

# Deforestation as One of the Problems of Modern Times: Relevant Issues of Criminal Liability

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**Keywords:** Criminal law, criminal liability, criminal policy, qualification of crimes, nature protection, deforestation, ecology, timber.

**Abstract:** The objective of the research is to analyze the current criminal legislation in countering illegal logging. Achieving the objective set has become possible due to solving the following tasks: analysis of the state criminal policy in countering the ecological crimes; study of legislative base for its conformity to the needs of the executor of law; study of Art. 191<sup>1</sup> of the CC of the RF and Art. 260 of the CC of the RF for identifying the features of components of crimes to facilitate proper qualification of crimes; making suggestions on improvement of legislation on forest protection. The choice and content of the study methods are conditioned by its subject and tasks that allowed to use the scientific cognition method of three levels: empirical, experimental-theoretical and theoretical levels. The clarification of particular features of the components of crimes determined in the research that has been based on the current legislation and the analyzed judicial and investigative practice will facilitate the correct criminal law assessment of socially dangerous infringements regulated by Art. 191<sup>1</sup> of the CC of the RF and Art. 260 of the CC of the RF. As a result of the conducted research, we concluded that the stability of the current legislation on forest protection directly depends on its “mobility”, as the regulatory activity makes it possible to eliminate the existing gaps in the legislation identified in the course of the law enforcement practice.

## 1 INTRODUCTION

The fight against crime is a historically long process, in the course of which the state is forced to use a wide range of active offensive measures. The forms, methods and means of countering the negative social events are developed on the basis of the state criminal policy, which, like a canary in a coal mine, highlights important national tasks, among which, of course, the protection and strengthening of law and order can be distinguished.

One of the forms of external expression of the state criminal policy are the rules of law, and if the current law is socially induced, reflects the objective reality in terms of the conditions of life of society, then it contributes to its progressive development, ensures solving the tasks set upon its adoption. On the contrary, the rules of law that do not meet the modern realities can cause stagnation in economic and social transformations.

Currently, one of the relevant criminal law problems is nature protection (Ryzhkova E.I., 2021;

Helena Du Rées, 2001). The environmental protection is subject to significant harm due to the mistaken idea that the natural reserves resources are limitless and inexhaustible, which has been rooted in the minds of individual citizens and officials. One of the most pressing problems in the field of ecology is illegal logging, as well as trafficking in illegally cut timber (Lynch, Michael J., 2016). Illegal logging of valuable species has become critical. The researchers note that the foreign furniture and parquet manufacturers (China) purchase such valuable wood species as oak, ash, elm, linden, in the scope that significantly exceeds their permitted logging volumes, and as a result, interferes with sustainable forest management. Subsequently, the finished products are sold in Europe, the USA, Japan (Kabanets A.G., Milakovskiy B.D., Lepeshkin E.A., Sychikov D.V., 2013). During the working meeting with the President of the Russian Federation on 19/02/2021, Yuri Chikhanchin, the Director of the Federal Financial Monitoring Service, noted that together with the FSB, the MIA, the Prosecutor's

Office, and the Investigative Committee, they work on the issue of forest protection. In particular, the criminal cases on timber smuggling have been initiated in the Far East and in Ural. In the Northwestern Federal District, they work on identifying the foreign beneficiaries who participate in shadow schemes.

It is impossible to achieve the desired results in countering this kind of criminal activity outside of science, since the development of the regulatory framework and the improvement of the existing criminal law rules providing for liability for illegal logging are currently the starting points for further improvement of the criminal policy on the ecological safety issues (Maria X.Sanmartin, Mir M.Ali, SeanLynch, 2019; Ranjan R. 2018). That is why, the objective of the research is to analyze the current criminal legislation in countering illegal logging. To achieve the objective set, the following tasks should be solved: analysis of criminal law rules, other regulatory acts in order to understand the legislative resource capable of properly responding to illegal logging; identifying the features of components of crimes as provided by Art.191<sup>1</sup> of the CC of the RF and Art. 260 of the CC of the RF to ensure correct legal assessment of the acts committed by guilty persons; making suggestions on improvement of legislation on forest protection. The scientific novelty of the research mainly consists in that the authors took an integrated approach to study the issue of the effectiveness of the current legislation regulating the issues of liability for illegal logging, as well as the turnover of the illegally cut timber.

