

FOREST PROTECTION THROUGH CRIMINAL LAW. ASPECTS OF COMPARATIVE CRIMINAL LAW

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Abstract: *The forestry development strategy for the period 2001-2010 was aimed, among others, at harmonizing the national laws of the Member States with the specific European Union legislation, and the international conventions and agreements (Europe and North Asia Forest Law Enforcement and Governance, Forest Law Enforcement, Governance and Trade Action Plan and Fourth Ministerial Conference on the Protection of Forests in Europe -Vienna Declaration 2003), as well as adapting the regulatory framework for logging and wood-processing operations, taking into account the environmental protection and preservation requirements. The E.U. has established forestry policies, strategies and organizational structures regulating the protection and development of forests, to which the Member States have to adapt their forest management and development policies.*

Key words: *forestry policies, Forest Code, criminal-law protection.*

1. Introduction

Given the importance of law enforcement, and of the legal regime established in the forest sector, it is important that the criminal law instruments can intervene to guarantee the legal provisions that make up his legal regime.

As the *indictment rules* laid down in the forest law are newly established [Vlad and Ene 2006, p. 89], they are in line with the principles of legislative technique.

Moreover, the indictment rules are strongly dependent on certain non-criminal rules, which may well lead to a breach of the principle of legality, and also the infringement of the principle of separation of powers [Boroi et al. 2007, p. 567].

2. Common issues with regard to forest offences

We can state that forest offences are mostly result offences for which the injury caused to the injured party is an essential requirement for the offences to exist, and a form of aggravation for some offences.

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The causal link shall be established in relation to the type of forest offence. In the case of formal crimes, they are the mere result of the perpetration of the conduct prohibited by law. If we are dealing with a result (material) offence, the causal link must be proven and it will result from the manner in which the offence has been committed.

The subjective side of offences generally consists in a certain mental attitude, made up of intellectual [Mitrache and Mitrache 2016, p. 118], volitional and emotional elements triggering and accompanying the perpetration of the offence.

Modalities. Forest offences take on normative modalities established through closed or open criminalisation content enabling other modalities than those contemplated by the legislator. Modalities of a factual nature may be the most diverse.

Penalties. The social danger as reflected in the indictment rules established for forest offences allows for broad-based sanctions. Thus, such offences may be alternatively punishable by either short-term imprisonment plus a fine or imprisonment for terms ranging from 15 years up to a maximum of 25 years, even life imprisonment, for example in the case of the crime of destruction which resulted in a disaster (section 111 par. 2 of the Forest Code).

The Treaty [* 2015] establishing the European Community does not provide for a specific common forest policy, which is why the principle of subsidiarity applies and the responsibility for the enforced forest policy lies with each and every Member State. However, the European Union adopted in 1998 a Forestry Strategy emphasizing the importance of the multifunctional role of forests and sustainable forest management for the development of society. Moreover, the strategy identified a series of key elements which are the basis for the implementation of the Strategy. The Strategy states that forest policy is a Member State competence, while the European Union can contribute to the implementation of sustainable forest management through common policies, based on the principle of subsidiarity and the concept of shared responsibility.

The Strategy highlights the implementation of international commitments, principles and recommendations through national or sub-national forest programmes developed by the Member States and active participation in all forest-related international processes, while stressing the need to improve co-ordination, communication and co-operation in all policy areas of relevance to the forest sector.

3. Forest Protection through Romanian Criminal Law

The legal framework regarding the national forest regime in Romania is a complex one, consisting of various applicable legal acts of different levels, which are complementary to each other, namely 21 Acts, 95 Government Decisions and Ministerial Orders.

Given the importance of enforcement of the legal regime established in the forest sector, it is acknowledged that the criminal law instruments must intervene to guarantee the legal provisions that make up this legal regime.

The Romanian Criminal Code does not provide for indictment rules regarding the protection of national forests, and there is no indictment rule containing references to the protection of this most valuable national asset. However, forest protection and

conservation is ensured by means of indictment rules contained in specific non-criminal laws, such as the indictments set forth in the Forest Code - Act No. 46/2008 (*in original: Legea nr. 46/2008*).

