

ADMINISTRATIVE AND LEGAL REGULATION IN THE FIELD OF SUBSOIL USE IN UKRAINE AND FOREIGN COUNTRIES

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ABSTRACT

The article is devoted to the study of the features of administrative and legal regulation in the field of subsoil use. The essence of the category of administrative and legal regulation, as well as the mechanism of administrative and legal regulation in the field of subsoil use, is revealed. The legal basis of state regulation in the field of subsoil use in some foreign countries, in particular, in North America (for example, USA, Canada), European countries (for example, France, Germany) and CIS countries (for example, Kyrgyzstan and the Republic of Kazakhstan) are determined. Given the study of foreign practice of administrative and legal regulation in the field of subsoil use, the experience of the Republic of Kazakhstan has been recognized as positive, in particular, on the normative enshrinement in the Subsoil Code and subsoil use of basic principles in the field of subsoil use. Administrative and legal regulation in the field of subsoil use in Ukraine has been investigated by studying the legislative and organizational components. In the context of the above, it has been found that the regulatory framework for the implementation of state regulation in the field of subsoil use in Ukraine has a large number of regulations (both legal and substatutory). The system of state regulatory bodies in the field of subsoil use is represented by bodies of state power and local self-government, whose powers to use subsoil are determined by the norms of current Ukrainian legislation. The author's definition of the essence of the concept "administrative and legal regulation in the field of subsoil use" is given.

Keywords: State Regulation, Administrative And Legal Regulation, Subsoil, Subsoil Use, Rational Use Of Subsoil, Subsoil Use Permits.

INTRODUCTION

According to the norms of the current Ukrainian legislation, subsoil is referred to the objects of property rights of the Ukrainian people. This is directly proclaimed at the constitutional level, namely in Art. 13 of the Constitution of Ukraine dated June 28, 1996 (Constitution of Ukraine, 1996). Subsoil as a mineral resource base is crucial for the development and effective functioning of the country's economy, and therefore the integration of the latest global market system. Therefore, the use of subsoil requires an effective and rational

state policy in the field of their protection, which, in turn, presupposes the existence of an appropriate regulatory and legal framework.

Being one of the leading sectors of the country's economic development, the subsoil use sphere is under the control of state bodies. The importance of state influence and state taxation in this area is primarily due to the need to create conditions for a flexible response from the state to changes in the economy, to determine the priorities of the country's export-import activities, and the like. Thus, the administrative and legal regulation in the field of subsoil use makes it possible to influence the processes of functioning of this object by forming an effective administrative and legal regulation mechanism in this area.

Administrative and legal regulation in the field of subsoil use in a particular country is characterized by certain features, which is due to the specifics of administrative and legal relations in this area. State regulation of the subsoil use in Ukraine is aimed at solving many problems of economic, environmental, social nature, which are different in complexity and scale. At the same time, the implementation of administrative and legal regulation in the field of subsoil use requires an effective mechanism, it must necessarily have a legislative basis, which should regulate the issues of not only rational and efficient use of subsoil, but also the provision of guarantees for environmental safety, protection of subsoil, protection of rights and legitimate interests of citizens, enterprises, institutions, organizations and so on. Therefore, taking into account the above, it seems expedient to study the experience of public administration and regulation in the field of subsoil use in foreign countries in order to further use world practices to increase the level of rational and effective use of subsoil in Ukraine.

LITERATURE REVIEW

The study of the features of administrative and legal regulation in the field of subsoil use in Ukraine and the study of the experience of foreign countries of state regulation of this area primarily requires clarification of the nature and disclosure of the essence of the category of “*administrative and legal regulation*”. Considering the administrative and legal regulation as a component of state influence, it should be noted that its essence as a social category is revealed through a set of relevant features that distinguish it from other types of regulation. These include the following: (1) it is a means of influence of the state on public relations; (2) it is carried out with the help of legal means that constitute the mechanism of administrative and legal regulation; (3) it aims to streamline state-power relations; (4) it establishes the rights and responsibilities of participants in administrative and legal relations, etc (Igonin & Viktorchuk, 2018).

