

COMPARATIVE LEGAL ANALYSIS OF THE LEGAL REGULATION OF OVERUSE IN UKRAINE AND THE REPUBLIC OF ITALY

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Annotation. The article is devoted to the study of the legal regulation of subsoil use in Ukraine and the Republic of Italy. It has been studied that starting with Ukraine's declaration of independence, a new stage of development of the subsoil use institute began, which was marked by the adoption of a wide range of laws in the specified area.

It has been established that in the context of adapting legislation in the field of subsoil use to the requirements of the European Union, it seems appropriate to improve the norms of national legislation to international norms of environmental legislation.

It is noted that the legal regulation of subsoil use in Ukraine is carried out in accordance with general normative acts that regulate the right of ownership, the right to use subsoil resources, the activities of mining enterprises, namely: the Code of Ukraine on Subsoil; The Mining Law of Ukraine, as well as special regulatory acts regulating the extraction of certain types of minerals – precious stones, precious metals, oil, gas.

It has been investigated that despite the existing legal framework in the field of subsoil use, there are problems of legal regulation of mining of precious stones, including amber, in Ukraine. It is noted that in order to improve the legislation in the field of mining of precious stones, it seems appropriate to adopt a legislative act that will contain provisions on the specifics of mining, sale of precious stones and responsibility for its illegal mining.

The article examines the historical and legal aspects of the formation of Italian legislation from the earliest times. The legislation of the Republic of Italy is analyzed. It has been established that legal regulation in the field of subsoil use is regulated by both general legislative acts and laws that carry out legal regulation of subsoil use in individual regions of Italy.

The article analyzes the legal regulation of the mining police (Polizia Mineraria), whose activities are aimed at preventing offenses in the field of subsoil use.

It was concluded that it is necessary to borrow the experience of the Republic of Italy in the field of subsoil use in the formation of a special unit of the mining police of Ukraine and the adoption of the Law of Ukraine "On the Mining Police of Ukraine".

Key words: minerals, subsoil use, legal regulation of subsoil use in Ukraine and the Republic of Italy, legislation in the field of subsoil use, problems of legal regulation in the field of subsoil use.

1. Introduction.

With Ukraine's declaration of independence, a new stage in the development of the Institute of Subsoil Use begins. The need to develop and consolidate the foundations of legal regulation of subsoil use was foreseen in the Declaration on State Sovereignty of Ukraine dated July 16, 1990 [1].

One of the significant events of the early 1990s was the formation of environmental legislation, namely: the adoption of the Law of Ukraine "On Environmental Protection" on June 25, 1991, in which special attention was paid to the legal regulation of subsoil use [2, p. 51].

During the period of Ukraine's independence in the field of subsoil use, a significant list of normative legal acts was adopted, the basis of which is: the Code of Ukraine on Subsoil; Mining Law of Ukraine, Law of Ukraine on Environmental Protection, etc.

At the same time, the legal regulation of subsoil use has certain shortcomings that require improvement, namely: issues related to the legal regulation of mining of precious stones, including amber.

In the context of adapting domestic legislation in the field of subsoil use to the requirements of the European Union (hereinafter referred to as the EU), it seems appropriate to improve the norms of national legislation to international norms. Adaptation of domestic environmental legislation to EU requirements is due to European integration processes taking place in Ukraine. The strategy of Ukraine's integration into the EU should ensure the country's entry into the European political, informational, economic and legal space.

In this context, the study of the legal regulation of subsoil use of the Republic of Italy, as one of the leading EU countries, which has significant experience in legal regulation in the specified area, is of particular importance.

The development of legal regulation in the field of subsoil use through the mechanism of adaptation of Ukrainian legislation to the EU legal system should ensure the fulfillment of the requirements of European energy legislation in accordance with the Partnership and Cooperation Agreement between Ukraine and the EU, the Program for the Integration of Ukraine into the European Union [3, p. 241].

2. Analysis of scientific publications.

The study of the legal regulation of subsoil use in Ukraine was the subject of research by such scientists, namely: I. Bulgakova, V.L. Bredikhinoy, O.A. Hrytsan, A.S. Yevstigneeva. R.S. Kirina, I.M. Kozyakova, A.V. Makarenko, I.B. Machuska, S.V. Razmetayeva, O.O. Surilova, V.V. Strelnyk, O.P. Svitlychnoy, Yu.S. Shemshuchenko, V.K. Filatova.

