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NON-COMPLIANCE WITH THE REQUIREMENTS FOR SUBSOIL PROTECTION: ISSUES OF ADMINISTRATIVE LIABILITY

Abstract. ***The purpose*** of the research is to analyze the issues of bringing persons to administrative liability for non-compliance with the requirements for subsoil protection. ***Research methods.*** The paper is based on general scientific and special methods of scientific cognition. ***Results.*** The authors have analyzed the particularities of distinguishing administrative liability from criminal one violating the requirements for subsoil protection. It has been emphasized that administrative misdemeanors differ from criminal offences by a lack of the intention to inflict serious harm to protected social relations. This difference is manifested in all elements of unlawful acts of both types: an object, actus reus, a subject, mens rea. The article has made a comprehensive analysis of the elements of an administrative offence for violating the requirements for subsoil protection. It has been found out that taking into account the body of an administrative offence under art. 57 of the Code of Ukraine on Administrative Offenses, i. e., blanket elements, one should refer to normative legal acts which regulate a complex of social relations in the subsoil realm and determine specific elements of administrative offences. The research has established that the breach of requirements for subsoil protection involves violating the performance of mining activity. The authors highlight that there is legal liability for the disturbance of mining activity. In particular, persons guilty of breaching mining laws are brought to disciplinary, administrative, civil and criminal liability under the laws of Ukraine. The article has studied administrative liability for the above offences. Mining offences mean the execution of mining works without technical documents (projects, work descriptions) approved under the established procedure or violation of their requirements. ***Conclusions.*** The research concludes that bringing to administrative liability for non-compliance with regulations on the protection of subsurface resources arises when one infracts the Subsoil Code of Ukraine and the Mining Law of Ukraine, in particular, violations in mining works, i. e., the execution of mining works without approved technical documents (projects, work descriptions etc.) or breach of their requirements.

Key words: administrative liability, administrative offences, elements of administrative offences, criminal liability, violation of requirements for subsoil protection, environmental protection.

1. Introduction

The Constitution of Ukraine defines the right to an environment that is safe for life and health, and to compensation for damages caused by violation of this right as one of the most fundamental constitutional rights of a man and citizen. At the same time, case law is an individual form and system of actions to protect and safeguard the rights, freedoms and legitimate interests of a person, which have legal consequences, in particular, in the environmental sphere. In addition, it is crucial to turn attention to the fact that in practice, the issue of differentiation between violations of the rules of protection/use of subsoil resources (Article 240 of the Criminal Code of Ukraine) (Criminal Code of Ukraine, 2001) and other components of administrative offenses, including the breach of subsoil protection requirements (Article 57 of the Code of Ukraine on Administrative Offenses (hereinafter – CAO) (Code of Ukraine on Administrative Offenses, 1984), is often raised. Bringing a person to

administrative liability for violations in the field of subsoil protection has a social function. Thus, O. Uliutina notes that a significant social value of the administrative liability is a disciplinary feature, as the existing law and order is restored or compensated by the actions of authorized state bodies in social relations. Moreover, an offender has the opportunity to assess his/her actions in a relatively short time, which is peculiar to administrative procedure. In the context of environmental protection and nature management, administrative liability makes it possible to ensure compliance with environmental requirements necessary to guarantee the security of man and society and the entire state (Ulyutina, 2011, p. 10).

The purpose of the research is to analyze the issue of bringing persons to administrative liability for violating subsoil protection requirements, taking into account doctrinal approaches and regulatory framework. **Research methodology.** To study the issue of bringing persons to administrative liability for violating the requirements for subsoil protection, complete the task of separating administrative and criminal liability for violating the requirements for subsoil protection, the authors have used a set of general scientific and special methods. In particular, the dialectical method has been applied during the analysis of connections between the development of scientific ideas and modification of terms for bringing to administrative liability. Thus, the dialectical method has been applied during the analysis of relations between the evolution of scholarly views and modification of conditions of bringing to administrative liability. The systems approach has contributed to establishing the system of bodies related to the procedure of bringing to administrative liability. The logical method has assisted in identifying the features that are inherent in an administrative offense. The comparative law method has been used to distinguish administrative liability from criminal one.

