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PUBLIC ADMINISTRATION IN THE FIELD OF SUBSOIL USE AND PROTECTION IN UKRAINE

ABSTRACT. Laws and regulations backing and governing public administration in subsoil use and protection in Ukraine is gradually gaining priority and importance given incoming energy security and resource self-sufficiency risks alerts for the State as one of the warrants for political and economic independence and guarantees for the people of Ukraine to enjoy and plenipotentiary implement its propitiatory rights set forth in the Constitution of Ukraine with regard to natural resources and benefits that constitute the genuine wealth of the nation.

The article is written with the application of inductive reasoning and performance of various research methods, such as case studies, phenomenological study with some focus on nature and source of laws and administrative functions, grounded theory study; also a deep comparative analysis of domestic and overseas legal patterns is carried out.

The article is devoted to the research of problems with regard to public administration in the field of subsoil use and protection in Ukraine. The author emphasizes that determination of public administration in the field of subsoil use and protection is a form of public managerial activities of public administration authorities (state authorities, local self-government bodies, self-governing public organizations with the respective competence). It is suggested that these activities are aimed at implementation of the policies in the field of geological exploration of mineral resources, mineral extraction, construction of underground and terrestrial facilities not related to the extraction of minerals, subsoil and environmental protection and they are based on the principles of interaction between subject and object of public administration, discretion, mutual responsibility, self-governance and decentralization when public services are provided.

Also, the article presents many judicial practice of the European Court of Human Rights and Citizen, the Supreme Court in the field of public administration in the field of subsoil use and protection.

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In concluding notes amendments to Subsoil Code of Ukraine, methodology for calculating the initial selling price for the sale of special permit, selection procedures for open special permit tender bid winners and responsibility for subsoil use abandonment costs are suggested by the author.

KEYWORDS: Legal relations; public administration; Subsoil Code of Ukraine; The Supreme Court; The European Court of Human Rights; public interest; fundamental rights; subsoil use, renewal and protection.

Ukraine is persistently following the path of harmonization of its legislation with European vector and principles. This task is comprehensive and surely requires reforms of the fundamentals that frame its social and legal relations. Administrative reforms in Ukraine were unleashed in 1998 for the purpose of gradual transit of soviet-style administrative instrument into modern and widely accepted system of public administration. This process has not been complete yet as is ongoing far and beyond anticipated terms. Given complicity and scale of transformations at legal, psychological and managerial level, it requires focused academic substantiation, studies and support for development of new techniques and approaches to each particular area of public administration on-the-go. Legal and managerial themes of public administration in subsoil use and protection have been for a long time in the focus of insightful phenomenological and methodological studies in legal and other social sciences going deeply into the essence of it as a priority factor for the State of Ukraine as it to a great extent decaying in terms of domestic energy producing as an objective consequence of exhausting consumption of internal subsoil resources, growing expenses and burden on the public budget due to imports of highly demanded energy resources and deprivation of equal public access and lawful rights of the people of Ukraine, its households and individuals to possess and benefit from the natural resources of Ukraine by diminishing its abilities to be in control of its equitable distribution and use. Modern processes of creating an independent state in Ukraine are closely connected, first of all, with the formation in Ukraine of a new approach to the regulation of relations between the state and society. The removal of the influence of the post-Soviet totalitarian system and the democratic society today necessitates the creation of a system of organization of relations of power in the state, which shall envisage as its main purpose to meet the needs of a man and a citizen, finding an optimal balance in the ratio of deterministic regulation and freedom of conduct, between rigorous public administration

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¹ *Екологічне право України. Академічний курс: підручник* (Шемшученко Ю заг ред, Юридична думка 2005) 163.

and discretionary powers of subjects to administrative legal relations. Such a system represents public administration.

First and foremost it shall be noted that public administration is a rightful activity that is legally significant and binding, since rights produce obligations as well.

Public administration

– legally significant activity of a certain circle of subjects aimed at achieving the goal of satisfying the interests of society;

– the process of administration connected both with the use of power and its enforcement, as well as encouragement and stimulation, which is using the authentic rule of law.

Thus, since it is obvious that administration as a process is characterized by exercising a power, its enforcement, including means of encouragement and stimulation, all that activities shall be based on the genuine rule of law.

Re-thinking of the role of the state in the administration of the social system causes the introduction of a new administrative methods, namely, the means of public administration, causes the development of new institutions and the gradual phasing out of obsolete administrative and legal forms, which do not meet the requirements of time and social needs, the stage of development of social relations, in particular in the field of subsoil use and protection.

