

Criminal Legal Protection of the Forest: History and Modernity

R. A. Tovsultanov^{1,*}, M. Sh. Tovsultanova², and L. N. Galimova³

¹Kadyrov Chechen State University, Sheripova Street, 32, 364024, Grozny, Russia

²Chechen State Pedagogical University, Subra Kishieva str., 33, 364068, Grozny, Russia

³Ulyanovsk Institute of Civil Aviation named after the Chief Marshal of Aviation B.P. Bugaev, Mozhaisky str., 8/8, 432071, Ulyanovsk, Russia

Abstract. The purpose of this scientific article is to consider the specifics of development, some improvement of the modern reflection of the criminal law protection of the forest in the domestic criminal legislation. The following methods were used in the work: dialectical, logical, formal-legal, comparative-historical and many others. On the basis of the study, it is stated that it is the indication of the “damage” caused by the offenses we are considering that serves as a fundamental criterion for distinguishing crimes from related acts. Since otherwise, as it was before the recent change in Art. 261 of the Criminal Code of the Russian Federation, for law enforcement agencies there was a problem of clearly distinguishing the nature of the unlawful act committed by the guilty person. The domestic legislator is pointed out the need to analyze the correctness of his definition of the object applicable to the act reflected in Art. 191 of the Criminal Code of the Russian Federation.

1 Introduction

The scientific article analyzes the specifics of development and modern mechanisms of criminal law protection of the forest. It is emphasized that the responsibility for acts that encroach on the forest begins to be reflected in the documents from the Council Code of 1649. But it is directly developed only in the Code of Criminal and Correctional Punishments of 1845.

It is emphasized that only with the Criminal Code of the RSFSR of 1926, the elements of the crimes we are considering began to be constructed with an indication of the damage caused. At present, this is reflected in all acts that encroach on the forest. Since, in order for liability to arise, the guilty person must cause “significant damage” (which, as a rule, is reflected in the notes to the relevant articles of the Criminal Code of the Russian Federation) [1]:

- art. 260 “Illegal felling of forest plantations” of the Criminal Code of the Russian Federation;
- art. 261 “Destruction or damage to forest plantations” of the Criminal Code of the Russian Federation;

*Corresponding author: rustam-tovsultanov@mail.ru

- art. 262 “Violation of the regime of specially protected natural areas and natural objects” of the Criminal Code of the Russian Federation.

In the Russian Federation, the search for optimal mechanisms for the criminal-legal protection of the forest continues. This can be evidenced by the numerous changes made to the Criminal Code of the Russian Federation regarding the topic under study.

To a large extent, this is due to the fact that the forest is one of the key elements for the formation of a favorable life on the planet. It is he who absorbs carbon dioxide, maintains the hydrological regime of rivers, prevents soil erosion, etc.

Meanwhile, the analyzed acts lead to a decrease in the number of forest plantations, which, accordingly, causes both environmental and economic damage to the Russian Federation [4]. It should be taken into account that the forest, even being a renewable resource, requires a significant number of years for its restoration, which is what the state draws attention to.

Thus, the domestic legislator prescribed the damage caused by the criminal acts studied in this paper [5]. For example, in Art. 260 “Illegal felling of forest plantations” of the Criminal Code of the Russian Federation and Art. 261 “Destruction or damage to forest plantations”, as well as in Art. 262 “Violation of the regime of specially protected natural areas and natural objects” of the Criminal Code of the Russian Federation focuses on the wording “significant damage”.

Thus, if the perpetrator caused a less significant amount of damage, then the norms of the Code of Administrative Offenses of the Russian Federation will apply to him. Thus, such elements of crimes are constructed as material ones, although during the development of the draft Criminal Code of the Russian Federation, initiatives were expressed, according to which it was proposed to regulate these offenses, taking into account the existing foreign experience, as formal ones [6]. However, later the Supreme Court of the Russian Federation rejected the above technical and legal construction [7]. Therefore, the acts under study were reflected as “material components of socially dangerous acts”.

