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Mining Law, as traditional, land related part of the Law of Natural Resources**

1. Introduction

According to (1) subparagraph Article P) of our Fundamental Law *„Natural resources, particularly arable land, forests and water resources, as well as biological diversity, in particular native plant and animal species and cultural values shall comprise the nation's common heritage; responsibility to protect and preserve them for future generations lies with the State and every individual."*[1] As it is obvious according to the title as well, Mining Law has the closest relationship with land among the natural resources (however, we will see it in further, that mining activity may have effects on other natural resources as well in several situation). As it could be red in the abovementioned legal citation, protection, and preservation for the future generations[2] of these aforementioned natural resources is our responsibility, and obligation. However, it usually occurs, that mining activity endangers these resources, and made obstacles to fulfil our abovementioned obligation. The ongoing Sweden Bunge Ducker Case is a good example of that. Bunge Ducker is located in northern part of Gotland in Sweden. In this case the Nordkalk company would like to quarry limestone in this area.

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[1] In connection with interpretation of the Fundamental Law – especially related to meaning of the `nation's common heritage´ phrase – explanation of János Ede Szilágyi is relevant from the topic of this study as well: Szilágyi János Ede: Változások az agrárjog elméletében?, *Miskolci Jogi Szemle*, 2016/1, 47-49.; and Szilágyi János Ede: Current challenges concerning the law of water service in Hungary, *Lex et Sciencia*, 2016/1, 73. Szilágyi expand the interpretation related on category of `heritage´ in connection with different legal aspects of waters and lands: Szilágyi János Ede: A magyar földforgalmi szabályozás új rezsimje és a határon átnyúló, *Miskolci Jogi Szemle*, 2017/1. klszm, 122. (74. footnote). László Fodor develops interpretation of the `nation's common heritage´ with similarly valuable remarks; see: Fodor László: A víz az Alaptörvény környezeti értékrendjében, *Publicationes Universitatis Miskolciensis Sectio Juridica et Politica*, 2013/31, 331., 336-337., 340.

[2] Within the topic of sustainability and Mining Law see more details in: Bőhm Judit: A bányászat környezetjogi vonatkozásai, *Bányászati és kohászati lapok,* 2012/5, 3-6, http://www.ombkenet.hu/images/stories/banyaszat2012_05.pdf (15.12.2017); Bőhm Judit: A közösségi energiapolitika környezeti szempontokat érvényesítő jogi eszközei, *Publicationes Universitatis Miskolcinensis. Sectio Juridica et Politica*, 2007/1, 251-265. See more in connection with questions of sustainability: Csák Csilla: A jogi szabályozás aktualitásai a fenntarthatóság jegyében, *Műszaki Földtudományi Közlemények*, 2013/1, 72-79.

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The company applied for environmental permit (which is needed to start the mining activity) in 2006, but it was granted for it only in 2014, after several appeal, and hearing. Reason of the several appeal was, that it became questionable, that whether the mining activity will endanger the status of water in the area, and whether it will have effects on the neighbouring Natura 2000 areas. However in 2015 the Swedish Environmental protection Agency and the County Administrative Board of Gotland appealed against the permission, because these two bodies proposed the area in question to the European Commission as an expansion of an existing Natura 2000 area (if it could be happened, it would be impossible to get the permission) – due to this proposal the permitting procedure was suspended.[3] This case shows clearly, that mining activity may interfere with environmental interests in several situation (for example protection of water or Natura 2000 areas). However from the aspect of the other side, doing mining activity is obviously needed, for example in order to ensure guarantees of energy supply of the country, or in order to product several every day products, which raw material can be found underground, moreover in order to fulfil other (ever increasing) human demands. Thus on the other hand, the abovementioned obligation, and the strict environmental protection rules may obstacle mining activities, since the extremely long permitting procedures may infringe economical interests of the mining entrepreneur, which indirectly may endanger energy supply[4] of the country.

Mining Law is a neglected area of jurisprudence (just a few of legal literature can be found in this). However – as László Fodor also emphasized it in one of his former studies – it is an ever developing field as well, and on its regulation European integration has effects, and in this field environmental aspects were also integrated.[5]

[3] MinPol and partners: *Study – Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU*, Luxembourg, Publications Office of the European Union, 2017, EU Law and Publications Homepage, in: https://publications.europa.eu/en/publication-detail/-/publication/18c19395-6dbf-11e7-b2f2-01aa75ed71a1/language-en/format-PDF (15.10.2017), doi: 10.2873/920344.

