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PROSPECTS FOR REFORMATION OF ECONOMIC AND LEGAL MECHANISMS OF SUBSOIL USE IN UKRAINE

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The article deals with the process of reformation of mining industry and intense subsoil use, which requires constant improvement of legal support, rationalization and ecologization of subsoil use. The more intensely natural resources are used, the more carefully they should be exploited, especially, it concerns the nonrenewable resources: recently the world community has been lacking in nonrenewable natural resources. The author offers to consider the balanced use of natural resources as the state economic function including management and regulation of ecological and economic relations.

Keywords: *mining industry, mineral-raw resources, subsoil use, economic and legal mechanisms, license for extraction, concession.*

Problem statement. Nowadays the interaction of society and nature in the sector of natural resources use is of great importance. Mankind faces two basic problems that are closely related to the environmental management in general and to the use of mineral resources in particular: the influence of natural resource scarcity on their use and social production development, the negative and increasing environmental pollution and the necessity of creation of measures on liquidation of this threat for the further development of society.

Alongside with the above-defined global issues, the environmental issues and rational use of natural resources have a strongly pronounced regional character and perform a particular role in the intensification of production, based on the achievements in the scientific and technological progress. Therefore, the only alternative to solve these problems may be reformation of economic and legal mechanisms for the mineral resources use.

Analysis of recent researches and publications. The problems of conceptual design of productive forces harmonious development are concentrated in the national policy of natural management. These issues have been studied by many Ukrainian scientists: I. Andrievskiy [1], B. Danilishin, M. Korzhnev [2], V. Mishchenko [4], V. Kosterin, V. Ostroveskyi [8]. For example, Andrievskiy I. [1] pointed out that at present there is no clear differentiation of powers of authorities on the regulation of

relations in the subsoil use; as a result it is impossible to determine the degree of responsibility of each of them based on the analysis of existing economic and legal mechanisms of subsoil use regulation. Mishchenko V. [4] argues that despite the relatively long period of market reforms in Ukraine the relationship of centralized economy has remained, as the government continues its policy of unaddressed custody of exploration work based on inadequate market environment of economic and legal mechanisms subsoil use.

Previously unsettled problem constituent. The current situation requires a radical and coherent approach to the existing national ecological and economic problems solutions. The interest to the problems of effectiveness increase of mineral resources use in Ukraine by the authorities, the scientific community in recent years has increased significantly. Some factors of market economy require a reassessment of traditional natural resources of Ukraine and the prospects for their effective use. Unfortunately, the system of state regulation of mineral resources use in our country does not currently meet the requirements of a market economy and has a bulky structure; its separate elements are duplicated.

It is also should be noted that the out-of-date techno-economic equipment of Ukrainian mineral resources users and economic problems stipulate the necessity of liberalization process of natural resources use concerning possible investment by domestic and foreign investors in the modernization of mining equipment, the introduction of high-tech and energy-saving technologies.

Main purpose of the article. The conducted research is based on the scientific concepts and theoretical developments by scientists of our country and foreign scholars in the direction of environmental management, namely, in the organization of rational mineral resources use. The information base of the research consists of legislative and normative documents on economic and state administration issues in the sector of mineral resources use, materials of publications by leading scientists on this issue, the statistical data.

Results and discussions. In the process of economic development of Ukraine the rational use of natural resources, in particular, land and source of raw materials has always been and remains significant. According to the Council on Productive Forces Study of NAS experts' views the total cost of natural resources of Ukraine in world prices in 1996 were about \$ 5.002 trillion, while land resources were 72 % and mineral resources - 26 %, other resources - almost 2 % of the total cost, so for the Ukrainian economy the land and mineral resources are fundamental ones. However, this does not diminish the role of water, forest, recreational resources, resources of flora and fauna in creation of the necessary conditions for life activity of the Ukrainian people and sustainable development of the country as a whole.

In the Soviet government times, the natural resources were in the so-called "national property", but it did not become the basis of their rational use. All the

natural resources of Ukraine, except part of farmland transferred into private ownership, are the property of the Ukrainian people. This is a constitutional right fixed in number of normative legal acts creating a legal system for natural resources use [1, p. 105).

Ukraine belongs to the regions with a high level of geological explored areas, significant reserves of mineral resources and the capacity of their involvement in the economy. Today in its interior there are about 20,000 deposits of 114 kinds of minerals of natural and anthropogenic origin. In the past, the share of the mineral complex of Ukraine was one third of productive assets, almost 40% of annual funding, a third of foreign exchange earnings, producing about 5% of global mineral resources, while territory is only 0.4 % of the world territory [2, p. 38].

