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MECHANISM OF PROTECTING FOREST AND LAND RESOURCES OF UKRAINE FROM ILLEGAL AMBER MINING: LEGAL ASPECT

Purpose. To determine a legally established mechanism of criminal-legal protection of forest and land resources on the territory of Ukraine where illegal amber mining is carried out.

Methodology. The methodological basis of the study is a system of general and special methods of cognition: the dialectical method was used to learn the essence of such a phenomenon as the protection of public relations for environmental protection and rational use of natural resources during amber mining; system-structural method – when separating the social relations of the constituent elements protected by the law within the specified structure; when analyzing the forms of socially dangerous acts of crimes under Articles 240-1, 239 and 245 of the Criminal Code of Ukraine; logical-dogmatic method – during the interpretation of certain terms used in the sciences of geology, administrative and criminal law, contained in the provisions of current legislation; comparative law method - in the study of the relationship of objective signs of acts under Articles 201-1, 239 and 245 of the Criminal Code of Ukraine.

Findings. It is established that the criminal law protection of Article 240-1 of the Criminal Code of Ukraine covers public relations for the protection and rational use of amber resources, forest and land resources. The former ones are the main direct object of the crime, the latter ones are the direct additional objects of this crime. The range of objects of this crime is established – amber, forest and land resources. The collision of norms of Articles 240-1 and 245 and Articles 240-1 and 239 of the Criminal Code of Ukraine.

Originality. It is established that the object of the crime under Article 240-1 of the Criminal Code includes the main direct object – public relations for the protection and rational use of amber resources and two direct additional objects of crime: public relations for the protection and rational use of forest and land resources. It is determined that damage to forests due to illegal amber mining must be further qualified under Part 1 of Article 245 of the Criminal Code of Ukraine if illegal mining is carried out in a generally dangerous manner. This crime must be further qualified under Part 1 of Article 239 of the Criminal code of Ukraine if illegal extraction of amber is carried out with violation of special rules of treatment of substances, waste or other materials.

Practical value. From a practical point of view, the results of the study will contribute to the correct qualification of practitioners of illegal amber mining in Ukraine.

Keywords: *protection of subsoil of Ukraine, illegal amber mining, protection of forests and lands, criminal liability*

Introduction. The legislation of Ukraine contains a definition of “forest” as a type of natural complexes (ecosystem), which combines mainly woody and shrubby vegetation with relevant soils, grass vegetation, fauna, microorganisms and other natural components that are interrelated in their development, affect each other and the environment. At the same time, it is declared that the forest as well as the land and its subsoil are the national wealth of Ukraine and are under the protection of the state [1]. In accordance with Article 1 of the Land Code of Ukraine the land is also the main national wealth, which is under special protection of the state [2]. However, at present, some of Ukraine’s natural resources are being damaged as a result of illegal amber mining.

Ukraine has one of the largest reserves of amber in Europe. However, despite the large deposits of this mineral, national companies that have special permits for its extraction annually extract only about 4 tons of amber. Illegal fishing, which is out of state control, accounts for a much larger volume of production – from 120 to 300 tons per year. The annual income from the illegal sale of Ukrainian amber on the black market and its smuggled exports from Ukraine is estimated at 300 to 320 million US dollars [3].

Illegal amber fishing leads to a number of negative environmental, economic and social consequences of this phenomenon. In particular, according to experts, the ecological

consequences should include: violation of the unity of geological layers, depletion of amber subsoil, violation of hydrogeological conditions in the surrounding areas, destruction of grass cover and fertile soil, felling of trees and their root system, change in wetland biocenoses. Overcoming these consequences requires the reclamation of disturbed lands, conservation of natural resources and complexes. The economic consequences of uncontrolled amber mining include losses in forestry and water management, soil degradation, loss of significant amounts of raw amber for the state, failure to receive customs, national and local taxes and fees. The social consequences are manifested in the growing level of criminogenic situation in the regions, injuries and deaths among miners due to non-compliance with safety rules, increasing social tensions due to conflicts between miners and ordinary citizens [4].

In this regard, the Government of Ukraine adopted a project for the reclamation of forest lands damaged by illegal amber mining for 2016–2021 [5], and the State Agency of Forest Resources of Ukraine approved a list of land plots, within which there are parts damaged by illegal mining amber, and in need of reclamation [6].

Literature review. Researchers V. L. Bredikhina, V. I. Tsymbalyuk, Yu. A. Turlova, G. S. Polishchuk, O. O. Dudorov, M. V. Komaritsky, D. O. Kalmikov, N. V. Netes studied the problems of legal protection of public relations in the field of amber mining in Ukraine.

