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THE FORMS OF RESPONSIBILITY FOR VIOLATION OF THE FOREST LEGISLATION

The thesis reflects topical issues on the form of responsibility for violation of the forest legislation. There is the complexity of legal liability of the legal institution for violation of the forest legislation noted, that is an important mean of ensuring the rule of law in the forest relations.

The relationship between the concept of a form and sanction of responsibility is considered by reflecting the relationship of these dialectical categories as a content (sanction) and form. In the external expression, the concept on the form of responsibility for violation of the forest legislation is defined by testing negative additional consequences of a personal property or organizational nature by an individual or legal entity for committing offenses in the use of forests, forest resources, and forestry lands

It is proposed to divide the forms of responsibility for violation of the forest legislation into general and special. The following general forms of liability were proposed to include the collection of a fine (punitive sanctions) and termination, modification or limitation of the relevant relationship. The offered special forms of liability refer to the compensation for damage, deprivation of liberty, restriction of liberty, application of operational

and economic sanctions, confiscation of an item or direct object that has become an instrument of committing an administrative offense.

The thesis uses practice materials on the main part of the named both general and special forms of liability for violation of the forest legislation, demonstrating the relevance of the research topic.

The importance of understanding the forms of responsibility for the most complete restoration of the violated rights and legitimate interests of the owners and users of forests, forest resources and forestry lands, that is the main function of the responsibility in the forest relations, is significantly substantiated

Key words: *responsibility, violation, forest legislation, form of responsibility, general and special forms of responsibility*

The relevance of research. Legal responsibility is one of the main elements of legal support for environmental protection and rational use of natural resources. Currently, there is a pluralism of opinions on the definition of the concept, essence, content and forms of legal liability. The presence of scientific discussions on this subject also relates to liability for violation of environmental legislation including forests.

The application of measures of legal responsibility for violation of legal norms is the well-known statement in the theory of law. Violation of the norms of environmental legislation, causing harm to the environment, including forests, is also provided for the application of legal liability measures, which is associated with specific hardships and is accompanied by negative consequences for the perpetrator, including the oppression of his personal, property and other rights. Such measures have different forms, the understanding of which is especially important for liability for violation of forest legislation.

In practice, an error in choosing the form of liability in these respects may lead to the impossibility or only to partial restoration of the violated right or legitimate interest.

At the legislative level, the forms of responsibility are determined by the norms of many regulatory legal acts, and only a certain part of them is provided by the Forest Code of Ukraine (hereinafter – FCU). This state of legislation has a negative impact on ensuring the objectives of forest legislation.

The scientists such as A. P. Getman [1], O. A. Zayarny [2], L. I. Kalenichenko [3], V. V. Kostitsky [4, p. 32–331], O. E. Leist [5], Z. F. Tatkova [6] and others have studied the issues of definition, essence and content of legal responsibility including the correlation of its forms. At the same time, the questions of responsibility forms for violation of forest legislation remain debatable. The above indicated the relevance for the stated research topic.

The purpose of the article is to clarify the provisions on the liability forms for violation of forest legislation.

In order to achieve the goal there have been used general and special methods of reality cognition including dialectics, analysis and synthesis, observation, induction and deduction, generalization and legal interpretation.

Presenting the main material of the study. First of all, it is advisable to clarify the definition of the concept of the form of responsibility, since this issue is debatable. Exploring the concept of the responsibility form we can identify the general definition of “form”.

The Great Explanatory Dictionary of the Modern Ukrainian Language presents the “form” as outlines, contours, external boundaries of an object that determine its appearance. From a philosophical point of view, this category is considered as a way of existence of the content, its internal structure, organizational and external expression [7]. The similar interpretations are also stated in the Academic Explanatory Dictionary, a public electronic dictionary of the Ukrainian language [8, 9] and can be taken as a basis of this study.

To clarify the concept of the form of responsibility, it is advisable to refer to the concept of legal responsibility itself that has different approaches to the definition. The most acceptable classical understanding of the concept of responsibility is the approach according to which it is the legal duty of the offender to undergo the forced deprivation of certain values belonging to him or her. Consequently, legal responsibility is the obligation of a person to undergo cer-

tain deprivations of a state-imperious nature provided by the law for committing an offence [10, p. 167]. In this case, attention is focused on the subjective understanding of responsibility i.e., on the part of the offender, while the essence of responsibility lies in the suffering by the guilty person of the hardship provided by the law. Therefore, the external expression of such an enduring can be considered as a form of responsibility.

