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Roman S. Kirin, Petro M. Baranov, Volodymyr L. Khomenko

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The State Service of Geology and Subsoil of Ukraine (Geonadra) as a legal subject exercising the right of geological control

Roman S. Kirin¹, Petro M. Baranov², Volodymyr L. Khomenko³

¹ Institute of Economic and Legal Research of NAS of Ukraine, Kyiv, Ukraine, kirinrs62@gmail.com

² Dnipropetrovsk Scientific and Forensic Expert Center for the Ministry of Internal Affairs of Ukraine, Dnipro, Ukraine

³ Dnipro University of Technology, Dnipro, Ukraine

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Abstract. The article analyzes the scientific and legislative provisions related to the legal status of the State Service of Geology and Subsoil of Ukraine as a subject of geological control. The external and internal structural peculiarities and normative bases of exercising the control and supervisory functions of the State Geonadra are investigated. The external

aspect is the subordination of the organization to the Ministry of the Environment, which determines the priority areas of work of the State Geonadra, approves its work plans and harmonizes the structure of the apparatus. The internal aspect is that it exercises its powers directly both through established territorial bodies (Department of State Geological Control, inter-regional territorial departments and through territorial inspectorates, which are within the sphere of management of the State Geonadra) created within the established order. The normative grounds for exercising control and supervisory functions by the State Geonadra at the present stage are analyzed: the law on state surveillance; government regulations; orders of the State Regulatory Service of Ukraine, the Ministry of Environment and the State Geonadra; annual and monthly inspection plans; document forms and reporting forms. The authors propose a classification of subjects of geological control rights, which includes the following types: general, generic and direct (primary and secondary). The classification of scheduled and unscheduled inspections as measures of state supervision (control) was made according to the following criteria: patrimonial subject of control; the object of control over the use of mineral resources; the subject of the initiation and the reason for unscheduled inspections; the object of control over the destination of minerals; the object of control over the type of natural mineral substance. The beginning of the reform of the state supervision (control) system in the field of environmental protection is characterized. Its purpose is to create an effective state system for the prevention of environmental offences and for environmental monitoring, reduce the pressure on the business environment, encourage broad involvement of the public in the supervision (control), formation of a single integrated state body of environmental monitoring and control (D) – State Environmental Protection Service.

Keywords: State geological control, State Geonadra, geological study of mineral resources, subjects of control.

Держгеонадра як суб'єкт права геологічного контролю

Р.С. Кірін¹, П.М. Баранов², В.Л. Хоменко³

¹ Інститут економіко-правових досліджень НАН України, Київ, Україна

² Дніпропетровський науково-дослідний експертно-криміналістичний центр МВС України, Дніпро, Україна

³ Національний технічний університет «Дніпровська політехніка», Дніпро, Україна, kirinrs62@gmail.com

Анотація. У статті проаналізовано наукові та законодавчі положення, пов'язані з правовим статусом Державної служби геології та надр України як суб'єкта геологічного контролю. Досліджено зовнішні та внутрішні структурні особливості та нормативні підстави здійснення контрольно-наглядових функцій Держгеонадрами. Зовнішні є підвідомчою організацією Мінприроди, яке визначає пріоритетні напрямки роботи Держгеонадр, затверджує плани роботи і узгоджує структуру апарату. Внутрішні – здійснює свої повноваження безпосередньо і через утворені в установленому порядку територіальні органи (департамент Державного геологічного контролю, міжрегіональні територіальні відділи і територіальні інспекції, які належать до сфери управління Держгеонадр). Проаналізовано нормативні підстави здійснення контрольно-наглядових функцій Держгеонадрами на сучасному етапі: закон про держнагляд; постанови уряду; накази Державної регуляторної служби України, Мінприроди і Держгеонадр; річні і місячні плани проведення перевірок; форми документів і форми звітності. Авторами запропоновано класифікацію суб'єктів права геологічного контролю, яка включає такі його види: загальний, родовий і безпосередній (основний і додатковий). Класифікацію планових та позапланових перевірок як заходів державного нагляду (контролю) здійснено

за такими критеріями: родовий суб'єкт контролю; об'єкт контролю за видом користування надрами; суб'єкт ініціювання і підстави позапланових перевірок; об'єкт контролю за призначенням корисних копалин; об'єкт контролю за видом природної мінеральної речовини. Охарактеризовано початок реформи системи державного нагляду (контролю) у сфері охорони навколишнього природного середовища. Її метою є створення ефективної державної системи запобігання екологічним правопорушенням і моніторингу стану навколишнього природного середовища, зниження тиску на бізнес-середовище, широке залучення громадськості до здійснення нагляду (контролю), утворення єдиного інтегрованого державного органу природоохоронного моніторингу та нагляду (контролю) – Державної природоохоронної служби.

Ключові слова: державний геологічний контроль, Держгеонадра, геологічне вивчення надр, суб'єкти контролю.

Introduction. In the current conditions the control function of the state has, apart from regulative, preventive value, since the subject of the control performs the assessment on and inspections of how the object of the control performs and follows the legally-imposed requirements in order to prevent deviations from legitimate activity in its work, and in case of discovery of a violation – bringing the controlled objects to a condition of allowable safety level using the generally-binding, formally defined, state-guaranteed rules of behaviour which regulate public relations.

