

## **THE EFFECTS OF THE EMERGENCY ORDINANCE NO. 119/2021 IN TERMS OF THE FIGHT AGAINST FORESTRY CRIME**

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### **Abstract**

*Even if, from an overall perspective, the amendments brought to forestry crimes by Law no. 197/2020 were necessary and useful, their non-correlation with the special legislation on forestry contraventions generated certain unpleasant particular situations in which the same act was susceptible to be classified as both a crime and a misdemeanor.*

*Compared to the principles governing criminal law (criminal law more favorable and in dubio pro reo) starting with the date of entry into force of Law no. 197/2020 respectively 11.09.2020 there was a real risk that, on certain crimes, their perpetrators benefit of a favorable legal regime.*

*Emergency Ordinance no. 119/2021 has the merit to correlate the Law no. 46/2008 on the Forestry Code with the Law no. 171/2010 on the establishment and sanctioning of forestry contraventions and, as a consequence, to remove the possibility for forest criminals to benefit from a more favorable sanctioning regime.*

**Key words:** special legislation, forestry code, forestry contraventions

### **INTRODUCTION**

Even if, from an overall perspective, the amendments brought to forestry crimes by Law no. 197/2020 were necessary and useful, their non-correlation with the special legislation on forestry contraventions generated certain unpleasant particular situations in which the same act was susceptible to be classified as both a crime and a contravention.

Reported to the principles that govern criminal law (criminal law more favorable and in dubio pro reo) starting with the date of entry into force of Law no. 197/2020 respectively 11.09.2020 there was a real risk that, on certain crimes, their perpetrators to benefit of a favorable legal regime.

### **MATERIAL AND METHOD**

Materials used in drafting this work are composed of web sites, legislation. The methods used are legal, namely the formal method, the historical method, the comparative method, the logical and sociological method, the analytical method. The use of these methods has the role of performing a systematic analysis of the information from the studied sources in order to elaborate the points of view and the conclusions.

## RESULTS AND DISCUSSION

Emergency Ordinance no. 119/2021 has the merit to correlate the Law no. 46/2008 on the Forestry Code with the Law no. 171/2010 on the establishment and sanctioning of forestry contraventions and, as a consequence, to remove the possibility for forestry offenders to benefit from a more favorable sanctioning regime.

Against the background of the constant decrease of the areas covered with forest vegetation and of the alarming increase of the criminal phenomenon in the forestry field, the fight against the crimes in this sector has become a constant preoccupation of the authorities.

In this context, the forestry legislation has undergone, in a relatively short period of time, a series of changes meant, on the one hand, to transpose the community legislation and, on the other hand, to stop the illicit timber business. Several institutions were involved with a role in ascertaining forestry contraventions and crimes and with bringing them before the investigation / criminal prosecution bodies.

One of the most important and useful changes was the one regarding the elimination of the minimum threshold value, the achievement of which was conditioned by the existence of forestry crimes. Since the entry into force of the old Forestry Code, in their quasi-unanimity the existence of forestry crimes has been conditioned by a value of the lesion caused of at least 5 times higher than the average price of one cubic meter of wood per foot at the date of committing the act or as the case may be at the date of its finding.

Below the value mentioned above, the deed was not classified as a crime but only as a simple contravention, with all the legal consequences that flowed from it. The experience of the 30 years since the entry into force of the old Forestry Code has proved that taking advantage of the existence of the minimum value of the lesion, there were enough people who constantly committed forest crimes with a lesion, counted for each act in part, under the one required by law so that the deed can be classified as a crime.

In the context mentioned above, as it results from the explanatory memorandum<sup>1</sup> that accompanied the draft law<sup>2</sup>, modifications were considered in order to facilitate the possibilities of classifying an act as a forestry crime.

