

ELEMENTS OF ADMINISTRATIVE-LEGAL REGULATION IN FIELD OF SUBSOIL RESOURCES

A.V. PASHUN, *applicant,*

National University of Life and Environmental Sciences of Ukraine

The article deals with the questions of administrative legal regulation the field of subsoil resources: the theoretical aspects are analysed in relation to the determination of basic elements of the mechanism of administrative legal regulation in the mentioned field.

Subsoil resources; administrative legal regulation; aims, tasks, principles, functions, methods of administrative legal regulation.

The formation of a legal state in Ukraine predetermines special importance of the legislative regulation of the most essential public relations. Taking into consideration the objective state of the nature in the country, it is possible to assert that they include the relations related to its use and protection. In this connection the search of optimal forms of legal protection of natural objects becomes a foreground state task.

The subsoil resources take the special place among other natural objects of the state. It is explained by that the use of subsoil resources influences intensively on the earth, waters, atmospheric air, and that is why to overcome negative effects, the research of elements of administrative legal regulation in the field of subsoil resources is becoming particularly topical.

The subsoil resources as one of the leading industries of an economic development of a state are studied by the representatives of the different legal sciences. It should be noted the theoretical looks of such scientists as: V. Andreytsev, M. Brinchuk, A. Hetman, N. Malysheva, V. Muntyan, V.

Semchyk, Y. Shemshuchenko, O. Shemyakova, E. Shulga, M. Shulga and others. However, the necessity of legal researches and formation of the certain legal mechanism related to administrative legal regulation is becoming particularly topical under the conditions of aggravation of crisis phenomena of ecological character, which create a danger in the field of subsoil resources, and this makes this article currently important.

Modern legal science determines the right for using of subsoil resources in an objective sense as a complex of legal norms that establishes an order of recovery of any benefits of subsoil resources.

In the majority countries of the world a sphere of subsoil resources is controlled strictly by the state which in general is a proprietor of mineral resources. At the same time the governmental control is based mainly on economic principles and this allows to react flexibly to all the changes in management, to influence on the formation of export-import priorities, to care of ecological safety. In Ukraine the economic control also includes the very wide circle of questions, in particular financing of geological study of subsoil resources, forecasting of needs, pricing and stimulation, crediting, etc. In order to protect its own interests and to provide a high level of efficiency of the use of subsoil resources, the state: establishes licence access control to subsoil resources ;introduces the mode of availability at a fee with corresponding differentiation in the normative base and privileges- incentives through it; forms relations and ownership structure for subsoil resources; limits monopolistic tendencies; introduces specific mining and tax legislation, etc.

Main features of subsoil resources as an object of administrative legal regulation, stipulate, from one side, a necessity of state influence on the process of functioning of the mentioned object and an existence of administrative legal mechanism of its regulation by forming a normative legal base, and, from the other side, determine the aspects of such a regulation.

Thus, the integral goal of administrative legal regulation of subsoil resources in Ukraine may be defined as providing of the effective functioning in the field of subsoil resources and its steady progressive development.

The achievement of this primary objective is possible due to the realization of such aims of administrative legal regulation in the field of subsoil resources in Ukraine as: development of Conception of development of subsoil resources and its stage-by-stage realization, improvement of the current normative-legal base in relation to the governmental control in the field of subsoil resources, arrangement of norms in relation to technical, ecological safety in the field of subsoil resources in accordance with international standards and requirements.

The analysis of the current normative-legal acts which regulate activity in the field of subsoil resources in Ukraine at the present stage, gives reasons to assert that as subsoil resources in accordance with article 13 of the Constitution of Ukraine are one of the items of property of the Ukrainian people, then the order of grant of right for the use is founded, first of all, on the need of husbanding of subsoil resources.

The goal of the governmental control in the field of subsoil resources is conditioned by the basic tasks of such a regulation:

- 1) adaptation to the market conditions of management, formation of the effective competitive sphere of subsoil resources by the way of the state support;

- 2) providing with the scientific approach related to the rational use of subsoil resources, innovation and investment policies, recreation of mineral raw material base;

- 3) providing with clear regulation of clear decision procedure by the authorized organ of public power, the exhaustive list of grounds to receive the special permission to use subsoil resources.