[4] In connection with legal regulation of energy sector see especially: Olajos István – Szilágyi Szabolcs: A kistelepüléseken létrejövő távhő és termeletetési rendszerek energiajogi problémái, *Magyar Enegetika* 2012/6, 22-27.; Olajos István – Szilágyi Szabolcs: A megújuló energiaforrások európai uniós jogi szabályozása, különös tekintettel a megújuló energiaforrásokra vonatkozó irányelvekre, *Publicationes Universitatis Miskolciensis Series Juridica et Politica,* 2014/31, 441-450.; Bányai Orsolya: *Energiajog az ökológiai fenntarthatóság szolgálatában,* Debrecen, Dela Könyvkiadó Kereskedelmi és Szolgáltató Kft, 2014.; Bányai Orsolya – Fodor László: Some environmental law questions related to the extension of Paks nuclear power plant, *Environmental Engineering and Management Journal,* 2013/13 2757-2763.; Szilágyi Szabolcs: Környezeti hatásvizsgálat a csernelyi biomassza alapú energetikai rendszer vonatkozásában; in: Csák Csilla (edit.): *Jogtudományi tanulmányok a fenntartható természeti erőforrások témakörében*, Miskolc, Miskolci Egyetem, 2012., 170-179.; Szilágyi Szabolcs: The legal doctrinal basis of energy efficiency, in: Szabó Miklós (edit.): *Studia Iurisprudentiae Doctorandorum Miskolciensium – Miskolci Doktoranduszok Jogtudományi Tanulmányai*, 2014/14, 269-275.

[5] Fodor László: Bányajog – Hagyományok és mai kihívások között, *Jogtudományi Közlöny*, 2012/12, 523.

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László Fodor examined in his aforementioned study the material of the Mining Law Seminar published by the Energy Law Institution of University of Köln (Institut für Energierecht an der Universität zu Köln), and he emphasized current challenges and questions, which are existing not only in Germany, but in Hungary as well: (a) neighbouring rights between underground mining and property ownership, (b) relationship between mining indemnity[6] and demands arising from neighbouring rights, (c) questions of carbon dioxide storage in geological formations in the field of Mining Law, (d) underground use conflicts, (e) legal framework of closing mining holdings.[7]

So there is a huge number of interesting research topics in the field of Mining Law, however it could not be examined in a same length study. For this reason, the aim of this study is not analyse these questions in details, but to introduce the legal regulations, and institutional background, and the most important rules in the field of Hungarian Mining Law (mostly focusing on questions of permission), and may be to reveal some problematic point of the field – which can be served as basis for a later, more extensive, longer, individual research as well. In the present study I will deal mostly with the Hungarian regulation, however I will show some cases among the related practice of the Court of Justice of the European Union too (but only in one chapter) – on the one hand, in order to introduce foreign examples, and on the other hand, because we are one of the Member States of the European Union, thus these cases have effects on the Hungarian regulation as well.

In this research I have the following hypothesis: between mining activity and environmental protection there is conflict, which has effects on the related legislation, and which obstacles the fulfilment of obligation, or responsibility for protection of natural resources.

For this reason, questions which will be examined in this study are as follows: What are the most important legal regulations in the field of Hungarian Mining Law? Which bodies are entitled to act in case of permitting procedures related to mining activities? What are the basic concepts and ownership questions of the Mining Law? Which topics are the most important ones among the case law of the Court of Justice of the European Union (in this field), and how can these cases influence on development of the union or national Mining Law?

[6] Mining activity may cause environmental damages in several situation. See more in connection with this topic: Csák Csilla: A kártérítés szerepe a környezetjogi szabályozásban, *Miskolci Jogi Szemle*, 2017/2. különszám, 90-99.; Csák Csilla – Hornyák Zsófia: A környezeti kárfelelősség elmélete és gyakorlati megoldásai, Publicationes Universitatis Miskolciensis Series Juridica et Politica, 2017/35, 236-247.

[7] Fodor 2012, 524-525.