In the scientific literature, in particular civil and economic law, it has been talking about forms of legal liability which are defined as additional burdens (personal, proprietary or organizational) imposed on the offender [11, p. 370]. Thus, the form of civil liability is a way of expressing additional property encumbrances imposed on the offender. Civil law establishes different forms of liability including compensation for damage (Article 22 CCU), compensation for non-pecuniary damage (Article 23 CCU), payment of a penalty (Article 624 CCU), loss of a deposit (Article 571 CCU) and others.

A similar approach is presented in the scientific literature in terms of forms of economic and legal liability. Although there is no single approach to determining the number and types of forms of such liability and their relationship with sanctions. According to the analysis of art. 217 p. the Commercial Code of Ukraine (hereinafter – CCU) it follows that the forms of economic and legal liability can be consid-

ered as compensation for losses, payment of penalties, the application of operational and economic sanctions, and the application of administrative and economic sanctions that are defined by this article as economic sanctions.

V. K. Grischuk's position is close to the content. He believes that the form of negative (retrospective) criminal liability of a person is understood as a method of applying the norm (norms) of criminal law for a person who has committed a crime, provided by the current Criminal Code of Ukraine (hereinafter referred to as the CCU) [12].

The above approaches do not contradict the understanding of the form of responsibility as an external expression of the negative consequences suffered by the offender in accordance with the law.

In the study of forms of responsibility, it is advisable to consider the relationship between the concepts of forms and sanction of responsibility. Due to polysemantic nature of the Ukrainian language, the term "sanction" is used in different meanings which primarily depends on the scope of use. In general theory of law, a sanction is understood as a structural element of a rule of law that indicates the type and extent of possible legal liability for its violation. Some scholars view the sanction as coercion and adverse consequences for the violator of the rule of law. At the same time, the sanctions are characterized by the following features: it is an element of the rule of law, acts as a way

to protect the rule of conduct set forth in the disposition of the legal norm from its possible violations in order to prevent their commission, this is the indication of the adverse consequences that occur in the event of a violation of the rule of law, and applied by entities authorized to bring legal liability.

Based on the analysis of the concept of a sanction, as a measure of responsibility and the concept of a form of responsibility, as an external expression of suffering, the conclusion can be on the relationship between these dialectical categories as content (sanction) and form. These provisions form the basis of this study on the forms of responsibility for violation of forest legislation. Such liability is a rather complex legal institution based on the general principles of liability including violation of environmental legislation that is an important means of ensuring legality in the use of forests, forest resources and land.

In accordance with the FCU, liability for violation of forest legislation may be disciplinary, administrative-legal, civil-law or criminal legal (Article 105). Each type of liability has specific penalties, as well as, a special procedure for their application. Such types of liability have appropriate grounds (types of offence), a special implementation procedure and specific coercive measures. Despite fixing of four types of liability in the current legislation, scientists point to the existence of another type of liability, namely environ-

mental and legal, based on the continued discussions.

Taking into account the analysis of various points of view regarding the indicated types of responsibility and their forms for further research of the stated topic, it is advisable to take as a basis such understanding that the form of responsibility for violation of forest legislation is an external expression of negative additional suffering of a personal, proprietary or organizational nature by an individual or legal entity for committing offenses in the field of the use of forest, forest resources and land.

Forms of liability for violation of forest legislation should be divided into general and special. The general forms of liability for violation of such legislation include those that are inherent in several types of liability for the violations, although they are provided by the norms of different branches of law and differ in other features. Special forms of liability include the ones that are provided for a particular type of liability.

Having in mind the above division, the general forms of liability include collection of a fine (penalties), termination, modification or limitation of the relevant relationship. Special forms of liability for violation of forest legislation include compensation for damage (civil liability, economic liability), deprivation of liberty, restriction of liberty (criminal liability), application of operational and economic sanctions (economic and legal liability), confiscation of an object that has become an instru-

ment of committing or a direct object of an administrative offense (administrative-legal responsibility).

The most common general form of liability for violation of forest legislation is the collection of a fine (punitive sanctions). First of all, fines, as a form of liability, are provided by the norms of the Criminal Code of Ukraine and the Code of Administrative Offenses of Ukraine (hereinafter CAoOU). Thus, a fine in the amount of 1000 to 2000 UAH tax free with the minimum incomes of citizens is provided for illegal felling and damage to trees and shrubs (Article 246 of the CCU). In practice it is also pointed to the use of this form of responsibility. According to the verdict of the Slavutsk City District Court of the Khmelnytsky region in criminal case № 682/2090/19 on accepting an offer, promise or receiving an unlawful benefit by an official (Article 368 of the CCU), a fine in the amount of 1000 non-taxable minimum incomes was imposed on the guilty person, amounting to 17000 UAH [13].

