

Criminal Means of Counteracting Illegal Logging

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Keywords: Criminal law, criminal liability, environmental law, illegal logging.

Abstract: The article focuses on the study of problems arising in countering illegal logging by criminal means. To this end, the authors analyzed the criminal and environmental legislation in terms of determining the main features of the objective element of illegal logging; law enforcement practice was studied; the problems that arise when considering such cases were identified. The research was based on the application of general scientific and specific scientific methods of cognition: analysis and synthesis, the Aristotelian method. In order to improve the counteraction against illegal logging, the need to amend forest legislation in terms of conceptual framework unification and the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 21 "On the application by courts of legislation on liability for violations in the field of environmental protection and natural resource use" in terms of clarifying the subject and place of the crime.

1 INTRODUCTION

Russian forests occupy a quarter of the world's forest cover and perform the most important economic, environment-forming and protective functions. Recently, forest areas have been rapidly decreasing due to high rates of illegal logging and subsequent forest crime. According to the World Bank, direct economic damage from illegal logging in the world ranges from 10 to 15 billion dollars annually; at the same time, the volume of forest crime is 15-30 billion dollars a year. The environmental damage caused by forest crimes is incalculable, since the damage caused by illegal logging is not caused to individual trees, but to the entire ecosystem (Qian, 2016). Barbaric logging increases pressure on forests and creates environmental, economic and social problems that require urgent action. Due to the steady growth of illegal logging and the volume of damage caused, the role of criminal law measures as a reaction of the state to forest crime is growing (Lopashenko, 2020).


The problems of legal regulation and qualification of criminal encroachments on forest resources often become the subject of research by Russian and foreign scientists (Roque, 2018; Enuoh, 2018).


Particular attention is paid to the problems of criminal and environmental law interaction due to the blanket nature of the article disposition, which provides for liability for illegal logging, which requires an appeal to special environmental legislation (Yakimova, 2018; Timoshenko, 2018; Vasilyeva, 2019; Zvereva, 2019).


The goal of this work is to research the problems arising in countering illegal logging by criminal means, and to develop proposals for improving legislation and law enforcement practice that will help to increase the efficiency of the implementation of criminal means of counteracting illegal logging and subsequent forest crime.


2 MATERIALS AND METHODS

As the part of research, we analyzed the legislation governing the issues of criminal liability for illegal logging: Criminal Code of the Russian Federation, 1996 and special environmental legislation (Forest Code of the Russian Federation, 2006). Particular attention in the research was paid to the analysis of the provisions of Resolution of the Plenum of the

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Supreme Court of the Russian Federation, 2012, N 21, "On the application by courts of legislation on liability for violations in the field of environmental protection and natural resource use" (hereinafter also Resolution No. 21). Also, in order to develop theoretical proposals, scientific works were studied that influenced some of the research conclusions, for example, the question of the impact of amendments to the Forest Code of the Russian Federation on the content of the objective element of illegal logging (Davydova, 2019), the question of the causes of forest crime latency (Goncalves, 2012; Ivanov, 2019); on the structural features of blanket criminal norms (Timoshenko, 2018).

The research used general scientific and specific scientific methods of cognition: analysis and synthesis in the research of legislation, practice, scientific work in terms of identifying problems arising in the field under study; when interpreting the law; a formal-logical method for interpreting the results in order to develop proposals for increasing the effectiveness of criminal means of countering illegal logging.

3 RESULTS AND DISCUSSION

In the Russian Federation, a criminal is applied for illegal felling, as well as for damage to the point of growth cessation of forest range or trees, shrubs, vines not classified as forest range, if these acts are committed in a significant amount. Due to the blanket nature of the article disposition, when interpreting this criminal norm, the need to use a concept that has a legal definition in environmental legislation is taken into account. This is confirmed by Resolution N 21: when considering cases of environmental offenses, one should be guided by the provisions of environmental legislation and other regulatory legal acts of the Russian Federation and its subjects on environmental protection and nature management. It is the application of the forestry legislation norms when prosecuting for illegal logging causes difficulties for law enforcement bodies.