The problem of state control on study, use and protection of the mineral resources is closely related to the processes characteristic for the modern stage of the development of relations between the state and the subjects of the economy in general and a new understanding of the role of state monitoring (control) (hereinafter – SM (C)) in particular.

Materials and methods of research. The SM (C) in the environmental sphere was examined in numerous scientific works, orientations of which could be divided into the following groups: 1) ecological control and monitoring; 2) SM (C) in the sphere of use of natural resources; 3) ecological control and monitoring of use and protection of mineral resources.

Therefore, O.V. Holovkin, in his study on the conceptual and legal-regulatory provisions of the formation and development of the system of state control and monitoring in the sphere of protection of the environment in Ukraine, also analyzed the system of the bodies of the state control and specifics of their legal status in this sphere (Holovkin, 2012). At the same time, according to the author, such means of the corresponding improvement of the legislation, particularly the adoption of the Law “On State Monitoring” or improvement of these provisions in the Law “On Ecological Control”, from the perspective of the modern approaches to the systematization of legislation as the most promising form of improvement, must be considered suboptimum (Holovkin, 2013).

In his dissertation, O.B. Fedorovska suggested providing civic organizations with the right to have

a within their composition a subdivision of public inspectorate in the sphere of environment protection and determining the norm according to which an organization or community that recommends a person for performing duties of a public inspector would bear costs associated with the public control (Fedorovska, 2007).

While developing the characteristic of the current condition of public management in the sphere of use of the natural resources, Y.O. Leheza, among the problems of its execution, distinguished the following: low efficiency of performing the functions of state control and monitoring; absence of legally-defined administrative permission-license procedures for obtaining special rights; necessity of development and implementation of state programme of ecologization of production, etc (Leheza, 2018).

O.A. Hrytsan substantiated for the first time the expedience of re-distribution of the responsibilities in the sphere of use and protection of the mineral resources between the bodies of power of special competence in order to eliminate parallelism and duplication of the functions (Hrytsan, 2009).

A.S. Yevstihnieiev provided arguments that undertaking measures of SM (C) for enforcing compliance with the rules of ecological safety during special use of mineral resources is one of the main legal means of ensuring ecological safety (Yevstihnieiev, 2014).

As a possible solution of the problem of re-distribution of the functions of management, control and monitoring on use and protection of mineral resources, V.L. Bredikhina considers proposes making a clear designation of the responsibilities of the bodies which perform mining monitoring and bodies which perform control in the sphere of use of mineral resources and control-implementing organs according to the objects of control (Bredikhina, 2016).

O.O. Surilova, in her conclusions, on the one hand supports the well-known principle of necessity of designating the permissive and control functions in one management body, and on the other hand, as a supporter of the integral control function, rather illogically suggests differentiating it according to the

type of natural resource by establishing a specialized control organ – State Service for Protection of Mineral Resources (Surilova, 2016). It seems more expedient to have an internal specialization of control in an integrated control body, for example as suggested by the government – State Environmental Protection Service (Pro zatverdzhennia Polozhennia pro Ministerstvo ekolohii ta pryrodnykh resursiv Ukrainy, 2015).

According to V.V. Strelnyk, who determined identical and special features of the state geological control (hereinafter – SGC) and mining monitoring in the considered sphere in terms of their content, SGC is orientated at inspection of the results of geological survey of mineral resources (hereinafter – GSoMR), and mining monitoring – process of survey of the latter (Strelnyk, V.V., 2017). Similar conclusion seems discussible, since the analysis of the responsibilities of the subjects of control and monitoring as defined in the articles 62, 63 of the Code of Ukraine on Mineral Resources (hereinafter – CoMR) respectively, does not imply such interpretation.

Detailed comparison of the rights and duties of the subjects in the chain “use of mineral resources – control and monitoring – responsibility”, and the conclusion that they were insufficiently correlated was made by R.S. Kirin (Kirin, 2019).

Therefore, the analysis of separate scientific developments of domestic scientists of ecological, nature-resource, mineral resource, mining and geological law in the sphere of implementation of SGC indicated the potential for further analytical work. Thus, the **objective of the article** was determining the peculiarities of the legal status of the State Service of Geology and Mineral Resources of Ukraine, or Geonadra, (hereinafter Geonadra) as a subject of state geological control.

Results and their analysis. The recent history of the establishment and reformation of the organs and order of carrying out SGC is equally dynamic and complex. Therefore, less than in a month after adoption of The “Act of Declaration of Independence of Ukraine” by the Verkhovna Rada of Ukrainian SSR, the Cabinet of Ministers of Ukraine (hereinafter – CMU) through the “Questions of the State Committee of Ukraine on Geology and Use of Mineral Resources” from 23th September of 1991 № 219 adopted the corresponding Provision, according to which the main duties of the State Committee of Geology of Ukraine are, among others, control and monitoring of protection of the mineral resources and geological environment.