Analysis of recent research and publications. The works of the following scientists hold pride of place among the studies devoted to the issue under consideration: V. Averianova, I. Aristova, A. Berlach, Yu. Bytiak, V. Bilous, I. Borodin, Ye. Dodin, L. Kovalenko, T. Kolomoiets, V. Kolpakov, T. Matselyk, N. Nyzhnyk, V. Ortynskyi, O. Ostapenko, S. Pietkov, O. Uliutina et al. However, there are controversial points that require further research.

2. Differentiation between administrative and criminal liability

It is inconceivable that the development trend of administrative science takes place without the comprehensive approach to distinguishing features of administrative liability in any sphere. The above is justified by a clear division of administrative and criminal liability. It is worth paying attention to the fact that under para. 2, art. 9 of the CAO, administrative liability for offenses enshrined in the CAO arises if these offences, by their nature, don't involve criminal liability by the law (Code of Ukraine on Administrative Offenses, 1984). In other words, such a law category as the degree of social harm or social danger of a committed action is the main criterion for distinguishing criminal and administrative offenses. At the same time, it is also essential to keep in mind a quantitative factor (frequency, offense repetition). Moreover, administrative misdemeanors differ from criminal offenses by a lack of the intention to inflict serious harm to protected social relations. This difference is manifested in all elements of unlawful acts of both types: an object, actus reus, a subject, mens rea. According to Yu. P. Bytiak, art. 9 of CAO and art. 11 of the Criminal Code of Ukraine directly indicate the guilt (action's guiltiness) of an offender. Given the necessity to prove the offender's guilt, there appears a need to manage the issue of recognition or non-recognition of an administrative offense as a socially dangerous act since such an element as a social danger of the administrative offense is not officially enshrined in legislation, but the science of administrative and criminal law singles it out (Bytiak, 2020, p. 90).

3. Elements of an administrative offense

The main legal category which is peculiar to an administrative offense is its set of elements. In this context, it is incumbent to analyze a set of elements of an administrative offense under art. 57 of CAO. It is worth mentioning that social relations in the field of environmental protection and natural resource use are an object of unlawful attempts to violate the established rules about subsoil protection (p. 1, art. 240 of the CC of Ukraine), established rules of subsoil use (p. 2, art. 240 of the CC of Ukraine) and requirements for subsoil protection (art. 57 of CAO). However, one observes a greater disarrangement of social relations in committing a punishable criminal offense, as opposed to an administrative misdemeanor.

Characterizing an object of the offense specified in art. 57 of CAO, it is important to note that it is represented by social relations arising in the field of subsoil protection. A statutory basis for the regulation of mining relations in Ukraine consists of the Constitution of Ukraine, the Law of Ukraine "On Environment Protection, the Subsoil Code of Ukraine" and other relevant legislative acts of Ukraine. In addition to laws, mining relations

are harmonized by other normative legal acts, as follows: 1) inter-branch and branch security rules which contain norms for performing safe mining activity; 2) interbranch and branch rules for technical operations prescribing the requirements and standards for effective, safe, and environmentally-friendly performance of mining activity, industrial organization and management; 3) unified blasting safety regulations which establish the procedure for storage, transportation, and use of explosives during the mining operation (Kozyakov, 2014, p. 296).

