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THE OWNERSHIP RIGHT OF MINERAL RESOURCES IN ROMANIA

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Abstract: *Ownership right is defined, according to the Civil Code, as the right of a person (s.n. natural or legal person) to rejoice and dispose of a thing exclusively and absolutely, but within the limits established by the law. Depending on holder and characteristics, ownership can be private or public. As for the situation of mineral resources, according to the Constitution and the special legislation in the field, an ownership right is instated absolutely in favour of the Romanian State. In this scientific step we propose to analyse the legal and technical landmarks of this absolute ownership right, respectively the transfer method to the private entities performing mining exploitations in Romania. Finally, we will envisage the situation of the ratio between the public respectively private ownership right, while exercising the option of prospection / exploration / exploitation of mining perimeters by the private entities.*
Keywords: *ownership right, mineral resources, Mining Law, Romanian State, transfer*

1. Introduction

As for the **ownership right over mineral resources, it is assigned *ope legis* to the Romanian State exclusively**, for this purpose we hold the provisions of Articles 1 and 2 of the Law no. 85/2003 (hereinafter referred to as “The Law” - Mining Law published in the Official Gazette of Romania no. 197 of 27.03.2003), as follows:

“*Art. 1 - The* mineral *resources located on the territory and in the subsoil of the country and of the continental shelf in the economic zone of Romania in the Black Sea, delimited according to the principles of international law and the regulations of the international conventions to which Romania is a party, are the exclusive object of public property and belong to the Romanian state.*

Art. 2 - (1) The mineral resources covered by this law are: coal, ferrous, non-ferrous ores, aluminium and aluminiferous rocks, noble metals, radioactive, rare and dispersed metals, haloid salts, useful non-metallic substances, useful rocks, precious and semi-precious stones, peat, therapeutic mud and peat, bituminous rocks, non-combustible gases, geothermal waters, gases accompanying them, natural mineral waters (carbonated and still), therapeutic mineral waters, as well as the mining waste product from tailings dumps and tailings ponds.

(2) The provisions of this law shall also apply to drinking and industrial groundwater for the activities of prospecting, exploration, determination and recording of reserves."

The special rule in which the extent of the property right over mineral resources is presented logically derives from the provisions of art. 136, paragraph 3 of the Romanian Constitution, where it is mentioned that "*The riches of public interest of the subsoil, the airspace, the waters with exploitable energy potential, of national interest, the beaches, the territorial sea, the natural resources of the economic zone and of the continental shelf, as well as other goods established by the organic law, are the exclusive object of public property*".

The definition of mineral resource is given in the Methodological Norms for the application of the Law, more specifically in art. 4 letter b). It is noted that it consists of *the natural substance of the earth's crust, formed as a result of geological processes, usable, as such or by processing, in the economic and social activity representing the quantity of useful mineral substances characterized from the point of view of*

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quality, technology and recovery conditions, as they are found in the deposits (without changes in the exploitation process and, as the case may be) and which can be used at present or are supposed to be able to be used in the future.

Based on these normative texts of the highest legal power, we hold the exhaustive nature of establishing the entity which holds the ownership right, more exactly the Romanian State.

2. The notion of public property right

The public property right has been unanimously defined in the doctrine [1] as the **principal, inalienable, imperceptible, imprescriptible right**, which confers the attributes of possession, use and disposal over an asset, which, by its nature or by declaration of the law, is of public use or utility, attributes that can be exercised absolutely, exclusively and perpetually, respecting material and legal limits. The holder of the right of public property may be, according to the relevant legal provisions, more precisely of article 858 of the Civil Code, the state or an administrative-territorial unit.

In relation to the object of analysis treated, as mentioned above, an absolute property right was established in favour of the Romanian State.

A relevant question arises from this aspect – why was it not established that the administrative-territorial units also have a right of ownership over certain categories of mineral resources?

The answer, we believe, is related to the need to centralize the way of capitalizing on mineral resources, more precisely the need for a single and congruent policy for the exploitation of these mineral resources, with the effect of acquiring revenues for the state budget.