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2. Legal and institutional background of Hungarian Mining Law, and its main regulations

Related to Hungarian Mining Law, the most important and basic regulations are set in Act XLVIII of 1993 on mining[8], and in Government Decree No. 203/1998 implementing the Mining Act which was issued in order to execute the MA. Beside these laws, several other legal regulation was made in this field, which contain special rules on mining activity, mineral resource management, technical safety, and concession. Some examples can be found hereunder: (a) Government Decree No. 161/2017 on Mining and Geological Survey of Hungary,[9] (b) Government Decree No. 54/2008 on nominal values of royalty (which – among others – contains important rules related on determination of value of quantity of extracted mineral raw materials, and mining royalties), (c) NFM Ministerial Decree No. 8/2014 on mining concessions, (d) Government Decree No. 53/2012 on mining constructions permitting, furthermore (e) NFM Ministerial Decree No. 78/2015 on mining permitting fees. Beside these regulations several other legal provisions must be applied during the permitting procedures on exploration, exploitation, and extraction, which are not directly concerned on mining, they concerned on other fields, but they contains some rules which are related to mining as well. These fields are especially the followings: (a) environmental protection, (b) nature conservation, forestry, (c) water management, (d) land use planning, spatial development, soil management, (e) transportation, construction, catastrophe protection, moreover police, and military, (f) cultural heritage, (g) furthermore the fields of public administration, and court procedures. The figure no. 1. hereunder shows the proportion of legal regulations derived from these fields in the aggregation of legal regulations on mining activity. According to this illustration, it is obvious, that Mining Law has the most important connection with water management, and environmental protection. Since mining activity may have effects on these fields in several situations (as the later examination of court cases will show it).

[8] In further: MA (= Mining Act)
[9] In further: MBFSZ decree

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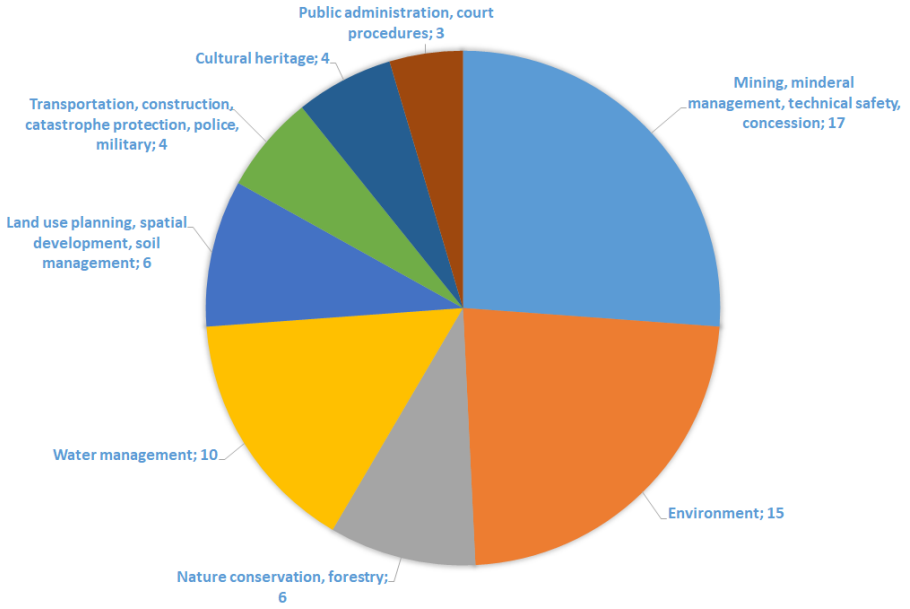

Figure no. 1
Proportion of legal regulations on mining activity in Hungary[10]

According to institutional structure of the field of Mining Law, the Magyar Bányászati és Földtani Szolgálat (Mining and Geological Survey of Hungary)[11] has the most important role. This authority was established on 1st July 2017 by the merger of the Hungarian Office for Mining and Geology and the Geological and Geophysical Institute of Hungary based on the Governmental decision No. 1009/2017 as well as the Governmental decree No. 161/2017. The MBFSZ is led by the minister responsible for mining, and it is a a central budgetary organization functioning as a central office, which has economic structure as well.[12] The reason of importance of this authority is that it has supervisory power related to the field of mining (more details in connection with this can be found in a later part of the study). (Before the establishment of MBFSZ this power was given to the Magyar Bányászati és Földtani Hivatal (Hungarian Office for Mining and Geology).[13]

As in several other field, a lot of difficult, and long permitting procedure is needed to mining activity as well. In Hungary the following authorities take part in these procedures. In first instance government offices and county directorates for disaster management has this power.

