

# Heritage silvic theft according to the Forestry Code, Law 46/2008

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**Abstract** This paper analysis of legal and criminal offense of theft of property forest incriminated by Article 110 of Law no. 46/2008 Forestry Code. The content of the paper is outlined legal concept and are detailed in their natural order, object of the crime, subject, objective side, the subjective side, forms the offense and the sanction. Addressing is done with reference to theory and practice in the field, the doctrine and jurisprudence and legal provisions governing the correlation defining elements of the offenses. Theft of forest heritage finds rules in article 110 of Law no. 46/2008 Forestry Code.

## Key words

law, sanction, forest, offence

Offenses under Art. 110 of Law no. 46/2008 Forest Code incriminates theft or broken trees felled by natural phenomena, or trees, seedlings or sprouts that were cut or removed from the roots, with or without the right of national forest or on forest lands under Art. 6 (from outside the note), if the damage is over five times the average price of a cubic meter of standing timber, or If the value is below this limit damage but the act was committed at least twice in every two years.

Paragraphs 2 and 3 of that Article covers situations in which the offense was result in a loss of over 20 times the average price of a cubic meter of standing timber, respectively, the act resulted in a loss of over 50 times higher than the average price of a cubic meter of standing timber. In paragraph 4, art. 110 of the normative act referring to the circumstances mentioned governed by Art. 97 parag. 4 of Law no. 46 / 2008 Forest Code, which give character facts worsened and that attract an increase in punishment. These are:

- a) perpetration of two or more persons together;
- b) perpetration of a person having a weapon or dangerous chemicals;
- c) the commission of crime during the night;
- d) the commission of the crime in protected forest areas.

## Material and Methods

**The object.** The offenses covered by art. 110 of Law no. 46/2008 Forest Code is legal object social relations for their normal development, possession or require compliance movable detention that are part of national forest or forest vegetation located in outside it,

as covered in forest legislation in force. Incrimination protects only the facts, physical ownership of a movable certain patrimony.

Article 110 of Law no. 46/2008 Forestry Code of criminal law is a means for protection of possession, regardless of its nature, licit or illicit, which is applicable only if harm to the forest heritage by stealing of property: trees felled or broken by natural phenomena or seedlings or shoots of trees cut or removed from the roots. When possession furniture was lost due to other causes, the owner has on hand an action or a refund action for damages in a civil trial. Physical object that the actual value contains, felled trees is the natural phenomena, natural phenomena such as broken trees and trees, seedlings or shoots cut or removed from the roots. Trees felled by natural phenomena are trees that have lost their vertical posture, with or without pulling roots from the earth and the integrity of the stem and broken trees phenomena.

Is immaterial to the legal classification of whether trees, seedlings or shoots have roots were cut or removed in accordance with the law or no law. Requisite to the offense is that the trees felled or broken by natural phenomena and trees, seedlings or shoots, cut or removed from the roots, to be part of national forest or on forest lands located outside. In a brief definition of literature is presented as forest all surfaces with the use of forest recorded as such in forest planning and improvement summary trials. Law no. Forest Code 46/2008, Government Ordinance no. 96/1998 on the regulation of forestry and national forest management and any other regulations of the forest do not define the content of their national forest. The first two acts but normative reference to national forest establishment,

using the criteria different forest type and ownership respectively. According to article 1 of Law no. 46/2008 Forest Code, shall take up the forest national forest, land for a forestation, land that serve the needs of culture, production or forestry management, ponds, streams and riverbeds unproductive land. Government Ordinance no. 96/1998 on forestry regime and managing enact national forest national forest establishment by type of property.

According to article 3 of the legislative act mentioned above, national forest consists from:

- a) forest public property;
- b) publicly owned forest of the administrative - territorial communes, towns, municipalities;
- c) private forest cult units (parishes, convents, monasteries) of educational institutions, the Romanian Academy and other private individuals;
- d) the undivided fund private individuals (freeholders and yeomen or their heirs).
- e) forest private individuals;

**The subject.** In principle, the active subject can be any person. Since the offense is committed by stealing and theft involves in turn, the act of making a movable possession or custody of another, without his consent, in and to him very unfairly offense is excluded by the property owner mobile, except as provided in art. 208 par. 3 Penal Code, which states that, "The deed is theft, even if the property belongs to all or part of the perpetrator, but when committing, good that was in the possession or legitimate possession of another person". Consequently, the owner of trees felled or broken by natural phenomena or of trees, seedlings or shoots have been cut or removed from the roots, with or without right, by him or other people, the national forest or on forest lands under at art. 6 can be an active subject of the crime under art. 110 paragraph 1 of the Forestry Code.