We consider that the criterion of belonging to the public property of the Romanian State presents a positive aspect, even under the conditions of decentralization policies, as long as, for example, the identification of mining perimeters may or may not overlap with the territory of several administrative units, or the coordination of such exploitation of resources requires the existence of a unitary vision, which transcends the various local visions in determining the operations in question.

With reference to **the criteria for determining the assets that make the object of public property**, we note that the lawmaker chose to use both the references regarding their nature, and the express, punctual and normative determination of the mineral resources object of the ownership right. In this regard, the provisions of article 858 of the Civil Code, the provisions of Law no. 213/1998 on public property, respectively of the Mining Law, are the special primary legislation.

In fact, these laws use two criteria to determine the goods that are the object of public property, namely their determination by law or the recourse to the criterion of the destination of those assets, namely the public utility (See the Decision no. 31 of May 26th, 1993 and the Decision no. 33 of May 26th, 1993, in the Constitutional Court of Romania. Collection of decisions 1992-1993, pages 203-204, respectively pages 211-212).

In relation to these criteria, all mineral resources have a public utility under the law, respectively the enumeration from the provisions of Article 2 of the Mining Law can be extended by organic law to other categories of assets according to Article 73 paragraph 3 of the Constitution, given that the multiple regulatory areas established in favour of organic laws, it also includes the "general property regime" - letter m) of this text.

In conclusion, we can note that as far as the situation of mineral resources is concerned, an absolute property right in favour of the Romanian State has been established ope legis. Certainly, this unique property right cannot be confused with the right of ownership over the real estate (By real estate we mean the land, the water surfaces, the airspace, the waters with recoverable energy potential, of national interest, the beaches, the territorial sea, the economic zone and the continental shelf) where the mineral resource deposits are found, which can be both public and private.

Given that the mineral resources are in the exclusive property of the Romanian State, we note that the right to admit the possibility of carrying out their exploration or exploitation depends on the **exclusive will of the administrative decision-maker**.

In this regard, the provisions of article 19 paragraph (1) of the Law according to which the *Initiative for the concession of mining activities under the conditions provided for in article 18 paragraph (2) letter b) may belong to the competent and regulatory authority or to interested Romanian or foreign legal persons*.

Although it would seem to be an absolute decision-making power, for the first time in the national legislation, article 285 of the Administrative Code establishes the principles of exercising the public property right, namely:

a) the principle of the priority of the public interest;

b) the principle of protection and conservation;

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c) the principle of efficient management;

d) the principle of transparency and publicity.

Thus, even if it is established at a principled level, the possibly defective management of mining resources can lead to civil, administrative or criminal liability for the representatives of the Romanian State, as the case may be.

3. The legal characters of the public property right regarding the mineral resources:

According to article 861 of the Civil Code, the legal characteristics of the right of public property are inalienability, imperceptibility and indefeasibility.

However, according to article 554, paragraph 2 of the Civil Code, *unless otherwise provided by law, the provisions applicable to the right to private property also apply to the right to public property, to the extent that they are compatible with the latter.*

Under these conditions and also in relation to the provisions of article 555 of the Civil Code, the right of public property confers on the Romanian State in the present case the prerogatives of possession, use and disposal, exercised exclusively, absolutely and perpetually, but within the limits established by the laws in force.

In the present analysis, we note that it is necessary to establish a clear distinction in terms of these characteristics when we talk about the situation of the mining perimeters, respectively of the mining product actually subject to exploitation.

Thus, ab initio it is necessary to specify the fact that **only a right of use or concession can be established on the immovable properties representing the mining perimeters and which are in the public domain, and they cannot be encumbered by any other rights in rem that would lead to the loss of the legally established inalienable character.**

The contouring and materialization in the field of the prospection, exploration and exploitation perimeter is carried out in the light of the definition found in Article 3 item 21 of the Law, essentially representing *"the area corresponding to the projection on the surface of the contour of the part of the earth's crust within which, on a determined depth interval, prospecting, exploration, respectively exploitation works are carried out, as well as the areas necessary for carrying out the activities of processing, preparation of mineral resources and storage of mining residual products".*

We note that the prospecting, exploration and exploitation perimeters of the mineral resources in question may or may not be in public property, respectively they do not identify with the area where the mineral resource deposit is located, but they extend over a possible area necessary for the development in good conditions of the entire cycle of production and exploitation of mineral resources.