In terms of the above, one should refer to paragraph 1 of article 13 of the Code of Ukraine of Subsoil which ascertains that subsoil users are enterprises, institutions, organizations, citizens of Ukraine, foreigners and stateless persons, and foreign legal entities. Subsoil resources are given for use, in particular, to extract minerals (para. 1, art. 14 of the Code of Ukraine of Subsoil) (Code of Ukraine of Subsoil, 1994). According to para. 2 of Art. 24 of the Code of Ukraine of Subsoil, users of subsoil resources shall use them under an intended purpose; guarantee the fulness of geological study, rational and complex exploitation, and conservation of subsoil resources; maintain the safety of people, property, and the environment; restore land parcels disturbed while using subsoil resources to a condition suitable for their further use in social production; provide and disclose information on national and local taxes and fees, other payments, and production (economic) activities necessary to guarantee transparency in the extractive industries according the procedure approved by the Cabinet of Ministers of Ukraine; fulfill other requirements for subsoil use established by the legislation of Ukraine and product distribution agreement.

Analyzing the physical element of an administrative offense, one should highlight the following: physical elements of non-compliance with the requirements for subsoil protection include: 1) unauthorized building on sites of commercial mineral occurrence, breach of subsoil protection rules and requirements for environmental protection, buildings and facilities from the harmful effects of activities associated with the use of subsurface resources, destruction or damage of observation regime wells on groundwater, as well as surveying and geodetic signs; 2) selective mining of ample areas of deposits that leads to unjustified losses of balance reserves of minerals, excessive losses and excessive impoverishment of minerals during extraction, damage to mineral deposits, and other violations of the requirements for rational use of their reserves; 3) a loss of surveying documentation, breach of requirements for bringing mine workings and boreholes, which are liquidated or conserved, into a condition ensuring public safety, as well as requirements for the preservation of deposits, mine workings and boreholes during conservation; 4) infringement of specific conditions of a special permit for subsurface use as long as it is not associated with generating large-scale income. At the same time, the generation of large-scale income occurs when its amount is three hundred times more than non-taxable minimum incomes.

The mental element (mens rea) of an administrative offense is also of importance. Both citizens and officials can be the mental element of the offense. Thus, according to para. 2.3 of the Instruction on registration of materials on administrative offenses and imposition of administrative penalties by Ukrainian Geological Survey approved by the Order of the Ministry of Ecology and Natural Resources of Ukraine № 347 dated 14 August 2013 (hereinafter "Instruction"), if non-compliance with subsoil laws committed by officials of enterprises, institutions, and organizations, their structural or separate subdivisions regardless of ownership and business profiles is revealed, it is drawn up a protocol with respect to a person who has infringed subsoil laws; if such a person cannot be identified – with respect to an official who is liable for the state of subsoil use at this enterprise (institution, organization), and if such a person is not appointed – with respect to the head of the enterprise, institution, or organization (On approval of the Instruction on registration by the State Service of Geology and Subsoil of Ukraine of materials on administrative offenses and imposition of administrative penalties, 2013).

As it is known, mens rea consists of the mental attitude of a person towards his/her illegal activity and its effects in the form of intent and negligence. In particular, intent's presence can be discussed in the case when an offender realized the illegal nature of his/her actions or inactivity, foresaw its harmful consequences, and wished them to occur (direct intent) or deliberately assumed the occurrence of such consequences (indirect intent).

The offender's actions are regarded as negligent, if a person, who committed illegal action, foresaw the possibility of harmful consequences of his actions and inactivity but carelessly relied on their prevention (self-confidence) or did not provide for the occurrence of such consequences, although, he had to and could have foreseen

them (negligence). Therefore, the mental element of an administrative offense involves committing the mentioned act both with intent and negligence.

It is worth paying attention to the classification of the elements of an administrative offense as provided for by art. 57 of CAO: nature of damage caused by the administrative offense – formally and materially defined; according to the subject of the administrative offense – mixed, i. e., there are features of both non-special (general) (a sane person who has reached the age of 16) and special subject (an official); according to the internal structure – alternative elements, as the article's disposition specifies several actions; according to the construction – with blanket elements; according to the degree of social harm – qualified elements.