The subject of research into the legal regulation of subsoil use in Italy was the work of the following scientists, namely: M. Bessone, V. Cirulli Irelli, R. Caccin, P.La Rocca, F.A. Roversi Monaco, M. Sertorio.

3. The purpose of the work.

The purpose of the article is to conduct a comparative legal analysis of the legal regulation of public use in Ukraine and the Republic of Italy.

4. Presenting main material.

The Institute of Subsoil Use in Ukraine and in the world has a centuries-old history. The emergence and development of civilization is directly related to the use of subsoil [2, p. 51].

Ukraine has significant natural resource potential. The mineral and raw material base of Ukraine includes: 20,000 deposits and manifestations of 117 types of minerals [4].

Legal regulation of subsoil use in Ukraine is carried out in accordance with the following regulatory acts, namely: the Code of Ukraine on Subsoil; Mining Law of Ukraine; Laws of Ukraine "On production sharing agreements", "On state regulation of mining, production and use of precious metals and precious stones and control over operations with them" dated November 18, 1997 No. 637/97-BP 4,

“On gas (methane) of coal deposits”, “On oil and gas”, On the approval of the Classification of mineral reserves and resources of the state fund of natural resources.

It is worth noting that in Ukraine for a long time there is a problem of improving legal regulation in the field of subsoil use. Thus, one of the significant problems is the legal regulation of mining of precious stones, including amber. Despite significant efforts of the legislator, a significant number of legislative acts in the specified area were not adopted. At the same time, the problem of illegal amber mining remains unresolved for many years, which is directly related to environmental, socio-economic, political and cultural aspects. One of the mechanisms to overcome it is the improvement of the legal regulation of the mining of precious stones by adopting the Law of Ukraine “On Precious Stones”, which should contain provisions relating to the specifics of mining, control, supervision over the mining and sale of precious stones, legal responsibility, and the application of sanctions for the illegal mining of such a special type of minerals that have significant market, cultural and aesthetic value.

In order to improve legal relations in the field of subsoil use, it is advisable to consider the experience of the Republic of Italy.

Mineral development in the Republic of Italy dates back to (the end of the 4th - the beginning of the 1st millennium BC) – Montano, Monte Tabuto [5].

In the period of the Roman Empire, the development of marble (the city of Carrara) was of particular importance [6]. Until 1751, there was no clear legislation in the field of subsoil use, the rule of law concerned only the legal regulation of land relations. From 1751 to 1852, by the Dukes of Massa and Carrara, and then by their successors, the Dukes of Modena, relations in the field of subsoil use were regulated by a normative act known as the law of Este (La legislazione estense) - the laws of la Legge 1/2/1751, and later la Legge 6/4/1844 [6].

In the future, the mining legislation of Carrara was regulated by the Regulation of 14/7/1846 of 14/7/1846, approved by the governor (Nicolò Bayard Conte de Volo), which established rules for the use of marble [7, p. 85].

Today, the mining industry remains an important sector of the Italian economy [7, p. 85].

At the beginning of the 20th century in Italy, legislation in the field of subsoil use begins to be formed, which was affected by the adoption of the Mining Law of 1927 (legge mineraria n. 1143/1927) [8]. In accordance with the provisions of the law, norms were established regarding geological exploration of the subsoil and mining and private ownership of quarries.

By Presidential Decree Decreto del Presidente della Repubblica 7 maggio 1958, n. 574. Costituzione dell’Ente autonomo di gestione per le aziende minerarie. (G.U. 13 giugno 1958, n. 140), created an autonomous authority for the management of mining companies [9].

Jurisprudence establishes that quarries are private property, as stated in the Decision of the Italian Constitutional Court No. 20 of 1967 (la Corte Costituzionale, la quale, con sentenza n° 20 del 1967). The decision of the Court of Cassation (La Corte di Cassazione) No. 6270/80 and No. 6354/81 “denied ownership of the space below the ground in favor of a person who is not the owner of the soil” [10].