The first problem is the mass character of the acts that make up the blanket basis. Most of the dispositions of norms providing for the responsibility for environmental crimes are blanket, and they are based on more than 70 federal laws alone and over 1000 other by-laws (Zvereva, 2019), which certainly complicates the law enforcement process.

The second problem is the poor quality of legal regulations. This is largely due to changes in forestry legislation. With the adoption of the 2006 Forest

Code of the Russian Federation, the objective element of the crime expanded, which entailed the difficulty in distinguishing between the crime of "illegal logging" and "acquisition, storage, transportation, processing for the marketing or sale of deliberately harvested timber, as well as illegal logging with an administrative offense (Davydova, 2019).

The third problem is the latent nature of forest crimes. They go unnoticed, unregistered, or simply ignored in Russia and many countries, (Goncalves, 2012; Ivanov, 2019). In our opinion, this problem is associated, among other things, with the vagueness and inconsistency of forestry and criminal legislation. Hence, it becomes difficult to establish and interpret the signs of the forest crimes elements. It also contributes to latency and low efficiency in law enforcement bodies (Hendriana, 2020). This is due, inter alia, to the lack of the necessary specialized knowledge in the field of ecology and law and the lack of environmental experts (Mardhatillah, 2016).

The fourth problem is the lack of legal liability of legal entities for environmental crimes. Content analysis of the mass media shows that large volumes of illegal harvesting of forest resources are performed by organizations. Both in Russia and in other countries, the persons who actually perform the felling are brought to justice, and who cannot compensate for the damage caused, taking into account their material condition (Lynch, 2015). In order to solve this problem, some states have taken the path of establishing criminal liability of legal entities for environmental crimes: Australia, England, Ireland, Iceland, Netherlands, Switzerland, Belgium, Denmark, USA, Canada, etc. (Ilyas, 2019; Muchtar, 2019; Grebennikov, 2016; Ternovaya, 2016).

Taking into account the above circumstances and factors of low efficiency of criminal law impact on the forestry crime, the authors propose to pay attention, first of all, to the improvement of forest legislation and to improve the quality of the relationship between the norms of criminal and forest legislation.

Firstly, a clearer definition of the crime subject is needed.

According to Resolution N 21, "the subject of crime is both forest range, that is, trees, shrubs and vines growing in forests, and trees, shrubs and vines growing outside forests". From our point of view, in this provision, the judicial authority assumed the function of rule-making, since the legal structure "forest range, that is, trees, shrubs and vines" is, in fact, the definition of "forest range". While in special legislation - the Forest Code of the Russian Federation - there is no such definition. Due to this

gap, there is a need to change forestry legislation in terms of consolidating the legal definition of “forest range”.

Secondly, it is necessary to clarify the place where the crime was committed.

A clear definition of the place of forest range growth affects the act qualification (illegal logging or theft). Resolution N 21 specifies that “trees, shrubs and vines growing in tree nurseries” do not refer to the subject of the crime, that is, a tree nursery (as a plot of forest land on which forest range is grown) is not recognized as a crime scene. To our opinion, this approach does not fully take into account the peculiarities of forestry legislation, which establishes various legal statuses of these plots. According to the Forest Code of the Russian Federation, forest range cultivation can be performed on the territory of nurseries and plantations (Table 1).

Table 1: The legal status of plots for the forest range cultivation.

Tree nursery for state institutions	Private tree nursery, decorative crops nursery	Forest plantation
Purpose of creation		
cultivation of planting material of forest plants	cultivation of planting material of forest plants, obtaining fruits, berries, decorative and medicinal plants	cultivation of forest range of certain target species
Legal basis		
permanent use	rent	rent
Ownership of the grown range		
state, municipal	private	private

We can assume that Resolution N 21 uses the term “tree nurseries” as a collective term. While clarification is required on which plot is: 1) state tree nursery, 2) private tree nursery and nursery of decorative crops, or 3) forest plantation. Obviously, in cases 2 and 3, damage is caused to a private person, and the plantings themselves are a collection of trees as commodity and material values. Consequently, the exclusion of such plots from crime scenes is fair, and the illegal logging of such trees, bushes and plants is qualified as their theft.