## 2 MATERIALS AND METHODS

The scientific research has been carried out using several levels of cognition. The empirical methods were comparison and computation. We compared the previous legislation in the forest protection and the current rules of law. We computed the statistical data on the registered crimes as provided by Art. 191<sup>1</sup> of the CC of the RF and Art. 260 of the CC of the RF. The experimental-theoretical level of cognition included such methods as historical and logic. Here, having studied the given statistical data, we used logical thinking and found out a tendency for growth of crimes of the studied category. The theoretical methods were analysis and generalization that we used to make the basic conclusions and proposals on improvement of the current legislation.

## 3 RESULTS AND DISCUSSION

In our researches, we had already addressed to this issue, but the problem has remain relevant for over ten year period (Petrasheva N.V., Samoilova Yu.B., 2008). It is known that the dominating consequence of ecological crimes is the harm caused to the natural environment, which is not limited to monetary values (Lavygina I.V., 2003; Ryumina E.V. 2009; Persak N., 2019). Among others, the environmental harm from illegal logging consists in the depletion of forest resources for legal business, increased pressure on protective forests, destruction of opportunities for traditional nature management, degradation of animal habitats, including valuable and especially valuable ones, as well as food potential (Kabanets A G., Milakovskiy B.D., Lepeshkin E.A., Sychikov D.V., 2013). It cannot be estimated in monetary value (Robert I., McMurry., Stephen D. Ramsey, 1986; Vallejos M., G.H.Camba Sans, S.Aguiar, M.E.Mastrángelo, J.M.Paruelo, 2021).

In Europe, great attention is paid to environmental issues, as well as the legal origin of timber entering the market. On 03/03/2013, Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (hereinafter - the EU Regulation). The EU Regulation defines the operators as the companies supplying timber and timber products on the market of the European Economic Space. It establishes the obligation of the operators to introduce certain procedures and measures for mitigating the risk of market entry of the products made of illegally cut timber (Parsadanyan M.A., 2020). This is so-called "due diligence system". This document is remarkable in the framework of the topic under consideration that the effect of the EU Regulation covers also the suppliers of the countries where the timber is produced, including Russia.

It can be seen that the due diligence system has a preventive role in the fight against illegal logging that prevents legalization of illegal timber in the global market, and is a means to prevent illegal logging.

Our state pays great attention to solving the problem of illegal logging. Federal Law No. 415-FZ of December 28, 2013 introduced Chapters 2<sup>2</sup> and 3<sup>3</sup> into the Forest Code of the Russian Federation, which regulates the procedure for transporting timber and accounting of the related transactions in the Unified State Automated Information System for Timber Accounting and Related Transactions (USAIS).

To enhance criminal liability for crimes committed in the field of forestry, in 2014, the

criminal liability for trafficking in illegally cut timber was established (Art. 191<sup>1</sup> of the CC of the RF was introduced by Federal Law No. 277-FZ of July 21, 2014).

This rule makes it possible to bring to criminal liability not only the persons directly involved in illegal logging (that is done often for mercenary motives), but also the persons involved in its sale and making it legal, that is, the entire "chain" persons illegally "earning" ("profiting") on the destruction of forests (Simon L. Bager, U. MartinPersson, Tiago N.P.dos Reis, 2021).

134 crimes were registered in 2015, and 149 - in 2020. At this, 64 persons were identified in 2015, and 77 - in 2020. It can be seen that the practice of bringing persons to criminal liability under this article of the CC of the RF is currently developing. It is supposed that the USAIS can have a positive influence on the possibility of establishing the sign of "knowingly illegal" timber.