3.1. Inalienability

This character derives from the retention of the provisions of article 136, paragraph 4 of the Constitution as well as of article 861, paragraph 1 of the Civil Code. Thus, under the conditions in which an exploration or exploitation license has not been issued, respectively a prospecting or exploitation permit, it will not be possible for a private entity to acquire the ownership right over the mineral resource. At the same time, we consider that even in the conditions in which these administrative acts were issued, the mere issuance should not be able to lead to the automatic possibility of transferring the right of ownership, this being conditioned by compliance with the clauses included in the above-mentioned administrative acts. However, the *de plano* situation of the current legislation does not provide for any kind of conditionality, which leads to the need to amend the mining legislation as soon as possible regarding this issue.

If we analyse the content of Law 85/2003, there is no legal reference to the actual time and the concrete manner in which the transfer of ownership of the mining product subject to the exploitation license/permit takes place, much less in terms of the ownership right over the samples of mineral resources subject to exploration/prospecting.

The only reference, which is otherwise insufficient and inaccurate from the point of view of legal rigor, is given by the provisions of art. 38 letter c). of the Law where it is mentioned that the Holder of the license/permit has the following rights: c) to dispose of the quantities of mining products made.

However, the **right of disposal** represents **an attribute of the right of ownership, not being legally equivalent to the right itself**, consisting of the owner's prerogative to alienate the property or to establish real rights over it in favour of another person (right of legal disposal) as well as to consume or destroy, even without use, the thing that belongs to it, suppressing its existence or modifying its functionality (right of material disposal).

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In this easily observable legislative vacuum, it is necessary to draw technical and temporal limits of the moment when the transfer of the ownership right from the Romanian State to the entity that carries out the exploitation / exploration is made.

Thus, in establishing these coordinates, it is necessary to define the concepts of exploration and exploitation of the mineral resource.

Exploration, after prospecting the deposits, represents the next, more in-depth stage of the geological research, which contributes to the outlining and quantitative and qualitative determination of the industrial reserves of useful mineral substances and to the specification of the potential conditions for further exploitation of the mineral ore [2].

Therefore, the exploration of mineral ores can be defined as the stage that includes all the research works carried out in order to determine the quantity and quality of the reserves, the geological, hydrogeological and technical-mining conditions of exploitation and the industrial importance of the useful mineral substances researched [3].

Certainly, during the exploration works, samples of useful mineral substances are taken that lead to the determination of the existence of the resource to be exploited, respectively of the concrete way of distributing the deposits, with the concrete effect of establishing a way of exploiting them as profitable as possible.

Therefore, it is necessary to differentiate between these samples, as well as the analysis / tailings material and the data, respectively the information referred to in art. 5 paragraph 1 of the Law, resulting from the prospecting / exploration activity.

It is noted that the lawmaker chose to establish a real right of co-ownership over the scientific research itself, but did not legally determine the situation of the mineral material obtained in the prospecting / exploration phase, although this period can last for years, a context in which it was necessary to regulate the situation. We are of the opinion that ope legis **an exclusive ownership right** is established over these mineral substances obtained at this specific stage, given that there is certainly no legal mechanism identified by which these substances can be placed in the civil circuit without the consent of the Romanian State.

In support of this thesis, we note the general incidence of Article 5 paragraph 1 of the Law, which refers to the fact that *all data and information, **regardless of the storage method**, regarding the Romanian mineral resources, determined according to Article 1, will be made available to the competent and regulatory authority and belong to the Romanian state, their record and management being made at national level by the competent and regulatory authority, according to this law*.

Or, the mineral substances analysed in the exploration procedure are part of scientific, complex research, which involves both the theoretical and the physiological component, on which the right of ownership in favour of the Romanian State was established by the effect of the law.

This solution also follows from the incidence of the provisions of Article 5 paragraph 2 of the Law, according to which *the holders of licenses or permits for mining activities may use the data and information obtained only for their own interest, **throughout the mining activity***.

