

МІНЕРАЛОГІЯ, ГЕОХІМІЯ ТА ПЕТРОГРАФІЯ

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**GEMOLOGICAL LAW OF UKRAINE:
FORMATION PROBLEMS AND DEVELOPMENT PROSPECTS***(Представлено членом редакційної колегії д-ром геол. наук, проф. В.А. Нескеровським)*

The article analyzes the scientific and legislative provisions connected with the specificity of the legal regulation of relations in the field of gemological activity and gemological objects. The current state of sources of gemological law and their belonging are investigated, which is nowadays ambiguous, since they get to a system of currency law (a component of financial and credit or budgetary and financial legislation) as well as to a system of industrial legislation, while having the provisions of mining, economic, civil, administrative, fiscal, customs and expert legislation in the contents. It is proposed to consider gemological law as a set of legal norms regulating public relations in the field of organizing and carrying out gemological activities connected with the acquisition of the right to use, mining, property, use and operations with gemological objects in the form of subsoil, mineral, production and secondary resources, control over their turnover and expertise.

It is noted that consideration of precious stones and precious metals, having geological and mineralogical, physicochemical, jewellery and industrial, and legal differences, as the complex object in the context of the domain of the unified legislative act, intended to be a basis of new market relations in the field of jewellery transactions, could be regarded as the justified one only at the early stage of legislative base formation for the field. Provisions are given, according to which it is recognized that the current law is outdated, since its subject of regulation has been transferred mainly to the subordinate level; the mechanisms for replenishing state funds provided in it are contradictory, incomplete and practically not implemented in practice; the form of restrictions in the circulation of valuable objects and their validity are debatable; relations of the quality and safety of products, consumer protection, ensuring a balance of public and private interests, equality of business entities, competitiveness of the industry need updating in European integration legal regulation.

For the first time in the context of geological and legislative science, the authors propose to form a structure of the gemological law system based upon the principles of differentiation of a type of gemologically important activities for generic derivatives (i.e. gemological and resource law; right of gemological circulation; right of gemological expertise etc.) as well as a type of gemological objects and resources for direct groups. Development prospects of gemological legislation are connected with its reduction to a certain agreed system and its unity provision by means of the internal and external improvement of contents and development of the Gemological Code of Ukraine.

Keywords: *gemological legislation, precious stones, circulation of precious stones, gemological resources, gemological activities.*

Statement of the problem. In terms of market conditions, natural gemstones (i.e. precious stones, semi-precious stones, and ornamental ones) may be among the most commercial budget filling minerals. Certain types and deposits of the stones may be quite profitable in terms of relatively insignificant time consumption and cash expenditures connected with their exploration and development. To compare with other types of natural ornamental stones, amber is the most competitive one in Ukraine. Marketing of the finished luxurious amber products may become the reliable source to fill the state treasure with money inclusive of currency. These are the development prospects of a branch, connected with gem stone raw material, and related to "Other non-metallic raw material" group. The prospects are a part of the National Programme for the Development of Mineral Resource Base of Ukraine up to 2030 (*Про затвердження Загальнодержавної програми, 2011*).

In terms of industrial and economic importance, the total of the raw material varieties belong to Г category; i.e. to the types of mineral raw material which are not developed today being understudied. However, in future they may become significant for the national economy taking into consideration the needs of other industries. Moreover, the raw material group is characterized as follows: 1) it involves such types, being traditional for Ukraine, as amber, topaz, beryl, and rock crystal; 2) the estimated reserves of amber, onyx marble, and rhodonite; and 3) the detected manifestations of emerald, aquamarine, ruby, garnet, amethyst and other jewellery

ornamental stones; however, their prospects have not been clarified.

Individual group, called "precious stones and diamonds" involves the first-order precious stones, i.e. diamond determined as the important raw material type belonging to Г category. The three areas of kimberlite and lamproite magmatism (i.e. indigenous diamond sources) have been prospected in Ukraine: the north of Volyn-Podillia plate; central part of Ukrainian Crystalline Shield; and Pryazoviiia Block and area of its rock mass jointing with Donbas.

The relationships, connected with the development, production, use, and storage of precious metals and precious stones (hereinafter, PMs&PSs); precious stones of organogenic origin (hereinafter, PSOF); and semi-precious stones (hereinafter, SPSS) as well as control over transactions with them are controlled by: a) Law of Ukraine "On the State Regulation of Mining, Production and Use of Precious Metals and Precious Stones and Control over Transactions with them" (hereinafter, PM&PS); b) other Laws of Ukraine; and c) regulations (hereinafter, Rs), adopted in accordance with them (*Про державне регулювання видобутку, 1997, Art.2*).

Unfortunately, there is no question of sufficiency and quality of legal settlement of gemological relationships as well as relationships in the field of precious stones which influences respectively the problems of formation and future of the national gemological right and legislation.

Analysis of the recent research. The fact is that there are publications in terms of the study. However, they

concern either certain problems of PMs&PSs legislation of specific features of the branch regulation of corresponding relationships. In this context, the paper by Yu.O. Titova (*Тимова, 2012*) is the most noticeable one where the author considers normative principles of PMs&PSs transactions in Ukraine while separating Rs system to identify both legislative and organizational foundations of administrative and legal control over PMs&PSs transactions being a set of laws and bylaws (being in force at that time). They are of hierarchic structure to create legal boundaries for the implementation, namely: international acts being a part of the national legislation of Ukraine; Constitution of Ukraine and Codes of Ukraine (i.e. Commercial Code, Tax Code, and Code on Administrative Offences); Laws of Ukraine; Decrees of the President of Ukraine and Order of the Cabinet of Ministers of Ukraine (hereinafter, CMU); Orders of the Ministry of Finance of Ukraine; Orders of the National Bank of Ukraine (hereinafter, NBU); and Rs, containing technical requirements. Taken together, they form appropriate system of technical and legal norms. In our viewpoint, the author of the paper notes on the record rather than makes a scientific conclusion concerning the fact that regulations of PMs&PSs transactions are numerous legislative acts which can be divided conditionally into the two groups: 1) those controlling relationships arising in the process of PMs&PSs transactions; and 2) those identifying legal foundations to control PMs&PSs transactions (*Тимова, 2012, p. 102*).