So you might ask whether, if the deed provided for art. 110 of Law no. 26/1996 Forest Code, the provision of article 210 Criminal Code, theft is committed when of private forest by her husband or close relatives. We appreciate that the provisions of Art. 210 Criminal Code, if the tree theft knocked down or broken by natural phenomena, or trees, seedlings or sprouts, cut or removed from roots, was committed between spouses or between close relatives, or by a guardian or minor damage, or by one who lives with the victim or hosted by it. The close relatives mean those in the cases provided in art. 149 Criminal Code. Therefore, the offenses set forth in art. 110 of Law no. 46/2008 Forest Code, which will have such an active subject will be pursued only complaint of the victim. Criminal participation is possible. It has a character objective, and would find applicability in the situation where some of the perpetrators are not criminally liable.

The application of this aggravating circumstance precludes application and statutory aggravating provided in article 75 letter a) of the Criminal Code, perpetration of three or more people together. If they would do so, it would come to a point that would give twice the same relevance circumstances and thus to an increase unrealistic and unfair to sanction penale<sup>6</sup>. Is compatible the application of legal aggravating provided by article 75 letter c) Criminal Code offense committed by a major with a minor. Offenses under Article 110 of Law no. 46/2008 Forest Code, committed under above, can enter the contest with art. 323 par. 1 of the Criminal Code, the association for commit a crime if the perpetrators, to commit theft, have been associated and proposing aim of the association that theft. The circumstances in which the active subject is a person with a weapon on him or substances hazardous chemicals, is an aggravated form of the offense under Article 110 of Law no. 26/1996.

Circumstance has no relevance to the application if the weapon or dangerous chemical or not visible. The seriousness of the offense is increased, mainly in that the offender commits act with greater certainty, knowing that the means at its disposal with which to cancel any resistance, regardless of whose side would come. The weapon is meant as determined by the provisions of Article 2 of Law 295/2004 the regime of weapons and ammunition, as amended and supplemented by Law no. 235/2007. If gun ownership was made without deed can enter the contest as real crimes the offense of failure regime weapons and ammunition provided by art. 279 Criminal Code. Hazardous chemicals are those substances that may affect the environment and health, where their regime is not observed.

The regulation of hazardous chemicals is based on Law no. 360/2003, as amended and supplemented by Law no. 263/2005. In case of participation, will influence and responsibility of those aggravating co-authors or instigators accomplices who knew that the offense is committed under these conditions. It is not necessary as a weapon or dangerous chemical has been taken by the defendant on him to commit the crime. According to article 104 of Law no. 46/2008 Forest Code, is aggravating and committing theft under Article 110 of the enactment by forestry personnel with responsibilities for finding crimes and misdemeanors. In such cases the subject is qualified.

**The objective side.** To talk about the offense provided for in art. 110 of the Act no. 26/1996 Forest Code, is required as prerequisite situation, the existence of trees, saplings or shoots of national forest or on forest lands outside of it. Material element of the crime is considered theft of trees felled action or broken by natural phenomena, or trees, seedlings or shoots from the roots cut or removed, with or without law, the national forest or on forest lands outside of it.

Us are thus in a situation where the action is a material element of certain offenses separate indictment finds another piece of legislation. Thus, theft as a means of achieving material element of the offense under Article 110 of Law no. 46/2008 Forest Code is regulated as a distinct crime in art. 208 par. a, of the Criminal Code.

Theft is the taking of possession of a movable or detention of another, without consent it, in order to own it and unfairly. Action by making a mutation occurs in reality the actual property damaged in the sense that goods are removed from this rule is listed in the perpetrator. The crime situation analysis, decision involves the removal of national forest or vegetation outside the forest, trees felled or broken by natural phenomena or trees, seedlings or shoots have been cut or removed from their roots and transition rule of the offender. Possession is the state which is in possession of a thing material by a person, with intent to behave to him as the owner or holder of a real right. In most cases, possession is exercised even by the owner, being the manifestation essential property rights, but may work by a person not holding this right. Detention is a possession of a thing actually, the obligation to reimburse the owner. Any person aggrieved, which is always different than the perpetrator's possession or custody property that was stolen and from that moment begins the possession of another. The latter shall, by way of theft, the rule actually work. By possession actually understand the situation if only the good is available to the perpetrator.

