

CRITICISM OF HOW IT WAS REGULATED AND PROSECUTED THE CRIME OF THEFT IN FOREST LAW 46/2008

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Abstract

Theft forest species is a variant of the common law crime recorded in art. 208 Criminal Code (petty larceny) and, respectively, in art. 209 (aggravated burglary). This distinction is very important for proper legal classification of illegal acts that will meet both specific constitutive elements of the forest and on the common law crime. The new forest code, not made, at least in terms of forest crimes, changes expected. In particular, the penalties for forest crimes are reduced to their social danger cocret and how criminality is likely to make finding work extremely difficult crimes.

Key words: forestry code, penal code, offense of theft, offenses against property forest

INTRODUCTION

In the fight against crime existing in any society, laws have criminalized all times and severely punished crimes against property. Over time, due to factors specific criminological every social order, crimes against property will be imposed gradually as a special autonomous category of criminal law in the modern and contemporary.

Legal institutions of the age old Romanian law contains specific rules established criminal offenses against property. These include: Romanian Teaching Book, in 1646, appeared in U.S. in command of Vasile Lupu STRAIGHTENING LAW, published in 1652, printed at the disposal of Matei Basarab Targoviste and culminating with the Codex CRIMINAL Sturza occurred during Alexander's (1826) in Moldova and Stirbei Barbu (1850) in Wallachia. In modern times, the Criminal Code of 1864 contained a separate chapter entitled "Crimes and offenses against property" (art.306-380), later supplemented with different regulatory framework non-criminal law (Romanian Forestry Code of 1881, followed by published in 1910). In terms of the unification of Greater Romania Unitary National State legislation, the Criminal Code of 1937 provided in book 2, Title 14, property crimes as "crimes and crimes against property "(art.524-573) was subsequently introduced in 1950 a new chapter," Some crimes against public property "(art.536), which were later modified by the socialist regime. With the drafting of the 1968 Criminal Code, contained in Title 3 regulation as "Crimes against personal or private wealth" (art.208-222) when criminality has been removed from superfluous special Criminal Code, and some were placed criminality corresponding object in their legal categories, charges received from special editing wider than the 1937 Penal Code (crimes of theft, robbery). Title 4 of this code provided crimes against public property. By Law. 140/1996, the Romanian Parliament adopted a new rule has been provided in relation to crimes against property. Thus, changed the name of Title 3 of the "Offences against the personal or private wealth" to "Crimes against property" and Title 4 "offenses against public property" was repealed in its entirety. Now through Law no. 46/2008 largely resume the provisions of Law 26/1996 regarding the regulation of forest crime.

RESULTS AND DISCUSSION

Forest theft is regulated by art. 110 and art. 115 of Law no. 46/2008 Art. 110 of Law no. 46/2008 is as follows: "The theft of trees felled or broken trees or natural phenomena, seedlings or saplings that were cut or uprooted, the forest, protective forest of degraded land have been improved by the works afforestation and forest vegetation outside the national forest and other products of any specific national forests is an offense and is punishable as follows:

- a) by imprisonment from 6 months to 3 years or a fine if the value of stolen wood is 5 to 20 times including higher than average price of a cubic meter of standing timber,
- b) to imprisonment for 6 months to 3 years if the offense was committed at least twice within a year and the cumulative value of the timber exceeds the amount referred to in point.
- c) imprisonment from 2 years to 6 years if the amount stolen is over wood 20 to 50 times including higher than average price of a cubic meter of standing timber,
- d) with imprisonment 4 years to 16 years if the value of stolen wood exceeds 50 times the average price of a cubic meter of standing timber.

Maximum penalties under par. (A) shall be increased by three years if the acts were committed in the following circumstances: a) two or more persons together b) a person with a gun or a narcotic substance paralyzing or c) at night; d) forest located in protected natural areas of national interest. "Article 115 establishes an aggravating, given that the crime of theft is committed by personnel forestry forestry. Theft forest species is a variant of the common law crime recorded in art. 208 Criminal Code (petty larceny) and respectively, in art. 209 (aggravated burglary). The distinction is very important for proper legal classification of illegal acts that will meet both specific constitutive elements of the forest and on the common law crime. In this case, there will there is a concurrence of crimes, but merely a text contest (C.vlad, C. ene - forestry crimes), with priority to the application of forest code generalibus derogant specialties according to the rule - provided by art. 362 Criminal Code. The first criterion is critical for maintaining the value of stolen wood, ie 5 to 20 times higher than the average price including a cubic meter of standing timber."