Such researchers as Egorova T. P., Storozhuk V. F., Dudorov O. O., Pismensky E. A., Sasov O. A., Zavgorodnya V. M.,

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Marfina N.V., Melnyk P.V., Kuzyk A.D., Popovych V.V., Popkov M.O., Balyuk G.I., Hetman A.P., Kovalchuk T.G. and others dealt with the problems of forest protection. The works by the first group of scientists were aimed at solving the problems of public administration in the field of amber mining in Ukraine, highlighting the causes and consequences of illegal activities in this area, criminalization of illegal amber mining. The works by other scientists were aimed at solving the problems of public administration in the field of forestry in Ukraine, highlighting the causes and consequences of illegal activities in this area, criminalization of illegal logging.

At the same time, the outlined link between illegal amber mining and forest damage raises certain legal issues that remain unexplored. In particular, whether the current Article 240-1 of the Criminal Code of Ukraine [7], which provides for liability for illegal amber mining, covers forests damaged by such activities for the object and subject of protection. Or the actions that lead to damage to forests should be further qualified under Article 245 of the Criminal code of Ukraine which separately provides responsibility for destruction or damage of objects of the vegetative world.

Purpose. Determining legal remedies for the protection of ecosystems established in the country during the development of mineral deposits, including amber mining in Ukraine, providing scientific and practical interpretation of protection legislation in this area and scientifically sound recommendations for their improvement. The purpose of the study is achieved through the consistent solution of the following tasks:

- study of literature sources and regulations, which describe and enshrine the existing criminal norms, which put public relations in the field of amber mining and forest protection in Ukraine under protection;
- providing scientific and practical interpretation of the objective features of the crimes envisaged by Articles 240-1, 239 and 245 of the Criminal Code of Ukraine;
- providing recommendations on the practice of criminal-legal qualification of illegal amber mining, which has led to damage to forest plantations.

Methods. The methodological basis of the study is a system of general and special methods of cognition: the dialectical method was used to learn the essence of such a phenomenon as the protection of public relations for environmental protection and rational use of natural resources during amber mining; system-structural method – when separating public relations of constituent elements protected by criminal law within the specified structure: public relations for the protection and rational use of amber resources, forest and land resources; when analyzing the forms of socially dangerous acts of crimes under Articles 240-1, 239 and 245 of the Criminal Code of Ukraine; logical-dogmatic method – during the interpretation of certain terms used in the sciences of geology, administrative and criminal law, contained in the provisions of current legislation, as well as in the formulation of definitions of legal concepts; comparative law method – in the study of the ratio of objective signs of acts under Articles 201-1, 239 and 245 of the Criminal Code of Ukraine; general methods (analysis, synthesis, induction, deduction, abstraction, generalization) - in the study of scientific and regulatory sources.

Results. Environmentalists point out that illegal amber mining is rapidly destroying forests and subsoil, which will take decades to restore: “such forests will now appear not earlier than in a hundred years”, – emphasizes P. Testov, an ecologist of the human rights organization “Ecology, law, man” [8]. The ecologist believes that in a forest where amber diggers have already been, all the trees will dry up in a few years, because the hydrological regime is disturbed by pits and pumps. Animals that fall into the pit and cannot get out will also have problems. Amber is often mined in valuable natural areas. For example, in Zhytomyr region, illegal logging took place in a unique protected forest, where no logging had occurred for more than 80 years. “In Volyn, I personally saw pits on the territory of the Pripyat-Stokhid

National Nature Park. When extracting amber, diggers do not pay attention to the regime of the territories, which makes it impossible for many rare species of animals from the Red Book to exist, which do not like to be disturbed by humans. For example, a lynx or a black stork”, – P. Testov emphasizes [8].

According to experts of the State Forestry Agency of Ukraine, 3.5 thousand hectares of forest has already been damaged in this region due to illegal amber mining. This is due to the fact that “black” diggers do not follow the extraction technology, washing the amber stones with motor pumps, which leads to the destruction of groundwater drainage channels. “It simply came to our notice then. This is the complete destruction of the possibility of groundwater circulation and as a consequence microclimatic changes in these regions”, – said O. Bobrov, Doctor of Geological Sciences, a representative of the Union of Geologists of Ukraine [8].