Obviously, these differentiations into transaction relationships and control ones in the field of PMs&PSs is based upon a law on PMs&PSs in terms of which transaction relationships involve contacts concerning PMs&PSs mining, production, use, storage, and marketing (Chapter 2 of the Law); and control relationships involve contacts of the state control over PMs&PSs transactions (Chapter 3 of the Law).

Certain features of Ukrainian legislation, controlling PMs&PSs transactions, mentioned by the author of the paper, attract certain attention (*Тимова, 2012, p. 103*). They are the following: numerous (almost 100) bylaw Rs, specifying one law in the field of PMs&PSs transactions in turn factoring into the instability and internal inconsistencies of legislative acts in the field of PMs&PSs transactions; interbranch nature since the provisions in the field of PMs&PSs transactions involve regulations of constitutional, administrative, financial, commercial, civil, and customs laws; declarativity of many legislation provisions, concerning PMs&PSs transactions, and nonavailability of the mechanisms to implement the regulations; complexity since the current legislation regulates legal relationships concerning all transaction aspects of precious metals as well as precious stones; and a tendency to liberalize PMs&PSs transactions.

V.P. Romanov, another scholar in the administrative and legislative field, represents proper works (*Романов, 2017, p. 5-6*) noting that his thesis develops a characteristic of regulatory frameworks of PMs&PSs transactions, which make up Rs, identifying: 1) rules of mining and production (inclusive of refining and salvage); use, storage, and marketing of PMs&PSs and goods made of them (inclusive of jewellery); 2) rules of their delivery to places where the reserves are stored; 3) exhibition rules for such items; 4) legal status of players providing PMs&PSs transactions; 5) rules of pawnshop lending to the population on the security of PMs&PSs items; 6) accrediting and training procedure for gemology experts; 7) procedure to import PMs&PSs and materials, containing them, in the customs territory of Ukraine and export from it (or forwarding); 8) order to register imprints of owners; 9) procedure of records, setting-up, and maintenance of the economic entities engaged in PMs&PSs; 10) and procedure of a touch control as well as

implementation of legal responsibility measures for the law violation in the field.

However, the approach to systemize legislation Rs in the field of PMs&PSs can hardly be considered as the successful one from the viewpoint of both subjective and objective criteria. For instance, integration of the diversified Rs, controlling PMs&PSs mining, production, use, storage, and marketing, into the unified unit, cannot correspond to any type of legislation system development relying upon the contents of the actions and their results.

Somewhat earlier than the previous author, O.M. Malichenko proposed to consider following organizational and legal measures of public administration bodies as the tendencies to improve the efficiency of legal control over PMs&PSs transactions in Ukraine: centralization and revision of functions of governmental agencies in terms of administrative reform; development and legislative legalization of the Concept of PMs&PSs transactions improvement; decrease in control by regulatory authorities over the field of PMs&PSs by means of the decreased number of revisals; and development of a joint action programme by The Ministry of Finance, the State Assay Service of Ukraine, the State Gemological Centre of Ukraine (further, SGCU), and the State Fund of PMs&PSs in Ukraine in the context of the field under study (*Маліченко, 2012, p. 15*).

From the economic and legislative viewpoint, K.V. Yefremova has developed a three-stage model to systemize legal control over the business activities in the field of item production using PMs&PSs. At an element level, the model should involve a number of laws (*Єфремова, 2009, p. 8*): 1) the modernized basic PMs&PSs law which has to gain a status of the codified Rs (a market as an hierarchic structure with each phase and the related industries will become its subject rather than the items as such; moreover, the market provisions should involve all the related production types); 2) the specialized laws such as a law on the quality of PMs&PSs items; and 3) laws controlling relationships in the market of PMs&PSs items in terms of certain sector of the market (i.e. laws on pawnshops and pawnshop activities in Ukraine; laws on the state monopolies and holding companies).

A conclusion, made by the author (*Єфремова, 2009, p. 5-6*) is that the market of PMs&PSs items being a complex subject of legal regulation and consisting of several segments is also worth noticing. The segments are as follows: raw material base formation; manufacturing of items; marketing; and secondary market (i.e. commission trade, utilization and processing). The segments have their officially permitted significance being individual subjects of legal industrial policy within the branch. To provide economic and legislative regulation of the relationships in the context of the branch, it is expedient to consider it autonomously relying upon availability of the two sectors: 1) jewellery market; and 2) market of industrial products.

Expert in the field of public administration, K.M. Semeniuk has improved scientific substantiation of certain disadvantages of the regulatory framework as for the state regulation of Ukrainian jewellery industry by means of their separation (*Семениук, 2015, p. 9*): lack of technical norms and quality standards for jewellery which would regulate the amount of the precious metal and its assay as well as quality and content of the base impurities, coating etc.; prohibition for economic entities, engaged in the production and sale of jewellery, to use a simplified taxation system in their activities; abolition from October 2012 of the right of jewellery manufacturers, who branded their own products with the state assay, to perform such operations; nonavailability of accurate determination of control components being a mechanism of the state test control as well as governmental bodies effecting the control etc.

