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Protected Areas of Rare Species of Birds' Breeding Ground: Peculiarities of Legal Regulation in Ukraine

*Strefy ochronne wokół miejsc gniazdowania rzadkich gatunków
ptaków – osobliwości regulacji prawnej na Ukrainie*

An important habitat for wild birds and a prerequisite for their reproduction are their breeding grounds, which should be protected. Much of these places, among other things, are found on trees. Therefore, felling of trees along with other ways of destroying birds' places of nesting, leads to the destruction of the natural habitats of birds and is one of the reasons for reducing their abundance. According to the author, the idea of creating special zones for the protection of wild birds may become one of the effective mechanisms for their conservation in Ukraine, especially in those cases where the legislation in certain areas permits activities that lead to the destruction of wild birds' habitats. This is due to the fact that their breeding grounds may be outside the protected areas (nature reserves, national parks, etc.), where, under the rules of the reserve, felling of trees and some other human activities are prohibited or in those parts (zones) of protected

areas where not all types of felling of trees or other activities are prohibited, which leads to the destruction of birds' breeding grounds. Therefore, the establishment of preservation areas around birds' breeding grounds with the appropriate legal regime can solve this problem, especially since this mechanism may be a more rapid way to protect the natural habitat of birds compared with the creation of traditional conservation areas or other preserved areas.

In accordance with the provisions of Annex XXX, Chapter 6 "Environment" of Section V "Economic and Industrial Cooperation" of the Association Agreement between Ukraine and the European Union¹ (regarding Section V of the Agreement, dated 27 June 2014, ratified by the Law of Ukraine of 16 September 2014, No. 1678-VII with a statement², entered into force as of 1 September 2017³), Ukraine has undertaken to comply with the requirements of the Directive No. 2009/147/EU on the conservation of wild birds⁴ in the part "definition and designation of special conservation zones for different species of birds" (Art. 4.1 of the Directive) within four years from the date of entry into force of this Agreement (that is, before 1 September 2021).

The provisions of the Directive No. 2009/147/EU on "the definition and designation of special conservation zones for different species of birds" in the legal regulation intersect with a number of other EU directives, as well as international treaties to which Ukraine is a party, in particular:

- Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora⁵;
- Convention on Biological Diversity (Rio de Janeiro, 1992)⁶, ratified by the Law of Ukraine of 29 November 1994, No. 257/94-VR⁷;

¹ The Association Agreement between Ukraine, on the one part, and the European Union, the European Atomic Energy Community and their Member States, on the other part (in part V, dated June 27, 2014), http://zakon2.rada.gov.ua/laws/show/984_011 [access: 7.11.2018].

² The Law of Ukraine No. 1678-VII of 16 September 2014 "On the ratification of the association agreement between Ukraine, on the one part, and the European Union, the European Atomic Energy Community and their Member States, on the other part", Verkhovna Rada State Paper, 2014, No. 40, p. 2021.

³ Letter of the Ministry of Foreign Affairs of Ukraine of July 20, 2017, No. 72/14-612/1-1713, <http://zakon.rada.gov.ua/rada/show/v1713321-17> [access: 7.11.2018].

⁴ Directive of the European Parliament and the Council 2009/147/EU of November 30, 2009 on the conservation of wild birds (as amended and supplemented by the Council Directive 2013/17/EC of May 13, 2013), http://zakon.rada.gov.ua/laws/show/984_001-09 [access: 7.11.2018].

⁵ Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0043> [access: 7.11.2018].

⁶ Convention on Biological Diversity (Rio de Janeiro, 1992), http://zakon.rada.gov.ua/laws/show/995_030?find=1&text=%F1%E5%F0%E5%E4%EE%E2%E8%F9#w110 [access: 7.11.2018].

⁷ The Law of Ukraine of November 29, 1994, No. 257/94-VR "On ratification of the Convention on Biological Diversity", Verkhovna Rada State Paper, 1994, No. 49, p. 433.

– Convention on the Conservation of European Wildlife and Natural Habitats (Bern, 1979)⁸, which Ukraine joined with reservations under the Law of Ukraine of 29 October 1996, No. 436/96-VR⁹;

– Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 1979, with amendments)¹⁰, which Ukraine joined under the Law of Ukraine of 19 March 1999, No. 535-XIV¹¹;

– Agreement on the Conservation of African-Eurasian Migratory Waterbirds (The Hague, 1995)¹², ratified by the Law of Ukraine of 4 July 2002, No. 62-IV¹³;

– Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 1971, with amendments)¹⁴, concerning the participation in the Convention, Ukraine has been recognized as the successor to the Union of Soviet Socialist Republics under the Law of Ukraine of 29 October 1996, No. 437/96-VR¹⁵.

Currently, at the national level, in the Fundamental Law of Ukraine – the Constitution, as well as other laws of Ukraine legal requirements, which can be called legal preconditions and grounds for “definition and designation of special conservation zones for different species of birds” are established only at the level of general norms.

In particular, in accordance with Art. 16 of the Constitution of Ukraine (1996)¹⁶ it is proclaimed that ensuring environmental safety, maintaining ecological balance in the territory of Ukraine shall be the duty of the State; and according to

⁸ Convention on the Conservation of European Wildlife and Natural Habitats, http://zakon.rada.gov.ua/laws/show/995_032 [access: 7.11.2018].

⁹ The Law of Ukraine of October 29, 1996, No. 436/96-VR “On the accession of Ukraine to the 1979 Convention for the Protection of Wildlife and Natural Habitats in Europe”, Verkhovna Rada State Paper, 1996, No. 50, p. 278.

¹⁰ Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 1979, with amendments), http://zakon.rada.gov.ua/laws/show/995_136 [access: 7.11.2018].

¹¹ The Law of Ukraine of 19 March, 1999, No. 535-XIV “On the accession of Ukraine to the Convention on the Conservation of Migratory Species of Wild Animals”, Verkhovna Rada State Paper, 1999, No. 18, p. 154.