After almost a year, by the order of the CMU from 12th August of 1992 № 467, a new provision

with a similar name was adopted. However it lost its force as well due to regulation of the CMU from 1st of April of 1996 № 387. In the meantime, the provision on SGC was amended twice, particularly:

1) by the regulation of the CMU from 17th March 1993 № 200 “On the adoption of the Provision on the State Geological Control of works of geological studies on the Mineral Resources of Ukraine” (the provision identified the following bodies of the SGC:

The Main Office of the SGC of works on the GSoMR of the State Committee of Geology Ukraine; Territorial inspections of the SGC of the works on GSoMR);

2) the regulation of the CMU from 30th November 1994 № 801 “On the adoption of provision on the state geological control of the works on geological surveys and use of the mineral resources of Ukraine” (SGC of the works on GSoMR was conducted by the Ministry of Nature and its local bodies). The latter regulation was developed due to adoption of the CoMR from 27.07.1994

However, that regulation lost its force as well due to the regulation of the CMU from 14th December 2011 № 1294 “On adoption of the order of conducting state geological control”, according to which the SGC was carried out by the State Service of the Mineral Resources and its territorial bodies. Eventually, the same happened to the most recent government’s regulation which lost its force due to the regulation of the CMU from 10th March of 2017 № 239.

Thus, currently, the Geonadra executes its duties directly or through the territorial bodies created according to the established procedures (Pro zatverdzhennia Polozhennia pro Derzhavnu sluzhbu heolohii ta nadr Ukrainy, 2016), entirely corresponding to the provision of Article 5 of the Law of Ukraine “On the State Geological Service of Ukraine” (hereinafter – law on the State Geoservice) (Pro derzhavnu heolohichnu sluzhbu Ukrainy, 1999), because the State Geoservice includes: 1) State Geonadra; 2) State enterprises, institutions and organizations in the sphere of management of the State Geonadra. By contrast, according to Article 7-1 of the same law, SGC is performed by the State Geonadra, and the order of execution is adopted by the CMU. However, taking into consideration the discrete nature of the changes, in fact there is now practically no such control.

The abovementioned governmental regulation of 10th March 2017 № 239 mentions cancellation of some regulations of the CMU, the existence of which is not prescribed by the law of Ukraine “On the main provisions of the State Monitoring (Control) in the sphere of the economic activity” (hereinafter the State

Monitoring) and no other law which defines the order of conducting state monitoring (control) (SM (C)), and the goal of adoption of this regulation was elimination of the reasons for conducting excessive (doubled) control in the sphere of the economic activity, decrease in the regulatory pressure on business, improvement of investment climate. However, such argumentation obviously contradicts the abovementioned provisions of the law on the State Geoservice¹³, article 7-1.

Furthermore, the current CoMR contains a whole section (section VII “State Control and Monitoring of the Work on Geological Study of the Mineral Resources, their Use and Protection”, articles 60-63), which defines the goals of the SGC, the body which performs its functions and responsibilities regarding the SGC. Also, article 62 of CoMR stipulates that the order of implementation of the SGC is determined by the CMU and should be orientated towards the ensuring the fulfillment of the established order of exploitation of mineral resources, fulfillment of the obligations regarding the protection of mineral resources by all state bodies, enterprises, institutions, organizations and citizens, according to the Legislation of Ukraine.

Therefore, a situation has developed, in which, first of all, according to part 4 of article 4 of the law on state monitoring, a body of the SM (C) cannot conduct state monitoring (control) in the sphere of economic activity, if the law does not directly impose SM (C) in a particular sphere of economic activity on such body and does not define the obligations of such body during SM(C).

Secondly, the abovementioned instructions of the Law on State Geoservice and CoMR do regulate the described relations regarding the State Geonadra and SGC, though both laws empower particularly the government to set out the order of SGC.

Thirdly, the law on the state monitoring sets out general requirements on SM (C) and special laws are adopted taking into account the peculiarities defined in the corresponding spheres, that is the law on the State Geoservice and CoMR.

Fourthly, at subsidiary level, according to the law on state monitoring, general instructions are defined regarding: a) requirements to design of the annual complex plans on measures of SM(C), making changes in them and reporting on their execution (Pro zatverdzhennia Vymoh do oformlennia richnykh ta kompleksnoho planiv zdiisnennia zakhodiv derzhavnoho nahliadu (kontroliu), unesennia zmin do nykh ta zvituv shchodo yikh vykonannia, 2017); b) methods of the development of the criteria which define the extent of risk caused by carrying out economic activity and the periodicity of planned measures of

SM (C) is defined, as well as the unified forms of acts concluded based on the results of planned (exceptional) measures of SM(C) (Pro zatverdzhennia metodyk rozroblennia kryteriiv, za yakymy otsiniuietsia stupin ryzyku vid provadzhennia hospodarskoi diialnosti ta vyznachaietsia periodychnist provedennia planovykh zakhodiv derzhavnoho nahliadu (kontroliu), a takozh unifikovanykh form aktiv, shcho skladauietsia za rezultatamy provedennia planovykh (pozaplanovykh) zakhodiv derzhavnoho nahliadu (kontroliu), 2018).

Fifthly, at the subsidiary level, according to the Law on State Monitoring, special instructions are made regarding: a) criteria defining the extent of risk from economic activity in the sphere of geological study and rational use of the mineral resources and the periodicity of the planned measures of SM(C) by the State Geonadra (Pro zatverdzhennia kryteriiv, za yakymy otsiniuietsia stupin ryzyku vid provadzhennia hospodarskoi diialnosti u sferi heolohichnoho vyvchennia ta ratsionalnoho vykorystannia nadr i vyznachaietsia periodychnist zdiisnennia planovykh zakhodiv derzhavnoho nahliadu (kontroliu) Derzhavnoiu sluzhboiu heolohii ta nadr, 2018); b) forms of documents in the sphere of SGC (Pro zatverdzhennia form dokumentiv u sferi zdiisnennia derzhavnoho heolohichnoho kontroliu, 2013) and reporting formats (Pro zatverdzhennia formy zvitnosti, 2013).

