

UDC 347.235

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Romaniuk, Myroslav (2023). Specific features of establishing the type and amount of damage in criminal offences related to illegal land acquisition. *Entrepreneurship, Economy and Law*, 6, 5–9, doi <https://doi.org/10.32849/2663-5313/2023.6.01>

## SPECIFIC FEATURES OF ESTABLISHING THE TYPE AND AMOUNT OF DAMAGE IN CRIMINAL OFFENCES RELATED TO ILLEGAL LAND ACQUISITION

**Abstract. Purpose.** The purpose of the article is to study the amount of damage caused by criminal offences related to illegal land acquisition, which requires a comprehensive and systematic study of a wide range of issues, and develop reasoned proposals and recommendations for reducing the amount of damage.

**Results.** The article focuses on establishing the type and amount of damage caused by a criminal offence related to illegal land acquisition. The author emphasises that land has a special value which distinguishes it from any material object. It is limited in space and is the basis for the deployment of productive forces. In the course of various political changes, land has been a central object – it was taken away and given away, redistributed and granted. The fundamental task of land reform is to radically change the attitude towards land as the main national wealth. In the context of the transformation of land relations, which has led to an increase in the number of land owners and land users, a trend towards a rapid increase in the number of offences in the field of land relations has emerged, and the issue of effective state control over the use and protection of land is becoming increasingly important. **Conclusions.** It is established that criminal offences in criminal proceedings related to illegal land acquisition on the basis of the object of encroachment are grouped as follows: those which violate the right of actual use without obtaining the official status of a land plot owner; criminal offences aimed at the illegal acquisition of legal rights to land; environmental criminal offences aimed at illegal land acquisition. It is emphasized that the establishment of the nature of the damage in the course of proving in criminal proceedings related to the illegal land acquisition is individual in scope. The negative consequences of offences related to illegal land acquisition are of a tangible and intangible nature. When establishing the amount of damage caused by criminal offences in criminal proceedings related to the illegal land acquisition, it is necessary to consider the nature of the damage. Depending on the latter, the method of establishing the amount of damage is determined. The method of establishing the amount of damage is differentiated depending on the criminal offence committed.

**Key words:** damage, criminal offence, illegal acquisition, land, ecology, land relations, environment.

### 1. Introduction.

It should be noted that the problems of establishing the type and amount of damage caused by a criminal offence related to illegal land acquisition have not been specifically studied, and the scientific works known today have studied these issues in a fragmentary manner or within the framework of broader issues. No comprehensive approach has been developed to clarify this issue, which leads to an objective need for scientific research in this area.

Therefore, the need to study the amount of damage caused by criminal offences related to illegal land acquisition requires a compre-

hensive and systematic study of a wide range of issues, and to develop reasoned proposals and recommendations for reducing the amount of damage and this determines the relevance of the topic, its theoretical and practical significance.

In the theory of criminal procedure, a number of theorists have focused on the issues of establishing the nature and extent of damage caused by a criminal offence in proceedings related to illegal land acquisition, in particular: A.P. Bohdanov, I.A. Horodetska, O.O. Dudorov, Y.O. Diakin, V.M. Kozhurina, O.S. Litoshenko, R.O. Movchan, H.V. Muliar, V.O. Oderii,

O.S. Khovpun, Yu.Ya. Chumak, A.M. Shulha, H.P. Shust, and others.

It should be noted that the focus of these scholars' research was mostly on material damage caused by unauthorised land acquisition, and the procedure for determining the nature and type of damage remains controversial to this day. To date, the nature of damage and the procedure for its establishment have not been defined at the theoretical level. This causes difficulties for practitioners in proving criminal offences related to the illegal acquisition of land plots.

## **2. Classification of criminal offences related to illegal land acquisition**

According to the Constitution of Ukraine, Article 14 states that land is the main national asset under special protection of the State. This approach is a historical result of recognising the role and place of land resources in the economic development of any State (Constitution of Ukraine, 1996).

