

Criminal liability for illegal destruction of forest plantations

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Abstract. Russia's forests, occupying one-fifth of the world's forest area and being one of the renewable natural resources, meet multiple needs of the economy and society for forest resources, performing the most important environmental, protective and other useful functions. The problems of forest protection and utilization are becoming increasingly diverse and complex. Illegal felling of forest plantations is one of the most widespread crimes provided for in Chapter 26 of the Criminal Code of the Russian Federation and accounts for ½ of the total number of socially dangerous acts causing or threatening to cause damage to the environment. According to experts, it is practically impossible to fully restore the forest fund damaged by illegal logging. This is primarily due to the time required to replace lost trees and shrubs, which ranges from 81 to 120 years and more for coniferous and deciduous species of seed origin, and from 41 to 70 years and more for coniferous and deciduous species of shoot origin. Reforestation requires high material costs. The objective of this research is to develop new and optimize existing approaches to counteract the illegal destruction of forest plantations. In order to achieve the desired goal, the research sets and consistently solves the following objectives: to analyze the legal norms determining the limits of legal responsibility for illegal felling of forest plantations; to determine the place of illegal felling of forest plantations in the structure of environmental crimes; to study the statistical data on the number of registered environmental crimes, convicted persons for committing environmental crimes in general and for illegal felling of forest plantations in particular; to consider the doctrinal approaches to the subject of this research; to develop the author's proposals on the legal regulation of the fight against illegal felling of forest plantations; to develop the author's proposals on the legal regulation of counteraction to illegal destruction of forest plantations.

1 Introduction

Currently, the contribution of the forestry sector to the economy of the Russian Federation is significantly lower than the potential and similar indicator of other countries similar to the Russian Federation in terms of reserves and timber harvesting. In particular, the share of the forestry complex in the economies of Sweden and Finland is up to 5% of the gross national product, while in the Russian Federation the share of gross value added created by the

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country's forestry sector amounted to 0.74% at the end of 2019. This situation resulted from the orientation of domestic producers mainly to low-value-added production segments (roundwood and sawn timber), which led to the underutilization of the export potential of the Russian forest complex [1].

Russian forests, occupying one fifth of the world's forest area and being one of the renewable natural resources, meet multiple needs of the economy and society in forest resources, perform the most important environment-forming, environment-protecting and other useful functions. The problems of forest conservation and utilization are becoming increasingly diverse and complex. The standards of forest management are changing and must meet increased international, social, environmental and economic requirements. Threats of forest loss from fires, pests, and other adverse factors associated with illegal destruction of forests are increasing.

The issues of countering environmental crimes in general, as well as illegal cutting of forest plantations in particular, have repeatedly been the subject of discussion on the part of the highest bodies of state power. Thus, the President of the Russian Federation once again emphasized the need to ensure consistent work in the fight against the considered encroachments on social relations protected by criminal law, as well as the use of qualitatively new, more effective, modern and, most importantly, efficient approaches in this direction [2].

The analysis of statistical data shows that more than half of the crimes causing harm or threatening to cause harm to social relations in the field of ecology is illegal cutting of forest plantations, responsibility for which is provided by article 260 of the Criminal Code of the Russian Federation (fig. 1). In addition, it should be noted that there are difficulties in law enforcement activities due to the differentiation of legal responsibility of persons who violated the legal prohibition under consideration. We are talking about the norms defining the limits of criminal (Art. 260 of the Criminal Code of the RF) and administrative responsibility (Art. 8.28 of the Administrative Offenses Code of the RF).

The aforesaid indicates the need for comprehensive doctrinal research of the stated problem, development of new, as well as optimization of existing approaches to counteracting the illegal destruction of forest plantations (table 1).