Thus, the result of the scientific research resulting from the prospecting/exploration operations will be found in the public property, and it will be noted that the entities that carry them out have only a right of use limited to the temporary level of mining activity (research s.n.). The consequence of this fact leads to the impossibility of retaining any copyright in the scientific results in question.

As for the concept of **exploitation of mineral resources**, it involves the totality of the works of development of mineral resources, firstly their disaggregation from their initial, natural geological form.

In relation to the object of the present research, the doctrine has mentioned that the mineral resource is a natural substance from the earth's crust, formed because of geological processes, usable, as such or by processing, in the economic and social activity[7.]

When issuing an exploitation license, the analysis of the ownership right will strictly concern the situation of the mineral resource subject to exploitation, while the material obtention of other resources will not lead to the acquisition of any real right, while the license limits the beneficiary strictly to its limits.

Finally, we will hold that the ownership right transferable to the holder of exploitation license/permit will concern the industrial reserve [4] noted Ri which is equal to the sum of the clean reserve of mineral extracted from the mineral ore and the sterile rocks added.

In fact, this situation also derives from the fact that in the Law, Article 3, items 28 and 29 they mention the existence of mining product and residual mining product, both types make the object of exploitation activity under the conditions of issuing an exploitation license and implicitly, the object of payment obligations in favour of the Romanian State in light of royalty (In fact, this is also the opinion of the National

Agency for Fiscal Administration that obliges the holder of license to pay the royalty for the residual mining product – for details, see also https://chat.anaf.ro/ContestatiiSite.nsf/ec4cdbdead046898422570de003c294f/949eec979e163e55c225792000238563/$FILE/012509BH.pdf accessed on 13.01.2025).

Given all these technical issues, we will subsequently analyse the typology of the ownership right obtained by the holder of an exploitation right of an ore.

As it was previously held, the Law refers strictly to the incidence of a right of disposal.

However, it is particularly important the moment when the transfer of ownership right is made, while from this moment the private entity introduces the mining product, including the residual product in the civil circuit, and the incidence of the right leads to derived rights and obligations, such as fiscal or environmental rights and obligations.

As far as we are concerned, we believe that the transfer of the ownership right is tightly connected to the **moment when the exploitation license or permit, as applicable, comes into force**, the industrial reserve will be analysed in light of the definition of movable assets by anticipation, which can be found in Article 540 of the Civil Code.

In this respect, according to Article 21 paragraph 1 index 2 of the Law, "*For the exploitation activity the license comes into force as follows:*

a) on the date of coming into force of the order of the president of the competent authority for regulation of its approval, except for the concession licenses or administration licenses for exploitation set out in letter b);

b) on the date of coming into force of the Government Decision regarding the approval of the concession license / administration license for exploitation of aluminium ores and aluminiferous rocks, ferrous ores, non-ferrous ores, noble metals, radioactive ores, rare and dispersed land and coals.

(13) The order of the president of the competent regulatory authority for approval of licenses comes into force on the day of its publication in the Official Gazette of Romania Part I."

Thus, the ownership right of mineral resources will not relate as temporary element to the **existence of the technical possibility of the industrial extraction** of the ore quantity from the industrial reserve or the deadline of 360 days mentioned in article 22 of the Law for the start of mining activity.

Moreover, the ownership right cannot be related to the moment of processing of the mining product subject to the exploitation license, while that moment cannot be checked by the representatives of the Romanian State.

We also hold that we cannot confuse the situation of the transfer of ownership of the mining product for the situations regulated by article 24 of the Mining Law, which refer to the rights and obligations derived from the license concerning the situation of legal exploitation, not of the mining product subject to license.

When establishing this temporal moment, we hold at least the following factual reasons deriving from the legislation in force, with the mention that this situation is criticized and should be regulated by the norms; otherwise, it can be established only by the effect of the exploitation license or potential concession / association contracts in view of concession of mining perimeters.