In the context of the research topic, the subsoil use as an object of administrative and legal regulation is of scientific interest. It should be noted that, in this regard, there are scientific studies of domestic scientists. Special attention should be paid to the comprehensive study of the issues of administrative and legal regulation of subsoil use in Ukraine, covered in the dissertation of Pashun (2015). The mechanism of legal regulation is defined by the author as the organizational influence of legal means, which allows to achieve in a certain way the set tasks, goals, and objectives in the field of subsoil use. It is important to emphasize the selection of certain elements of the mechanism of administrative and legal regulation in the field of subsoil use, which include: (1) management system, which characterizes, on the one hand, a complex management entity and the organization of interaction of simpler entities, and on the other, - a combination of democracy and governance, which is expressed in the nature and forms of citizen

participation in the exercise of governance functions; (2) social and legal norms, by means of which the content of influence is provided and communication in management continues; (3) ways to determine the goal based on knowledge of controlled processes; (4) the management process as a cycle where certain stages change, the actions of the management system to achieve these goals, which culminates in an assessment of the effectiveness of management influence (Pashun, 2015).

METHODOLOGY

The methodological basis of the study of the features of administrative and legal regulation in the field of subsoil use in Ukraine and foreign countries is represented by a set of dialectical, formal-legal, comparative-legal, and system-structural methods. The *dialectical method* is used to establish the essence of the concept of “*administrative and legal regulation*”, as well as the formulation based on the results of research on selected topics of the concept of “*administrative and legal regulation in the field of subsoil use.*” The *formal-legal method* allowed to establish the legal framework, ie to determine which legislative acts of the current Ukrainian legislation regulate administrative relations in the field of subsoil use in Ukraine, and to find out the content of the relevant provisions of regulations, which define the principles of administrative regulation in the field of subsoil use. Using a comparative-legal method, the legal basis of state regulation in the field of subsoil use in some foreign countries, in particular in North America (for example, the United States, Canada), European countries (for example, France, Germany) and neighboring countries (for example, Kyrgyzstan and the Republic of Kazakhstan). Using the system-structural method, the problematic aspects of the implementation of administrative and legal regulation in the field of subsoil use are identified, which are classified according to such criteria as legislative and organizational.

FINDINGS AND DISCUSSIONS

In this or that foreign country, administrative and legal regulation has its own characteristics. Some of them are considered. In the countries of North America, the implementation of administrative and legal regulation in the field of subsoil use is primarily associated with the federal structure of the country. In the United States and Canada, the legislative framework includes federal legislative acts that regulate legal relationships for the use of subsoil in territories under federal jurisdiction, as well as individual laws that apply to legal relationships in subsoil use in individual states / provinces. So, according to the Constitutional Act of Canada dated 1982, the provinces have supreme power in their territory within their competence, and separately Art. 50 defines the important role of local provinces in the regulation of activities in the field of subsoil use (Law, 1982). This article refers to Art. 92A of the Constitutional Act of Canada dated 1867, according to which the provinces are vested with the competence of the legislature, which lies in the possibility of adopting legislative acts for the development, conservation, and management of unused natural resources and forest resources in the province (Law, 1867). An important subject of state regulation in the field of subsoil use is the Department of Natural Resources of Canada, whose activities are regulated by the Department of Natural Resources Act dated 1994.

It is also necessary to consider the experience of European countries in matters of state regulation of the subsoil use sphere. The supervision of subsoil use activities in France is carried out by state bodies and provides for the granting of special permits for the use of subsoil, including for the conducting, exploration, and exploitation of natural resources of the subsoil. For example, the issue of the use of subsoil for the provision of a mining lease is separately regulated by the norms of the Mining Code of France in 1955. Its provisions regulate the granting of a permit for exploration or an exclusive permit for: exploration of geothermal deposits, exploration of underground storage facilities, research of concession substances, etc (Law, 1955). State regulation in the field of subsoil use is attributed to the competence of the Ministry of Energy and Natural Resources. German legislation contains a separate legislative act that regulates legal relations in the field of subsoil use, namely the Law on the Use of Subsoil. The use of subsoil in accordance with the Law requires obtaining a license or permit. A license or monopoly license is needed for: extraction of natural resources; removal and storage of substances; selection and supply of heat using open systems and the like. Permits are granted for underground drainage, selection and supply of heat with closed systems (Law, 2018). The state body that regulates subsoil use is the Federal Ministry for Economic Cooperation and Development.

