

# Distinctive Features of Legal Relations in the Area of Subsoil Use, Renewal and Protection in Ukraine

N. Maksimentseva

**Abstract**—The issue of public administration in subsoil use, renewal and protection is of high importance for Ukraine since it is strongly linked to energy security of the state as well as it shall facilitate the people of Ukraine to efficiently implement its proprietary rights towards natural resources and redistribution of national wealth. As it is stipulated in the Article 11 of the Subsoil Code of Ukraine (the Code) the authorities that administer the industry are limited to central executive bodies and local governments. In particular, it is stipulated in the Code that the Ukraine's Cabinet of Ministers carries out public administration in geological exploration, production and protection of subsoil. Other state bodies of public administration include central public authority responsible for state environmental protection policies; central public authority in charge of implementation of state geological exploration and efficient subsoil use policies; central authority in charge of state health and safety control policies. There are also public authorities in the Autonomous Republic of Crimea; local executive bodies and other state authorities and local self-government authorities in compliance with laws of Ukraine. This article is devoted to the analysis of the legal relations in the area of public administration of subsoil use, renewal and protection in Ukraine. The main approaches to study the essence of legal relations in the named area as well as its tasks, functions and methods are analyzed. It is concluded in this article that legal relationship in the field of public administration of subsoil use, renewal and protection is characterized by specifics of its task (development of natural resources).

**Keywords**—Legal relations, public administration, Subsoil Code of Ukraine, subsoil use, renewal and protection.

## I. INTRODUCTION

THE process of European integration of Ukraine requires harmonization of its legislation with European standards and needs reforming of social and legal relations. From the 1998 fundamental administrative reform in Ukraine had been unleashed and the consecutive transformation of public administration is in the process thus far. This process is backed up by academic thought, studies and pursuit of new approaches in each specific area of public administration. Public administration in subsoil use, renewal and protection is being consistently and deeply studied in law and social science for many years [1] and is a priority issue in view of the deficit for domestic energy producing subsoil resources, heavy state budget losses due to hydrocarbon import burden and breaching of the lawful rights of the people of Ukraine for exercising the possession of natural resources and having control over fair distribution of the resources. Therefore,

Nadiia Maksimentseva is an attorney in the Prosecutor General's Office in Ukraine and is writing a doctoral thesis with Oles Honchar Dnipropetrovsk National University, Ukraine (e-mail: nmaksime@yahoo.com).

proper selection of the legal framework for public administration in the field shall facilitate and streamline corresponding legal relations in accordance with generally accepted conceptual principles. It is of high importance under current reforms in Ukraine to properly define legal relations in the field of public administration as regards subsoil use, renewal and protection. For this purpose, first of all, the essence of such legal relations shall be determined in order to satisfy the needs of modern Ukrainian society and deal with present challenging environment.

From the analysis of research base and studies it is obvious that public administration as a general category has been paid due and wide attention in many sources on administrative law. However, specific features pertinent to the subsoil use, renewal and protection, in opinion of the author, require stand-alone study. Taking into account above-mentioned in order to develop effective mechanisms for public administration in subsoil use, renewal and protection in Ukraine it is essential to carry out a profound study of legal relations in that field.

It is defined in general theory of law that integral parts of any relations are: subjects, objects, scope and legal cases, which, taken altogether, build up the prerequisites for emergence, alteration and termination of such legal relations. Specifics of legal relations, in particular in what is related to subsoil use, renewal and protection, are rendered by studying its essence and distinctive features. It is commonly considered by the scientists [2] that public administration, above all, shall facilitate effective reach of a certain task set forth by the State in the field of public or social relations.

In the framework of administrative law, the definition of the subject in legal relations is firmly established and is meant as the system empowered with well-defined competences and governing authorities, which allow exercising its power by putting into action executive orders and resolutions being compulsory for implementation. In other simplistic words, such a system is the administrative system.