(i) It can be noted that the retention of such moment is required as long as by license we establish the estimated quantity of the mining product exploitable for the period of license. In this respect, the provisions of article 20 paragraph 1 letter a) and b) of the Law are incidental, where it is mentioned that the *exploitation license is granted by negotiation, based on a request accompanied by:*

a) the feasibility study regarding the valorisation of mineral resources, the protection of ore and as applicable, the valorisation of mining gaps, which will include the initial plan of cessation of activity drawn up according to the norms issued by the competent regulatory authority;

b) the ***exploitation development plan****, drawn up according to the technical instructions issued by the competent regulatory authority;*

Thus, when the exploitation license comes into force, both the initial holder of the ownership right of the mineral resource and the license holder will estimate the quantities of mining product from the industrial reserve, including the business plan, respectively the estimation of receipts to the state budget can be made accordingly.

Under these conditions, the concessionaire will be able to attract investments in light of a legally obtained ownership right of the mining product, respectively can sign various contracts and commitments in light of these estimated quantities.

In fact, according to Article 557 paragraph 2 of the Civil Code, applicable according to Article 554 paragraph 2 of the Civil Code, *in the cases set out by the law, the ownership can be acquired by the effect of an administrative act,* which in this case is the exploitation license.

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Therefore, the lawmaker set out in the civil general legislation the **mechanism of acquisition of the ownership right regarding the mining products**, even it did not reiterate it in the Mining Law (special legislation), although in our opinion this situation required it. Under these conditions, we will discover in the same general legislation the normative texts based on which we can identify the concise means of acquisition/transfer of the ownership right over the mining resources.

However, certainly the general legal norms applicable will have to find their specificity in the special norms, respectively in the technical realities specific to mining exploitations.

(ii) the mining legislation refers to the concept of disposal which was used instead of the ownership right. Or, *de lege lata* we hold that this right of disposal has concrete legal effects in the matter of mineral resources.

In this respect, we draw your attention to the provisions of Article 2389 of the Civil Code and Article 2629 of the Civil Code, which concern the establishment of **movable mortgages in the national law and private international law.**

According to Article 2389 of the Civil Code, which has as object the situation of movable mortgage *we can set mortgage on*: *f) oil, natural gas and the other mineral resources* **to be extracted***;*

On the other hand, according to article 2629 of the Civil Code, in the matter of private international law regarding *the applicable law for natural resources*, we hold that the *Conditions of validity, publicity and effects of mortgage on mineral resources, oil or gases or on a receivable resulted from their sale at source,* ***which is generated from the extraction date of assets or from the date when the amounts of money obtained from sale are transferred into the bank account,*** *are subject to the law of the exploitation location.*

Or, from the correlated analysis of the two normative texts quoted above, we can see that the Romanian lawmaker chose to correlate the existence of a real right – the mortgage, more exactly, the legal possibility of constituting this right with the legal possibility of "*extraction*" of mineral resources.

But, in this case the license holder can only create a right of movable mortgage if it is the owner of the mineral resource at creation time, or it has an approval in this respect from the Romanian State – the original holder of the ownership right, which leads to a series of practical legal problems we will analyse in a future study.

In essence, the most important obstacle in this concept concerns the prosecution right of the asset subject to movable mortgage – the main or residual mining product, while starting from the thesis that it is public property, it is subject to *ope legis* **immunity from distraint/seizure.**

Therefore, the only interpretation of these normative texts leads to the retained thesis of the temporal moment of transfer of ownership right previously proposed, which although it is not exempted from criticism, it offers at least a legal framework of legal paradigm.

As for the mortgage right, it is defined in Article 2343 of the Civil Code, as *"the real right of movable or immovable assets allotted to the fulfilment of an obligation".*

The essence of mortgage is that it is created **without the dispossession of the owner of the encumbered asset**; it is a true and real guarantee, which assures its holder a prosecution right and a preferential right.

As for the **prosecution right**, it represents the expression of prerogative by which the mortgagee is entitled to prosecute and valorise the encumbered assets in the hands of whoever it can be found, even if it was alienated by the creator of mortgage right [5].

The preferential right concerns the prerogative recognized to the mortgagee by which the mortgagee is entitled to prosecute and valorise the encumbered assets in the hands of whoever it may be found, even if it was alienated by the creator of mortgage right [6].

In our opinion, the creation of mortgage right is not automatically subject to the condition set out by Article 27 of Mining Law, the regulation in question does not perfectly cover the hypothesis treated.

