

Mining Regalia (Bergregal) in Russia and Foreign Countries: A Historic Legal Review of Exclusive Rights of the State.

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Abstract: The article examines the history of the mining regalia, the emergence and development of mining legislation in Russia and foreign countries. Analyzes the preconditions of formation the institution, features of government industrial domain.

Key words: Regalia % Bergregal % Right % Mining % Privilege

INTRODUCTION

Who shall have the right to be in charge of mineral resources the surface owner or the State has been the key issue since the history of legal mining regulation started.

The Beginning of the Mining Regalia in Europe: In ancient Egypt with its extensive gold, silver and copper mining works located along the line of modern Ethiopian-Arab borders the mines used to belong to the rulers. Carthaginian Republic held the possession of those mines that were allocated to private owners to be developed and charged money for that [1].

In Ancient Greece Laurium Mines (silver) and Pangeya Mines (gold) together with extracted minerals and metals were considered to be the State property. These cases are related with the extraction of precious metals that formed the basis of monetary regalia. As for other ores and minerals the history has other examples.

According to Roman Law mining regalia was restricted to the property right for land as mineral resources therein constituted an undivided part of the free tenure, though later during Justinian times, an unrestricted regalia right of the State to mineral resources formed up [2].

In Stoff's opinion, mining industry in Germany, Hungary and England appeared earlier than private property and English mining practices had much in common with continental mining conventions of Hungary, Moravia, Bohemia and Saxony [3].

Already in the VII century we can find examples when mining rights were granted by kings or dukes to various civil or religious rulers and permitted them to develop

metals or salt either in the lands that belonged to the conferred or in the lands that belonged neither to the right receiver, nor to the king or duke [4].

Thus since ancient times mineral resources have been not in the ownership of landlords, but in possession of supreme rulers in the name of a sovereign.

In Germany Bergregal reached its prime in Medieval times when the right to mine mineral resources was given in fee by the sovereign to vassals like the right to hunt. 4 These regalia were established after mining tax for the benefit of State was declared and the sovereign pronounced the trade free and farmed it out.

Also there was the first option right (*jus praemptionis*), i.e. the right of the State to buy first hand any product produced by a private manufacturer for a certain price, which constituted a part of regalia right as well.

In Germany of the XIX century the right to explore and develop ores was related with meeting mining law formalities. First of all the interested person was to obtain a certificate permitting to explore ores from the mining authorities. Such certificates were issued for a particular site and time period. Then it was necessary to get the right for ore exploitation. For all activities of the kind the State imposed duties. However irrespective of this right, that had the form of a regalia (Bergregal), state authorities reserved its powers to supervise all types of commercial mining activities. In order to protect public interests by the sovereign right of State (*Berghoheit*) [5].

At the same time period in England minerals and everything buried in Earth interior were considered to be in the ownership of the landlord and any exploitation of somebody else's soil was considered to be the violation

of the property right, however by virtue of old royal privilege all gold and silver resources belonged to the king who had the right to excavate those minerals anywhere [6]. Other ores and minerals were exempted from regalia rights.

Mining Regalia (Bergregal) in Russia: In Russia regalia rights for Earth interior (resources) emerged in the beginning of the XVIII century, though rudimental mining industry had existed already before Peter the Great times.

The first attempt to develop mining industries is dated back to Ivan III times. There were several efforts to explore precious metals, but they were not successful. During Michail Fedorovich reign gold-placer mines were discovered in the Urals, but soon they were abandoned because of lack of experienced mining professionals [7].

Some scholars believe that there was no need in mining regalia (Bergregal) in Russia as Peter the Great regalia were manifested only in the State first option right to purchase gold, silver, copper and saltpeter. The right to excavate these and other mineral resources was granted to everybody according to the principle of “mining freedom” [3]. The persons who built mining industries enjoyed financial support granted free of charge in the form of land and/or forest plots, extra serfs or the right to have serfs given to those who did not have such right, etc. Foreigners were allowed to have mining businesses like the natives.

I. Tarassoff wrote that privileges in mining industry were based on the fact that mineral resources belonged to the State, but not to the surface owner [8]. In certain time periods the law specified directly how deep into Earth soil the right of a private owner would go down. I. Yanzhul called mining regalia an exclusive right of the State for mining activities. In his opinion mining regalia covered the right of the State to get income by levying taxes and duties on persons involved in mining business [7]. At the same time he thought that government should have mining businesses only in specific cases. Considering the importance of the discussed issue, it is worth while giving several examples when the State monopolized the mining industry.

Thus Yanzhul specifically related to such cases the situations when the mineral resources were rich enough and did not demand serious investment for their exploitation and sales; when mining enterprises were closely related with other businesses such as weapon production; or if there were evident signs of future profitability of a mine [7].

Such grounds for the existence of governmental enterprises might be as well applicable in the industry decline situations.