¹² Agreement on the Conservation of African-Eurasian Migratory Waterbirds (The Hague, 1995), http://zakon.rada.gov.ua/laws/show/995_934 [access: 7.11.2018].

¹³ The Law of Ukraine of 4 July, 2002, No. 62-IV “On the ratification of Agreement on the Conservation of African-Eurasian Migratory Waterbirds”, Verkhovna Rada State Paper, 2002, No. 36, p. 268.

¹⁴ Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 1971, with amendments), http://zakon.rada.gov.ua/laws/show/995_031 [access: 7.11.2018].

¹⁵ The Law of Ukraine of 29 October 1996, No. 437/96-VR “On the participation of Ukraine in the Convention on Wetlands of International Importance especially as Waterfowl Habitat”, Verkhovna Rada State Paper, 1996, No. 50, p. 279.

¹⁶ Constitution of Ukraine of 28 June 1996, No. 254к/96-VR (with amendments), <http://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80> [access: 7.11.2018].

Art. 66 it is stipulated that everyone shall be obliged not to harm nature and to compensate for any damage he/she inflicted.

In accordance with the main strategic document in the field of state environmental policy – the Main Principles (Strategy) of the National Environmental Policy of Ukraine for the Period up to 2020, it is recognized that “the main threat to biodiversity [including birds – G.L.] are human activities and the destruction of the natural habitats of flora and fauna” [including nests, lekking grounds, places around them – G.L.]. According to the Strategy, “the destruction of the environment occurs as a result of plowing of the land, deforestation with subsequent change of the purpose of land use, drainage or flooding of territories, industrial, residential and suburban construction, etc.”¹⁷.

According to Art. 3 of the Fundamental Law of Ukraine “On Environmental Protection” (1991)¹⁸, one of the main principles of environmental protection is the preservation of the spatial and species diversity and integrity of natural objects and complexes (item “d” Part 1). At the same time, according to the relevant law, it is established that not only the territories and objects of the nature reserve fund of Ukraine, but also other territories and objects, determined in accordance with the legislation of Ukraine (Art. 5 (2)), are subject to special state protection.

The Law of Ukraine “On the Fauna” (2001)¹⁹ is the special national law on wild fauna, including wild birds, which proclaimed that the conservation and improvement of the wildlife habitat is one of the objectives of the Ukrainian legislation on protection, use and reproduction of fauna (paragraph 2 part 1 of Art. 2). The Law recognizes that not only the objects of fauna [including birds, their eggs, etc. – G.L.] are subject to protection, but also the dwellings and structures of these animals, their locations of lekking, nesting colonies of birds, other territories that are their habitats and ways of migration (part 2 of Art. 3; paragraphs 4, 2 of part 1 of Art. 37). There is also a legislative ban not only on the destruction of animals, but also the destruction of their dwellings and other structures, the violation of the living conditions of animals and the deterioration of their reproductive conditions, in particular, under the general use of fauna (part 4 of Art. 16). Important for this study are the norms of the law, which state that:

– enterprises, institutions, organizations and citizens in the course of any activity that affects or may affect the condition of fauna, are obliged to provide

¹⁷ The Main Principles (Strategy), [in:] The Main Principles (Strategy) of the National Environmental Policy of Ukraine for the Period up to 2020, approved by the Law of Ukraine dated 21 December 2010 No. 2818-VI, <https://zakon.rada.gov.ua/laws/show/2818-17> [access: 7.11.2018].

¹⁸ Law of Ukraine of 25 June 1991, No. 1264-XII “On Environmental Protection” (with amendments).

¹⁹ The Law of Ukraine of 13 December 2001, No. 2894-III “On the Fauna” (with amendments), <http://zakon.rada.gov.ua/laws/show/2894-14> [access: 7.11.2018].

protection of the habitat, conditions of reproduction and migration route of animal (part 1 of Art. 39);

– during the placement, design and construction of settlements, enterprises, buildings and other objects, improvement of existing and introduction of new technological processes, introduction into the economic circulation of virgin lands, waterlogged, coastal and busy areas, land reclamation, forestry use and forestry activities, conducting exploration works, extraction of minerals, determining the places of grazing and driving of domestic animals, the development of tourist routes and the organization of places of rest of the population, measures to preserve the natural habitat and the conditions for the reproduction of animals should be provided for and should be implemented (part 2 of Art. 39).

Another national law, “On the Red Book of Ukraine” (2002)²⁰, does not contain any direct norms that would include “definition and designation of special conservation zones for different species of birds” or more general norms of law such as the need for protection and/or prohibiting the damaging and destruction of birds’ habitats, etc. According to paragraph 5, part 2 of Art. 11 of this Law, it is stated that the protection of the objects of the Red Book of Ukraine is ensured, in particular, by prioritized establishing of reserves, other territories and objects of the nature reserve fund [“special conservation zones for different species of birds” does not apply to these territories according to the national legislation, but they can be created in their composition – G.L.], as well as the ecological networks in the territories where the objects of the Red Book of Ukraine are located (growing) and on the migration routes of rare and endangered species of fauna. It is believed that this Law needs to be improved by recognition of the importance of protecting rare/endangered species of fauna, not only by prioritizing the protection of the conservation areas of Ukraine and the ecological network, but also by legislative recognition of the possibility of protecting these species by creating “special conservation zones” of rare/endangered species of flora and fauna (including birds).

The Law of Ukraine “On the Protection of Animals from Brutal Treatment” (2006)²¹ establishes a prohibition of plowing or otherwise damaging, destroying natural habitats of wild animals (lair, dens, nests, etc.) (part 7 of Art. 20).

