POSSIBLE REGULATORY DEFICIENCIES OF THE INCRIMINATION METHODS OF FOREST CRIMES

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RESEARCH ARTICLE

Abstract

4 years after assuming the revision desideratum of the legislative framework in the forestry field, there are still some aspects that I consider to be deficient in terms of the criminalization of forestry crimes.

Keywords: regulation, incrimination, theft, forest crimes
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INTRODUCTION

In 2017, the Ministry of Waters and Forests elaborated the National Forestry Strategy 2018-2027 (http://www.mmediu.ro/app/webroot/uploads/files/2017-10-27_Strategia_forestiera_2017.pdf), which contains a series of strategic objectives in the forestry field. The first of these is the one regarding the Efficiency of the institutional and regulatory framework of forestry activities. The main aspect assumed within this objective was the revision of the existing legislative framework. 4 years after assuming this desideratum, there are several aspects that I consider to be deficient in terms of the criminalization of forestry crimes. A first possible regulatory problem can is found in the case of breaking, destroying, degrading infractions or uprooting, without right, trees, saplings or sprouts from the national forest fund, respectively theft of saplings or sprouts that have been cut or uprooted. In the case of both previously mentioned infractions, the legislator opted for the inclusion in the sphere of the objective side of the variant in which the act generated minimal damage that can be cumulated arithmetically by adding the damages caused by all the acts committed within a year.

MATERIAL AND METHOD

The materials used in writing this paper are composed of legislation and websites. The methods used are legal, namely the formal method, the comparative method, the logical andthe 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 DISCUSSIONS

In concrete terms:

- Art. 107, para. (1)(Law 46/2008 republished in M. Of. 611 of 12.08.2015)Breaking, destroying, degrading or uprooting, without right, trees, saplings or sprouts from the national forest fund, regardless of the form of ownership, constitutes a forestry crime and is punished as follows: *b) with imprisonment from 6 months to 3 years or with a fine, if the value of the damage caused does not exceed the limit provided for in letter a),* ***but the act was committed at least twice within a year****, and the cumulative value of the damage caused exceeds the limit provided for in letter a);*

- **Art. 109 para. (1)** Theft of saplings or sprouts that have been cut or removed from the roots, from forests, protective forest curtains, from degraded lands that have been improved through afforestation works constitutes a crime and is punished as follows:

b) with imprisonment from 6 months to 3 years or with a fine, ***if the act was committed at least twice within a year****, and the cumulative value of the wood material exceeds the value provided for in letter a);*

Such a regulatory manner can be of a nature to generate numerous inconveniences for the authorities with responsibilities in

establishing and carrying out criminal prosecution, in light of the fact that exactly the same acts, if they do not exceed the minimum threshold value for the act to become a crime, are regulated as contraventions.

Specifically, if for such an act with a damage lower than the minimum threshold value, a record of finding and sanctioning the contravention has been drawn up (based on the provisions of art. 8 par. 1. letter a) or c) of Law 171 /2010), the same act can no longer be taken into account for the retention of the forestry offense if, after its sanctioning as a contravention but within the 1-year term, the author commits another act whose damage, combined with the first, would exceed the minimum amount threshold necessary for the act to be criminalized.

Article 4 of Protocol 7 of the Convention enshrines "the right not to be judged or punished twice", known by the traditional name of "ne bis in idem": "*No one may be prosecuted or punished criminally by the jurisdictions of the same State for committing the offense for which he has already been acquitted or convicted by a final judgment according to the law and* ***criminal*** *procedure of this State. (...)"*

The contraventional sanction applied to the person for the first act of breaking, destroying, degrading trees or stealing saplings/sprouts, according to art. 8 para. 1 lit. a), b) from Law no. 171/2010, can therefore be circumscribed to the notion of criminal accusation, since the act for which he was sanctioned can be considered to have a criminal character in the autonomous sense, which the European Convention on Human Rights gives to this notion, considering that, on the one hand, the prohibition established by art. 4 of Protocol 7 to the Convention is addressed to all persons and that, on the other hand, the purpose of the sanction is to punish and prevent the commission of similar acts in the future (the case of Anghel v. Romania, 2007), the social values protected in the contraventional law and in the criminal one are the same, and the first material act component of the offense was separately sanctioned with a contravention fine, which became final in the sense of art. 4 of Protocol no. 7 to the European Convention, prior to the initiation of criminal proceedings against the defendant.

The manner of regulation of the offenses provided for by art. 107 para. 1 and art. 109 para. 1 of the Forestry Code therefore raises a constitutionality issue, from the perspective of the ne bis in idem principle.