Subsoil resources are the property of the people of Ukraine:

– Art. 13 of the Constitution of Ukraine states that subsoil resources ‘comprise object matter of the property rights of the people of Ukraine. On behalf of the Ukrainian people, the rights of the owner are exercised by the state authorities and local self-government bodies within the limits defined by this Constitution’².

– Art. 4 of the Law of Ukraine “On Privatization of State and Communal Property” dated January 18, 2018 states that ‘subsoil, minerals of national importance, other natural resources that are the object matter of property rights of the people of Ukraine, are not subject to privatization’³.

Being recognized as the property of the people of Ukraine⁴, as stated in the Constitution of Ukraine, the subsoil resources are the subject of the right of public ownership. Therefore, the state is not the only subject of public relations and in the scope of its public legal personality is a derivative of the will of the people, acting only as an instrument of the embodiment of the will of the people.

² Конституція України: Закон України від 28 червня 1996 р. № 254к/96-ВР. *Відомості Верховної Ради України*. 1996. № 30. Ст. 141.

³ Про приватизацію державного і комунального майна: Закон України від 18 січня 2018 р. № 2269-VIII <<https://zakon.rada.gov.ua/laws/card/2269-19>> (дата звернення: 11.08.2019).

⁴ Конституція України (н 2).

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Establishment in the Constitution of Ukraine of the institute of property rights of the Ukrainian people, in particular, the property on the subsoil, under the current legislation gives an understanding of the social importance of this institution. In addition, the assignment of subsoil to such proprietary objects determines the purpose of their use.

The Law of Ukraine “On Ratification of the Nationwide Mineral Resources Base Development Program of Ukraine for the Period until the Year 2030” dated April 21, 2011 states that almost 20 thousand fields and occurrences of 117 types of minerals were discovered in the subsoil of Ukraine, of which 8290 deposits and 1110 records for 98 types of mineral raw materials are of industrial value and are recorded in the state balance of mineral resources, 3349 deposits are being developed⁵.

It is absolutely reasonable to assume that subsoil use activities as one of its main components include the administrative aspect of governance in all its multifaceted forms and evidences. It will not be an exaggeration to express a suggestion that the vast part of the norms of mining activities, which mediates the process of subsoil use, is just managerial, and therefore administrative in its nature, and is aimed at regulating state power influence on the scope of human appropriation (subjects of law) of subsoil natural resources within the underground environment.

In its turn, public administration, state policy, governance and control in the field of subsoil use and protection shall proceed from the objective prerequisite of exhaustibility of mineral resources, non-renewable and limited status of mineral resources. Along with the development of public administration in the direction of ensuring the rational use of mineral resources and preserving natural resources for future generations, it is necessary to take into account that mineral resources are a significant factor in the development of the economy of Ukraine and ensure the economic security of the state. Such a balance of environment and economy, in order to meet the needs of society, shall be the basis of sustainable development of the state, which from the legal point is effectively provided by the relevant administrative rules of public administration⁶.

Given the fact that the subsoil is declared the object of the property of the people of Ukraine by the Constitution of Ukraine, the public law nature of the legal relations of subsoil use is undeniable. At the same time, the general public law point of reference of administrative regulation of the subsoil use and

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⁵ Про затвердження Загальнодержавної програми розвитку мінерально-сировинної бази України на період до 2030 року: Закон України від 21 квітня 2011 р. № 3268-VI <<https://zakon.rada.gov.ua/laws/show/3268-17>> (дата звернення: 11.08.2019).

⁶ Про Стратегія сталого розвитку “Україна – 2020”: Указ Президента України від 12 січня 2015 р. № 5/2015 <<https://zakon1.rada.gov.ua/laws/show/5/2015>> (дата звернення: 11.08.2019).

protection includes certain elements and methods of private law regulations. In the end, there are no crystal “pure” branches of law.

It is well-known that the criterion for dividing into the fields of law is the object of legal relations. The nature of these relationships, their essence and features will be determined on the basis of their object.

The object of public administration in the field of subsoil use and protection:

– compound object: direct (intermediate) interests of society (activities of public administration subjects); the final object is material wealth (subsoil);

– the object of legal relations: activities of public administration subjects, aimed at implementation of the interests of society in achieving material wealth – subsoil.