²⁰ The Law of Ukraine of 7 February 2002, No. 3055-III “On the Red Book of Ukraine” (with amendments), <http://zakon.rada.gov.ua/laws/show/3055-14?find=1&text=%F1%E5%F0%E5%E4%EE%E2#w122> [access: 7.11.2018].

²¹ The Law of Ukraine of 21 February 2006, No. 3447-IV “On the Protection of Animals from Brutal Treatment” (with amendments), <http://zakon.rada.gov.ua/laws/show/3447-15> [access: 7.11.2018].

According to the requirements of the Forestry Code of Ukraine (1994, with amendments)²², the use of forest resources and the forest management measures should be conducted while taking into account the preservation of favorable conditions for the lives of wild animals (part 1 of Art. 76). Temporary forest users in forest areas allocated to them for the needs of the hunting activity, in agreement with forest owners or permanent forest users, may create protective sites, carry out other measures related to the management of the hunting activity (part 2 of Art. 76).

In addition, in the Law of Ukraine “On the Nature Reserve Fund of Ukraine” (1992)²³, special conservation zones for different species of birds are not mentioned and are not appointed to the so-called traditional territories and objects of the nature reserve fund (natural reserves, biosphere reserves, national parks, etc.).

At the moment, it can be argued that the development of legal regulation or the attempt to create special conservation zones for different species of birds for the first time occurred in Ukraine in 2016. By that time only isolated cases of creation of such special conservation zones for birds were carried out on the initiative of certain organizations (forestry or national natural parks) in Ukraine without proper legal regulation on the part of the state or bodies of local self-government. For example, in 2007–2008 and up to 2011, on the initiative of the national natural park “Gomilshanskiy Forests” (subordinated to the State Forestry Agency of Ukraine) (Kharkiv region) settled nests were discovered, as well as potential sites for further population by birds of prey. The special conservation zones were installed around the nests in the appropriate sites/blocks of the forest in the economic zone or the zone of regulated recreation of the park (such areas were not created within the reserve area of the park, since its reserve regime was the extremely severe as it was)²⁴; the mode of their use is described as special, close to the reserve, and also these zones are reflected in the “Project of organization of the territory of the park”²⁵. For example, at that time, for the hawks (small

²² The Forestry Code of Ukraine of 21 January 1994, No. 3852-XII (with amendments), <http://zakon.rada.gov.ua/laws/show/3852-12?find=1&text=%F1%E5F0%E5%E4EE%E2%E8F9#w145> [access: 7.11.2018].

²³ The Law of Ukraine of 16 June 1992, No. 2456-XII “On the Nature Reserve Fund of Ukraine”, <http://zakon.rada.gov.ua/laws/show/2456-12> [access: 7.11.2018].

²⁴ On the territory of national natural parks, a differentiated regime is established for their protection, reproduction and use in accordance with functional zoning: a reserve area (the most stringent regime of protection); zone of regulated recreation; zone of stationary recreation; economic zone (part 1 of Art. 21 of the Law of Ukraine of June 16, 1992, No. 2456-XII “On the Nature Reserve Fund of Ukraine” (with amendments), <http://zakon.rada.gov.ua/laws/show/2456-12#o204> [access: 7.11.2018]).

²⁵ The project of the organization of the territory is being developed in accordance with the legislation and requirements of the international treaties with the purpose of defining and substanti-

Accipiter nisus and the large *Accipiter gentilis*), a protective zone with a radius of 300 m was installed, for the gray owl (*Strix aluco*) – 100 m, for the dwarf eagle (*Hieraaetus pennatus*) – 400 m; for the little eagle (*Aquila pomarina*) – 500 m; for the white-tailed eagle (*Haliaeetus albicilla*) – 600 m²⁶.

Only in Appendix 5 of the Procedure for the division of forests into categories and allocation of specially protected forest sites (2007)²⁷, the rules of the allocation of special protective forest areas around the lekking grounds of great grouses with a radius of 300 m (with a restriction that on 10 thousand hectares of forest fund no more than 3 such sites are allocated). The legal regime of these territories is defined as for specially protected forest sites in accordance with Art. 41 of the Forest Code of Ukraine, namely: special protected sites with limited forest usage may be allocated in forests; it is possible, in whole or in part, to prohibit the use of particular types and methods of cutting in such sites (in particular, by the executive authority on environmental protection in the Autonomous Republic of Crimea, oblasts, Kyiv and Sevastopol city state administrations, in agreement with the executive authority On Forestry of the Autonomous Republic of Crimea, State Forestry Agency of Ukraine). The procedure for their creation is special for these sites: they are allocated by the executive authority on forestry issues of the Autonomous Republic of Crimea, the State Forestry Agency of Ukraine, upon submission by forest management organizations and with the consent of the executive body on the environmental protection issues of the Autonomous Republic of Crimea, oblasts, Kyiv, Sevastopol city state administrations [it should be noted in advance that the creation of special zones in Ukraine for all the species of birds is carried out under a simplified procedure, therefore, it is necessary to create a single legal regulation of this issue – G.L.].

The beginning for the development of legal regulation of relations with regard to the creation of special zones for birds was the adoption in 2016 by the Gov-

ating the measures that are envisaged to be implemented within five years for the implementation of activities, protection, reproduction and use of natural complexes and objects, as well as the definition and substantiation of the strategy of development of the national natural park for ten years (clause 1.3 of the Regulation on the organization of the territory of the national natural park, protection, reproduction and recreational use of its natural complexes and objects, approved by the order of the Ministry of Environment of Ukraine dated July 6, 2005, No. 245 (as amended by Order of 21 August 2014, No. 273, <http://zakon.rada.gov.ua/laws/show/z1133-14#n2> [access: 7.11.2018]).

²⁶ Letter-reply of the National Nature Park “Gomilshanski Forests” dated August 4, 2016, No. o7-N/276 addressed to V. Boreyko, the head of the Kyiv Ecological and Cultural Center, <http://ecoethics.ru/unikalnyiy-opyit-natsparka-gomolshanskie-lesa/> [access: 7.11.2018].