Such rules make it almost impossible to declare the act of the crime. It is known that, usually, a cart has a capacity of 1.5 - 2 cm, such crime is still necessary to achieve more consignments. Or, is quite obvious that someone made for a surprise in the first carriage and the others will do. In terms of acquiring the deed does not meet the criterion of value trees for the forest could be considered theft in a would be normal and logical to apply the provisions of the Criminal Code, the general law, which applies each time when there is no special law escape. But, through art. 8 letters. b) of Law 171/2010 on the establishment and sanctioning of infringements forest Published in Official Gazette no. 23/07/2010si 513 of the act came into force on 08/22/2010 of theft or unlawful assumption of the material timber of seedlings or sprouts of national forest, where the damage is fixed by law up to 5 times the average price of a cubic meter of standing timber, the date of discovery of the deed is incriminated as the offense. Or, this indictment as nothing but offense does not decriminalize the act and punished as provided in art theft. Penal Code art. 208.

We are thus in the situation where no right insusireaa of trees valued me less than 5 times the average price of a cubic meter of standing timber to be an offense (in the special law mentioned above) and some other goods insurirea with a lower value than the above are mentioned to be crime under art. Penal Code 208. In corroboration of art. Forestry Code 110, with art. Criminal Code and Article 208. 3 letter. a) of Law 171/2010 on the establishment and sanctioning of infringements arise if the objective side of the offense of

theft of forest is made the sole owner of the land, without it has signed a management contract with the Forestry specialist, not as criminal offenses . This is because according to art. 208 Criminal Code theft is the taking of property from the possession or detention cell to another in order and he himself unjustly. Alin. 3 of the same article provides that the act is theft even if the property belongs to all or part of the perpetrator, but was committed was in possession of that good or lawful possession of another person. Or, given that on purpose or by omission that the landowner does not sign a management contract with specialized Forestry is not as good condition to find legitimate possession or detention of another person.

Lack of express stipulations that will be reported when calculating the amount of damage. Without this indication is more serious because, under the provisions of art. Forestry Code 123 average price of a cubic meter of standing timber is determined annually by order of the head of the central public authority responsible for forestry. In practice the courts found that there is no uniform view on the consequences of change (upwards) the average price of a cubic meter of standing timber, which came after the commission of the offense, for crimes which affect the forest. Thus, some courts, hearing the trial of offenses committed before the increase in the average price of a meter cubic foot timber, ordered acquittal in the art. 11 point 2. a), related to art. 10 point 1 letter. b) of the Code of Criminal Procedure, considering that the average price increase in the ratio of cubic meter of standing timber, whether the amount of damage not exceeding 5 times the average price of cubic meter of timber, the system works constitute only misdemeanors forest.

In another point of view appreciated that in such cases requires the conviction of defendants on grounds that the average price may be considered a constituent of the crime, but only criterion for determining the amount of damages to which the criminal offense, such that the incidence to be reported when the deed was consumed. Finally, other courts have ordered the acquittal in the art. 11 point 2. a), related to art. 10 point 1 letter. d) of the Code of Criminal Procedure, considering that the amount of damage is part of the objective side of crime and the conditions under which such a requirement is not met, the offense is missing one of the constituent elements of the crime. Those courts have interpreted and applied Security incidents fair laws, the problem was solved by non-unified interpretation of the Decision. 12/2008 pronounced by sections of the High Court of Cassation and Justice as a result of passing an appeal on points of law. It should be noted that this decision was related to the forestry provisions of the old code, but as the Law 46/2008 which is criterion value and continue to maintain not expressly provide for the time reported that the damage is calculated, it can be considered that the provisions are binding on the court and under the current forestry code.

CONCLUSIONS

The new forest code, did not, at least in terms of forest crimes, the changes expected. In particular, the penalties for forest crimes are reduced to their social danger coeret and how criminality is likely to make finding work extremely difficult crimes.

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