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# Who Will Be Responsible for the Massive Loss of the European Bison in Ukraine?

## Introduction

The European bison is a great and powerful animal. It was widely distributed in the wild in ancient times all over the forests of Europe, and disappeared from Ukraine around the 17<sup>th</sup> century. Due to its size, the European bison was a very easy and profitable target for hunters, so in the late 19<sup>th</sup> – early 20<sup>th</sup> centuries, only two natural populations survived in the Belovezhskaya Pushcha and the North Caucasus. In February 1919, the last free European bison was killed that lived in Belovezhskaya Pushcha. As a result of the civil war, bison protection in the Caucasus ceased as well. In 1923, the International Society for the European Bison Protection emerged.<sup>1</sup> As of 2014, there were approximately 5,046 European bison in the world, including 3,403 species in the wild in free or semi-free flocks.

Today, the problem of the European bison decrease in Ukraine is nationwide. So, there is a need to preserve and restore their population. The European bison has already been listed in the International Red Book, European Red List, Red Book of Ukraine, and also included in the Red Book and Red Lists of other neighboring countries, namely Poland, Belarus, Lithuania. It is protected by the Berne Convention. Thus, the European bison protection is an honorable duty of every state in which this animal is located.

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<sup>1</sup> *Balance Lost: On Extinct Animals That Have Disappeared from the Territory of Ukraine Due to Human Activities*, Zik News, [https://www.google.com/amp/zik.ua/amp/news/2018/11/13/vtrachenyy\\_balans\\_pro\\_tvaryn\\_yaki\\_znykly\\_i\\_znykayut\\_z\\_terytorii\\_ukrainy\\_1446881](https://www.google.com/amp/zik.ua/amp/news/2018/11/13/vtrachenyy_balans_pro_tvaryn_yaki_znykly_i_znykayut_z_terytorii_ukrainy_1446881) [access: 30.11.2019].

It seemed that the people and the state would have to draw serious conclusions from the recent tragic event and take all necessary measures to protect them. In Ukraine, in 2016, there were 300 European bison in total, 100 of which occupied the Vinnytsia region. The large herd of the European bison here had been carefully restored for the last ten years.

### The circumstances of the case

The European bison were brought to the hunting grounds of Vinnytsia region in Ukraine in 1979 (4 females and 2 males) from Volhynia. As of early 2016, there were approximately 300 species in Ukraine, while in 1991, there were more than 664. What happened to the rest of the animals? The incident in Vinnytsia gives the comprehensive answer to this question.

An unprecedented case of a large number of red-book animals death shocked all Ukraine in January 2016. In the territory of Vinnytsia region, almost one tenth of all the European bison of Ukraine died in tragic and unexplained circumstances.<sup>2</sup> According to official data, the herd of European bison huddled on the frozen pond, but the ice cracked and some of the animals dropped into the water.<sup>3</sup> There were 80 bison, 20 of which drowned. Thus, the total loss of the Vinnytsa European bison population amounted to more than 20%, which constitutes the largest loss of the biggest wild animals in Ukraine. That is the price of poaching.

In order to hide the scale of the tragedy, the most absurdous versions of its reasons were put forward. According to one version, the cause of death was psychosis among the herd caused by the number of animals. Another reason was suicide.<sup>4</sup> It was also claimed that they were afraid of something and entered the ice. However, foresters have evidence that this was not an accident or some incomprehensible biological phenomenon. They claim that a herd of the European bison would never go on the ice voluntarily. This is unnatural for them. Animals, weighing almost one ton, are defenseless there.<sup>5</sup>

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<sup>2</sup> *Is the Matter Delayed? Almost a Year Ago, No One Was Responsible for the Massive Loss of the European Bison*, 20 Minutes News, <https://www.google.com/amp/s/vn.20minut.ua/Kryminal/amp/spravu-zatyaguyut-za-zagibel-zubriv-mayzhe-rik-tomu-dosi-nihto-ne-vidp-10571439.html> [access: 30.11.2019].

