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Executive summary “Improvement of Legal Liability for Violations of Forest Law and Combating the Illegally Extracted Forest Resources: Recommendations for Amendments to the Law”

Oleg Storchous, expert of the European Neighborhood and Partnership Instrument East Countries Forest Law Enforcement and Governance II Program (ENPI EAST FLEG II Program) prepared recommendations for the improvement of legal liability for violations of forest law and combating the illegally extracted forest resources.

Given the significant changes that have taken place since Ukraine gained independence, there is a long-standing need in society, economics and law for improving the legal regulation of legal liability for violations in the area of protection of forests and rapid adoption of relevant laws and regulations. Delaying the implementation of necessary legislative changes leads to an increase in forest sector violations and raising unlawful actions in the area. It should be noted separately circulation of timber and other forest resources, which currently has a very weak legal framework.

Due to high social danger of illegal activities in the forestry sector, the author paid special attention to the development of legislative recommendations for combating illegal felling. In particular, it is proposed to distinguish between two key concepts: “unauthorized illegal felling” and “silvicultural illegal felling”, introduce a financial limit for administrative and criminal offenses and improve the criminal and administrative responsibility for these actions. At the same time, the author justifies differentiation of tariffs charged for illegal felling, depending on the actors committing these acts, and specifies ways to address the shortcomings of civil liability for illegal felling.

In order to solve many problems of civil liability for violation of forestry law, it is proposed to annul the effective Cabinet of Ministers of Ukraine Regulation dated 23 July 2008, No. 665. Instead, a completely new by-law should be adopted to regulate the relationship mentioned. Recommendations for such legal act in the form of draft tariffs for unauthorized felling are presented by the consultant in the study. The need to introduce penalties for certain violations in the forest management is the subject of separate consideration. The author also did not pass over in silence a very topical issue of courts charging fees from permanent forest users for damage caused by unknown persons as a result of them committing illegal felling. For a fair solution, a number of recommendations are offered for by-laws through which the described legal disputes may be resolved.

The consultant justifies the need for appropriate amendments to the Criminal Code of Ukraine in terms of improving provisions concerning the destruction of forests due to fires. Also, he formulates recommendations for the wording of article concerning the illegal removal of green plantations in the settlements.

Major part of recommendations submitted concerns administrative responsibility in the forest sector. The author examines in an itemized format disadvantages of each article in the Ukraine Code of Administrative Offences (UCAO), which provides for administrative liability for violations in the forest sector. It is essential that except for a thorough analysis of legal norms, the author gives recommendations on all kinds of offenses relating to all areas of forest protection and

forest management. In particular, in addition already mentioned proposals addressing illegal felling, there are formulated amendments to the articles on irregularities in the use of forest land, timber logging by permanent forest users, forest reproduction, use of secondary forest materials and harvesting of minor forest products, conservation of forest infrastructure and property of permanent forest users, protection of forest fauna. Separately, the author argues for the establishment of responsibility for violations when reserving sites for wood harvesting and valuating felling areas, strengthening responsibility for compliance with fire safety in forests, making appropriate changes to the Forest Code of Ukraine regarding the responsibilities of individuals while staying in the woods.

Since the level of enforcement of rules on administrative liability is directly associated with the activities of the relevant supervisory bodies, it is recommended to introduce certain changes regarding departmental subordination of cases on administrative violations in the protection of forests.

An extremely actual task is the search for promising ways of legal regulation of circulation of and accounting for timber and some other forest resources, such as coniferous Christmas trees and wild berries, mushrooms, nuts. Therefore, a separate section of work is devoted to combating the illegally extracted forest resources. In this connection, the author proposes to develop a single law that would regulate circulation of timber and other forest resources (the working title is the Law of Ukraine “On State Regulation of Forest Resources Circulation”), define the principles of state policy in the field of registration, labeling, sale, export, import, transporting of unprocessed timber, certain secondary forest materials. The analysis of timber circulation explored in detail the electronic database of timber as a means of combating illegal felling and illegal timber trafficking. In addition, it was substantiated the necessity of settling relations on accounting and sales of coniferous Christmas trees, adoption of a specific by-law – on the procurement of wild forest fruits, mushrooms and berries.

The practical value of work is defined by the possibility to submit directly the recommendations presented to the Parliament. It is expected that the approval of the recommendations by the Verkhovna Rada of Ukraine as a separate draft law and the approval of a number of the relevant by-laws will improve the legal protection of forests and decrease the circulation of illegally extracted timber. The proposed changes will improve the situation in legal support of the State Environment Inspectorate, forest protection and law enforcement authorities in applying rules of legal liability for forest sector violations.

It should be noted that the issues raised in the study are quite complicated, and a significant part of the proposals requires active discussion and understanding by all stakeholders, foresters, environmentalists, public, control and law enforcement authorities. The purpose of the recommendations presented is an attempt to introduce a certain system of interrelated activities of legal liability in combating violations in the protection of forests and forest resources circulation.

In general, materials of the study provide a complete picture of the problem of application of law governing the legal liability for forest sector violations. Recommendations formulated by the survey may be used by lawyers for further scientific and legislative activities, further developed by NGO activists, taken into account when preparing lecture courses and conducting classes on forestry, criminal and administrative law.