A complicated situation has developed in the legal status of territorial bodies of the State Geonadra. Therefore, for the execution of the provisions of the Law on the State Geoservice (Pro derzhavnu heolohichnu sluzhbu Ukrainy, 1999), the order of the Ministry of Ecology and Natural Resources of Ukraine from 26 January 2001 №12 “On establishment of territorial inspections of state geological control”, 6 territorial inspections of SGC (hereinafter TIoSGC) were created for monitoring work on geological surveys and use of mineral resources (hereinafter – GSUoMR) in the form of property and legal status as a state organization: Donetsk, Southern, Central (Kirovsk), Western, North-Eastern (Poltava), Black Sea, which operate according to the order of the Ministry of Nature from 7th April 2008 № 174. According to the proposition of the Ministry of Nature and State Geonadra, entire property complexes of these State Organizations (SO) TIoSGC were given to the sphere of the management of the State Geonadra (Pro peredachu tsilisnykh mainovykh kompleksiv derzhavnykh pidpriemstv, ustanov ta orhanizatsii do sfery upravlinnia Derzhavnoi sluzhby heolohii ta nadr, 2011). Directly after that, in the second half of 2011 another three notable events occurred:

1) adoption of the order which defines the organizational and procedural issues of the interaction between the Ministry of Nature and the State Geonadra (Pro zatverdzhennia Poriadku vzaiemodii Ministerstva ekolohii ta pryrodnykh resursiv Ukrainy z tsentralnymy orhanamy vykonavchoi vlady, diialnist yakykh spriamovuietsia i koordynuietsia Kabinetom Ministriv Ukrainy cherez Ministra ekolohii ta pryrodnykh resursiv Ukrainy, 2011);

2) establishment of interregional territorial bodies as structural units of the apparatus of the State Geonadra (Pro utvorennia mizhrehionalnykh terytorialnykh orhaniv Derzhavnoi sluzhby heolohii ta nadr, 2011);

3) adoption of new order of implementation of SGC – resolution of the CMU from 14th December 2011 № 1294 “On adoption of the order of implementation of state geological control” (lost its force according to the regulation of the CMU from 10th March 2017 № 239).

In early 2012 SGC was performed, according to the abovementioned order, by the Geonadra and its territorial bodies, which according to the government order (Pro utvorennia mizhrehionalnykh terytorialnykh orhaniv Derzhavnoi sluzhby heolohii ta nadr, 2011) comprised 6 inter-regional departments (hereinafter – IRD): Northern, Southern, Western, Eastern, Central, Azov-Black Sea. The IRD were included in the Department of SGC of the Geonadra, which, according to the set goals performed the following functions (Struktura Derzhavnoi sluzhby heolohii ta nadr Ukrainy, 2019): 1) ensuring compliance with the established order, norms and rules of geological-survey, search, survey and other works related to geological study of the mineral resources by all users of mineral resources, i.e. legal and normative-regulatory acts of Ukraine, state standards, normative-technical documents during the use of mineral resources and requirements regarding protection of mineral resources during their complete and complex studies; 2) organizing and carrying out planned and unscheduled inspections of users of mineral resources, according to the results of which (in case of finding violations of the legislation obligations) acts are concluded, it gives obligatory guidance (instructions) about eliminating the found defects and violations of the legislation; 3) preparing data on the basis of analysis and generalization of the initial materials for giving propositions to the management of the Geonadra regarding improvement of the effectiveness of works on GSUoMR; 4) developing data bases of the conducted inspections and collecting, analyzing and processing information on activity of users of

mineral resources throughout Ukraine, its continental shelf and exceptional (marine) economic zone; 5) according to the established order preparing materials for action in cases of administrative violations. Apart from IRD, the Department of SGC has also the department of control on GSUoMR.

Therefore, all State Organizations (SO) TloSGC, by remaining state organizations that belong to the sphere of management of the Geonadra, lost their functions of SGC. Instead, their goal was still activity related to collecting materials and assessment of results of activities of the resource users, which are necessary for control of compliance with the conditions of special permission for using the mineral resources or agreement about the conditions of using mineral resources.

Therefore, for example, SO Southern TloSGC performs work with consideration of requirements of the CoMR, government resolutions, other normative documents in the sphere of geology, protection of mineral resources and mining, involving description of issues regarding:

Rationality of geo-surveys during GSUoMR;

Methodological compliance of works during GSUoMR;

Rationality of applying the methods and technologies, complexity, effectiveness of work on GSUoMR;

Full amount and probability of the initial data on the quantity and quality of the reserves of the main and together embedded fossil fuels and components in them;

Timely state registration of the works of GSoMR;

Timeliness and correctness of the reports of mineral resource users which carry out extraction of fossil fuels;

Compliance with the requirements, standards and other requirements to the GSUoMR by the users;

Correspondence of geosurveys performed by the users to the aim of GSoMR projects of such works;

Completeness of the extent of study of the geological structure of mineral resources, mining-technical, hydrogeological, engineering-geological, geological-ecological and other conditions of deposits of fossil fuels; - quality and efficiency of works on GSoMR;

Fulfillment of the technologies which would ensure the necessary study, while not reducing the industrial value, during survey-industrial mining;

Compliance with the stipulations of special permissions for using the resources;

Fulfillment of the agreement on using the resources;

Observance of the decisions and recommendations of the State Commission of Ukraine on the Mineral Resources (Derzhavna orhanizatsiia «Pivdenna terytorialna inspektsiia derzhavnoho heolohichnoho kontroliu za vedenniam robot po heolohichnomu vyvchenniu ta vykorystanniu nadr», 2018).