<sup>3</sup> *Who killed the European Bison in Vinnytsia Region?*, BBC News Ukraine, [https://www.bbc.com/ukrainian/society/2016/02/160215\\_bisons\\_tragedy\\_vinnytsya\\_vc](https://www.bbc.com/ukrainian/society/2016/02/160215_bisons_tragedy_vinnytsya_vc) [access: 30.11.2019].

<sup>4</sup> *Mass Suicide of the European Bison in Vinnytsia Region*, Open Forest, <https://www.openforest.org.ua/27486> [access: 30.11.2019].

<sup>5</sup> *Bloody Mlynok, or Trebukhiv Tragedy*, Eko Inform, <https://ekoinform.com.ua/?p=1162> [access: 30.11.2019].

### **Criminal liability for improper use of specially protected wildlife species**

Legal responsibility is usually defined as the obligation of a person that violated law to take respective administrative, criminal, civil, and disciplinary measures that are applied to him. According to the scheme of the Ukrainian environmental legislation, the elements of basic violations in this area are provided in the Law of Ukraine on Environmental Protection<sup>6</sup> and specified in the primary environmental laws, while sanctions for them are established and applied in accordance with the labor legal acts, laws on administrative offenses, criminal and civil law. In particular, it is provided in the Laws of Ukraine on Wildlife,<sup>7</sup> on Hunting,<sup>8</sup> on the Red Book of Ukraine,<sup>9</sup> the Criminal Code of Ukraine,<sup>10</sup> the Code of Ukraine on Administrative Offenses,<sup>11</sup> the Civil Code of Ukraine<sup>12</sup> and others.

Environmental offenses are characterized by infliction or risk of possible infliction of harm to the environment (e.g. extinction, mass extermination or serious diseases of wildlife species, inability to reproduce for a long time certain wildlife species, particularly large-scale material damage, etc.). Qualifying signs of environmental crimes also include certain methods of encroaching on legal order of environmental protection and use of natural resources, tools and means of committing a crime (e.g. violations of hunting rules committed by an official using official position, or by previous consent of few persons, or via mass extermination of animals, birds or other wildlife species, or using vehicles, etc.).<sup>13</sup>

In order to ensure proper and uniform legal practice regarding application of faunistic legislation in criminal proceedings, the Plenum of the Supreme Court of Ukraine adopted the Resolution on Judicial Practice in Cases of Environmental Crimes and Other Offenses No. 17 of 10 December 2014. According to the Resolution, characteristics of environmental criminal liability are determined by the following: 1) it

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<sup>6</sup> Law of Ukraine of 25 June 1991 on Environmental Protection (Bulletin of the Verkhovna Rada of Ukraine of 1991, No. 41, item 546, as amended).

<sup>7</sup> Law of Ukraine of 13 December 2001 on Wildlife (Official Bulletin of Ukraine of 2002, No. 2, item 47, as amended).

<sup>8</sup> Law of Ukraine of 22 February 2000 on Hunting (Official Bulletin of Ukraine of 2000, No. 12, item 442, as amended).

<sup>9</sup> Law of Ukraine of 7 February 2002 on the Red Book of Ukraine (Official Bulletin of Ukraine of 2002, No. 10, item 462, as amended).

<sup>10</sup> Criminal Code of Ukraine of 5 April 2001 (Official Bulletin of Ukraine of 2001, No. 21, item 920, as amended).

<sup>11</sup> Code of Ukraine on Administrative Offenses of 7 December 1984 (as amended) (Verkhovna Rada of Ukraine), <https://zakon.rada.gov.ua/laws/main/80731-10> [access: 30.11.2019].

<sup>12</sup> Civil Code of Ukraine of 16 January 2003 (Official Bulletin of Ukraine of 2003, No. 11, item 461, as amended).

