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Административная ответственность за незаконную рубку лесных насаждений

ОЛЕНИНА

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Аннотация:

Статья посвящается проблеме применения норм права в связи с привлечением виновных лиц к административной ответственности за незаконную рубку деревьев и кустарников в России. Вопросы административной ответственности за нарушения в сфере использования и охраны лесов в России приобретают все большую актуальность в связи с развитием лесопромышленного комплекса в Российской Федерации за последние годы. Наиболее распространенным видом ответственности за нарушение норм природоохранительного и природоресурсного законодательства является административная ответственность, осуществляемая путем применения уполномоченным органом или должностным лицом административных взысканий к гражданам и юридическим лицам, совершившим правонарушение. В связи с несовершенством норм административного законодательства в области нарушения правил использования и охраны лесов, видовым разнообразием нарушений лесного законодательства, на практике возникает ряд проблем при их квалификации лицами, ведущими производство по делам данной категории. Проблема правоприменения связана с тем, что в лесном законодательстве России отсутствует четкое определение леса, а стало быть, и лесных насаждений.

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Forests as ecosystems of global influence on the environment have a significant role in conservation and sustainable development of environment. At the present moment, there is a real need for enhancing efficiency of forest conservation programs. The problem of preserving forests is becoming more and more urgent, especially in the context of wide-spread vandalistic usage of this natural resource. Imposing administrative liability on offenders is one of the ways to guarantee conservation of forests.

Administrative liability is the procedure of bringing sanctions set forth by current administrative laws and enforced by the state organs (or officials) against a person who has been found guilty of administrative offence [3; 136].

Forest Code of Russian Federation of December 4th, 2006 No 200-FZ does not have special provisions for liability and its norms refer to provisions of Code of administrative offences of Russian Federation of December 30th, 2001 No 195-FZ.

Article 8.28 of Code of administrative offences of Russian Federation impose administrative liability for unlawful cutting, damaging of forest crops or unauthorized digging out of trees, bushes or lianas in the forest. The objects of offence are different types of forest vegetation both of natural and artificial origin, which are rooted on the territory of forest fund (the territory covered by forests, major object of forest government as established by Forest Code of Russian Federation) [4].

Offences stipulated by Article 8.28 fall into following classification:

- 1) illegal felling of forest crops;
- 2) damaging of forest crops;
- 3) unauthorized digging out of trees, bushes or lianas in the forest.

According to the first paragraph of Article 1 of Forest Code of Russian Federation, felling of forest crops (trees, bushes, lians in the forests) imply the processes of sawing, cutting or shearing them down. Forest Code defines forest crops as trees, bushes and lians in the forests. The key factor in this term is location of certain vegetation in the forest. But what is legal definition of forest?

Russian Constitution of December 12th, 1993 does not give the definition of forest. Stating just general provisions on natural resources (e.g., articles 9, 36), it does not provide us with definition of natural resources and does not answer to question whether forests can be seen as natural resources.

Forest Code of Russian Federation in its article 5 "Definition of forest" prescribes that exploitation, conservation, protection and reproduction of forests is based on the idea of forests as ecosystems or natural resources. We believe that this definition is incomplete [2; 100]. Forest Code does not have a clearly specified list of terms and the definitions provided by the Code do not deal with the core ideas of described objects [6].

V.K. Bykowsky reasonably states the importance of "or" clause in the legal definition of the forest because the forest cannot be both ecosystem and natural resource at the same time. [1; 31] O.I. Krassov highlights the fact that Forest Code of Russian Federation does not clarify situations when forest can be an ecosystem and when it should be seen as a natural resource. [5; 40]

Current Russian legislation does not give definition for terms "ecosystem" and "natural resource" which can help us to deeply analyze the status of forests. Federal law from January 1st, 2002 7-FZ on protection of environment gives the definition of natural ecosystem and natural resource.

-natural ecosystem is an objectively existing territory of the natural environment that has space/territorial boundaries and where living (plants, animals and other organisms) and non- living components interact as a single functional entity and are inter-related by means of exchange of substances and energy.

-natural resources are natural environment components, natural facilities and natural - man - made facilities which are or can be used in economic and other activity as sources of energy, production products and consumption items and have a consumer value.

The only legal definition of forest can be found in the official standart (OST) of the branch of industry named "Forestry. Terms and definitions" (adopted by the order of Federal Forestry Agency of Russian Federation on December 3rd, 1998 No 203) "3.1.3. Forest is an integral complex of forest woody and other plants, soil, animals, microorganisms and other natural components in their mutual interaction with inner and outer environment".

This legal norm, as well as Article 8.28 of Code of administrative offences of Russian Federation does not mention that forests are located in the territories of forest fund. Therefore, forests can be located in the territories of different categories. However, existing precedents show us that unauthorized felling of forests in municipalities does not lead to administrative liability established by Article 8.28, as this article protects forests situated in special territories of forest resources. In contrast, forest in municipal territories are located in the territories of municipalities and therefore are not regulated by article 8.28 (e.g. see case A56-53728/2005, Arbitration Court of St.-Petersburg and Leningradskaya oblast).

Some theorists of law (Dubovik O.L., Salitscheva N.G. and others) agree with this concept and exclude following types of vegetation from the definition of the object of offence. That is trees and bushes forming protective forest plantations, which grow in the agricultural territories, protective forest plantations near railway roads, highways and channels, territories of municipal landscape gardening and group of trees in cities and other municipalities in the territories which status is not defined as the city forest, trees growing in farmlands and in cottage gardens, trees and timber stand brought down by wind with roots torn outside, wind-fallen trees (usually damaged at the level lower than the level of crown), brushwood, trees and bushes which are stockpiled for aims of timber production [4].

In the municipal district of Petrozavodsk the liability for illegal felling can be imposed according to Article

2.14 ("breach of regulations on landscape planning and improvement") of Act of Republic of Karelia from March 15th, 2008 №1191-ZRK "On administrative offences".

Regulations on landscape planning and ensuring cleanness and order have been approved by decision of Petrozavodsk City Council from 27.04.2010 No 26/41-813 (ed. 10.09.13). Paragraphs 2 and 2.1. of Article 30 (Section 6) of this normative act forbid unauthorized felling of trees and bushes.

Paragraph 1 of Article 2.14 of Act of Republic of Karelia from March 15th, 2008 №1191-ZRK "On administrative offences" specifies warning or administrative fine (one thousand roubles for individual) as possible sanctions for the offence. In comparison, paragraph 1 of Article 8.28 of Code of administrative offences of Russian Federation specifies that the fine in amount of 3 thousand to 5 thousand roubles is imposed on individuals. Therefore, we can see that the administrative liability for illegal felling of trees in the city is prescribed with lower fine. In this case the more specified legal norm should be applied as we deal with breaches of law in municipal territories.

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Administrative liability for the illegal felling of forests

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Summary:

This article looks at problems existing in the sphere of application of legal norms which regulate the process of imposing administrative liability for the illegal felling of trees and shrubs in Russia. Administrative liability for violations in the sphere of use and protection of forests in Russia is becoming the issue of high priority due to the development of the timber industry in the Russian Federation over recent years. Being the most common type of liability for violations of environmental law, administrative liability creates tools for authorized state organs and officials to hold individuals and legal entities liable for certain offences. Due to the imperfection of administrative legislation which stipulates penalties for violating the rules of use and protection of forests, as well as complex classification of offences in this sphere, in practice there is a problem of proper qualification of the offences by authorities presiding over the cases. The enforcement problems are mainly connected with absence of a clear definition of forest and forest zones.