The application of a fine of 30 to 900 tax-free minimum incomes of citizens for the same violation is provided in Art. 65 CAoOU. In addition, this form of responsibility is provided by eighteen more articles of the Code of Administrative Offenses (Art. 54, Art. 63–77, Art. 188⁵). Thus, according to the results of supervision (control) in the field of environmental protection, in particular on the use of forests, the State Environmental Inspectorate has fined in

the amount of 817,48 thousand UAH, out of which only 742,252 UAH have been collected for 9 months in 2020 in total in Ukraine [14].

The collection of fines as a form of liability is also provided by the Civil Code of Ukraine for non-fulfillment or improper fulfillment of contractual obligations. The procedure for the application is provided in Articles 549–552. In particular, a fine may be provided as a type of security for the fulfillment of obligations under contracts, including the use of forests, forest resources and land, by the individual violation.

Penalties for violation of forest legislation can be applied on the basis of article 230–234 of the Commercial Code for non-fulfillment or improper fulfillment of a business obligation. If the subjects of such an obligation are business entities. For example, penalties can be used to ensure the fulfillment of a contract for the long-term temporary use of forests for recreational use concluded between a forest enterprise and a limited liability company or other business entity.

Therefore, the conclusion can be made that such forms of liability when the application of a fine is inherent in those types of liability that are mostly used in violation of forest legislation.

The following general form of responsibility for violation of forest legislation, namely in termination, change or restriction of the relevant relations, can be divided into types due to the types of responsibility. The types of this liability

form are deprivation of the right to hold certain positions or engage in certain activities (criminal or administrative liability), termination or suspension of activities (economic and legal liability), and termination of the use of forests and forest resources (environmental and legal responsibility).

Deprivation of the right to occupy certain positions or engage in certain activities is provided by the Criminal code (Article 55) and is applied for an offense committed in the field of forest use as an additional punishment for a period of one to three years, The specified form or responsibility for violation of forest legislation is also provided by the Code of Administrative Offenses (Article 30) applied by the court for the period of six months to one year. The use of this form is possible without indicating it in the sanction of the relevant article of the Special Part of the Criminal Code or the Code of Administrative Offenses, if the court recognizes the impossibility of retaining the right of the offender to hold certain positions or engage in certain activities. This form of responsibility was applied in accordance with the verdict of the Slavutsk City District Court of the Khmelnytsky region in criminal case No. 682/2090/19 against a person guilt of a criminal offense under the first part of Article 368 of the Criminal Code which consists of the deprivation of the right to hold positions related to organizational, and administrative functions at state enterprises for a period of one year [13].

Termination or suspension of activities as a form of liability is provided in art. 238–239 of the Commercial Code of Ukraine which is applied among other things for violation of forest legislation. In this case, the application of such a form is possible on the basis of the second part of Art. 10 and part three of Art. 50 of the Law of Ukraine “On Environmental Protection” (hereinafter referred to as the Law), according to which the activities of individuals and legal entities that cause harm to the environment may be terminated by a court decision. In addition, the termination of the activities of forest users who were granted the right to use forest resources is provided by the FCU (Clause 3 of the first part or Article 78). Thus, according to the results of state supervision of the State Environmental Inspection of Ukraine, a temporary suspension of activities of forest enterprises was applied once in the Rivne region in 2019 and the Kharkiv region in 2020 [14, 15].

The following general form of liability for violation of forest legislation, such as termination of the contract, can be applied in accordance with Art. 651 CCU and Art. 188 CCU, according to which the contract may be terminated in the event of a material breach of the terms of the contract. The subject of which is the use of forests, forest resources and land which is decided by the court at the request of one of the parties. According to the decision of Commercial Court of the Cherkasy region, the contract for the long-term

temporary use of forests is subject to termination with the private enterprise Leader-2009 for improper performance of obligations [16].

Termination of the use of forests and forest resources as a form of liability is provided by forest legislation. Thus, the termination of the right to permanent forest use is provided for in the following cases: the use of forest resources in ways that are harmful to the environment, do not ensure the preservation of health-improving, protective and other useful properties of forests, negatively affect their condition and reproduction; use of a forest plot for other purpose that its intended (Article 22 FCU).

In addition, the termination of the right to use forest resources is provided in case of violation of the rules and regulations, the conditions of special permits for the use of forest resources; the use of forest resources in ways that adversely affect the state and reproduction of forests, lead to the deterioration of the natural environment; violation of the established deadlines for collecting fees for the use of forest resources; use of the forest plot for purposes other than its intended; non-compensation in accordance with the established procedure for damage caused to forestry due to violations of forest legislation, and failure to comply with requirements to eliminate identified shortcomings (Article 78 FCU).

The given general forms of liability for violation of forest legislation are the most common in practice when such violations are detected.

