

Law regulation of giving the land for oil and gas output in Ukraine

Правове регулювання виділення земельних ділянок для видобутку нафти й газу в Україні

Yury Slusarenko

Key words:

natural gas, shale gas, law regulation, law status, legal personality, gas output companies.

Ключові слова:

природний газ, сланцевий газ, правове регулювання, правовий статус, правосуб'єктність, газовидобувні компанії.

Formulation of the problem. The market relationship development in Ukraine caused the necessity of law regulation transformation in production, processing and sale of its processing as the main condition of independent and effective function of national economic that are based on the commodity-money production. As recent events showed, Russian Federation foreign policy at the present stage is connected with increasing the pressure on Ukraine in the context of Euro integration process disruption. Energy supplies have become a pretty powerful lever of Russian foreign policy. In summer 2016 under consideration in international courts was the claim of the Russian "Gasprom" to Ukrainian "Naftogas" for 25 million dollars for refusing to import Russian gas scheme. Accept this, in august 2016 Russia denied Ukraine in energy supply after Ukrainian asking. At that time Ukraine can not refuse from coal supply from territory named as Donetsk national republic. This and other factors are making energy supplies in Ukraine one of the risking in national security sphere. In such conditions are making the changes in legislation of industry and public energy supply sphere and are taking risks that the needs of huge financial-industrial groups in Ukraine will be in priority for Ukrainian government and the public needs will go after them. In such conditions as one of the most effective way of dependence reducing from Russia energy supply is taxes sharp increase on gas supply for public, which was defined as nonsense by many scientists. On the other hand Ukrainian output companies are complaining about imperfect legislation, which requires strictly follow the rules of the land purpose for making the necessary work. So it is very important to make the modern standards and requirements for the geological study stages, when is making hydrocarbons output and industrial reformation of oil and gas deposits, construction and operation of wells, machines an hydrocarbons output technology with taking into account the rational mineral resources use for complete software of public safety, the environmental and property secure.

The analyze of the last publication and resources. Some aspects of research problem were in the works of O. Grizan, Y. Pazyrkivskogo, Y. Bokovykovoy, N. Maevskoy, A. Eyvstigneyeva. R. Maydanyka, M. Slusarevskogo, Y. Kurpasa.

The work purpose: to mark the legal regulation state and to show the perspective ways of increasing the shale gas output in Ukraine with influence defining and further sharpness Russian-Ukrainian relationship in war conditions in Donbas and strengthening the international competition on the energy supply market on this process.

Presentation of main research results. The current Ukrainian legislation establishes legal guarantees of private land ownership. Thus, in accordance with Art 41 of the Ukrainian Constitution no one may be unlawfully deprived of property rights. However, legal acts identified cases of incarceration of private land ownership. In particular, the Basic Law states that expropriation to the public needs on the basis and in the manner prescribed by law, and subject to advance and complete compensation of their value. The expropriation of land from public needs is a transfer of land ownership plots owned by individuals or entities to the state or territorial community of social necessity by the court.

February 15, 2011 in Washington, DC Ukrainian Ministry of energy and coal industry and the US state Department signed a Memorandum of understanding between the governments of Ukraine and the United States regarding gas resources from unconventional sources. And in 2012 the company "Shell" and "Chevron" on the basis of signed agreement began research and exploration work in the area of the Dnieper-Donetsk and Oleskogo shale gas deposits. Since 2012, the public authorities adopted a number of important decisions regarding the extraction of shale gas in Ukraine. In particular, The Ukrainian Verkhovna Rada adopted changes to the legislation under which the shale gas layers are related to hydrocarbons and unconventional hydrocarbons. In turn, the Ukrainian Cabinet of Ministers in favor of foreign investor's production and use of this gas related to the priority directions of innovative activity.

However, certain provisions of the agreement between Ukraine and the "Shell" company has caused objections subject to the application of Ukrainian legislation and internationally recommended practices of oil and gas fields which means the uses and practices that at a point are accepted in similar circumstances in the international oil and gas industry. The investor was provided the right to obtain land outside the contract area at any time with the appropriate requirement. It actually means the ability to use any land outside pre-defined limits. Moreover, if the land were in private ownership and the owners did not agree to the conclusion of agreements in respect of land on a voluntary basis, on request and in agreement with the "Shell" has to be a termination of the ownership private right, permanent use, and lease for such land plots¹. For landowners it was also important that the company "Shell" to the public need, when, in accordance with the Ukrainian legislation should be forced alienation of land by court.

