Approval Commission for forestry in 2022, in the form presented by the developer, (CTAS Notice no. 81 of 18.07.2022);

The forestry management of the Văliug Forest Bypass was approved by MMAP Order no. **2226/18.08.2022.**

And according to art. 22 of the Forestry Code "{I) Forestry arrangements and their modifications are approved by order of the head of the central public authority responsible for forestry. (Jl) The initiation of the environmental assessment procedure for forestry facilities by the environmental protection authority is done simultaneously with the development of the first version of the forestry facility, according to the provisions of Government Decision no. 1.076/2004 regarding the establishment of the procedure for carrying out the environmental assessment for plans and programs, with subsequent amendments. (Jl) The forestry arrangement enters into force on the date of its approval by order of the head of the central public authority responsible for forestry. (J3) Issuance of the environmental administrative act for forestry facilities is carried out in compliance with the terms stipulated by Government Decision no. 1.076/2004 regarding the establishment of the procedure for carrying out the environmental assessment for plans and programs, with subsequent amendments, but no more than 60 days from the date of the organization of the technical solutions pre-notification meeting - the II planning conference. "

Also, please take into account the fact that through the introductory action measures are requested to be ordered with important consequences for the Caraş-Severin Forestry Directorate and the concerned forestry bypass, which, in the unlikely event of the application being accepted, will be unable to fulfilling the role dictated by the legislator, of protecting and rationally and economically managing the forest fund in the area of activity (see in this regard the provisions of GD no. 229/2009) as well as for the Caraş-Severin Environmental Protection Agency by requesting cancellation of a technical-legal act.

I. **EXCEPTIONS CITED:**

1. We invoke the nullity of the summons request, the lack of active procedural quality and a representation.

- A. In accordance with the provisions of art. 196 of the Civil Code "(I) The request

for summons which *does not include the name and first name or, as the case may be, the name of any of the parties,the object of the request, its factual reasons or the signature of the party or the representativeit is null.*"

From the documents submitted to the case file, it follows that the action is promoted by the Agent Green Association, drawn up by "lawyer Rădulescu Cătălina Mihaela", signed by the same lawyer and the "plaintiffs".

With respect to the plaintiffs, I have not identified any document that proves these qualities and identifies who is/are the plaintiff/complainants in this case, including the first and last names of each person who are "plaintiffs".

In addition, the preliminary complaint is formulated by the petitioner Agent Green, also represented by "lawyer Rădulescu Cătălina Mihaela" and signed by the "interested public".

With regard to Agent Green, according to the legal provisions, in the case of an association of this kind, the governing bodies are established by statute and constitutive act, documents that establish the duties of each governing body.

The statute of the plaintiff association establishes that the governing body is the AssemblyGeneral Meeting of Associates, which, among other things, has the attributions of electing and revoking the Board of Directors and the President. The executive body is the Board of Directors, which is responsible for concluding legal acts in the name and on behalf of the association and can authorize any person, including persons who are not members of the association, to conclude legal acts in the name and on behalf of the association.

In this context, considering that the summons request is a legal act, we consider it mandatory to prove the quality of legal representative of the person who signed the attorney's power of attorney - if it exists in the case file - who has the capacity to conclude legal acts, respectively, the ability to grant the lawyer the mandate to do this, or proof that this lawyer was hired by the Board of Directors, taking into account the fact that a contract was required to be concluded in this regard.

The legislator appreciated that this form condition of the summons request is essential, "through his holographic signature, located at the end of the request, the plaintiff certifies his will to initiate the process and the accuracy of the summons request, and this condition is not considered fulfilled only by specifying the applicant's surname and first name".

Given that the application does not include the name and surname of the interested public, nor the name and surname of the legal representative of these plaintiffs, combined with the fact that we do not know who signed the power of attorney and the fact that the action communicated to the underwriter includes only a signature of "plaintiffs" in the original , and the lawyer's signature is an almost illegible copy, we ask the court to apply the provisions of art. 196, para. 1 of the Civil Code and to find the nullity of the summons request.

In the situation where the court considers that it is not necessary to establish the nullity of the request for summons, for all the reasons cited above, as long as we could not identify, in accordance with the provisions of art. 194 CPC, who is / are the plaintiff / plaintiffs in this case, we ask you to admit the exception of the lack of procedural quality and representation.

B. We invoke the exception of the lack of active procedural quality for the reasons below.

By active procedural quality is meant the legitimate interest of a person to request the court's assistance, which originates from the violation of a right of his own or from a relationship - recognized by law - of connection with that right.