<sup>13</sup> N.R. Malysheva, M.I. Yerofeyev, *Scientific and Practical Commentary to the Law of Ukraine on Environmental Protection*, Kharkiv 2017, p. 391.

is a type of retrospective legal liability; 2) it is based on a socially dangerous crime, the object of which is the violation of relations in the field of protection, use and reproduction of wildlife species; 3) it is applied to those socially dangerous acts, that are provided in the Criminal Code of Ukraine, and only upon the court's judgment; 4) prosecution of the guilty persons does not exempt them from compensation for the damage caused to the fauna; 5) specific body of the crime in this sphere shall be established with reference to the legislation on wildlife.<sup>14</sup>

Concerning criminal liability in this case, criminal proceedings were initiated regarding this incident under Art. 248 (illegal hunting) and Art. 364 (abuse of power or authority) of the Criminal Code of Ukraine. Subsequently, the criminal proceedings were initiated under Art. 249 of the Criminal Code of Ukraine (responsibility for illegal fishing, animals or other aquatic mining). The maximum punishment that is possible for poachers (apart from the fine, of course) is 5 years imprisonment.

According to Art. 248(1) of the Criminal Code of Ukraine, illegal hunting is such hunting that is conducted in violation of established rules (if it caused significant harm); as well as of animals, birds or other species of fauna listed in the Red Book of Ukraine, etc. Criminal violation of hunting rules is complete from the moment of causing significant harm. When deciding whether the harm is significant, the quantity, cost and environmental value of the extinct animals and birds, the environmental harm calculated at special fees shall be considered. For example, the destruction of at least one bison shall be recognized as a significant harm. Illegal hunting of wildlife species included in the Red Book of Ukraine is a formal crime and is considered to have been completed since start of the hunt, regardless of whether the relevant game animals were actually obtained.

Therefore, in the course of the objective aspect of crime, the crime constitutes: 1) violation of the hunting rules, if it caused significant harm; 2) illegal hunting in wildlife sanctuaries or in other nature reserve fund territories and objects; 3) hunting of animals, birds or other species of fauna listed in the Red Book of Ukraine. In case of illegal hunting in wildlife sanctuaries or other nature reserve fund territories and objects of animals, birds or other species of fauna listed in the Red Book of Ukraine, criminal liability arises regardless of whether any harm inflicted there.

However, the investigation into this outstanding case took a long time. Up to the last moment, there was hope that poachers would be found and punished. In June 2017, the case was formally closed due to “the absence of a crime”. Investigators claim they heard a few hundred testimonies of witnesses and conducted a series of expert reports. As a result, they came to the conclusion that there was no evidence that

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<sup>14</sup> G.I. Baliuk, O.O. Pogribnyy, Yu.S. Shemshuchenko, *Wildlife of Ukraine: Legal Protection, Use and Reproduction*, Kyiv 2010, p. 273.

someone intentionally forced the herd to enter the ice.<sup>15</sup> At the same time, no poacher was suspected of the crime.

According to the statistics, up to 30 European bison are killed every year by poachers in Ukraine, while about 20 animals are born and reach breeding age. The rapid decline in the European bison population in Ukraine was caused not only by poaching but it also introduced the possibility of legal commercial hunting for them. The profit from this commercial hunting was to be allocated to the opening of the European bison protection fund, but it was not created, and such hunting led to the extermination of the species. It was a particularly sophisticated form of poaching. At the request of public environmental organizations, such practices were put to an end.

Based on the above analysis of the institute of legal responsibility for environmental offenses, there can be drawn the conclusion with regard to at least three important issues that hinder its effective application: environmental legal nihilism, the unwillingness of individual officials to apply sanctions to violators, and the weakness and inefficiency of these sanctions.<sup>16</sup> The risk of harm to the natural objects of the analyzed group (especially protected or especially valuable natural objects) should already be a sufficient reason to criminalize such offenses regardless of other circumstances. The mere fact of extinction or destruction of such natural objects indicates rather high seriousness of the act due to their special value.<sup>17</sup>

In this regard, we agree that it is appropriate to broaden the scope for liability for encroachment on specially protected natural objects and species in separate articles or their sub-articles. In order to ensure a uniform understanding of such objects and species and more accurate application of the criminal law, it is also advisable to include the Note into the Criminal Code of Ukraine with an approximate list of especially protected natural objects and species as objects of criminal protection. This will not only bring criminal law in line with environmental law in general, but also unify and make it more effective.<sup>18</sup>

In addition, analysis of the relevant norms revealed their lack of “environmental nature”. As a rule, they do not take into account the environmentally hazardous consequences, which complicates the application of criminal law and does not allow to interpret such norms correctly. Therefore, it would be advisable to point specific environmental consequences in criminal law, along with the overall grave consequences.