Systemic character of public administration refers to provision of unity among executive (governing and administrative) and partnership (social and collective) approaches to regulation of social relations and activities [3]. Public administration shall be effective provided it is grounded on systematicity. It is envisaged by the fact that public administration consolidates lots of state bodies and social establishments, millions, in some cases, of public officers and servants [4]. The term "system" originates from Greek word (σύστημα) *systema*. This term means the compound of elements which are incorporated into interaction and links between each other in order to support defined

integrity, unity, and oneness [5]. Thus, if subject of legal relations (in particular, public administration) is meant as the system that is represented by the state authority with specified organization, structure and hierarchy which is stipulated in internal policies of subordination of its elements, then any integral part of that system (state authority) is also permitted to act as a subject of public administration. Such subject shall be entitled to act as state body entirely or individually as an officer from such state body within prescribed competence/power, but with the right to execute the competence/power at its own discretion (*discretionary power*), by choosing the one and only best option from various legally permitted options under specific conditions. At the same time, the major characteristic of the subject in the above mentioned field is prescribed by certain power, defined by the State in order to be able to have administrative and regulatory impact on the object of public administration. Hence, the object of public administration shall be compulsory subordinated to the power of the subject.

## II. OBJECT, AIMS AND FEATURES

It is specific sign of public administration in subsoil use, renewal and protection that its officers may belong to general and special authorities. As a rule, general state authorities execute its powers in subsoil use, renewal and protection along with other tasks, such as, for instance, definition of state policies in other economic, social, cultural and academic disciplines. In its turn, public authority of special competence operates specifically in applicable field, in particular in the field of subsoil use, renewal and protection. Therefore, public administration in the field of subsoil use, renewal and protection is its primary task, although some secondary tasks may also exist.

Special public authorities are subdivided in two groups, intra-industrial and inter-industrial, depending on competence. For the purpose of this study, intra-industrial public authorities include the Ministry of Ecology and Natural Resources of Ukraine (a central executive authority activity of which is governed and coordinated by the Cabinet of Ministers of Ukraine, the Ministry supervises environmental protection, ecological safety, treatment of waste, hazardous chemicals, agricultural chemicals and is authorized to carry out ecological expertise on behalf of the State). The Minister of Ecology and Natural Resources of Ukraine administers and coordinates more specific state agencies, such as State Ecological Inspection of Ukraine, State Geological Survey of Ukraine, State Water Resource Agency of Ukraine etc.). Intra-industrial authority is represented, as an example, by the State Geological Survey of Ukraine. However, each element of administrative system shall be always focused on the object of administration. Therefore, the scope of subjects for legal relations, the borders of powers, their specifics are closely linked to the object of public administration in subsoil use, renewal and protection.

There is no single approach to the scientific definition of the object of legal relations. In some cases there are exactly opposite approaches. For instance, some scholars, such as

Atamanchuk [6], argue that the objects are represented by society, groups of individuals and individuals if they are united by common features. Other scholars, such as Starilov [7], argue that tangible objects, resources, funds and suchlike represent objects of public administration.

Authors of the Concept for Administrative Reform in Ukraine refer to the object of public administration as the field of social activities that is under supervisory impact of the State [8]. At the same time certain scholars consider the object of public administration as an aggregation of activities that may be subject to intentional impact from a single person or an organized group of persons [9].

As it is stipulated in Article 11 of the Subsoil Code of Ukraine the authorities that administer the industry are limited to executive bodies and local governments.

Judicial authorities shall be treated and distinguished separately in what is related to regulation of subsoil use, renewal and protection as they do not possess administering powers of abovementioned matters, however by its rulings they may impact public administration, for instance, by calling off (canceling, revoking, annulling etc.) certain administering acts of the authorities. It is commonly determined in the theory of law that the object of legal relations is understood as a category in which regard corresponding parties to relationships operate [10]. Thus, in the opinion of the author, social relations that fall under the governing and regulatory impact of public authorities that administer subsoil treatment comprise, indeed, the object of public administration of subsoil use, renewal and protection.