The basic normative document regulating relations in the sector of mineral use is Code of Ukraine "On Subsurface» consolidated the state control over the use of mineral resources. The basic requirements of subsoil geological exploration, accounting, public examination and evaluation of mineral resources reserves, the state control are regulated within the Code.

Cabinet of Ministers of Ukraine adopted a number of regulatory acts. In addition, the use of mineral resources, including geological exploration is governed by the Laws of Ukraine "On state regulation of mine, production and use of precious metals, precious stones and control over the operations with them", "Mining law", "On oil and gas", "On mining and processing of uranium ores".

At the same time, the current legislation of Ukraine is behind the needs of market regulation in the economic conditions, that is, there are no unambiguous economic and legal mechanisms to facilitate broad investment in the mining sector. It is easy to explain a low level of foreign investment, if for the industry in Ukraine in 2007 it was attracted to 49.8% of foreign investments of their total volume, the mining sector attracted only 3.2% [6, p.90].

There are two basic systems of provision the right for mineral resources use: administrative (licensing) and the contractual system. Within the administrative system the right of use of mineral resources is based on state resolution issued in the form of licenses, patents, permits and other documents. In this case, the state acts as an authoritarian entity granting the right of subsoil use in the administrative order determining the fundamental conditions for subsoil use. Within the contractual system the right for mineral resources use is provided by means of the conclusion of contracts between the state and the investor, within the scope of civil law. The main forms of the contractual relations are the concessions, agreements on the distribution of products, lease, and various forms of contracts.

However, the contractual and administrative systems for provision of subsoil actually do not exist in their pure form. In most countries there is a process of mutual influence and additional administrative and contractual systems use of subsoil [3].

In many countries, the provision of subsoil use for exploration of mineral resources takes place on the basis of permits, while mining can be carried out on a contractual basis. In countries where the provision of mineral resources mining can be carried out on the basis of the administrative system, the minerals are also available for use by national companies under state control, which in their turn in order to attract investment contracts conclude the contracts with investors for joint development of mineral deposits, and the distribution of the finished products in natural and in money terms. In fact, this mechanism is an agreement on the distribution of products and is typical for countries such as China, Azerbaijan, Egypt, Indonesia and Nigeria, where the national oil companies were established. Russia is the only country where the agreements on the distribution of products are regulated by a separate federal law and a party to the agreement appears not specifically authorized company but the state directly [5].

Ukraine uses only one rental form of mineral resources use. Unfortunately, production contracts are not being used, and laws restrict access of concessionaires to natural resources that is surprising as the concession of subsoil use is normal international practice.

Ukraine is among the top ten countries in terms of volume of natural resources mining. Every year we have extracted mineral resources at about \$ 28 billion. Our country could additionally receive about \$ 8 billion by means of the active use of the latest global technologies, even not taking into account an increase in mineral resource mining [4].

According to the author one of the ways to solve this problem is the implementation in practice of concession relations. Concession is a provision by the authorized government body to a foreign investor for a particular price and for a specified period of exclusive rights to the special use of natural resources, carrying out of economic activities related to the use of objects owned by the state. Concession facilities are land, mineral resources, forests, water; selection of concessionaires usually takes place on a competitive basis. Concession form of raising capital is widely used in developed countries, and the beneficiary will be the one who passes the object to the concession and the concessionaire itself. So, in 80s of XX century the legislation of more than 120 countries provided the granting of the concessions. They included the USA, Great Britain, China, Mexico and Norway. Even such leading states were not able to allocate the necessary capital to explore the field of the World Ocean.

Adoption of the law "On Concessions" makes it possible to speed up the process of foreign capital attraction in order to strengthen the scientific and industrial potential, tends to stabilize the economy. The problem of concession has not been settled by the national legislation and the necessity for this law is increasing every day. For example, in Ukraine it has been explored the deposits of metals, and for

which there is no domestic production technology. World practice shows that in such a case it is advisable to transfer the natural resources in the concession [7]. At this stage it is impossible, as there is no defined procedure of transmission of natural resources into the concession: there is no law defining the responsibilities of the parties, the terms of the contract, providing the order, the procedure of distribution of property after the termination of the concession [8].

