

JUDICIAL REGIME PROVIDED BY 109 ARTICLE FROM FORESTRY CODE CONCERNING THE DELINQUENCY OF TREE THEFT FROM FORESTRY FUND

NUȚ SILVESTRU

*Dolj Forestry Division, Ianacu Jianu street, no 19, Romania
silvestru1969@yahoo.com,*

ABSTRACT

The present paper aims the presentation of judicial regime of delinquency of tree theft from forestry fund provided by 109 article from Forestry Code emphasizing the most significant elements related to the judicial regime, the objective side, the subjective side and the immediate repercussion.

A special attention is paid to the analysis of the total value of the damage brought to the forestry fund in function of which the theft is considered as delinquency or contravention.

We have, also insisted on the fact that the mentioned delinquency has, by definition, a high social inflict determined by the following repercussions, the social relations that make up the objective of forestry fund preservations, by the penal law, the frequency of wood theft and by multiple way of doing them.

THE LEGAL CONTENT

Art. 109 – (1). The theft of trees that were cut or broken by natural phenomena or other kind of wood, saplings or branches that were cut or dug out from their roots from woods, woody strips for protection, from degraded lands that have been reclaimed by reforestation or from woody vegetation apart from the national forestry fund as well as of all specific other products of the national forestry fund is considered delinquency and it is punished as follows:

a) imprisonment from 6 months to 3 years or fine, if the value of the stolen woody material is at least 5 times higher than the average price of a cubic meter;

b) imprisonment from 6 months to 3 years or fine if the felony has been made at least two times during a year and the value of the cumulated woody material overpass the value stated in letter a;

c) imprisonment from one year to 5 years if the value of the stolen woody material is of at least 20 times higher than the average price of a cubic meter of woody material;

d) imprisonment from 2 to 7 years if the value of the stolen woody material overpass by 50 times the average price of a cubic meter of woody material;

(2) The special limits of punishments stated at lin (1) will be enhanced by half if the deeds have been done in the following conditions:

a) by a person who had a gun or a narcotic or paralizant substance;

b) during the night;

c) in woods that are protected natural areas of national interest

d) by forestry personnel.

Preexistent conditions

A. The object of delinquency

a) The judicial general object of the felony is social relationships related to the national forestry fund as it is described by the Forestry Code.

b) The judicial special object is represented by the social relationships related to the patrimonial rights owners, both private or institutional. The judicial norm included in the above mentioned text of law protects the possession of woody materials (trees, saplings, branches) against felony deeds of stealing this kind of material by breaking the laws that are designed to ensure the social relationships whose aim is to defend the owners against

thefts of woody material from the national forestry fund or from lands with forestry vegetation, stated at art. 6 from the Forestry Code that belongs to public or private property determining the worsening of social relationships that are mentioned above.

We underline the fact that there are protected both the legitimate possession, when the protection refers to punishment of thefts made by the true owner, by violation of the forestry regime and the not legitimate one, a stolen good making the object of a theft.

In this context we, also, underline that the protection of not legitimate possession is imposed from considerations that avoid patrimonial prejudice that could be produced by stealing forestry material from other's patrimony that is considered a not legitimate possession of him.

The material object is constituted by forestry vegetation, respectively, trees that are cut or broken by natural phenomena or saplings or branches that were cut or dug out from the roots with or without legal right from the forestry national fund or from lands with woody vegetation.

The particularity of the material object of felony is the fact that mentioned forestry materials must be cut away from soil or from stems.

Forestry materials that are abandoned, which means they are not in the possession of the administrator of the forestry fund any more, with his will, and the other that are found that do not belong to the same administrator without his will can not constitute the material object of a delinquency. In the first case, the deed does not constitute a felony and in the second one it is considered felony of the found object stated by art. 243 from the penal code in the conditions that are stated by this law.

B. The subject of delinquency

The direct, active subject (author) can be any person that can penally respond, the legal norm does not state any condition about the quality of this person. This way, active subject can be, even the owner or the one who possess the forestry perimeter established by law.

The penal participation is possible under all its forms: coauthor, instigation, complicity, being applied the common right laws.

In the case of the variant regulated by line 2, the felony made by a forestry personnel staff the punishment is according with that regulation.

The penal punishment is applied even if the persons who committed the felony did not obtain or did not intended to obtain material advantages.

The passive subject is the state who must protect the forestry national fund.

Along with the state, as passive subject can be any person or institution who's patrimonial interests have been affected by committing the respective felony.

C. The constitutive content

1. The objective part

a) the material element consists of simple action of taking cut or broken by natural phenomena trees or a combined action of cutting and taking trees, saplings or branches.

The simple action involves the taking without the right, not legally of the forestry material.