In particular, the idea of land as a territory of residence with certain natural resources has changed significantly in modern society. In the life of any society, land is of utmost importance, as it is a natural resource, an object of labour, a means of production, an element of market relations, and performs a number of other functions. If we consider land as a natural object protected by law and a resource that exists independently of human will, it has social value and performs an environmental and resource function; a social function as a place of human life; political and economic functions as a territory of the State, as well as an object of economic activity and an element of market relations.

The analysis of the state of affairs in national legislation enables to study the structure of criminal offences entailing criminal liability for illegal land acquisition and to propose their hierarchical classification based on the subject matter of the encroachment (Horodetska, 2010, pp. 135-137).

As a result of this hierarchical classification, criminal offences related to the illegal acquisition of land can be grouped as follows: those that violate the right of actual use without obtaining the official status of land owner; those aimed at the illegal acquisition of legal rights to land; and environmental criminal offences aimed at the illegal acquisition of land.

The first group of criminal offences that violate the right of actual use without obtaining the official status of a land plot owner includes an unauthorised land grab and unauthorised construction (Article 197-1 of the Criminal Code of Ukraine) and arbitrariness (Article 356 of the Criminal Code of Ukraine). The specificity of such criminal offences is that the object

of encroachment is the land plot itself, not the rights to it. The subject matter of proving is the fact of land acquisition, determination of its area (Horodetska, 2010, pp. 139-140; Criminal Code of Ukraine: Law of Ukraine, 2001).

The second group consists of criminal offences aimed at the illegal obtaining of legal rights to land. This group includes fraud, abuse of power or official position, abuse of authority by persons providing public services, forgery of documents, seals, stamps and forms, their sale, use of forged documents, and official forgery. The specific feature of this group of criminal proceedings is that they involve the illegal transfer of legal rights to a land plot.

The third group includes environmental criminal offences aimed at the illegal land acquisition. These include illegal seizure of soil cover and illegal acquisition of water fund lands on a particularly large scale. This group is characterised by actions aimed at seizing soil cover or water resources without a specialised permit. The object of encroachment is the soil cover (Muliar, Khovpun, Shust, 2019, pp. 269-270).

Establishing the nature and amount of damage caused by a criminal offence related to the illegal land acquisition is one of the most difficult issues in the investigation of criminal proceedings, since the proof of certain elements of a criminal offence depends on the correct determination of the amount of material damage.

With regard to the nature of the damage caused by criminal offences related to the illegal land acquisition, it should be noted that it can be quantitative and qualitative. The quantitative measure of damage means the scale, size of the violation of rights or interests protected by law. On the other hand, the qualitative aspect of such harm determines the seriousness of the consequences for individuals, State or public interests, or the interests of legal entities (Bohdanov, 2020, pp. 128-129).

Ya.O. Diakin divides damage into tangible damage, which is reflected in monetary terms, and intangible damage, which relates to the victim's internal sphere and encroaches on intangible goods that belong to a person by birth or by virtue of law or violates his or her personal non-property rights. The specificity of intangible damage is that it does not have a mathematical system of measurement, and therefore the question of its materiality is decided by law enforcement agencies in each case based on an analysis of all the circumstances established in the criminal proceedings. It can be of an organisational or environmental nature. Organisational damage includes disruption of the activities of a separate part of the State or public apparatus, the work of a particular enterprise, institution or organisation, sus-

pension of production processes, and creation of significant obstacles to their work. Environmental damage may include significant environmental pollution, massive loss of flora and fauna (Diakin, 2019, pp. 211-212).

According to R.O. Movchan, the damage caused to the owner of a land plot or land user may include the components such as the use of land plots for other purposes than their intended purpose; removal of soil cover without special permission; losses associated with the destruction or damage to green spaces or destruction of buildings or structures located on an unauthorisedly occupied land plot; expenses that a person must incur to restore his or her violated right to a land plot or the quality of the land plot as an object of ownership or use (Movchan, 2020, pp. 162-163).

