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Rent Payments for the Use of Subsoil as Part of the Implementation of State Policy in the Field of Environmental Protection

1. Introduction

The state policy in the field of natural resources use in Ukraine cannot be assessed as sufficiently effective, as the state of natural resources continues to deteriorate. According to official figures, the state of the environment in about 20% of Ukraine is defined as unsatisfactory. As a result, an additional 30,000–35,000 people die each year, and economic damage reaches 10% of the value of gross domestic product.

The system of ensuring efficient and safe use of natural resources includes many components, the leading one among which is the formation of a proper mechanism of public management in this area and the legal framework for its operation in general, and in particular in the payment of mandatory fees for their operation. This mechanism covers the entire process of using natural resources, from granting the right to use them to bringing those responsible for its violation to legal responsibility and termination of this right. Suffice it to mention the numerous violations of the procedure for obtaining special permits for the use of natural resources, in particular in the field of subsoil use (spontaneous extrac-

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tion of amber, coal, etc.), forest resources (mass destruction of forests, including protected areas of the Carpathian region), placement in violation of the requirements of environmental safety of man-made waste, etc. These circumstances indicate an extremely low level of efficiency of the mechanism of public administration in the use of natural resources in general, and in particular, its economic and legal component. In this regard, it is urgent to develop and improve the system of administrative and legal regulation of public administration in the field of collection of mandatory payments for the use of natural resources, in particular, on the collection of rent.

The state of scientific development of the problem is characterized by the fact that, despite the presence of numerous fundamental studies of the formation and development of legislation on the use of natural resources, in particular V.I. Andreytsev, A.P. Hetman, R.S. Kirin, V.V. Kostytsky, V.A. Zuev, P.M. Rabinovych, Yu. S. Shemshuchenko, etc., which relate to environmental and legal issues, issues of administrative and legal regulation of the use of natural resources in general, and in particular, on issues of rent for the extraction of useful minerals remain underdeveloped.

General issues of administrative and legal regulation of public administration in various spheres and industries, including the use of natural resources, have been the subject of research by many domestic administrators, including V.B. Averyanov, O.F. Andriyko, K.K. Afanasyeva, O.M. Bandurka, V.M. Bevzenko, Yu.P. Bytyak, L.R. Bila-Tiunova, M. Yu. Vikhlyaeva, V.M. Garashchuk, E.A. Hetman, I.P. Golosnichenko, I.S. Gritsenko, N.L. Guberskaya, E.V. Dodina, T.E. Kaganovskaya, R.A. Kalyuzhny, S.V. Kivalova, L.P. Kovalenko, N.V. Kovalenko, I.B. Koliushko, T.O. Kolomojets, V.K. Kolpakova, A.T. Komzyuk, Yu.O. Legezy and others. However, at present there are no works that would comprehensively analyze the problems of determining the issue of rent for the use of natural resources have not been studied enough, which determines the relevance of this scientific development.

The purpose of the article is to characterize the collection of rent payments for the use of subsoil as part of the implementation of state policy in the field of environmental protection.

2. Problems of implementation of state policy in the field of environmental protection

In today's conditions, the processes of globalization significantly affect the functions of the state, the choice of priorities for its activities. The scientific literature quite reasonably emphasizes that under the influence of world integration processes change the nature and content of state activity².

Not the least role in this global process of unification of functions of separate national-territorial associations is played by a factor of existence of problems which pose a threat to all world community and cannot be solved by the separate state; these include the nuclear threat, the internationalization of terrorism, international drug crime, violations of human rights and freedoms, and so on. And among these dangers, an important place is given to the problem of conservation and rational use of natural resources, because it depends not only on what the future of mankind will be, but also whether it will be the future at all.

The global processes of internationalization of production, international division of labor, dissemination of scientific and technological achievements and the creation of a global information space cannot leave aside traditional state and political formations. Under the influence of these processes in the modern state not only modernize existing but also create new functions. Globalization significantly affects the content and implementation of both external and internal functions of the state.

The functions of the state are defined as the content of its essence and are considered by scientists as the purpose of the administrative and legal mechanism of public administration³.

