

CRIMINAL LIABILITY FOR ILLEGAL DEFORESTATION

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Abstract: *Illegal deforestation represents a significant threat to the environment and biodiversity, thus certain international and national efficient legislative measures are required, to fight this phenomenon. According to statistics published by the authorities, massive loss is reported on forests worldwide and on a national level. Consequently, the present work will analyse the relevant laws in force, in connection with studies performed in this domain and it will also present a personal point of view in regard to the sanctioning regime regulated by the Romanian lawmaker.*

Key words: *illegal deforestation, criminal liability, stock of wood, landslide*

1. Introduction

Wood represents an extremely valuable resource to mankind, but a rather limited resource, thus it requires sustainable management. Given this reason, the exploitation of wood for human needs must be performed in a responsible manner, to continue to benefit from the advantages provided by this resource. It is an incontestable fact that the protection of the stock of wood is an extremely important issue in the present global context, given the imminent threat of illegal cuts which grew excessively worldwide. Thus, we must analyse the liability regarding the prejudice brought upon the environment by asking the key question of “what type of liability is enforceable in this matter?”. Because of the illegal cuts which have a destructive effect on the environment and biodiversity, the states of the world took an active preoccupation in effectively regulating deforestation, thus regulating punitive measures in this matter. Also, to support the initiative of protecting the woods, several organizations were founded, both international and national. According to studies by the Food and Agriculture Organization of the United Nations (FAO), given the statistics of 1990-2020, there is a significant decrease in surfaces covered by forests. Thus, during the observed time, forest surface decreased by approximately 420 million hectares; it is also significant to state that, within the last 5 years of this study, the deforestation rate was reduced (from

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12 million hectares between the years 2010-2015 to 10 million between the time 2015-2020). (FAO, 2020)*³

2. Effects of Illegal Deforestation

The importance of woods is not limited to their role of generating certain resources which are indispensable to mankind; it also reflects in its role of housing species of animals, ensuring the water resources or diminishing the effects of climate change, given their capacity to absorb gas (European Council)⁴. To this end, the disappearance of forest surfaces produces certain consequences. One of the first such consequences is the increase the acid level of the oceans given the gas produced by the burning of fossil fuel, which can no longer be absorbed by forests, thus creating a significant effect on the marine fauna (Shelia Hu, 2022).

Also, according to studies (Smith, J. C., Baker & Spracklen, D. V., 2023), the decrease of forest surfaces leads to an increase in precipitation in deforested areas, both locally and regionally, thus affecting the hydrological cycle and leading to the destruction of natural habitats or agriculture. Specialty studies (A.M. Ciobotaru et. Al, 2019) underline the idea according to which deforestation can weaken the structure of the soil, thus causing landslides. The lack of forests accentuates and speeds up this process by directly exposing the soil to weather phenomena, by affecting the fertility of the soil (the direct contact with water removes the layer needed for vegetation to develop, thus leading to the degradation of the soil) (Sarah Moore, 2022) or by the submerging of surfaces affected by deforestation given the inability to absorb the volume of precipitation in a timely manner (Rob Boyle, 2024). Thus, given the previously presented issues, we can justly state that there is a direct causality connection between landslides and uncontrolled deforestation.

3. The Regulation of Deforestation in the European Union

In Europe, illegal deforestation is a serious issue. According to official publications, the causes for this practice are diverse; the ones identified by the European Parliament are: urbanisation, which is the main reason for deforestation in Europe, industrial agriculture, as 20% of deforestation is performed with the purpose of transforming forest land in agricultural land, and in spaces needed for feeding cattle or for overexploitation of wood mass. (European Parliament).

As a prompt response from the authorities, the UN became involved in terminating this phenomenon, through projects of laws; among these, we must mention the New EU Forest Strategy for 2030, with the aim of increasing the quantity and quality of woods in the European Union and promoting their role as carbon reservoirs. For this goal, we

³ In this regard, see the official website of FAO, (2020) consulted via: <https://www.fao.org/interactive/forest-resources-assessment/2020/en/>

⁴ See the website of the European Council/Council of the European Union, available at: <https://www.consilium.europa.eu/ro/policies/deforestation/>

must also mention the legislative initiative (European Parliament)⁵ of obligating companies who distribute certain produces to check if their suppliers can prove that their produce does not come from deforested land and it did not cause the degradation of land; in case supplies are unable to provide such proof, they are sanctioned with a fine which can reach 4% of their total turnover in the European Union. This includes products such as palm oil, soy, wood, coffee, rubber of cattle produce (European Parliament).