Table 1. Illegal cutting of forest plantations in the structure of environmental crimes

Year	Number of convictions for environmental crimes in Russia	Number of convictions for illegal cutting of forest plantations in Russia	Percentage ratio
2012	11 272	5 765	51%
2013	10 214	4 924	48%
2014	9 479	4 825	51%
2015	9 045	4 694	52%
2016	8 654	4 464	52%
2017	7 829	4 222	54%
2018	7 347	4 030	55%
2019	6 189	3 295	53%
2020	5 299	2 493	47%
2021	5 943	2 792	47%
2022	6 495	3 094	48%

2 Literature Review and Research Methodology

Criminal law enforcement of the environment and environmental safety has repeatedly been the subject of a number of doctrinal research, including fundamental research. For example, S.I. Golubev devoted his works to theoretical and applied aspects of sentencing for environmental crimes [3]. Problems of theory and practice of constructing criminal-legal norms on responsibility for environmental crimes were considered by Yu.A. Timoshenko [4]. Other scientists focused on the development of legislation on criminal liability for environmental crimes [5], the causes and conditions of environmental crimes [6], as well as the prevention of specific crimes that threaten the environment [7]. General issues of criminal liability for violation of forest legislation, as well as private problems related to criminal legal means of forest protection were investigated by V. Yu. Arzamasov [8], A. V. Ivanchin [9] and other representatives of the doctrine of criminal law.

Despite the solid volume of theoretical and applied research, the proposed ways of solving urgent problems of countering the illegal destruction of forest plantations have not been reflected in the legislation. The empirical material accumulated to date in the theory of criminal, as well as environmental law, the experience of investigative and judicial practice makes it possible to make a comprehensive analysis of the phenomenon under consideration and give its scientific justification.

The methodological basis of this research is represented by both general scientific and private methods of scientific cognition: system-structural, inductive, deductive and content-analysis methods.

3 Results

1. Over the past ten years, the number of registered environmental crimes in Russia has tended to decrease (Fig. 1). Despite this, the number of encroachments on public relations in the sphere of ecology protected by criminal law remains at a high level. Moreover, it is necessary to state a high level of latency of the considered socially dangerous acts due to various factors.

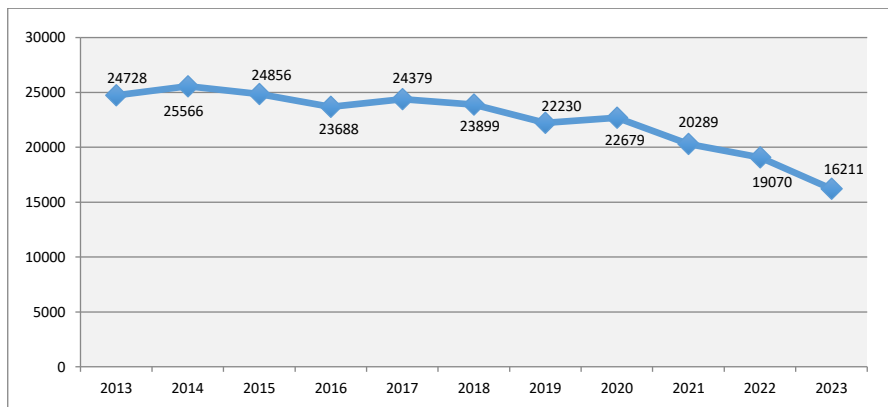


Fig. 1. Number of registered environmental crimes in Russia committed in the period from 2013 to 2023 [10]

2. The number of cases of bringing perpetrators of crimes under Ch. 26 of the Criminal Code of the RF to criminal responsibility has a wavy character, presented in Fig. 2. It is worth noting that the smooth decline in the assignment of measures of state coercion, which were

reflected in the conviction of the court, was replaced by an increase in the number of those convicted of environmental crimes.

