

LEGISLATIVE TECHNIQUE ASPECTS REGARDING THE INDICTMENT OF FORESTRY THEFT INFRACTIONS

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Abstract

The indictment of the forestry theft infractions is done through a text that suffers from an obvious lack of accessibility and predictability. In this context and related to the high social danger of the acts regulated by this text, a legislative intervention is imposed to overcome this deficiency. Until the aforementioned legislative intervention, there is a risk that the authors of the misappropriation acts, of specific forestry products (other than trees, saplings or shrubs) to not be sanctioned.

Key words: predictability, accessibility, specific products of growing stock, legislative changes

INTRODUCTION

The decision to write the present article came to me as a result of reading the considerations of an acquittal decision¹ pronounced by the Cluj Court of Appeal, where it is mentioned that the deed imputed to the defendant is not found in concrete in the norm of incrimination.

The lack of clarity and predictability of the indictment rule was the reason in which base the Constitutional Court appreciated² such a text as being capable of violating the constitutional provisions regarding the right to a fair trial.

The indictment of forestry theft infractions is done by a text which, regarding specific products of growing stock (other than trees, seedlings or cuttings), suffers from an obvious lack of accessibility and predictability.

MATERIAL AND METHOD

According to the legal provisions³ regarding the normative technical norms, the normative act must be written in a specific normative language and judicial style, concise, sober, clear and precise, which excludes any ambiguity. The legislative text must be clearly stated, fluent and

¹Decision no.1282 / 2017 pronounced by the Cluj Court of Appeal on 12.10.2017 in the case which formed the object of file no.15109 / 211/2015, available at <http://www.rolii.ro/hotarari/59e6b829e49009902200002b>

²Decision no. 903 of July 6, 2010 (Published in the Official Gazette No. 584 of August 17, 2010).

³Article 26 paragraph 1 of Law no.24 / 2000 on rules of legislative technique for elaboration of normative acts, republished.

intelligible without syntactic difficulties and obscure or ambiguous passages. There aren't used terms with emotional impact. The form and aesthetics of expression mustn't prejudice the judicial style, accuracy and clarity of the provisions.⁴

The justification of such an intercession, as mentioned above, is given by the necessity for any person reading a normative act to be able to understand it so that they can conform the behavior to the law's rigors. Per a contrario, it can't be required to a person to adopt a certain behavior in the conditions in which this is not developed in an intelligible manner.

Besides the aforementioned aspect, the importance of strict observance of the legislative technique is even more obvious in criminal matters, where there is a risk that some people will be held accountable on the basis of texts which, although they have read, have not understood.

In its jurisprudence⁵, the European Court of Human Rights has appreciated the clarity and accessibility of the law as being protected and entering in the infliction jurisdiction of the principle of indictment legality.

In other words, the citizen must be able to have sufficient information, taking into account the circumstances of the case, in relation to the legal rules applicable in a given case. On the other hand, the law must be "*stated with sufficient precision*" so that a person to be able to predict "*with a reasonable accuracy degree*", taking into account the circumstances of the case, the consequences which may result from a specific act committed by him.⁶

In conclusion, the imputation of a criminal act to someone implies the necessity for the deed to be found in concrete terms in the norm of incrimination, in a clear and accessible manner.

With strict reference to the crime of forest theft, the text⁷ through which the indictment is made has the following content: "Theft of trees that have been destroyed or broken by natural phenomena or trees, saplings or shoots that have been cut or removed from roots, from forests, forest protection curtains, from degraded lands that have been alleviated by afforestation and from forest vegetation outside the national growing stock as well as any other specific products of the national growing stock constitutes a crime and is punished as follows:

⁴Art.8 paragraph (4) of the Law no.24 / 2000 on rules of legislative technique for elaboration of normative acts, republished.

⁵CEDO, Sunday Times vs. United Kingdom, 6538/74, 26 April 1979

⁶CEDO, Rotaru vs. Romania, decision of 02.03.2000, published in the Official Gazette no.19 of 11.01.2001

⁷Art.109 of the Law no. 46/2008 republished, regarding the Forest Code

- ▶ with imprisonment from 6 months to 3 years or by fine, if the value of the stolen wood is at least 5 times higher than the average price of one cubic meter of standing timber
- ▶ with imprisonment from 6 months to 3 years or with a fine, if the act was committed at least twice within one year and the cumulative value of the wood exceeds the value stipulated in let.a)
- ▶ with imprisonment from one to five years, if the value of stolen wood is at least 20 times higher than the average price of a cubic meter of standing timber
- ▶ within imprisonment from 2 to 7 years, if the value of stolen wood exceeds 50 times the average price of one cubic meter of standing timber.

According to the legal provisions⁸, the national growing stock products are classified in wood and non-wood products.

In their turn, non-wood products, those for which I consider that the indictment rule doesn't respect the legislative technique conditions, are classified in:

- fauna of hunting interest
- fish from mountain waters, farmland, ponds and lakes from the growing stock
- forest fruits
- forestry seeds
- truffles and other edible mushrooms from the spontaneous flora within it;
- medicinal and aromatic plants from its content
- resin
- other products

RESULTS AND DISCUSSION

Not being wood material, their value is not susceptible to be established according to the criteria set out in the rule of indictment. As can be easily observed, the legislator opted for a system to establish the penalty limits depending on the "**value of stolen wood**".

As a consequence, although expressly impleaded *in the case of the infraction of non-wood products theft* of the national growing stock, *the legislator omitted to set limits of sanction*, those indicated referring exclusively to wood products.

In the conditions in which also the non-wood products of the growing stock (forest fruits, mushrooms, fish, medicinal herbs) have a special

⁸Art.58 of the Law no. 46/208, republished, regarding the Forest Code.

patrimonial value, the legislator had the possibility to establish, in this case too, the limits of sanction according to this value.

In eventuality in which the determination by law of the value of non-wood products was difficult to achieve, the legislator had the option of indicating some minimum or maximum sanctions, without indicating a threshold value.

CONCLUSIONS

Until the realization of the proper legislative changes, there is the risk of declaring the unconstitutionality of the indictment of forestry theft having as object the non-wood products of the national growing stock.

The conclusion is the more obvious so as the violation of constitutional and conventional provisions concerning the right to a fair trial, as a consequence of the lack of clarity and predictability of the rule, is already found in the constant practice of the Constitutional Court.

Until the pronouncement of an eventual unconstitutional decision, there is a risk that the perpetrators of such acts will be acquitted by the courts on the consideration that the deed isn't found in an indictment rulewrittenexhaustively.

REFERENCES

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4. Law no.24/2000 on rules of legislative technique for elaboration of normative acts
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