²⁷ Procedure for the division of forests in categories and allocation of specially protected forest areas, approved by the Cabinet of Ministers of Ukraine of May 16, 2007, No. 733, <http://zakon.rada.gov.ua/laws/show/733-2007-%D0%BF?find=1&text=%F2%EE%EA%EE%E2%E8%F9#w11> [access: 7.11.2018].

ernment of Ukraine in a new wording (with amendments and supplements) on the Sanitary Rules in Forests of Ukraine (previously approved by the Government Decree of 27 July 1995, No. 555)²⁸. In accordance with clause 5 of these Sanitary Rules, of 11 November 2016, it is prohibited to implement measures to improve the sanitary state of forests²⁹ around the breeding grounds of birds of prey that are listed in the Red Book of Ukraine (radius of 500 m), and black stork (radius of 1,000 m), lekking grounds of great grouses, black grouses (radius of 300 m) in Ukraine.

Subsequently, on 29 December 2016, referring, in particular, to the above-mentioned Sanitary Rules in forests of Ukraine and Directive 2009/147/EU on the conservation of wild birds, the Ministry of Environment and Natural Resources of Ukraine (hereinafter referred to as the Ministry of Environment) adopted an Order No. 557 “On Additional Measures for the Conservation of Rare and Endangered Species of Animals and Plants”³⁰. This order approved two lists of species of flora and fauna from the Red Book of Ukraine in two appendices, for the protection of which preservation areas are created: in Appendix No. 1, a list of flora species (for a total of 62 species); in Appendix No. 2, a list of fauna species (for a total of 59 species, including 35 species of birds). For example, the preservation areas include graus crane nests (*Grus grus*) with a radius of 500 m; black stork nests (*Ciconia nigra*) with a radius of 1,000 m; colonies of nests on branches of trees for the chamomile (*Platalea leucorodia*) with a radius of 100 m; the lekking grounds of great grouses (*Tetrao tetrrix*) with a radius of 300 m.

In accordance with paragraph 1 of this Order, the Ministry of Environment obliges the managers of the Carpathian Biosphere Reserve and national natural parks that belong to the Ministry of Environment³¹ within a three-month period:

²⁸ The Sanitary Rules in Forests of Ukraine, approved by the Decree of the Cabinet of Ministers of Ukraine of 27 July 1995, No. 555 (in the wording of the Decree of the Cabinet of Ministers of Ukraine of 26 October 2016, No. 756), <http://zakon.rada.gov.ua/laws/show/555-95-%D0%BF> [access: 7.11.2018].

²⁹ According to paragraph 4 of the Sanitary Rules in Forests of Ukraine, approved by the Decree of the Cabinet of Ministers of Ukraine of 27 July 1995, No. 555, the following measures are taken to improve the sanitary state of forests: selective sanitary felling; continuous sanitary felling; elimination of clutter; prevention of the occurrence and spread of pests and diseases of the forest, fighting them and protecting harvested wood from pests and diseases of the forest.

³⁰ The Order of the Ministry of Environment and Natural Resources of Ukraine of 29 December 2016, No. 557 “On Additional Measures for the Conservation of Rare and Endangered Species of Animals and Plants”, <http://document.ua/pro-dodatkovi-zahodi-shodo-zberezhenja-ridkisnih-ta-znikayu-doc313863.html> [access: 7.11.2018].

³¹ These include the national natural parks of Ukraine (as of 1 June 2018): “Synevyr”, Carpathian, “Vyzhnytskyi”, “Podilski Tovtry”, “Desniansko-Starohutskyi”, “Sviati Hory”, Yavorivskyi, “Hutsulschyna”, Uzhanskyi, Ichnianskyi, “Velykyi Luh”, Mezynskyi, “Prypiat-Stokhid”, “Holosiivskyi”, Hetmanskyi, “Buzkyi Hard”, Nyzhniodnistrovskyi, Pryazovskyi, “Biloberezhzhia Sviatoslava”, “Verk-

- to indicate on the maps, in accordance with data available, the protected sites in relation to the species of flora and fauna, in accordance with the lists;
- to approve the lists of these sites and the maps (hereinafter referred to as lists) and ensure their protection and conservation taking into account the peculiarities of the biology and ecology of the species, in particular by prohibiting sanitary logging, elimination of clogging, creation of forest crops, recreational use;
- to take into account the established preservation areas when developing projects of the organization of territories and materials of forest management of the corresponding institutions of the nature reserve fund;
- to ensure the addition of lists in the event of the discovery of new habitats/growth of these species of flora and fauna;
- to ensure annual monitoring of these sites and, if necessary, to make appropriate changes to the lists.

In pursuance of the above-mentioned order of the Ministry of Environment, since 2016, protected sites for certain types of flora and fauna have been actively created in the reservation areas of Ukraine (with defining of their protection regimes). For instance:

- according to the Order of the Kivertsivskyi National Nature Park “Tsumanska Pushcha” (Volyn oblast, 2017), 4 protected sites for birds were created, namely: for 1 nest of gray crane (*Grus grus*) and 3 nests for black storks (*Ciconia nigra*); the workers of the park were ordered “to provide protection of territories and preservation taking into account peculiarities of biology and ecology of species, in particular, by prohibiting sanitary logging, eliminating clogs, creating forest crops, recreational use; to take into account the created objects when developing the project of organization of territory and materials of forest management; to ensure constant monitoring of the territory of the Park in relation to the existing places of birds nesting, to identify new nest sites (...) and, if necessary, to make proposals for amending the list of nesting places for birds (...)”³²;

hovynskyi”, “Dvorichianskyi”, “Dermansko-Ostrozskyi”, “Dzharylhatskyi”, “Dnistrovskyi Kanion”, “Karmeliukove Podillia”, “Kremenetski Hory”, “Meotyda”, “Nyzhniosulskyi”, “Oleshkivski Pisky”, “Pyriatynskyi”, “Pivnichne Podillia”, “Slobozhanskyi”, “Tuzlovski Lymany”, “Khotynskyi”, “Charivna Havan”, “Cheremoskyi”, as well as Carpathian Biosphere Reserve (in accordance with the list of enterprises, institutions and organizations belonging to the management of the Ministry of Ecology and Natural Resources (annex), specified by the Cabinet of Ministers of Ukraine of 9 November 2011, No. 1122-p, <http://zakon2.rada.gov.ua/laws/show/1122-2011-%D1%80> [access: 7.11.2018]).