[10] Own illustration made on the basis of summarizing table of the MinPol 2017 study, can be find on pages 1070-1076.
[11] In further: MBFSZ
[12] MBFSZ decree 1. § (1) subparagraph
[13] See (1) subparagraph 3. § of the Government Regulation No. 267/2006 on Hungarian Office for Mining and Geology

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In second instance more authority is entitled to act – with regard to subject of the appeal these are the followings: (a) Magyar Bányászati és Földtani Szolgálat (Mining and Geological Survey of Hungary), (b) Nemzeti Közlekedési Hatóság (National Transport Authority), (c) BM Országos Katasztrófavédelmi Főigazgatóság (National Directorate General for Disaster Management), (c) Honvédelmi Minisztérium Hatósági Hivatal (Ministry of Defence Office of Authorities), (d) Országos Rendőrfőkapitányság (Hungarian National Police), (e) Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség (National Inspectorate For Environment, Nature and Water) (f) Nemzeti Park Igazgatóság (National Park Directorate), (g) Országos Atomenergia Hivatal (Hungarian Atomic Energy Authority), (h) Nemzeti Élelmiszerlánc-biztonsági Hivatal (National Food Chain Safety Office), (i) ÁNTSZ Országos Tisztifőorvosi Hivatal (National Public Health and Mecical Officer Service, The Office of the Chief Medical Officer), (j) Magyar Nemzeti Vagyonkezelő Zrt. (Hungarian National Asset Management Inc.). In mining activity related court cases Administrative and Labour Courts have jurisdiction in first instance. In case of an appeal, Regional Courts of Appel, and after that the Curia has this jurisdiction. And of course, cases in connection with the Fundamental Law and constitutional questions are related to the Constitutional Court.[14]

After examining the legal and institutional background, I will analyse the main rules of the MA, and the basic definitions as well. According to 4. point 49. § of the MA., definition of mining contains of the following elements: *„exploration, exploitation and extraction of mineral raw materials*[15] *management of wastes derived from these activities , and mineral resource management"*. This section of the Act explains further the definition, set, that the followings shall qualify as mining activity: *"(a) the on-site processing of the extracted mineral raw materials, in hydrocarbon mining making the mineral raw materials suitable for reprocessing or re-utilization, especially the propane-butane recovery, gasoline processing and fuel-cake production, (b) on-site stocking of economic raw materials, (c) interruption, closure of the mine and the hydrocarbon field, (d) the land remediation after the termination of the mining activity, (e) exploration, design, utilization and closure of geologic structures suitable for hydrocarbon storage (f) exploration, recovery and utilization of geothermal energy, and (g) the management of the waste generated during the activities defined in items a) - f)."* Among elements of the definition the followings must be emphasized. According to this Act exploration means: *„mining activity carried out with geological (geophysical, geochemical) and engineering methods, serving the purpose of: (a) the discovery of the mineral raw material deposits, (b) the delimitation and thorough quantitative and qualitative understanding of the discovered mineral raw material deposit, and (c) the understanding of the earth-crust conditions of the geothermal energy, and (d) the understanding of the geological structures, in terms of suitability for underground hydrocarbon storage."*[16]. However exploitation[17] means the mining activity serving the purpose of the extraction of the mineral raw material.

[14] MinPol 2017, 1077-1093.

[15] According to the definition in 1. point 49. § of the MA. „*mineral raw material: shall mean mineral materials usable at the given level of scientific and technical development. The soil, subject to a separate Act, and the water, independently of its state shall not qualify as mineral raw materials"*.

[16] MA. 17. point 49. §

[17] Ma. 9. point 49. §

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And extraction[18] means mining and separation of the mineral raw material from its natural place of occurrence, and its bringing to surface, furthermore the extraction of the mineral raw material from the closed waste heaps and the underground coal gasification shall be considered as extraction as well. Management of mining wastes[19] consists of activities like collecting and storage of waste generated during the mining, storage and processing of mineral raw materials in a waste management site – except wastes originating not directly from such activities –, as well as the transport of such wastes from the place of generation to the waste management site. This element of the definition (management of mining waste) is significant, because on the one hand it connected to the obligation on land remediation subsequent to extraction, and on the other hand inconvenient management of mining wastes gave/gives reasons for court cases in union and national level alike.[20] During the further examination of the definition of mining, some remarks must be made on mineral management too. This activity belongs to the competence of mining supervision body (the Mining Authority) and means a complex of decisions and *measures "assuring (a) the registry of quantity, quality and occurrences of the mineral raw materials as well as the data providing needed for the registry, (b) the maintenance, protection of the known and registered mineral raw materials as well as the prevention of unjustified extractions and utilization of the mineral raw materials, (c) minimizing losses during the extraction of the mineral raw materials, (d) settlement of accounts of the extracted mineral raw materials as well as the further extractibility of the closed mineral reserve".*[21] Which authorities have the competence on mining supervision is set in the abovementioned MBFSZ decree. This regulation entitles several authorities to act in connection with mining supervision and national geological tasks. The Government assigns the Office and the Government Offices of Baranya, Borsod-Abaúj-Zemplén, Jász-Nagykun-Szolnok, Pest and Veszprém counties to these tasks.[22]