According to art. 36 Proc. code civil., The procedural quality results from the identity between the parties and the subjects of the litigious legal relationship, as it is deduced to the judgment.

According to art. 20 para. (1) of GEO 195/2005, the competent authority for environmental protection, together with the other authorities of the central and local public administration, as the case may be, ensures information, public participation in decisions regarding specific activities and access to justice, in accordance with the provisions of the Convention on access to information, participation *public decision-making and access to justice in environmental matters, signed in Aarhus on June 25 1998, ratified by Law no. 86/2000.*, and according to paragraph, (6) Non-governmental organizations that *promote the protection of the environment, have the right to legal action in environmental matters, having active procedural status in litigations that have as their object the protection of the environment,*

The Aarhus Convention, of June 25, 1998, regarding access to information, public participation in decision-making and access to justice in environmental matters, ratified by the Romanian Parliament through Law 86/2000, in art. 1 states: "In order to contribute to the protection of the rights of every person in present and future generations to live in an environment adequate to his health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making and access to justice *in the environmental problems, according to the provisions of this convention",*

According to art. 9 point 1 of the Convention, Each party, within the national legislation, will ensure *the possibility for any person who considers that the information request, according to the provisions art 4, was ignored, wrongly refused, partially or totally, or who considers that he received an inadequate answer or that his request was not considered according to the provisions of art. 4, to have access to an appeal procedure before the court or another independent and impartial body provided by law.*

According to art. 4 point 1 of the Convention, Each party will ensure that the public authorities, in accordance with the following points of this article, in response to a request for information on environmental issues, make this information available to the public, respecting the provisions of national legislation, including in if copies of the documentation containing or including the respective information are requested.

Considering the aforementioned legal provisions, you must find that the plaintiff has active procedural status and can promote legal actions only in the sense of the provisions of art. 9 and art. 4 of the Convention regarding the request for information.

It therefore follows that this action based on the provisions of Law no. 554/2004 by which requests the suspension, respectively the cancellation of the valuation documents, does not fall under the actions for which the Non-Governmental Organizations that promote environmental protection have active procedural status, according to the Aarhus Convention and art. 20 of GEO no. 195/2005.

In relation to what has been shown, please accept the exception of the lack of active procedural quality a Agent Green Association and to reject the action as and formulated by a person without active procedural status.

2. By way of exception, we ask you to reject the plaintiff's action as inadmissible related to the provisions of art. 7 para. 1 of the Administrative Litigation Law no. 554/2004, respectively the lack of prior procedure.

According to art. 7 para. 1 of Law no. 554/2004 „ (1) Before addressing the competent administrative litigation court, the person who considers himself injured in a right or in a legitimate interest by an individual administrative act addressed to him must request the authority issuing public authority or the hierarchically superior authority, if it exists, within 30 days from the date of communication of the act, its revocation, in whole or in part. For well-grounded reasons, the injured person, addressee of the act, can file a preliminary complaint, in the case of unilateral administrative acts, and beyond the deadline stipulated in paragraph (]), but no later than 6 months from the date of issue of the act".

We specify that the petitioner filed a prior complaint registered with ANPM under no. 7034/28.06.2023, against the decision to issue environmental notice no. 119 of 17.05.2022.

So, it can be observed that the plaintiff filed the preliminary complaint late, exceeding the 30-day time limit provided by the administrative litigation law.

In addition, the prior complaint concerns the decision to issue the environmental opinion, while the present action concerns the environmental opinion.

Unfortunately, the petitioner did not file a prior complaint against the environmental notice no. Ol/ 06.06.2022 whose cancellation is requested in the present litigation.

Accordingly, please grant the exception of inadmissibility in relation to **the provisions of Law 554/2004.**

3. We invoke the exception of the plaintiff's lack of interest and the abuse of rights on her partand we ask you to admit them for the reasons below.

Administrative litigation law no. 554/2004 (which is invoked as a legal ground by the plaintiff) provides for art. 1, para. (1) that: "Any person who considers himself injured in a right or in a legitimate interest by a public authority, by an administrative act or by the non-resolution of a request within the legal term can address the court administratively, for the annulment of the act, the recognition of the claimed right and the reparation of the damage that was the cause'.

We ask the honorable court to note the fact that the plaintiff, in the content of the action, only requested the cancellation of some valuation documents, without indicating, in concrete terms, the right that was violated, the legitimate interest violated and the damage caused by the issuance of these documents.