In criminal law doctrine, the objective features of the crime include the object, the objective side and the subject of the crime. The object of the crime reflects those social relations that are placed under the protection of criminal law, the objective side characterizes the features of a socially dangerous act (action or inaction), the consequences of the crime, their causal relationship with the act, as well as place, time, the situation, method, tools and means of committing the crime. The object of the crime is the material object that the crime itself encroaches on. As part of our study, we will focus on the study of the direct objects of crimes under Articles 240-1 and 245 of the Criminal Code of Ukraine, the content of their socially dangerous acts and their subject. This will make it possible to determine the existing mechanism at the level of legislation for the state to protect forest plantations and land from their destruction as a result of illegal amber mining.

On December 19, 2019, the Law of Ukraine No. 402 “On Amendments to Certain Legislative Acts of Ukraine on Improving the Legislation on Extraction of Amber and Other Minerals” was adopted, which, along with other changes in the legislation, introduced criminal liability for illegal extraction, sale, acquisition, transfer, shipment, transportation, processing of amber, the legality of which is not confirmed by relevant documents, and others [9].

Thus, Article 240-1 of the Criminal Code of Ukraine provides for liability for illegal amber mining, which should be understood as actions that consist in its extraction from mineral deposits (pumping, construction of mines, quarries, and so on). First of all, we are talking about prospecting methods of extraction, which, depending on the geological conditions, are carried out by digging (pit excavations) and underground hydraulic washing.

The use of one or another method is determined by a combination of the following factors:

- 1) the depth of amber-containing deposits;
- 2) the depth of groundwater and the presence of floodplains;
- 3) susceptibility of amber-containing deposits to erosion;
- 4) the content of amber in the ore [10].

Indeed, the legislator emphasizes the need to combat illegal amber mining, when, as the article itself does not explicitly state the protection of forest and land resources from the negative consequences of such illegal activities. In this regard, the question arises whether the subject of criminal law protection of Article 240-1 of the Criminal Code of Ukraine includes public relations on the rational use of forests and land resources and their protection.

The science of criminal law distinguishes the concept of the main and additional objects of the crime. There are two types of additional objects of crime: mandatory and optional. In particular, as noted in the professional literature, there is a classification of direct objects of crime “horizontally”. Here occurs separation by the value of the object to qualify a specific crime. The following types of direct object are distinguished by the “horizontal”:

- the main (main) direct object;
- an additional direct object;
- an optional direct object.

The need for such a classification arises when one crime simultaneously harms several social relations. For example, when committing robbery (Article 187 of the Criminal Code of Ukraine), the guilty person encroaches on property and human life or health at the same time; in case of hooliganism (Article 296 of the Criminal Code of Ukraine), damage may be caused not only to public order, but also to the health of a person, property of the authority of the authorities, and so on; when encroaching on the life of a law enforcement officer, a member of a public formation for the protection of public order and the state border or a serviceman, damage is inflicted not only on the normal service activities of law enforcement officers and their authority, but also on the lives of these persons. Thus, the main direct object of the crime is such public relations, the violation of which is the social essence of a particular crime and for the protection of which the legislator has established a criminal law that provides for liability for its violation.

The main direct object of the crime under Article 240-1 of the Criminal Code of Ukraine involves public relations that arise and exist in society regarding the rational use of minerals, in particular, amber stones.

An additional direct object of the crime is considered to be such public relations, the encroachment on which does not constitute the content of the crime and is not the main purpose of the legislator of their protection, but which are always violated in parallel with the main object. In other words, this is a relationship that is always automatically harmed by the crime; however, the legislator created a specific rule not for these relationships themselves.

The optional direct object of the crime is public relations, which may be harmed when committing a particular crime, but they are not specifically protected by this crime, and, as a rule, are protected by another provision of the Criminal Code (e.g., property and health relations under hooliganism). The difference between an optional object and the additional one is that the additional object is always harmed, and the optional one may or may not be harmed.

It is not difficult to point out that in this aspect the issue of protection of forests and land resources is not defined by the legislator as the main objects of crime. This is indicated by the actual wording of the disposition of Article 240-1 of the Criminal code of Ukraine in which there is no mention about their protection. And the legislative act itself, which criminalized illegal amber mining, is referred to as the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Improve the Legislation on Amber Mining and Other Minerals" of December 19, 2019 No. 402. And again not a word about the direction of its actions for forest protection.

So, let us try to determine whether the legislator has placed public relations for the protection of forests and land resources from their damage due to illegal amber mining under the protection of criminal law. If so, we will determine to which category of the object of the crime they can be attributed: additional mandatory or optional.