4. Statistics regarding State Deforestation

Regarding the national situation, according to statistics provided by organizations active in this market, given the numbers of the National Forest Inventory (Cycle II), approximately 20 million cubic meters of wood annually disappear from the forests without specific authorization, of which merely 200.000 cubic meters are seized. (Greenpeace)⁶. At the same time, according to reports of the National Statistics Institute (INS), in 2023, the surface covered by woods was 27,8% of the country's territory, namely 6460 thousand hectares, thus noting a 1,1% increase since 2014, an increase owed mainly to the introduction in the forest fund of other types of lands than those regulated in 2014. Even if this percentage increased, the regeneration works decreased significantly in 2013 being performed on only 26646 hectares, 2859 less than in 2014.

5. The National Regulation regarding the Protection of Forest Land

The protection of the environment and, implicitly the forests, is a subject of interest in our national law, as such provisions are found including in the Constitution. Article 35 of the Romanian Constitution, named "The right to a healthy environment" is an innovative measure in this domain, since such rights were not regulated in the 1965 Constitution. Thus, the first alignment expressly states that „The State shall acknowledge the right of every person to a healthy, well preserved and balanced environment.". The correspondent obligation is stated in the third alignment: "Natural and legal entities shall be bound to protect and improve the environment." The second alignment mentions the idea according to which „The State shall provide the legislative framework for the exercise of such right.". In accordance with the previously quoted legal provisions, the state passed several laws in this domain. Thus, in Romanian law, the most important law regarding illegal deforestation is Law no 331/2024 of the new Forest Code (Law 331/2024] which brings substantial changes regarding forest crimes as opposed to the old regulation of Law no 46/2008, currently out of force.

⁵ See European Parliament - *Deforestation: what are the causes and how the EU is fighting it*, available at <https://www.europarl.europa.eu/topics/ro/article/20221019STO44561/defrisarea-care-sunt-cauzele-si-cum-o-combate-ue>

⁶ See the article published by Greenpeace Romania, (2023) available at: <https://www.greenpeace.org/romania/afla-cat-se-taie/>

6. The Regulation of Illegal Deforestation in the Forest Code

Even if the text of the law mainly contains rules pertaining to the administration of the national forest fund, it also represents common law on forest crimes and criminal liability in this domain, as the regulations are of a true criminal character. The present Forest Code brings a more complete and complex presentation of the existing social realities as opposed to the old Code, by also having the role of covering certain legislative voids both in practice and in specialty doctrine. Thus, in regard to the criminal area of this domain, the lawmaker regulated new crimes, such as falsifying data or false statements (article 149 of the Forest Code) - while also emphasizing criminal liability in case these regulations are violated - or the seize of all wood materials, the seize of illegally obtained products (both stated in article 152 of the present law), or the suspension of access to the national data system (article 147).

Special attention must be brought upon article 142 of the afore mentioned law, marginally called "Unlawful cutting of trees". According to this article, the unlawful cutting of trees of the national forest fund, regardless of the owner of the forest land, is a crime, thus sanctioning both illegal cutting on public property and on private property. This article must be interpreted in connection with article 7 of the law which lists the forms of property used by the lawmaker in this matter: the public property of the state, the private property of the state, the public property of the counties and the private property of individuals and legal entities.

We believe this regulation is extremely useful as, in the hypothetical situation in which deforestation on private property would not be sanctioned, in practice, the percentage of land deforested every year would be significantly larger than the current ones.

The above mentioned crime is punished differently depending on the value of the prejudice it causes. We must also consider that the legal text of article 107 of the old Forest Code is maintained by the new law, but with certain changes regarding the sanctioning regime, as the lawmaker regulated the special maximum of sentences. Thus, a conclusive example in this matter is represented by letter a) of the first alignment of article 142 which regulates a punishment of 6 months to 3 years imprisonment or a fine for the unlawful cutting of trees if by this deed, the value of the prejudice is larger than 5 times the price of a cubic meter of wood at the time the deed was committed, whereas Law no 46/2008 regulated a sanction of imprisonment between 6 months and a year or a fine.