There are several types of relations that are indicated in the national legislation that regulates mining and use of subsoil and underground natural resources:

- Mining relations: relations in the field of geological exploration of subsoil, design, construction (reconstruction or reentry, technical workover) extraction, shutdown and abandonment of mining operations, emergency protection of mining operations, health, safety and environment protection of mining. Therefore, mining relations are those pertaining to exploitation of mineral deposits, in particular;
- Relations in the field of State subsoil fund formation and formation of State Mineral Deposits Fund as an integral part of State Subsoil Fund [11];
- Relations in the field of subsoil protection;
- Relations in the field of subsoil renewal.

In addition to object of public administration there are other fundamental elements, such as the aim and the mission (tasks) of public administration.

Public administration of subsoil use, renewal and protection is focused on the efforts of state bodies to supervise and administer activities in the field of mining and subsoil use, to improve and to develop such activities and to secure administrative impact on legal relations in the field of subsoil use, renewal and protection. It is the aim of public administration in the abovementioned field to provide effective, well educated, rational and balanced subsoil use for the best benefit of a society and to guarantee along with this

aim that subsoil use shall not bring about any hazard or damage to human safety, property and environment with proper attention being paid to protection of legal rights and interests of entrepreneurs, establishments of different legal forms and individuals.

The aim of public administration in the aforementioned field shall be reached after a number of certain interim tasks are accomplished. These tasks shall include, but are not limited to:

- Optimization of public administration in the field of subsoil use, renewal and protection;
- Development and implementation of effective and productive state policies for subsoil use, renewal and protection;
- Introduction of innovative technique into public administration of subsoil use, renewal and protection;
- Borrowing and imports of external experience from public administration agencies, laws and regulations from abroad;
- Advance of decentralization in the abovementioned field of public administration;
- Employment of well-informed and qualified professionals and active input into the system of education, professional training and further development and advance of staff;
- Proper budget financing of public administration;
- Permanent advance of legislative initiatives and amendments to laws and regulations in place for public administration in the field of subsoil use and protection of environment;
- Upgrade of scientific and IT support for public administration in the field;
- Prevention and extinction of corruption;
- Interagency cooperation and communication between different public administration authorities.

In view of the fact that public administration of subsoil use, renewal and protection are meant to deal with social relations, it is required to define its features. This is indeed the aim of public administration that determines its designation and sets forth administrative system in a particular field of social relations. For that reason, public administration is exercised according to the aim, which, in its turn, determines the path of development and specifics of administrative system in each particular industry.

It is generally accepted that there are five characteristic features of public administration: Governance and execution; subordination to laws; scale and universality; hierarchy; organizational feature [12].

Governance and execution is carried out through administering agent since executive bodies of state are the major administering agents, which exercise execution, issue regulatory acts, rules (bylaws). Execution of legislative acts is the fundamental function of state executive bodies. This feature is commonly represented in a legislative act that regulates each particular public authority (normally it is set forth in rules and regulations under which it is established). For instance, State Geological Survey of Ukraine is a central executive body that operates under governance and

supervision of the Ukraine's Cabinet of Ministers through the Minister of Ecology and Natural Resources of Ukraine (hereinafter, the Minister). State Geological Survey of Ukraine is incorporated into the system of state executive bodies and implements state policies in the field of geological exploration and efficient subsoil use. State Geological Survey of Ukraine is in a possession of direct or other corporate control over a number of enterprises, organizations and legal entities of private and public laws. Such organizations and entities operate for the purpose of accomplishing certain tasks in the field of subsoil use, in particular, and include, but are not limited to inspections, commissions, expert agencies, institutions etc.

Scope of public administration is defined by the law (in general meaning). Exempli gratia, legislative fundamentals of public administration in the field of subsoil use, renewal and protection are stipulated in the following legislative acts: Subsoil Code, Ukraine's Law on mining [13] etc. Executive bodies may pass bylaws and regulations that work out clauses and provisions of special laws in details. In such a way *subordination to laws* is another feature of public administration.

The *scale of public administration* encompasses all territories and objects to administration under the state jurisdiction of Ukraine.

*Universality of public administration* refers to continuous and uninterrupted execution by administering agent of impact and control over social relations, exercise of such impact across all levels of public administration.

