



**ENVIRONMENT
PEOPLE LAW**

The rule of law for the protection of the environment

WHAT KIND OF ENVIRONMENTAL DAMAGES CAN BE RECOVERED FROM THE RUSSIAN FEDERATION IN COURT

What directions does the term "damage to the environment" cover?



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For two years, Ukraine has been living in the regime of a full-scale war, which was started by the Russian Federation. We all sadly witness war-driven devastating damage to the Ukrainian environment and entire ecosystems that had been formed for hundreds and thousands of years, destruction of rare habitats and a variety of species of flora and fauna.

Since the armed aggression of the Russian Federation against Ukraine still continues, and the negative impact on the environment increases, the scope of the damage caused to Ukraine and, accordingly, to all citizens of Ukraine, is constantly increasing.

Today, it is very important to ensure the correctness of the procedure of calculating environmental damage assessment and collecting evidence, as this will define the evidence acceptance if a lawsuit is to be filed against the Russian Federation for the damage caused to the environment.

Before applying to the court with a claim for compensation of environmental damages, it is necessary to correctly determine what kind of damage can be recovered from the Russian Federation in court.

It is important to understand that according to the national legislation, the damage caused as a result of a violation of environmental protection legislation **is subject to full compensation** (Part 1 of Article 69 of the Law of Ukraine "On Protection of the Natural Environment").

At the same time, Part 2 of Article 69 of the Law of Ukraine "On Protection of the Natural Environment" defines that persons who have suffered such damage also have the right to compensation for **unearned profits** for the time necessary to restore quality of the environment, restore natural resources to a state suitable for intended use.

The possibility of full compensation for damage caused to the environment, defined by the current legislation, means that the person, due to whose illegal actions such damage was caused, **bears full responsibility** for his/her actions. Therefore, civil liability for violation of environmental legislation assumes that damage caused as a result of violation of environmental protection legislation is subject to compensation in full.

Importantly, the basis for the obligation to compensate for damage is such a legal fact as **property (material) and moral damage** to another person. The damage caused can be of a property nature or only moral, according to Clause C, Part 2 of Article 11 of the Civil Code of Ukraine.

The national legislation is not limited to the use of "**damage**" category only, which gives grounds to claim that there is no unified terminology for defining such negative consequences for the environment (property, non-property) that are borne by a party and that have legal significance. At the same time, it is important to distinguish between the categories of environmental "**damage**" and environmental "**damages**". However, at first glance, they may seem identical, especially since these two terms are usually used to determine the extent of the material responsibility of the Russian Federation for war crimes committed by it against the environment on the territory of Ukraine.

As for the category "damage", this concept is broader, as it includes material and non-material components. Whereas "damages" refers to material damage. Damages are always a valuable (monetary) expression of property damage caused by illegal actions of a certain person. Recovery of damages is one of the ways of recovering property damage.

Chapter 82 of the Civil Code of Ukraine deals with the issue of compensation for damage. According to Part 1 of Article 1166 of the Civil Code of Ukraine, **property damage** caused by wrongful decisions, actions or omissions regarding personal non-property rights of a natural or legal person, as well as damage caused to the property of a natural or legal person, shall be compensated in full by the person who caused it.

The civil legislation of Ukraine establishes the principle of presumption of guilt of the person who caused the damage, which should be understood in the following way: the absence of guilt is to be proved by the person who violated the obligation (Article 614 of the Civil Code of Ukraine).

In accordance with Part 3 of Article 12 of the Civil Code of Ukraine, each party must prove the circumstances that are relevant to the case and which it refers to as the basis of its claims or objections, except for the cases established by this Code.

The general conditions of liability for *damage* are the presence of such damage. Thus, at a court hearing of a case on recovery of environmental damage, it is important for the plaintiff to prove the presence and extent of the damage caused to the environment, to prove the illegality of the actions of the Russian Federation carried out by it on the territory of Ukraine and which caused damage to the environment. Taking into account the well-known facts of illegal actions of the aggressor country on the territory of Ukraine, which is proven by indisputable evidence, it will not be difficult at all.

