

OBJECT OF SUBSOIL USE WHEN SUBSURFACE WATERS USE

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In the article the system of objects of subsoil legal relationship is considered. General, patrimonial and direct subsoil objects have been identified. The special attention is paid to consideration of subsoil use when subsurface water use.

Subsoil, subsoil object, subsurface water, ground water

The public relations of subsoil using have difficult complex nature. The issue of objects of legal relationship in the specified sphere has conceptual value.

The purpose of article is the analysis of objects of legal relationship on subsoil use, to present them in the form of the structured system and to determine subsoil use object when subsurface water use.

The theoretical basis of research are works of the Soviet and modern Ukrainian jurists: G.I. Baliuk, G.S. Bashmakov, V.I. Gordeev, I.I. Karakash, R.S. Kirin, I.M. Koziakov, O.S. Kolbasov, V.M. Komarnytskyi, N.R. Malysheva, N.B. Mukhitdinov, V.K. Filatova, M.V. Shulga and others.

For the analysis of subsoil as object of subsoil legal relationship we will use such philosophical categories as «general», «particular» and «singular». Similar approach is used by science, for example, the criminal law to objects of criminal legal relationship and divides them into «general», «patrimonial» and «direct» [8, 104]. Having applied this method to objects of subsoil legal relationship, it is possible to allocate general, patrimonial and direct subsoil object.

General object in this case is all subsoil of Ukraine. Article 1 of the Subsoil code of Ukraine [3] determines subsoil as part of the crust located under surface of land and bottom of reservoirs and stretching to depths, available to geological studying and development. As to any natural phenomenon, to the subsoil it is possible to apply the philosophical

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category «whole». In that case the area of subsoil is will be «part» of this «whole».

In article 5 of the Subsoil code of Ukraine it is emphasized that the State fund of subsoil includes as areas of subsoil which are used, and the areas of the subsoil which haven't been involved in use, including areas of continental shelf and an exclusive (sea) economic zone. That is the State fund of subsoil represents set of all areas of subsoil of Ukraine. Analyzing articles 5, 14, 16, 17, 19, 20, 21, 23 of the Subsoil code of Ukraine it is possible to approve that it is not simply set of areas; it is a certain system of groups of areas which is characterized as structure.

Having the similar legal regime, groups of areas can be allocated to **patrimonial objects**. Based on the current legislation it is possible to separate out the following patrimonial objects of subsoil legal relationship: 1) the subsoil areas not involved in use; 2) the subsoil areas granted for geological studying; 3) the mineral deposits estimated previously; 4) the mineral deposits estimated as industrial; 5) the subsoil areas not connected with mining; 6) the subsoil areas used in order article 23 of the Subsoil code of Ukraine.

Specifics of each patrimonial object of subsoil relationship consist in the following.

The subsoil areas not involved in use represent those parts of subsoil which aren't used at all now, but can be attracted for future reference and pass to any other patrimonial object.

As soon as the area of subsoil is involved in use, it passes to other patrimonial object – the subsoil areas granted for geological studying. Article 37 of the Subsoil code of Ukraine determines geological studying as activities directed on data acquisition about geological structure of subsoil, processes which are occurring in them, identification and assessment of minerals, studying of regularities of their forming and placement, clarification of mining and other conditions of mineral deposits development and subsoil using for the purposes which not connected with mining.

It is important that, by the general rule, the subsoil area which hasn't been involved in use can't be granted for use for any other purposes, than geological studying of this area. So, the mineral deposits estimated previously (the third patrimonial object), or estimated as industrial (the fourth patrimonial object), can't be determined without preliminary geological studying of these areas of subsoil. The subsoil areas not connected with mining, owing to article 48 of the Subsoil code of Ukraine, is also impossible to provide without preliminary geological studying of these

subsoil areas. Exception of this rule is subsoil areas used in order article 23 of the Subsoil code of Ukraine (the sixth patrimonial object). The last subsoil areas are provided for use without geological studying.

If a result of geological studying are mineral manifestations or mineral deposits, such subsoil areas go to the third patrimonial object (the mineral deposits estimated previously) or the fourth patrimonial object (the mineral deposits estimated as industrial) depending on degree of an assessment of minerals. The subsoil areas of mineral deposits are estimated as industrial make the State fund of mineral deposits, and subsoil areas with previously estimated mineral deposits make reserve of this fund.