As the experience of countries such as the UK, Canada, Australia, effective protection of the territorial community interests in the subsoil use sphere is the conclusion of special collective agreements², which provide the necessary interests balance and parties needs to the agreement (the investor – state – territorial communities), but a priority which is to protect the territorial community interests. V. Averyanov, V. Andriyko, V. Polyuchovich noted that the decisive criteria in the interpretation of the administrative law task should become a new functionality such as "human rights" (protection of rights and interests) that has been accepted in democratic countries³.

However, the Ukrainian legislation under the domination of large financial-industrial groups strongly limited the involvement of local communities as primary subjects of local self-government to the issues of subsoil use on the territory of their residence⁴. This, in particular, testified that the bill No. 2438, where he proposes to remove from the Ukrainian Code on bowels and the Ukrainian law "About local government in Ukraine" powers of local authorities in the process of granting subsoil use⁵.

During 2011–2013 in Ukraine began to actively discuss the problems of Shale gas extraction and development has been enacted to regulate this process. Public outrage has caused the possible negative consequences of consumer attitudes to the environment mining companies. Only July 4, 2013 the Committee on environmental policy, nature resources utilization and elimination of Chernobyl catastrophe consequences of the Ukrainian Verkhovna Rada has recommended the Ukrainian Cabinet of Ministries before starting work, the companies "Shell" and "Chevron" to ensure the organization of a permanent environmental monitoring system and environmental control the state of the environment in the areas of exploration and production of shale gas. Next to it was supposed to, and advancing public awareness about the benefits and risks of shale gas development participation in socio-economic development of local communities⁶.

¹ Розвідка та видобуток сланцевого газу: соціальні, правові та екологічні виклики (короткий огляд питання) / [Т.М. Жиравецький, О.В. Кравченко, Б.Г. Проць, В.В. Харкевич, Г.І. Хомечко] ; за заг. редакцією О.В. Кравченко [Електронний ресурс]. – Режим доступу : <http://www.uk.xlibx.com/4yuridicheskie/99400-8-rozvidka-vidobutok-slancevogo-gazu-socialni-pravovi-ekologichni-vikliki-korotkiy-oglyad-korotkiy-oglyad-lviv.php>.

² Teel J. International Environmental Impact Assessment: A Case Study in Implementation / J. Teel // 31 Environmental Law Reporter 10291. – 2001.

³ Авер'янов В. Академічні дослідження проблем державного управління та адміністративного права: результати і перспективи / В. Авер'янов, О. Андрійко, В. Полюхович // Юридичний журнал. – 2004. – № 5. – С. 180. – [Електронний ресурс]. – Режим доступу : <http://justinian.com.ua/article.php?id=1191>.

⁴ Бобко У.П. Колективні договори як механізм адміністративно-правового захисту інтересів територіальних громад у сфері користування надрами / У.П. Бобко [Електронний ресурс]. – Режим доступу : <http://aplaw.knu.ua/index.php/arkhiv-nomeriv/1-7-2014/item/260-kolektyvni-dohovory-yak-mekhanizm-administrativno-pravovoho-zakhystu-interesiv-terytorialnykh-hromad-u-sferi-korystuvannya-nadramy-bobko-u-p>.

⁵ Про внесення змін до деяких законодавчих актів України (щодо погодження користування надрами) : Проект Закону України від 27 червня 2013 р. № 2438а [Електронний ресурс]. – Режим доступу : http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47654.

⁶ Екологічні проблеми видобування сланцевого газу в Україні : Рішення комітету з питань екологічної політики, природокористування та ліквідації наслідків Чорнобильської катастрофи [Електронний ресурс]. – Режим доступу : http://komekolog.rada.gov.ua/komekolog/control/uk/publish/article?art_id=50631&cat_id=47174.

For many years the main form of relationship between the state and subsoil users was the provision of licenses. Stable legal regulation of these relations has failed to provide, and by signing agreements on production sharing, as foreign investors were interested in getting profit from the exploitation of Ukrainian mineral resources. The development of oil and gas fields was carried out on the basis of "Rules of development of oil and gas fields", which was approved the Ministry of oil industry of the USSR on 15 October 1984⁷ and "Rules of development of gas and gas condensate fields", approved by USSR Gosgortekhnadzor on 6 April 1970⁸. Ukraine has formed a so-call dual system of subsoil use for mining which included the elements of an authorization (license), and contractual system.