This circumstance associated with the introduction of Art. 191<sup>1</sup> of the CC of the RF in the CC of the RF influences the statistical data of the registered crimes as provided by Art. 260 of the CC of the RF. Thus, 20,826 crimes as provided by Art. 260 of the CC of the RF were registered in 2010, 14,192 crimes - in 2015, and 12,260 crimes - in 2020. It is obvious that there is a steady downward trend of the number of registered crimes (Art. 260 of the CC of the RF) (Romanova M.V., 2020), which only focuses that most of the crimes in illegal logging are classified according to Art. 191<sup>1</sup> of the CC of the RF. The common purpose of the above components of crimes induces difficulties in the issues of delimitation of these criminal law rules, and therefore, the law enforcement practice in resolving this issue is ambiguous.

Thus, in the Nizhny Novgorod region, a citizen was convicted under P. 3, Art. 260, of the CC of the RF. The deputy prosecutor of the region did not agree with the verdict and considered unjustified the court's conclusion on the excessive imputation of cl. 3, Art. 191<sup>1</sup> of the CC of the RF on the grounds that "other technological processes associated with illegal logging are covered by Art. 260 of the CC of the RF". The prosecutor noted, and it is difficult to disagree with, that the aforementioned rules have different objects and a different objective side, as well as that the actions on the illegal transportation for sale and the timber sale, are not covered by the disposition of Art. 260 of the CC of the RF. The first cassation court supported the prosecutor and pointed out, that is noteworthy: "the object of the crime as provided by Art. 260 of the CC of the RF are public relations in

the field of ecological safety (Dalgaly T.A., Gostkova D.Zh., 2021). The city court sentence was canceled. Also, the Seventh General Cassation Court disagreed with the opinion of the lawyer about the excessive conviction under P. 3 of Art. 191<sup>1</sup> of the CC of the RF arguing that the subject of crimes is the same, and the illegal logging includes the import and disposal of timber, since illegal logging makes no sense without a sale. The court reasonably noted that the actions that constituted the conviction under the two rules of the Criminal Code of the Russian Federation are different, and the illegal logging can be committed with various motives, including those not conditioned by self-interest, profit. The sentences where the qualification under Art. 191<sup>1</sup> of the CC of the RF was excluded were also appealed by the representatives of the victim. An example is the decision of the Eighth General Cassation Court dated July 24, 2020. The convicted person, together with another person who was not aware of the illegality of his actions and who assumed that he was acting in the framework of the law, performed the illegal logging. Subsequently, the pine was removed from the illegal logging site and was sold as legal timber in the framework of the previously concluded purchase and sale agreement.

At the same time, the conducted analysis of the court decisions evidences that the amount of damage according to Art. 260 of the CC of the RF and according to Art. 191<sup>1</sup> of the CC of the RF was determined in the same way.

## 4 CONCLUSIONS

It should be taken into account that the illegal logging causes the ecological harm. In accordance with the note to Art. 260 of the CC of the RF, this damage is calculated according to the rates and methods approved by the Government of the Russian Federation.

Currently, this is Resolution No. 1730 of the Government of the Russian Federation dated 29/12/2018. After the tree trunk, bush and liana stems are separated from the root, as well as other processes related to logging, the crime ceases to be ecological.

Further activities on sale of illegally cut timber will be already classified as a crime in the field of economic activity. For incurrance of criminal liability under Art. 191<sup>1</sup> of the CC of the RF, a large size of damage must be established that cannot be calculated using the same methodology and the same taxes as for illegal logging, since it transforms into an economic crime. It is obvious that in this regard, Resolution of the Government of the Russian Federation No. 273

dated 08/05/2007 (as amended on 11/10/2014, as amended on 02/06/2015) adopted for the purposes of 191<sup>1</sup> of the CC of the RF was canceled. This has led to a difficult situation, the executors were deprived of the opportunity to duly establish the damage caused. Currently, this gap has been eliminated by approving the rates for calculating the value of the illegally cut timber for the purposes of 191<sup>1</sup> of the CC of the RF, Resolution of the Government No. 2306 dated 28/12/2020.

Thus, the continuous improvement of the legislation is a forced measure that determines the current law stability. By determining the direction of the regulatory activity, the criminal policy of the state, in our case this is the mobility of the law, objectively determines the need for legal protection of the environment. The results of the regulatory activity become a part of the criminal policy and represent a fusion of science and law enforcement practice.

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