

PRACTICAL CONSEQUENCES OF THE EXISTENCE OF A PARAMETRIC CRITERION VALUE IN CRIMINALIZING FORESTRY THEFT OFFENSE

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Abstract

This work deals with the consequences of the existence of a negative value criterion in incrimination of forestry theft offense. Lack of correlation between social danger of deed and legal limits of punishment, might put persons who unfearly are appropriate timber in a more favorable situation than other persons who appropriate another kind of goods, even with a much lesser value. The difficulty of finding, researching, prosecuting of any criminal forestry offenses is another negative consequence of the existence of criterion value.

Key words: Forestry Code, forest offense, damage, punishment, timber.

INTRODUCTION

In agreement with modern criminal law, the Romanian legislator understood to give up may define the offense as a deed which shows social threat. Sure, as far as I am concerned I appreciate welcome changing guidance, the new definition of the offense being more anchored in everyday realities.

But on the other hand, the surrender they also expect it hopefully to define an offense through the prism of danger, a must under no circumstances be interpreted in the sense in which this feature does not remain extremely important.

If legislator understood to incriminate a deed, it is understood that he took into account only those facts which presents a relevant social danger, harming or endangering fundamental social values of the society (Antoniou G., 2003).

MATERIAL AND METHODS

Material used for compiling this work is composed of monographs, manuals of expertise, specialized courses and Internet addresses. Methods used are legal, namely formal method, the method historical, comparative methodology, sociological method, the method logic and analytical methods which have affected systematic analysis of information extracted from the sources studied in order to develop their views and conclusions.

RESULTS AND DISCUSSION

In the matter of forest offenses, social danger or damage value represents a constituent of criminal offense, more exactly of its objectivity. In the absence of immediate History Museum, respectively in the case that the damage does not reach the amount provided for, the deed does not constitute an infringement has been committed. It can be a punishable offense, if all the other conditions are met.

In concrete terms, the existence of criminal offenses referred to in Article 107, 108 and Article 109 of Law No 46/2008 (source: Codul silvic) and, by default, difference from corresponding irregularities, as provided for by Article 8 (1) (a) or (b) of Law No 171/2010 (source: Legea contraveniilor silvice nr. 71/2010), depends on the damage, "which must be at least 5 times higher than average price of a cubic meter of standing timber from the date was committed murder" (in variants type of criminal offenses, or Article 108 (1) (a) and Article 110 (1) (a) of the Forestry Code) (source: Codul silvic).

Regarding the subject of this work, it should be noted that in accordance with the provisions of Article 109 (1) of the Law 46/2008 - Forestry Code (source: Codul silvic), the theft of trees subvert or broken by natural phenomena times of trees, saplings or shoots which have been cut or removed from roots, from forests, forest curtains to protect, of eroded lands that have been improved through work for afforestation and forest vegetation outside national forest fund, as well as any other specific products of national forestry is crime and it is punished as follows:

a. with prison from 6 months to 3 years, or fine, if the value of material woody stole is at least 5 times higher than average price of a cubic meter of standing timber;

b. with i prison from 6 months to 3 years, or fine if offense was committed at least two times within one year, and cumulative amount of woody material exceeds the amount laid down in (a);

c. with prison from one year to 5 years in jail, if the value of material woody stole is at least 20 times higher than average price of a cubic meter of standing timber;

d. with prison from 2 to 7 years, if the value of material standing timber stolen exceeds 50 times average price of a cubic meter of standing timber.

A first problem, simple for the specialists in criminal law but complicated to all the other citizens, is linked to the legal classification of that acts of theft of trees whose value does not exceed the threshold laid down by law.

Analysing the situation above, the reference to the provisions of Article 8 (2) (1) (b) of Law No 171/2010, i.e. up to the provisions of Articles 227-228 penal code.

Article 8. Paragraph 1 (b) of Law No 171/2010 regarding establishment and to penalise of forestry cases, establish as contravention the act or deed of "circumvention or acquisition without the right of the material standing timber, the shoots of young trees or national forest fund, if the value injury laid down in accordance with the law is up to 5 times average price of a cubic meter of standing timber, from the date of the aforementioned determination deeds" (source: Legea contravențiilor silvice nr. 71/2010).

Following paragraph of the same Article, establishes also the relevant penalties, as follows:

(a) fines ranging from 500 lei to 1,000 lei if the value of injury established in accordance with the law is up to average price of a cubic meter of standing timber, from the date of the aforementioned determination of the offense;

(b) with fines ranging from 800 lei to 2,000 lei if the value of injury established in accordance with the law is from 1 to 3 times average price of a cubic meter of standing timber, from the date of the aforementioned determination of the offense;

(c) fines ranging from 2,000 lei to 5,000 lei if the value of injury established in accordance with the law is from 3 to 5 times average price of a cubic meter of earth standing timber, from the date of the aforementioned determination of the offense.

