

STATE PROPERTIES CONCERNING ELECTRICITY PRODUCTION IN HUNGARY

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Abstract in original language:

Az energiaellátás fontos része életünknek. Olaj, szén és földgáz határozzák meg a világ energiaellátását, így kiemelkedő a szerepük az energiafelhasználás egyik legjelentősebb területén, a villamosenergia-termelésben is. Ezen energiahordozók azonban kimerülő jellegűek és a nem arányosan oszlanak meg a világ országai között. Az államoknak, így Magyarországnak is, dönteniük kell, hogy az energiahordozókat, energiaellátáshoz kapcsolódó tevékenységeket milyen mértékben vonják felügyeletük alá, esetleg állami tulajdoni körbe.

Key words in original language:

Bányászat, Villamosenergia-ellátás, Állami tulajdon, Engedélyezés.

Abstract:

Energy supply is important part of our every day life. Energy supply of the world is based upon oil, coal and natural gas. These energy sources have a large role in electricity generation, which is one of the major energy consumptions. However, they are to be used up and are not divided proportional between the countries. State, and therefore Hungary, shall make a decision concerning controlling activities or regulating state ownership in mining and energy sector.

Key words:

Mining, Electricity supply, State ownership, Authorisation.

1. INTRODUCTION

Energy is very important in everyday life; our society is highly dependent on proper energy supply, while economic growth demands for more and more. For generating energy natural resources or energy sources are needed, but traditional natural resources are limited. According to the present scientific knowledge the amount of the reserves – for which we exactly know their geographical extent and which can be economically exploited – can not satisfy the quarter of the needs of the XXI. century. Of course future scientific development will be able to increase this amount, but meanwhile the experiences show that energy needs are also increasing. Natural resources represent the connection between nature and mankind's economical activity, namely those natural elements, which can be used in energy production, feeding and as a raw material in industrial processes. Energy sources are natural resources which are – due to its structure – suitable for energy extraction. Therefore, as a first step of energy production we need natural resources. These are so called primer energy sources, such as: (1) mineral fuels, like coal, natural gas and petroleum, (2) mineral substances, for example uranium, used as fissile material, (3) renewable energy sources (sun, wind, and water). These primer energy sources are processed to secondary energy sources, such as electricity and petrol.

Hungary's energy supply is based on coal, oil, natural gas and atomic energy. These energy sources cover 95-97% of energy demands.¹ The main problem is that Hungary consumes more energy than it can generate, therefore a part of the demand has to be satisfied with imported energy sources. One of the main energy uses is electricity generation. In 2008 37% of atomic energy, 18% of coal, 39% of hydrocarbon and 6% of renewable energy sources covered the total amount of electricity generation in Hungary.² We can establish that fossil energy sources and atomic energy are still determinant parts of the Hungarian energy production. Furthermore, electricity supply is a public service, since safety and continuousness of its supply is very important for the whole or for the biggest part of society. The great task of states is to guarantee continuousness and safety of energy supply for everyone, even if the suppliers are reluctant to satisfy consumers' demand. Therefore, all state has to pass the essential decision concerning proprietary rights to mining of natural resources (energy sources) and to produce, transport and distribute energy. Generally free competition is not carried out in mining law and in the law of energy supply, while states seriously restrict these sectors. This presence of the state can reach state ownership of the main assets and activities. In this Article I'm going to introduce legislation concerning state property in mining and in electricity production, transport and distribution in Hungary.

2. HUNGARIAN STATE IN MINING LAW

To generate electricity we need certain energy sources. Mining's main purposes are to prospect, to exploit and to explore these energy sources. According to the motivation of the effective Act XLVIII of 1993 on mining two legislative methods can be differentiated. The legislator can determine natural resources as the property of the owner of the land where the natural resources can be found; therefore the owner has the right to mine these natural resources. Otherwise the State owns all natural resources and has exclusive right to mine independently of the owner of the land. The Hungarian Constitution was adopted in 1949 and it regulated treasures of the earth and mines as properties of the people, and therefore they were under state ownership. In the 1960's the former Mining Act determined mining raw materials as exclusive properties of the state and that mining activities could be exercised only by state owned companies.³ (Although the owner of the land could exploit mineral resources in a little quantity used for private purposes.) The Act XLVIII of 1993 (hereafter: Mining Act) has changed this legislative concept. The questions arising are the followings: who has the right to own mineral resources and who has the right to exercise mining activities.