Finally, K.Yu. Dikhtiarenko believes that in his thesis (Діхтяренко, 2019, р. 4) he has improved substantiation of the expediency to delimitate legal control of PMs&PSs, PSOF, and SPSs transactions taking into consideration features of the items as the material world objects; geological structure of the territorial shelf of Ukraine; mining conditions in the country; and legal regime of the transactions stipulated by the fact that precious stones do not belong to gold and foreign exchange reserves of the country, cannot be used as the international reserve fund, and cannot be considered as currency values.

The word combination proposed by the mentioned author, i.e. "geological structure of the territorial shelf of Ukraine", seems as incorrect set of phrases for geological terminology as well as for legal one.

Hence, the analysis of certain results of the studies by the national scholars in the field of legal regulation of PMs&PSs transactions has demonstrated the necessity and supported the possibility of further analytical activities to clarify the current state and specific features of terms of Rs reference, regulating gemological relationships, with the substantiation of the findings.

Thus, the **purpose of the paper** is searching for the arguments to substantiate scientific foundations of the gemological right consideration as the specific legal structure within the national legislative system.

For the purpose, the paper involves study of the following parts of a general problem which were not solved previously:

- identification of the formation genesis of the source base of the gemological right;
- determination of the external belonging of the regulations of the gemological legislation;
- detection of integration features of two different mineral resources as an object of legal regulation of one law;
- analysis of gemological component of the Law on Precious Metals and Precious Stones;
- further studies of legal status of the State Gemological Centre of Ukraine, and legal regime of Certification scheme of Kimberley process; and
- substantiation of the development prospects of a gemological right subject.

Statement of the main material. 1. Forming the source base of the gemological right. Current Ukrainian gemological legislation begins upon at the turn of 1991 when the Presidium of the Verkhovna Rada of Ukraine adopted a resolution "On the Establishment of Reserve of Precious Metals and Precious Stones in Ukraine" (*Про створення запасу дорогоцінних металів, 1991*). Among other things, the CMU set a mission to provide the state assay supervision, and put under control the use of PMs&PSs by the national enterprises and institutions.

To develop the unified national control system of PMs&PSs transactions and provide their rational use, following resolution by the Verkhovna Rada of Ukraine "On the Provision of Rational Use of Precious Metals and Precious Stones" delegates the CMU: 1) in a month's time, to prepare a statutory instrument in cooperation with the NBU to regulate a problem of sharing functions concerning production, processing, mining, use, and development of PMs&PSs reserve; and 2) to draw up and approve the national programme to create a raw material base of PMs&PSs, processing industry, and provide the state regulation of their marketing (*Про забезпечення раціонального використання, 1993*).

Resolution by the CMU "On the Commercial Classification and Assessment of the Value of Natural Stones" is the important R of gemological legislation (*Про загальну класифікацію та оцінку вартості, 1994*). In addition to the commercial division of natural stones into:

1) precious stones (1st-4th orders); 2) SPSs (1st-2nd orders); and 3) ornamental stones, it has been determined that changes in the classification are made by the CMU on the request of the Ministry of Ecology and Natural Resources and The Ministry of Finance. Cost evaluation of natural stones and issuance of a certificate of their assessment in the form approved by the Ministry of Finance was put on the SGCU; in cooperation with the SGCU, the State Customs Service of Ukraine had to provide training of specialists to supervise transfer of the natural stones through the customs border of Ukraine.

Later, the Parliament focused on the activities to adopt a law controlling the certain type of civil and law relations originated by the Resolution of the Verkhovna Rada of Ukraine on the 17th of October 1994 (#169/94-ПВ). The activities resulted in the adoption of corresponding law (*Про визначення розміру збитків, 1995*).

Finally, at the end of 1997, open-ended discussions and modifications resulted in the adoption of PMs&PSs Law determining legislation foundations and principles of the national regulation of mining, production, use, and PMs&PSs storage as well as control over their transactions (*Про державне регулювання видобутку, 1997*). Namely, in addition to chapters one (i.e. "General provisions") and four (i.e. "Final provisions"), the PMs&PSs Law regulates two more groups of relationships in the field of PMs&PSs, specifically: 1) control over PMs&PSs mining, production, use, and marketing; and 2) governmental control over PMs&PSs transactions.

Consequently, formation of the current source base of Ukrainian gemological right is in progress from gaining independence being characterized by the availability of the basic legislative act as well as numerous bylaw regulations.

2. External belonging of regulations of gemological legislation. The structure of Law on the PMs&PSs demonstrates obvious intersubjectivity of legal regulation. In such a way, a classifier by the Ministry of Justice (*Про затвердження Класифікатора галузей законодавства, 2004*) refers gemological legislation and precious metal legislation called as "Precious metals and precious stones" (code 110.120.050) to such a Rs unit as "Currency Regulation" (code 110.120.000); in turn, the unit is a part of financial and credit legislation (code 110.000.000 "Finance and credit").

On the other hand, in terms of the Parliament legal classification proposed by the information retrieval system "Legislation of Ukraine", the gemological component (i.e. Precious metals, precious stones", code 20130 30) can be found in "Currency Law" chapter (code 20130), being a part of budget and financial legislation (code 20), as well as in the industrial legislation (code 160 "Legislation on the activities of industrial branches"); namely, such a chapter as "Inventory, supply of precious metals, diamonds, and precious metals for industrial needs" (code 160 20).