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<sup>15</sup> *Opened Loudly, Closed Quietly*, Silski Visti, <http://silskivisti.kiev.ua/19502/index.php?n=36233> [access: 30.11.2019].

<sup>16</sup> V. Kostyts'kyi, *Ten Issues on Legal Liability for Environmental Offenses*, [in:] *Public Liability Law: Monograph*, red. I. Bezklubyi, Kyiv 2014, p. 411.

<sup>17</sup> S.B. Gavrysh, *Criminal Legal Protection of the Environment in Ukraine*, Kyiv 2002, p. 95.

<sup>18</sup> *Ibidem*, pp. 101–102.

## Compensation of environmental harm for violations of the requirements of faunistic law

According to the current environmental legislation of Ukraine, the application of disciplinary, administrative or criminal liability measures does not release the violators from compensation for the damage caused by the irrational use of natural resources, their destruction, including those that are subject to special protection. Issues of compensation of harm are regulated by the legal provisions on civil liability, which is proposed to be recognized as an environmental liability due to exclusive compensatory, restorative, material and financial nature of the legal relationship in which it is implemented.

Environmental harm is a necessary element of an environmental offense or the result of illegitimate actions defined in the law, the object at risk of which is natural resource belonging to the owner or user, the environment as a system of life conditions, and life and health of the person in such environment.<sup>19</sup>

From the point of view on a scientific approach regarding differentiation of environmental legal liability as of a separate one, it is interesting to refer to its division depending on the ways of influencing the offender: compensatory, aimed at covering damages, and repressive, which is realized through the use of punishment. Compensatory liability includes, in particular, the obligation to cover the damage according to the rules of civil and commercial law. Administrative, criminal and disciplinary responsibility are regarded as repressive types.<sup>20</sup> Thus, harm and requirement for its compensation are the main attributes of responsibility.

The Resolution of the Cabinet of Ministers of Ukraine No. 1030 of 7 November 2012 established the amount of compensation for the illegal extraction, destruction or damage of fauna and flora species listed in the Red Book of Ukraine, as well as for the destruction or deterioration of their habitat (growth). According to this Resolution, the compensation for one illegally killed bison is equal to UAH 130,000.

The State Environmental Inspectorate reported damages of more than UAH 2 million and sent the materials to the Main Directorate of the National Police in Vinnytsia Oblast to determine the causes of the European bison's massive loss.<sup>21</sup> Such an amount of the fine will have to be paid to those found guilty of poaching. However, the offenders have not been brought to responsibility yet. The only recent thing the state

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<sup>19</sup> M.V. Krasnova, *Compensation for Damage under the Environmental Legislation of Ukraine (Theoretical and Legal Aspects)*. Monograph, Kyiv 2008, p. 69.

<sup>20</sup> M. Krasnova, *Current Issues of Definition of the Concept of "Environmental Responsibility" in the Modern Law of Ukraine*, [in:] *Public...*, p. 427.

<sup>21</sup> *The Perpetrators of the Massive Loss of 17 European Bison Enlisted in the Red Book Have Not Been Punished Yet*, Censor Net, [https://www.google.com/amp/s/amp.censor.net.ua/ua/news/395122/politsiya\\_zatyaguye\\_rozsliduvannya\\_zagybeli\\_17\\_zubriva\\_na\\_vinnychchini\\_ekolog\\_andriy\\_plyga\\_dokument](https://www.google.com/amp/s/amp.censor.net.ua/ua/news/395122/politsiya_zatyaguye_rozsliduvannya_zagybeli_17_zubriva_na_vinnychchini_ekolog_andriy_plyga_dokument) [access: 30.11.2019].

has done in the area of animal protection is an introduction of new fees for damages caused to forestry during illegal wildlife poaching.