In these conditions, collaboration of the State Geonadra with SO TIoSGC in the sphere of SGC looks specific. According to the standard formula (about planned measures of SM (C) in a certain period) the head of the Geonadra orders the department of SGC to 1) carry out planned inspections on the activities of the resource users; 2) involves scientists and experts, workers, including DO TIoSGC (with approval with their management) in participating in the inspections according to the established order. That is, while not being *de jure* a subject of SGC the workers of territorial inspections *de facto* can perform certain duties regarding the SGC, in the case of their involvement by the Department of SGC as a legal subject of SGC, because these SO TIoSGC are within the management sphere of the Geonadra.

To a great extent, this scheme of SGC was organised composed taking into account the staff deficiency during performance of the established plans of SM (C) by the departments of SGC, because, for example, in the report for 2016, this department had 37 officials who carried out the inspections of the highest level in all administrative-territorial units of Ukraine (except the temporarily occupied territory of Crimea and certain areas of Donetsk and Luhansk Oblasts). At the same time, 962 measures of SGC took place, including 907 planned and 55 exceptional measures of SGC. In 2017 and 2018 these indicators were respectively 62 (0 and 62) and 1045 (979 and 66). In 2017 the planned inspections of the resource users by the Department of SGC were not performed due to the established moratorium on their implementation.

Finally, we should note that during planning of the control-monitoring orientation of the work in 2018 by the Department of SGC, a risk-orientated approach was used, implying risk criteria defined by the resolution of the CMU from 5th November 2014 № 593, which in late 2018 was updated and currently the planned measures of SM (C) of the activities of subjects of economy in the sphere of GSUoMR in accordance with the special permission for using the resources are carried out by the Geonadra within their authority depending on the criteria defined in the appendices to the regulation (Pro zatverdzhennia kryteriiv, za yakymy otsiniuietsia stupin ryzyku vid provadzhennia hospodarskoi diialnosti u sferi heolohichnoho vyvchennia ta ratsionalnoho

vykorystannia nadr i vyznachaietsia periodychnist zdiisnennia planovykh zakhodiv derzhavnoho nahliadu (kontroliu) Derzhavnoiu sluzhboiu heolohii ta nadr, 2018) with the following periodicity: 1) with high level of risk – no more than twice in two years; 2) with average level of risk – no more than once in 3 years; 3) with low level of risk – no more than once in 5 years.

At this stage the reform of the SM (C) in the sphere of the protection of the environment in general and mineral resources in particular has not stopped, because in Ukraine the corresponding Conception of Reformation of SM (C) system was adopted (Pro skhvalennia Kontseptsii reformuvannia systemy derzhavnoho nahliadu (kontroliu) u sferi okhorony navkolyshnoho pryrodnoho seredovyscha, 2017). In this aspect, we suggest looking at some important issues, solving which and consideration of which in the future development of the subject of the SGC seem quite relevant.

1. *Duplication of control-monitoring functions.* According to articles 231 and 239 of the Code of Ukraine on administrative violations (Kodeks Ukrainy pro administratyvni pravoporushennia, 1984) (hereinafter – CoAV), the subjects of prosecution regarding administrative responsibility of violations of laws on mineral resources and geology are as follows:

1) central body of executive power which implements the state policy in the sphere of labour safety (now State Labour Service of Ukraine) which considers the violation of legislation on mineral resources (article 57 of CoAV);

2) central body of executive power which implements the state policy in the sphere of geological study and rational use of mineral resources (now – State Service of Geology and Mineral Resources) which deals with cases of administrative violations listed in article 57 of CoAV.

According to duties of the Labour Service, this subject implements state mining monitoring and in cases described in the legislation concludes protocols on administrative violations, considers cases on listed violations and prepares protocols on administrative fines (Pro zatverdzhennia Polozhennia pro Derzhavnu sluzhbu Ukrainy z pytan pratsi, 2015). The further subsidiary regulation of mentioned provisions of CoAV and articles 60-63 of CoMR was reflected in the government resolution on state mining monitoring (Pro zatverdzhennia Polozhennia pro poriadok zdiisnennia derzhavnoho hirnychoho nahliadu, 1995). At the same subsidiary level, the issues of drawing

up materials on administrative violations regarding mineral resources were detailed.

Currently, by clause 5 of the regulation of the CMU from 10th September 2014 № 442 “On optimization of the system of central bodies of the executive power” and regulation of the CMU from 30th September 2015 № 1021-p “Issues of the State Labour Service”, Labour Service and its territorial bodies are the corresponding successors of the State Service of Mining Monitoring and Industrial Security of Ukraine and its territorial bodies which cease their activity. Instead, in the structure of the State Labour Service the control-monitoring functions will be implemented by the Management of Mining Control, including: 1) Department of Monitoring the Coal Industry; 2) Department of the Monitoring the Mining Industry, on Explosive Works and Utilization of Ordnance; 3) Department of Geological-Mine Surveys (Derzhavna sluzhba Ukrainy z pytan pratsi).