It is rational to conclude that the object of legal relations within public administration in the field of subsoil use and protection is an activity, behavior of subjects of social relations, aimed at achieving the result, implementation of societal interests, in relation to the subject of the material world – subsoil. At the same time, the subjects of public administration are those in the field of subsoil use and protection, which form a system as a whole and are in compound relationships with each other.

Subjects of public administration:

– subjects are subjects of public administration;

– subjects of public administration (executive bodies and executive bodies of local self-government), and other entities authorized to perform public functions;

– the entities that are entitled to certain authorities may include legal entities of public law (communal / municipal, state, public property (state unitary and similar enterprises) and private law entities.

Today, the state and its institutions are not monopolists of the subjects, such public administration subjects are public administrations, to which, in addition to legal entities, also belong the persons to whom the state delegates the provision of public services. The activities of public administration subjects shall be subject to administrative discretion, and discretionary powers shall be limited by law.

Public administration in the field of subsoil use and protection:

– the form of public administrative activity of public administration entities (state authorities, local self-government bodies, bodies with delegated public authority);

– the activity aimed at implementation of the policy in the field of geological exploration of mineral resources, mining of minerals, construction of

underground and terrestrial facilities not related to the extraction of minerals, the protection of subsoil;

– the activity based the principles of interaction between the subject and the object of public administration, discreteness, mutual responsibility, decentralization in the provision of public services.

The accomplishment of the goals and objectives of public administration in the relevant field is ensured by the legal mechanism of public administration as a set of institutional and managerial means and regulatory and legal support.

At the same time, the mechanism of public administration in the field of subsoil use and protection is a strict branch-wise manifestation of the general concept of the mechanism of public administration in general.

The legal mechanism of public administration in the field of subsoil use and protection:

– a set of institutional and managerial means as well as instruments of specific regulatory and legal support;

– the activity focused on ensuring: interaction between the subject and the object of public administration; discreteness; mutual responsibility; decentralization in the provision of public services in the field of subsoil use and protection.

Rules and regulations are carried out in accordance with the type of activity, namely the use and protection of subsoil mineral resources.

Therefore, in our opinion, the use of subsoil mineral resources shall be understood as obtaining certain benefits (economic, social, ecological or any other kind) from the utilization of subsoil (their components) in the activity of a certain entity/body (i.e. subjects).

In its turn, the protection of subsoil is a set of measures that ensure the most complete extraction of minerals, preservation or acceptable changes of structures and properties.

The basis of legal regulation is a set of documentation regulating the activities of specific subjects – public administrations, having the appropriate administrative competence and authority. The most settled in regulatory area is the public administration of the subsoil use, with the specifics and details being arranged on the basis of the type of minerals. The rules of law governing the public administration of the subsoil protection are prescribed in normative acts of various branch-wise point of reference. They are primarily declarative in nature and do not foresee a procedure for the implementation of specific measures aimed at the protection of mineral resources in the subsoil. It is advisable to put aside a block of legislation that defines public administration of the protection of subsoil mineral resources.

Further reforms are aimed at a comprehensive and more complete regulation of relations in the area. At the same time, in our opinion, it is advisable to single out a *separate unit of legislation with the rules devoted to management/governance*, in which it is advised to do the following:

- to clearly define the scope of subjects, criteria, tasks and principles;
- to unify the conceptual set of tools;
- to reflect the identities of public administration subject to subsoil involving activity (subsoil use and protection).

In fact, such reforming of the legislation shall be considered as *systematization of normative legal acts through their codification* to be achieved by preparation and adoption of a new edition of the Code of Ukraine on Bowels⁷.

The European Court of Human Rights (ECHR) judgments on compliance with public interest:

- violation of the equitable balance between the interests of property rights protection and the general maintenance of the balance between general social needs and the need to preserve the fundamental rights of the individual (Court Judgment, Sporrang and Lonroth v Sweden: ECHR 18 Dec 1984 (§19))⁸;
- the state must ensure a balance between different interests; it is necessary to maintain a balance between general social needs and the need to preserve fundamental rights (Court Judgment, Novoseletskiy v. Ukraine, ECHR 22 Feb 2005, § 61, 69)⁹;
- the state shall preserve proper environmental safety and secure individual rights and freedoms in the event of violation (Court Judgment, Dubetska & Others v. Ukraine, ECHR 10 May 2011, § 125, 141)¹⁰.