Environmental criminal offences aimed at the illegal land acquisition result in tangible and intangible damage. As an example of intangible damage in the form of creating a danger to human life, health or the environment, this is the illegal seizure of soil cover.

Material damage in the course of committing the illegal seizure of soil cover may result in the death of people, mass death of flora or fauna, or other grave consequences. Other grave consequences should be understood as causing damage characterised by increased danger to all living things, destruction or significant damage to extensive natural areas (protected tracts, forest areas, etc.), loss of unique and rare natural objects listed in the Red Data Book of Ukraine, mass deaths of people, mass deaths of animals over a large area, etc. The analysis of law application practice shows that damage in the form of death of people, mass death of flora or fauna is not inherent in this type of criminal offence (Shulha, 2023, pp. 35-36).

### **3. Specific features of establishing the amount of damage caused by criminal offences related to the illegal land acquisition**

Establishing the amount of damage caused by criminal offences aimed at illegal acquisition of legal rights to land has its own specifics, which is due to the fact that the amount of damage is a qualifying feature rather than a element of the objective side of the criminal offence. During the investigation of land fraud, material damage is of secondary importance. Intent is of primary importance. The absence of intent to commit fraudulent acts with a land plot is grounds for an acquittal. The amount of damage caused is a qualifying feature.

Establishing the amount of damage caused by fraud committed with land plots does not require additional expertise. As a rule, in the case of a criminal offence of this category, the funds that are the subject of the offence are transferred

to the suspect, accused or victim against a receipt written by the person who received such funds. Therefore, the amount of damage will be equivalent to the amount specified in the receipt. It is confirmed by the testimony of victims and witnesses. The receipt is attached to the criminal proceedings (Diakin, 2019, pp. 196-198).

In this respect, the amount of damage in criminal proceedings related to abuse of power or official position, as well as abuse of authority by persons providing public services committed with the aim of illegal acquisition of land, is determined on the basis of the monetary value of the land plot. The results of the monetary valuation of the land plot that was the subject of the criminal offence are contained in the technical documentation of the land plot and are used as a basis for establishing the amount of damage. In order to determine the compliance of the completed valuation of a land plot or rights to it with the requirements of regulations on property valuation, methodology, methods, valuation procedures, a land valuation examination is carried out, which is evidence of material damage (Movchan, Dudorov, 2020, pp. 125-126).

It should be noted that in the absence of complete information necessary to establish the value of a land plot, it is possible to conduct a land technical expertise, which is carried out by comparing similar offers of land plots as of the year in which the criminal offence was committed and determining the likely market value of the land plot and its legal status. This practice is quite controversial, but it does take place.

Therefore, the amount of damage caused by criminal offences aimed at the illegal acquisition of legal rights to land is determined on the basis of attaching to the criminal proceedings: receipts or other supporting documents on the transfer of funds; results of monetary valuation of the land plot; conclusion of land valuation and appraisal (Oderii, 2015, pp. 224-226).

The amount of pecuniary and non-pecuniary damage in the course of investigation of environmental criminal offences aimed at illegal land acquisition is determined by conducting unscheduled inspections, construction and technical expertise, which allows to establish the amount of extracted mixture from the land plot and the amount of damage caused. The amount of tangible and intangible damage in the investigation of environmental criminal offences aimed at illegal land acquisition is determined by conducting unscheduled inspections, construction and technical expertise, enabling the volume of the extracted mixture from the land plot and the amount of damage caused to be determined. A problematic issue that arises when establishing the amount of damage caused by a criminal offence in proceedings related to

illegal land acquisition is the absence of a procedure for unscheduled inspections in the CPC of Ukraine (Shulha, 2022, pp. 169-170).

#### 4. Conclusions

A danger to human life is the creation of a real possibility of the death of at least one person. Health hazard is the impact of environmental factors that pose a real threat to health, lead to disability or even pose a real threat to the life and health of future generations. Environmental hazard is the threat of the following consequences: death of animals, plants, forest plantations; land degradation; reduction of land cover, which affects the supply of agricultural products to the population; climate change and other changes in the biological, chemical and physical composition of the soil, etc.