To a large extent, this is due to the fact that based on the concept of “crime” (Article 14 of the Criminal Code of the Russian Federation), there is no need to postpone the onset of socially dangerous acts to an earlier period of time [8]. And also, it is the onset or non-onset of consequences as a result of the act of the guilty person that contributes to the delimitation of crimes from related offenses reflected in the Code of Administrative Offenses of the Russian Federation.

At the same time, in this case, the damage caused and the public danger are closely interconnected. It is the damage that acts as a kind of indicator that determines the onset of public danger as a result of the act committed by the guilty person.

Therefore, it is applicable to environmental crimes and, in particular, to encroachments on the forest, it is necessary to take into account, with the help of taxes and methods, the damage caused to the forest and the possibility of its restoration [9].

However, in our opinion, it is necessary to analyze the specifics of the regulation of the criminal law protection of forests in the history of the development of criminal legislation. This, firstly, will allow us to determine the moment of emergence and gradual development of the legal protection of forest plantations, and secondly, to trace the succession between the previous and modern content norms of criminal legislation, thirdly, it is possible to propose the improvement of the Criminal Code of the Russian Federation, taking into account a more optimal technical and legal construction of norms for forest protection with the help of criminal law.

2 Research Methodology

Analyzing the original version of the Criminal Code of the RSFSR of 1960, we can note that it regulated two acts associated with encroachment on the forest [10]:

1) illegal felling of forests related to field protection, bank protection or soil protection, as well as the commission of this act in forest parks, state reserves, etc. public or administrative pressure.

However, as a qualified corpus delicti, there was an indication of the felling of such a forest by a person engaged in fishing or causing large damage as a result of deforestation (Article 169).

2) the commission by a citizen of deliberate damage to field-protective forest plantations, fruit and berry and other plantations, which caused significant damage (Article 168).

However, as we can judge, subsequently the domestic legislator introduced significant changes regarding illegal logging. So, there was a differentiation of the damage caused due to illegal logging, depending on belonging to a certain group and the amount of damage caused [11].

And as a qualified corpus delicti was the commission of an act systematically or the commission for the first time, but causing large damage.

At the same time, the Federal Law of July 01, 1994 No. 10-FZ "On the Introduction of Amendments and Additions to the Criminal Code of the RSFSR and the Code of Criminal Procedure of the RSFSR" criminalized an act associated with the destruction or significant damage to forest areas as a result of careless handling of fire or other sources of increased danger (Article 150).

In addition, this Federal Law of July 01, 1994 No. 10-FZ introduced criminal liability for "deliberate pollution of forest areas with harmful substances, waste, emissions, refuse, resulting in drying out or disease of tree and shrub or other vegetation, or intentional significant damage or destruction of forest areas by arson" (Article 149) [8-9].

3 Results and Discussions

So, paying attention to the specifics of the development of criminal law protection of the forest, it should be emphasized that in the very first laws there was no mention of forest protection. However, according to a study by S.V. Avtonomov and I.A. Sobol, during the formation of the Moscow state, liability for violation of the regime of forest plots was regulated [10].

After, the Sudebniks of 1497 and 1550 did not provide for the regulation of the acts we are considering. But already in the Council Code of 1649, a significant number of norms aimed at protecting the forest were reflected. For example, in ch. X "On the Court" prescribed the responsibility of the landowner or estate owner for the destruction of forests that did not belong to their possession. As a result, they had to compensate for the damage caused by their unlawful actions (Article 220).

At the same time, in this Code, the formation of the act, currently reflected in Art. 261 of the Criminal Code of the Russian Federation [11]. In Art. 223 of the Council Code, it was formulated as: "For setting fire in the forest." Moreover, the shepherd could also be the subject, who, due to carelessness in handling fire, causes damage to the forest, especially to the side trees, as well as to the animals inhabiting this forest. Therefore, it became necessary to establish the form of guilt. If the perpetrator had no intent, then he was not liable for damage caused as a result of careless handling of fire.