In the National Action Plan to Combat Illegal Logging [*** 2018*], it is stated that at a sectoral level, the forestry development strategy for the period 2001-2010 was aimed, among others, at harmonizing the national laws of the Member States with the specific EU legislation, and the international conventions and agreements to which Romania is a party, as well as adapting the regulatory framework for logging and wood-processing operations, taking into account the environmental protection and preservation requirements. At national level, the National Forest Action Plan 2010 has been established. Moreover, the forestry development strategy for the period 2001-2010 is concerned with the implementation of the fundamental objectives of forest policy.

Furthermore, the National Forest Strategy 2013-2022 has been established in keeping with the recommendations laid down in the project entitled Functional Review of the Central Public Administration in Romania II - Environment and Forestry Sector. Also, a work group under the leadership of the Ministry of Waters and Forests is currently working on developing the National Forest Strategy 2017-2026. The timeline for project completion is 31 August 2018, and the National Forest Strategy will be approved by Government decision.

The National Forest Programme (2005) set forth that resolute action should be taken to prevent illegal logging and emphasized the need to uniformly coordinate the forest-related policies and strategies at all activity levels. The measures adopted in order to address illegal logging are an integral part of the process of implementation of the forest strategy and national forest programme, and also a basic requirement for sustainable forest management.

As regards forest offences, we have identified only one offence which, by way of interpretation, can be deemed as both willfully and negligently [*Vlad and Ene 2006, p. 97*] committed offences, namely that defined under section 114 of the Forest Code, that is the failure to comply with the obligation laid down in section 30, par. 1, "reforestation works and works intended to complement natural regeneration shall be carried out no later than two growing seasons from a single or final felling", which constitutes a forest offence punishable by imprisonment from 1 month to 3 months or a fine.

Among formal offences [*Mitrache and Mitrache, 2016, p. 118*] we have identified the falsification of special timber marking devices (section 113 of the Forest Code) and the failure to comply with the obligation to carry out reforestation works (laid down in section 114 of the Forest Code). The behaviours take into consideration the threat posed by such offences to the forest regime.

In the case of forest offences, the motive and purpose are mere guidelines used for deciding on the severity of the punishment and have no bearing on the legal interpretation of the acts. The preparatory acts of these offences are not criminalized.

The attempt to commit such offences is punished, but only insofar as the indictment rules provide for such punishments (E.g. section 108 of the Forest Code.). Some forest offences may be committed over a certain period of time – E.g. timber theft as defined in section 110 of the Forest Code.

The forest offences referred to under sections 106 - 113 of the Forest Code are a common offence aggravated by its being committed by foresters (section 115 of the Forest Code).

The additional punishment consisting in the disqualification for the exercise of a right is only provided for in case of aggravated destruction - section 111, par. 2 of the Forest Code.

In the case of forest offences, the special seizure (Pascu, 2013, p. 492) must be carried out in compliance with section 116 of the Forest Code which reads as follows: "Illegal timber shall be seized and disposed of as provided for by the law". The seizure stipulated by the Forest Code is a special type of seizure, and its enforcement shall be carried out in accordance with the terms of the Criminal Code and the Code of Criminal Procedure.

Furthermore, the indictment rules are strongly dependent on certain non-criminal rules, which may well lead to a breach of the principle of legality, and also the infringement of the principle of separation of powers [Boroi et al. 2007, p. 567]. For example, the offence under section 106, par. 1 of the Forest Code, "reduction of the area of the national forest disregarding the provisions of sections 36 and 37 constitutes an offence punishable by imprisonment from 6 months to one year or a fine", shall maintain its character of offence only to the extent that the indicated behaviours, *i.e.* the material element, are committed without prior approval according to the law.

4. Forest Protection under the provisions of the French Criminal Law

The French Criminal Code only contains references to forest protection through criminal law [Conte, 2005, p. 363]. We refer to section 322-5 in Title 2, which stipulates that the unintentional destruction, degradation or deterioration of an asset belonging to another as a consequence of an explosion or a fire caused through the infringement of a precautionary measure provided for by a law or regulation is punishable by imprisonment for a term of one year and a fine amounting to EUR 15,000. If the act constitutes an intentional infringement of a security obligation or a provision stipulated in a relevant law or regulation, such aggravating circumstance shall justify a more severe punishment consisting in two years' imprisonment and a fine in the amount of up to EUR 30,000.

A higher severity degree is attributed to the acts under section 322-5 of the French Criminal Code, in case of causing the destruction by fire of forests, steppes, plantations or reforestations of a third party.