The realization of the administrative legal regulation is impossible without proof foundation of regulation, which may be fundamental principles,

basic rules, provisions according to them the regulative system acts - principles of its action. The concept of principles of the administrative legal regulation serves to represent regularities, which exist objectively in the regulation and have a particular importance for its organization and implementation.

In the general theory of law principles of law are considered as basic (guided) ideas, backgrounds, which characterize the content of law, essence and intended purpose in the society. From one side, they express conformities with a law, and from another - are the most general norms which operate in all the field of legal regulation and spread to all subjects. These norms neither are set in a law directly, nor are determined from general content of laws.

From the point of view of legal science, the principles of law are basic principles, which are enshrined in legal norms and represent regularities of development of relations of the society, and also disclose and represent regularities of the certain branch of a law. For example, article 7 of the Mining Law of Ukraine represents principles of public policy in the mining industry [4].

Depending on the development of socio-economic conditions that is one of the main factors of considerable influence on economic state of the society, the principles represent certain features that are in congruence with the processes of development of the society. The development of the society leads to the certain correction of principles, including in the field of subsoil resources.

In administrative legal science there is not an only idea concerning the types of principles of the administrative legal regulation, grounds for their classification. The undertaken studies allow to assert that the governmental control in the field of subsoil resources is exercised on such principles: objectivity; democracy; publicity; norming; branch, territorial, functional management; priority of requirements of ecological safety; reimbursement of

the losses caused by violation of mining legislation; limitation of influence of economic activity; combination of measures of economic stimulation and legal responsibility, etc.

All mentioned principles do not exist separately, but co-operate, forming the system by means of internal and external connections – the element of mechanism of the state administration in the field of subsoil resources in Ukraine. At the same time, the principles can change depending on social-economic and political conditions.

The scientists of administrative law do not have any doubts that the content of administrative legal regulation is unfolded through the content and character of the functions of administrative legal regulation which are realized in the process of such an activity.

The functions should be grouped in such a way: general, special, auxiliary functions of the state administration in the field of subsoil resources. The general functions involves: function of forecasting and modeling, planning, co-ordination, control, informative providing and others like that. The special functions in the field of subsoil resources are the functions that represent the features of regulative influence of a concrete subject of control on the field of subsoil resources: rational use and protection of natural resources, environmental protection, observance of requirements of ecological safety, co-operation of bodies of executive power and self-governing authorities, providing with equal conditions for development of an economic activity in the field of subsoil resources, etc.

The new administrative system of Ukraine must answer the requirements of deregulation, that is why it is necessary to go on from "hand control" of an economy to performance of the long-term programs of development of an industry, from control over an enterprise and direct financing - to regulation and redistribution of resources in an economy [5, p. 223]. Therefore, only the complex approach to the functions of the governmental control in the field of subsoil resources, in conjunction with

realization of administrative and regulator reform will give an opportunity to remove problem questions in this sphere of public relations.

For liquidation of gaps in the current legislation of Ukraine, first of all it is subject to The Subsoil code of Ukraine with a presence in it of norms with suspended validity and most blanket standards, with a presence of inconsistencies and even contradictions between this code and the Mining Law, it is necessary to work out and enshrine at legislative level a concept, essence and system of methods of the governmental control in this field, putting an emphasis on application of economic and legal methods.

Thus, the undertaken study allows to do such generalized conclusions: for overcoming of the negative developments in the field of subsoil resources in Ukraine a revision and conceptual establishment at the theoretical and legislative levels of basic elements of mechanism of administrative legal regulation are appropriate and well-timed; for the elimination of terminological vagueness and legislative gap it is necessary to define normatively and set such basic elements: goal, aims, tasks, functions, principles, methods of administrative legal regulation in the field of subsoil resources; to work out and approve the National program of development of mineral raw material base of Ukraine for a period to 2020, in which an aim should be defined, the basic methods of the governmental control should be described, that will provide with the real possibilities in relation to the further increase of explored reserves, their use and protection.