It is established that criminal offences in criminal proceedings related to illegal land acquisition on the basis of the object of encroachment are grouped as follows: those which violate the right of actual use without obtaining the official status of a land plot owner; criminal offences aimed at the illegal acquisition of legal rights to land; environmental criminal offences aimed at illegal land acquisition.

Thus, the establishment of the nature of the damage in the course of proving in criminal proceedings related to the illegal land acquisition is individual in scope. The negative consequences of offences related to illegal land acquisition are of a tangible and intangible nature. When establishing the amount of damage caused by criminal offences in criminal proceedings related to the illegal land acquisition, it is necessary to consider the nature of the damage. Depending on the latter, the method of establishing the amount of damage is determined. The method of establishing the amount of damage is differentiated depending on the criminal offence committed.

When revealing the content of socially dangerous consequences of unauthorised acquisition of a land plot, it is necessary to consider the rules under which current legislation provides for the procedure for determining the amount of damage for unauthorised acquisition of a land plot.

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## ОСОБЛИВОСТІ ВСТАНОВЛЕННЯ ВИДУ І РОЗМІРУ ШКОДИ У КРИМІНАЛЬНИХ ПРАВОПОРУШЕННЯХ, ПОВ'ЯЗАНИХ ІЗ НЕЗАКОННИМ ЗАВОЛОДІННЯМ ЗЕМЛЕЮ

**Анотація.** *Метою* статті є дослідження розміру шкоди завданими кримінальними правопорушеннями, пов'язаним із незаконним заволодінням землею потребує комплексного і системного дослідження широкого кола питань, розробки аргументованих пропозицій та рекомендацій щодо зменшення розміру шкоди. *Результати.* У статті наголошується на встановленні виду і розміру шкоди, завданої кримінальним правопорушенням, пов'язаним із незаконним заволодінням землею. Наголошено, що земля має особливу цінність, що відрізняє її від будь-якого матеріального об'єкта. Вона обмежена в просторі і є базисом для розміщення продуктивних сил. Упродовж різноманітних політичних змін земля виступала центральним об'єктом – її відбирали та дарували, перерозподіляли і наділяли. Фундаментальним завданням земельної реформи є радикальна зміна ставлення до землі як основного національного багатства. В умовах трансформації земельних відносин, що призвели до збільшення кількості власників землі та землекористувачів, намітилася тенденція до стрімкого зростання кількості правопорушень у галузі земельних відносин, тому особливої уваги набуває питання ефективного здійснення державного контролю за використанням та охороною земель. *Висновки.* З'ясовано, що кримінальні правопорушення у кримінальних провадженнях, пов'язаних із незаконним заволодінням землею за ознакою предмету посягання, поділяються на три групи, а саме: ті, які порушують право фактичного користування без одержання офіційного статусу власника земельної ділянки; кримінальні правопорушення, метою яких є незаконне набуття юридичних прав на землю; кримінальні правопорушення екологічної спрямованості, метою яких є незаконне заволодіння землею. Наголошено, що встановлення характеру шкоди під час доказування у кримінальних провадженнях, пов'язаних із незаконним заволодінням землею, носить індивідуальний характер. Негативні наслідки від правопорушень, пов'язаних із незаконним заволодінням землею, носять матеріальний та нематеріальний характер шкоди. При встановленні розміру шкоди, заподіяної кримінальними правопорушеннями, у кримінальних провадженнях, пов'язаних із незаконним заволодінням землею, необхідно враховувати характер шкоди.

**Ключові слова:** шкода, кримінальне правопорушення, незаконне заволодіння, земля, екологія, земельні відносини, довкілля.

*The article was submitted 17.10.2023*

*The article was revised 08.11.2023*

*The article was accepted 28.11.2023*