In addition, as we can judge from the analysis of the norms of the Code of 1649, several acts were prescribed in it, implying responsibility for the destruction of side trees. So, in Art. 218 ch. 10 reflected the deliberate destruction of such trees [12]. Moreover, a fine followed for the guilty person. For the destruction of a tree with bees, the criminal was threatened with a fine - 3 rubles, and without bees - 1.5 rubles, but also separately in this article there was an

indication that sounded like: “If the board was made.” Then the guilty person was threatened with 25 altyns.

In Art. 239 of this chapter. The Code reflected the responsibility for cutting down the side tree. With or without bees - it was not indicated. And in Art. 240 there was a punishment for burning or cutting side trees that do not belong to the owner [13]. Or vice versa, if “the owner himself plows these trees when plowing the field and causes damage to them”, then the person had to compensate for the damage caused. This was not only about the owner.

Thus, we can note that in this historical time, to a large extent, forest plantations were protected not with the help of criminal law, but through civil law. Also, the greatest attention was paid to the side trees, as a result of which it was not so much the forest that was protected, but the trees suitable for bees and honey production.

Subsequently, in 1845, the Code of Criminal and Correctional Punishments was adopted, which was the first codified criminal law, divided into a General and a Special part (before it, all laws were intersectoral). In addition, the Code of 1845 has been repeatedly changed throughout its validity. Especially in 1885, when, in fact, it was completely reprinted in a new edition. It is considered the most optimal, compared with the previous edition.

So, first, let's pay attention to the specifics of the criminal law protection of the forest in accordance with the original version of the Code of 1845. It regulated liability for illegal logging of the state forest (Articles 941-952). It also reflected the punishment for the abduction of this forest (Art. 941), for the abduction of oak, planted or sown (Art. 942), in Art. 943 for logging (without removal of trees) [14]. Art. 944 differentiated responsibility depending on whether or not the guilty person used violence against the forest guard. At the same time, in Part 1 of this Art. Attention was drawn to the fact that in the process of identifying the acts of offenders engaged in illegal logging of state-owned forests, it will be taken into account whether they have committed such a thing for the first time or have previously been prosecuted for a similar crime.

It should be emphasized that Art. 945 of the Code, liability was reflected in the event that the theft or illegal logging was carried out by entire villages or by a number of persons exceeding 10 people [15].

The Code also reflected the responsibility for concealing the state forest (if the person does it consciously (Art. 946)). A separate act was the sale of timber, when it was received free of charge by the guilty person (Article 947) [11]. The Regulations reflected the responsibility for cutting trees (from 10 to 100 of the number declared for legal felling of trees). Moreover, if the felling was up to 10 trees, then the person was liable under Part 2 of Art. 948. Art. 949 of the Code prescribed responsibility for felling trees near rivers (which violates the legal right to cut wood, reflected in the ticket), and in Art. 950 also reflected the commission of a similar act, but is no longer applicable to the river. At the same time, in Art. 951 established liability for felling trees with an expired ticket. In Art. 952 - for abuse or deviation from the rules when cutting down state forests (only a peasant could be a subject).

It should be mentioned that the Code regulated the punishment for the destruction of the forest for plowing fields, without the appropriate permission from the state authorities (Article 953). In addition, responsibility was contained for setting fire to state forests (Article 974). At the same time, it should be emphasized that Art. 976 prescribed the abduction or felling of deciduous, pine, etc. trees made in ship groves. The punishment for such perpetrators was differentiated taking into account the relapse (repetition) of the commission of acts [12]. However, in Art. 977 was reflected in the abduction or felling in ship groves of firs, birches and aspens, i.e. other trees not prescribed in Art. 976. At the same time, liability, in contrast to Art. 977, was not differentiated depending on the number of cases of bringing a person to responsibility. In Art. 980 described an act for damaging or spoiling a forest growing in ship forests. It should also be added that the Code in Art. 982 also regulated liability for the unintentional destruction or damage of ship groves with the help of fire (fire).