It is not mandatory to use the property, because possession is achieved by the fact that In fact, the good is available to the owner, being able to perform any acts good material, showing thus "Sibi habendi animus", the intention to behave good as a true owner. Perpetrator is always the owner of stolen property, a holder of bad faith, of course. Article 208 para. A Criminal Code provides for two elements of subjective side: no consent to the injured party and unfairly properties. Lack of consent is presumed, the obligation of returning the offender sample. The purpose of theft is not enrichment, material profits of the offender (animus work faciendi) but the entry into possession of (animus Sibi habendi rem). This means that even if the perpetrator is theft did not take, physically, with nothing on from crime. The lack of features makes the action unjust purpose have no criminal character.

The essence of the offense provided for in art. 110 par. 1 of Law no. 46/2008 Forest Code is conditioned by the value of the damage products, which must be over five times the price Average one cubic meter of standing timber damage or if the value is below this limit, but the offense was committed at least twice in two years. Damage created by theft, national forest products or forest vegetation off site, located on publicly or privately owned land is assessed in accordance. Emergency Ordinance no. 85/2006 on establishing detailed damage assessment forest products and forest vegetation outside thereof,

approved by Law no. 84/2007. Damage assessment is done consistently, regardless of property ownership or how they were produced and are differentiated according to their production by damage to trees, seedlings or sprouts and Christmas trees.

Order of the Ministry of Agriculture and Rural Development no. 416/2006 is the act normative setting average price of a cubic meter of standing timber on under which compensation is calculated to damage the forest and forest vegetation outside the forest and to account for financial obligations national forest land occupation. The method of calculating the damage to determine the existence of any of the offenses analysis has generated much controversy in legal terms. The Constitutional Court has received the often invoking the unconstitutionality of art. 97 and 98 of Law 26/1996 Forest Code, the argument that the two pieces of legislation provide for offenses committed against the forest, crimes whose existence is conditioned by the amount determined according to product damage The average price of a cubic meter of standing timber, in violation of Article 23, 31 and 73 of the Constitution regarding the determination and application of penalties, right to information and need to regulate their organic law. They also showed that the average price of a cubic meter of standing timber is not defined by rules laid down by the organic law and

The only reference to the average price is included in the Law no. 81/1993, the former law to determine compensation for damage to forests and forest vegetation outside forests located on public property and private land. This law, although there was a law organic, provided in article 5 that the price is established by the Ministry of Agriculture and Rural, in the first instance, not published in the Official Gazette in respect of which the price is fixed damage value for committing acts that constitute crimes.

The Constitutional Court decision no. 27/1999 and 57/2003 were rejected exceptions alleged unconstitutionality. It held that Art. 97 and 98 of the Forestry Code provide elements constituting the crime which it covers. In addition, article 109 of the Forest Code that "The provisions of this title shall be filled with the Criminal Code and Code of Criminal Procedure." To these provisions can not be argued that the law is not provided all the conditions required for such acts constitute a crime. On the contrary, examination of these laws reveals that they define crimes sufficiently they provide, describing unlawful conduct specifically incriminated and setting penalties applied. Determine the average price of a cubic meter of standing timber by central authority responsible for forestry is based on a power given by organic law and damage assessment based on criteria established by law. Constitutional Court Note that the central competent authority responsible for forestry to establish that price can not be understood than its obligation with respect to calculate parameters provided by law.

## Results

In determining damages take into account the price of products on commission deed. In legal literature expressed the view that whenever theft meets value and place under conditions of art. 110 of Law no. 46/2008 Forest Code will be sanctioned According to this text, and vice versa, you do not meet these conditions will be punished according to Art. 208 of the Criminal Code. Such opinions may not be accepted in full, is in disagreement with some provisions laws and principles of substantive law. Forest Code, adopted by Law no. 46/2008, is the special law on the report with certain provisions of the Criminal Code - Special Part, which is the general criminal law. As provisions of Article 96-104 of Law 26/1996 was subsequently adopted as provided in the penal code, derogatory character is obviously under the "specialties generalibus depart." Therefore, after the entry into force of the current Forest Code are to the provisions its forestry regime for the facts because they are "special law" in relation to "law general" special from Criminal Code.

The principle of special law enforcement the facts on forestry regime was applied consistently by the courts and supported in the literature juridică<sup>15</sup>. Timber theft or destruction shall be sanctioned under the Criminal Code only when property on which the offense bears are processed, stacking, transported or only carefully cut through silvice<sup>16</sup> organs. In relation to the foregoing, we conclude that if not met conditions in relation to art. 110 of Law no. 46/2008 Forest Code, the value of the damage or repeatability acts of theft of trees felled or broken by natural phenomena, or trees, seedlings or sprouts, cut or removed from the roots, with or without law, the national forest or on forest lands outside of it, such acts do not meet the elements incorporation of forest crime under art. 110 par. 1 of Law no. 46 / 2008 Forest Code, but do not constitute any offense under Art. 208.