Therefore, proprietary environmental harm is linked to the certain economic value of the objects of the material world and shall be regarded as property losses, i.e. reduction of value of damaged object within the meaning of natural resources, property complexes managed by the respective persons, including both owners and users, reduction or loss of income derived from the opportunities to use such resources and complexes for their intended purpose, the need for new costs to restore their useful properties, etc. Such damage is always associated with the corresponding loss and reduction of material benefits (including natural resources and objects) protected by law. The primary forms of compensation are natural and monetary ones, which, depending on the actual circumstances, may have the following features.<sup>22</sup>

The material criterion of environmental harm includes the assessment of an environmental value, personal and qualitative characteristics. The material criterion enables to take maximum account of the damage and should play a decisive role in the qualification of the offence in cases of destruction of unique, endangered, rare or other particularly valuable environmental elements, for example, in a given region. A qualitative criterion characterizes environmental harm in terms of its scale, the magnitude of the overall harm to nature and people, which makes it possible to distinguish environmental crimes from wrongdoings and qualify the severity of environmental crimes themselves.<sup>23</sup>

The consequences of environmental crime determine the concept and content of environmental harm. It is based on various types of harm including biological (harm to the natural environment in a narrow sense), personal (harm to life and health) and economic (damage to the material sphere) ones. The most complex environmental harm to be assessed in the course of criminal qualification is economic damage, which causes not only direct losses (actual costs), but also losses in the form of economic losses (costs for environmental restoration) and lost profits (reasonably planned profits).<sup>24</sup> Thus, the issue of guilt for environmental harm remains open to debate. If general rules on tort liability are based on guilt, then absolute liability, if defined as such by special laws on liability for environmental damage, is based on the absence of guilt.<sup>25</sup> In such a case, since the investigation bodies did not find people that are guilty of the mass destruction of the bison in Ukraine, then the compensation for environmental damage was financed by the state budget with the loss equal to UAH 3 million.<sup>26</sup>

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<sup>22</sup> M.V. Krasnova, *Compensation...*, pp. 76–77.

<sup>23</sup> S.B. Gavrysh, *op. cit.*, p. 295.

<sup>24</sup> *Ibidem*, p. 537.

<sup>25</sup> M.V. Krasnova, *Compensation...*, p. 425.

<sup>26</sup> *The Vinnytsia Authorities Will Have to Pay Three Million Hryvnias for the Destroyed European Bison*, Vlasno Info, <http://vlasno.info:8080/spetsproekti/2/ecology/item/14906-vinnytsku-vladuzmusiat-zaplatyty-try-miliony-hryven-za-znyshchenykh-zubriv> [access: 30.11.2019].



## Conclusions

1. As far as the key problems of the case in question are concerned, it should be noted that this is an irreparable loss not only for the Vinnitsa region but for the whole of Ukraine. The European bison is a national asset of the Ukrainian people and is subject to special protection. However, as we see, due to the current procedural legislation, it is difficult to hold somebody responsible for environmental crimes, since the environmental legal aspect is not taken into account in the course of procedural regulation. Despite the international legal protection of specific wildlife objects, its protection on the national level is a failure. Procedural legislation does not take into account the peculiarities of the pre-trial and judicial procedure for consideration of environmental disputes.

Consequently, we consider that proposals of some scholars regarding the need to distinguish environmental procedural sub-branch of law are relevant. It shall be defined as a set of legal norms established or authorized by the state, regulating uniform procedural relations in the environmental field arising from spatial-territorial ordering of natural objects, including natural resources, planning, forecasting, observation and information in the field of environmental protection, distribution of natural resources, environmental control and environmental dispute resolution.<sup>27</sup> It corresponds to the Law of Ukraine on the Fundamental Principles (Strategy) of State Environmental Policy to Ukraine for the Period till 2030,<sup>28</sup> according to which one of the root causes of Ukraine's environmental problems is unsatisfactory control over the observance of environmental legislation, failure to ensure the inevitability of responsibility for its violation. In this regard, we may conclude that the issues that still remain unsolved to this day are: Who will be responsible for that environmental crime and who will compensate the environmental damage caused to the state?

2. If we talk about specific ways of solving this case, we support proposals of scholars and practitioners to create a special Hunting Area Protection Service, that is armed and well-equipped with the latest surveillance equipment, provided with appropriate vehicles and powers, such as those in Poland or Belarus. In order to support and strengthen the conservation regime of the area as a habitat for rare red-book animals, it is also proposed to create the Zubry Podillya National Nature Park.<sup>29</sup> Accordingly,

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<sup>27</sup> A.P. Het'man, *Introduction to the Theory of Environmental Procedural Law of Ukraine: Textbook*, Kharkiv 1998, p. 12.