The act criminalized under section 322-6 of the French Criminal Code, namely the destruction, degradation or deterioration of an asset belonging to a third party by using explosive materials, causing a fire or in any other manner which poses a threat to the health and safety of individuals, is punishable by ten years' imprisonment and a fine amounting to EUR 150,000. Furthermore, according to section 322-6, par. 2 of the French Criminal Code, in the case of destruction by fire of forests, steppes, plantations or reforestations of a third party caused in such a manner that it creates a risk of personal injury or results in an irreversible environmental damage, the punishments

shall consist in imprisonment for terms of up to fifteen years and fines in the amount of up to EUR 150,000.

Therefore, the Criminal Code does not provide for direct solutions for the indictment of such acts affecting mainly the national forests, the criminalization being achieved only as an adjacent value in the case of destruction offences. This does not mean that forest-related infringements escape the punishments provided for by the criminal law [Malingrey, 2007].

According to the provisions of the Forestry Act No. 602 "owners exercise on the wooded land all the rights arising from their ownership within the limits specified by the Forest Code and related acts, aiming to contribute through sustainable management to the country's ecological balance and to cover the need for timber and other forest products".

5. Forest Protection under the provisions of the Finnish Criminal Law

In Finland, punishments related to forest management are not strict, and are only rarely applied since disputes are being and have always been settled through negotiation. The Forest Code provided for fines or imprisonment. The previous Forest Code [Hirakuri, 2001] for private forests did not provide for strict punishments for infringement of the law.

However, the new Forest Code contains more severe legal remedies, consisting in fines and imprisonment. Fines are applied for three types of infringements: minor offences, forest-related violations, and forest offences.

The most serious are forest offences, such as the felling of trees before reaching the harvesting age or illegal logging in protection forests and protection areas. In these cases, offenders are punished by fine or imprisonment for a maximum term of two years.

The Finnish Criminal Code (Act No. 38/1889 as subsequently amended by Act No. 766/2015) contains a distinct chapter - Chapter 48a - in which offences against natural resources are defined. Section 3 "Forest Offences" stipulates that any person who wilfully or by gross negligence:

(1) cuts down a forest thereby infringing a lawful provision or order regarding forest cutting for maintenance and regeneration purposes, issued on the grounds of sections 5(2) or 5(4) of the Finnish Forest Code (1093/1996), or

(2) infringes any provisions of the Finnish Forest Code or other lawful provision or order issued on its basis with respect to protected wooded areas or protected areas, shall be charged with a forest offence and punished by fine or imprisonment for a maximum term of two years.

Moreover, any person who, by means of a measure regarding forest exploitation, wilfully causes damage to the living environment in its natural state, which is clearly distinguishable from the surrounding areas and has a particular importance from the point of view of the biodiversity of natural forests, thereby infringing any provisions of the Finnish Forest Code or other lawful provision or order issued on its basis, without

holding a permit required by law or infringing the provisions of any existing permit, shall also be charged with a forest offence.

It can be noted that the Finnish Criminal Code has adopted the solution of integrating some general provisions, which are incomplete and need to be applied in conjunction with the relevant provisions of the Finnish Forest Code. The Finnish Criminal Code expressly refers to section 5, par. 2 and 4 of the Forest Code.

The first of these texts concerns selection cutting. In accordance with section 5, par. 2 of the Finnish Forest Code.

Moreover, the Finnish Forest Code criminalizes some acts which constitute violations of the forest regime. Section 18 of the Finnish Forest Code sets forth minor forest-related offences and forest crime, as amended by Act No. 552/2004, which are punishable as laid down in Chapter 48a, section 3 of the Finnish Criminal Code.

The second paragraph of Section 18 of the Finnish Forest Code stipulates that, whosoever either wilfully or through gross negligence:

- fails to submit the forest use declaration referred to under section 14 of the Finnish Forest Code or submits the same outside the statutory 14-day time limit,
- infringes the rules regarding standing timber cutting regulated by Section 5 or a provision or regulation issued in keeping therewith,
- breaches a provision regarding tree planting under Section 8 or a provision or regulation issued in keeping therewith;
- carries out management operations or implements a measure having a negative impact on a habitat of particular importance from the point of view of forest diversity, thereby violating the provisions under Section 10 of the Finnish Forest Code or a provision or regulation issued in keeping therewith;
- breaches the provisions regarding windbreaks under par. 1 or 2, Section 12 of the Finnish Forest Code or a regulation issued in keeping therewith,
- breaches the provisions regarding protection areas under Section 13 or the regulations issued in keeping therewith,

Shall be fined for an infringement of the forest regime, unless a more severe punishment is provided for in another relevant legal act.