There should be three reasons to bring a person to administrative liability: 1) a statutory reason – the availability of a legal rule that prescribes an administrative offense and accountability for its commission; 2) a factual reason– the commitment of an unlawful, guilty act by a person that envisages administrative liability pursuant to the law; 3) a procedural reason – an order (or a decision) of the body of administrative jurisdiction on the imposition of an administrative penalty.

Taking into account the construction of an administrative offense prescribed by art. 57 of CAO, namely blanket elements, one should refer to normative legal acts which regulate a range of social relations in the field of subsurface resources and establish specific features of administrative offenses. Thus, the tasks of the Soil Code of Ukraine are to regulate mining relations to meet the demands for mineral raw materials and other needs for public production, subsoil protection, guaranteeing the security of people, property, natural environment, as well as the safeguard of the rights and legitimate interests of enterprises, establishments, organizations, and citizens when using subsurface resources (art. 2).

According to para. 1, article 4 of the Subsoil Code of Ukraine, subsurface resources are exclusive ownership of the Ukrainian people and are granted only for use. Agreements or actions violating the subsurface title of the Ukrainian people directly or indirectly are invalid. The Ukrainian people exercise the subsurface title through the Verkhovna Rada of Ukraine, the Verkhovna Rada of the Autonomous Republic of Crimea, and local councils (Code of Ukraine of Subsoil, 1994).

4. Public administration in the field of protection of subsurface resources

Analyzing the provision of para. 1, article 11 of the Subsoil Code of Ukraine, it should be emphasized that public administration in the field of geological study, use and protection of subsurface resources is carried out by the Cabinet of Ministers of Ukraine, a central executive body which ensures the formation of state policy on natural environment protection, a central executive body which exercises state policy on the geological study and rational subsurface use, a central executive body which exercises state policy on labor protection, government agencies of the Autonomous Republic of Crimea, local executive authorities, other state authorities, and local self-government bodies under the legislation of Ukraine.

When referring to the powers of central executive authorities in the mentioned field, it is interesting to note that Ukrainian Geological Survey (Derzhheonadra) is a central executive body the activities of which are controlled and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Ecology and Natural Resources, who implements state policy on the geological survey and rational subsurface use (para. 1 of the Regulations on Ukrainian Geological Survey approved by the Order of the Cabinet of Ministers of Ukraine № 1174 dated December 30, 2015) (On approval of the Regulations on the State Service of Geology and Subsoil of Ukraine, 1995). At the same time, it is worth noting that the history of the Ukrainian Geological Survey went through several stages during Ukraine's independence: 1) for the first time in Ukrainian history, Regulations on the State Committee of Geology and Subsoil of Ukraine were approved on September 2, 1991; 2) new Regulations on the State Committee of Geology and Subsoil of Ukraine were approved on 01.04.1996; 3) on March 13, 199, the State Committee of Geology and Subsoil of Ukraine was reorganized into the Committee of Ukraine on Geology and Subsoil Use; 4) on March 30, 2002, the Committee of Ukraine on Geology and Subsoil Use was reorganized into Ukrainian Geological Survey and integrated in the Ministry of Ecology and Natural Resources, to which it subordinated; 5) State Geological Service was liquidated on April 14, 2004; 6) State Geological Service, which became a government authority and operated as the part of the Ministry of Ecology and Natural Recourses, to which it subordinated, was renewed on September 24, 2005; 7) on April 6, 2011, it was established Ukrainian Geological Survey, which is coordinated by the Cabinet of Ministers of Ukraine through the Ministry of Ecology and Natural Resources (Leonova, 2013, p. 77).

Under paragraphs 9,10,11 of the above Regulations of Derzhheonadra of Ukraine

(On approval of the Regulations on the State Service of Geology and Subsoil of Ukraine, 1995), it is authorized to issue a special permit for subsurface use (including the use of oil-gas bearing resources) according to the established procedure; to suspend and revoke the validity of special permits for subsurface use (including the use of oil-gas bearing resources) in the prescribed manner, to resume their validity in case of suspension; to carry out the re-issuance of special permits for subsurface use (including the use of oil-gas bearing resources), to amend them and issue duplicate copies, extend the validity of special permits for subsurface use (including the use of oil-gas bearing resources). In particular, the breach of requirements for the protection of subsoil resources by citizens and officials leads to bringing the mentioned persons to administrative liability.