³² The Order of the Kivertsivskyi National Nature Park “Tsumanska Pushcha” of the Ministry of Ecology and Natural Resources of Ukraine of 30 June 2017, No. 19 “On the creation of protected sites of flora and fauna on the territory of the Kivertsivskyi National Nature Park “Tsumanska Pushcha”, <http://ecoethics.ru/tri-ivano-frankovskih-leshoza-i-kivertsevskiy-natsionalnyiy-park-tsumanskaya-pushha-sozdali-ohrannyye-zonyi-vokrug-gnezd-redkih-ptits/> [access: 7.11.2018].

– according to the Order of the National Nature Park “Vyzhnytskyi” (Chernivtsi oblast, 2017)³³, the lists of protected sites for species of flora and fauna was approved, in particular, 61 sites for fauna (insects, amphibians, reptiles, birds, mammals), of which 31 are for breeding sites of birds (for example: black milvus (*Mulvus migrans*) – 2, spotted eagle (*Aquila pomarina*) – 3, eagle owl (*Bubo bubo*) – 2, etc.) included in the Red Book of Ukraine; as well as ordered the following: to designate these security areas on the charts, to take into account the data on them in the implementation of sanitary and sanative actions and recreational activities, to ensure their protection and conservation, taking into account the peculiarities of biology and ecology, to monitor them annually and, if necessary, to make appropriate changes to the lists.

“The creation of protected sites is a step towards the preservation of natural resources according to European standards”³⁴, said Ostap Semerak [Minister of Ecology of Ukraine – G.L.]. He also appealed to the representatives of forestry subordinate to the State Forestry Agency of Ukraine, which are part of national parks, without exception to support this initiative and take additional environmental protection measures.

As a result, on January 20, 2017, the State Forestry Agency of Ukraine, referring, in particular, to the above-mentioned Sanitary Rules in the forests of Ukraine, also adopted an order “On Additional Measures for the Protection of Species of Fauna and Flora Included in the Red Book of Ukraine”³⁵. In accordance with paragraph 1 of this Order, the heads of regional forestry and hunting departments and Shatskyi National Nature Park (Volyn oblast) were ordered:

– to provide formation, if necessary, on the territories of the facilities of the natural reserve fund belonging to the sphere of the State Agency of Forestry on the basis of materials of forest management, surveys, chronicles of nature, etc. of sites for the protection of species of flora and fauna included in the Red Book of Ukraine up to 1 January 2018;

³³ The Order of the National Nature Park “Vyzhnytskyi” of the Ministry of Ecology and Natural Resources of Ukraine of 28 March 2017, No. 43-o “On the list of protected sites”, <http://ecoethics.ru/natsionalnyie-parki-minprirodyi-sozdali-1736-ohrannyih-zon-dlya-zashhityi-redkih-vidov-floryi-i-fauny/> [access: 7.11.2018].

³⁴ Ostap Semerak ordered the nature reserves to take additional protection measures for the location sites of rare and endangered species of plants and animals: news, Government portal. The single web-portal of executive bodies of Ukraine, <https://www.kmu.gov.ua/ua/news/249639875> [access: 7.11.2018].

³⁵ The Order of the State Forestry Agency of Ukraine of 20 January 2017, No. 17 “On Additional Measures for the Protection of Species of Fauna and Flora Included in the Red Book of Ukraine”, http://dklg.kmu.gov.ua/forest/control/uk/publish/article;jsessionid=D7F8654BA5B89954CE19E0B0D77DBBCB.app1?art_id=175917&cat_id=65319 [access: 7.11.2018].

- to establish the sizes of these protected sites in accordance with the current legislation (for the relevant species) and within the tax allocations appointed by the forest management or formed as a result of the surveys;
- to consider at the meetings of the scientific and technical councils of the relevant institutions and approve the specified protected sites by orders and determine the necessary measures for preservation and protection of the habitats of the species included in the Red Book of Ukraine;
- to mark protected sites on the maps of appropriate establishments and ensure their annual monitoring. In accordance with paragraph 2 of the Order, it also provides for the proper accounting of protected sites during forest management of the nature reserves fund, as well as the design of a complex of necessary organizational and forestry measures aimed at preserving and protecting the habitats of species of flora and fauna listed in the Red Book of Ukraine as well as making suggestions on changes and additions to the existing legal acts on forest management in relation to the protection of the species of flora and fauna listed in the Red Book of Ukraine.