As for **damages**, the current Civil Code of Ukraine contains a definition of the concept of damages, which forms the basis of the study of its content. Therefore, in accordance with Part 2 of Article 22 of the Civil Code of Ukraine, the following **should be considered damages**: 1) **losses** that a person suffered in connection with the destruction or damage of a thing, as well as expenses that a person made or must make to restore his/her violated right (**real damages**); 2) income that a person could actually have received under normal circumstances, if his/her right had not been violated (**lost benefit**).

After the beginning of the full-scale invasion of the Russian Federation and because of the need to develop a comprehensive approach to calculation of damage and losses in Ukraine, the Cabinet of Ministers of Ukraine adopted the Resolution dated March 20, 2022 No. 326 "On Approval of the Procedure for determining damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation" (hereinafter referred to as the Procedure).

According to paragraph 2 of the appendix to the Procedure, which is entitled General estimates of damages caused to property and property rights as a result of the armed aggression of the Russian Federation, the term "**damages**" is defined as the value of the lost, damaged and (or) destroyed property that has suffered a devastating impact as a result of hostilities, terrorist acts, sabotage, missile and bomb attacks during the armed aggression of the Russian Federation, as well as the amount of expenses necessary to restore the violated right (real damages); and/or the amount of income that the victim could have received in the absence of the armed aggression of the Russian Federation (lost benefit).

Thus, it was this specified legal act that fixed the term "damages" in the context of the armed aggression of the Russian Federation against Ukraine.

At the same time, Part 3 of Article 22 of the Civil Code of Ukraine defines the general rule of full compensation for damages, according to which damages are compensated in full, if a contract or a law does not provide for compensation in a smaller or larger amount.

As a rule, damages are not a sanction of a predetermined amount, their compensation is provided in case of any offense, unless otherwise provided by law. It should be understood that if damages are not compensated for in full, this will mean in a certain way the release of the violator from the obligation to compensate any of the component elements of damages listed in part 2 of Article 22 of the Civil Code of Ukraine, with a certain maximum amount or in other direct or indirect way.

It is worth paying attention to the provision of paragraph 2 of part 3 of Article 22 of the Civil Code of Ukraine, according to which the amount of damages may also include the amount of **lost profit**, which must be compensated to the person whose right has been violated.

As a result of the armed aggression of the Russian Federation against Ukraine, in some places even entire natural ecosystems were destroyed. This results in the loss of some ecosystem services, which include all the useful resources and benefits that humans can derive from nature.

Therefore, the damage caused to the environment should include the loss of ecosystem services, the assessment of which is carried out by methods of direct and indirect monetary assessment based on existing financial statistics and the market.

Based on the provisions of the current legislation of Ukraine, environmental damages should be understood as **expenses** incurred by the state in connection with damage to an environmental object, as well as expenses that the state must bear in order to restore the normal state of the environment that existed before the damage was caused; **revenues** that the state could realistically have received under normal circumstances, if no damage had been done to the environment, if of course such revenues were expected (for example: **loss of ecosystem services**); **compensation** in case a natural object cannot be restored, i.e. it is completely lost.

What directions does the term "damage to the environment" cover?

The armed aggression of the Russian Federation causes damage to the Ukrainian environment in various directions. In particular, constant missile attacks on Ukrainian territory cause devastating damage to land and water resources, atmospheric air, forest and steppe ecosystems, fauna, as well as nature conservation areas of national and international importance.

The military actions result in the destruction of industrial facilities - oil depots, plants, factories, warehouses, mines, infrastructure facilities such as water pipelines, gas pipelines, water purification stations, water supply stations; destruction of numerous buildings, which is accompanied with powerful fires, emissions of dangerous substances into the air, spills of fuel and lubricants, the entry of untreated sewage into rivers, which leads to pollution of water, atmosphere, soil and can cause numerous diseases and poisonings, as well as entry of carcinogenic substances into the body.

Fires not only cause harmful air emissions and atmospheric pollution, but also destroy the upper fertile soil layer and plant cover.