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<sup>1</sup> [http://www.cdep.ro/pls/proiecte/upl\\_pck2015.proiect?idp=18415](http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?idp=18415)

<sup>2</sup> Draft Law for the amendment and completion of Law no. 46/2008 - Forestry Code (PL-x no. 356/2020 at the Chamber of Deputies)

By Law no. 197/2020<sup>3</sup>, the necessary amendments were made, in the sense that both in the case of the crime of illegal cutting of trees and in the case of theft of trees, the condition of the existence of a prejudice of a certain minimum value was removed.

Specifically, after the entry into force<sup>4</sup> of the amendments introduced by Law no. 197/2020, the Forestry Code has the following content regarding the two crimes:

Unlawful cutting of trees<sup>5</sup> from the national forest fund, regardless of the form of ownership, constitutes a forestry crime and is punished as follows:

- a) with imprisonment from 6 months to one year or with a blind, **if the value of the lesion caused is up to 5 times the average price of one cubic meter of wood per foot** at the date of finding the deed;
- b) with imprisonment from one to 3 years, if the value of the lesion caused is between the limit provided in let. a) and at most 20 times higher than the average price of one cubic meter of wood per foot at the date of finding the deed;
- c) with imprisonment from 2 to 7 years, if the value of the lesion caused is at least 20 times higher than the average price of one cubic meter of wood per foot at the date of finding the deed

Theft of trees<sup>6</sup> felled or broken by natural phenomena or of trees that have been cut down or uprooted, from forests, forest protection curtains, from degraded lands that have been ameliorated by afforestation works and from forest vegetation outside the national forest fund, as well as of any other specific products of the national forest fund constitutes a crime and is punished as follows:

- a) with imprisonment from 6 months to one year or with an fine, if the value of the lesion caused is up to 5 times the average price of one cubic meter of wood per foot at the date of finding the deed;
- b) b) with imprisonment from one to 3 years, if the value of the lesion caused is between the limit provided in let. a) and at most 20 times higher than the average price of one cubic meter of wood per foot at the date of finding the deed;

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<sup>3</sup> Law 197/2020 for the amendment and completion of Law no. 46/2008 - Forestry Code, Official Gazette 823 of 2020.09.08

<sup>4</sup> 11 September 2020

<sup>5</sup> Article 107 para. (11) Forestry Code of 2008 (Law no. 46/2008) - Republishing, Official Gazette 611 of 2015.08.12

<sup>6</sup> Article 109 para. (11) Forestry Code of 2008 (Law no. 46/2008) - Republishing, Official Gazette 611 of 2015.08.12

- c) with imprisonment from 2 to 7 years, if the value of the lesion caused is at least 20 times higher than the average price of one cubic meter of wood per foot at the date of finding the deed

Starting with that moment, at least theoretically any unlawful cutting or theft of trees should have been a crime, without the value of the lesion to be relevant in terms of legal classification of the deed (eventually in terms of judicial individualization of punishment). This was, moreover, the intention of the legislator and the main motivation of the amendments introduced by Law no. 197/2020.

Even if, from an overall perspective, the amendments brought to forestry crimes by Law no. 197/2020 were necessary and useful, their non-correlation with the special legislation on forestry contraventions generated certain unpleasant particular situations in which the same act was susceptible to be classified as both a crime and a contravention.

Reported to the principles that govern criminal law (criminal law more favorable and in dubio pro reo) starting with the date of entry into force of Law no. 197/2020 respectively 11.09.2020 there was a real risk that, on certain crimes, their perpetrators to benefit of a favorable legal regime. Specifically, modifying the content of the objective side of forestry crimes and leaving unchanged Law no. 171/2020<sup>7</sup> on establishing and sanctioning forestry contraventions, the legislator generated a complicated situation in the sense that, on a lesion of *up to 5 times the average price of one cubic meter* the act of unlawful cutting or theft of trees was, at the same time, both the objective side of a crime and that of a contravention.