The legal regulation of subsoil use in Italy is also carried out by other normative legal acts, namely: Norme per l’attuazione della politica mineraria L. 6 ottobre 1982, n. 752 (Rules for the implementation of mining policy [11]. The regulation of the procedure for granting permits for the exploration of the territory and concessions for the development of mineral deposits of national and local importance is carried out in accordance with the Disciplina dei procedimenti di conferimento dei permessi di ricerca e di concessioni di coltivazione di giacimenti minerali di interesse nazionale e di interesse locale D.P.R. 18 aprile 1994, n. 382 [12].

It is appropriate to note that legal regulation in the field of subsoil use is carried out not only in accordance with general legislative acts, but also with normative acts relating to individual regions of Italy, namely: Legge Regionale 5 novembre 2009, n. 40. Attività estrattiva nel territorio della Regione Calabria.- Regional law of November 5, 2009, n. [13]; Legge regionale Toscana (Regional Law of Tuscany 5/12/1995 No. 104), La Legge Regionale Toscana 3/11/1998 n. 78 [14].

Also, in connection with changes in the provisions of Article 117 of the Constitution of Italy, new provisions were introduced regarding the extraction of minerals in the regions of Italy [15, p. 43]. Regional Law No. 36/80 (La Legge Regionale n° 36/80) provides for transitional provisions regarding the exploitation of quarries and environmental protection [16].

Features of the management of the regional park "Apuan Alps" are regulated by: Regional Law No. 65/1997 (Legge Regionale n 65/1997 - istituzione dell'Ente per la gestione del "Parco Regionale delle Alpi Apuane"). In accordance with the provisions of the law, a special management body was established to manage the territory of the Aswan Alps; whose main task is the formation of a policy on balanced environmental management [17], the Regional Law of Tuscany 3/11/1998 (La Legge Regionale Toscana 3/11/1998 n. 78), regulates activities related to the extraction of mineral substances belonging to the category of "car "years" [14], the Regulation on the concession of the marble quarries of Carrara is stated in the Decree of the City Council of Carrara dated 21/7/2005 No. 61 (Delibera del Consiglio Comunale di Carrara del 21/7/2005 n°61). [15].

In order to prevent violations of safety rules at mining enterprises, investigate accidents, and prevent offenses in the field of subsoil use, a special unit of the mining police (Polizia Mineraria) has been operating in Italy for sixty years [18].

The activities of the Polizia Mineraria are regulated by the following regulations, namely: Norme di polizia delle miniere e delle cave (D.P.R. 9 aprile 1959, n. 128. Norme di polizia delle miniere e delle cave. [19], Regionale n 44 del 26.4.2000 (artt. 27, 28, 29, 30, 31, 32, 33) [20].

Thus, taking into account the positive experience of the Republic of Italy in the field of subsoil use and in the context of the adaptation of Ukrainian legislation to EU legislation, the formation of a special unit of the mining police of Ukraine is a necessary measure to ensure the safety of employees of mining enterprises and will contribute to the protection and rational use of subsoil resources. For this purpose, in our opinion, to make a proposal regarding the expediency of adopting the Law "On the Mining Police of Ukraine" [21].

5. Conclusions.

Taking into account the above, it is appropriate to draw the following conclusions. Today, Ukraine is at a new stage of formation, which is connected with its formation as a European-level state. The defining element of such reform is the formation of legal regulation of subsoil use. In the context of adapting legislation in the field of subsoil use to the requirements of the European Union, it seems appropriate to improve the norms of national legislation to international norms of environmental legislation.

Despite a significant list of legal acts in the field of subsoil use, in Ukraine there are problems of legal regulation of mining of precious stones, including amber. In order to improve legislation in the field of mining of precious stones, it seems appropriate to adopt a legislative act "On precious stones", which will contain provisions on the peculiarities of mining, sale of precious stones and responsibility for its illegal mining.

In order to improve legal relations in the field of subsoil use in Ukraine, it is advisable to borrow the experience of the Republic of Italy in this field. Taking into account the existence of illegal mining of precious stones, including amber, in Ukraine, it seems appropriate, taking into account the positive experience of the Republic of Italy in the field of subsoil use, the formation of a special unit of the mining police of Ukraine, which will be a measure to ensure the safety of employees of mining enterprises and will contribute to ensuring the protection and rational use of resources subsurface For this purpose, it seems appropriate to submit a proposal for the adoption of the Law "On the Mining Police of Ukraine".

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