Not only terrestrial ecosystems are damaged, but also numerous rivers and lakes, as well as ecosystems of the Black and Azov seas. The explosions of projectiles that fall into water bodies cause death of biota and chemical pollution of water. Sunken military equipment causes water pollution with fuel and lubricants. Sewage from damaged oil depots and destroyed water treatment facilities enters the water bodies. Water from burned buildings, warehouses and factories flows with storm sewers. Also, products of human bodies decomposition from mass graves and individual corpses enter ground and surface water, which causes significant danger for people who consume this water, especially in the cities of Donetsk and Luhansk regions with little supply of drinking water, in particular the city of Mariupol. A decomposing body is a source of dangerous bacteria that can get into water bodies, can be spread by animals: birds, dogs, rats. The potential hazard is caused by gastroenteritis from contaminated water with which the body of the deceased was in contact, as well as those diseases from which the deceased suffered: hepatitis B and hepatitis C, HIV, intestinal

pathogens, tuberculosis, cholera, and others. If bacteria from a decomposing body enter an open wound or mucous membranes, through water into the human body, it can cause blood infection, inflammation and lead to serious consequences. After death, harmful bacteria, the corpse bacillus, are formed in the biological material. Therefore, you should not touch decomposing bodies without proper protection.

The Russian Federation is causing a significant negative impact on the environment, the consequences of which Ukrainians will be forced to observe for more than one decade, as they are of a long-term nature.

In the current criminal legislation of Ukraine, article 441 of the Criminal Code of Ukraine contains ecocide - mass destruction of plant or animal life, poisoning of the atmosphere or water resources, as well as committing other actions that can cause an ecological disaster. According to this article, law enforcement agencies opened and are conducting pre-trial investigations in criminal proceedings related to the armed aggression of the Russian Federation.

According to the current criminal legislation of Ukraine, if to be qualified by their immediate object, all crimes against the environment can be divided into:

1) crimes against environmental safety:

- Article 236 of the Criminal Code of Ukraine – violation of environmental safety rules;
- Article 237 of the Criminal Code of Ukraine - failure to take measures to eliminate the consequences of environmental pollution;
- Article 238 of the Criminal Code of Ukraine - concealment or distortion of information about the environmental condition or morbidity of the population;
- Article 253 of the Criminal Code of Ukraine – design or operation of structures without environmental protection systems.

2) crimes in the field of land use, subsoil protection, atmospheric air:

- Article 239 of the Criminal Code of Ukraine – pollution or damage to land;
- Article 239-1 of the Criminal Code of Ukraine – illegal acquisition of soil cover (surface layer) of lands;
- Article 239-2 of the Criminal Code of Ukraine - illegal acquisition of water fund lands in particularly large amounts;
- Article 240 of the Criminal Code of Ukraine - violation of the rules of subsoil protection or use;
- Article 241 of the Criminal Code of Ukraine - ambient air pollution;
- Article 254 of the Criminal Code of Ukraine - unmanaged land use.

3) crimes in the field of water resources protection:

- Article 242 of the Criminal Code of Ukraine – violation of water protection rules;
- Article 243 of the Criminal Code of Ukraine – sea pollution;
- Article 244 of the Criminal Code of Ukraine – violation of the legislation on the continental shelf of Ukraine.

4) crimes in the area of forest use, protection of flora and fauna:

- Article 245 of the Criminal Code of Ukraine - destruction or damage to plants;
- Article 246 of the Criminal Code of Ukraine - illegal forest logging.
- Article 247 of the Criminal Code of Ukraine – violation of plant protection legislation;
- Article 248 of the Criminal Code of Ukraine - illegal hunting;
- Article 249 of the Criminal Code of Ukraine - illegal fishing, hunting or mining;
- Article 250 of the Criminal Code of Ukraine – explosive works in violation of the rules for fish stocks protection;
- Article 251 of the Criminal Code of Ukraine – violation of veterinary regulations;
- Article 252 of the Criminal Code of Ukraine – intentional destruction or damage of territories protected by the state and objects of the nature reserve fund.

The criminal legislation of Ukraine defines relevant socially dangerous acts that encroach on the legally protected rights and freedoms of Ukrainian citizens in the field of environmental protection, and for committing which guilty person bear responsibility.

Accordingly, in the event that law enforcement agencies open criminal proceedings for committing a crime against the environment provided for by one of the above-mentioned articles of the Criminal Code of Ukraine, the victim will be able to exercise his/her right to recover material and non-material damages from the guilty person. This right can be exercised, in particular, by filing a civil lawsuit in court in the relevant criminal proceedings.