A situation has developed, in which the functions of protection of the mineral resources, and therefore control-monitoring ones are performed by two bodies of executive power – the Labour Service and Geonadra, which in the conditions of duplication of functions of SM (C) would obviously complicate both subjective execution and objective perception. Particularly this aspect – elimination of duplication of the functions in monitoring (control) of central bodies of executive power is emphasized in the Conception of Reformation of the SM (C) (Pro skhvalennia Kontseptsii reformuvannia systemy derzhavnoho nahliadu (kontroliu) u sferi okhorony navkolyshnoho pryrodnoho seredovyscha, 2017). Furthermore, the framework of de-regulation implies transition from the system of total planned monitoring (control) to a service system which would orientate towards such measures as 1) nature protection monitoring; 2) prevention of violations of nature protection legislation; 3) performing control based on risk-orientated criteria.

2. The principle of management and structuring of the subject of SGC. Reformation of the system of monitoring (control), according to the Conception (Pro skhvalennia Kontseptsii reformuvannia systemy derzhavnoho nahliadu (kontroliu) u sferi okhorony navkolyshnoho pryrodnoho seredovyscha, 2017), is performed by placing the authority of implementation of the state policy of monitoring and control in the sphere of protection of the environment, rational use and restoration and protection of the mineral resources on the State Environmental Protection Service (hereinafter – SEPS) which is planned to be established.

This decentralized approach includes redistribution of nature protection functions and authorities by forming the interregional territorial bodies of SEPS as one integral state body of nature protection monitoring and control. The basis of such structure should comprise of the principles of ecological-resource and ecological-technogenic peculiarities of the districts (Carpathian, Polisky, Prydniprovsky, North-West, Stolychny, Black Sea, Podilsky, Central and North-East). Besides, the latter are planned to include 27 special Oblast inspector managements.

A similar intention fully corresponds to the main purposes of collaboration of Ukraine with the EU regarding the development of an inclusive strategy in the environmental sphere, including: a) planned institutional reforms; b) distribution of the duties of nature protection bodies at national, regional and local levels; c) procedures of adoption of solutions and their execution; d) procedures of supporting the integration of nature protection policy into other spheres of state policy. The abovementioned measures, in turn, should ensure the execution of the tasks of reformation of the SM (C) system with the purpose of: - reducing the number of inspections and increasing their effectiveness; - implementation of the principle “polluter pays”; - creating an efficient system of prosecuting those responsible for harm to the environment and ensuring compensation.

Therefore, we should agree with the expert group of independent assessment of the Geonadra (Demikeli *et al.*, 2016) which suggests, based on the principle “first – functions, then – form”: 1) forming a management team which would develop a conception of organization and strategy of management, reflecting the key functions, lines of subordination and priority goals; 2) develop such strategic component of staff provision which would avoid fragmentation of the resources for the support of numerous secondary programmes, and provide the resources for priority tasks; 3) stop non-priority works until the appearance of additional resources; 4) study initiatives of subjects of the economy in respect to the partnership between the state and private subjects, create quasi-state subjects, companies “on a turn-key basis”, etc, devolving the transition of certain current state functions onto the private sector.

3. Legal strategy of nature protection function. The first stage of implementation of the Conception (2017-2020) was planned to include, among others, the formation of SEPS and adoption of provision for it. Instead, by the initiative of particular parliamentarians, two draft bills were proposed: 1) the main “On the

State Environmental Protection Service of Ukraine” (registry № 9336 from 23.11.2018) – defines the legal aspects of organization and work of SEPS, order of employing the staff, status of state inspectors on environmental protection and responsibility of legal persons and individual entrepreneurs for violation of the requirements of the nature protection legislation; 2) alternative one “On State Inspection on Protection of Environment of Ukraine” (register № 9336-1 from 07.12.2018) – defines the legal aspects of organization and work of the State Inspection on Protection of Environment of Ukraine, its structure and status of state inspectors of environmental protection.

According to the authors of the abovementioned draft bills, their adoption would allow improving the condition of the environment and the living conditions of the population, implementing a system of monitoring (control) and monitoring in accordance with international standards, avoiding duplication of the control-monitoring functions and ensuring efficient performance of the monitoring and control in the sphere of the environmental protection.

However, such initiative looks disputable, because according to the provisions of Article 116 of the Constitution of Ukraine, issues of orientating and coordinating the work of a ministry and other central bodies of the executive power, their formation, reorganization and closure (according to the law) is attributed to the competence of the CMU. Moreover, such proposition does not correlate with the tasks set by the government’s development of a draft bill on improvement of the system of state nature protection monitoring of the conditions of the environment, as defined by the President’s Decree (Pro dodatkovy zakhody shchodo rozvytku lisovoho hospodarstva, ratsionalnoho pryrodokorystuvannia ta zberezhennia ob’ektiv pryrodno-zapovidnoho fondu, 2017), for the law on the regime of the SM (C) and the law on the status of the body of SM (C) are obviously not equivalent. Therefore, naturally, both bills were rejected at the same time on 29.08.2019.