Section 18 of the Finnish Forest Code criminalizes the act of preventing timber cutting, while Section 20 under the same chapter of the Finnish Forest Code establishes certain remedies in case of forest offences.

6. Criminal liability for acts affecting forests under the provisions of the Criminal Code of Kosovo and the Forest Act, Act No. 2003/3 respectively

The adoption of the Criminal Code, Code No. 04/L-082, 20 April 2012, entered into force on 1 January 2013, preceded by the Provisional Criminal Code of Kosovo, issued on 6 July 2003 under the aegis of the United Nations, the United Nations Interim Administration Mission in Kosovo, as amended by Act No. 2004/29 of 28 July, under the aegis of the United Nations creates the required premises for observing an invaluable normative development for the perception of the protection granted by the criminal laws with respect to various social assets, such as the forests.

Section 332 of the above-mentioned legal act criminalizes the act of illegally occupying a real property or any part thereof belonging to another committed by any person, which is punished by fine or imprisonment for a maximum term of two years.

If the occupied property is part of a protected forest or park or a special destination forest or a buildable land, the perpetrator shall be punished by imprisonment from three months up to three years.

Section 357 of the same legal act also criminalizes forest destruction, which is the act of perpetrated by any person who, acting against the provisions of an act or order issued by a relevant authority, cuts down or destroys a forest or fells trees or causes any other destruction to a forest. Such acts are punished by a fine or by imprisonment of up to two years. When the offence is committed with respect to a protected forest or park or any special destination forest, the perpetrator shall be punished by a fine or by imprisonment of up to three years.

Considering all the above, we may conclude that the Criminal Code of Kosovo criminalizes the most important acts which may be committed against forests, which are deemed to have a sufficiently important social value justifying the indictment of the acts under the provisions of the criminal law. The same applies with respect to other environmental factors, the following acts being punishable under the criminal law:

- illegal hunting (section 359), act which in its basic form is committed by whosoever hunts or kills a wild animal or captures it alive without a permit or license. The offence is punished more severely if committed against an animal of a value exceeding EUR 2,000 or having a particular importance according to the hunting regulations, or committed off-season or by a group of persons, or against endangered or rare species the hunting of which is prohibited, as well as in case of hunting a certain species without a proper permit or using mass extermination methods or vehicle headlights or a bright light for capture purposes.

- taking animal trophies out of the territory of Kosovo (section 360), perpetrated by whosoever illegally sells or takes out of the territory of Kosovo a wild animal trophy.

- illegal fishing (section 362), the act of any person who fishes using explosives, electricity, poison or toxic substances thereby causing the death of fish or fishes in a manner which is detrimental to the regeneration of the fisheries fund.

- violation of animal and plant disease control orders (section 354), perpetrated during an epidemic posing a threat to livestock by whosoever infringes an order or decision containing measures aimed at fighting and preventing diseases issued by a relevant authority according to the law.

The provisions of criminal law regarding the protection of Kosovo forests are completed with the provisions of the Forest Act of 2003. Section 36 of this act criminalizes forest offences, which are punished by fines from EUR 2,000 up to EUR 25,000.

7. Conclusions

In Romania indictment rules in the field of forestry are in line with the principles of legislative technique.

There are also incomplete rules, as is the case of the offence under section 106, par. 1 of the Forest Code, which refers to two sections of the same legal act – sections 36 and 37 of the Forest Code –, which means that these rules take elements from texts contained in the defining legal act.

The French forest regime is outlined in its fundamental terms in the Forest Code [Version of 5 April 2018, www.legifrance.gouv.fr.] which also contains indictment rules. The general principles of the French forest policy are laid down in Title 1 (Livre 1) of the French Forest Code. The forest policy takes into consideration the economic and social role of forests, which contribute to sustainable development.

In the Finnish legislation, forest protection is ensured by means of the Criminal Code and the Forest Code, which contain mutual reference provisions. The same technique is used in another field, as laid down in Section 1 of the chapter entitled “Hunting-related offences”.

The provisions of criminal law regarding the protection of Kosovo forests are completed with the provisions of the Forest Act of 2003.

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