Later, protected sites were created also in conservation areas under the authority of the State Forestry Agency of Ukraine, as well as in forest parks and forest hunting grounds. For instance:

- according to the Order of the State Enterprise “Radekhivske forest hunting management” (Lviv region, 2017)³⁶, protected sites around 3 nests of black storks (*Ciconia nigra*) were appointed and forest managements were obliged to strengthen the protection around these nests with a radius of 1,000 m and plan measures to improve the sanitary state of forests not including forest areas located at a distance of less than 1,000 m from the nesting sites of red-listed species of birds, as well as the hunter expert to conduct continuous monitoring of these breeding grounds;
- according to the Order of the State Enterprise “Berdychiv Forestry” (Zhytomyr region, 2017)³⁷, the list of breeding grounds was approved, which included: 6 places for black stork nesting (*Ciconia nigra*) with a radius of 1,000 m each and 3 breeding grounds of spotted eagle (*Aquila pomarina*) with a radius of 500 m

³⁶ The Order of the State Enterprise “Radekhivske forest hunting management” of Lviv Regional Department of Forestry and Hunting Management of the State Agency of Forest Resources of Ukraine dated May 15, 2017, No. 75 “On additional measures for the protection of species of animal and plant life included in the Red Book of Ukraine”; <http://ecoethics.ru/zhitomirskoe-oblupravlenie-lesnogo-hozyaystva-i-5-leshozov-lvovskoy-chernovitskoy-i-ivano-frankovskoy-oblastey-sozdali-ohrannyye-zonyi-dlya-gnezd-redkih-ptits/> [access: 7.11.2018].

³⁷ The Order of the State Enterprise “Berdychiv Forestry” of Zhytomyr Regional Department of Forestry and Hunting Management of 5 April 2017, No. 73, <http://ecoethics.ru/eshhe-chetyire-leshoza-sozdali-ohrannyye-zonyi-vokrug-gnezd-redkih-vidov-ptits/> [access: 7.11.2018].

each. At the same time, the foresters are obliged: to ensure the conservation of the habitat of these birds, to observe the regime of protection of their breeding grounds, to carry out their constant monitoring and to identify new breeding grounds for birds of prey listed in the Red Book of Ukraine, to add the black stork, the lekking grounds of great grouses and black grouses to the list.

According to Volodymyr Boreyko, the head of the charity organization Kyiv Ecological and Cultural Center, as of 21 June 2017, the protected zones around the habitats of rare species of flora and fauna in Ukraine were created: 1 biosphere reserve (out of 1) and 33 national natural parks (out of 37), which are under the management of the Ministry of Environment; 1 regional landscape park (Mizhrichensky, Chernihiv region); 3 national natural parks (out of 6), which are in the management of the State Forestry Agency of Ukraine; 4 regional forestry and hunting managements (out of 22); 1 forest research station (Boyarskaya, Kyiv region); 20 forest managements (out of 270). As a result, by the above date, 2,621 security areas had been created, 1,676 of them are for rare species of animals, including 1,161 for birds³⁸.

It is also known that after 21 June 2017 in Ukraine, the work on the establishment of protected sites for certain species of flora and fauna continues, therefore, the number of such protected sites, in particular for birds, continues to increase.

In addition to the decisions of national authorities on the creation of protected sites (the Government, the Ministry of Environment, the State Agency for Forest Resources) and the decisions taken by them to execute orders administered by their organizations, a corresponding decision of the local self-government body was also adopted in Ukraine, namely: the decision of the Kyiv City Council (2017) "On the establishment of protected zones around the nests of rare species of birds listed in the Red Book of Ukraine"³⁹. According to this act, protected sites for 7 species of rare birds (according to the list) have been created, and the heads of 3 forest park managements and the national natural park "Golosiivsky" shall ensure the compliance with the regime for the protection of rare species of birds, including by prohibiting the holding of events of sanitary condition improvement of forests; to continuously monitor the nests of these birds and to carry out continuous activities to find nests of rare species in order to create

³⁸ V.Y. Boreyko, *The results of the first stage of creation of protected areas around habitats of rare species of flora and fauna in Ukraine*, <http://ecoethics.ru/itogi-1-go-etapa-sozdaniya-ohrannyih-zon-vokrug-mest-obitaniya-redkih-vidov-flory-i-fauny-v-ukraine/> [access: 7.11.2018].

³⁹ The Decision of the Kyiv City Council of 21 September 2017, No. 47/3054 "On the establishment of protected zones around the nests of rare species of birds listed in the Red Book of Ukraine", <http://ecoethics.ru/kiygorsovet-sozdal-ohrannyi-zonyi-vokrug-gnezd-hishhnyih-ptits/> [access: 7.11.2018].

protective zones around them, as well as to modify forest management materials regarding the available breeding grounds for these birds.

It should be noted separately that the Law of Ukraine “On the Red Book of Ukraine” (a special act for the conservation of rare and endangered species of flora and fauna), and the above-mentioned Laws of Ukraine “On the Fauna” (a special act on the management of wildlife) and “On Environment Protection” (basic act in the field of environmental protection), provide for legal liability for deterioration, destruction of the habitat, ways of migration of species of wild fauna (including birds). In particular, the Code of Administrative Offenses (1984, with amendments)⁴⁰ establishes administrative liability (usually in the form of a fine): Art. 87 – for breach of the requirements regarding the protection of the habitat and ways of migration of wild animals, as well as for failure to take measures to prevent the deterioration of the environment of their residence and conditions of migration [meaning those not included in the Red Book of Ukraine – G.L.]; Art. 90 – for deterioration, destruction of the habitat of animals whose species are listed in the Red Book of Ukraine; Art. 91 – for the conduct within the territories and objects of the nature reserve fund, their preservation zones, as well as territories reserved for the next mission, of forbidden economic and other activities, violation of other requirements of the regime of these territories and objects, the unauthorized change of their limits, failure to take measures to prevent and eliminate the negative consequences of accidents or other harmful effects on the territory and objects of the natural reserve fund [if the protected site is established within the territories and objects of the nature reserve fund of Ukraine, although such sites do not apply to these reservation territories – G.L.]. The Criminal Procedure Code of Ukraine (2001, with amendments)⁴¹ establishes criminal responsibility for the deliberate destruction or damage to the territories taken under the protection of the state and objects of the nature reserve fund (Art. 252). The Decree of the Government of Ukraine approved the amounts of compensation for the illegal extraction, destruction of or damage to species of fauna and flora included in the Red Book of Ukraine, as well as for the destruction or deterioration of their habitat (growth), including birds' nests (2012 with amendments)⁴², etc.