Hence, separation of the relationships of industrial use of precious stones is quite obvious: 1.1) for jewellery needs; 1.2) for art and industrial, and stone-cutting needs; and 1.3) for industrial and technical needs. Moreover, it is necessary to take into consideration the available relationships to use precious stones for scientific and cultural purposes: 2.1) for exposition needs (i.e. museum and collections); 2.2) for research activities; 2.3) for expert evaluation; and for financial purposes: 3.1) for needs to form bank assets; 3.2) for economic needs (i.e. storage, marketing, and other operations); and for medical and religious purposes: 4.1) for the needs of medical geology, lithotherapy; and 4.2) for religious, ceremonial, and magic needs.

Statutory provision on PMs&PSs Law should also be taken into consideration in terms of which the National PMs&PSs Fund has been assigned to provide production, financial, scientific, sociocultural, and investment needs of Ukraine.

Probable, the recent belonging of gemological legislation to the system of financial legislation looks like conventional. First of all, it can be justified by a semantic link of such categories as "financial" and "precious" as well as by a legal status of the Ministry of Finance. The matter is that provision of the formation and implementation of the national policy in the field of PMs&PSs, PSOF, and SPSs mining, production, use, storage, transactions, and accounting are among the most important missions of the governmental agency (*Про затвердження Положення ...*, 2014). The abovementioned supports the idea that current stage of the development of system of regulations of gemological legislation has not any unified position concerning its external belonging to the formed legislation branches.

3. *Integration of two different mineral resources as an object of legal regulation of one law.* The unifying criterion for PMs&PSs is the following. In terms of their significance, the two groups belong to minerals of the national importance. According to a list by the CMU (*Про затвердження переліків корисних копалин*, 2011) "precious metals" are metallic ores of precious metals (i.e. gold, silver, and platinum group metals). Among other things, "non-metallic minerals" class involves such groups as "jewellery raw materials (precious stones including 44 mineral types)", and "jewellery-ornamental raw materials (SPSs including 19 mineral types)".

As for the Mineral Classifier ДК 008:2007 (*Класифікатор корисних копалин*, 2007), it groups stones somewhat differently. 30 000 000 class, being "Non-metallic minerals", contains 35 000 000 group, i.e. "Precious and collectable stones". In turn, the latter includes following subgroups: 35 001 000 "Jewellery raw materials" (i.e. precious stones involving 47 mineral types; 35 002 000 "Jewellery-ornamental raw materials" (SPSs involving 28 mineral types); 35 003 000 "Ornamental raw materials" involving 30 mineral types; 35 004 000 "Precious stones of organogenic formation" involving 8 mineral types; and 35 005 000 "Collectable stones" involving precious stones; SPSs; ornamental stones; stones of organogenic formation; as well as optic and piezo-optic stones being unfitted for the basic type of use).

In this context, the "precious stones" term includes the following: 1) gems; 2) SPSs; 3) ornamental stones; and 4) collectable ones. Moreover, it is applied for organic and inorganic minerals and rocks where qualitative indices are determined by crystalline and structural as well as physical and mechanical properties which quality corresponds to the demands of jewellery and stone cutting industry to be used to manufacture jewels and the applied-purpose artefacts.

In terms of the latter, it should be noted that according to the legislation on the folk arts and crafts, such a manufacturing type as the "Stone art" involves following product group as the carved memorial signs; table lamps; vases; ashtrays; boxes; decorative sculpture; decorative plastic of minor forms; bijoux; stone details of architectural constructions etc (*Деякі питання реалізації Закону України*, 2002).

Following determination of intergroup and group nature also come under notice:

1) "precious and semiprecious stones" being crystals of clear and pure mineral types; colourless or bright; having certain hardness, chemical resistance; those being amendable to polishing and cutting; and those being durable in items;

2) "ornamental stones" being a group of minerals and rocks where quality is determined with the help of physical as well as physicochemical properties and chemical composition. They are applied either as a technical material or to produce artefacts and souvenirs; and

3) "collectable stones" being samples of minerals, mineral aggregates, and rocks of scientific or educational interest and having decorative and artistic value.

"Precious and collectable stones" composition (i.e. gemstones, SPSs, decorative stones, and precious stones of organogenic origin) corresponds to the available classifications taking into consideration data concerning their use and market value. Following morphological types are separated in their composition: individual crystals; druses; crystal aggregates; and crystals in rocks.

Classification division of 20 000 000 class "Metallic minerals" into groups, subgroups, and their composition (i.e. types) is based upon a provision by the abovementioned Order of the Cabinet of Ministers of Ukraine #837 of 12.12.1994. Namely, group 24 000 000 "Noble metal ores" (i.e. ores of noble metals applied to recover precious metals and their alloys: gold ores, silver ores, and platinum group metals) includes 3 subgroups involving 20 mineral types.

The term "Metallic minerals" is considered as ores which mineral composition and physicochemical characteristics make it possible to obtain ferrous metals, nonferrous metals, rare metals, rear-earth metals, precious metals, and radioactive metals as well as their alloys and compounds.

As the objects of legal relations, precious stones and metals also differ at almost each stage of internal transactions acting as follows: subsoil resources; mineral raw materials before their processing, during it, and after it; industrial raw materials; goods for transactions in the consumer market; and secondary raw materials. For instance, experts in the fields of geology and mining differentiate minerals in terms of their origin, source, physical state, occurrence conditions, industrial use, importance etc. Their deposits are divided into geogenic formations (primary and placer) and technogenic ones. Mining process of precious stones includes their extraction, gradation, classification, and primary evaluation.