Another possible regulatory problem is found in the case of the illegal cutting crimes and trees theft.

In concrete terms:

- **Art. 107(1^1)** Unauthorized cutting of trees 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 fine, if the value of the damage caused is up to 5 times the average price of a cubic meter of wood per foot **on the date of ascertainment of the act;**

b) with imprisonment from one year to 3 years, if the value of the damage caused is included between the limit provided for in letter a) and at most 20 times higher than the average price of a cubic meter of wood per foot **on the date of ascertainment of the act;**

c) with imprisonment from 2 to 7 years, if the value of the damage caused is at least 20 times higher than the average price of a cubic meter of wooden mass per foot **on the date of ascertainment of the act.**

- Art.109 (1^1) Theft of felled or broken trees by natural phenomena or of trees that were cut or removed from the roots, from forests, protective forest curtains, from degraded lands that were improved through afforestation works and from the forestry vegetation outside the national forest fund, as well as 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 a fine, if the value of the damage caused is up to 5 times the average price of a cubic meter of wood per foot **on the date of ascertainment of the act;**

b) with imprisonment from one year to 3 years, if the value of the damage caused is included between the

limit provided for in letter a) and at most 20 times higher than the average price of a cubic meter of wood per foot **on the date of ascertainment of the act;**

c) with imprisonment from 2 to 7 years, if the value of the damage caused is at least 20 times higher than the average price of a cubic meter of wooden mass per foot **on the date of ascertainment of the act.**

The use of the phrase "*on the date of ascertainment of the act*" for the calculation of the damage (and implicitly the aggravating variants) generates a possible unconstitutionality through the prism of reporting at a time after the commission of the act. In concrete terms, there is a possibility that reported to the time of the commission of such a crime, the act may generate a prejudice likely to attract the simple option, but if the moment of ascertainment is later and in the meantime the price of the cubic meter has increased, it may impose an aggravating factor. As a consequence, the regulatory manner can generate particular situations in which the sanction applied is different not depending on the act or damage, but on the moment of its ascertainment by the authorities.

A third potential regulatory problem is found in the case of the crime of using special marking devices without the right.

In concrete terms:

Art. 107^1(1) The use of special marking devices provided for in art. 63 without right or **with non-compliance with the specific regulations in force** constitutes a forestry crime and is punishable by imprisonment from 6 months to 3 years or a fine.

The method of incrimination, through references to legal (Law 24/2000 regarding legislative technical norms for the elaboration of normative acts - republished M.Of. 260 of 02.04.2010) texts not specifically indicated, clearly violates the legal provisions related to the rules of legislative technique, according to which "The reference in a normative act to another normative act is made by specifying its legal category, its number, the title and the date of publication of that act or only the legal category and the number, if thus any confusion is excluded".

A fourth and last potential problem identified is related to the manner in which, in order to punish the theft of specific products of the forest fund, the legislator chose to refer to the value of the average price of a cubic meter of wood per foot.

CONCLUSIONS

It is at least debatable the way of quantifying the prejudice in the case of the theft of products specific to the forest fund (mushrooms, berries, etc.) by referring to the value of the wood mass.

Equally debatable and uninspired was the option to regulate the theft of specific products of the forest fund together with the theft of trees, given that the material object protected by the law is completely different.

I appreciate that in the case of the crime of theft of the forest fund specific products, separate criminalization should have been imposed, with the possible imposition of a fixed value threshold or determinable based on different criteria than the value of the wood mass.

Theft of felled or broken trees by natural phenomena or of trees that were cut or removed from the roots, from forests, protective forest curtains, from degraded lands that were improved through afforestation works and from the forestry vegetation outside the national forest fund, as well as <u>any other specific products of the national forest fund</u> constitutes a crime and is punished as follows:

a)with imprisonment from 6 months to one year or with a fine, if the value of the damage caused is up to 5 times the average price of a cubic meter of wood per foot on the date of ascertainment of the act

b) with imprisonment from one year to 3 years, if the value of the damage caused is included between the limit provided for in letter a) and at most 20 times higher than the average price of a cubic meter of wood per foot on the date of ascertainment of the act

c) with imprisonment from 2 to 7 years, if the value of the damage caused is at least 20 times higher than the average price of a cubic meter of wooden mass per foot on the date of ascertainment of the act

Four years after assuming the desideratum revision of the legislative framework in the forestry field, there are possible constitutionality problems concerning the criminalization of forestry crimes and a certain violation of the legal provisions regarding the legislative technical

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