The Evolution of the Mining Law: If we take the beginning of the XVIII century, the review of the legislation will show that the government then energetically supported manufacturers. It granted them “mining freedom” and guaranteed that the established enterprises would not be taken away either from their current owners or their heirs [9]. A well-known Berg-Privilege of 1719 declared that anyone irrespectively of his rank or title was free to explore, mine, melt and shine all metals, minerals, rocks and stones anywhere both on own and other people’s lands. If the owner did not wish to build his own factory,.. or did not have money for that, he had to put up with the situation when other people would excavate ore in his lands, search for minerals, mine them and process so that “this God’s blessing” was not wasted in soil in vain [9]. That rule abolished mining freedom and restored mining regalia, however exclusively on the lands of the State. The regulations did not eliminate private owners of mines and metallurgical works, on the contrary, it ensured financial support in the form of allocated forest sites and extra serfs. In their turn mine owners had to pay a special fee to the budget- the mining tithe. Foreigners could equally participate in mining activities together with the Russians.

The State had the preemptive right to purchase gold, silver, copper and saltpeter and that right could not be transferred to private persons unless the State had no need in such products, or no money to buy them.

Those regulations were an important legislative move and provided a means of comprehensive control over mining industry. Berg-Privilege was specifically characterized by a combination of two tendencies in administrating the mining industry. On one hand, Peter the Great with all his might tried to encourage the development of private industrial production by adhering to the principle of “mining freedom” and permitting everyone without exception to “explore, mine and melt” all over Russia despite the objections of the land owners. On the other hand, the Emperor tried to extend regalia principle in mining according to which the State had the supreme right for big or small incomes from any business of this kind [10].

As is clear from Order¹ 3701 of 1720, mining freedom was expanded onto foreigners who were equated with the Russians in those rights [11]. Extended rights of foreigners meant that they did not have to give the found minerals and metals to the State with the exception of pure

gold and silver that were to be sent to the mint place in their full mined amount. As it followed from the Order all other metals and minerals like copper, tin, lead and vitriol could be sold by the company to anyone after it had paid one-tenth of the mined amount to the State, yet five percent of sales were to be paid for the Sovereign benefit [11]. Though the true amount of income was never revealed by the manufacturers in full, the fact of foreign investments into the mining industry meant a lot as such. The Order was issued in proper time, it reflected the desire of the Russian government to continue external cooperation. It openly declared that if a company wanted to found a new factory, its offer would be welcomed and an agreement would be signed. Thus the Order not only equaled Russians and foreigners in the mining freedom right, but also established preferences in the form of an opportunity to sell some minerals and metals at will.

By 1725 the legislative measures resulted in the establishment of over 200 manufactories [12]-protectionism policy brought fruit.

During the reign of Peter II the principle of encouraging private production in mining industry continued, moreover the owners of mines and metallurgical works were relieved of some income dues and new factories were exempted from mining tithe for the first ten years [10]. Ore prospecting teams were sent to different places of the country. The importance of such explorations on national scale becomes evident, when we study the legal mechanisms regulating exploration schemes. Exploration activities were regulated by special governmental orders which defined the composition of expeditions, time periods, accounting procedures, etc.

Actually further development of Peter the Great's policy in mining regalia field during Peter II times can be tracked down through legal acts issued then. In September 1727 a supreme Order appeared "On the permission to explore and mine ore in far-distant Siberia regions" [13]. Essentially that Order was an addendum to the Berg-Privilege of 1719, which was declared in the Order Preamble. It said that in 1719 Peter the Great ... had wished to issue the General Privilege ... and in 1719 that privilege was supplemented by the given Imperial Order [13]. The Act itself said that according to the report of the Commerce Commission many different ores were mined in far-distant places of Siberia (Irkutsk and Yenisei provinces), so it was hard to deliver ores and pay one-tenth of the mined amount, the due that had been set by the Berg-Privilege, on time. The Order permitted an unrestricted construction of new factories to melt ores and sell them with paying the established duties. The

legislator significantly extended the powers of the Berg-Privilege, thus facilitating the development of new geographical regions. It abolished obligatory sales to the State and mandatory payment of the one-tenth part of profit during ten years. Actually the State renounced its right for mineral resources (though it had not been fixed legislatively) and permitted to sell produced gold, silver, copper, tin, lead and other minerals extracted from ores at will with no restrictions.

One of positive effects of the order was demonstrated in an increase of ore sales by its producers, for the Act prohibited to sell minerals of an unknown origin and demanded special certificates and presence in Customs (i.e. required to confirm the property right and a proof of ore or metal origin) [14]. Russian and foreign manufacturers were equaled in their rights. The Order directed Berg-Collegium to assist manufacturers and send foremen together with apprentices to newly established factories free of charge. (Article 7).

Control over the implementation of the Order of 1727 was executed by voyevodes (regional rulers) who had large powers to check output amounts and ore quality and to report the outcomes of such checks to Berg-Collegium [13].

