

Case study

Maderoland, an EU member state, has a large port, widely used for international trade (including to EU third countries).

The regional judicial authorities received anonymous some indications that the port was being used for an illegal export of timber, the operation being conceived and carried out by a national company.

However, there are no forests in the area in question, but the information held attests that superficially processed and illegally harvested logs are exported from mountain forests.

Also, it is suspected that in the documents presented to customs, unreal mentions are made related to the source of the wood taken for export.

Not only is the export of unprocessed logs illegal in this country, but the company that does so avoids the payment of taxes that would have had to be paid if the export had been done legally.

It is suspected that by doing so, the company avoids the responsibility of the authors for an illegal deforestation of a forest, which, however, must be identified where it is found.

In the sense of this case study, you are the notified prosecutor who works together with the police authorities.

Given this scenario, please answer the following questions:

- 1) Do you consider it appropriate to open a criminal investigation? Why?
- 2) How will you proceed to raise concrete evidence for all these matters?
- 3) Which elements of the factual situation and which legal provisions would you pay more attention to?
- 4) What evidence and technical procedures would you find relevant for open investigations and how would you obtain them?
- 5) Would you pursue the case administratively or criminally? Based on what arguments?
- 6) In the legal system of your country, are there legal instruments that allow taking measures to restore the ecosystem affected by such facts?

Response

My answer is easier to present in pictures.

1. Anyway, for me as a practitioner, it is mandatory to open an investigation in real time, to verify exactly what happened and what responsibility is imposed and for whom.

I have no preconceived opinions in investigations, so to be convinced of the truth, useful evidence must be administered.

2. The necessary evidence must establish exactly what is found on the spot, and compare the reality with what is written in the customs documents.

Then, let's go back to the thread of the operation, and establish where it started and which natural and legal persons are involved.

3. I therefore consider that it should be established:

- where the deforestation took place
- what supporting documentation exists and who issued it
- what is the interest of such an operation. So is it about financial profits or is it just stupidity?
- what defenses does the exporting company have and how serious are they?
- if the export of logs had been allowed, what would have been the correct procedure? What deviations from this have been committed? With what legal and financial effects and for what purpose?
- can concrete and useful measures be taken to restore the deforested forest?

4. More than anything, a laboratory must be found to establish exactly what wood is being exported, where it comes from and to investigate on the spot, both at the place of deforestation and at the place where it is written in the documents that it was harvested.

Obviously, all this must be compared with what is found in the location in the Port where the suspicious shipment was discovered.

5. As long as it is observed that there is a set of false mentions in the customs documents, it means that there is an intention to defraud and thus, the only way to proceed correctly is the way of criminal investigation.

6. There is a legal instrument in Romania for such a procedure, but it is inefficient and superficial.

Concretely, reinstatement in the situation prior to the commission of the crime is legally possible, but it can only be ordered by the judge and only during a trial, that is, after a completed investigation, which means that years can pass, which makes it ineffective .

A set of proposals have been formulated to the Parliament and the Government, in order to generate laws that would allow such a thing, but the progress is very slow in forestry matters, unlike that of waste traffic, where the results are much more significant.