⁴⁰ The Code of Administrative Offenses of Ukraine of 07 December 1984, No. 8073-X (with amendments), <http://zakon.rada.gov.ua/laws/show/80731-10/stru#Stru> [access: 7.11.2018].

⁴¹ The Criminal Code of Ukraine of 5 April 2001, No. 2341-III (with amendments), <http://zakon.rada.gov.ua/laws/show/2341-14#n1680> [access: 7.11.2018].

⁴² The Decree of the Cabinet of Ministers of Ukraine of 7 November 2012 “On the establishment of the amounts of compensation for the illegal extraction, destruction of or damage to species of fauna and flora included in the Red Book of Ukraine, as well as for the destruction or deterioration

However, due to the legal uncertainty of the concept of protected sites for birds at the level of basic and special laws of Ukraine, there is no special legal responsibility for the conduct of prohibited economic and other activities, violation of other requirements of the regime within the protected sites, the unauthorized change of their boundaries, failure to take measures to prevent and eliminate the negative consequences of accidents or other harmful effects on these areas, etc.

As a result of this study, the following conclusions can be drawn:

1. Ukraine has to fulfill its international obligations to “define and designate special conservation zones for different species of birds” (from 1 September 2017 to 1 September 2021) in accordance with the Directive 2009/147/EU on the conservation of wild birds (Art. 4.1.), the implementation of which is stipulated by the Association Agreement between Ukraine and the European Union (Annex XXX, Chapter 6, Section V). However, at the level of the laws of Ukraine, including in the sphere of environmental protection, the concept of the protection of birds (including rare ones) is clearly not recognized or regulated through the “definition and designation of special conservation zones for different species of birds”: there is no legal recognition of these territories, including with the definition of the place in the system of special protected areas of Ukraine and the possibility of their parallel existence (sometimes layering) with traditional conservation territories or other protected areas; the procedure and subjects of creation, financing, management; the legal regime of these zones for birds, etc. These laws provide only general wording, such as the need during the different activities to take into account the requirements for the protection (or prohibition of deterioration/destruction) of the habitat (nests, nest colonies, places of lekking of birds, etc.), breeding conditions and ways of animal migration, and recognition of opportunities of establishment of other protected areas, except for territories and objects of the nature reserve fund and ecological network, which are subject to special protection.

Consequently, in this part, the national legislation should be supplemented and improved, as well as certain provisions in the draft of the new law on the protection of habitats (flora and fauna) that are planned to be adopted and are in the stage of preparation and discussion (responsible to the Ministry of Environment).

2. The legal regulation in Ukraine “definition and designation of special conservation zones for different species of birds” at the time has been implemented directly:

– at the level of normative legal acts regulated by law and adopted by the Government and special national agencies, namely:

of their habitat (growth)” (with amendments), <http://zakon.rada.gov.ua/laws/show/1030-2012-%D0%BF> [access: 7.11.2018].

Sanitary Rules in the forests of Ukraine (2016 No. 756) (mandatory for forest management, use of forest resources and the conduct of works unrelated to forest management, enterprises, institutions, organizations and citizens, as well as state specialized forest protection enterprises, territorial bodies of the State Agency of Forestry, owners of forests, permanent forest users, etc.);

a) by the order of the Ministry of Ecology (2016 No. 557) (mandatory for national natural parks and the Carpathian Biosphere Reserve, under the control of this ministry);

b) by the order of the State Agency of Forest Resources (2017 No. 17) (mandatory for forest and hunting management departments and Shatsky National Natural Park, other institutions of nature reserve fund belonging to the sphere of agency management);

c) as well as local decisions (orders) taken by local organizations (nature reserves, national natural parks, forest managements, etc.) (mandatory for these organizations);

– at the level of decisions of local self-government bodies of Ukraine, namely: decision of the Kyiv City Council (2017 No. 47/3054) and local decisions (orders) taken by individual organizations (mandatory for the forest park organizations specified in decisions, and subjects who live or are located on the territory of the city of Kyiv).

The obligation to establish protected sites is thus not covered by all subjects throughout the territory of Ukraine, the ownership or use of which may include breeding grounds of birds (including rare birds), requiring appropriate legislative changes.

3. In particular, in these subordinate normative-legal and other acts:

3.1. The concept of “protected site” for birds (as well as other species of fauna and flora) is introduced, without legislative definition of the content and legal nature of this category;

3.2. The species and number of birds around the breeding grounds of which the protected sites are created, are defined differently, although the sizes of their radii for the same species of birds are fixed equally, namely: a) in the order of the division of forests into the categories (2007 No. 733) the creation of protected forest sites only around the lekking grounds of great grouses is provided with a restriction that no more than 3 such sites are allocated for 10 thousand hectares of the forest fund [such restriction should be cancelled – G.L.]; b) in the Sanitary Rules in the forests of Ukraine (in its new edition in 2016, No. 756), around the breeding grounds for birds of prey included in the Red Book of Ukraine, black storks, lekking grounds of great grouses, black grouses; in the order of the Ministry of Environment (2016 No. 557), around the breeding grounds for 35 species of birds, including those included in the Red Book of Ukraine; in the order of the

State Agency of Forest Resources (2017 No. 17), there is no clear definition of the list of species of birds, around the breeding grounds of which protected sites need to be created, as well as the size of these sites, but it is only indicated that the establishment of protected sites for species of flora and fauna, listed in the Red Book of Ukraine should be ensured, and their size needs to be established according to the current legislation (for the relevant species); in the decision of the Kyiv City Council (2017 No. 47/3054), around the breeding sites of 7 species of birds included in the Red Book of Ukraine without a clear definition of the size of the protective zones;