Answering the first question is quiet easy, because the Act IV of 1959 on the Civil Code of the Hungarian Republic (hereafter: Civil Code) states that the treasures of the earth are under exclusive state ownership. Therefore, in the Hungarian mining law property rights of mineral resources are still independent from the owner of the land where the mineral resources can be found, although, it is not the state who disposes over mineral resources in economy. There shall be provisions in mining law, which determines the conditions of the acquisition of the property right of mineral resources by others. The framework for this is regulated under the

¹ See also: László Tihanyi: *Energy supply* (lecture notes) 2006.

²http://www.haea.gov.hu/web/v2/portal.nsf/hasznositas_hu/77E9291CEDC2EC7EC12571090060BE5A?OpenDocument

³ Act III of 1960 on mining

Mining Act. This Act also states as a main rule, that in their “site” mineral raw materials and geothermic energy are under state ownership, but the mining entrepreneur can become the owner of the exploited mining raw material through exploitation and of the geothermic energy, exploited for the purposes of energy production, through utilization. (According to the concepts of the Act „Site” shall mean the place of the natural occurrence of mineral raw materials). Although the state doesn’t deliver its property freely, it expects a share of the exploited mineral raw material and geothermic energy. This is the so called mining royalty, which is a pecuniary fulfilled obligation (or in exceptional cases obligation in kind), which is determined on the basis of the amount of the exploited mineral. The mining entrepreneur and the person exploiting geothermic energy shall pay mining royalty. (According to the concepts of the Mining Act mining entrepreneur means legal entity or natural person or association having no legal personality entitled to carry out mining activity.) The sum of the mining royalty is determined in the Mining Act or in the contract of concession. While mineral raw materials are very important part of the economy of a country, persons - who are entitled to acquire the ownership of mining raw materials and geothermic energy – shall manage mineral resources well. Therefore the Mining Act introduces the principle of mineral resources management. All activities under the effect of the Act shall be pursued in line with this principle. Mineral resources management means activities, measures, production programs, systems and methods of exploration, exploration and exploitation, which serve the economical exploitation of mineral raw materials in a manner, which does not damage and preserves the non-mined parts of the site, in order to secure the later exploitability; and allows at the same time the reduction of losses and the possibly fullest exploitation of mineral resources, as allowed by technology and justified by the market conditions. Application of this principle ensures the protection of the state property, and that the state owned mineral resources are managed well and in an economical manner.

The Mining Act regulates several activities, such as mining of mineral raw materials, utilization and exploration of geothermic energy, conveyance through pipelines of hydrocarbons, and operating any other connecting matters and facilities. It has been presented above that minerals are in state ownership, so the regulation of activities managing minerals should be examined. The main Acts relating to the right to exercise mining activities are the followings: (1) the Act XVI of 1991 on concession (hereafter: Concession Act); (2) the Act XLVIII of 1993 on Mining (and Government Decree No. 203/1998. which is issued for execution of the Mining Act). The Concession Act brings under regulation those cases in which the exercise of activities under exclusive competence of the state is by way of a contract of concession. Concession is one way to utilize state property. According to the Concession Act, activities qualified as exclusive state activity can be pursued principally by an economic organisation in which the state has a majority ownership interest or voting right. As another solution the state can assign the right to pursue the activity on a temporary basis by a contract of concession. The Concession Act determines these activities exactly, among others, it states that concerning mining research and exploitation, and related secondary mining activities, transport and storage of products by pipeline can be subject of a contract of concession. Special acts - like the Mining Act – shall determine special conditions of pursuing these activities within the framework of the Concession Act. In the other hand the Concession Act gives opportunity for the special acts to exempt certain types of activities from the provisions of contract of concession. These activities are liberalized activities. The Mining Act determines conveyance through pipelines of mineral oil, mineral oil products, and hydrocarbon gases (with the exception of natural gas) as an exclusive state activity. As it has been discussed above the result of this qualification is that only those economic organisations

can exercise the right to pursue these activities, which are in state ownership or in which the state has a voting right, or in special cases to which the state has assigned this right by a contract of concession.

The regulation of conveyance and storage of natural gas is very interesting at this point of my Article. Originally conveyance and underground storage of all hydrocarbons were qualified as exclusive state activities, which could be the subject of a contract of concession. Act XLII of 2003 on natural gas supply amended the relevant regulation of the Mining Act. From 1 January 2004 conveyance and underground storage of natural gas are liberalized activities, which can be carried out on the basis of an official licence of the Mining Authority. The purpose of the amendment can be connected to one of the major challenges of the European energy policy. The concept of liberalization of electricity and gas market come to the front in the 1980's. The Directive 98/30 of the European Parliament and the Council was the first step to a liberalized gas market, which was repealed by Directive 2003/55/EC. The aim of this Directive is "to speed up liberalisation in these sectors with a view to achieving a fully operational internal market".⁴ To implement Directive 2003/55/EC conveyance and underground storage of natural gas should be exempted from exclusive state activity category.⁵