MA. contains the main regulations also on ownership of materials extracted by mining activity. According to the Act the mineral raw materials and geothermal energy are state-owned in their natural place of occurrence. However the mineral raw material extracted by the mining entrepreneur and the geothermal energy obtained for energy purposes shall be the property of the mining entrepreneur with the utilization. Moreover, in case of hydrocarbon extraction, mining entrepreneur has the opportunity to acquire the ownership before the extraction. Since according to the Act the mining entrepreneur holding a permit for operation for the natural gas storage specified in a separate Act, may acquire the ownership of the hydrocarbon stored in underground gas storage, as its natural place of occurrence upon request, – in due observation of the

[18] MA. 15. point 49. §
[19] MA. 47. point 49. §
[20] Especially the following cases must be mentioned among the practice of the Court of Justice of the European Union: Case C-304/94 Euro Tombesi and Adino Tombesi, Roberto Santella (C-330/94), Giovanni Muzi and others and Anselmo Savini v. Commission preliminary ruling |1997| ECR I-03561.; Case C-9/00 Korkein hallinto-oikeus – Finland v. Commission preliminary ruling |2002| ECR I-03533; Case C-6/00 Abfall Service AG (ASA) v. Bundesminister für Umwelt, Jugend und Familie |2002| ECR I-01961.
[21] MA. 3. point 49. §
[22] MBFSZ decree (1) subparagraph 3. §

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general rules relating to the royalty rate – prior to the extraction, by paying 1.4-fold of the royalty amount determined in item b) of paragraph (3) of Section 20 of MA. MA. set rules on the method of payment of the abovementioned amount of money – in this case, the mining entrepreneur shall pay the 1.4-times the amount of: (a) the portion exceeding 12% of the value generated from the mineral raw material, within 60 days from the resolution of the Mining Authority on the transfer of property entering into force (mining entrepreneur shall receive the ownership of the hydrocarbon on the payment of this amount), (b) the portion corresponding to the 12% of the value generated from the mineral raw material, in the course of extraction.[23]

Although mining activities belong to the competence of the state, however the minister (responsible for mining activities), through the concession agreement made with domestic or foreign natural people or transparent organization may lease for a specified period: (a) in closed areas, (a/1) the exploration, development and extraction of mineral raw materials, (a/2) exploration, recovery and utilization of geothermal energy; (b) the establishment and operation of crude oil, crude oil products and – with the exception of natural gas –hydrocarbon transmission pipelines.[24] Concession agreement can be concluded only through a public tender. On the one hand, the call for tender has to satisfy the conditions set in Paragraph 8. of the Act XVI. of 1991. on the concession[25], and on the other hand, MA. declare some specified content elements as well. According to these provisions, the call for tender shall contain: *"(a) determination of the area or the geospace included in the tender, clearly indicating whether any third person has earned the right to the mining of a mineral raw material, to the recovery, utilization of geothermal energy or to exercising any activities covered by the present Act, (b) the professional requirements of the concession activity, and requirements set on the basis of the results of the vulnerability and loading capability assessments and the obligation for providing a security needed for the fulfilment of requirements, (c) content requirements of the exploration work programme to be submitted, (d) information on the requirements on the participation fee and the requirements related to the economic and financial situation of the tenderer, (e) the requirements of land remediation and restoration of the area covered by the concession area, and the determination of any guarantee for the fulfilment of the obligation"*[26] Beside the general provisions on concessions, a further special rule is that the public call for tender needs to be published in the Official Journal of the European Union, at least ninety days prior to the deadline of the submission period.[27] The minister shall set up a Evaluation Committee for the evaluation of the sent tenders, which are satisfy the conditions laid down in the call for tender. After that, upon the Committee's proposal the minister makes a decision on granting the concession. Finally, the result of the tender shall be made public and every tenderer shall be notified of it.[28] Afterwards, the minister conclude the concession contract with the winner of the tender.