The special place is taken by the sixth patrimonial object – subsoil areas used in order article 23 of the Subsoil code of Ukraine. Separation these areas into a particular patrimonial object is caused by special regime and order provision for use of these areas. Land owners and land users within the parcels of land provided to them have the right to use minerals of local value and peat with a general depth of development up to two meters and subsoil for domestic needs. This use happens without the special permission and mining allotment.

Besides, article 23 of the Subsoil code of Ukraine grants the right to land owners and land users without special permissions and mining allotment within provided to them the parcels of land to extract subsurface water for own domestic needs, not centralized and centralized (except production of the packed-up drinking water) domestic drinking water supply on condition that productive capacity of water intakes of subsurface water doesn't exceed 300 cubic meters per day.

The general subsoil object specifies subsoil as object of the property right of the Ukrainian people (Art. 4 of the Subsoil code of Ukraine), whereas **direct subsoil object** should define object of right of subsoil use.

The Subsoil code of Ukraine doesn't contain regulations, unlike the water legislation (Art. 1 of the Water code of Ukraine), determining what is direct subsoil object. Scientists-lawyers always paid attention to this question [2, 4]. Based on the analysis of works of the Soviet, modern Russian and Ukrainian scientists, it is possible to draw a conclusion that at the present stage of subsoil law science approach to understanding of object of the right of the subsoil use, offered by R.S. Kirin [2] is represented to the most optimum. The author considers this object as mining allotment – «specific, physically individualized by isolation in nature (to location, depth and coordinates of borders, the areas, inventories and type of minerals), legally isolated by assurance by the act (considered by

registration number in the established place of fixing) the subsoil area provided by authorized state body to the specially licensed subject for industrial development of a mineral deposit based on the approved project» [2, p. 57].

This definition contains one essential indication – an individually legally and spatially certain part (area) of subsoil is granted in use, instead of subsoil in general. In this there is a difference between subsoil as object of the use right and subsoil as object of the property right [4, p. 182].

I.M. Koziakov emphasizes that objects of subsoil use legal relationship are parts of subsoil, on which on the legal title the subjective rights and obligations of the juridical and physical persons having legal status of the subsoil users are directed. To each specific type of subsoil use is corresponded certain object. For example, to geological studying of subsoil – the environment space, provided for scientific researches and searches of mineral deposits; to geological prospecting – the areas of subsoil for the evaluation of opened mineral deposits; to building and operation of underground constructions – natural or anthropogenous cavities of a subsoil, etc. [4, p. 183].

The Subsoil code of Ukraine (Art. 17) determines mining allotment as the part of subsoil provided to users for industrial development of mineral deposits and for the purposes, not connected with mining. So mining allotment can be direct object in relation to the fourth (the mineral deposits estimated as industrial) and the fifth (the subsoil areas which use isn't connected with mining) patrimonial object of the offered classification.

The first patrimonial object (the subsoil areas not involved in use) has no direct object as it can be only in case of direct use of subsoil.

For the second (the subsoil areas granted for geological studying) and third (the mineral deposits estimated previously) patrimonial object of subsoil the Ukrainian legislation doesn't determine direct objects. Possibility of application of mining allotment in this quality is excluded by article 20 of the Subsoil code of Ukraine. It establishes that for geological studying (areas of the second patrimonial object), including pilot development of mineral deposits of nationwide value (areas of the third patrimonial object), subsoil is granted in use without provision of mining allotment after obtaining of special permission for geological studying.

The order of provision of special permissions for subsoil use (further the Order No. 615) approves the resolution of Cabinet of Minister of Ukraine of May 30, 2011 No. 615 «About approval of the Order of provision of special permissions for subsoil use» [7]. Action of this Order extends on

all types of subsoil use. According to item 12 of the Order No. 615, data on a subsoil area, granted in use, are specified in permission and included its name, location, coordinates and, in case of need, restrictions on use depth. It is possible to note that specific, physically individualized, legally separated subsoil area is granted in use regardless of patrimonial object.

In the legislation, for the fourth and fifth patrimonial object, such areas are determined as mining allotment. For the second and third patrimonial object the legislation of Ukraine doesn't provide determinations for these areas. But, for example, the Law of the Russian Federation "About a subsoil" in article 7 applies the determination «geological allotment» to similar areas. By the way, this term contains in the subsoil legislation of some former USSR countries: Kazakhstan, Kyrgyzstan, Belarus, Georgia, Armenia, Tajikistan [4, p. 187, 195]. The definition of this concept definitely differs from each other, but in fact the legislation of these countries determines the subsoil areas granted for geological studying. Among the Ukrainian scientists G.I. Baliuk distinguished geological allotment as object of subsoil use [1, p. 110]. V.K. Filatova [9, p. 24] suggested the determination "geological allotment" to the Ukrainian legislation.