Concerning other activities the Mining Act introduces the differentiation of closed areas and open areas. Prospecting, exploration and exploitation of mineral raw materials only raises the question of concession in closed areas, because the Act determines closed areas as areas designated for concession tender and delimited for the purpose of the exploration, exploration and exploitation of certain mineral raw materials. (Closed area has another case, when someone had acquired a right of mining a mineral raw material before the Mining Act entered into force.) All other areas not qualified as closed areas are open area. The conditions of the tender and the content of the contract of concession are determined in the Concession Act, in the Mining Act and in the Government Decree issued for the execution of the Mining Act. Liberalized activities are – among others – (1) exploration of mineral raw materials in an open area, (2) exploration and exploitation of mineral raw materials, (3) activities and facilities used in exploitation, preparation and primary processing of hydrocarbons, (4) pipelines conveying hydrocarbons, underground gas storage, (5) prospecting, exploitation and utilization of geothermic energy. These are authorized by the mining supervision. Furthermore, preliminary surface exploration can be carried out on the basis of reporting. When someone had acquired a right of mining of a mineral raw material before the Mining Act entered into force, the company/natural person can continue its activity in accordance with the particular conditions of exercising this right and only in relation to that given mineral raw material.

3. CONTROL OF THE STATE OVER ELECTRICITY SECTOR

Electricity power has advantages and disadvantages. Electricity is mostly produced in the country, it is not depends on import and it can be generated using different technologies and raw material. But electricity can't be stored, so supply has to follow consumers' demand.

⁴ Preamble of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC

⁵ Motivation of Act XLII of 2003 on natural gas supply

Electricity supply consists of different activities. These are generation, transmission, distribution, trade and consumption. Generation is the production of electricity. Transmission is transportation of electricity principally to the distributors and through the transmission network. Distribution means transportation of electricity too, but to consumers and through a distribution network. Trade means regular and businesslike purchase and sale of electricity for economic purposes. Consumption is an activity, when a private individual or a company receives electricity for his/its own use. In the very beginning electricity generation was essential for operating plants and factories (for example mines). These plants generated surpluses which were used – after building out the necessary grids – to supply the demand of the nearby towns. It was the beginning of a process which ended with a national power grid and energy supply. While the first electricity suppliers were private companies generating energy primarily for themselves, two types of energy supply, electricity generated for private or public purposes, appeared in the relevant acts. In 1949 public electrical installations and power grids – fulfilling some conditions according to their efficiency and purpose of use – were taken into public ownership.⁶ Act IV of 1962 on electricity generation, transmission and distribution qualified electrical installation (power plants, distribution and transmission networks and connection equipments) and the generated energy as subjects under social ownership without any condition. It restricted this rule further with qualifying public electrical installations as subjects which could be only under state ownership and that exclusively public electrical installations were authorized to supply energy for consumers. In 1991 the Civil Code regulated, with an amendment, public electrical installations and national power line of energy supply and transmission as subjects of exclusive state ownership. Due to the state ownership only state-owned companies were entitled to participate in electricity transmission, distribution and supply for consumers, although from 1991 when the Act on Concession was adopted the possibility arose to pursue these activities and operate these installations under a contract of concession. The appearance of state monopolies was unavoidable; therefore competition in this sector was restraint. This restraint was further enhanced by a special type of contract concerning to the relationship of the consumer and the supplier. Public service contract is a kind of contract in which the freedom of the parties of the contract is highly restricted. The supplier shall contract; if the consumer registers his/her claim to an electricity supply. The consumer can not choose a supplier freely, because in a geographical region the authorized supplier has exclusive right to supply electricity. Generally the content of the contract is also determined by the law, which mainly appears in the legal regulation of the public prices. The consumer contracts only with the public service supplier, who is obliged to contract with other participants of the sector. In the 1990's the Civil Code qualified electricity, gas and water supply as typical examples of this contract.

Paragraph of the Civil Code concerning state ownership in electricity sector was in force only for some years, because an act annulled it in 1995.⁷ A new act on electricity⁸ was adopted and some amendments and annulments – for example the relevant paragraph of the Concession Act - became necessary to achieve a new situation in this sector. Operating a public electricity

⁶Act XIII of 1946 on nationalization of coal industry and Act XX of 1946 on state ownership of batteries and transmission lines of particular electricity installations

⁷ Act XLVIII of 1994 on the Production, Transmission and Supply of Electric Energy

⁸ Act XLVIII of 1994 on the Production, Transmission and Supply of Electric Energy

installation has become a liberalised activity, which can be exercised with appropriate licence of the Hungarian Energy Office. In 1995 privatisation of the companies of electricity sector has started and realized in several stages. Nowadays almost all power plants, companies concerning supply and operation of the grid are in private ownership.⁹ These changes were necessary to fulfil obligations regard to the European Community.