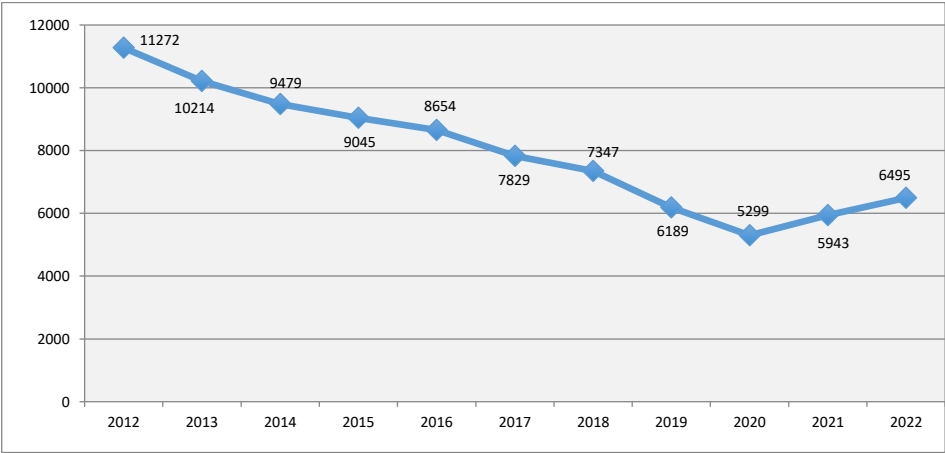


Fig. 3. Number of convicted persons for committing environmental crimes under Ch. 26 of the Criminal Code of the Russian Federation (Art. 246-262 of the Criminal Code of the Russian Federation) in the period from 2012 to 2022 [11]

3. The number of convicted persons for illegal logging of forest plantations correlates with the rates of criminal prosecution for crimes against the environment in general. Thus, from 2021, there is an increase in the number of convicted persons who violated the criminal law prohibition defined by Article 260 of the Criminal Code of the Russian Federation (Fig. 3).

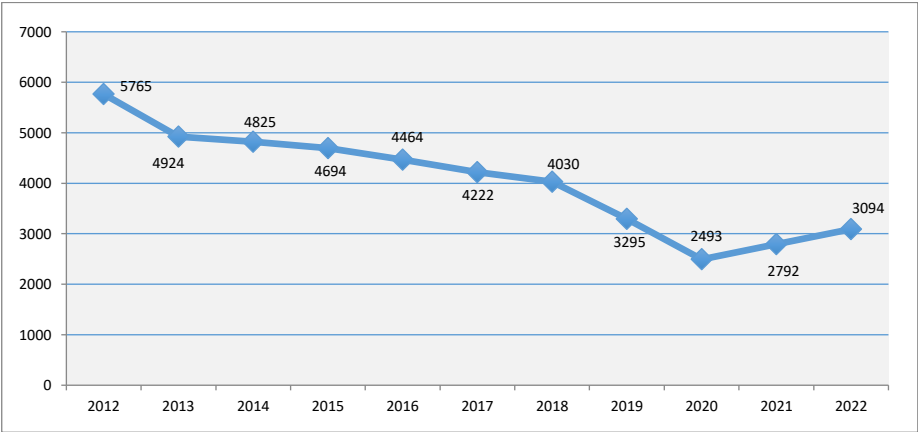


Fig. 3. Number of convictions for illegal logging forest plantations (Art. 260 of the Criminal Code of the Russian Federation) in the period from 2012 to 2022 [12]

4. Taking into account the vector of criminal policy towards humanization of the current legislation, liberalization and "fairization" of criminal justice, the need to save measures of criminal repression, reducing the number of persons with a criminal record, it is necessary to revise such constitutive feature of the crime under Article 260 of the Criminal Code of the RF as a significant size, towards its increase.

4 Discussion

Environmental protection, along with the protection of other most important social relations, is an objective of the criminal legislation of the Russian Federation. For its implementation, Chapter 26 of the Criminal Code of the Russian Federation defines what acts dangerous for the individual, society or the state are recognized as crimes, and establishes measures of criminal-legal impact for their commission.

According to statistical data illegal cutting of forest plantations (Article 260 of the Criminal Code of the RF) is one of the most widespread crimes envisaged by Chapter 26 of the Criminal Code of the RF and makes up $\frac{1}{2}$ of the total number of socially dangerous acts causing or threatening to cause harm to the environment.