During the reign of Peter II similar order were issued rather frequently, which is an evidence of a serious interest of the State for the development of mining industry. However due to various reasons (political and economic) commercial production was declining despite legislative measures.

By her Order of 1739 Anna Ioannovna abolished mining regalia (Bergregal) in Russia [15] – all State-owned factories [16] were given out to private owners. State income was formed by an increased tax on gold, silver, saltpeter and base metals (*jus praemptionis*) [10]. Today it is not easy to assess the rightness of those measures objectively; however the State incomes in the said period reduced only a little.

Elizaveta Petrovna's policy marks the next step in the development of industrial domain and mining regalia. The government tried to attract new investments into industry. The only effective way to do that was to abolish mining regalia and transfer the State factories into private ownership. The Regulations of Manufactory Collegium demanded that after bringing into good order all existing manufactories and factories owned by the State should be given over to private owners [17].

During that time the number of factories in Russia increased greatly with metallurgical industry concentrated in Siberia. The central part in the development of metal

production belonged to the Demidovs, Russian industrialists. Before 1747 the lands, forests, rivers and mineral resources in Altai used to belong to the State and had been given to A. Demidov in temporary use. In return the manufacturer was to pay one-tenth part of his income to the government budget and to sell his products to the State. During the twenty year period (1727 - 1747) of his mining and metal production commercial activities A. Demidov built the foundation for the development of industry and economy in Siberia. Very soon the Demidovs' profits became comparable with the income of the Russian Tzar and the family won fame all over Russia. The Demidovs cared for their serf-workers and eventually established a real industrial empire protected from intruders by strongholds and outposts [18].

Court schemes and competition between the State and Demidov's factories resulted in the highest Order signed by Tsarina Elizaveta Petrovna on May 12, 1747. The Order directed that all Demidov's factories together with the allocated lands, excavated ores, tools, big and small guns, skilled workers and serfs should be transferred into the State property [19]. The reasons of that supreme decision remain ambiguous and still cause discussions among historians.

A serious attention to the development of mining business and mining engineering education was paid during the times of Emperor Nicholas I who establish College of Mines, Technological Institute, assay schools, etc. [19]. In the time of G. Cancrin as the Minister of Finance the revenues from mining industry increased from 8 mln rubles up to 9 mln rubles [20]. In his book "Economy of Human Society" Cancrin objected to those who thought that Russian manufacturing industry existed only because of the governmental support. He argued that the industry was strong enough by itself as 25 years had passed without any serious financial donations sacrificed to maintain national production [21]. The Minister saw mining business as a main source of national wealth growth. Reasoning from mercantilism theory he protected national manufacturers, promoted engineering education, fostered mining business and production of precious metals.

However despite governmental economic and legal actions the crisis in mining and metallurgical industries became a distinctive feature of early XIX century. That branch operated on governmental orders and was heavily administered without any opportunities for a healthy competition. Studying the crisis situation Academician Bezobrazov, who was specializing in Russian finance and economy issues, noted that a regular governmental

support of inefficient factories subverted that industry branch [22]. And really, regalia procedures or protection policy can be useful either at early stages of an industry development, or during crisis periods, but to support an industry systematically from the State budget is not good, as it either ruins the budget or harms competition and always impairs normal economic development.

By the end of the XIX century Russia had taken the third place in the world in gold production (37 325 kg) following Australia and the USA (50 964 kg and 49 654 kg correspondingly) [23]. At that time all gold production was concentrated in Yakutia and Primorskaya Region.

In the XIX century mining legislation was characterized by a clear subdivision of regulations into financial and civil ones.

Financial regulations were represented in the Mining Law and Industry Law adopted in order to harmonize norms and standards regulating the extraction, production and sales of minerals and metals. Those regulations described mining rules and budget receipt procedures in detail [24]. The main way of legal regulation was the method of administrative enforcement (imperative method).

In the second half of the XIX century the State relinquished its regalia right for the minerals contained in privately owned lands. There were only several exemptions from that rule (thus, for example, the regalia for exclusive development of all or specific minerals at the lands belonging to Cossack was preserved).

According to some old and contemporary scientists [25], the signs of mining regalia (Bergregal) can be tracked down in the legal regime that regulated the production and sales of gold, silver and platinum by private persons.

CONCLUSION

Research of the topic " Mining regalia (Bergregal) in Russia and foreign countries: a historic legal review of exclusive rights of the State " leads to the conclusion that in the modern period regalia past of the mining industry is echoed in the taxation of these business activities, which is revealed in the tax on mineral resources (Ch. 26 of the Tax Code of the Russian Federation).

Many think negatively of the fact that the State had refused its mining regalia and the majority of industrial domains. Nevertheless the existence of regalia as such, as well as that of State enterprises, was brought into life by social and political circumstances that have changed by now. Today a developed State system with a democratic society asks for absolutely different competitive principles of regulating economy and commerce.

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