As it has been mentioned above, the EC would like to open-up and liberalise electricity (and gas) markets to create a common market in these economic fields. The main element of liberalization is the right of consumers to choose their services free. Since 1 July 2007 all consumers have this right. Nowadays the consumer is an active player of the electricity market, so the consumer can and shall contract with generators, transmission network, distributor licensees and electricity traders. The content of these contracts are regulated partly by Electricity Act and partly by the Civil Code. But electricity supply is still a public service therefore the Directive has acknowledged that Member States can impose public service obligations on undertakings to ensure supply of particular consumers. One task of Member States to regulate that all household customers and small enterprises enjoy universal service. Universal service means a right of these consumers to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable and transparent prices.¹⁰ In Hungary the legal structure of universal service is similar to the public service contract, because in a geographical region there is only one universal supplier, who has exclusive right to satisfy consumers' demand in that region and they can be entrusted by customers to contract with other players of the market.

Generation, transmission, distribution and trade are activities which shall be authorized by the Hungarian Energy Office. Operating a power plant with 0,5 MW or more capacity shall be licensed by Hungarian Energy Office. According to the data of the Hungarian Energy Office 13 generators have acquired the necessary license. Concerning transportation of electricity the companies which operate the networks are very important. Concerning the Directive Member States should designate one or more Transmission System Operator. In Hungary there is one transmission system operator, since MAVIR Hungarian Transmission System Operator Company Ltd is authorized to operate the Hungarian Power System. In distribution 6 companies are entitled to operate distribution networks. While universal service can be the last opportunity for the most vulnerable consumers, Member States shall designate a company for all geographical regions, which means 6 universal service suppliers in Hungary. Exclusive rights still exist in the new structure of the market, while transmission system operator, distributor licensees and universal service suppliers can exercise their activity exclusively. The biggest enthusiasm can be observed in trade, because Hungarian Energy Office authorized several companies as electricity traders. In spite of liberalization some companies of the energy sector are still in state property. According to the Appendix of the Act CVI of 2007 on state property Hungarian Power Companies Ltd., one of the major company of the Hungarian energy sector, is under state ownership permanently. The rate of this property right can not be lower than 75% and one vote. Hungarian Power Companies Ltd. owns and operates several other electricity undertakings operating in all section of electricity supply.

⁹ <http://www.eh.gov.hu/home/html/index.asp?msid=1&sid=0&HKL=103&lng=1>

¹⁰ Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity

The most important is MAVIR Hungarian Transmission System Operator Ltd., while this company is responsible for the Hungarian power grid. The Directive requires that undertakings separate their activities concerning generation, transmission, distribution and trade. Therefore, MAVIR Ltd. operates independently from MVM Ltd., but the ownership of the MVM Ltd. exists. The state is still presented in energy sector.

4. CONCLUSION

It can be established that mining, energy generation, transport and supply are very important for operating a country. Therefore, mining and activities concerning energy supply are strictly regulated by the Hungarian State. Previously not only mineral resources and activities concerning mining and electricity supply, but the generated energy were reserved for the state. However, this could be owed partly to the political regime. Since the 1990's regulation of these sectors have been changed. Role of these sectors has not changed; therefore, the new regulation should find a balance between control and liberalization. Amendments were not an easy thing for the very reason that many times the new regulations were obligations concerning accession to the European Union. The strictest regulation appears especially in mining law. Natural resources are state owned in Hungary, although it is not the State who generally explores and exploits mining raw materials, but it doesn't mean that anyone can exercise these activities voluntarily. The companies have to face well-defined conditions and control. Authorization and control are also effective means in electricity supply, although in this sector a competitive market approach gains more and more ground. While ensuring safety and continuousness of energy (electricity and gas) supply is great problem nowadays, European countries shall find a balance between internal market and safety. Making this decision is not an easy one, and tight control and authorization are required. Competition in electricity sector is still restricted but in a common legal frame. Some undertakings still have exclusive, special rights and compensations, but these measures are necessary to ensure not only competition, but also safety of supply in this market. The process has not ended with directive 2003/55/EC the European Commission urges stricter common measures in the field of legal unbundling, consumers' protection and tasks of national authorities.

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