The study of state regulation in the field of subsoil use in foreign countries also requires studying the experience of neighboring countries. For example, the legislation of Kyrgyzstan contains a separate regulatory legal act on the regulation of subsoil use issues-the Subsoil Law dated 2018. The Law defines the procedure for state legal regulation, the competence of state authorities, local state administrations and local self-government bodies, the rights and obligations of individuals and legal entities, as well as liability for violation of the legislation of the Kyrgyz Republic in the field of subsoil use. The competence of state institutions for the use of subsoil is enshrined in Chapter 2 of the Law, namely, the powers of the government of the Kyrgyz Republic, the authorized state body for subsoil use, local state administrations, and local self-government bodies (Law, 2018). The authorized state body for subsoil use in Kyrgyzstan is the State Committee for Industry and Subsoil Use. In order to implement the state policy and represent the interests of the Republic of Kazakhstan in the field of subsoil use, the Government of the Republic of Kazakhstan shall designate a competent body, which is the central executive body. The Code establishes separate modes of subsoil use, namely licensing and contractual. In order to implement the state policy and represent the interests of the Republic of Kazakhstan in the field of subsoil use, the Government of the Republic of Kazakhstan determines the competent body, which is the central executive body. This state body has the authority to grant and terminate subsoil use rights for exploration and production of hydrocarbons, uranium extraction, exploration and extraction of solid minerals; to control over subsoil users' compliance with the terms of contracts in the field of hydrocarbon and uranium mining, as well as licenses for exploration and extraction of solid minerals, etc.

In order to study the features of administrative and legal regulation in the field of subsoil use in Ukraine, it is primarily advisable to focus on establishing the regulatory framework, ie determining which legislative acts regulate administrative relations in the field of subsoil use in Ukraine, in particular, the activities of public administration in sphere of use and protection of subsoil. The basic systematized legislative act, the norms of which determine the basic principles of state regulation in the field of subsoil use, is the Subsoil Code of Ukraine dated July 27, 1994

(Law, 1994). Laws also play an important role in the system of Ukrainian legislation that defines the principles of administrative and legal regulation in the field of subsoil use. Among them, in particular, the Mining Law of Ukraine of November dated 6, 1999, some provisions of which are devoted to the regulation of subsoil use in mining operations (Law, 1999). Substatutory legislative acts, which include the Decrees of the President of Ukraine, resolutions of the Cabinet of Ministers of Ukraine, orders of the Ministry of Environment and Natural Resources of Ukraine are also important in the system of legislation on administrative and legal regulation in the field of subsoil use.

It should be noted that the implementation of administrative and legal regulation in the field of subsoil use in Ukraine is in compliance with the requirements not only of current national legislation but also international documents. In particular, this refers to the Model Code on Subsoil and Subsoil Use for the CIS member states dated December 7, 2002. Chapter 7 of this document enshrines the basic principles of public administration and regulation in the field of subsoil use and protection. Provisions of Art. 32 are devoted to the use and protection of subsoil as an object of state management and regulation, namely: (1) in accordance with the Constitution of the state subsoil is a carrier of natural resources that are used and protected as the basis of life and activity of the population; (2) the state manages state ownership of subsoil and state regulation of activities for the use and protection of subsoil (Law, 2002).

It is important to emphasize that today the legal framework for the regulation of subsoil use in Ukraine is represented by a large number of regulations that need to be updated and unified in accordance with modern requirements. An important step in this direction was the development of a new Subsoil Code by the Ministry of Environmental Protection and Natural Resources of Ukraine, which began in the summer of 2020. The adoption of a new version of this legislation is due to the implementation of the Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons, which aims to promote the most efficient search, exploration, and extraction of resources and strengthening the integration of the internal energy market of the Member States, as well as other European Union legislation to fulfill its obligations under the EU-Ukraine Association Agreement.

While examining the organizational component of administrative and legal regulation in the field of subsoil use in Ukraine, it is important to note the following. The competence of public authorities in the field of subsoil use is enshrined in the Subsoil Code of Ukraine. The competence of the Cabinet of Ministers of Ukraine includes issues related to state control over the use and protection of subsoil, determination of the procedure for executive bodies in the field of subsoil use and protection and coordination of their activities, ensuring the development of national and regional programs in the field of subsoil use and protection. The provision of subsoil for the development of mineral deposits of local significance is within the competence of regional, Kyiv and Sevastopol city councils. Approvals for the use of subsoil for the purpose of geological study, development of mineral deposits of local importance, as well as control over the use and protection of subsoil are the responsibility of village, town, city and district councils, and councils of united territorial communities in their territory (Law, 1994). It should be noted that Ukraine has a subsoil use permit system. According to the Procedure for granting special permits for subsoil use, approved by the Cabinet of Ministers of Ukraine dated May 30, 2011, granting special permits for subsoil use is within the competence of the State Service of Geology

and Subsoil of Ukraine (Law, 2011). One of the main tasks of this state body is the implementation of state policy to ensure the rational use of subsoil, which is achieved by issuing special permits for subsoil use, their suspension and cancellation, state control over the rational and efficient use of subsoil, etc (Law, 2015).