While expertizing PMs&PSs, specialists make their early assumptions relying upon the overall view and colour of the metal or stone. However, the determination accuracy may be supported by measuring one or another optical or physical constant. Generally, they involve: a) refractive index; birefringence and dispersion values; colour; absorption spectrum, and specific gravity for stones plus such additional factors as glance, dichroism, pleochroism, polarization, asterism, luminescence, hardness, cleavage and fracture, separateness, density, and lucidness; and b) density, hardness, and specific gravity of hardeners (i.e. allowable impurities) for metals. Thus, the conclusion is absolute in terms of which precious stones and metals have numerous geological and mineralogical, physicochemical, jewellery and industrial, and other differences.

Moreover, in the legal aspect, precious stones and metals also have common and specific feature; hence, their inclusion in the sphere of the specific legislation act may be performed as follows: a) PMs&PSs are the complex object of legislative control of the unifies legal act; b) PMs&PSs are the integrated object of legislative control, common features of which legislative regime are considered by the general part of the law, and specific ones are considered by the special part of the law; and c) PMs&PSs are the differentiated objects of different laws.

The national legislation has a precedent when two different mineral resources have been combined in one law as an object of legislative control (Law of Ukraine "On Oil and Gas" is meant). However, if the Law on PMs&PSs identifies legal foundations and principles of governmental control over PMs&PSs mining, production, use, storage, and transactions, then oil and gas law determines the basic

legislative, economic, and organizational foundations of the activities by the oil-and-gas industry of Ukraine controlling the relationships connected with the features of oil-and-gas subsoil use, production, transportation, storage, and application of oil, gas, and their processing products to provide energy security of Ukraine; develop competitive relations in the oil-and-gas branch; and protect the rights of each subject of the relationships arising in the context of geological prospecting of oil-and-gas subsoil, development of oil-and-gas fields, oil and gas processing, storage of oil, gas, and their processing products, transportation, and marketing as well as oil and gas consumers, and the industry employees.

Common feature of the laws is the following: they develop their provisions at a bylaw level which Rs involve and concretize the specifics of corresponding mineral resources (i.e. oil-and-gas legislation; legislation on precious metals; and gemological legislation).

4. Gemological component of the Law on PMS&PSs.

Analysis of the contents of the Law on PMS&PSs has made it possible to separate the specific types of legal relationships being common and specific for both types of the objects. In this context, the relationships, concerning precious metals only, will be ignored proceeding from the paper purpose.

1). Common PMS&PSs relationships are as follows:

1.1) accounting and reporting of business entities engaged in PMS&PSs transactions; jewellery items produced using them; and materials containing PMS&PSs; 1.2) the State PMS&PSs Fund of Ukraine, and Historical PMS&PSs Fund of Ukraine; 1.3) the State Reserve of the explored PMS&PSs deposits; 1.4) the State Storage of PMS&PSs of Ukraine; 1.5) PMS&PSs payment; 1.6) ownership of PMS&PSs; 1.7) use of PMS&PSs and their secondary resources; 1.8) import procedure and export procedure for PMS&PSs and jewellery items produced using them; 1.9) Marketing of PMS&PSs and jewellery items produced using them; 1.10) the state quality of PMS&PSs and jewellery items produced using them; 1.11) functions of the central executive administration (further, CEA) providing formation of the state financial policy in the field of the governmental control over PMS&PSs mining, production, use, and storage, and implementing the state policy in the field of the governmental assay control; 1.12) the state bodies controlling PMS&PSs transactions as well as their powers; 1.13) purpose and control types of PMS&PSs transactions; 1.14) rights of officials of the state agencies controlling PMS&PSs transactions; 1.15) protection of business entities engaged in PMS&PSs mining, production, processing, and use; and 1.16) liability for violation of the procedure of mining, production, use and marketing of PMS&PSs as well as jewellery items and household goods manufactured using them.

2). Gemological relationships: 2.1) SGCU; and 2.2) the state control over the diamond transactions in accordance with the Certification scheme of Kimberley process.

Hence, the structuring of the Law on PMS&PSs supports absolute PMS&PSs dominating as the complex object of its legal regulation. It should be noted the number of relationships in the field of precious metal, regulated by the Law, are much more to compare with the number of gemological relationships. Such a situation transfers forcibly the regulation of the latter to the bylaw level.

5. The legal status of the State Gemological Centre of Ukraine.

In the context of Ukrainian legislation, the SGCU carries out independent expertise while controlling quality of raw materials and items manufactured using precious metals, PSOF, and SPSs as well as items containing them; expertise of precious stones, PSOF, and SPSs attached to the State PMS&PSs Fund of Ukraine; provides

methodological assistance to geological prospecting, mining, and processing enterprises to improve their activities; analyzes raw material from the viewpoint of gemology; and performs other operations, connected with the independence expertise of precious stones, PSOF, and SPSs, following orders by the authorized bodies.

The SGCU belongs to a management domain of the central executive body authorized by the CMU (The Ministry of Finance at present) established to use adequately the raw base of precious (semiprecious) stones (*Про створення Державного гемологічного центру України, 1993*) acting on the basis of the Provision confirmed by it (*Про внесення змін до Положення, 2012*). For the first time, the provision on the SGCU was confirmed by The Ministry of Finance Order of 07.09.1995. The Order was modified (a new edition) in 2004 and 2012. Currently, it involves following components concerning the SGCU: 1) General provisions; 2) The basic missions and functions; 3) Types of activities; 4) Rights and responsibilities; 5) Central funding sources; 6) Management; 7) Structure; 8) Scientific and Technical Council; 9) and Liquidation and reorganization.