It is necessary to pay further attention to the role of the legal judgments of the Supreme Court and the judgments of the European Court of Human Rights (ECHR), which are obligatory for the courts for making decisions, in particular: the violation of the equitable balance that must be ensured between the interests of the protection of property rights and the general maintenance of the balance between the general the social needs and the need to preserve the fundamental rights of the individual (the judgments in Sporrang and Lonroth v Sweden, Novoseletskiy v. Ukraine set actual criteria for the discretion of the state powers).

⁷ Кодекс України про надра: Закон України від 27 липня 1994 р. № 132/94-ВР <<http://zakon.rada.gov.ua/laws/show/132/94-%D0%B2%D1%80>>

⁸ Sporrang and Lonroth v Sweden, Application no. 7151/75; 7152/75, Judgment of 18 December 1984, ECHR <<https://www.bailii.org/eu/cases/ECHR/1984/18.html>> (accessed: 11.08.2019).

⁹ Novoseletskiy v. Ukraine, Application no. 47148/99, Judgment of 22 February 2005, ECHR <<http://hudoc.echr.coe.int/eng?i=001-68373>> (accessed: 11.08.2019).

¹⁰ Dubetska & Others v. Ukraine, Application no. 30499/03, Judgment of 10 May 2011, ECHR <<https://www.informea.org/sites/default/files/court-decisions/COU-157034.pdf>> (accessed: 11.08.2019).

Judgments of the Supreme Court on remedy against violated rights (Article 5 of the Code of Administrative Court Procedure of Ukraine)¹¹:

– recognition as unlawful and abolition of an individual act or its separate provisions (judgment of the Supreme Court dated May 25, 2018 in the case No. 826/6102/16, where the court noted that the refusal of the State Geological Survey of Ukraine to grant a license for subsoil use is allowed only in case of non-compliance with the requirements of the legislation)¹²;

– recognition as unlawful and abolition of an individual act or its separate provisions (judgment of the Supreme Court dated 10.05.2018 in the case No. 802/4846/13-a), where the court invalidated and canceled the Order of the State Geological Survey of Ukraine on the suspension of the activities of the entity and the revocation of the license and the obligation to confirm the legality of such actions by the ruling of the administrative court)¹³;

– recognition of actions of the public authority as unlawful and the obligation to refrain from committing certain actions;

– recognition of inaction of the public authority as unlawful and obligation to perform certain actions (judgment of the Supreme Court dated 10.05.2018 in the case No. 804/4335/16, where the court, moreover, indicated that it shall not replace the state body whose actions are contested and take instead a decision which belongs to the competence of this body alone, since such actions of the court go beyond the powers determined by the legislator)¹⁴;

– determination of the presence or absence of the competence (power) of the public authority and other cases.

In addition, judgments of the Supreme Court perform as a source of law in other court decisions. Analysis of the practice of applying the norms of the current legislation in rulings of courts with various degree of authority indicates the presence of a vast number of cases concerning the permitting (licensing) activity of public administration bodies and the exercise of other functional responsibilities.

Organizational and institutional support of public administration in the field of subsoil use and protection:

– subjects of public administration (state authorities, local self-government bodies) and subjects, which are delegated with powers to perform functions of the state;

¹¹ Кодекс адміністративного судочинства України: Закон України від 3 жовтня 2017 р. № 2147-VIII <<http://zakon3.rada.gov.ua/laws/show/2747-15>> (дата звернення: 11.08.2019).

¹² Постанова Верховного Суду від 25 травня 2018 р., справа № 826/6102/16 <<http://www.reyestr.court.gov.ua/Review/74265811>> (дата звернення: 11.08.2019).

¹³ Постанова Верховного Суду від 10 травня 2018 р., справа № 802/4846/13-a <<http://www.reyestr.court.gov.ua/Review/73901555>> (дата звернення: 11.08.2019).

¹⁴ Постанова Верховного Суду від 10 травня 2018 р., справа № 804/4335/16 <<http://www.reyestr.court.gov.ua/Review/73938808>> (дата звернення: 11.08.2019).

– subjects, such as State Enterprise “Geoinform of Ukraine”, State Commission of Ukraine on Mineral Resources, Ukrainian State Geological Research Institute (UKRSGRI) can be referred to similar to the authorities exercising state delegated powers, which provide public services regarding the accessibility to mineral resources, their valuation, etc.;

– participation of civil society in performance of public administration and governance in the field of subsoil use and protection.

Speaking about organizational and legal support, it is advisable to conclude that there is a fairly wide range of subjects to authority. Most of them can be attributed to bodies of general competence.