The Code on Penal and Correctional Punishments in its original version reflected the responsibility not only for persons committing illegal acts in relation to the forest, but also regulated the punishment for people responsible for protecting the forest. For example, a forest officer made an allotment for logging in the wrong place (Article 991) or gave permission for unauthorized use of forest materials (Article 992). Either the forest official received information about unauthorized felling, but left them without due attention for more than three days. In the cases described above, the punishment was differentiated taking into account the time (repetition) of such an act (Article 993) [16].

Secondly, the area was allocated within which it was impossible to cut down forests. For example, within 50 km around Moscow or soil protection forests, etc. Deforestation within the forbidden strips established as part of the water protection zone was prescribed here as a specially qualified corpus delicti.

Subsequently, taking into account the change in the vector of the state policy pursued, in 1958 new Fundamentals of the Criminal Legislation of the USSR and the Union Republics were adopted, which influenced the adoption of the new Criminal Code of the RSFSR in 1960.

So, after analyzing the history of the development of the criminal law protection of the forest, we can say that, nevertheless, not all crimes that encroach on the forest were accompanied by an indication of the materiality of the act (by assessing the damage caused to the forest when a certain crime was committed). Meanwhile, at present, the Criminal Code of the Russian Federation presents three elements of offenses that pose a danger to forests - these are [3]:

- art. 260 "Illegal felling of forest plantations" of the Criminal Code of the Russian Federation;

- art. 261 "Destruction or damage to forest plantations";

- art. 262 "Violation of the regime of specially protected natural areas and natural objects."

In this case, the constituent is the infliction of significant damage.

Note that applicable to the act reflected in Art. 261 of the Criminal Code of the Russian Federation, the indication of "significant damage" occurred taking into account the adoption of the Federal Law of March 25, 2022 No. 63-FZ "On Amendments to the Criminal Code of the Russian Federation and Articles 150 and 151 of the Code of Criminal Procedure of the Russian Federation". As emphasized in the explanatory note to this Federal Law, to a large extent, the specification of significant damage took place after the appearance of the order of the President of the Russian Federation dated May 4, 2020 No. Pr-741.

Meanwhile, referring to the statistics, it can be noted that about 90% of all fires in the forests of the Russian Federation are caused by a person who carelessly handles fire or sets fire to dry grass, and the fire gradually spreads to the nearest forest [1-2].

In turn, in part 1 of Art. 261 of the Criminal Code of the Russian Federation does not specify the amount of damage from a forest fire. As a result, when investigating a crime, law enforcement agencies must involve the perpetrators under Art. 261 of the Criminal Code of the Russian Federation to criminal liability, regardless of the damage caused to the forest.

So, despite the fact that the Criminal Code of the Russian Federation and the Code of Administrative Offenses of the Russian Federation regulate liability for similar acts, the distinction should be made taking into account the damage caused. For example, in case of careless handling of fire, a fire spreads through the forest floor and tree roots and causes damage (in case of a ground fire) about 8 thousand rubles.

Thus, it is advisable to specify the amount of damage caused as "comprising no more than 10 thousand rubles" (determined by the rates and methodology approved by the Government of the Russian Federation) [13].

At the same time, according to some authors, it is advisable to change the material damage caused, in particular, to the forest, taking into account the inflationary processes taking place in Russia. However, as we can judge from the analysis of the acts we study, this does not happen often.

In particular, it applies to the act reflected in Art. 260 of the Criminal Code of the Russian Federation, only the Federal Law of July 22, 2008 No. 145-FZ “On Amending Article 260 of the Criminal Code of the Russian Federation and Article 8.28 of the Code of Administrative Offenses of the Russian Federation” introduced innovations regarding the calculation of the damage caused. And not in the direction of increase, but in the direction of decrease.