The object of Article 260 of the Criminal Code of the Russian Federation is public relations on protection and rational use of forest plantations. The subject of the crime is both forest plantations, i.e., trees, shrubs and vines growing in forests, and trees, shrubs and vines growing outside forests (for instance, plantations in parks, alleys, specific trees planted within the city). In this case, according to the explanations of the Plenum of the Supreme Court of the Russian Federation, it does not matter whether forest plantations or trees, shrubs, vines not classified as forest plantations are planted artificially or whether they grew without purposeful human efforts [13].

On the objective side, the considered crime consists in the illegal cutting or damage to the degree of cessation of growth of forest plantations or trees, shrubs and vines not classified as forest plantations. This act is recognized as criminal if it is committed on a significant scale.

It is this feature that distinguishes the crime under Article 260 of the Criminal Code of the RF from the offense regulated by Article 8.28 of the CAO RF. In addition, as noted by the Plenum of the Supreme Court of the Russian Federation, when differentiating between the two compositions it should be taken into account that qualification under article 8.28 of the CAO RF is subject to the damage to forest plantations committed by a person, which did not lead to the cessation of their growth, regardless of the amount of damage caused, or damage to forest plantations to the extent of cessation of their growth, if the amount of damage caused did not reach the amount defined as significant in accordance with the note to article 260 of the Criminal Code of the Russian Federation [13].

"Significant size", as an estimated criminal-legal category expressed in a certain monetary equivalent, has been repeatedly subjected to adjustment by the legislator (Table 1). Thus, since the beginning of the Criminal Code of the Russian Federation, it amounted to damage twenty times higher than the minimum wage (hereinafter - MROT), established by the legislation of the Russian Federation at the time of the offense. In December 2003, due to the refusal to calculate the damage in multiples of the minimum wage, significant damage from illegal logging of forest plantations received a fixed amount of 10,000 rubles [14].

The steady increase in the number of illegal logging of forest plantations and the size of the damage caused, indicating the special public danger of violations of the established order of forest management, as well as the prerequisites for the emergence of a threat to environmental safety on the scale of the state, were the reason for the strengthening of criminal liability for committing the crime under Art. 260 of the Criminal Code of the Russian Federation (table 2). "The existing measures of state coercion, as practice shows, are incommensurate with the size and nature of the harm caused and their application does not ensure the achievement of the preventive purpose of punishment" - noted in the explanatory note to the bill [15]. Thus, in 2008 the significant amount from illegal actions described in the disposition of the paper was adjusted and amounted to 5,000 rubles [16].

Table 2. Change in the size of damage as a mandatory feature of the crime under Art. 260 of the Criminal Code of the RF

Revision Criminal Code of the Russian Federation	significant size	Large size	Extra large size
January 1, 1997	Damage 20 times the minimum wage established by the legislation of the Russian Federation at the time of committing the crime	Damage 200 times the minimum wage established by the legislation of the Russian Federation at the time of committing the crime	-
December 29, 2001	Damage 20 times the minimum wage established by the legislation of the Russian Federation at the time of committing the crime	Damage 200 times the minimum wage established by the legislation of the Russian Federation at the time of committing the crime	Damage 500 times the minimum wage established by the legislation of the Russian Federation at the time of committing the offense
December 8, 2003.	10,000 rubles	100,000 rubles	250,000 rubles
July 22, 2008.	5,000 rubles	50,000 rubles	150,000 rubles

In the current wording of the criminal law, significant, large and especially large amount of damage, as a mandatory feature of the crime under Article 260 of the Criminal Code of the Russian Federation, is expressed in the same monetary equivalent and amounts to 5,000 rubles, 50,000 rubles and 150,000 rubles, respectively.

