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## NORMATIVE-LEGAL REGULATION OF UNLIMITED TILLAGE OF FORESTS

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### Abstract.

**Purpose:** the purpose of the scientific article is to study and analyze theoretical approaches to defining the concept and content of the definition of "illegal felling of the forest" as well as the study of the legal regulation of illegal logging, namely the provisions of civil, administrative and criminal liability. **Methods:** the Improvement of the legislative framework, which provides legal responsibility for the illegal cutting out of the forest. **Results:** environmental offenses are offenses that require priority consideration and bring the perpetrators to justice. Illegal felling of the forest is one of the varieties of environmental offenses, which involves civil, administrative and criminal responsibility for the commission of unlawful acts. The current state of logging is worrying, therefore, inspections are carried out by the competent authorities, criminal proceedings are opened, civil claims are filed and administrative protocols are drawn up, which is a rather positive trend. **Discussion:** the need for a clear legal separation of administrative and criminal responsibility for the illegal logging.

**Keywords:** forest, forest code, illegal logging, environmental legislation, civil, administrative and criminal liability.

### 1. Introduction

Crimes and other offenses against the environment that encroach upon public relations in the area of protecting the right of citizens to a safe environment, as well as the protection, using, conservation and reproduction of the natural resources, ensuring environmental safety, preservation of the genetic fund of wildlife, landscapes and other natural complexes, natural Objects related to the historical and cultural heritage require special attention, namely: bringing the perpetrators to justice. Normative acts establish not only the requirements for the rational use of natural objects, but also the responsibility for illegal encroachments on a given natural object, which can lead to negative changes.

This article analyzes the legal and legal framework and the actual aspects of legal liability for the illegal felling of forests in Ukraine.

### 2. Problem and its connection with scientific and practical tasks

Nowadays one of the most dangerous violations in the field of forest protection is the illegal felling. Illegal logging entails environmental losses, promote degradation of forest ecosystems and reduce biodiversity and cause great damage to the state's economy.

At the same time, one of the main causes of illegal logging is the abuse of the forest guards themselves, namely: the lack of an effective control by the forest inspectorate and forestry enterprises over the activities of structural subdivisions regarding the preservation of forest plantations, service negligence and the actual abuse of forest protection [1, p.23].

That is why it is important to consider liability for violations of environmental legislation and to find an effective model for it.

### 3. Analysis of result research

The scientific basis of the article are the works of such Ukrainian scholars as S.B. Gavriha, A.P. Hetman, O.O. Dudorova, V.M. Zavgorodnaya, V.V. Kostytskyi, N.R. Kobetsky, V.K. Matviychuk, P.V. Melnyk, L.V. Mendik, I.I. Mitrofanova, V.L. Munteana, V.O. Navrotsky, Yu.S. Shemshuchenko [2], as well as other researchers who made a significant contribution to the development of legal aspects related to the analysis of liability for violations of the legislation in the area of illegal logging. Despite the rather noticeable volume of publications, this problem can not be considered to be completely exhausted; some issues in this area require clarification and scientific analysis, such as: the notion of illegal logging, the effectiveness of protection against illegal logging, the complexity of legal liability for the illegal felling of forests.

### 4. Setting objectives

The purpose of the article is to study and analyze theoretical approaches to defining the concept and content of the definition of "illegal felling of the forest", the content of the effectiveness of forest protection against illegal felling, the nature of legal responsibility for such actions, as well as the study of legal regulation of illegal felling of forests, namely, provisions civil, administrative and criminal liability.

### 5. Presenting main materials

The Constitution of Ukraine states that the land, its subsoil, atmospheric air, water and other natural resources ..., Including the forests, are the objects of the right of ownership of the Ukrainian people. Forests fulfill an important function in preserving the ecology of Ukraine and ensuring the needs of the community in forest resources. In accordance with the provisions of the Forest Code of Ukraine (hereinafter - FCU Ukraine), forests are in state, communal and private ownership, although the vast majority of forests are privately owned (Article 7).

All forests in the territory of Ukraine, irrespective of whether they are growing on the territories of which categories for the main purpose, and re-

gardless of the ownership of them, constitute the forest fund of Ukraine and are protected by the state.