Thus, a legal strategy on the regime of nature protection control, as well as its subjects is desperately needed, for on the example of SGC, it is orientated towards fostering the changes necessary for the reformation of the State Geonadra regarding cessation of work or transfer of competence from/to ministries or agencies and modification of the internal procedures of executing the works of the service (exchange and management of the data, etc).

4. Content and procedure of prosecuting violation of nature protection. The European Parliament and the Council of the European Union

in their recommendations indicate that existence of inspecting systems and effective performance of inspections is a tool of controlling ecological violations, because it allows the authorities to identify the violations and implement the ecological laws through sanctions or other means (Rekomendatsiia 2001/331/IeS Yevropeiskoho Parlamentu ta Rady «Shcho peredbachaie minimalni kryterii shchodo ekolohichnykh inspektsii u derzhavakh-chlenakh» vid 4 kvitnia 2001 roku, 2001). The Government of Ukraine, while developing the provisions of the Conception (Pro skhvalennia Kontseptsii reformuvannia systemy derzhavnoho nahliadu (kontroliu) u sferi okhorony navkolyshnoho pryrodnoho seredovyscha, 2017), set the task of developing and submitting to the CMU in the established order draft bills of making amendments to the CoAV and the Criminal Code of Ukraine regarding increasing the responsibility for administrative violations and crimes against the environment, including use of natural resources. Also, the government plans to create a fund of financial guarantees of ecological responsibility (Pro zatverdzhennia planu zakhodiv shchodo realizatsii Kontseptsii reformuvannia systemy derzhavnoho nahliadu (kontroliu) u sferi okhorony navkolyshnoho pryrodnoho seredovyscha, 2018).

Separate attention should be paid to the proposition of State Geological Service of Mineral Resources regarding the draft bill “On Changes to Article 65 of the Code of Ukraine on Mineral Resources” developed with consideration of Article 276 of the CoAV, according to which cases of administrative violations are considered at the place where they occurred, but at the same time the laws of Ukraine may permit another place for consideration of such cases. According to the existing staff of officials of the Geonadra who are responsible for the corresponding actions, this subject of SGC has no possibility of providing the needed consideration of cases on administrative violations at the place of their occurrence. For this purpose, the draft bill defines the place of considering cases on administrative violation, particularly at the location of the Geonadra, by its authorized officials. These changes, according to their developers, would ensure the fulfillment of the CoAV-defined terms of consideration of cases on administrative violations, as well as legislation-established procedure of consideration of such cases (Zvit pro rezultaty derzhavnoho heolohichnoho kontroliu za heolohichnym vyvchenniam nadr ta ratsionalnym i efektyvnym vykorystanniam nadr u 2018 rotsi, 2019). Such changes obviously would not be welcomed, first of all by the subjects of use

of mineral resources due to a number of objective concerns. At the same time, we should note the possibility of considering cases at the places of registration and record of certain types of violation recorded in automatic regime.

Thus, the institution of legal responsibility is an important connection between the regulatory link and effective instrument of contributing to more consistent implementation and use of ecological legislation of the European Union and avoiding unhealthy competition in this sphere.

Therefore, the conducted analysis of scientific developments, instructions to the legislation on mineral resources and administrative violations, defining the legal status of State Service of Mineral Resources as subject of law of geological control, allowed us to draw the following **conclusions**.

1. Structural peculiarities of the State Service of Mineral Resources can be divided as follows:

1.1) external:

1.1.1) among the main tasks of the Ministry of Nature is performing SGC (Pro zatverdzhennia Polozhennia pro Ministerstvo ekolohii ta pryrodnykh resursiv Ukrainy, 2015);

1.1.2) Geonadra is an organization of the Ministry of Nature (central body of the executive power, activity of which is orientated and coordinated by the CMU through the Minister of Ecology and Natural Resources);

1.1.3) The minister orientates and coordinates the work of the Geonadra, particularly: - ensures the formation of state policy in the corresponding sphere and controls its implementation by the Geonadra; - determines the priority directions of the work of the Geonadra and means of execution of the task placed before it, approves the plan of the Geonadra's work; - agrees on the structure of the apparatus of the Geonadra;

1.2) internal:

1.2.1) the Geonadra implements the control on geological study of the mineral resources (SGC) and their rational and effective use (Pro zatverdzhennia Polozhennia pro Derzhavnu sluzhbu heolohii ta nadr Ukrainy, 2016);

1.2.2) the head of the Geonadra submits the plan of his organization's work to the Minister of Ecology and Natural Resources for approval, approves provisions on separate structural subunits of the apparatus of the Geonadra;

1.2.3) The Geonadra performs its duties directly and through the territorial bodies created according to the established order;

1.2.4) implementation of control-monitoring

functions of the Geonadra is placed on the Department of SGC which includes 6 inter-regional territorial departments (IRD) as structural units of the Geonadra apparatus, and also the department of control of GSUoMR;

1.2.5) Department of SGC, during the implementations of SM (C), can involve 6 territorial inspectorates of SGC (SO TIoSGC) as state organizations which belong to the sphere of management of the Geonadra.