*Hierarchy* is used to mean a strict and precise system of public authorities based on obedience and subordination, which allows reaching desired tasks in the most efficient manner.

State Geological Survey of Ukraine, as an example and as is said earlier, is subordinated to the Ukraine's Cabinet of Ministers and is under coordinating influence of the Minister of Ecology and Natural Resources of Ukraine. Along with this, the survey has its own sophisticated structure that includes various departments with individual powers, for instance the Department of State Geological Control and Divisions of control over geological exploration and use of subsoil with regional representative offices, such as:

- Central intraregional office;
- Western intraregional office;
- Southern intraregional office;
- Northern intraregional office;
- Azov Sea and Black Sea intraregional office.

*Organizational feature* of public administration refers to concordance between administering agents and objects to public administration on the different layers of hierarchy in order to secure rational and efficient subsoil use, renewal and protection while reaching anticipated social, ecological and economical effect.

With regard to legal relations in the field of public administration of mining industry and subsoil use it is important to highlight inherent features of such relations:

- a) It is developing on the basis of administrative, legislative

reforms as well as reforms in the field of ecology and subsoil use.

- b) Typical administering agents have common competence and may be intra-industry and inter-industry with ability to execute its rights and obligations both collectively and individually by strictly authorized public official.
- c) It is primarily linked to the special status of the object that may exist in the field of mining and subsoil use, renewal and protection, State subsoil fund formation and formation of State Mineral Deposits Fund as an integral part of State Subsoil Fund.
- d) It is a form of social relations of public authority in charge of subsoil use, renewal and protection.
- e) Exercise of rights and obligations is controlled and guaranteed by the State.

From stated above it is evident that public administration in the field of subsoil use, renewal and protection is characterized by specifics of the subsoil as a matter per se since it is an object of the nature with special conditions for its use. The resources of subsoil have certain features, which are not existent for other means of production, in particular:

- Resources of subsoil (as a part of natural resources) are the products of the nature, they emerge and exist regardless from the will and awareness of a human being;
- Resources of subsoil may alter its characteristics of kind and quantity in the process of use, exploration and extraction in particular;
- *Resources of subsoil are in close connection to other objects of public administration, such as land, water etc.*

Feasibility of subsoil use as a natural deposit of mineral wealth is characterized by its geological and economic properties of subsoil. Ecological properties of subsoil are reflected by its mission in preservation of natural balance. Natural and geological properties of subsoil determine its fundamental commercially and environmentally intended use in a corresponding geological exploration, commercial production of mineral resources, construction and exploitation of subsoil or underground installations related and not related to production of mineral resources, production and other hazardous waste disposal, discharge of liquid wastes and sewage, establishing of preserved natural parks, recreational and other protected territories, collection of rare mineralogical, paleontological and other unique geological samples [14].

### III. CONCLUSION

As a conclusion, legal relations that are existing with regard to public administration of subsoil use, renewal and protection are primarily shaped by unique nature of its object (in particular, exploration and use of natural resources). It should be emphasized that the essence of public administration in subsoil use, renewal and protection is reflected in the scope of powers and authorities, which are exercised by means of official functions that are aimed at designated targets.

Public administration in the field of subsoil use, renewal and protection shall be performed by the state bodies of general and special competence in accordance with parameters (characteristics) of public administration which are prescribed

in provisions of administrative law and are determined by legal relations where subsoil is referred to as the major object and which require to be regulated by administrative legal means. Therefore, administrative legal relations shall be considered as the paradigm for public administration of subsoil use, renewal and protection, because administrative legal relations indeed are the main focal generators of power and authority. Formation of the best operational model of public service and public administration that shall implement regulatory functions and tasks towards subsoil use, renewal and protection is dependant on legal relations in this filed.

Legal relations in the field of public administration of subsoil use, renewal and protection comprise a dialectic category of historical character and are subject to change under the impact of various economical, political and other conditions. Reforms in the field of subsoil use and mining in Ukraine bring about transformation of such relations and public administration in that field.

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