[23] MA. (1) subparagraph 3. §
[24] MA. 8. §
[25] In further: Concession Act
[26] MA. (2) subparagraph 10. §
[27] MA. (3) subparagraph 10. §
[28] MA. 11. §

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This contract may be concluded for a period no longer than 35 years, which may be extended once, with not more than half of the concession contract duration (this extension shall be initiated 6 months prior to its termination – in case of neglecting the deadline the contract shall not be extended). MA. has some provisions on the content of this concession contract as well. According to these provisions the content of the exploration work program and the guarantees serving the compliance with the work program shall be laid down in the concession contract. The exploration technical operation plan approved by the Mining Authority shall have to include the undertaken tasks in the work programme specified in the concession contract. Furthermore, the minister may stipulate the reimbursement of the costs necessary for the compliance of the work program if the concession holder fails to fulfill the obligations of the approved work programme. It is also a significant rule of this Act, that should any extractable mineral raw material be left over on the concession area subsequent to termination of the concession contract, a new tender shall be called for by the minister within 3 (three) months subsequent to the termination of the former concession contract (however, in this case by undertaking conditions of the most favourable offer, the concession shall be entitled to the former holder too). Although it is possible to diverge from these ownership regulations of the Act, but basically the superficial installations built upon the concession contract shall be the mining entrepreneur's property, with the commissioning date. For this reason, the mining entrepreneur has an obligation, which important from environmental protectional aspects as weel, that if the installations may not be operated at the expiry of the contract, the mining entrepreneur shall be obliged to demolish them and remediate the area. When the concession terminate without the closure of mine, the ex-entitled to the concession shall be obliged to carry out all activities in connection with mine closure and land remediation. The Mining Authority shall delete the mining plot from the Registry ex officio subsequent to the approval of mine closure and land remediation.[29] Of course, the state shall not transfer these rights – according to the MA. Excersising the concession mining activity, concession fee shall be paid to the state or other compensation shall be given. This amount of the concession fee, the payment conditions or the other typed compensation and its fulfilment shall be set in the concession contract by the parties.[30] Moreover, another significant provision, that the winner of the tender may transfer the right for excercising the mining concession activity to another party by contract. Of course, transfer of this right shall not be peremptorily, ministerial approval is also needed to it.[31]

[29] MA. 12. §
[30] MA. (1)-(2) subparagraph 12/A. §
[31] MA. (1) paragraph 18. §

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3. Practice of Court of Justice of the European Union related to Mining Law

As in case of the community law in general, it is true in case of Mining Law as well, that practice of the Court of Justice of the European Union[32] has a significant role in its development. We can find several cases in the practice of the Court, which have direct or indirect effects on development of this extractive industry. These are mainly economic origin cases (debates on the supply of financial state-aid, deferred terms of tax and royalty payments, anti-dumping of mining products, tenders), however we can find cases related on uranium supply, (for example: occupational diseases, early retirement schemes for miners), moreover on failure in transposing the acquis on asbestos exposure in mines too. Furthermore we can find cases with environmental protection subject as well in practice of the EU Court, but number of these cases is lower than the abovementioned ones. Characteristically, in these court cases parties are the individuals, mining companies, Member States and/or the European Commission.[33] Because of the length limits, and in order to avoid to examination of a too wide topic, among the Mining Law related practice of the EU Court, I will enhance only some fields, on which I had referred above. These are as follows: (a) waste management, (b) environmental protection, water management, (c) state aids.

In waste management relations the 2006/21/EC Directive on the management of waste from extractive industries and amending Directive 2004/35/EC must be emphasized[34]. This directive does not set exactly the definition of mining waste (although it has several provisions on its management), however it refers to waste definition of Article 1(a) of Directive 75/442/EEC – according to this *„waste: shall mean any substance or object (they are listed in the Annex I of the Directive) which the holder discards, intends to discard or is required to discard."* For this reason practice of the EU Court has a significant role in this field as well,[35] which contains several judgements which had effects on establishing, and specifying of definition of mining waste. These are the mining waste definition relevant remarks of the Court among these judgements: (a) economic value of a material is not relevant in the manner of examining the definition of mining waste.[36] (b) The leftover rocks, and sand from a quarry have to be regarded as waste, therefore should be subject to EU waste handing rules.[37] (c) Deposit of hazardous waste in a disused mine to secure hollow spaces (mine sealing) does not necessarily constitute a disposal operation for the purposes of the 2008/98/EC Directive on waste and repealing certain Directives.[38]