The situation is different with plantings in state tree nurseries. Such nurseries were created not for private, but for state interests. In light of the global problem of deforestation, each state has undertaken the obligation to increase the forest cover of its territory, and the role of forest tree nurseries is undoubtedly increasing. Taking into account the

special role of state tree nurseries for reforestation in Russia, the authors propose to amend Resolution N 21 in terms of clarifying the crime scene: it is proposed to replace the term “tree nursery” with “tree nursery leased, forest plantation”.

Thirdly, due to the active reform of environmental and forestry legislation, there is a need to promptly adjust the official acts of judicial interpretation, due to their special role for law enforcement bodies. Let us explain this by an example, when discrepancies in the priority of using sources that determine the objective element of the crime entailed serious consequences.

The actions that constitute the objective element, expressed in “illegal logging”, are explained in the Forest Code of the Russian Federation (article 16) and in Resolution N 21.

Despite the indication in Resolution N 21 that “when considering cases of environmental offenses, one should be guided by the provisions of environmental legislation”, in unclear situations the law enforcement body does not use a systemic interpretation of forest legislation, but refers to the explanations of a higher court. This conclusion of the authors is based on an analysis of judicial practice in the period from 2012 to 2017.

In 2012, the “felling” definition in Resolution N 21 was identical to the definition contained in the Forestry Code of the Russian Federation.

In 2015, the Forest Code of the Russian Federation was amended to include additional processes in the “felling” definition. Since the provisions of forestry legislation should serve as a guideline for the interpretation of Art. 260 of the Criminal Code (Timoshenko, 2018), a similar clarification should have been included in Resolution N 21, but this was not done (detailed differences in the “felling” definition by year are presented in Table 2).

The analysis of judicial practice showed that in the majority of court decisions of the period of discrepancy in the definition of felling, an outdated definition of felling was used with reference to Resolution N 21. This led to a restrictive interpretation of the criminal law, and the objective element of the crime was narrowed by excluding from it the processes of skidding, partial processing, storage of wood in the forest.

Due to the fairly frequent changes in environmental legislation and the issues arising in law enforcement practice in connection with this, we consider it appropriate to recommend timely updating the explanatory provisions of the Plenum of the Supreme Court of the Russian Federation.

Table 2: The concept of forest range felling.

Forest Code	Resolution N 21
2012	
processes of sawing off, chopping down, cutting off forest range	sawing off, chopping down or cutting, that is, separating the tree trunk, cane and vine from the root in various ways
2015	
processes of forest range felling (including sawing off, chopping down, cutting), as well as other technologically related processes (including skidding, partial processing, storage of wood in the forest)	sawing off, chopping down or cutting, that is, separating the tree trunk, cane and vine from the root in various ways
2017	
processes of forest range felling (including sawing off, chopping down, cutting), as well as other technologically related processes (including skidding, partial processing, storage of wood in the forest)	forest range felling (including sawing off, chopping down, cutting, that is, the separation of the tree trunk, cane and vine from the root in various ways), as well as other technologically related processes (including skidding, partial processing and (or) storage of wood in forest)

4 CONCLUSIONS

The research of the problems arising in the application of criminal liability for illegal logging made it possible to come to the following conclusions.

Based on the peculiarities of the interaction of criminal and environmental law, in our opinion, the legislature's approach to using the method of constructing blanket criminal law norms is correct. In this regard, the norms of the Criminal Code of the Russian Federation establishing responsibility for illegal logging do not need to be changed. Forest legislation, which acts as a blanket basis, regulates the activities associated with the forest range felling in sufficient detail. At the same time, due to the inconsistency between the norms of criminal and forestry legislation, contradictions often arise in this category of cases in law enforcement practice. Elimination of the identified problems is possible by amending:

- 1) the forestry legislation in terms of consolidating the definition of "forest range as trees, shrubs, vines in forests";
- 2) the Resolution N 21 in terms of clarifying the crime scene - replacing the term "tree nursery" with "tree nursery leased, forest range".

We believe that these methods of minimizing defects in legislation and law enforcement practice will help to increase the effectiveness of the implementation of criminal means of countering illegal logging.

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