<sup>28</sup> Law of Ukraine of 28 February 2019 on the Fundamental Principles (Strategy) of the State Environmental Policy of Ukraine for the Period until 2030 (Official Bulletin of Ukraine of 2019, No. 28, item 980).

<sup>29</sup> *The Forests of Three Districts in Vinnytsia Region Are Proposed to Be Integrated into a National Park*, Vlasno Info, <http://vlasno.info/spetsproekti/2/ecology/item/15929-lisy-trokh-raioniv-na-vinnychchyni-proponuiut-ob-iednaty-v-natsionalnyi-park> [access: 30.11.2019].



there will be no hunting areas, hunting of any kind of animals will be prohibited. This way the European bison population may be preserved and restored.

In addition, this practice is already common in Ukraine. In particular, on 18 August 2000, the General Zoological Reserve “Zubr” was established in the area of 4,050 ha, which stores the only European bison population in the Volyn region. In 1965, 15 European bison were brought to this area from the Belovezhskaya Pushcha. They became the symbol of this primeval forest in which they lived until the 17<sup>th</sup> century.<sup>30</sup> It corresponds with the provisions of the Law of Ukraine on the Red Book of Ukraine, according to which the protection of species enlisted in the Red Book of Ukraine is ensured through the rapid establishment of wildlife sanctuaries, other nature reserve fund territories and objects, as well as the environmental network in the territories where species of the Red Data Book of Ukraine are located (growing); and along the ways of migration for rare and endangered fauna species.

3. The protection of European bison in Ukraine should be subject to more stringent regulation as in Belarus,<sup>31</sup> in particular, via adopting the special regulatory act on additional measures for the protection of this animal in Ukraine.

To sum up, there is a certain contradiction/inconsistency between the use of environmental resources and its protection. Finding the right approach to this issue will have its influence on the future environmental situation,<sup>32</sup> including the conservation of rare and endangered wildlife species. In this regard, it is important to focus attention of society and public authorities on the negative trends in terms of environmental crime. Emphasizing the environmental, legal and moral aspects of dealing with such cases is an urgent issue.

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<sup>30</sup> V. Het'man, O. Mazurenko, *Tsuman Pushcha: A Journey to the World of Bison and Orchids*, “Ecological Bulletin” 2019, p. 17.

<sup>31</sup> P.M. Yermolinskiy, *On the Issue of the Ratio between the Protection and Rational Use of the European Bison Legal Institutes in the Republic of Belarus*, [in:] *Actual Problems of Reforming Land, Environmental, Agricultural and Economic Relationship: Collection of Abstracts of the International Scientific and Practical Conference*, Khmelnytskyi 2013, p. 25.

<sup>32</sup> *Ibidem*, p. 27.

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**Abstract:** The article is devoted to research of legal responsibility for violation of the legislation in the field of protection and use of rare and endangered fauna species. Special attention is paid to the issues of criminal liability in the sphere of the use of protected wildlife species. It is concluded that it is necessary to strengthen the criminal liability for encroachment on especially protected species in separate articles or respective sub-articles of the Criminal Code of Ukraine. The author considered the issue of compensation for environmental harm for violation of the requirements of faunistic legislation. It is proved that harm and requirement on its compensation are the primary feature of responsibility. In this regard, it is suggested that the application of measures of adverse material impact on violators of environmental legislation should be defined as environmental responsibility. The above-mentioned issues were considered with reference to the example of unprecedented destruction of large number of red-listed European bison in January 2016 in Ukraine. The article describes the potential ways of resolving this case to prevent such situations from occurring in the future. In particular, the author proposes to strengthen the conservation regime of this territory, as a habitat for rare red-listed species, as well as to establish the National Natural Park for preservation of the European bison population in the Vinnytsia region.

**Keywords:** environmental responsibility; environmental harm; criminal liability; the Red Book of Ukraine; European bison; legal protection of wildlife; faunistic law