The notion of illegal felling is not clearly defined and has not been adequately enshrined in Ukrainian legislation. Nevertheless, this concept often generates a scientific discussion. In particular, in the theory of criminal law it is envisaged that the fringe is illegal, if it is carried out: 1) without special permission, which is certified by the relevant document (logging or forest ticket) issued by the authorized body (person); 2) permission issued on violation of applicable law; 3) in the presence of a permit, but with failure to comply with the conditions stipulated therein regarding the place, method and timing of cutting, the number and species of trees and shrubs (the felling is not in the allocated area, before or after the expiration of the terms set in the permit, the cutting of valuable and rare trees and shrubs, included in the Red Data Book of Ukraine, carnivorous, positive and other trees of exceptional importance for the conservation of biodiversity, etc.); 4) in the presence of a permit to conduct a continuous sanitary felling, but without observing restrictions established in relation to the area, terms, technologies of carrying out works [3, p. 448 - 449].

O.M. Shumilo notes that the illegal felling of trees and shrubs is recognized; committed: without permission; permission issued in violation of applicable law; before or after the expiration of the terms set in the permit; not on designated sites or more than an established quantity; not those species of trees as defined in the permit; rocks, cuttings which are forbidden [4, p. 183].

Thus, in our opinion, the illegal felling of trees and shrubs is recognized in all cases when in the course of its implementation the person violates general prohibitions on the cutting or receives special documents permitting the cutting down or violating the conditions of such permissions.

Of course, ensuring the proper protection of forests against illegal felling is under the auspices of the State Forestry Agency. In order to increase interaction between various executive authorities and law enforcement agencies, the State Forestry Agency prepared and sent to the heads of regional state administrations a letter dated 15.06.2017 № 01-18 /

373-16 proposing holding joint meetings with the participation of employees of territorial police, security services Ukraine, the State Fiscal Service of Ukraine, the State Inspection of Ukraine and the heads of regional departments of forestry and hunting economy for the implementation of joint measures in the area of ensuring forest protection in from illegal logging and other offenses. At the same time, by order dated 01.08.2016, No. 298, heads of territorial bodies, the State Forest Service, enterprises and institutions belonging to the sphere of its management, are obliged to ensure the proper protection of forests from violations of forest legislation.

In order to inform the public about violations of forest legislation, it was decided to publish on the official web-sites of the departments of such information [5, p. 18].

The cooperation of state law enforcement bodies in improving the measures for preventing and detecting illegal logging is an effective and universally recognized mechanism for preventing offenses in this area. At the same time, the lack of coordination of law enforcement cooperation is considered one of the main reasons for the spread of illegal logging offenses [6, p. 11, 18, 26-28; 7, p. 11, 15-16; 8, p. 7-8, 25]. Moreover, among the facts of illegal logging, the problem of sanitary felling of forests is highlighted, during which along with dry and weak trees there is a valuable digestion species of viable trees, and also such cutting is not subject to taxes, which significantly increases the incomes of unscrupulous forest users from such illegal logging. Also, one of the factors of large volumes of illegal logging recognizes the indifference of the public to this problem [8, p.25].

In 2017, the President of Ukraine, Petro Poroshenko, signed the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Protection of Virgin forests in accordance with the Framework Convention for the Protection and Sustainable Development of the Carpathians", which will promote the preservation of natural values of European significance, in particular, virgin forests, in compliance with the requirements of the convention [9].

This law has introduced amendments to the Criminal Code of Ukraine (hereinafter - the CCU) to increase the liability for illegal felling of forest, trees or shrubs in forests, protective and other forest plantations, in reserves or on the territories and ob-

jects of the nature reserve fund ; amendments to the Code of Administrative Offenses of Ukraine (hereinafter - CUpAO) regarding the introduction of administrative liability for violation of the requirements of protection of natural forests, virgin forests, quasiparils; changes to the FCU of Ukraine and the Law of Ukraine "On the Nature Reserve Fund".

According to clauses 1, 5 of the second part of Article 105 of the LC of Ukraine, responsibility for violations of forest legislation is borne by persons: guilty of illegal cutting down and damage to trees and shrubs; guilty of violating the terms of reforestation and other forest management requirements established by the legislation on protection, protection, use and reproduction of forests.

According to Art. 68 of the Law of Ukraine "On Environmental Protection" enterprises, institutions, organizations and citizens are obliged to reimburse the damage caused by them as a result of violations of the legislation on environmental protection, in the order and in amounts established by law [10].