Article 228 Penal Code, prosecute on the other hand theft as "(1) taking a moveable property from the possession or detention of another, without the user's consent, for the purposes of and it himself in an unfair way, shall be punished with imprisonment from 6 months to 3 years, or fine; (2) it is theft, and that the object belongs to in whole or in part to offender, but when committed, that good was in possession or legitimate detention of another person. (3) It is considered movable and spoken or written, electricity, as well as any other kind of energy which has economic value." (source: Codul penal).

Finally, Article 229 Penal Code (source: Codul penal) qualified theft as theft committed in the following circumstances:

- in a public transport;
- during the night;
- a person masked disguise or travestita;
- through break-in, assault escalation or by using without the right of a key true times from a key false;

- by taking out of operation of the alarm system times of supervision, shall be punished with imprisonment from one to five years.

If theft has been committed in the following circumstances: on a good that is a part of cultural heritage; by breaking in professional offices; a person having regard to a weapon, the punishment is imprisonment from 2 to 7 years. Theft relating to the following categories of goods: crude oil, gasolines, condensed liquid ethane, gasoline, diesel oil, other petroleum products or natural gas in the pipes, deposits, tanks or rail tankers; and parts of the irrigation systems; components of electricity grids; a device or a system of signals, alarm or alert has been issued in the event of fire or other emergency situations published; a means of transport, or any other means of intervention to fire safety, accidents at railway, road, ship and air times in the event of disaster; installation of safety and traffic routing by rail, road, naval, air and components thereof, as well as components of the means of transport carrying them; goods through which acquisition is liable to endanger the safety and traffic of the persons on public roads; cables, lines, equipment and installations of telecommunications, radio communications, as well as components of communications, shall be punished with imprisonment from 3 to 10 years.

An offense provided in Article 109 of Law No 46/2008 (Forest Code), as well as that provided in Article 107 of the same law, are offenses such as a result. In their case, the effect of immediate offenses is represented by a loss in a certain amount (for a certain value). Existence of such offenses and, by default, difference from corresponding irregularities, as provided for by Article 8 (1) (a) or (b) of Law No 171/2010, depends on the damage, which must be at least 5 times higher than average price of a cubic meter of standing timber from the date was committed murder (in variants of criminal offenses, or Article 108 (1) (a) and Article 110 (1) (a) of the Forestry Code). The value of damage depend not only the existence of criminal offenses in question, but also legal framing, either in variants type, either in the aggravated type concerned Article 109 (4) thereof (1) (c) and Article 107 (1) (c) (if the value of damage is at least 20 times higher than average price of a cubic meter of standing timber from the date offense was committed). In other words, in the case of these recriminations, the damage value represents a constituent of criminal offense, more exactly of its objectivity (source: Codul silvic).

In the absence of immediate pursuit, respectively in the case that the damage does not reach the amount provided for, the deed is not an offense but a simple forestry contravention. This with all as the offense caused a reduced material injury, but which do not fall but covered by special law, it is contentious as criminal offense in Penal Code.

To the current value level necessary for the existence of the forestry theft offense issues, I appreciate that the proportion between social danger of offense and punishment is not fair. At present, by Law No 4/2015 (M. Oh no. 18 of 9.01.2015, applicable act from 12.01.2015) average price of a cubic meter of standing timber has been set to the value of 115 lei (source: Legea nr. 4/2015). Consequently, reported to the threshold value terms imposed by legislature in the case of forestry theft offense, for its existence is no need for a value not less than 575 lei. Under the conditions in which the criminal law does not provide for a minimum threshold value, there is a possibility that a person who evaded a ball-point pen or 100 lei from one means of transport to the joint or within a dwelling being sentenced for committing a crime of theft, while the who appropriated timber of 574 RON, being penalized only with civil sanction. According to current laws, even if the person endorse timber in quantum of 1150 RON in two stages of the same value at an interval greater than 1 year between them, the committed deed will be highlighted from a legal point of view in two distinct and serious offenses between 2003-2004 as criminal offenses. Thus, there is the possibility that the same quantity of timber to constitute either offense or offense depending on the time interval (more or less than 1 year) between the two acts, the time interval being a criterion laid down in Article 109 (1) (b) final sentence of Law 46/2008.

In other words, the maintenance criterion value necessary for existence of forest offenses make it almost impossible to establishment and its proof by default. Under the conditions in which a regular cart has no more than 2 cubic meters, for the purpose of carrying out an offense are required more than one shipment. In this context, the deed of the one who, by helping a cart, is trying to steal timber and is surprised by the bodies empowered, constitutes a mere contravention. In the same order of ideas, if for example, the person concerned has been able to circumvent timber being caught only at the 10th transport, load agent of a sample that there are facts and previous offense by default, it will be very difficult especially if the person concerned has carried wood to other destination than his own home.

CONCLUSIONS

Personally I appreciate that in the case of forest offenses, damage was not only has a material component (determined exclusively on the basis of the value of stolen material standing timber), but have an especially an eco-friendly component, with the most devastating physico-climate consequences. In this context, I consider that it is asert to surrender criterion value, in which case it is able to generate suffer inequitable situations in which the persons who committed acts with less social threat, to be more

severely punished than those which appropriate timber with a several higher value.

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