Protecting nature and ensuring the rational use of natural resources and their restoration is an urgent need of the modern world and a vital activity of any state. Among the objective factors that require the imple-

² Todyka O.Yu. (2005), *Narodovlastye v uslovyakh hlobalyzatsyy* [Democracy in the context of globalization]. Kharkov: Pravo, pp. 130–131 [in Ukrainian].

³ Leheza Yu.O. (2012), *Funktsii derzhavy yak zmist yii sutnosti* [Functions of the state as the content of its essence]. *Naukovyi visnyk Dnipropetrovskoho derzhavnogo universytetu vntrishnikh sprav*, no. 2, pp. 68–75 [in Ukrainian].

mentation of environmental (environmental) function, the leading place is occupied by the scientific and technological revolution and its harmful consequences for humans.

While providing great benefits to people, it is inevitably associated with increasing involvement of the environment in social production, which, in turn, causes various negative effects on ecological systems, leads to air and water pollution, increases radiation levels and poses a threat to plant and wildlife, human health and life. Man himself, as a result of his economic activity, breaks natural ties, destroys the natural environment, which involuntarily creates unfavorable, even disastrous living conditions for himself, which entails the need for state intervention in environmental protection.

In modern conditions, the ecological function of the state is recognized by scientists as one of the independent, necessary conditions of the state. It seems to us that currently the ecological orientation of the state is insufficiently assessed from the standpoint of the importance of its role for society and the state and in the near future it should take priority among other areas of law enforcement. Its further development will contribute to the greening of other functions of the state, which has been slowly happening over the past few years.

The first scientific studies, which suggested the need to highlight environmental protection as a separate function of the state, are related to the work of scientists in the 70's. Thus, in particular, O.S. Kolbasov noted that "the protection of the natural environment in the USSR is a constant and basic independent function of a developed nationwide socialist state"⁴.

Beginning in the 1980s, when interest in this area of state activity increased significantly, the term "ecological function of the state" began to be used in Soviet jurisprudence, but the term "environmental protection" was used synonymously. For example, in VN Khropanyuk we find the statement that the environmental (ecological) function – a vital activity of any modern state, the world community as a whole⁵.

⁴ Kolbasov O.S. (1978) *Problemy okhrany okruzhayushchey sredy v novoy Konstitutsii SSSR* [Environmental protection problems in the new Constitution of the USSR]. *Sovetskoe gosudarstvo y pravo*, no. 5, pp. 22–25 [in Ukrainian].

⁵ Khropanyuk V.N. (1995), *Teoriya gosudarstva i prava* [Theory of State and Law]:

According to the results of the analysis of the views expressed in the scientific legal literature on the concept and specifics of the ecological function of the state, H.I. Chopko comes to quite reasonable, in our opinion, conclusions.

First, this function is recognized as one of the main activities of the state, the content of which reveals the work of its bodies, and its existence is due to the task of the latter to ensure the rational use of natural resources, environmental protection and environmental safety.

Secondly, attention is drawn to the fact that the function in question has a specific historical nature, as evidenced by the fact that for a long time in legal sources, state activity in this area was not recognized as an independent function and studied only as part of economic and cultural educational function of the state.

Third, the ecological function is characterized by stability, ie it is constant and constant under constant political and socio-economic conditions, but with changes in the nature and social structure of the state, its functions also change. For example, in the days of totalitarianism, the need for such a function did not arise.

Fourth, it is emphasized that the object of influence of the studied function is the relationship on the rational use of natural resources, environmental safety and environmental protection.

Fifth, it is noted that the content of this function is to influence environmental relations through the activities of state bodies. Sixth, it is proved that the peculiarity of functions is that, having an objective character, they arise and develop in accordance with the goals and objectives of the state. However, with regard to the ecological function, its essence and purpose is to ensure the rational use of natural resources, environmental protection and environmental safety⁶.

Despite the extremely high level of practical demand, there is virtually no economic and legal mechanism for public administration in the use of natural resources of Ukraine, which should include an effective

учеб. пособие для вышших учебных заведений (eds. Strekozova V.H.). Moscow, p. 166 [in Russian].