Please bear in mind that the entire action is formulated for purely emotional reasons, without specifically indicating what relevant information should have been verified through site visits or what scientific data should have been collected from the field in relation to the fact that the plaintiff, from the response to the prior complaint, is aware of the fact that environmental studies were carried out and that*"the way in which they were identified and functionally framed was specifiedsemi-virgin forests". However,*the petitioner requests the annulment of the APVs without any basis, without having any concrete evidence and with a

long string of legal provisions, without being explained, in concrete terms, the connection of each of these provisions with the object of the case.

Even if the plaintiff, by the nature of the type of organization (NGO/Association), invokes some/hypothetical legitimate public interest not identified by the application, Decision no. ICCJ no. 8/2020 emphasizes that: *"In order to exercise legality control over administrative acts at the request of associations as interested social bodies, the invocation of the legitimate public interest must be subsidiary to the invocation of a legitimate private interest, this one arising from the direct link between the administrative act subject to the control of legality and the direct purpose and the objectives of the association, according to the statute".* From the applicant's request and the statute submitted as evidence, I could not identify a purpose of hers that would justify the invocation of the legitimate public interest subsidiary to the invocation and proof of the legitimate private interest - mainly.

Thus, even if the purpose of the association is the protection and preservation of the environment and the natural living conditions of man, the petition did not prove any violation of the legal provisions regarding the protection of the environment by the undersigned.

Once again we specify the fact that the environmental notice is issued in full compliance with the applicable legal provisions.

The legitimate public interest for which this lawsuit was brought, which should be subsidiary to a legitimate private interest, is not stipulated for the latter, as no future, foreseeable, foreshadowed subjective right can be deduced from the request submitted to the judge.

The plaintiff only requested the cancellation of the environmental notice without indicating in the what a way it was harmed by issuing this opinion, which right has been violated or which is the legitimate private interest.

As it is about the contentious objective, in this case, the plaintiff only requested the annulment of the opinion of environment, without asking to compel the defendants to issue another act or document or to ask us for a certain administrative operation to repair the hypothetical damage caused, otherwise not showing, concretely, how it was affected by this environmental opinion.

In conformity with the provisions of art. 32 of the Code of Procedure, the essential conditions sine qua non that any litigant who wishes to invest in a court must possess are listed, restrictively and strictly, as follows: *(1)Any request can be madeandabove, held only if its author: a) has legal capacity, under the law; b) has procedural quality; c) formulates a claim; d) justifies an interest".*

The interest of the legal action is represented by the advantage, the practical benefit, which the plaintiff hopes for in order to win the case.

Therefore, if the judicial activity cannot provide the party with a practical interest, his request willbe rejected for lack of this requirement.

Researching the existence of the interest to act is of particular importance, given the fact that through this condition it can be established whether the plaintiff has really formulated a just, well-grounded request, with the intention of which he aims to achieve a right or defend a legitimate interest, and not in purely harassing purpose, seeking to block the activity of a regime of national interest (art. 1, par. 3 of

GD no. 229/2009) and thus unnecessarily burdening the courts with requests devoid of any real and realizable interest, purely emotional and devoid of any evidentiary material.

The exception of lack of interest is conclusive and, when admitted, leads to rejection action.

Reported to the abuse of law that we request you to ascertain we make the clarifications below.

In accordance with Art. 15 Abuse of law from the Civil Code "No right can*beexercised with the aim of harming or damaging another or in an excessive and unreasonable manner, contrary to good faith.*"

In accordance with Art. 12, para. 1 CPC: "Art. 12: Good faith

(}) Procedural rights must be exercised in good faith, according to the purpose for which they were recognized by law and without violating the procedural rights of another party.."

In accordance with Art. 54 Prohibition of the abuse of rights from the Charter of Fundamental Rights of the European Union: "None of the provisions of this Charter shall be interpreted as implying any right to carry out any activity or perform any act directed against any of the rights and freedoms recognized by this charter or to impose wider restrictions on them than those provided by this charter",

The measures requested, through the introductory request, to be ordered are the suspension and cancellation of the environmental approval as well as the complete restoration of the forestry and the appropriate evaluation study.

In this case, through the introductory action, the plaintiffs request extreme measures to be ordered harsh and with extremely important consequences for the subscriber, which lead to the termination of the activity of DS Caraş Severin, with the consequence of the staff being made available, in the context of a very precarious national economic situation.

All these claims are formulated at a time when these claimants were clearly informed, at least through the response to the prior complaint (no. 7034/AAA./20.07.2022), of the fact that the environmental assessment procedure followed all the procedural steps provided by the legislation in force respectively, HG 1076/2004 and OM 119/2010.