The general grounds for liability for damage caused by property are stipulated by Article 1166 of the Civil Code of Ukraine. Civil liability for violations of forest legislation should not only be carried out by persons who directly carry out unauthorized felling of forests (damage to trees), as well as permanent forest users, whose fault is to prevent and prevent their employees from unlawfully cutting down forest plantations (damage to trees) due to inappropriate fulfill their official duties. The illegal inactivity of such persons is the lack of protection for forest workers by the employees of the protection and protection of forests, as a result of which tree felling (damage to trees) is detected by unidentified persons [11].

CUpAO provides administrative liability for a number of violations in the area of environmental protection, use of natural resources, protection of cultural heritage, such as: "Illegal use of lands of the State Forest Fund" (Article 63), "Illegal felling, damage and the destruction of forest crops and young animals "(Article 65)," Destruction or Damage to Protected Forest Bands and Protected Forest Plants (Article 65-1) ", " Violation of the rules for the restoration and improvement of forests, the use of resources of the Sloi de rovings, requirements for the protection of virgin forests, quasiparesis and natural forests "(Article 68), etc. [12].

It must be noted that administrative liability arises if the illegal felling of the forest does not en-

tail criminal liability under the current legislation. In our opinion, the main criteria for delimiting an administrative and criminal offense is to determine the existence of substantial harm (if it is to cause material damage) or other grave consequences, such as the commission of the said actions in forests of special significance and value: in the reserves, in the territories and objects of the natural reserve fund, virgin forests, quasi-parishes, since such consequences are sufficient to recognize the damage essential. This is due to the special, high value of the forest data recognized by the state in the manner prescribed by law, and therefore the encroachment on such forests is a gross violation, which entails grave consequences, which are manifested not only in causing direct pecuniary damage, which will be essential given the special the value of these forests, as well as in violation of a holistic ecosystem, the restoration of which to the pre-commissioning of the state of law violation is a rather complicated, and sometimes in fact, impossible process [13]. In order to present the assessment of the damage caused by these actions, it is sufficient to refer to the Decree of the Cabinet of Ministers of Ukraine "On Approval of Taxes to Calculate the Amount of Damage Caused by Violation of the Law on Nature Conservation Forms" dated July 24, 2013, No. 541. In accordance with the provisions of Appendix 1 of the above-mentioned Resolution, the damage for each tree with a diameter of more than 50 centimeters is cut or damaged to the extent of the termination of growth, is from 192 to 220 UAH for every centimeter of the tree. In the case when the illegal felling concerns individual trees that are botanical monuments of nature, the amount of compensation for damage caused by the illegal felling of the forest is calculated according to the tax, shown in Annex 1, increased three times. Consequently, it can be predicted that the size of material damage will be significant in the illegal felling of forests of special significance [14].

The basis of the aforementioned position, in relation to the determination of material damage, is a judicial practice. Thus, in the Resolution of the Plenum of the Supreme Court of Ukraine dated December 10, 2004, No. 17 "On judicial practice on crimes and other offenses against the environment" it is noted that the courts, when determining the damage caused by unlawful actions provided for in Article 246 of the Criminal Code of Ukraine, should be understood as significant harm not only

quantitative and cost criteria, but also other circumstances of significance, which are understood as the grave consequences of such actions, which may have such forms as: "death or mass disease of people, a significant deterioration of the environmental situation in one or another region (area) disappearance, mass death or serious illness of the objects of the animal and plant world; the impossibility of recreating for a long time certain natural objects or using natural resources in a particular region; genetic transformation of certain natural objects; causing material damage in particularly large amounts; etc.". It must be borne in mind that for the recognition of the consequences of severe, enough death, even one person. At the same time, significant in the sense of Article 246 of the Criminal Code of Ukraine may be recognized as harm if: certain species of trees have been destroyed; with deterioration of the ecological properties of the forest, there were difficulties in reproduction of afforestation in the area; the quality of atmospheric air has decreased; the terrain has changed, riverbed; there was erosion of the soil or other negative consequences for the ecology of the area occurred [15].