In addition to the Criminal Code of Ukraine, in accordance with paragraph 2 of the Resolution of the Cabinet of Ministers of Ukraine dated March 20, 2022 No. 326 "On approval of the Procedure for determining damage and damages caused to Ukraine as a result of the armed aggression of the Russian Federation" (hereinafter - the Procedure), the determination of damage and damages is carried out separately in the following directions, in particular, in the field of environmental protection:

- damage caused to land resources (subparagraph 9);
- subsoil losses (subparagraph 10);
- damage to water resources (subparagraph 11)
- damage to ambient air (subparagraph 12)
- forest fund losses (subparagraph 13)
- damages to nature reserve fund (subparagraph 14).

More details on each direction of determining damage and damages in the area of environmental protection will be discussed below.

Damage caused to land resources includes damage as a result of destruction of the fertile soil layer and damage caused by pollution and littering of land resources. In accordance with Part 1 of Article 18 of the Land Code of Ukraine, the lands of Ukraine include all lands within its territory, including islands and lands occupied by water bodies, which are divided into categories according to their main purpose.

As a result of the full-scale armed aggression of the Russian Federation, about 180,000 sq. m of the territory of Ukraine have been contaminated with explosive objects. That is, approximately 30% of the territory of Ukraine currently needs demining and cleaning¹. Explosive objects are unexploded shells, various types of mines, bombs and others. They pose a deadly threat to soldiers, civilians, and domestic and wild animals. In order to clear all territories, including roads, settlements, agricultural lands, forests, and steppe areas, it will take years of demining work.

Numerous missiles, bombs, projectiles of various types, mines and bullets also pose a threat to natural ecosystems. These objects carry not only a direct mortal threat, but also cause invisible chemical pollution of the environment. Hundreds of thousands of shell craters on the territory of Ukraine are potential sites of environmental contamination with heavy metals and other hazardous substances. Also, a very toxic substance is rocket fuel, which enters the environment in the event of a rocket falling without detonation. Phosphorous munitions are also particularly dangerous: they contain white phosphorus, a toxic substance. Soils contaminated with numerous fragments of projectiles - shrapnel also pose a threat to the environment and health of citizens.

Due to the passage of machinery, the soil is contaminated with fuel and lubricants, the soil is compacted, and vegetation is destroyed. At the sites of battles and detonation of heavy machinery, the ground cover and the environment are polluted with remnants of burned equipment, fuel and lubricants, and projectile fragments.

¹ <https://zn.ua/ukr/UKRAINE/direktor-krizovoho-bjuro-proon-ponad-180-tis-kv-mv-ukrajini-mozhut-buti-zaminovani-tsja-ploshcha-u-4-5-razi-perevishchuje-shvejtariju.html>

Due to military operations, big amounts of demolition waste have been formed. Destroyed buildings, bridges, and equipment require special disposal measures and landfills for storage. After all, the simple storage of these remains can become another source of contamination of ground, surface waters and soils. Burnt objects also contain a large amount of ash and unburnt remains of materials, which can be washed away by precipitation, as well as blown away by the wind in dry conditions. Some of the substances may evaporate and pose an additional danger for human health and life.

Some Ukrainian lands, where long-term and active hostilities took place, were most negatively affected. Russians used "scorched earth tactics" on them, which according to international law is a war crime. During such actions, there is destruction of all components of nature, physical and chemical pollution of territories, loss of valuable properties of ecosystems and natural resources.

Construction of fortifications (trenches, caponirs, etc.) with varying degrees of destruction of soil layers (submergence), movement of heavy military equipment, demining, munitions ruptures in the soil lead to changes in the soil structure and violation of the integrity of natural ecosystems. In the context of natural biogeocenoses, this is a direct impact, because as a result of removal of the top layer together with vegetation, damage is caused to the entire soil system and there is a negative impact on flora and fauna, representatives of which can be listed in the Red Book of Ukraine or be endemic species. Even after restoration of the soil cover, it will be extremely difficult to restore the destroyed areas back to a whole massif in the future. The above is especially relevant for shaly steppe biogeocenoses² (for example, Volga fescue-esparto steppe), where any kind of anthropogenic impact on plant resources leads to active development of other plants in disturbed areas, which can lead to displacement of rare species.