⁶ Chopko Kh.I. (2008), *Ekolohichna funktsiia derzhavy* [Ecological function of the state]. *Universytetski naukovy zapysky: Chasopys Khmel'n. un-tu upravlinnia ta prava*, vol. 3: Pravo – ekonomika – upravlinnia, pp. 212–215 [in Ukrainian].

mechanism for lending to environmental measures, preferential taxation and price incentives for environmental activities. The components of the economic and legal mechanism of public administration in the field of use of natural resources include the mechanism of rent payments for the use of subsoil of Ukraine.

3. Peculiarities of rent collection for the use of Ukrainian subsoil

In accordance with the provisions of the Tax Code of Ukraine №2755-VI of 2.12.2010 (item 252.1.1, item 252.1 of Article 252)⁷ it is determined that the payers of rent for the use of subsoil for the extraction of minerals are business entities, including citizens of Ukraine, foreigners, stateless persons registered in accordance with the Law of Ukraine “On State Registration of Legal Entities and Individual Entrepreneurs”⁸ as entrepreneurs who have acquired the right to use the object (plot) of subsoil on the basis of special permits use of subsoil within specific areas of subsoil for the purpose of conducting economic activities for the extraction of minerals, including during geological study (or geological study with further research and development) within the specified in such special permits facilities (areas) of subsoil.

The system of entities that are obliged to pay rent for the use of subsoil for the extraction of minerals, includes landowners and land users, except for business entities, which in accordance with applicable law are entities engaged in farming and carry out groundwater extraction activities on the basis of permits for special water use (paragraph 252.1.4 of paragraph 252.1 of Article 252 of the Tax Code of Ukraine)⁹.

⁷ The Verkhovna Rada of Ukraine (2010), *Podatkovyi kodeks Ukrainy* [Tax Code of Ukraine]: Zakon Ukrainy № 2755-VI vid 2.12.2010 roku. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 13–14, no. 15–16, no. 17. art. 112 [in Ukrainian].

⁸ The Verkhovna Rada of Ukraine (2003), *Pro derzhavnu reiestratsiiu yurydychnykh osib ta fizychnykh osib-pidpriemtsiv* [On state registration of legal entities and natural persons-entrepreneurs]: Zakon Ukrainy vid 15 travnia 2003 roku № 755-IV. *Vidomosti Verkhovnoi Rady Ukrainy*, no 31–32. art. 263 [in Ukrainian].

⁹ The Verkhovna Rada of Ukraine (2011), *Podatkovyi kodeks Ukrainy* [Tax Code of Ukraine]: Zakon Ukrainy № 2755-VI vid 02.12.2010 roku. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 13–14, no. 15–16, no. 17. art. 112 [in Ukrainian].

The object of rent for the extraction of minerals is the volume of marketable products of the mining enterprise – extracted minerals (minerals), which is the result of economic activity for the extraction of minerals in the tax (reporting) period, which must meet the standard established by industry legislation of Ukraine (paragraph 252.3 of Article 252 of the Tax Code of Ukraine)¹⁰.

Activities related to the extraction of minerals of local significance (limestone, clay, peat, etc.) are not subject to taxation, and their use must take place on landowners or land users on the land in respect of which they have the legal title of ownership or possession, and further use such resources are provided to meet their own needs¹¹.

In accordance with the provisions of the Resolution of the Cabinet of Ministers of Ukraine № 827 of 12.12.1994, the list of minerals of national and local importance, which includes groundwater¹². At the same time, groundwater is also an object of the water fund of Ukraine, which is determined in accordance with the provisions of the Water Code of Ukraine. According to the legal position of the Supreme Court of Ukraine set forth in case № 810/1638/13-a, it is determined that groundwater is both an object of the water fund of Ukraine and part of the subsoil as a component of the mineral fund of national importance¹³.

Thus, groundwater is a resource with a dual-use regime, which requires the application of both the provisions of the legislation on subsoil and water legislation of Ukraine.