A similar situation arose in the Russian Federation, where amur tigers appeared to be at risk of extinction as a result of degradation of habitats and resources. Under the illegal felling of the forest fell forests, which are the main habitats of the Amur tiger, whose number is about 450 individuals in the wild. Because of the widespread illegal harvesting of mature Korean pine and Mongolian oak in these forests, the food supply of conifer nuts and acorns for wild boars and deer, which are the main elements of feeding amur tigers, has diminished. In addition, roads built for illegal felling provide access to previously inaccessible forests, which play an important role as the main areas of the Amur tigers. This makes it possible for poachers to use such roads to penetrate into the denser tigers and their prey. Long-term studies in the region indicate a strong negative impact on the survival of tiger and young females. As a result of these actions, in addition to the Amur tigers, certain species of birds, such as the black owl (which is the largest owl in the world), are also threatened with extinction, as well as rare plant species are destroyed, as well as threatening the traditional sources of life of Taiga peasants and indigenous peoples, including hunting, beekeeping of the forest and the harvesting of cedar nuts. [6, p. 4, 24]

A similar situation is also found in the Ukrainian Carpathians, where the illegal felling of the forest is constantly observed and which is the habitat of rare plants and animals, for example: salamanders of spotted, brown bear, rice, golden eagle, primrose of Polonin, etc. That is why the adopted changes to the legislation of Ukraine are extremely important, in order to strengthen the responsibility for illegal felling of the forest, as well as practical and scientific attempts to develop an effective model of enforcement of these provisions.

According to the provisions of the Criminal Code of Ukraine, the strengthening of liability for the illegal felling of forests is provided for in Part 1 of Art. 246 of the Criminal Code of Ukraine in the form of a fine of three hundred to five hundred non-taxable minimum incomes, or arrest for a term up to six months, or restraint of liberty for a term up to three years, or imprisonment for the same term, Part 2 of Art. 246 with a qualification as committed repeatedly or by prior conspiracy by a group of persons is punishable by restraint of liberty for a term of two to five years or by imprisonment for the same term [16].

It must be noted that in recent years, due to the increased attention paid to the problem of illegal logging by the supreme bodies of state power, the activity of law enforcement agencies in this area has intensified. In particular, the following examples of legal liability for unlawful felling of the forest can be cited.

Chernihiv local prosecutor's office at the end of 2015 sent to court an indictment for Art. 246 of the Criminal Code of Ukraine on the fact of the illegal felling of 18 trees (13 of them), on the territory of the forest fund of the State Enterprise Chernihiv Forestry, in the tract "Kozlyanske" without a log book (warrant) two persons, according to the previous conspiracy, committed unlawful acts. At the same time, the damage was established for the above actions and the civil prosecutor filed a lawsuit for the total amount of UAH 127050. The Chernihiv District Court issued a conviction and granted a civil action [17].

The official website of the Kharkiv Regional Prosecutor's Office contains information on illegal logging and methods of combating them. In the course of studying the issue of compliance with environmental protection legislation in the area of protection, use and reproduction of natural resources, facts of illegal felling of forest plantations

in 2016 in the territory of Kharkiv and Zmiyivsky districts of the oblast belonging to one of the forestry enterprises were established. The total amount of losses is almost 350 thousand UAH. According to the facts, criminal proceedings and civil actions have been initiated in court [18].

The press service of the Prosecutor's Office of the Transcarpathian region reported that the Khust Local Prosecutor's Office filed a lawsuit in the interests of the state to recover 35 thousand UAH. harm caused to the environment by the commission of a criminal offense, namely: illegal felling of the forest. Due to the fact that from the beginning of 2017, in the tract "Buchiv", on the territory belonging to the forest fund of the SLAP "Irshavaagrolis", a local resident committed the unauthorized felling of the trees of the breed "Acacia White" [19].

The Korosten local prosecutor's office, during the study of compliance with forestry requirements, initiated the unscheduled inspection by the State Ecological Inspection in Zhytomyr region on the territory of the Ushumirsky Forestry subsidiary of Korosteny Forestry AIC. At the same time, facts of illegal felling of trees in six departments of forestry are established. The conducted inspection revealed that the felling of trees caused damage to almost 1.5 million UAH. and accordingly a claim for the specified amount was filed [20].