Legislation activities of the SGCU, determined by the provision, includes its coordinated with The Ministry of Finance development of Rs concerning the production, use, and marketing of precious stones, PSOF, SPSs, and decorative stones as well as their artificial substitutes. Moreover, the SGCU basic missions also include generalization of practices to apply legislation in terms of the problems belonging to its competence; development of the recommendations to improve it; drafting legislative acts, acts of the President of Ukraine, acts of the CMU; and their submitting to consideration by The Ministry of Finance subject to the normal due process.

Nevertheless, one of the key activities by the SGCU is scientific and technical expertise inclusive of diagnostics and evaluation of forecasting cost of precious stones, PSOF, SPSs, and decorative stones in the form of raw materials and final goods. The list also involves cult objects and artefacts being of cultural (scientific, historical, memorial etc.) value as well as artificial substitutes of the stones, samples of minerals, mineral products, and rocks on the results of which the SGCU issues relevant written conclusions according to the forms approved by the Ministry of Finance.

It should be noted that certain aspects of the gemological expertise right needs special attention. First, it is availability of two different types of gemological expertise: 1) scientific expertise, and scientific and technical one carried out according to the Law of Ukraine "On the Scientific and Scientific and Technical Expertise" of the 10th of February 1995 # 51/95-BP; and 2) legal expertise carried out in accordance with the Law of Ukraine "On the Legal Expertise" of 25th of February 1994 # 4038-XII. Second, scientific and scientific and technical gemological expertise is carried out by gemology experts, and appraiser experts; legal expertise is carried out by surveyors. Third, findings of gemological expertise cannot be considered as an act of the legal expertise since the person acquires rights and incurs obligations only after receiving the decision on commissioning of expert studies.

If one and the same case involves opposite conclusions of both specialist (i.e. gemology expert) and surveyor, then judgment is made according to the rules of a procedural law; in this context, conclusion by surveyor is more preferable (*Про деякі питання практики призначення судової експертизи, 2012*).

The specific gemological activities by the SGCU involve provision of services concerning sorting of precious stones, their classification, identification, storage, and repacking as

well as the development of the state standards and technical conditions in the field of transactions of precious stones.

6. Legal regime of the Certification scheme of Kimberley process. According to Interlaken Declaration on the Certification Scheme of rough diamonds in terms of Kimberley process (further, KP) and Resolution # 1459 (2003) of the UN Security Council, since the 1st of January 2003, Ukraine has joined officially the Certification scheme of KP, incurred liabilities to trade in rough diamonds only with KP participant countries. In accordance with the Scheme and Order of the Cabinet of Ministers of Ukraine (*Про ввезення на митну територію України 2003*), import of the rough diamonds in the customs territory of Ukraine, their export from it and customs clearance is permitted if only KP certificate is available. The Order authorizes the SGCU to provide execution of the certificates, and determines a list of regional custom houses as well as customs terminals performing customs clearance of the rough diamonds after all the required expertise procedures were carried out and supporting documents were completed by the authorized officer from the SGCU.

Order by the Ministry of Finance (*Про затвердження Порядку оформлення супровідних документів, 2003*) established a form of KP certificate for diamonds, being exported from the territory of Ukraine, the procedure to compile supporting documents, and introduction of the diamonds in accordance with the Certification KP Scheme.

If the order concerning the fact that Ukrainian balance subsoil reserves of minerals (separately for diamonds) is the highly classified information (*Про затвердження Зводу відомостей, 2005*) then the tendency can be noticed to form Rs group as well as the certain rules of the law regulating relationships as for the diamond sphere. Recently, the similar specifics but on a much larger scale, have been available in amber legislation (*Кірін, 2020*). Moreover, use of the national standard in Ukraine, regulating the general technical conditions as for the rough amber since 01.07.202, will favour optimum orderliness degree in the field of the rough amber mining, production, use, and storage (*ДСТУ 8847:2019 Бурштин-сировина, 2019*). The matter is that the previous nonavailability of the state amber standards made difficulties for legal expertise as for the determination of the raw material quality, price policy, and certification. Hence, the experts had to use foreign classifications of raw material quality, pricelists, and reference collections, often differing in grade characteristics, rather than the national ones (*Баранов та Кірін, 2020*).

7. Development prospects of subject-matter of gemological law. Thus, it is possible to mention the two tendencies for the development of gemological right sources: 1) the tendency oriented to the control of active types of the subjects (i.e. mining precious stones, their production, use, storage, and control of transactions); and 2) the tendency oriented to the regulation of material view of the subjects (i.e. certain types of natural and artificial (synthetic) minerals in the raw materials; unprocessed and processed form (i.e. in items).

In this context, operations with precious stones, PSOF, and SPSs, involve the actions connected with: a) accrual of ownership and its termination as well as other rights for precious stones, PSOF, and SPSs; b) delivery of precious stones, PSOF, and SPSs to storage areas of funds and reserves as well as their storage and issue the goods in due order; c) changes in the composition or physical state of precious stones, PSOF, and SPSs in terms of any substances and materials during their mining, production, and use; d) import of precious stones, PSOF, SPSs, items and materials, containing them, to the territory of Ukraine, and their export from it; and e) storage of precious stones, and their exhibiting.

Hence, differentiation of certain types of gemological relationships into gemological as such and adjacent to gemological is quite obvious. The latter can be divided into the following: 1) gemological and subsoil relationships: 1.1) gemological and geological; 1.2) gemological and mining; 2) gemological and business; 3) gemological and civil; 4) gemological and administrative; 5) gemological and financial; 6) gemological and fiscal; 7) gemological and customs; 8) gemological and investment; 9) gemological and expert; and 10) gemological and educational.