In its turn, the State Geological Survey of Ukraine (SGSU) is the body of special competence¹⁵. That is, SGSU while exercising public administration in the field of subsoil use and protection of mineral resources has the most extensive and specified authority in relation to the object of public administration. The State Geological Survey of Ukraine carries out public administrative activities aimed at implementation of the policy in the field of geological exploration of mineral resources, mining of minerals, construction of underground and ground structures not related to the extraction of minerals, mineral resources and the environment; the direct interaction between the subject and the object of public administration is available at all stages and SGSU is also providing public services.

The essence of public administration in the field of subsoil use and protection is determined by the functions of public administration performed by the subjects of public administration.

Functions of public administration in the field of subsoil use and protection of mineral resources:

– part of the administrative activity of public administration authorities, namely in the field of subsoil use and protection, which they carry out on the basis of a law or other legal act for the achievement of the purposes of public administration; Functions are interdependent and interconnected. At the same time, based on the functions of public administration in the field of subsoil use and protection the system of public administration bodies is formed. The essence, contents, goals and objectives of administration are reflected through functions.

In other words, in essence functions of public administration subjects are the means of procedural and legal nature (the main directions (contents) of activity related to the field of our interest). They (functions) find their normative reflection in the competence of the subjects of public administration.

¹⁵ Про Положення про Державну геологічну службу України: постанова Кабінету Міністрів України від 3 грудня 2015 р. № 1174 <<https://zakon.rada.gov.ua/laws/card/1174-2015-%D0%BF>> (дата звернення: 11.08.2019).

Functions of public administration in the field of subsoil use and protection of mineral resources shall be understood as a part of the administrative activity of public administration entities, namely in the sphere of subsoil use and protection, which they carry out on the basis of a law or other legal act for the achievement of the purposes of public administration.

A feature of the functions of public administration in the field of subsoil use and protection is the impossibility of unambiguously assigning this type of administrative function to only one sphere (field) of public administration, which is due to the complex nature of public administration in the field. In particular, governance in the field of subsoil use and protection “penetrates” and has its manifestation in other areas of administration. For example, in the administration of the economy such functions are implemented as analysis, planning of the subsoil use. When implementing ecological administration, the functions of accounting for natural resources, limiting, valuation, etc. are implemented.

Responsibility in the field of public administration of subsoil use and protection:

- it is an indispensable element of the mechanism of legal regulation for the purpose of public administration;
- kinds of responsibility in the field are as follows: disciplinary, proprietary (civil law), criminal, administrative legal;
- the main emphasis is shifting precisely to the preventive-educational function of responsibility and, to a smaller extent the emphasis is made upon the punitive and compensatory functions.

Public administration as a form of activity of public administration officials is not a good simply because of the legitimacy of public administration as a legal authority. Society through the state, as the spokesman on behalf of vox populi, establishes a system of preemptive tools against unfair, unlawful administration which may harm the public interest.

And it is exactly *the institute of administrative responsibility* in the toolkit of its methodology of influencing public consciousness and adjusting the behavior of people that has a specific instrument for the most effective and secure *achievement of the goals of proper, honest public administration*.

Administrative and legal responsibility of the sphere of public administration in the field of subsoil use, protection (the Code of Ukraine on Administrative Offenses)¹⁶:

- body of offense against property right (Article 47, Code of Ukraine on Administrative Offenses, CUAO);

¹⁶ Кодекс України про адміністративні правопорушення: Закон України від 7 грудня 1984 р. № 8073-Х <<https://zakon.rada.gov.ua/laws/show/80731-10>> (дата звернення: 15.08.2019).

- offense of rules and procedures in the course of subsoil use and protection (Articles 57, 58 of CUAO);
- body of offense in the field of land laws (Article 53, 54–56 of CUAO);
- body of offense against environmental rules (Articles 82, 94¹, 95¹ of CUAO);
- body of offense against construction rules and standards;
- body of offense against business conduct rules;
- body of corruption offense and similar offenses.

Therefore, public administration, as a general public good, regardless of the form, type and classification of the offense, will be only a general object of legal relationships under protection. And the direct object in this respect should be represented by subsoil deposits, mineral resources. Along with that, in our view, in the applicable sphere of responsibility in the field of public administration of subsoil use, the main focus is shifted precisely to the preventive-educational function of responsibility and, to a smaller extent the emphasis is made upon punitive and compensatory functions, although the latter are also available when implementing sanctions of responsibility. Prevention of further violation of the legislation for public administration is of primary importance in the field of subsoil use and protection.