3.3. The issues of legal regimes of protected areas around birds breeding grounds are regulated differently, in particular, in terms of limiting human activities, namely:

- in the procedure for the division of forests into the categories (2007 No. 733), limited forest management regime is provided for these areas; also the use of certain types and methods of felling may be completely or partially prohibited in part or in full;

- in the Sanitary Rules in the forests of Ukraine (in its new edition in 2016, No. 756), it is forbidden to implement measures to improve the sanitary state of forests in these sites, that is, selective, continuous sanitary felling; elimination of clutters; prevention of the occurrence and spread of pests and diseases of the forest, fighting them and protecting harvested wood from pests and diseases of the forest;

- the order of the Ministry of Ecology (2016 No. 557) obliges to provide protection and conservation of protected sites taking into account the peculiarities of biology and ecology of species, in particular by prohibiting sanitary logging, eliminating clogging, creating forest cultures, recreational use and taking them into account when developing projects of an organization of territory and materials of forest management;

- the order of the State Agency of Forest Resources (2017 No. 17) does not require or restrict activities; instead, it establishes that the legal regime is determined by the heads of regional departments of the forestry and hunting economy and the Shatsky National Nature Park;

- the decision of the Kyiv City Council (2017 No. 47/3054) provides ensuring compliance with the regime for the protection of rare species of birds, including the measures of prohibition to improve the sanitary state of forests.

The author believes that at the legislative level it is necessary to determine common approaches to these aspects of protected sites, in particular, to determine for which species of flora and fauna it is obligatory to create them, in what order and with what legal regime. At the same time, it is necessary to establish a prohibition in these sites not only on measures to improve the sanitary state of

forests, the creation of forest cultures, recreational use, but also for other types of activities that can lead to damage or destruction of breeding grounds of birds.

4. After the conceptual legal definition of the status of protected areas for birds (flora and fauna) at the level of basic and special laws, consideration should be given to the appropriateness of establishing separate legal responsibility for the conduct within the protected areas of prohibited economic and other activities, violation of other requirements of the regime of these territories, unauthorized change of their limits, etc.

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Abstract: The article deals with the changes in the legislation of Ukraine during 2016–2018, which have become the impetus for a new stage of development of legal regulation and practice of creation of protected areas around the breeding ground of wild birds, in particular, with the changes to the Sanitary Rules in forests of Ukraine, approved by the Cabinet of Ministers of Ukraine of 27 July 1995 No. 555 (in the wording of the Decree No. 756 of 26 October 2016), according to which since 11 November 2016, it is prohibited in Ukraine to implement measures to improve the sanitary state of forests (i.e. selective and continuous forest sanitation, elimination of clogging; prevention of the occurrence and spread of pests and diseases of the forest, combatting them, etc.) around the breeding ground of birds of prey from the Red Book of Ukraine (radius of 500 m), black stork (radius of 1,000 m), the lekking ground of gulls, black grouse (radius of 300 m). The decree of the Ministry of Ecology and Natural Resources of Ukraine No. 557 “On Additional Measures for the Conservation of Rare and Endangered Species of Animals and Plants” of 29 December 2016, Decree of State Agency of Forest Resources of Ukraine No. 17 “On Additional Measures for the Protection of Wild Animals and Plants Recorded in the Red Book of Ukraine” dated 20 January 2017, and separate local acts (of local councils, national natural parks, forestry enterprises, etc.) are also studied. The conclusions of the study on the peculiarities of the national legal regulation and the practice of creating such preservation zones, their legal regimes and recommendations for the improvement of legislation in this area are presented.

Keywords: protected areas of birds' breeding ground in Ukraine; protection of natural habitats of birds; selected and overall harvesting (logging, cutting); forest cleaning and other forest care activities

Streszczenie: W artykule przeprowadzono analizę zmian w ustawodawstwie ukraińskim w latach 2016–2018, które doprowadziły do kolejnego etapu rozwoju regulacji prawnych i praktyki tworzenia stref ochronnych wokół miejsc gniazdowania dziko żyjących ptaków. Ponadto dokonano analizy rozporządzenia Rady Ministrów Ukrainy z dnia 27 lipca 1995 r. o przepisach sanitarnych w lasach Ukrainy (w brzmieniu obowiązującym od 26 października 2016 r.), według którego na Ukrainie od 11 listopada 2016 r. zabronione jest podejmowanie działań z zakresu poprawy stanu sanitarnego lasów (złożonych i zupełnych rębni, czyszczenia oraz innych działań pielęgnacyjnych lasu) wokół miejsc gniazdowania ptaków drapieżnych wpisanych do Czerwonej Księgi Ukrainy (w promieniu 500 m), bociana czarnego (w promieniu 1000 m), głuszców i cietrzewi (w promieniu 300 m). W artykule omówiono również zarządzenie Ministerstwa Ekologii i Zasobów Naturalnych Ukrainy z dnia 29 grudnia 2016 r. o dodatkowych środkach dotyczących ochrony rzadkich i zagrożonych gatunków zwierząt i roślin, zarządzenie Państwowej Agencji Zasobów Leśnych Ukrainy z dnia 20 stycznia 2017 r. o dodatkowych środkach ochrony gatunków flory i fauny wpisanych do Czerwonej Księgi Ukrainy oraz niektóre lokalne akty prawne (samorządowe, parków narodowych, gospodarstw leśnych). We wnioskach końcowych przedstawiono charakterystyczne cechy ukraińskiego prawodawstwa dotyczącego stref ochronnych oraz praktyki ich tworzenia, sformułowano również postulaty zmian w przedmiotowym zakresie.

Słowa kluczowe: strefy ochronne wokół miejsc gniazdowania ptaków na Ukrainie; ochrona przyrodniczych środowisk bytowania ptaków; rębnie złożone; rębnie zupełne; czyszczenie lasu oraz inne działania pielęgnacyjne