Damage to oil depots leads to pollution of the atmosphere with combustion products, contamination of ground cover and surface water due to spillage of oil products. Oil depots in most regions of Ukraine were damaged by the actions of the enemy.

Subsoil losses include those caused by their arbitrary use. Part 1 of Article 5 of the Subsoil Code of Ukraine defines that the state subsoil fund includes both subsoil areas that are used and subsoil areas that are not used, including the continental shelf and the exclusive (marine) economic zone.

Damage caused to water resources includes pollution, littering, depletion and other actions on water resources that can worsen the conditions of water supply, cause harm to human health, cause a decrease in fish stocks and other objects of fishing industry, deterioration of living conditions of wild animals, reduction of soil fertility and other adverse phenomena as a result of changes in the physical and chemical properties of waters, a decrease in their ability to natural purification, disruption of hydrological and hydrogeological water regimes.

In accordance with Part 2 of Article 3 of the Water Code of Ukraine, the water fund of Ukraine includes: 1) **surface waters**: natural reservoirs (lakes); watercourses (rivers, streams); artificial reservoirs (reservoirs, ponds) and canals, except canals on irrigation and drainage systems; other water bodies; 2) **underground waters and springs**; 3) internal sea waters and territorial sea.

Contaminated effluents due to the destruction of treatment facilities, oil products, and substances formed as a result of damage to industrial facilities enter the surface and ground waters. The sources of pollution are also burial grounds where killed by the war farm animals and poultry as well as livestock products from warehouses are buried without observing security conditions. Due to the damage to and destruction of dams on water reservoirs, their shallowing occurs leading to the death of numerous hydrobionts.

Water bodies of Ukraine - lakes, rivers and seas - are being contaminated with explosive objects, which will require special demining measures. Due to explosions in water areas, chemical pollution of waters with explosive substances occurs. Also, contamination with toxic substances occurs due

² This refers to the south-east of Ukraine, in particular the Azov region, where active hostilities were/are being conducted.

to chemicals being washed away from damaged areas and through their migration in groundwater. Such an impact is gradual and long-term, depends on many factors: composition of the soil and rocks, their adsorption capacity, microbiological activity and the share of permanent plant cover.

The damage caused to water resources should be attributed to the blockade of seaports, loss of fisheries and aquaculture.

Due to military actions, people's access to water resources was significantly limited. According to the UN Office for the Coordination of Humanitarian Affairs, for the period from April to December 2022, the number of people without access to quality water increased from 6 to 16 million people.³

As a result of the military actions, wetlands of international importance, located on the coast of the Black and Azov seas, are adversely affected.

In the Black Sea, there are cases of dolphin stranding and an increase in the frequency of their getting caught in fishing nets, which can be caused by the presence of military boats with powerful acoustic devices in the sea, as well as due to explosions. Marine mammals may be at risk of direct damage and destruction from explosions and gunshots, acoustic trauma that will gradually lead to starvation or spatial disorientation and stranding, fatal acoustic trauma. Ukrainian scientists are conducting research, collected tissue samples from dead dolphins. They will be sent for an examination abroad, which will help to explain the cause of death in more detail.

Damage caused to ambient air includes damage caused by emissions of pollutants into the atmosphere. During the war, polluting substances enter the atmospheric air in connection with the detonation of ammunition, missile attacks, fires, including forest fires, and accidents at industrial facilities.

The air is polluted due to emissions of harmful substances during fires and explosions. As a result of shelling on the territory of Ukraine, there were numerous fires at oil depots and other objects of industry and infrastructure, which, according to the results of EPL research, causes emissions into the atmosphere of such dangerous substances as nitrogen oxides, ammonia, sulfuric anhydride, benzopyrene, carbon oxides, metals and their compounds. During explosions, sulfur gas, carbon monoxide, and nitrogen oxides are released into the air. They are toxic to the human body and can cause various consequences, from coughing to severe poisoning.