According to art. 43 of the Subsoil Code of Ukraine, national cadaster of deposits and occurrence of minerals contains data about each deposit included in the State Fund of Mineral Deposits, quantity and quality of mineral reserves and available components, mining-engineering, hydrogeological and other conditions of field development and its geological and economic assessment, as well as each manifestation of minerals (Code of Ukraine of Subsoil, 1994).

The State Fund of Mineral Deposits of Ukraine was established following the Order of the Cabinet of Ministers № 150 dated 02.03.1993 "On the State Fund of Mineral Deposits of Ukraine", and Ukrainian Geological Service of Ukraine was entitled to form the Fund (para. 1 of the Order).

According to para. 4 of the Resolution of the Cabinet of Ministers of Ukraine № 75 dated 31.01.1995 "On the Approval of the Procedure for State Recording of Deposits, Reserves and Minerals Occurrence" (hereinafter "Order № 75 dated 31.01.1995), all deposits of commercial minerals, including man-made ones, with reserves assessed as industrial compose the state fund of mineral deposits (hereinafter "state fund"), and all preliminary evaluated minerals – the fund's reserve. The accounting system of assets of the state fund comprises data of the national cadastre of deposits and occurrences of mineral resources (hereinafter "state cadastre") and state register of mineral reserves (hereinafter "state register"), as well as state and branch reports of the enterprises and organizations conducting exploration of deposits, including man-made ones, mining and mineral processing (On approval of the Procedure for state accounting of deposits, reserves and manifestations of minerals, 2015).

The application of art. 57 of the CAO correlates with art. 56 of the Subsoil Code, which outlines the basic requirements for the protection of subsoil resources. Thus, the basic requirements for the protection of subsoil resources involve: ensuring a detailed and comprehensive geological study of subsoil resources; maintaining the statutory order for granting subsoil resources for use and preventing unauthorized subsoil use; rational extraction and use of mineral reserves and available components; preventing the unfavorable impact of activities related to subsoil use on the conservation of mineral reserves, mining, and boreholes, which are operated or preserved, as well as underground structures; preserving mineral deposits from flooding, water intrusion, fires, and other factors that affect the quality of minerals and industrial value of deposits or complicate their exploitation; preventing unreasonable and unauthorized building on areas of commercial mineral occurrence and meeting the statutory procedure for the use of the relevant areas for other purposes; preventing pollution of subsurface resources in case of underground storage of oil, gas, and other substances and materials, disposal of harmful substances and industrial waste, and waste water disposal; compliance with other requirements provided by the legislation on environmental protection (Code of Ukraine of Subsoil, 1994).

By relying on art. 19 of the Mining Code of Ukraine, which establishes the mining procedure, one can specify the mining procedure. Therefore, mining activity is performed based on a special permit (license) for subsurface use issued under the law. Mining activity is carried out under the projects and certificates developed and approved following safety rules, maintenance rules, unified rules for blasting safety. Projects and certificates shall have the "Emergency Shutdown" section. In case of factual or predicted changes of mining-and-geological (production) conditions, mining works are suspended up to the adjustment and re-approval in the prescribed manner of projects and certificates. Projects and certificates are disclosed to the staff of mining enterprises as set outlined in the security rules. A corporate plan for the development of mining work is annually examined and approved by mining authorities (Mining Law of Ukraine, 1999).