The subject of state regulation in the field of subsoil use is also the Ministry of Environmental Protection and Natural Resources, which determines the procedure for granting special permits for the use of subsoil and approving the provision of subsoil for use (Law, 2020). The system of subjects of state regulation in the field of subsoil use should also include the body of state mining supervision, which oversees the use of subsoil. Previously, such a function was attributed to the competence of the State Service for Mining Supervision and Industrial Safety of Ukraine but in 2015 the powers of this state body were transferred to the State Service of Ukraine for Labor Issues, in particular, concerning the provision of mandatory instructions (orders) to eliminate violations of norms and rules for conducting work when using subsoil; termination of work related to the use of subsoil (Law, 2015). Art. 28 of the Code of Ukraine on Subsoil provides that the use of subsoil is paid. Payment for the use of subsoil is charged in the form of: (1) rent payment for the use of subsoil for the extraction of minerals; (2) rent payment for the use of subsoil for purposes not related to the extraction of minerals. The rent is determined by the norms of the Tax Code of Ukraine (Law, 1994). The importance of paying taxes established by the current tax legislation by subsoil users is explained by the fact that the fulfillment of such a tax debt is one of the important components of the country's financial security (Reznik et al., 2020). The competence of the State Tax Service of Ukraine includes the authority to control the timeliness, accuracy, completeness of accrual and payment of taxes provided by the Tax Code of Ukraine (including the payment of rent for subsoil use), as well as the timeliness of submission by taxpayers (including subsoil users) of taxes required by law reporting (Law, 2019).

RECOMMENDATIONS

According to the results of the study of the current legislative framework, which serves as the basis for the implementation of administrative and legal regulation in the field of subsoil use in Ukraine, it can be stated that it is represented by a ramified system of a large number of regulatory legal acts (both legal and substatutory). Moreover, the norms of such acts are not always consistent with each other. The application of procedures and the requirement for the availability of permits in the field of subsoil use, which today can be considered aggravating and outdated, are also no less problematic issues. Based on the above, the problematic aspects of the implementation of administrative and legal regulation in the field of subsoil use should be classified according to the following criteria: (1) legislative (i.e. the presence of an extensive system of a large number of normative legal acts, the provisions of which determine the principles of administrative and legal regulation in the field of subsoil use) (2) organizational (that is, the implementation of state regulation in the field of subsoil use is “*overloaded*” by the use of aggravating procedures, requirements for the availability of permits in the field of subsoil use, etc, which has a negative regulatory pressure on economic activity in the field of subsoil use). The need to solve certain problematic aspects in the implementation of administrative and legal regulation in the field of subsoil use justifies the urgent need for the adoption of a new Code of Ukraine on subsoil as a unified document, which is designed to consolidate the

fundamental principles of state regulation in the field of subsoil use, taking into account international standards, to ensure the protection and rational use of subsoil, and also equality and transparency of access of business entities to the use of subsoil and the like.

CONCLUSION

Based on the results of studying the issues on the selected research topic, it can be concluded that administrative and legal regulation in the field of subsoil use should be understood as a special form of management activity carried out by both state authorities and local self-government bodies in accordance with their competence, determined by the norms of current legislation. Considering the study of foreign practice of administrative and legal regulation in the field of subsoil use in some foreign countries, in particular in North America, Europe and neighboring countries, the experience of the Republic of Kazakhstan should be recognized as positive enough. The Subsoil and Subsoil Use Code contains basic principles in the field of subsoil use, which are represented by a set of large provisions on subsoil and their resources, provision of subsoil for use, subsoil use regimes and procedures for obtaining licenses and subsoil use agreements, powers of state authorities and local governments to regulate subsoil use, subsoil use safety requirements, subsoil use monitoring, etc. The study of the features of administrative and legal regulation in the field of subsoil use in Ukraine by studying the legislative and organizational components makes it possible to state the following. The legal framework for the implementation of state regulation in the field of subsoil use in Ukraine has a large number of regulations (both legal and substatutory). The system of state regulatory bodies in the field of subsoil use is represented by bodies of state power and local self-government, whose powers to use subsoil are determined by the norms of current Ukrainian legislation.

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