Specifically, on the lesion interval of up to 5 times the average price of one cubic meter of wood per foot, the text of the two infractions was identical to that of the following two contraventions:

- a) *cutting*<sup>8</sup>, breaking or uprooting *trees*, without right, as well as destroying or damaging trees, seedlings, Christmas trees or shoots from *the national forest fund* or cutting, breaking or uprooting trees, without right, as well as destruction or damage of trees on lands with forest vegetation outside the national forest fund, *if the value of the lesion, established according to the law, is up to 5 times the average price of one cubic meter of wood per foot*;
- b) *b) theft*<sup>9</sup> or misappropriation *of trees cut with or without right*, of seedlings, Christmas trees or shoots from *the national forest fund or of Christmas trees* from specialized crops or theft or appropriation of trees cut with or without right from lands with

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<sup>7</sup> Official Gazette 513 din 2010.07.23

<sup>8</sup> Law no. 171/2010, art. 8 para.1 letter a)

<sup>9</sup> Law no. 171/2010, art. 8 para.1 letter b)

vegetation outside the national forest fund, if the value of the damage, established according to the law, *is up to 5 times the average price of one cubic meter of wood per foot*

Emergency Ordinance no. 119/2021 has the merit to correlate the Law no. 46/2008 on the Forestry Code with the Law no. 171/2010 on the establishment and sanctioning of forestry contraventions and, as a consequence, to remove the possibility for forestry offenders to benefit from a more favorable sanctioning regime.

Observing the legislative non-correlation, the legislator proceeded to the amendment of Law no. 171/2010, in the sense of amending the legal text of the two contraventions mentioned above, as follows:

- a) cutting, breaking or uprooting of trees, without right, as well as the destruction or damage of trees from the forest vegetation *outside the national forest fund*.
- b) b) theft of *seedlings or shoots* that have been cut or uprooted, from forests, forest protection curtains, from degraded lands that have been ameliorated by afforestation works, if the value of the lesion caused is up to 5 times the average price of a cubic meter of wood on the foot at the date of committing the deed.

## CONCLUSIONS

As can be noticed, after the amendments introduced by **Emergency Ordinance 119/2021**<sup>10</sup>, in the case of unlawful cutting, the deed constitutes a contravention only if it has as object trees from the forest vegetation outside the national forest fund. Regarding the theft of trees, after the appearance of the Emergency Ordinance 119/2021, the deed will no longer be considered a contravention, any misappropriation without right, regardless of value, will be circumscribed to the objective side of the forest theft crime.

Emergency Ordinance no. 119/2021 has the merit to correlate the Law no. 46/2008 on the Forestry Code with the Law no. 171/2010 on the establishment and sanctioning of forestry contraventions and, as a consequence, to remove the possibility for forestry offenders to benefit from a more favorable sanctioning regime.

The discussion remains open regarding the facts, of the nature of those described above, which were committed in the period elapsed since the entry into force of Law no. 197/2020, ie 11 September 2020, until the appearance

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<sup>10</sup> Emergency Ordinance 119/2021 for the amendment and completion of Law no. 171/2010 regarding the establishment and sanctioning of forestry contraventions, Official Gazette 952 from 2021.10.05

of the amendments introduced by GEO no. 119/2021 respectively 5 October 2021.

#### **REFERENCES**

1. Draft Law for the amendment and completion of Law no. 46/2008 –
2. Forestry Code (PL-x no. 356/2020 at the Chamber of Deputies)
3. Forestry Code of 2008 (Law no. 46/2008) - Republishing, Official Gazette 611 of 2015.08.12
4. Law 197/2020 for the amendment and completion of Law no. 46/2008 - Forestry Code, Official Gazette 823 of 2020.09.08
5. Law no. 171/2010 regarding the establishment and sanctioning of forestry contraventions, Official Gazette 952 from 2021.10.05
6. Emergency Ordinance 119/2021 for the amendment and completion of forestry contraventions, Official Gazette 952 from 2021.10.05
7. [http://www.cdep.ro/pls/proiecte/upl\\_pck2015.proiect?idp=18415](http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?idp=18415)