To do this, it is necessary to understand the position of the legislator on this issue. In the explanatory note to the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Settlement of Amber Mining" (title as of October 8, 2019) in support of the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Improve Mining Legislation amber and other minerals" of December 19, 2019 No. 402 it is stated that "The need to adopt this bill is due to the particularly large size of illegal extraction and circulation of amber. As a result of excessive administrative burden, amber is extracted by methods that result in the destruction of ecosystems in the area. The main factors of negative impact are extremely illegal amber mining on a

large scale, which has led to the disturbance of ecosystems, insufficient funding for work to reduce environmental impact due to the development of deposits and non-reclamation of developed areas, especially Polissia. The economic consequences are losses in forestry and water management, soil degradation, loss of significant amounts of raw amber for the state, which far exceed the amount of legal extraction". And the purpose of adopting this law, along with the cessation of illegal amber mining, is to ensure the protection of the natural environment during amber mining and reclamation of disturbed lands [11].

Thus, the legislator, although not directly, recognizes that illegal amber mining has the effect of damaging both forest resources and land.

In addition, according to the experts, the nature of amber is formed due to the crystallization of the resin of ancient conifers for several million years without access to oxygen [12]. In this regard, its deposits in Ukraine are concentrated primarily in forests in Rivne, Zhytomyr and Volyn regions. This means that, taking into account the methods of illegal amber mining (digging or hydro-washing), damage to forest and land resources is caused in any case.

From the above it is necessary to draw conclusions about the following: 1) public relations for the protection and rational use of forest and land resources are placed under the protection of Article 240-1 of the Criminal Code of Ukraine; 2) they are mandatory in nature. The second conclusion means that encroachment on these social relations does not directly constitute the content of the crime and is not the main purpose of the legislator to protect them, but they are always violated in each case of a crime in the form of illegal amber mining.

As part of the crime, along with the object of the crime, the objective features traditionally include the subject of the crime. It is understood as any things and bodies of the material world, as well as intellectual and material values, influencing which, the guilty person harms the social relations protected by law. The subject of the crime must be distinguished from the object of the crime. The object of the crime always acts as a social relationship, it is always one of the four mandatory elements of the crime, and the subject of the crime is not found in all crimes, and therefore it is considered an independent optional feature of the crime. In our case, the duality of the direct object of the crime indicates the presence of at least two objects of the crime: amber stones and forest resources. The impact on the first subject harms the social relations that arise and exist in society regarding the rational use of minerals, in particular, of amber stones. And due to the impact on other subjects, public relations are damaged in terms of protection and rational use of forest and land resources.

These conclusions, in our opinion, need further clarification. First, public relations regarding the protection and rational use of forest and land resources will be the object of a crime under Article 240-1 of the Criminal code of Ukraine only in case of its commission in the form of illegal extraction of amber. The question is that as alternative and independent crimes, this article provides such actions as: 1) illegal extraction of amber; 2) its sale; 3) acquisition; 4) storage; 5) transfer; 6) shipment; 7) transportation; 8) amber processing. Therefore, if a person has committed this crime in the form of transportation of amber, the legality of which is not confirmed by the relevant documents, they cannot be directly accused of damage to forest resources. However, these actions are interrelated.

Another article – Article 245 of the Criminal Code of Ukraine provides for liability for destruction or damage to flora: "Destruction or damage of forests, greenery around settlements, along railways, as well as stubble, dry wild grass, vegetation or its remnants on agricultural lands appointment by fire or other generally dangerous means". As we can see, it recognizes such actions as destruction or damage to forests as crimes. Thus, the direct object of the crime is also public rela-

tions in the field of forest protection. This raises the issue of competition from Article 240-1 and Article 245 and the question of the correct qualification of these actions in practice.

To address this issue, attention should be paid to the mandatory feature of the objective crime under Article 245 of the Criminal code of Ukraine, – a way of its commission. Thus, the legislator noted that the destruction or damage of forests is considered a crime only if these actions are committed by fire or other generally dangerous means. Under this method one should understand cases of destruction or damage by an action similar in nature and impact, i.e. flooding, collapse, chemical pollution, physical destruction by vehicles and the like.

This means that damage to forests due to illegal amber mining must be further qualified under Part 1 of Article 245 of the Criminal code of Ukraine only in the event that illegal extraction is carried out in a generally dangerous way. For example, as a preparatory stage in the development of amber subsoil, forests were set on fire to clear space for further work.

In other cases, these actions are covered only by Part 1 of Article 240-1 of the Criminal Code of Ukraine.