It seems that at present these indicators indicate the absence of public danger as a fundamental feature of the crime. Analysis of investigative and judicial practice makes it possible to state that in a number of cases a person is subject to condemnation (censure) by the state for cutting one or more trees. For instance, for instance, the Promyshlennovsky district court of the Kemerovo region found a group of persons guilty of committing a crime under part 3 of article 260 of the Criminal Code of the Russian Federation and imposed a sentence of deprivation of liberty for a period of one year on each of them. During the trial it was established that the defendants illegally cut down to the point of cessation of growth two trees of the species "Birch" with a total volume of cut wood 1.4 m3 for a total amount of 5,800 rubles, which, according to the provisions of criminal law, is a significant amount [17].

Uglovsky District Court of Altai Krai within the framework of the criminal case established the fact of illegal felling of a raw growth tree of the species "Pine", which resulted in material damage to the forest fund of the Russian Federation represented by the Ministry of Natural Resources and Ecology of Altai Krai. On the basis of the Resolution of the Government of the Russian Federation from 29.12.2018 № 1730 "On approval of the peculiarities of compensation for damage caused to forests and natural objects located in them as a result of violation of forest legislation", the damage caused is a large amount (50,000 rubles). The presented, as well as other legally important circumstances of the case made it possible for the authorized state authority to find P. guilty of committing a crime under para. "g" part 2, Article 260 of the Criminal Code of the Russian Federation and to assign him a punishment in the form of imprisonment for a certain period of time [18].

This problem has repeatedly been the subject of discussion on the pages of specialized literature. As rightly notes A.V. Ivanchin, the damage in the amount of 5 thousand rubles as a condition of criminal liability for illegal cutting of forest plantations was established in 2008 and since then, despite the official inflation indicators, has not been subject to revision by the state [19, p. 91].

Moreover, the current wording of article 260 of the Criminal Code of the RF excludes the possibility of applying the provision of part 2 of article 14 of the Criminal Code of the RF. It should be reminded that the Supreme Court of the Russian Federation, as well as cassation courts are increasingly guiding lower courts on the need to discuss the possibility of recognizing the act, formally containing the elements of a crime, as insignificant. Damage caused by illegal cutting of forest plantations not exceeding 5,000 rubles implies bringing a person to administrative responsibility (Art. 8.28 of the CAO RF), over 5,000 rubles - to criminal responsibility (Art. 260 of the Criminal Code) criminal liability (Art. 260 of the Criminal Code of the Russian Federation).

Thus, at present, there is a need to revise the size of significant damage, as a mandatory feature of the crime under Art. 260 of the Criminal Code of the RF, in the direction of increasing its size.

5 Conclusions

Violation of the established order of forest management is a very serious environmental problem due to the threat of temperature fluctuations, changes in the amount of precipitation, air pollution, etc. In addition, illegal felling of forest plantations causes significant economic damage to the state.

Counteraction to such negative manifestations of society at the expense of legal means of ensuring the safety of public relations in the sphere of ecology is a reasonable and justified reaction on the part of authorized public authorities. At the same time, legal responsibility should be differentiated depending on the nature and degree of public danger of an act.

At present, the main criterion for differentiation between criminal illegal felling of forest plantations (part 1 of Article 260 of the Criminal Code of the Russian Federation) and illegal felling of forest plantations, for which administrative responsibility is provided by parts 1 and 2 of article 8.28 of the CAO RF, is a significant amount of damage caused by the encroachment, which must exceed 5,000 rubles.

Besides, the qualification under parts 1 and 2 of article 8.28 of the CAO RF is subject to the damage to forest plantations committed by a person, which did not lead to the cessation of their growth, regardless of the amount of damage caused, or damage to forest plantations to the extent of cessation of their growth in the absence of signs of crimes provided in Paragraphs "a" and "c" of part 2 of Article 260 of the Criminal Code of the Russian Federation, if the amount of damage caused has not reached the amount defined as significant.

Taking into account the vector of criminal policy towards humanization of the current legislation, liberalization and "fairness" of criminal justice, the need to save measures of criminal repression, reducing the number of persons with criminal records, we believe it is reasonable to revise the construction of the crime under Article 260 of the Criminal Code of the RF, increasing the amount of significant, large and especially large size specified in the note to the paper.

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