The direct object of the sixth patrimonial object is the subsoil area which horizontal borders correspond to borders of the parcel of land belonging to the land owner or provided to the land user and depth doesn't exceed two meters. The Ukrainian legislation doesn't contain a definition concerning these areas. To formulate term by analogy to other direct subsoil objects (mining allotment, geological allotment) is inappropriate as the regime of their use significantly differs. The word «allotment» can't be applied to these areas since their use don't require to be allotted; right to use is acquired directly by the law.

Analysis of direct subsoil object which use in case of subsurface water use requires special attention. It is known that for extract of subsurface water special constructions are used: water borehole and wells.

The Mining law of Ukraine determines a borehole as the cylindrical excavation created by drills or other boring tools. As mining boreholes have different types, more precise definition of water borehole is contained in the order of Ministry of Health of Ukraine of May 12, 2010 No. 400 «About approval of the State sanitary standards and the rules «Hygienic Requirements to Water Drinking, Intended for Consumption by the Person» (DSanPiN 2.2.4-171-10)» [5]. The tubular well (water borehole) is an engineering construction which is vertical excavation with a small round form of cross section which is intended for extraction of subsurface water

located at a different depth. The pit well is an engineering construction which is vertical excavation with a big (in comparison with a water borehole) size of cross section of a round, square, rectangular or six-sided form, which is intended for extraction of ground water. According to the order of the Ministry of protection of surrounding environment and nuclear safety of Ukraine of October 27, 1997 No. 171 "About approval of the Technique of the damage assessment caused by pollution and a contamination of land resources because of violations of the nature protection legislation" ground water is the subsurface water forming in the first (overhead) aquifer [6].

Thus, various size and form of cross section vertical excavation in subsoil is used for extraction of subsurface waters. According to the articles 21 and 23 of the Subsoil code of Ukraine such subsoil development a mining allotment isn't provided. Thus, the legislation directly doesn't determine direct subsoil object when subsurface water use. It is offered to put into the legislation the determination of new direct subsoil object – water-intaking allotment which would determine the subsoil area granted for construction (water borehole or well) for a water intake of subsurface water. Subsoil areas granted for this purpose constitute patrimonial subsoil object – the subsoil areas granted for subsurface water use.

Legalizing of the specified suggestion causes a new special type of subsoil use, connected with use of subsurface water. Similar precedent in the subsoil legislation already takes place. So, in the Order No. 615 there were three new types of subsoil use: 1) geological studying of mineral deposits, 2) geological studying of oil-and-gas subsoil, including pilot development of fields, with subsequent oil and gas extraction (industrial development of fields); 3) work (activities) under the production sharing agreement. Legalization of such additional types of subsoil using is allowed by open list provided in article 14 of the Subsoil code of Ukraine. So, point 5 of this article allows providing subsoil using for satisfaction of other requirements.

Summarizing the above, it is noted that object of subsoil legal relationship can present as complex three-level system. At the first level, subsoil as part of the crust located under surface of land and a bottom of reservoirs, represents general subsoil object of the property right of the Ukrainian people. The second level is presented by several groups of the isolated subsoil areas having the particular legal regime and thus forming some patrimonial subsoil objects. The third level is presented by the direct

subsoil object that is individual legally and spatially specified part (area) of a subsoil that is object of subsoil use right.

The analysis revealed lack of legislative determination of direct subsoil object in case of using a subsoil for geological studying, and pilot development of mineral deposits of nation-wide value. Based on theoretical researches of the Ukrainian jurists and experience of legal regulation of the similar relations in other countries, it is offered to determine such direct subsoil object as geological allotment.

Subsoil use right research in case of subsurface water use also reveal lack of a legislative definition of direct subsoil object of these legal relationships. It is offered to determine it as water-intaking allotment. It will give rise to new patrimonial subsoil object – subsoil area granted for subsurface water use, and the new type of subsoil use connected with it. Considering a certain specifics of the public relationship of subsurface water use, it will allow allocating their regulations in the relevant legal institution and providing it further development.

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