2. Control-monitoring orientation of the work of subjects of law of geological control is implemented at the current stage according to:

2.1) p.1 Article 5 of the law on State Monitoring;

2.2) subclauses 12, 14 of Clause 4 of the Resolution on Geonadra, adopted by the Regulation of the CMU from 30.12.2015 № 1174;

2.3) Plan of implementation of complex measures of SM (C) for 2019, adopted by the order of the State Regulatory Service of Ukraine from 15.11.2018 № 152;

2.4) order of the Geonadra from 28.11.2018 № 450 "On Adoption of the Annual Plan of Measures of State Monitoring (Control) by the State Service of Geology and Mineral Resources for 2019";

2.5) monthly plans of inspections of users of mineral resources, approved by the orders of the Geonadra;

2.6) requests for implementation of exceptional checks in accordance with the legislation;

2.7) criteria which define the extent of risk from the implementation of economic activity in the sphere of GSUoMR and the periodicity of planned measures of SM(C) by the Geonadra is determined (Pro zatverdzhennia kryteriiv, za yakymy otsiniuietsia stupin ryzyku vid provadzhennia hospodarskoi diialnosti u sferi heolohichnoho vyvchennia ta ratsionalnoho vykorystannia nadr i vyznachaietsia periodychnist zdiisnennia planovykh zakhodiv derzhavnoho nahliadu (kontroliu) Derzhavnoiu sluzhboiu heolohii ta nadr, 2018);

2.8) forms of documents in the sphere of implementing SGC (Pro zatverdzhennia form dokumentiv u sferi zdiisnennia derzhavnoho heolohichnoho kontroliu, 2013) and form of reporting (Pro zatverdzhennia formy zvitnosti, 2013).

3. The developed classification of the subjects of law of geological control looks as follows:

3.1) general subject – Ministry of Ecology and Natural Resources and its territorial organizations;

3.2) patrimonial subject – Geonadra and its territorial bodies formed in the established order;

3.3) the main particular subject - officials of the

units of the Geonadra with the duty of implementation of SGC (the responsible officials of the bodies of the SGC – Department of SGC (inter-regional departments (IRD), unit of control on GSUoMR));

3.4.1) additional obligatory subject – scientists, specialists, workers of SO TIO SGC belonging to the sphere of management of the Geonadra (approved with their management);

3.4.2) additional optional subject – scientists, specialists, workers of central and local bodies of the executive power, bodies of local management, enterprises, institutions and organizations not belonging to the sphere of management of Geonadra (approved with their management).

4. Planned and exceptional measures of SM (C) implemented by the Geonadra in the form of inspections are classified according to the following criteria:

4.1) by department (IRD) which implements inspection (subject of the control);

4.2) by types of use of mineral resources (article 14 CoMR) (mineral resources object of control);

4.3) by the reasons for implementation of exceptional inspections (article 6 of the law on state monitoring);

4.4) by the value of the fossil fuels (article 6 CoMR) (economic-resource object of the control);

4.5) by the level of the risk from implementation of economical activity by the object of control (Pro zatverdzhennia kryteriiv, za yakymy otsiniuietsia stupin ryzyku vid provadzhennia hospodarskoi diialnosti u sferi heolohichnoho vyvchennia ta ratsionalnoho vykorystannia nadr i vyznachaietsia periodychnist zdiisnennia planovykh zakhodiv derzhavnoho nahliadu (kontroliu) Derzhavnoi sluzhboiu heolohii ta nadr, 2018) (ecological safety object of the control);

4.6) by the region of administrative-territorial structure of Ukraine where the inspection was conducted (regional object of control);

4.7) by type of fossil fuel (mineral-resource object of the control).

5. Ukraine has started the reform of the system of SM(C) in the sphere of the protection of the environment (Pro skhvalennia Kontseptsii reformuvannia systemy derzhavnoho nahliadu (kontroliu) u sferi okhorony navkolyshnoho pryrodnoho seredovyshcha, 2017) intended to, with consideration of the implementation of the obligations indicated in the Treaty on Association, create an efficient state system of preventing ecological violations and monitoring the condition of the environment, reducing the pressure on the business-environment, broadly involving the

public in the monitoring (control), forming the integral state body of the environmental monitoring and control – the State Environmental Protection Service. Against the background of duplication by the central bodies of the executive power of monitoring (control) functions, the absence of an integral approach is seen, therefore the aims of the government to eliminate non-characteristic functions and authorities of the enterprises, institutions and organizations which belong to the sphere of the Geonadra, and improve the organizational structure of the Geonadra (Pro zatverdzhennia planu priorytetnykh dii Uriadu na 2019 rik, 2019) indicate the high probability of imminent reform of the system of SGC.

In the process of such reforms it is suggested to take into consideration the European experience in this sphere, because the EU has a great inconsistency in the various inspectional systems and mechanisms of its member states not only with respect to their ability to perform the inspection tasks, but also the sphere of action and content of the initial inspection tasks, and even in the existence of inspection tasks in several member states, and this situation cannot be considered satisfactory for the purpose of the efficient and more consistent implementation, practical use and application of legislation of the Community regarding the protection of the environment (Rekomendatsiia 2001/331/JeS Yevropeiskoho Parlamentu ta Rady «Shcho peredbachaie minimalni kryterii shchodo ekolohichnykh inspektsii u derzhavakh-chlenakh» vid 4 kvitnia 2001 roku, 2001).

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