It goes without saying that such a classification involves synthesis of active (i.e. gemologically important operations) and material (i.e. gemological objects and resources) types of the subject relationships not always corresponding to the consistency of the law sources. That is why it is proposed to select the material objects as the initial subject of gemological legal relations. First, the latter are characterized by temporary dynamics of physical, monetary, and legal status; second, they are adequate objects of certain and consecutive types of gemological activities. Hence, the type of gemological resource acting as subsoil resource; mineral resource; production resource; material resource; and secondary resource identifies a type of gemological activities – acquisition of the rights to use, mine, and operate.

Moreover, the type of gemological resource also identifies a type of proper homogenous specific group of gemological relations. Despite the abovementioned, the neighbouring relationship types are objectively necessary to implement gemological activities; they are not gemological in terms of their legislative nature. The relationships just create organizational, subsoil, civil, business, customs, fiscal, financial and other preconditions for functioning of gemological relationships as a subject-matter of gemological law.

Analysis of a bylaw Rs array of gemological legislation has made it possible to complement and concretize the types of gemological relations being currently subjects of their regulation. Sources of gemological right were systemized in terms of the following components:

1) *the gemological and resource right is to:* accumulate stocks of precious stones; mine gemstones, process them, and use; examine status of decorative stones, their prospects, and mining and processing development tendencies; use the Classification of stocks and resources of minerals of the State subsoil fund in the context of deposits of precious stones;

2) *the gemological transaction right is to:* organize collecting and processing of precious stone waste; provide rational use of precious stones; account, establish, and maintain a register of business entities engaged in precious stone transactions; publish wholesale prices for diamonds, precious stones, SPSs, and decorative stones; market precious stones, PDOF, and SPSs from the State PMs&PSs Fund; command currency values (exclusive of capital issues), precious metals and precious stones, PDOF, and SPSs becoming the property of the state; export from Ukraine the state awards made of precious metals and/or precious stones; perform commission trade in jewellery made of precious metals, precious stones, PSOF, and SPSs; trade in jewellery and other household goods made of gold, silver, platinum, and platinum-group metals, precious stones and pearls as well as scrap and certain arrested parts of such products; report on the amount of precious metals and diamonds containing in jewellery and household goods as well as in jewellery and household goods which became unusable or lost their operational value (the goods purchased from general public and those ones not taken out of pledge are meant); sell by auction items made of PMs&PSs, PSOF, and SPSs from the State PMs&PSs Fund; report on the precious metals and precious stones contained in museum pieces; and inform citizens

about the export (transfer) precious stones and items made of them as well as cultural values to alienate them outside of the customs territory of Ukraine;

3) *the right of gemological expertise is to*: classify generally and evaluate natural stones; accredit and train gemological experts; carry out gemological expertise of decorative stones, their artificial equivalents, rocks, and mineral substances; formulate tariffs on the activities connected with carrying out the expertise and training of gemological experts; certificate precious stones, PSOF, and SPSs; certificate lots of goods of natural stones; evaluate precious metals, precious stones, PSOF, SPSs, and decorative stones during their privatization (corporatisation); and determine both appraisal value and insurance value of artefacts of the Museum Fund of Ukraine.

Hence, the analysis of scientific papers, statutes on the PMs&PSs as well as gemological and neighbouring legislative branches, explaining formation problems and development prospects of the national gemological right and legislation, has made it possible to formulate and substantiate following **conclusions**.

1. It is proposed to consider gemological right as a set of legal norms controlling public relations in the field of organization and implementation of gemological activities connected with acquisition of the right to use, mine, possess, apply, and act with gemological objects in the form of subsoil, mineral, industrial, and secondary resources as well as control their transactions and expertise.

2. Currently, external belonging of the gemological right sources is ambiguous since they get to a system of currency law, being a component of financial and credit or budget and financial legislation, as well as to a system of industrial legislation while having in their contents provisions of mining, economy, civil, administrative, fiscal, customs, and expert legislations.

3. Consideration of precious stones and precious metals, having geological and mineralogical, physicochemical, jewellery and industrial, and legal differences, as the complex object in the context of the domain of the unified legislative act, intended to be a basis of new market relations in the field of jewellery transactions, could be regarded as the justified one only at the early stage of legislative base formation for the field. However, the fact becomes more than obvious that the current law turns out to be obsolete. The matter is that it has transferred its subject of regulation to a bylaw level; its mechanisms to increase the national funds are contradictory, incomplete, and almost inapplicable; a form of restrictions in the field of jewellery transactions as well as their reasonableness are debatable; and the relations concerning quality of the items and their safety, consumer protection, provision of the balance between public interests and private interests, equality of business entities as well as the branch competitiveness need European integration renewal in the context of legal control.

4. It is proposed to develop the structure of gemological law system relying upon the principles of differentiation of importance of gemological activities in terms of generic formations (i.e. the gemological and resource right; the right of gemological transactions; and the right of gemological expertise) and in terms of the types of gemological objects and resources (the right concerning diamonds, amber; the right concerning decorative, collectable, artificial stones etc.).

5. The scheduled adoption of a new version of the Code of Ukraine on subsoil intended to identify legal, organizational, and economic principles of the subsoil use to meet social needs in mineral raw materials; development of transparent and non-discriminatory procedure as for the acquisition of licenses to develop and mine minerals (*Про План законопроектної роботи Верховної Ради України,*

2020) as well as actualization of the priority exploration activities under current conditions of geological branch financing give grounds for further reforming of gemological legislation, its ordering, and reducing to certain internally agreed system, removing shortcomings, repetitions, and outdated standards and, finally, unity formation by means of internal and external processing of their contents, and the development of the Gemological Code of Ukraine.