With the amount of damage created is over 20 times higher than the price average one cubic meter of standing timber, respectively, over 50 times, we are in a situation provided in aggravating situation. Theft of trees, saplings and sprouts, meeting the other requirements of Code forest, committed at night or in protected forest areas, is aggravating under letters c) and d) of para. 4, article 110. By "night" means the time when darkness is effectively installed. This is a question of fact which is appreciated judiciary, depending on the particularities of time and place the act is committed. Twilight is not part of the night (darkness has not been installed, the attention is not influenced by night), while dawn yes (darkness persists and especially since the transition from sleep affects daily activity to the attention capacity of people). When some of the acts of execution of the offense lie in the night, the whole activity will be described in the paragraph. 4, point c) 18. In appreciation, aggravating

situation must consider each case individually, taking into account that, depending on the season, at the same time an act can be committed both by day and time the night.

## Conclusions

Whether there are aggravating or not the offender took advantage of "night" and whether if the place was lit or not. Aggravated "by night" does not subsist unless the act was committed night, not in other situations in which the advantage of darkness, such as during a total eclipse the sun. Under the provisions of par. 4, letter. d), the articles of law above is aggravating and perpetration in protected forest areas. Protected areas regime, conservation of natural habitats, flora and fauna Wild finds the Emergency Ordinance regulation 57/2007. Aggravated nature of the act of cutting or removal of roots, without right, trees, saplings or shoots in protected areas is that it harmed the natural heritage and is affected itself its conservation and sustainable use.

For these offenses there is a report from the middle end, cutting or removal of roots is indispensable for committing theft, when trees, seedlings or shoots are on foot. But the acts necessary materials that make up the objective side of each offense to have been committed by the same person, without interest if the acts were committed at a time the shorter or longer. It is possible that the cutting or removal of roots to be in competition with attempted theft, if who cut off the roots or trees, seedlings or shoots failed to acquire them immediately, reasons beyond his control. It is competition even if the facts repeated when the same person commits acts within two years, irrespective of ownership. Interval of 2 years should be understood as the maximum of the first acts was committed until the commission of the two. During this time, repeating the offense is subject to conditions required by law to existence of crime.

In an opinion denying the possibility of real competition between the two offenses, it is argued that there is an identity injury when cutting or removal of roots and theft are committed by the same person, and vegetation covered the two offenses is the same. It is known however, that immediately following the result not only is identified as sometimes regarded as just a form that they can present, it can be in the form a state of danger. According to an opinion, the act complained of art theft. 110 of Law no. 46/2008 Forest Code is capable of converting the offense of robbery, of course are met violence or threat conditions required by Criminal Code. It is considered that if a person uses violence or threat to steal trees from national forest or on forest lands outside thereof may be held criminally liable for the crime of robbery that has embedded in its content so complex offense the impact or threat, as well as that provided by article 110 of Law no. 26/1998 Forest Code. In another opinion, the act of theft,

accused of Art. 110 of Law no. 46/2008 Forest Code, there is capable of converting tâlhărie<sup>23</sup> offense. Not every crime from a law special association has good heritage content can be embedded in content offense of robbery.

## References

1. Antoniu G., Bulai C., Practica judiciară penală, vol. III;
2. Basarab M., Drept penal – partea generală, Editura Didactică și Pedagogică, 1983;
3. Paicu Al., Cu privire la formele calificare ale infracțiunilor silvice, revista Dreptul nr. 10/2009;
4. Paicu Al., Infracțiunile privind regimul silvic si administrarea fondului forestier național, revista Dreptul nr. 1/2010;
5. Păvăleanu V., Aspecte teoretice privind infracțiunile prevăzute în noul cod silvic, revista Dreptul nr. 9/2009;
6. Păvăleanu V., Infracțiuni silvice. Reglementare nouă, Revista de Drept Penal nr. 3/2010;
7. Potrivitu G., Opinii în legătură cu unele infracțiuni prevăzute în Codul silvic, Dreptul nr.8/2008;
8. Ungureanu A., Noi reglementări ale domeniului silvic, Revista de Drept Penal nr. 2/2011;
9. Voinea Gh., Considerații pe marginea unor încriminări cuprinse în noul cod silvic, revista Dreptul nr. 6/2011;
10. LEGIS ROMÂNIA