In 2013 in Ukraine, the development of oil and gas fields were regulated by the provisions of the Ukrainian Code "On subsoil", Ukrainian Laws "On oil and gas", "About principles of functioning of natural gas market", "On ecological expertise", "On protection of population and territories from emergency situations of man-made and natural character", "On environmental protection", "On fire safety", and also norms of DSTU 41-0032626-00-011-99 "phrases and Stages of exploration for oil and gas", DSTU 41-00032626-00-016-2000 "experimental-industrial oil, gas and gas condensate fields development", DSTU 41-00032626-00-007-97 "Protection of the environment. The exploration construction and production land oil and gas wells"; DSTU 320.00013741.017-2002 Exploration (additional prospecting) and oil and gas deposits arrangement. The constituent elements of the work and construction sites"; DSTU 41-00032626-00-022-2000 "Definition of oil recovery factors for geological and economic evaluation of resources and reserves identified and inferred deposits. Besides acting and a number of relevant regulations, namely: "The Rules of the safety at operation of main oil pipelines of Ukraine" (order of the State Committee of oil, gas and petrochemical industry of Ukraine dated 18.08.1997 No. 151, registered in the Ukrainian Ministry of justice 23.10.1997, No. 496/2300); "fire safety Rules in Ukraine (order of Ukrainian MES dated 19.10.2004 No. 126 registered in the Ukrainian Ministry of justice 4.11.2004, No. 1410/10009); "oil, gas, condensate. Fire safety. Basic provisions" (order and energy from 24.04.2007 No. 212); "Storage of oil, gas, condensate. Fire safety. Basic provisions" (order and energy from 24.04.2007 No.213); "Application instructions of Classification of investors and resources of minerals of subsoil to geology-economic study of resources of prospective areas state Fund and reserves of oil and gas fields" (order of the State Commission of Ukraine on mineral reserves (GKZ), dated 10.07.1998 No. 46, registered in the Ukrainian Ministry of justice 24.07.1998 G, No. 475/2915) and instruction about the contents, registration and procedure for representation in State Commission on Ukrainian mineral reserves oil and gas geology-economic evaluation materials" (order of the State Commission of Ukraine on mineral resources 18.10.99, No. 120, registered in Ukrainian Ministry of justice 10.12.1999 № 853/4146). Rules of transportation and storage of oil and gas and relevant laws were developed before the start of the preparatory process for the extraction of shale gas. Regulations of the Ukrainian Cabinet of Ministers from December 22.2005 No 1263 "On the competition at the conclusion of the agreement to distribution of hydrocarbons extracted within the Prykerchinska subsoil of the continental shelf of the Black sea"⁹, and also on may 30, 2011 № 615¹⁰, Ukrainian Cabinet of Ministers of 3 October 2007. № 828-R On signing the Agreement between the Ukrainian Cabinet of Ministers and the company "Venkointernationallimited" on distribution of hydrocarbons extracted within the Prykerchenska subsoil of the continental shelf of the Black sea¹¹ also regulated the procedure for granting special permits for subsoil use.

Despite the ambiguous reaction of citizens, warning of expert's activities of the Cabinrt Ministersis aimed primarily at satisfying interests of potential foreign investors. And not primarily is related to the process of land allocation for carrying out the relevant works. Ukrainian Ministry of energy developed a draft Ukrainian law "On amendments to the Land code of Ukraine concerning simplification of land for construction, operation and maintenance of oil and gas wellsand associated facilities or operation of pipelines, production facilities, access roads, power lines and communications". This project was registered January 28, 2014 in the Ukrainian Verkhovna Rada by the Cabinet of Ministers. In the explanatory note to the bill stated that mining companies are constantly faced with the problem of obtaining land rights to support their activities. Almost all oil and gas fields' areasin the Dnieper-Donotsk basin, which produces 85% of gas and more than 75% of oil in Ukraine, located in

⁷ Правила розробки нафтових та газонафтових родовищ від 15 жовтня 1984 р. [Електронний ресурс]. – Режим доступу : <http://www.geo.gov.ua/normativno-pravovi-akti-geolkontrol.html>.

⁸ Правила розробки газових і газоконденсатних родовищ від 6 квітня 1970 р. [Електронний ресурс]. – Режим доступу : <http://www.geo.gov.ua/normativno-pravovi-aktigeolkontrol.html>.

⁹ Постанова Кабінету Міністрів України від 22 грудня 2005 р. № 1263 // Офіційний вісник України. – 2005. – № 52. – Ст. 3306.