The material element that enters in the composition of the objective part of this felony is only made if there are cumulatively fulfilled the following essential requirements:

- the felony to be applied to trees, saplings or branches mentioned in the incriminatory text;
- the goods on which the felony is committed to belong to the national forestry perimeter or to other lands with forestry vegetation;
- the deed to be done without the legal right, breaking the law;

- the immediate repercussion to be that the value of the stolen woody material to be at least 5 times the average price of a cubic meter of woody material or more reduced but the felony was produced at least two times in a year.

It is easy to observe that the felony of stealing trees, saplings or branches from lands with forestry vegetation like gardens and backyards does not belong to this legal text, these felonies being stated and punished by art. 228 Penal Code.

The condition that the felony to be made without will which means without the permission of the passive subject (without legal right) is not stated by the incriminatory text, the stealing being already punished, so, the express referring is useless.

As regard the imposing a threshold of value on the stolen woody material there were several opinions that differ from the judicial exact description of this felony.

In a first acception, with the case when the damage is less than 5 times the price of a cubic meter of woody material, the felonies will not be considered by the Forestry Code but can be considered as theft or destruction (in function of case) that are stated by Penal Code.

Those who agree these opinions which we do not agree, consider that if the damage is under the value threshold stated in the text of the law there is applied the common right in this matter.

In other acception, there is considered that if the value of the felony is less than 5 times the price of a cubic meter of woody material, the thieves can not be penally punished for the felonies of theft or destruction stated by the Penal Code but will be distinctly punished by other laws.

In our opinion, the law must diminish the value threshold of this felony that is set by art 109 line 1, a letter, to the value of one cubic meter of woody material taking account the need to firmly control the thefts of woody material from the national forestry fund.

We underline that the deeds of persons that use violence or menacing in order to steal trees, saplings or branches from the national forestry fund or from lands with forestry vegetation constitute the felony of hitting or other violence (or outrage, after case) and the forestry felony stated by art. 109 from the Forestry Code are applicable to this case.

We insist on the fact that the feature of the forestry felony set by art. 109 from Forestry Code is not the action of theft regulated by art. 228 from Penal Code but the material object of it: trees that were cut or broken by natural phenomena or other kind of wood, saplings or branches that were cut or dug out from their roots from woods, woody strips for protection, from degraded lands that have been reclaimed by reforestation or from woody vegetation apart from the national forestry fund as well as of all specific other products of the national forestry fund.

The analyzed felony has, generically, a degree of social danger determined by the aftermath facts related to social relationships that form the object of penal protection, in the case of these felonies and the frequency of these thefts and the varied ways they are done.

The likeness between these two felonies is given by the fact that, both the theft felony stated by the Penal Code as well as the analyzed felony involve the good that was stolen from a certain patrimony, a certain one in the first case and from national forestry fund, in the second case.

b) The immediate aftermath

The action of theft without legal right that constitutes the material element of the felony has to have as an immediate aftermath the dispossession of thief as a person or of the institution who has stolen of the goods they have stolen (trees, saplings or branches), involving the changing of the state of the material by dispossession. The immediate aftermath is made even when the stolen material represented by trees, saplings or

branches are hidden in the vicinity, even in the perimeter of the forest from where they were stolen in expectancy to be transported at home to sell the stolen material.

In other words, the immediate aftermath is produced in the case the good no longer belongs to the right owner and he cannot use that object as his, while the thief has or will benefit for that object.

As civil regard, the immediate aftermath is a damaging influence brought to the person or institution who is affected by the theft, the ulterior restitution or compensation do not bring the exoneration of the penal felony

c) The casual report

The immediate aftermath must be the direct consequence of the theft action, this action being the cause and the immediate aftermath being the theft.

The aftermath, being a physical result, a material naturally consequence of it, the casual link between aftermath and the action of theft appears natural and its prove results, practically, from the proving of illegal action and from immediate aftermath.

2. The subjective part

The analyzed felony is done by direct or indirect intention; the law text does not state specifically any goal followed by the felon.

Apart from the felony of theft stated by Penal Code, when the felon has as a goal the possession of several goods, so, a condition that proves the intention, in the case of forestry felonies there is not a specific intention by the goal of the felon.

However, even though the felony is determined by objective and subjective causes, the one who wrote the law has not considered proper to include this condition in the subjective content of the felony, a certain goal of the felony being considered by judicial court when establish the punishment.

There is no interest the place where the forestry materials are as long as they were stolen by the felon.

The felony is considered even when the felon is dispossessed of the stolen material right after he has stolen it, either by forestry personnel or by other persons.

The exhaustion takes place when the material acts of illegal action stopped. Taking account of concrete circumstances there will be considered, in each case, if the committed action is a simple preparing act, attempt or felony in progress.

The attempt of felony is not punished; the law does not specify anything in this respect.

The penal law is started without any complaint. The penal follow is done by police and the judgment by judicial court.

This felony has 4 variants of aggravation stated by art. 109, line 2 that provides an increasing of punishment by half of the minimum and maximum of the criminal punishment.

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