Thus, significant damage was changed from ten thousand rubles to five thousand rubles, etc. The amount of damage caused as a result of illegal logging of forest plantations was halved [14].

As indicated in the explanatory note to the Federal Law of July 22, 2008 No. 145-FZ, the forest fund, as a rule, is not always possible to fully restore. To a large extent, this is due to the rather long period of time required to grow one tree. Since for coniferous and hardwood species it is necessary from 81 years old, and for softwood and hardwood species from 41 years old.

In addition, significant material costs are required for forest restoration.

At the same time, the demand for wood, and thus the commission of illegal logging, is ongoing. Therefore, the commission of such acts in the form of fishing is quite profitable. As a result, the measures of state coercion do not correspond to the goals of punishment.

So, in particular, this Federal Law, changes were made only regarding the amount of assessment of the damage caused as a result of such an act. After all, at the time of the adoption of the amendments to Art. 260 of the Criminal Code of the Russian Federation 1 cu. timber was estimated at 190 rubles. That is, the perpetrators had to cut down about 50 cubic meters. m in the forests of the first group or 500 cubic meters. m in other forests, which happens, based on judicial practice, quite rarely. Therefore, for offenders, it is often not criminal, but administrative responsibility, in accordance with the Code of Administrative Offenses of the Russian Federation [15-16].

At the same time, it should be mentioned that the Criminal Code of the Russian Federation contains, in fact, an act previously unknown to previous laws, expressed in violation of the regime of specially protected natural areas and natural objects. It should be noted that the Russian legislator regulated bringing a person to criminal liability under Art. 262 of the Criminal Code of the Russian Federation, provided that significant damage was caused.

Also, the Federal Law of July 21, 2014 No. 277-FZ “On Amendments to Certain Legislative Acts of the Russian Federation” criminalized the crime associated with the acquisition, storage, transportation, processing for the purpose of marketing or the sale of knowingly illegally harvested wood (Article 191.1 Criminal Code of the Russian Federation).

At the same time, in judicial practice there is a qualification for the totality of crimes provided for by Art. 260 and 191.1 of the Criminal Code of the Russian Federation.

At the same time, we note that illegal felling of wood provides, at a minimum, for its further transportation. And this presupposes, a priori, that from now on the criminal person will be liable under two elements [17].

In addition, it is necessary to analyze the feasibility of transferring the corpus delicti reflected in Art. 191.1 of the Criminal Code of the Russian Federation, in Ch. 26 of the Criminal Code of the Russian Federation. After all, as we have previously indicated, illegal logging of forest plantations is associated with transportation, etc. The only thing regarding this issue, the domestic legislator indicated that the onset of liability under Art. 191.1 of the Criminal Code of the Russian Federation is possible only in case of causing large damage (exceeds 80 thousand rubles according to the rates approved by the Government of the

Russian Federation), and not small (as is the case with respect to the act reflected in Article 260 of the Criminal Code of the Russian Federation).

In our opinion, Art. 191.1 to be moved to Ch. 26 of the Criminal Code of the Russian Federation, since it mostly refers to environmental crimes, because a person, to one degree or another, contributes to the illegal felling of forest plantations and the commission of other acts prescribed in the Criminal Code of the Russian Federation.

4 Conclusions

Thus, we can say that the legislative protection of the forest has a long history, but, directly, the forest began to be protected by criminal law only from the adoption of the Criminal and Correctional Code of 1845.

Meanwhile, it, like the Criminal Code of 1903, as well as the Criminal Code of the RSFSR of 1922, did not focus on the materiality of the corpus delicti (measured by the damage caused, taking into account methods and taxes).