¹⁰ Про затвердження Порядку надання спеціальних дозволів на користування надрами : Постанова Кабінету Міністрів України від 30 травня 2011 р. № 615 // Офіційний вісник України. – 2011. – № 45. – Ст. 1832.

¹¹ Розпорядження Кабінету Міністрів України від 3 жовтня 2007 р. № 828-р // Система інформаційно-правового забезпечення ЛІГА:ЗАКОН®. – К. : Ліга, 2014.

the area of valuable land, approval of the withdrawal or redemption of which today is within the competence of the Verkhovna Rada. The statutory terms of land allocation defined from four month, but in practice continue up to five years. It was pointed out that to develop the project of land acquiring in advance, for two or three years before the start of drilling, it is impossible, because each new well adjusts the location of the next. The Ministry of energy and coal industry has proposed legislation that would allow mining companies to conduct exploration work under a contract with the owner of the land without changing its purpose. The draft amendments to the Land code, it was noted that a proposal to conclude a contract shall be considered within 15 days. Also the relevant agencies are encouraged to permit mining companies in the case of obtaining a commercial flow of hydrocarbons from the well to use land under contract in the period of registration of documents for the use, but not more than two years¹². The Adoption of this bill effectively unties the hands of the mining companies in the sphere of carrying out of works on any regard to their value and the relevant decisions of the Verkhovns Rada. Next to that for the extractive companies was important in the consolidation of the Ukrainian Law "about agreements in producing section" obligation of employment of Ukrainian citizens with the opportunity for learning and rents for the use of subsoil for mining. And the bulk of taxes, fees and charges were coming through the redistribution of products. For a long time the most criticism from potential investors sounded at the address specified in previous agreement, the distribution of the produced fuel. And on the other hand many domestic companies, for example, subordinates Firtash participated in the auction package of shares only in order to consolidate the relevant land postponing production indefinitely.

In November 2014, Ukraine stated that it had fulfilled all the conditions for signing an operating agreement with the company "Chevron", which was engaged in the exploration of Oleskiy field. It is noteworthy that in December 2014, was adopted the Ukrainian Law "On amendments to the Tax code of Ukraine and certain legislative acts of Ukraine regarding tax reform"¹³, according to which the size of the Board increased from 28% to 55% for gas and from 39% to 45% on oil production. But in late July 2016, the right to develop the Yuzivska field received by the Dutch company "Uzgas" which pledged this year to start drilling, investing 200 million dollars to the project. This decision on the background of the lengthy process of receiving another tranche from the International monetary Fund of Ukraine looked like one of the urgent foreign investment in a difficult economic situation for the continuation of the confrontation with the Russian Federation. It is most likely that Ukraine will be forced to continue to offer foreign investors attractive conditions of subsoil of mining use. Therefore, a substantial simplification a numbered list of land for carrying out the relevant work is only a matter of time.

Conclusion. For a long time the territorial community was eliminated from the solution of the problems associated with the definition of land for mining. There was a continuing trend, when the bills in the interests of large financial-industrial groups, private foreign investors foresaw and maximum simplification of the mining companies obtains rights to use the subsoil. The licensing process the Ukrainian situation received a bid corruption component, which could result in negative consequences for the environment by virtually uncontrolled by the state the process of exploitation of mineral resources.

It seems that a very negative experience of the Chernobyl disaster can be one of the reasons for the increased attention of the state to the activities of mining companies, including in the field of land determination for carrying out the relevant works. Optimism provides additions according to the Law No 521-VIII dated 16 June 1015 article 5 of the Ukrainian Law "On oil and gas", where they talked about the principles of the state policy in the oil and gas industry position about the necessity of compliance with the standards and requirements necessary to ensure transparency in the extractive industries". It may be reasonable after the completion of mining operations to carry out a full reclamation of disturbed lands. And in the case of absence of technical possibilities to carry it out, for example, for a subsequent agricultural work, it is important to include the create-forests, reservoirs, or preparation for construction of the mandatory involvement in the process of allocating land and determining the nature of remediation of local communities. This would reduce the risk of environmental disasters and social conflicts.

¹² [Електронний ресурс]. – Режим доступу : http://business-tv.com.ua/news/v_ukraini_khochut_sprostiti_dostup_do_zemelni_kh_dilyanok_dlya_vidobutku_nafti_i_gazu-105.html.

¹³ Про внесення змін до Податкового кодексу України та деяких законодавчих актів України щодо податкової реформи : Закон України від 28 грудня 2014 р. № 71-VIII // Офіційний вісник України. – 2015. – № 3. – Ст. 46.