In view of this, the entity that uses groundwater, in accordance with current legislation of Ukraine is obliged to pay as rent for the extraction

¹⁰ The Verkhovna Rada of Ukraine (2010), *Podatkovyi kodeks Ukrainy* [Tax Code of Ukraine]: Zakon Ukrainy № 2755-VI vid 02.12.2010 roku. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 13–14, no. 15–16, no. 17, art. 112 [in Ukrainian].

¹¹ *Ibidem*.

¹² The Cabinet of Ministers of Ukraine (1994), *Pro zatverdzhennia perelikiv korysnykh kopalyn zahalnodержavnogo ta mistsevoho znachennia* [On approval of lists of minerals of national and local significance]: Postanova Kabinetu Ministriv Ukrainy № 827 vid 12.12.1994 roku. Retrieved from: <https://zakon.rada.gov.ua/laws/show/827-94-p#Text> [in Ukrainian].

¹³ Sprava № 810/1638/13-a [Case № 810/1638/13-a]: Postanova Verkhovnoho Sudu Ukrainy vid 29 veresnia 2015 roku. Retrieved from: <https://reyestr.court.gov.ua/Review/52418577> [in Ukrainian].

of minerals, and at the same time is obliged to pay for the use of groundwater, carried out on the basis of a special water use permit. .

The rent for water use should be calculated in accordance with the information contained in the Rent Tax Return, while the rent for mining should be calculated in accordance with the information to be specified in Annex №1 "Approximate procedure for filling in the calculation" to the Tax Code declaration¹⁴.

The Law of Ukraine "On the State Budget for 2018"¹⁵ exempted secondary water users from paying rent. Accordingly, the obligation to pay rent is imposed on primary water users who use (withdraw) and / or transfer to secondary water users water obtained by taking water from water bodies using water intake facilities or appropriate water intake equipment. In this case, the object of taxation of rent is the actual amount of water that is accounted for as a result of water intake and water treatment (purification or treatment to the established for the water body regulatory requirements for consumption).

As it was found out, rent payments belong to the revenue part of the state budget, which should be distributed as follows: 95% of the rent will be included in the revenues of the general fund of the State Budget of Ukraine (except for rent for subsoil use within the continental shelf and / or exclusive (sea) economic zone of Ukraine, which is credited to the general fund of the state budget in full); Revenues of the general fund of budgets of cities of the republican Autonomous Republic of Crimea and regional significance, cities of Kyiv and Sevastopol, district budgets, budgets of united territorial communities created in accordance with the law and long-term plan for formation of communities include 2% of rent (except rent) for the use of subsoil within the continental shelf and/or the exclusive (marine) economic zone of Ukraine), which is credited to the district budgets at the location (place of extraction) of the relevant natural resources; 3% of rent (except for rent for subsoil use within the

¹⁴ The Verkhovna Rada of Ukraine (2010), *Podatkovyi kodeks Ukrainy* [Tax Code of Ukraine]: Zakon Ukrainy №2755-VI vid 02.12.2010 roku. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 13–14, no. 15–16, no. 17, art. 112 [in Ukrainian].

¹⁵ The Verkhovna Rada of Ukraine (2018) *Pro Derzhavnyi biudzheth na 2018 rik* [On the State Budget for 2018]: Zakon Ukrainy vid 7 hrudnia 2017 roku № 2246-VIII. *Vidomosti Verkhovnoi Rady*, no. 3–4, art. 26 [in Ukrainian].

continental shelf and / or exclusive (marine) economic zone of Ukraine), which is credited to the budgets of cities of the republican Autonomous Republic of Crimea and regional significance, budgets of united territorial communities by location (place of extraction)).

In accordance with the provisions of the Law of Ukraine “On the State Budget of Ukraine for 2020” it is determined that the rent for the use of groundwater, which is part of the revenue side of the state budget is about 972 thousand UAH, and for mining – about 48 million UAH., which is almost 5%. The rent is also charged for the use of forest resources, for the transportation of substances by oil and gas, as well as for the use of radio frequency resources of Ukraine¹⁶.

Rental rates are constantly increasing, which is determined by the relevant state budget laws of Ukraine. In particular, in 2020 the rate of rent payments for special use of water and rent for special use of forest resources increased by 16.8%.