In this regard, it should be pointed out that the breach of the mining procedure provides for legal liability. Thus, art. 49 of the Mining Law consolidates liability for violation of mining laws. Consequently, persons guilty of the violation of mining laws are brought to disciplinary, administrative, civil, and legal liability under the laws of Ukraine. Mining offenses encompass

the performance of mining works without technical documentation (projects, certificates, etc.) approved in the established procedure or with the violation of their requirements.

5. Conclusions

As the result of scientific analysis, the authors have drawn the following conclusions about bringing persons to administrative liability for the violation of requirements for the protection of subsurface resources.

1. Administrative liability is one of the most efficient tools for counteracting administrative offenses in the field of subsoil protection.

2. The differentiation between criminal and legal offenses in the field of subsoil protection is based on a law category, which is manifested in the degree of social harm or danger of the committed action; at the same time, it is necessary to keep in mind the quantitative factor (frequency, offence repetition).

3. The qualification of an act under art. 57 of the CAO is possible if there are elements of an administrative offense. In particular, bringing to administrative liability under para. 1, art. 57 of the CAO, i. e., non-compliance with the rules for subsoil protection, takes place if one violates art. 56 of the Subsoil Code of Ukraine and art. 19 of the Mining Code of Ukraine, in particular, mining abuses – the performance of mining works without technical documentation (projects, certificates, etc.) approved in the established procedure or with the violation of their requirements.

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ПОРУШЕННЯ ВИМОГ ЩОДО ОХОРОНИ НАДР: ПРОБЛЕМА ПРИТЯГНЕННЯ ДО АДМІНІСТРАТИВНОЇ ВІДПОВІДАЛЬНОСТІ

Анотація. ***Метою статті*** є аналіз проблем притягнення до адміністративної відповідальності осіб за порушення вимог щодо охорони надр. ***Методи дослідження.*** Роботу виконано на основі загальнонаукових та спеціальних методів наукового пізнання. ***Результати.*** Авторами проаналізовано особливості розмежування адміністративної та кримінальної відповідальності за порушення вимог щодо охорони надр. Акцентується увага на тому, що адміністративні проступки відрізняються від кримінальних правопорушень відсутністю завдання значної шкоди охоронюваним суспільним відносинам. Ця різниця проявляється в усіх ознаках протиправних діянь обох видів: об'єкті, об'єктивній стороні, суб'єкті, суб'єктивній стороні. У статті зроблено детальний аналіз складу адміністративного правопорушення за порушення вимог щодо охорони надр. З'ясовано, що з огляду на конструкцію адміністративного правопорушення, передбаченого ст. 57 Кодексу України про адміністративні правопорушення, а саме бланкетний склад, варто звернутися до нормативно-правових актів, які регулюють сукупність суспільних відносин у сфері надр та встановлюють конкретні ознаки адміністративних правопорушень. Визначено, що порушення вимог щодо охорони надр включає й порушення порядку проведення гірничих робіт. Автори наголошують на тому, що за порушення порядку проведення гірничих робіт передбачена юридична відповідальність. Зокрема, особи, винні в порушенні гірничого законодавства, притягуються до дисциплінарної, адміністративної, цивільно-правової, кримінальної відповідальності відповідно до законів України. У статті досліджено адміністративну відповідальність за вищезазначене порушення. Правопорушеннями у сфері проведення гірничих робіт є проведення гірничих робіт без затвердженої в установленому порядку технічної документації (проєктів, паспортів тощо) або з порушенням їхніх вимог. ***Висновки.*** У статті зроблено висновок, що притягнення до адміністративної відповідальності за невиконання правил охорони надр має місце в разі порушення Кодексу України про надра, а також Гірничого закону України, зокрема в разі порушення у сфері проведення гірничих робіт, а саме проведення гірничих робіт без затвердженої в установленому порядку технічної документації (проєктів, паспортів тощо) або з порушенням їхніх вимог.

Ключові слова: адміністративна відповідальність, адміністративні правопорушення, склад адміністративного правопорушення, кримінальна відповідальність, порушення вимог щодо охорони надр, охорона навколишнього середовища.

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