In regard to the value of the prejudice, the most severe sanction was imprisonment from 2 to 7 years, in case the prejudice is larger than 20 times the previously mentioned price of the cubic metre of wood. However, despite the lawmakers' best efforts in making the text of law more actual, there are still situations which are not regulated from a legal point of view, as the attention is focused on cause and not on other effects. According to the previously mentioned statistics, deforestation can be the cause for massive natural disasters, including landslides. In national law there is no direct regulation regarding liability in such a circumstance except for article 39 second alignment letter e) corroborated with article 42 first alignment of Law no 246/2020 regarding the use, preservation and protection of the soil. Thus it is regulated that

owners of forest land or the users of such land, whose activity can cause devastating change to the characteristics and functions of the soil, have an obligation to „*prevent and reduce the risk of degradation and fight the changes of the soil, generated by their own activity or which might be caused by the unlawful use of the land of the enforcement of practices which are deemed unlawful by the current legal regulation in force*” (Law 246/2020), thus regulating tort liability of the active subject. Therefore, even if there is a rather general but explicit reference to such a circumstance, this regulation does not directly mention the legal consequences of the uncontrolled cutting of the forest fund followed by landslides, as the interpretation and enforcement of the law is left at the discretion of the judge.

Thus, reflecting on the possible disastrous outcome from an economical and social point of view, it is mandatory that this legislative void be covered by a criminal regulation, given the dangerous nature of the results of such a deed.

7. Liability for Illegal Deforestation and Suggestions for Improving the Laws in this Domain

According to the provisions of the Criminal Code in regard to the legal personalization of sanctions, there is a possibility to forego the enforcement of a sanction, to postpone the enforcement of a sanction or to suspend the imprisonment sanction under supervision, as the latter is applied in case the court considers the minimum sentence regulated for the crime of article 143 first alignment letter c). Thus, even if the social danger of these crimes is a significant one and the severity of the consequences is important, the perpetrators who commit such deeds have a real chance to benefit from a court decision which does not result in a conviction, and which can maintain the freedom of the perpetrator.

Even though the lawmaker considered the existing social realities of the Romanian society and the overcrowding situation in all prisons, the punishment is left at the discretion of the courts and the judges; failing to punish the perpetrators did not effectively create prevention, as the previously mentioned statistics show that the exact opposite effect was obtained.

Similarly, a legislative void still present in our law is represented by the illegal deforestation with the purpose of selling wooden material. This hypothesis considers the cutting of trees by individuals with the purpose of selling the resulting wood, without this being a commercial activity performed by a legal entity. This deed causes prejudice regarding the shrinking of the forests as well as a financial prejudice, as the perpetrators elude the payment of taxes owed to the state. Also, by performing such activities without being a legal entity which provides guarantees regarding the protection of workers, there is a real danger of harming oneself and other people who are involved in the process

8. Conclusion

In accordance with the previously stated point of view, we believe it is necessary to list the following suggestions regarding changes to be brought to laws in force:

- First, the increase of the minimal punishment for the crime regulated in article 143 first alignment letter c) from 2 to 3 years to reduce the possibility of courts to decide on the suspension of the execution of the sanction, considering the significant prejudice caused to the environment by such a deed.
- Second, the regulation of a new aggravated version of the crime of unlawful cutting of trees which regulates the situation of deforestation with the purpose of selling the wood by individuals.
- The regulation of a new crime regarding the unlawful cutting of trees which resulted in landslides.

Therefore, after analysing the global, European and national situation in correlation with the impact it produces on the environment, including in regard to the quality of human life, we believe that the liability required in this area must be criminal liability in accordance with the current laws in force, thus conferring upon the incriminating text both a preventive and a punitive character.

As a final statement considering the lack of any speciality doctrine in this area, the present work states an opinion on the subject at hand, an opinion which is based on scientific studies and data as well as legislative matters.

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