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ГЕМОЛОГІЧНЕ ПРАВО УКРАЇНИ: ПРОБЛЕМИ ФОРМУВАННЯ ТА ПЕРСПЕКТИВИ РОЗВИТКУ

Проаналізовано наукові та законодавчі положення, пов'язані з особливостями правового регулювання відносин у сфері гемологічної діяльності належність, яка нині є неоднозначною, оскільки вони потрапляють і до системи валютного (складової фінансово-кредитного або бюджетно-фінансового законодавства), і до системи промислового законодавства, маючи при цьому у змісті приписи гірничого, господарського, цивільного, адміністративного, податкового, митного та експертного законодавства. Запропоновано

розглядати гемологічне право як сукупність правових норм, що регулюють суспільні відносини у сфері організації та здійснення гемологічної діяльності, пов'язаної із набуттям права користування, видобування, власності, використання та операціями з гемологічними об'єктами у вигляді надрових, мінеральних, виробничих і вторинних ресурсів, контролем за їх обігом та експертизою.

Наголошено, що включення дорогоцінного каміння та металів з наявними геолого-мінералогічними, фізико-хімічними, ювелірно-промисловими та правовими відмінностями, як комплексного об'єкта у сферу дії єдиного законодавчого акту, можна було розглядати виправданим лише на початковій стадії формування законодавчої бази в цій сфері. Наведено положення, згідно з якими визнається, що чинний закон застарів, оскільки: 1) його предмет регулювання переведено переважно на підзаконний рівень; 2) передбачені в ньому механізми поповнення державних фондів суперечливі, неповні і на практиці практично не реалізуються; 3) форма обмежень в обігу коштовних об'єктів та їх обґрунтованість є дискусійними; 4) відносини з якості та безпечності виробів, захисту прав споживачів, забезпечення балансу публічних та приватних інтересів, рівності суб'єктів господарювання, конкурентоспроможності галузі потребують євроінтеграційного оновлення у правовому регулюванні.

Автори, вперше у геолого-правовій науці, пропонують сформувати структуру системи гемологічного права на принципах диференціації виду гемологозначущої діяльності для родових утворень (геолого-ресурсне право, право гемологічного обігу, право гемологічної експертизи) та виду гемологічних об'єктів і ресурсів – для безпосередніх угруповань. Перспективи розвитку гемологічного законодавства пов'язуються із зведенням його до певної узгодженої системи, забезпеченням єдності шляхом внутрішнього та зовнішнього вдосконалення змісту та розробки Гемологічного кодексу України.

Ключові слова: гемологічне право, дорогоцінне каміння, обіг дорогоцінного каміння, гемологічні ресурси, гемологічна діяльність.

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ГЕМОЛОГИЧЕСКОЕ ПРАВО УКРАИНЫ: ПРОБЛЕМЫ ФОРМИРОВАНИЯ И ПЕРСПЕКТИВЫ РАЗВИТИЯ

Анализируются научные и законодательные положения, связанные с особенностями правового регулирования отношений в сфере геммологической деятельности и геммологических объектов. Исследуются современное состояние источников геммологического права и их внешняя принадлежность, которая сейчас является неоднозначной, поскольку они попадают и в систему валютного (составляющей финансово-кредитного или бюджетно-финансового законодательства), и в систему промышленного законодательства, имея при этом в содержании предписания горного, хозяйственного, гражданского, административного, налогового, таможенного и экспертного законодательства. Предлагается рассматривать геммологическое право как совокупность правовых норм, регулирующих общественные отношения в сфере организации и осуществления геммологической деятельности, связанной с приобретением права пользования, добычи, собственности, использования и операциями с геммологическими объектами в виде недровых, минеральных, производственных и вторичных ресурсов, контролем за их оборотом и экспертизой.

Отмечено, что включение драгоценных камней и металлов с имеющимися геолого-минералогическими, физико-химическими, ювелирно-промышленными и правовыми различиями, в качестве комплексного объекта в сферу действия единого законодательного акта, можно было рассматривать оправданным лишь на начальной стадии формирования законодательной базы в этой сфере. Приведены положения, согласно которым признается, что действующий закон устарел, поскольку: 1) его предмет регулирования переведен преимущественно на подзаконный уровень; 2) предусмотренные в нем механизмы пополнения государственных фондов противоречивы, неполны и на практике практически не реализуются; 3) форма ограничений в обращении ценных объектов и их обоснованность являются дискуссионными; 4) отношения по качеству и безопасности изделий, защиты прав потребителей, обеспечения баланса публичных и частных интересов, равенства субъектов хозяйствования, конкурентоспособности отрасли нуждаются в евроинтеграционном обновлении правового регулирования.

Авторы, впервые в геолого-правовой науке, предлагают сформировать структуру системы геммологического права на принципах дифференциации вида геммологической деятельности для родовых образований (геммолого-ресурсное право, право геммологического обращения, право геммологической экспертизы) и вида геммологических объектов и ресурсов – для непосредственных составляющих. Перспективы развития геммологического законодательства связываются с его сведением в определенную согласованную систему, обеспечением единства путем внутреннего и внешнего усовершенствования содержания и разработки Геммологического кодекса Украины.

Ключевые слова: геммологическое право, драгоценные камни, оборот драгоценных камней, геммологическая деятельность.