The current legislation of Ukraine provides for certain measures aimed at encouraging and stimulating certain types of economic activity, which is economically unprofitable, but its implementation solves a number of strategic state tasks. To this end, from January 1, 2019, it is planned to reduce the rates of rent for the use of subsoil for the extraction of gas condensate from deposits that are fully or partially at a depth of 5,000 m, from 45% to 29% and from deposits that are completely depth of more than 5,000 m, from 21% to 14%.

However, in general, it should be noted that rental rates in Ukraine in comparison with other countries, whose level of energy independence is higher than national, are significantly inflated. Rent payments, in essence, should not perform a fiscal function, the priority of the use of such financial resources should primarily be associated with the restoration of natural resources, the development of greening policies in particular. The high rate of rent payments makes Ukraine’s energy sector unattractive for investment, which threatens overall compliance with national security requirements.

The essence of rent payments is to withdraw part of the excess profit

¹⁶ The Verkhovna Rada of Ukraine (2020) Pro Derzhavnyi biudzheth Ukrainy 2020 roku [On the State Budget of Ukraine 2020]: Zakon Ukrainy vid 14 lystopada 2019 roku № 294-IX. *Vidomosti Verkhovnoi Rady*, no. 5, art. 31 [in Ukrainian].

(excess – the difference between the received and the average normal profit). Rental payments around the world have this purpose and are set depending on rental income. They perform a regulatory function to ensure the economic feasibility of subsoil development of deposits, regardless of mining and geological conditions. Among European countries, the experience of France can be noted. In this country, when determining the amount of rent, a scale of rates is used, which depends on the volume of production: from 0% (for production less than 1000 barrels/day) to 12% (for production over 6000 barrels / day). In addition, in France, when calculating the rent payment from the total cost is deducted the cost of extraction, transportation¹⁷.

4. Conclusions

Rental payments, along with the environmental tax, should be classified as “green” payments, ie payments that should be attributed to payments that should be used to promote the rational use, protection and reproduction of natural resource potential. Article 13 of the Constitution of Ukraine establishes that land, its subsoil, atmospheric air, water and other natural resources located within the territory of Ukraine, natural resources of its continental shelf, exclusive (marine) economic zone are objects of property of the Ukrainian people, which requires a special approach to the use of such objects. Therefore, the rent must perform a social function – the distribution of financial resources from its use among all members of society. In this regard, the determination of the direction of funds from the proceeds of this tax should be based on a fair distribution of funds between the national budget and local budgets of administrative-territorial units where the production activities of oil and gas companies.

¹⁷ Sokur Ye., *Deiaki aktualni pytannia pravovoho rehulivannia rentnykh platezhiv v Ukraini* [Some current issues of legal regulation of rent payments in Ukraine]. Retrieved from: <https://radako.com.ua/news/deyaki-aktualni-pitannya-pravovogo-regulyuvannya-rentnih-platezhiv-v-ukrayini-0> [in Ukrainian].