From the above practice of applying the legislation on liability for illegal felling of the forest, it is clear that law enforcement agencies are taking comprehensive measures to bring the perpetrators: both measures of criminal liability and civil (material), which we consider a logically justifiable law enforcement mechanism. Indeed, the analysis of the current legislation on liability for illegal felling of forests suggests the complexity of such liability. At the same time, in order to determine the complexity of legal liability as an effective mechanism for protection of forests of Ukraine from illegal logging, it is necessary to include not only the criminal and civil (material) liability of the guilty persons in the illegal felling of the forest, as well as the disciplinary, administrative and criminal liability of the responsible officials in assuming such unlawful actions as a felling of the forest [8, p. 28].

Only in the context of the use of such a complex of measures, we can talk about the implementation of all functions of legal responsibility for the illegal felling of the forest, as repressive, punitive, and provocative, signaling and educational.

## 6. Conclusion

The conducted research allows us to conclude that environmental offenses refer to offenses that require priority consideration and to bring the perpetrators to justice. Illegal felling of the forest is one of the varieties of environmental offenses, which involves civil, disciplinary, administrative and criminal responsibility for the commission of unlawful acts.

Only in the application of such complexity of legal liability for illegal felling of the forest, we can speak about the effective protection of forests of Ukraine from illegal felling. The current state of logging is alarming, therefore, the competent authorities need to intensify inspections in the field of logging, and to intensify activities in the field of detection and investigation of criminal offenses for the illegal felling of forests. A positive shift can be considered the practice of civil actions for compensation of damage to the illegal felling of forests in criminal proceedings and their consequences, as well as drawing up protocols on administrative offenses, which is a very positive trend.

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**НОРМАТИВНО-ПРАВОВЕ РЕГУЛЮВАННЯ НЕЗАКОННОЇ ПОРУБКИ ЛІСУ**

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**Мета:** метою наукової статті є вивчення та аналіз теоретичних підходів щодо визначення поняття та змісту дефініції «незаконна порубка лісу» а також дослідження нормативно-правового регулювання незаконної порубки лісу, а саме положень цивільної, адміністративної та кримінальної відповідальності. **Методи:** удосконалення законодавчої бази, що передбачає юридичну відповідальність за незаконну порубку лісу. **Результати:** екологічні правопорушення відносяться до правопорушень, які потребують першочергового розгляду та притягнення винних осіб до відповідальності. Незаконна порубка лісу є одним із різновидів екологічних правопорушень, яке передбачає цивільну, адміністративну та кримінальну відповідальність за вчинення незаконних дій. Сучасний стан порубки лісів викликає занепокоєння, тому уповноваженими органами проводяться перевірки, відкривається кримінальні провадження, заявляються цивільні позови та складаються протоколи про адміністративні правопорушення, що є досить позитивною тенденцією. **Обговорення:** необхідність чіткого законодавчого розмежування адміністративної та кримінальної відповідальності за вчинення незаконної порубки лісу.

**Ключові слова:** ліс, лісовий кодекс, незаконна порубка лісу, природоохоронне законодавство, цивільна, адміністративна та кримінальна відповідальність.

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**НОРМАТИВНО-ПРАВОВОЕ РЕГУЛИРОВАНИЕ НЕЗАКОННОЙ ПОРУБКИ ЛЕСА**

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**Цель:** целью научной статьи является изучение и анализ теоретических подходов к определению понятия и содержания дефиниции «незаконная порубка леса», а также исследования нормативно-правового регулирования незаконной порубки леса, а именно положений гражданской, административной и уголовной ответственности. **Методы:** совершенствование законодательной базы, предусматривает юридическую ответственность за незаконную порубку леса. **Результаты:** экологические правонарушения относятся к правонарушениям, которые требуют первоочередного рассмотрения и привлечения виновных лиц к ответственности. Незаконная порубка леса является одной из разновидностей экологических правонарушений, которое предусматривает гражданскую, административную и уголовную ответственность за совершение незаконных действий. Современное состояние порубки лесов вызывает беспокойство, потому что уполномоченными органами проводятся проверки, открываются уголовные производства, заявляются гражданские иски и составляются протоколы об административных правонарушениях, является достаточно положительной тенденцией. **Обсуждение:** необходимость четкого законодательного разграничения административной и уголовной ответственности за совершение незаконной порубки леса.

**Ключевые слова:** лес, лесной кодекс, незаконная порубка леса, природоохранное законодательство, гражданская, административная и уголовная ответственность.