Summary

The main features of law regulation of giving the land for oil and gas output in Ukraine at the beginning of XXI were analyzed and the perspective ways of its development were defined. The reasons of increased attention for this types of fuel output were defined and the features and the ways of implement of legal entities in oil and gas output sphere in Ukraine.

Анотація

У статті проаналізовано особливості правового регулювання виділення земельних ділянок для видобутку нафти й газу в Україні на початку XXI ст., визначено перспективні напрями його вдосконалення. З'ясовано причини посилення уваги до видобутку цих видів палива, встановлено особливості та механізм здійснення правосуб'єктності юридичних осіб у сфері видобутку нафти й газу в Україні.

Literature:

1. Авер'янов В. Академічні дослідження проблем державного управління та адміністративного права: результати і перспективи / В. Авер'янов, О. Андрійко, В. Полухович // Юридичний журнал. – 2004. – № 5. – С. 180. – [Електронний ресурс]. – Режим доступу : <http://justinian.com.ua/article.php?id=1191>.
2. Бобко У.П. Колективні договори як механізм адміністративно-правового захисту інтересів територіальних громад у сфері користування надрами / У.П. Бобко [Електронний ресурс]. – Режим доступу : <http://aplaw.knu.ua/index.php/arkhiv-nomeriv/1-7-2014/item/260-kolektyvni-dohovory-yak-mekhanizm-administratyvno-pravovoho-zakhystu-interesiv-terytorialnykh-hromad-u-sferi-korystuvannya-nadramy-bobko-u-p>.
3. Про внесення змін до Податкового кодексу України та деяких законодавчих актів України щодо податкової реформи : Закон України від 28 грудня 2014 р. № 71-VIII // Офіційний вісник України. – 2015. – № 3. – Ст. 46.
4. Екологічні проблеми видобування сланцевого газу в Україні : Рішення комітету з питань екологічної політики, природокористування та ліквідації наслідків Чорнобильської катастрофи [Електронний ресурс]. – Режим доступу : http://komekolog.rada.gov.ua/komekolog/control/uk/publish/article?art_id=50631&cat_id=47174.
5. [Електронний ресурс]. – Режим доступу : http://business-tv.com.ua/news/v_ukraini_khochut_sprostiti_dostup_do_zemelnykh_dilyanok_dlya_vidobutku_nafti_i_gazu-105.html.
6. Постанова Кабінету Міністрів України від 22 грудня 2005 р. № 1263 // Офіційний вісник України. – 2005. – № 52. – Ст. 3306.
7. Правила розробки газових и газоконденсатних родовищ від 6 квітня 1970 р. [Електронний ресурс]. – Режим доступу : <http://www.geo.gov.ua/normativno-pravovi-aktigeolkontrol.html>.
8. Правила розробки нафтових та газонафтових родовищ від 15 жовтня 1984 р. [Електронний ресурс]. – Режим доступу : <http://www.geo.gov.ua/normativno-pravovi-akti-geolkontrol.html>.
9. Про внесення змін до деяких законодавчих актів України (щодо погодження користування надрами) : Проект Закону України від 27 червня 2013 р. № 2438а [Електронний ресурс]. – Режим доступу : http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47654.
10. Про затвердження Порядку надання спеціальних дозволів на користування надрами : Постанова Кабінету Міністрів України від 30 травня 2011 р. № 615 // Офіційний вісник України. – 2011. – № 45. – Ст. 1832.
11. Розвідка та видобуток сланцевого газу: соціальні, правові та екологічні виклики (короткий огляд питання) / [Т.М. Жиравецький, О.В. Кравченко, Б.Г. Проць, В.В. Харкевич, Г.І. Хомечко]; за заг. редакцією О.В. Кравченко [Електронний ресурс]. – Режим доступу : <http://www.uk.xlibx.com/4yuridicheskie/99400-8-rozvidka-vidobutok-slancevogo-gazu-socialni-pravovi-ekologichni-vikliki-korotkiy-oglyad-korotkiy-oglyad-lviv.php>.
12. Розпорядження Кабінету Міністрів України від 3 жовтня 2007 р. № 828-р // Система інформаційно-правового забезпечення ЛІГА:ЗАКОН®. – К. : Ліга, 2014.
13. Teel J. International Environmental Impact Assessment: A Case Study in Implementation / J.Teel // 31 Environmental Law Reporter 10291. – 2001.

Yury Slusarenko,

candidate degree of Law, docent

Kyiv national University named after Taras Shevchenko