[32] In further: EU Court
[33] MinPol 2017, 51-52.
[34] In further: Mining Waste Directive
[35] MinPol 2017, 52.
[36] Case C-304/94 Euro Tombesi and Adino Tombesi, Roberto Santella (C-330/94), Giovanni Muzi and others and Anselmo Savini v. Commission preliminary ruling |1997| ECR I-03561.
[37] Case C-9/00 Korkein hallinto-oikeus – Finland v. Commission preliminary ruling |2002| ECR I-03533; furthermore Case C-114/01 AvestaPolarit Chrome v. Commission preliminary ruling |2003| ECR I-08725.
[38] In further: Waste Framework Directive

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Deposits must be assessed on a case-by-case basis, in order to determine whether or not it is a recovery or a disposal operation for the objectives of the Waste Framework Directive.[39]

As I mentioned above, environmental protection cases also can be found in Mining Law related practice of the EU Court (although their number is not so big). Among these cases the water management relevant ones must be enhanced. Importance of emphasizing this group is that the water is one of the natural resources protected by the Fundamental Law as well, moreover in these cases contradictions between interests on mining activities and water protection can be examined. First of all, it must be emphasized, that one of the most important current objectives[40] of the union water policy, is to attain and maintain the good status of surface and underground waters[41] Among others, content of this objective was interpreted by the Court in no. C-461/13 Case. In this judgement the Court said, that Member States are required to refuse the authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status. With analysation of this judgement of the Court, we can find the conclusion, that certain mining activities my became extremely costly because of the requirement of good water status.[42]

Although it does not belong to the practice of the EU Court, but in connection with protection of waters one of the cases of the German Federal Constitutional Court must be mentioned (BVerfGE, 58, 300), which reveal an another side of the question, it concerned to constitutional aspects of it (it is about the right to water, as a fundamental right). According to the facts of the case, the suitor of the main proceedings operates a gravel dredging on his own property, and he also leased the neighbouring parcels in order to exploit gravel and sand. However, the areas were located in a water protection area, and a municipal waterworks of the city was also can be found there. The suitor requested a permission for an extension of the gravel extraction (according to the rules for an authorisation under the Water Resources Act). However, the authority rejected his application (and his demand on compensation as well), by the reason, that the distance from the mining sites to the wells of the waterworks are about 120 meters, thus contaminations of the excavated lake could reach a well and thus endanger the public water supply.

[39] Case C-6/00 Abfall Service AG (ASA) v. Bundesminister für Umwelt, Jugend und Familie |2002| ECR I-01961.

[40] Original deadline of attaining this objective was 2015, however this deadline can be changed in certain situatuions. Although the last deadline must be 2027. – Szilágyi János Ede: A magyar víziközmű-szolgáltatások és a Vízkeretirányelv költségmegtérülésének elve, *Miskolci Jogi Szemle*, 2014/1, 74.

[41] Our country declared the strategy, and the needed activities in the Water basin management plan in order to attain this objective. – See more about the topic: Szilágyi János Ede: Az EU és Magyarország vízstratégiája, *Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica*, 2013/31, 475-497.

[42] MinPol 2017, 53.

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Although the suitor did not file a suit for granting the requested permission, but he applied for his rejected compensation. The suitor argued that the refusal of a permission for an extraction constitutes an expropriation procedure which effects his established and functioning business and his property. The district court declared this lawsuit as justified. The counter appeal was unsuccessful. After the appeal, the Federal High Court of Justice has stopped the proceedings, and sent the case to the Federal Constitutional Court in order to get a decision, whether the general principles of water management set in the Water Act are incompatible with the fundamental right of property. The Federal Constitutional Court ruled, that in Germany there is a control system, with which the question can be answered. According to the argument of the Court, the Water Act subordinated groundwater under a public law regulation which is separated from the land ownership. These rules generally do not provide a right for the land owner to have access to underground water, but assigns it to the general public. For this reason, rejection of the permit was lawful, since the Water Resource Act does not grand a right to the land owners to influence the underground water. Beside these, the Federal Constitutional Court argued by that, just as the powers which end at the property boundaries, the suitor's legal position ends in principle where the activity comes into contact with groundwater.[43]