In addition to general forms, it is possible to use special forms of responsibility inherent in certain types of responsibility. First of all, compensation for damage is a special form of liability for violation of forest legislation. General provisions on compensation for damage are determined by the norms of the Civil Code of Ukraine (Article 1166), in the case when the violator of the forest legislation is an individual. Also, this form can be applied in accordance with Chapter 25 of the Commercial Code, when an enterprise is a violator of forest legislation. In addition, this form is provided by environmental legislation, including the Law (Article 69), FCU (Article 107). So, according to Art. 69 of the Law, damage caused as a result of violation of legislation on environmental protection is subject to compensation in full; according to Art. 107 FCU persons guilty of causing harm to forest are obliged to compensate for it in the manner prescribed by law. This form was applied in accordance with the decision of the Pere-myshlyansky District Court in the Lviv region in civil case №449/1295/19 to the guilty person in the form of recovery of damage caused by illegal logging in favor of the Bibrsky united territorial community in the amount of 5,002.48 UAH [17].

A feature of the application of this form is the calculation of damage on the basis of taxes, that is, conventional units for calculating harm. The tax is a predetermined amount of the penalty. The

specified is regulated by the Decree of the Cabinet of Ministers of Ukraine “On the approval of taxes for calculating the amount of damage caused to the forest” dated July 23, 2008 №665 [18]. According to the decision of the Commercial Court of the Transcarpathian region, the state enterprise the forest Volovets was charged with losses in the amount of 98,694.70 UAH for violation of forest legislation, calculated according to the indicated taxes [19].

The following special forms of responsibility for violation of forest legislation is imprisonment, provided for in Art. 246 of the Criminal Code for illegal felling or illegal transportation, storage, sale of timber. According to the verdict of the Drogobych city district court of the Lviv region, imprisonment of three years was applied to an official (forest master) for unauthorized felling of 175 trees [20].

Another special form of liability is the restriction of freedom, which is also provided in Art. 246 of the Criminal Code for illegal felling or illegal transportation, storage, sale of timber. The verdict of the Shatsky District Court of the Volyn region, a two-year restriction of freedom was applied to the offender for unauthorized illegal logging [21].

The application of operational and economic sanctions, as a special form of liability for violation of forest legislation, is provided by the norms of the Commercial Code of Ukraine (Articles 235–237), in the case, when one of the parties is a business entity. The applica-

tion of this form is possible in case of violation of the terms of reforestation and other requirements of forest management established by legislation in the field of protection, use and reproduction of forests, if such violations are provided by the contract. This form is used primarily extra judicially, however, in case of disagreement with the application of operational and economic sanctions, the interested party may apply to the court for the cancellation of such a sanction and compensation for losses caused by its application (part two of Article 237). For example, this form may be provided for by an agreement on the use of forest resources in the form of termination of the right to use these resources in the event of a systematic violation of the terms for making payments for such use.

Special forms of responsibility also include the confiscation of an object that has become an instrument for committing or a direct object of an administrative offense, which is provided for in Art. 29 CUoAO. This form can be used in case of carrying out activities related to the use of forests, forest resources and land, and consist in the forced transfer of this item to the state ownership by a court decision.

The above special forms of responsibility for violation of forest legislation can be applied both along with general ones, and separately or in combination with each other. Understanding the forms of responsibility, their content and differences is necessary for a more

complete implementation of the responsibility of its main function in forest relations, namely: the most complete restoration of the violated rights and legitimate interests of the owners and users of forests, forest resources and land.

Findings. As a result of the study, a definition of the concept of the form of responsibility for violation of forest legislation is proposed, which is understood as an external expression of the incurring of negative additional consequences of a personal, property or organizational nature by an individual or legal entity for committing offenses in the use of forests, forest resources and land.

It is proposed to divide the forms of responsibility for violation of forest legislation into general and special. The general forms of responsibility for violation of forest legislation include those that are inherent in several types of responsibility for these violations, although they are provided by the norms of different branches of law and differ in other features. Special forms of liability include those provided for a separate type of liability.

General and special forms of liability for violation of forest legislation are specified. It is proposed to refer to the general forms of such liability: collection of a fine (punitive sanctions); termination, change or restriction of relevant relations, among which are: deprivation of the right to hold certain positions or engage in certain activities; termination or suspension of activities;

termination of an agreement; termination of the use of forests, forest resources. It is proposed to refer to special forms of liability for violation of forest legislation: compensation for damage; deprivation of liberty, restriction of liberty; application of operational and economic sanctions; confiscation of an

item that has become an instrument of committing or a direct object of an administrative offense.

Further research into the issue of forms of liability for violation of forest legislation should be devoted to the content, grounds and procedure for the application of such forms of liability.

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