Concession remains one of the fastest and "painless" for the state kind of investments attractions. By its means the state for a certain period passes the investor (concessionaire) its right to ownership of the facility. In turn, the concessionaire (subject to the signing of the concession contract and the payment of concession) disposes of the object of state or municipal property without permission and gets some profit from it. Suppose the investor takes a certain company to the concession, completes it or arranges the production, while during the concession agreement all profits belong to the concessionaire. On expiration of the concession, the investor returns everything (including the purchase of equipment) to the state. Thus, the state, which itself is not able to "bump" the company is doing so at the expense of the investor, providing time for the right to manage a specific enterprise. However, concession is somewhat different from the lease. First, the concession objects are passed to the state or municipal ownership, they are uninsurable for privatization. In addition, the concession contract is for a longer period (according to Ukrainian legislation, the lease is for not more than three years, the term of the concession is not less than 10 and not more than 50 years). On the expiration of the lease contract the entrepreneur must return to the state only leased property, the concessionaire - the object of the concession with the basic means of production.

Law of Ukraine "On Concessions" has its own history. In 1993, the Verkhovna Rada of Ukraine made the attempts to accept it, but to no avail as the Communist faction blocked the process, their argument was "concession will lead to the plundering of the national wealth". In 1999, the Law "On concessions" was adopted, however, it should be stated the fact that there is practically no rule to implement in similar legislation in other countries as a concession "in Ukrainian" does not provide access to natural resources. Although the history of Ukraine concession has also left its mark: at the end of the nineteenth century it was founded modern Donbas region by Englishman John Hughes who signed the concession agreement with the government of Russian Empire at 24,000 pounds.

Imperfection of national legislation in the sector of mineral resources use creates some artificial problems for subsoil users of all forms of ownership. That is why in Ukraine the industrial development of new mineral deposits, except ornamental stones, has practically been suspended.

Conclusions and further researches directions. Functioning of economic mechanisms of subsoil use and conservation activities are only possible in the

legislative framework in order to ensure the rational use of mineral resources. Reformation of economic and legal mechanisms for subsoil use should be based on the establishment of such economic relations in the mineral resource sector, in which the national economy would have developed steadily, the state budget was replenished in the planned volumes with simultaneous and compulsory provision of the mineral resources rational use, balance of the interests of mining companies, regions and the state.

The objective necessity for further research in this area naturally arises taking into account the regulation of environmental aspects of mineral resources use, as mining process lasts for decades and the impact on the natural environment has been already shown at present and continues to accumulate in many years.

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**ПЕРСПЕКТИВИ РЕФОРМУВАННЯ ЕКОНОМІКО-ПРАВОВИХ МЕХАНІЗМІВ
НАДРОКОРИСТУВАННЯ В УКРАЇНІ**

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У статті розглядається процес реформування інтенсивного використання надр, що вимагає удосконалення правового та нормативного забезпечення, раціоналізації та екологізації. Чим інтенсивніше використовуються природні ресурси, тим ощадливіше необхідно їх експлуатувати, особливо це стосується непоновлюваних мінеральних ресурсів, тому що світове співтовариство в останні роки відчуває все більший дефіцит даних природних ресурсів. Автор акцентує увагу на основній ролі держави в розвитку процесів раціонального використання природних ресурсів, що припускає регулювання екологічних та економічних відносин у сфері надрокористування.

Ключові слова: *гірничодобувна галузь, мінеральні ресурси, надрокористування, економіко-правові механізми, ліцензія на видобуток, концесія.*

**ПЕРСПЕКТИВЫ РЕФОРМИРОВАНИЯ ЭКОНОМИКО-ПРАВОВЫХ МЕХАНИЗМОВ
НЕДРОПОЛЬЗОВАНИЯ В УКРАИНЕ**

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В статье рассматривается процесс реформирования интенсивного использования недр, требующий совершенствования правового и нормативного обеспечения, рационализации и экологизации. Чем интенсивнее используются природные ресурсы, тем бережливее необходимо их эксплуатировать, особенно это касается невозобновляемых минеральных ресурсов, так как мировое сообщество в последние годы ощущает все больший дефицит данных природных ресурсов. Автор акцентирует внимание на основополагающей роли государства в развитии процессов рационального использования природных ресурсов, подразумевающей регулирование экологических и экономических отношений в сфере недропользования.

Ключевые слова: *горнодобывающая отрасль, минеральные ресурсы, недропользование, экономико-правовые механизмы, лицензия на добычу, концессия.*