In connection with state aids, three cases must be mentioned among the practice of the EU Court. The first, and most relevant is the joint Cases T-233/11 and T- 262/11. In this Case, the Hellenic Republic gave state aid to mining company, to the Elinikos Chrisos company. The Commission opened a formal investigation, and it settled, that the aid was incompatible with the internal market and ordered the Hellenic Republic to recover the aid (No. 2011/452/EU Commission Decision). The main ground of the Commission was that neither an open tender nor an evaluation by independent experts was held during the disputed sale. Another significant judgement of the EU Court was set in a Hungarian Case, in the No. C-15/14, Commission v. MOL Case. The Case has relevance to the internal market rules and to national legislation with regards to undistorted competition vs. exclusive contracts between the government and a licensee (prohibition of selectivity). The case is important also because in it the EU Court determined the conditions by which a situation shall be classified as prohibited state aid. The verdict settled, that to diagnose a measure as prohibited state aid, it is necessary, that the advantage be granted selectively and that it be suitable to place certain undertakings in a more favourable situation than that of others. Finally, the third Case is the No. T-50/06 Case, in which the EU Court annulled the 2006/323/EC Commission Decision, which was about the exception from excise duty (given by France, Ireland, and Italy) on mineral oils used as fuel for alumina productions. The Court declared (which is important in connection with considering state aids), that the exemptions from excised duty can be regarded as state aid as well. In the concrete case, the Court ordered the states concerned to take all measures in order to recover the exemptions from the beneficiaries.[44]

[43] MinPol 2017, 975-976.
[44] MinPol 2017, 52-53.

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4. Summary

In the introduction of this study I started my research with the following hypothesis: between mining activity and environmental protection there is conflict, which has effects on the related legislation, and which obstacles the fulfilment of obligation, or responsibility for protection of natural resources. In my opinion the analysations above could justify this hypothesis. The examined court cases show, that mining activities may infringe environmental interests in several situations – for example: (a) in the field of waste management (since management of wastes emerging during mining activity, and leftover rocks are important questions, which easily can lead to legal disputes), (b) in the field of environment protection (within this topic, water protection is an emphasized field, see e. g. the EU Court Case in connection with good status of waters, or the German Case on relationship between the fundamental right to water and right to property), (c) in connection with protection of Natura 2000 areas (see the Sweden Case in the introduction). Although characteristically they are not concerned on environment protection, but the state aid court cases also must be mentioned with regards to mining. As we saw in the aforementioned cases, the EU Court regularly decide about the requirement of receiving the given aid (excepting some cases, like the Hungarian MOL-Case). Here, I would like to propose to deliberate, that whether the strict judgement of state aids on mining activity (in the same method, like other fields) is appropriate, regarding that mining activities are belonging to the monopoly of the state, underground minerals, materials are owned by the state, thus in these situations the state helps an activity, which otherwise would be its own task.

The above analysed cases obviously have effects on development of the EU (and of certain national) Law. Since, through these cases definition of waste, and mining waste, content of objective on attaining an maintaining good status of waters, and conditions of diagnose of prohibited state aids, etc. were interpreted.

By the examination of the cases, we can settle, that mining activity may endanger the natural resources (e. g. water, biodiversity, etc.) in several situations. However, with regards to the judgements of the EU Court, it can be assessed, that it means only endangerment, since in the practice, in case of a danger, the permit on mining activity will be rejected. For this reason this part of the hypothesis was denied, since the opposition of statement is true, because in most situations the wide environment protection rules obstacle certain mining activities.

As I mentioned in the introduction, the aim of this study is to serve as ground of a later, more extensive research. Thus finally, I would like to enhance some potential questions for the research: (a) Mining is a unique field, its exceptional, that its traditions are recognized in the Act.[45] An interesting research topic is the development of legal regulation on this field, and the question, that – is it possible to preserve these traditions in our ever changing world? (b) Which other fields of environment protection have conflicts with mining activity, and what is the result of these legal disputes, moreover how could be made these conflicts ceased by legal instruments, with speed-up, and making easier the permitting procedures on mining activities, and

[45] MA. 49/A. §

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securing the protection of the environment?[46] (c) Public participating in these cases also should be examined, since mining may have serious effects on environment, and it may raise several problems, which may concern on the public, and which belongs under the scope of the Aarhus or Espoo Conventions.

[46] In this topic several useful information, and interesting question can be found in the above referred MinPol study.

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