

QUALITY PART INJURED PARTIES OR CIVIL OFFENSES UNDER LAW 46/2008 – THE FOREST CODE

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Abstract

By early 2010 the practice courts of Romania was not consistent as private persons who may be injured party status and that can become a civil party in criminal proceedings, if the offenses covered by the law the NRA. 46/2008 - Forest Code.

Key words: the injured party, civil party, forest crimes, non-unitary interpretation

INTRODUCTION

In practice the courts found that there is no uniform view in the application of art. 105, with reference to art. 10 of Law no. 46/2008 concerning forest private individuals or businesses. Thus, some courts have held that the offenses forest forest covering private individuals or legal persons, as an injured party can have a civil or only forest owner violated, because the damage was caused to property of that owner.

Other courts, by contrast, have held that in such case, the court as a civil party so injured or damaged forest owner, unless the offender himself is causing harm and Forestry respectively Forestry Department to ensure forest management or forest services. In this context, based on art.414 Criminal Procedure Code, the general prosecutor of the High Court of Cassation and Justice has promoted an appeal on points of law which the court requested to rule on points of law that has received a different solution from the courts. By Decision. 03/15/2010 2 of the High Court of Cassation and Justice - United Section solve problems non-unified interpretation, present and a solution for future mandatory for all courts.

RESULTS AND DISCUSSION

By the decision, the High Court of Cassation and Justice has upheld the appeal on points of law, and ordered that the crimes stipulated in Law no. 46/2008 - Forest Code, which affect the private forests of the natural or legal person status of a victim or civil party can have both forests, not as a representative of the State and forest owner, unless the latter is an active subject of crime. The reasons for such decisions were detained following issues: civil action pursued in a criminal trial, with ancillary criminal proceedings, is subject to the provisions governing tort.

Therefore, to exercise civil action in criminal proceedings must be satisfied simultaneously, several conditions, including: the offense is subject to criminal action to be generating material or moral injury, there is a causal connection between the injury and crime, the harm to be common ground and have not been repaired, there will be a civil party-building in criminal proceedings. As in the civil trial in the civil action in criminal proceedings applies the principle of availability, which allows the injured person to choose not only the procedural context to pursue their claims, but when exercising civil action within the limits allowed by law.

In relation to this legal framework, prosecutor and court are not allowed to limit in any way entitle the holder to exercise the civil action and can not be subrogated to the rights of victims, but to intervene actively in their role, to put the injured party to state whether it is a civil party in criminal proceedings. multiple legal object of forest crime, consisting of social relationships to protect forest, as a key factor in maintaining an optimal level of environmental quality, but also guaranteeing property rights, and mainly passive subject of such crimes, regardless of ownership, it is always the rule, as representative of society interested in protecting forests and ensuring ecological balance, a print of this category of crime determining the allocation of specific procedural position of a victim or civil party the forest, representing the state, along with the owner of forest, secondary liability that matter, his being unable to recognize him as such it is an active subject of forest crime.

Such a conclusion is required by provisions of the overall Forest Code adopted by Law no. 46/2008, which governs the mandatory forest management and insurance services to all forests, irrespective of ownership by public forest districts. In this sense, art. 10 para. (1) of Law no. 46/2008 states that "binding management and forestry service provision, where appropriate, to all forests, irrespective of ownership, the forest districts."

Also, according to art. 3, with reference to art. 88 of Law no. 46/2008, the national forest is a good national interest to be defended and developed priority. Significant provisions are analyzed in terms of art. 33 of Law no. 46/2008, which regulates the obligation to set up fund forest conservation and in par. (2). e) shows that this fund is constituted, among other things, "50% of the amount of compensation for damage to privately owned forest products."

Furthermore, it should be noted that in art. 105 par. (3) of the same law stipulated that "in situations where damage assessed according to para. (A) and (2) was not recovered by the Forestry Department which provides services or forestry forest management, it is recovered by the central government Public Finance, as representative of the Romanian state. "Or, as long as the Romanian state is clearly interested, and morally, in all cases of crimes against forest private forest through the establishment of forest vegetation which ensures protection against acts of slaughter , breaking, destruction, degradation or removal of the roots of trees, seedlings or shoots belonging to the fund, could not believe that forests, as a representative of the Romanian state would not have the necessary legal basis of the civil accountability involved in committing such crimes.

Since the material object of any offense forest is the forest vegetation, regardless of ownership and liability principal subject of these crimes is the state interested in protecting all forest lands, forest district participation in the criminal proceedings as an injured party or as a civil party representing the state, is fully compliant with the principles of natural and right that stem from the provisions of art. 14 and 15 of the Criminal Procedure Code, in conjunction with art. Civil Code 998 et seq. As a result, by committing a crime against private forest, belonging to individuals or legal entities, assets and interests are affected by both the state, a representation which ensures the forest districts and nominal owner of that fund.

CONCLUSIONS

The decision of the High Court of Cassation and Justice on 15.3.2010 and published in the Official Gazette, Part I no. 414 of 22/6/2010 is intended to ensure the future interpretation and application of legal provisions relating to persons who can become a civil party in the case of forest crime. There are, or there could be a problem of interpretation . In the terms of the prounstate, referring to the subject of multiple legal forest crime, consisting of social relationships to protect forest, as a key factor in maintaining an optimal level of environmental quality.

Such a conclusion, it said considerenele decision is required by provisions of the overall Forest Code adopted by Law no. 46/2008, which governs the mandatory forest management and insurance services to all forests, irrespective of ownership by forest districts in the public interest. "But signing management contracts with forest districts constitute the basis of art. Lit. a) a mere breach of Law 171/2010. But what happens if there is such a management contract, there was no one authorized to provide private Forestry Forestry Services. Besides the problem of crime in contravention that the landowner may retain more Forestry can invoke an injury to enable it to participate in criminal proceedings?

REFERENCES

1. Criminal Code, with amendments and additions
2. Criminal Procedure Code, as amended and supplemented
3. Civil Code, as amended
4. Law 46/2008 - the Forest Code, as amended and supplemented
5. Decision. 03/15/2010 2 of the High Court of Cassation and Justice