Ambient air in Ukraine was polluted as a result of the operation of electric generators. Due to missile attacks and damage to energy infrastructure facilities, which occurred in the fall of 2022 and winter of 2023, diesel and gasoline generators were massively used in all regions of Ukraine. During the operation of electric generators, of which almost 670,000 were brought to Ukraine in 2022, there were emissions into the air of harmful substances (carbon monoxide, carbon monoxide, soot, nitrogen oxides and fine dust).

Damage to forest fund includes loss and destruction of forests, forest areas and related costs. In accordance to part 1 of article 4 of the Forest Code of Ukraine, the forest fund of Ukraine includes all forests on the territory of Ukraine, regardless of the land categories in which they grow according to the main purpose, and regardless of the ownership of them, including forest plots, protective plantings of linear type with an area of at least 0.1 hectare, other wooded land.

Throughout the full-scale invasion, Ukrainian forests and forested areas have been subject to constant missile strikes, resulting in fires that destroy entire ecosystems that will take decades to recover. The losses of the forest fund should also include illegal deforestation, which is carried out by the Russian military and local population in the occupied territories. Also, the loss of forests is caused by construction of fortification structures, which lower the level of groundwater, which over time can lead to massive drying of forests near such fortifications.

³ <https://reports.unocha.org/en/country/ukraine/card/50cUU0yjd2/>

Damages caused to the nature reserve fund of Ukraine include damages caused to the territories and objects of the nature reserve fund and related expenses. In accordance with Part 1 of Article 3 of the Law of Ukraine "On the Nature Reserve Fund of Ukraine", the Nature Reserve Fund of Ukraine includes:

- natural territories and objects: natural reserves, biosphere reserves, national natural parks, regional landscape parks, sanctuaries, natural monuments, protected tracts;
- artificially created objects: botanical gardens, dendrological parks, zoological parks, natural monuments, parks-monuments of horticultural art.

Nature conservation territories of international and national significance, nature reserves, national natural parks, territories of the Emerald Network, international wetlands, places important for bird migration and nesting, unique corners of wild nature still remain under occupation and under the influence of military actions. However, this does not stop the enemy on the way to their destruction, theft, capture of employees, abduction and sale of collections, removal of animals, hunting, theft of equipment, prohibition of fire extinguishing, use of protected areas as military training grounds.

As of September 2022, the Russian military occupied 8 Ukrainian nature reserves and 12 national natural parks. As of May 2023, 8 nature reserves and 10 national natural parks remain under occupation. These include: the Black Sea Biosphere Reserve (on the territory and water area of Kherson and Mykolaiv regions), Biosphere Reserve "Askania-Nova", National Nature Parks Azov-Syvaskyi, "Oleshkivski Pisky", Dzharylgatskyi (Kherson region), "Veliky Luh" and Pryazovskiyi (Zaporizhzhia region), "Biloberezhya Svyatoslav" (Mykolaiv region), "Meotyda" (Donetsk region), "Kreminski Lisy" (Luhansk region) and "Charivna Havan" (AR Crimea)⁴.

In the liberated territories of the nature reserve fund, there are numerous areas affected by fires, shelling and bombings, ruptures from explosions. There are also burnt equipment, fortifications and debris, destroyed research departments, offices and technical supplies of national parks.

It is worth highlighting the harmful impact of military actions on the animal world. Thousands of wild animals die from fires caused by shelling of forests and steppes, die from explosions during battles or as a result of contamination of the territory with explosive objects - unexploded shells, mines, streamers. Destruction is caused to animal habitats. Animals are injured, undergo stress, their living conditions, reproduction and migration are violated. These state of wild animal populations in Ukraine require detailed study and monitoring.

Of course, the real damage caused to the Ukrainian environment as a result of the armed aggression of the Russian Federation will be calculated only after liberation of all territories illegally seized by the Russian Federation. The extent of such damage will be much greater than is recorded now. After the end of the war, the Ukrainian environment will need a long-term restoration to its natural state. However, it is already necessary to develop appropriate mechanisms for calculating the damage caused, which will become the basis for formation of an evidentiary base in future court proceedings on compensation for damage caused to the Ukrainian environment by Russian aggression.

⁴ <https://armyinform.com.ua/2023/03/26/ekologichnyj-teroryzm-rf-v-ukrayini-zbytky-za-danymy-derzhkoinspekcyiy/>