Article 240-1 also competes for the object of the crime with Article 239 of the Criminal code of Ukraine. The latter provides for liability for pollution or damage to land by substances, waste or other materials harmful to life, human health or the environment, as a result of violation of special rules, if it created a danger to life, human health or the environment. In the professional literature it is stated that land damage means a change in the physical, biological and other properties and characteristics of land, which causes the unsuitability of their use for its intended purpose or requires special restrictions (including conservation). Decrease in natural economic value of lands can be shown, for example, in destruction or disturbance of a fertile layer of soil, disturbance of structure of soil, destruction of useful for soil fauna, littering or salinization of soil, its degradation.

The crime under Article 239 of the Criminal Code occurs only if the pollution or damage to land occurred as a result of violation of special rules for the treatment of the above substances, waste or other materials, which in this case are a means of encroachment [13].

So, here we have a similar situation, when damage to forests due to illegal amber mining must be further qualified under Part 1 of Article 239 of the Criminal code of Ukraine only if illegal extraction of amber is carried out in violation of special rules of treatment of substances, waste or other materials. For example, the use of untreated and intact wastewater, oil and petroleum products, heavy metal salts and other hazardous chemicals.

Conclusions. Summarizing the above, it should be noted that illegal amber mining in Ukraine poses a serious threat of damage and destruction not only of geological resources that have formed over hundreds of years, but also leads to extremely harmful consequences for the preservation of forests and lands in illegal mining areas. The findings of the study will lead to a deeper understanding of the social problem that has arisen, the structure of those social relations that are placed under state protection. From a practical point of view, they address a number of issues of criminal law qualification of illegal amber mining.

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Механізм охорони лісових і земельних ресурсів України від незаконного видобутку бурштину: правовий аспект

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Мета. Визначення законодавчо закріпленого механізму кримінально-правової охорони лісових і земельних ресурсів на території України, на яких здійснюється незаконний видобуток бурштину.

Методика. Методичну основу дослідження становить система загальних і спеціальних методів пізнання: діалектичний метод застосовувався для пізнання сутності такого явища як охорона суспільних відносин щодо охорони навколишнього природного середовища й раціонального використання природних ресурсів під час видобутку бурштину; системно-структурний – при виокремленні в рамках зазначеної структури охоронюваних законом суспільних відносин складових елементів; при здійсненні аналізу форм суспільно-небезпечних діянь складів злочинів, передбачених ст. ст. 240-1, 239 і 245 Кримінального кодексу України (КК України); логіко-догматичний – під час тлумачення окремих термінів, що вжи-

ваються в науках геології, адміністративного та кримінального права, містяться в положеннях чинного законодавства; порівняльно-правовий – при дослідженні співвідношення об'єктивних ознак діянь, передбачених ст. ст. 201-1, 239 і 245 КК України.

Результати. Встановлено, що під кримінально-правову охорону ст. 240-1 КК України підпадають суспільні відносини щодо охорони й раціонального використання ресурсів бурштину, лісових і земельних ресурсів. При цьому перші становлять основний безпосередній об'єкт злочину, другі – є безпосередніми додатковими об'єктами цього злочину. Встановлено коло предметів цього злочину – бурштин, лісові та земельні ресурси. Встановлено конкуренцію норм ст. ст. 240-1 і 245 і ст. ст. 240-1 та 239 КК України.

Наукова новизна. Встановлено, що до складу об'єкта злочину, передбаченого ст. 240-1 КК, входять основний безпосередній об'єкт – суспільні відносини щодо охорони й раціонального використання ресурсами бурштину та два безпосередніх додаткових об'єкти злочину:

суспільні відносини щодо охорони й раціонального використання лісових і земельних ресурсів. Визначено, що пошкодження лісів унаслідок незаконного видобутку бурштину необхідно додатково кваліфікувати за ч. 1 ст. 245 КК України, якщо незаконний видобуток здійснюється загальнонебезпечним способом. Цей злочин необхідно додатково кваліфікувати за ч. 1 ст. 239 Кримінального кодексу України, якщо незаконний видобуток бурштину здійснюється з порушенням спеціальних правил поводження з речовинами, відходами чи іншими матеріалами.

Практична значимість. Із практичної точки зору, результати дослідження сприятимуть вірній кваліфікації практичними працівниками дій із незаконного видобутку бурштину в Україні.

Ключові слова: охорона надр України, незаконний видобуток бурштину, охорона лісів і земель, кримінальна відповідальність

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