It is obvious to conclude that responsibility is a necessary element of the mechanism of legal regulation of public administration, the source of law enforcement in the field of public administration.

Responsibility in governance system is a definite process aimed at achieving the ultimate goal of public administration.

Administrative and legal measures for improvement of public administration in the field of subsoil use and protection:

- harmonization of regulatory acts in accordance with the currently existing system of executive branch of power;
- updating the powers of executive bodies;
- enhancing participation of civil society in the development and implementation of measures on rational use and protection of mineral resources carried out by executive authorities, bodies of power of the Autonomous Republic of Crimea and local self-government bodies;
- strengthening control over subsoil use and protection;
- strengthening protection of areas with mineral resource occurrence from construction activities;
- transferring to local governments of the authority for considering the disputes regarding subsoil use.

CONCLUSION. As a conclusion, it shall be emphasized that public administration in the field of subsoil use and protection in Ukraine is an integral part of the

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interaction between subjects and objects for the benefit and with the aim of meeting the needs of civil society in all respects related to above mentioned field of activities.

Speaking about further development and reforming of the public administration system in the field of subsoil use and protection of mineral resources, it is appropriate to talk about the balance of public interests and interests of the society (subsoil users and the people of Ukraine as the owner of the subsoil wealth) on the principles of public and private partnership. Accordingly, an improvement of public administration in the field of subsoil use and protection of mineral resources shall be embodied in the following.

Improvement of normative and legal provision of public administration in the field of subsoil use and protection of mineral resources:

- to prepare of the new edition of the Subsoil Code of Ukraine;
- to improve the methodology for calculating the initial selling price for the sale of special permit (license) for subsoil use;
- to improve the criteria for defining the winners of tenders (auctions) for subsoil use and the right to conclude production-sharing agreements;
- to establish responsibility of subsoil users for implementation of investment agreements, project documentation for the extraction of deposits, liquidation and abandonment costs of subsoil use;
- to improve secondary operations of sale and purchase of special permit (license) for subsoil use in accordance with the best industry practice in the developed countries of the world.

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ПУБЛІЧНЕ АДМІНІСТРУВАННЯ
У ГАЛУЗІ ВИКОРИСТАННЯ Й ОХОРОНИ НАДР В УКРАЇНІ

АНОТАЦІЯ. Закони і нормативно-правові акти, що забезпечують і регулюють державне управління у сфері надрокористування та охорони надр в Україні, поступово набувають пріоритетного значення, з урахуванням існуючих ризиків енергетичної безпеки і ресурсної самодостатності для держави як одного з гарантів політичної та економічної незалежності та гарантій для народу України користуватися і повноцінно здійснювати свої права, закріплені в Конституції України щодо природних ресурсів і благ, які становлять справжнє багатство нації.

Для написання статті використані індуктивні міркування й застосовані різні методи дослідження, такі як аналіз прикладів із практики, феноменологічне дослідження з певним зосередженням на природі та джерелі законів й управлінських функціях, обґрунтоване теоретичне дослідження; крім того, проведено глибокий порівняльний аналіз вітчизняних і зарубіжних правових моделей.

Стаття присвячена дослідженню проблем державного управління у сфері надрокористування та охорони надр в Україні. Авторка підкреслює, що встановлення державного управління у сфері надрокористування та охорони надр є формою державно-управлінської діяльності органів державного управління (органів державної влади, органів місцевого самоуправління, самоврядних громадських організацій, що мають відповідну компетенцію). Передбачається, що така діяльність спрямована на реалізацію політики в галузі геологічного вивчення надр, видобутку корисних копалин, будівництва підземних і наземних об'єктів, не пов'язаних із видобуванням корисних копалин, охорони надр та навколишнього середовища, і базується на засадах взаємодії суб'єкта й об'єкта державного управління, дискреційних повноважень, взаємної відповідальності, самоврядування і децентралізації при наданні державних послуг.

Також у статті представлена судова практика Європейського суду з прав людини, Верховного Суду, що стосується державного управління у сфері надрокористування та охорони надр.

У заключних зауваженнях запропоновані зміни до Кодексу України про надра, методика розрахунку початкової ціни продажу спеціального дозволу, порядок відбору переможців відкритого конкурсу на отримання спеціального дозволу, та відповідальність за витрати при відмові від надрокористування.

Ключові слова: правовідносини; державне управління; Кодекс України про надра; Верховний Суд; Європейський суд з прав людини; суспільний інтерес; основоположні права; надрокористування; відновлення і захист.