References

- Chopko Kh.I. (2008), *Ekolohichna funktsiia derzhavy* [Ecological function of the state]. *Universytetski naukovi zapysky: Chasopys Khmel'n. un-tu upravlinnia ta prava*, vol. 3: Pravo – ekonomika – upravlinnia. pp. 212–215 [in Ukrainian].
- Fomichov A. (2020), *Rentni platezhi: vlasnyk sverdllovyny platyt dvichi* [Rent payments: the owner of the well pays twice]. Retrieved from: https://www.pspaudit.com.ua/ua/f_a_q_/konsultacii/1593.html [in Ukrainian].
- Khropanyuk V.N. (1995), *Teoriya gosudarstva i prava* [Theory of State and Law]: ucheb. posobie dlya vyshikh uchebnykh zavedeniy (eds. Strekozova V.H.). Moscow, p. 166 [in Russian].
- Kolbasov O.S. (1978), *Problemy okhrany okruzhayushchey sredy v novoy Konstitutsii SSSR* [Environmental protection problems in the new Constitution of the USSR]. *Sovetskoe gosudarstvo y pravo*, no. 5, pp. 22–25 [in Ukrainian].
- Leheza Yu. O. (2012), *Funktsii derzhavy yak zmist yii sutnosti* [Functions of the state as the content of its essence]. *Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav*, no 2, pp. 68–75 [in Ukrainian].
- Sokur Ye. Deiaki aktualni pytannia pravovoho rehuliuвання rentnykh platezhiv v Ukraini [Some current issues of legal regulation of rent payments in Ukraine]. Retrieved from: <https://radako.com.ua/news/deyaki-aktualni-pitannya-pravovogo-regulyuvannya-rentnih-platezhiv-v-ukrayini-0> [in Ukrainian].
- Sprava № 810/1638/13-a [Case № 810/1638/13-a]: Postanova Verkhovnoho Sudu Ukrainy vid 29 veresnia 2015 roku. Retrieved from: <https://reyestr.court.gov.ua/Review/52418577> [in Ukrainian].
- The Verkhovna Rada of Ukraine (2010) Podatkovyi kodeks Ukrainy [Tax Code of Ukraine]: Zakon Ukrainy №2755-VI vid 02.12.2010 roku. Vidomosti Verkhovnoi Rady Ukrainy, no. 13–14, no. 15–16, no. 17, art. 112 [in Ukrainian].
- The Verkhovna Rada of Ukraine (2003) Pro derzhavnu reiestratsiiu yurydychnykh osib ta fizychnykh osib-pidpriyemtsiv [On state registration of legal entities and natural persons-entrepreneurs]: Zakon Ukrainy vid 15 travnia 2003 roku № 755-IV. Vidomosti Verkhovnoi Rady Ukrainy, no 31–32. art. 263 [in Ukrainian].

- The Verkhovna Rada of Ukraine (2018) Pro Derzhavnyi biudzheth na 2018 rik [On the State Budget for 2018]: Zakon Ukrainy vid 7 hrudnia 2017 roku № 2246-VIII. Vidomosti Verkhovnoi Rady, no. 3–4, art. 26 [in Ukrainian].
- The Verkhovna Rada of Ukraine (2020) Pro Derzhavnyi biudzheth Ukrainy 2020 roku [On the State Budget of Ukraine 2020]: Zakon Ukrainy vid 14 lystopada 2019 roku № 294-IX. Vidomosti Verkhovnoi Rady, no. 5, art. 31 [in Ukrainian].
- The Cabinet of Ministers of Ukraine (1994), *Pro zatverdzhennia perelikiv korysnykh kopalyn zahalnoderzhavnoho ta mistsevoho znachennia* [On approval of lists of minerals of national and local significance]: Postanova Kabinetu Ministriv Ukrainy № 827 vid 12.12.1994 roku. Retrieved from: <https://zakon.rada.gov.ua/laws/show/827-94-p#Text> [in Ukrainian].
- Todyka O.Yu. (2005), *Narodovlastye v uslovyiakh hlobalyzatsyy* [Democracy in the context of globalization], Kharkov: Pravo, pp. 130–131 [in Ukrainian].

Summary

The purpose of the scientific article is to implement the characteristics of rent payments for the use of subsoil as part of the implementation of state policy in the field of environmental protection. In the course of the study, the author determined that the mechanism of making rent payments refers to the economic and legal mechanism of the ecological function of the state. The necessity of understanding the economic function of the state as a system of means, methods, directions, measures, the implementation of which allows to solve strategic tasks to achieve the principles of rational use of natural resources, to stimulate the introduction of innovative technologies to green production. The mechanism of collection of rent payments is investigated, the bases of increase of rates of rent payments are defined. The types of rent payments are set. It is concluded that it is necessary to revise the regulatory approaches to understanding the base of accrual of rent payments, as well as the components of its further distribution between the revenue parts of the state and local budgets. It is proved that rent payments should perform a social function, ie the function of fair distribution of financial resources among all members of society or members of social groups. Taking into account the proved substantiated con-

clusion the expediency of revision of approaches to establishment of criteria of redistribution of receipts from payment of rent payments between means of the state national and means of local budgets is defined.

Keywords: energy security, innovation activity, stimulation, ecological function of the state, tax base, sphere of use of natural resources