Currently, all norms of the law related to the protection of forest areas indicate that “significant damage” must be caused (in the notes to the articles, as a rule, it is specified in what amounts it is measured, taking into account the methods and rates presented in the Government Decree of the Russian Federation dated December 29, 2018 No. 1730 “On approval of the specifics of compensation for damage caused to forests and natural objects located in them due to violation of forest legislation”). Otherwise, the responsibility for the guilty person should come in accordance with the Code of Administrative Offenses of the Russian Federation.

The domestic legislator needs to analyze in more detail the object of protected social relations described in Art. 191 of the Criminal Code of the Russian Federation. Since, in our opinion, the mechanism for committing the act under study is closer to Ch. 26 of the Criminal Code of the Russian Federation.

References

1. S. V. Avtonomov, I. A. Sobol, Development of Russian criminal legislation in the sphere of counteracting environmental crimes: historical dynamics and trend, **3(43)**, 27-34 (2009).
2. O. L. Dubovik, M. M. Brinchuk, N. S. Kudelkin, T. V. Rednikova, Improving legal liability for environmental offenses (2022).
3. N. I. Kuznetsova, M. V. Shkele, Ecological harm and socially dangerous consequences of environmental crimes, **2(82)**, 161-169 (2019).
4. T. V. Tagirov, The problem of determining significant damage in environmental crimes: author. dis. ... cand. legal Sciences, 23 (2014).
5. R. Kh. Ilyasov, Spline modeling and analysis of relationships in the economy with the possible presence of regression switching points, **11(4)**, 165-175 (2018).
6. M. Barzaeva, R. Ilyasov, Sustainable development of the global labor market in the context of the transformation of the industrial complex of the digital economy, 152-164 (2022).
7. G. V. Vorontsova, G. V. Chepurko, R. M. Ligidov, T. A. Nalchadzhi, I. M. Podkolzina, Problems and perspectives of development of the world financial system in the conditions of globalization, **57**, 862-870 (2019).

8. Y. E. Klishina, I. I. Glotova, O. N. Uglitskikh, E. P. Tomilina, I. M. Podkolzina, Peculiarities of the financial policy of non-profit organizations in the macroeconomic unstable environment. *Espacios*, **38(34)**, 34 (2017).
9. A. Lawler, End Game for Oil? OPEC Prepares for an Age of Dwindling Demand. Reuters (2021).
10. I. V. Taranova, I. M. Podkolzina, F. M. Uzdenova, O. S. Dubskaya, A. V. Temirkanova, Methodology for assessing bankruptcy risks and financial sustainability management in regional agricultural organizations, **206**, 239-245 (2021).
11. A. S. Salamova, O. Dzhioeva, Green transformation of the global economy in the context of sustainable development, 152-159 (2023).
12. A. S. Salamova, Global networked economy as a factor for sustainable development, 03053 (2020).
13. V. Sebestyén, E. Domokos, J. Abonyi, Focal Points for Sustainable Development Strategies: Text Mining-Based Comparative Analysis of Voluntary National Reviews, *Journal of Environmental Management*, **263** (2020).
14. S. G. Shmatko, L. V. Agarkova, T. G. Gurnovich, I. M. Podkolzina, Problems of increasing the quality of raw material for wine in the stavropol region, **7(2)**, 725-730 (2016).
15. I. M. Podkolzina, A. I. Belousov, F. M. Uzdenova, L. V. Romanko, O. A. Chernikova, Forms of financial fraud and ways to minimize risks, *Modern Global Economic System: Evolutional Development vs. Revolutionary Leap. Institute of Scientific Communications Conference*, 2197-2205 (2021).
16. I. M. Podkolzina, I. V. Taranova, K. T. Paytaeva, S. V. Revunov, T. F. Abrosimova, Innovative approaches in financial support for regional economic security, 549-558 (2021).
17. T. U. Elbuzdukaeva, A. M. Gelagaeva, A. M. Sugaipova, Migration processes in the chechen republic at the turn of xx century, 2690-2696 (2019).