In the response to the preliminary complaint, it was also mentioned that during the procedure there were recorded observations by the Altitudine Association, the Agent Green Association did not formulate comments or observations during the procedure for obtaining the environmental approval under the conditions and deadlines expressly established by GD 1076/2004.

The petitioner is also informed that the inclusion of the Bârzăviţa Nature Reserve in the TI functional type exceeds the legal regulations in force in relation to the provisions OM 766/23.07.2018 which defines the functional categories.

Therefore, although the petitioner knew at the time of the filing of the action that all the legal steps had been completed, including environmental studies and public consultation, that these surfaces had been scientifically analyzed, she still requests, in fact, the cessation of the activity of an entire forestry bypass.

Please note, from the documents submitted to the case file, that including in the Environmental Report made by INCDS "Marin Drăcea" Braşov Station in 2021, there are specified, starting on page 38,*"Relevant aspects of the current state of the environment and evolutionieits probable in the case of non-implementation of forestry management",* and the plaintiff - in her capacity as an association that aims to protect and preserve the environment - certainly knows what a forestry management and what

are the negative consequences in the event of its non-implementation.

Considering the fact that the undersigned has complied with all the applicable legal provisions, we consider this action to be a genuine abuse of law, the action being carried out with the clear aim of harming or damaging the defendant National Forestry Authority - Romsilva and its units and subunits or in an excessive and unreasonable way, contrary to good faith.

For all these reasons, please note that this action meets all the conditions for its inclusion in an abuse of right:

a) *to have a subjective civil right;* abuse of law does not exist outside of a subjective civil right; if the law or a rule of social coexistence is violated by committing an illegal act that is not related to a subjective right, a civil offense occurs, and *not* an abuse of right; relative to its capacity as an association whose purpose is the protection and preservation of the environment, it has the right, recognized by judicial practice, to promote actions for the fulfillment of its purpose;

b) *the subjective civil right to be exercised in bad faith* and *contrary to the social economic purpose* in which it was recognized by law; the holder of the right must have a negative subjective attitude, of ignoring the legal norms, an attitude that is expressed through what is called guilt *(C. Stătescu, C. Bfrsan, Civil law. General theory of obligations, 9th ed., Ed. Hamangiu, Bucharest, 2008, p. 196-198).* In art. 16 NCC is defined *guilt,* in a mannersimilar to the Criminal Code. "Bad faith is a form of guilt, it is the expression of deceit, fraud and serious guilt" *(L Deleanu, Subjective rights and the abuse of law, Ed. Dacia, Cluj-Napoca, 1988, p.71).* Exercising the right contrary to the economic-social purpose means exercising it for a purpose other than that recognized by the law, in order to harm another. The diversion of the subjective civil right from the purpose for which it was recognized by law cannot be conceived outside of guilt, *and/or the abusive, comissive or omitted acts,* are carried out *with intention.*

Thus, the introductory application promoted knowing that everything requested has already been carried out/fulfilled is a clear example of *exercise A RIGHT subjective with bad faith* and *contrary to the economic-social purpose* in which it was recognized by law;

c) exercising *abusive of the subjective civil right to lead to damage (D. Gherasim, op. cit. p. 116; I. Deleanu, op. cit., p. 100-107).* Damage canbepatrimonial or moral. In the present case, the damage that can be achieved is extremely high, both patrimonial (blocking the activity of an entire forestry bypass) and moral (for example, the fear of employees that they will not receive their salaries or that they will be laid off in the current economic situation) .

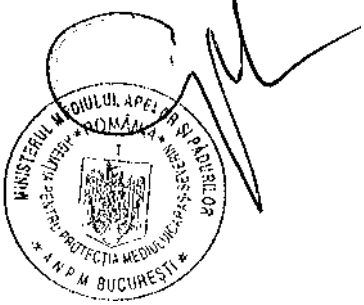
Considering these aspects, in our opinion, the plaintiff did not prove her legitimate private interest, an essential element for the trial of this case, and through the promoted action she commits a real abuse of rights - which can even be presented as an object of study as clearly as possible and without a doubt it is committed, which is why, based on the provisions of art. 40, para. 1 CPC and art. 15 of the Civil Code, we ask you to admit the exception of the lack of interest of the plaintiff and to establish the abuse of rights committed by promoting the request, with the consequence of ordering:

- the rejection of the action as devoid of interest

and
-stopping the abusive exercise of the right.

(EXTRACTED::::::))

Director Executiv
Mihai Dănuţ CEPEHA



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