(iii) This temporal moment concerns the possibility of relation to *the universality of movable assets de facto*, which are not individually identified, element particularly important when we refer to volumes of mining products expressed in high measuring units.

Thus, we can hold the existence of an ownership right of the concessionaire over quantities of thousands and hundreds of thousand tonnes, barrels or other measuring scales, which are estimated in the exploitation license concerning a certain mining perimeter, in this context we can identify and determine these quantities.

In this case, in relation to the temporal moment of coming into force of exploitation license, the ownership right can be quantified by referring to the universality de facto of the main or residual mining product, subject to that license, identified as such, such as "*x thousands of tonnes of coal, pit coal type found in quarry y*".

In fact, the civil general legislation allows for establishing an ownership right over universalities de facto of movable assets, according to Article 541 of the Civil Code.

Article 541 paragraph 1 of the Civil Code has defined universality de facto as the totality of assets belonging to the same person (in this case, the holder of exploitation license/permit) and which have a common destination established by his/her will or by the law.

The advantage of holding mineral resources for which the exploitation license or permit is issued as universality de facto derives from the fact that universality remains the same in spite of the fluctuations which may occur inside of it.

More exactly, the mining material from an exploitation perimeter is regarded as whole at the moment of business negotiation regarding the sale/mortgage/financial flow of the legal entity, can be replaced by another mining product exploited subsequently or even by similar mining products in terms of technical qualities, used to replace the material proposed for sale, for instance, obtained by the entity which makes the exploitation by an alternative method (for example, we can image the case when, due to special technical or environmental factors, we cannot do the exploitation according to the contract terms, and the mining company purchases similar products from third parties to sell them to the end customers, to avoid the application of contractual sanctions).

Practically, the mining product subject to an exploitation license forms a whole, a new entity, being a conceptual unit [7].

Similarly, coming back to the situation of mortgage right previously analysed, we can note that according to Article 2368 of the Civil Code, the movable mortgage can be instated on universalities de facto (sn. the mortgage cannot be instated on a legal universality) [8], formed by movable or immovable assets.

The main problem of such a classification resides from the need to temporarily transfer the ownership right from the State to the private concessionaire entity, in relation to the universality de facto formed by the whole mining material subjected to exploitation in that mining perimeter, so that the latter cannot dispose automatically of the whole quantity, at the coming into force of the exploitation license/permit, but it should be conditioned by certain contract terms or the payment of royalty for the mining product *per se*.

De plano, in the current mining legislation there are no premises of such a conditioning while *de lege ferenda* we propose the adoption of a specific regulation for this purpose.

(iv)Finally, this moment can be held in terms of establishing the legal nature of the mining products as movable assets by anticipation.

In this respect, according to article 540, paragraphs 1-2 of the Civil Code, "*(1) The riches of any kind of soil and subsoil, the fruits not collected yet, the plantations and constructions incorporated in the soil become movable by anticipation, when, by the will of the Parties, they are regarded in their individual nature in view of their detachment. (2). For opposability to third parties, the registration in the land book is necessary"*.

Movable assets by anticipation are those assets which, although they are immovable, the Parties to a legal act regard them as movable in consideration of what they will become in the future [9].

The law considers them movable, considering a future anticipated situation, when they will be detached and will become movable.

It is noteworthy that *"the movable assets by anticipation have a relative movable nature, meaning that these assets are movable only in the relationships between the Parties to a legal act. To third parties, they become movable only after the actual detachment from the substance."* [9]

In this case, at case law level (Decision no. 534 of February 17th, 2015 pronounced in appeal by the 2nd Civil Department of the High Court of Cassation and Justice accessed on 17.01.2025 on the website: https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery[0].Key=id&customQuery[0].Value=122519) we dealt with this legal qualification of mining products subject to exploitation as movable assets by anticipation, which leads to the retention of this nature when we established the conditions of exploitation by license.

However, the situation of the transfer of ownership right of the mining product cannot be held automatically from temporal point of view in the procedure of paying the royalty for this product.

Thus, according to the availability principle of the Parties, the Romanian State by its representatives, respectively the holder of an exploitation license/permit may establish that the exigibility of the time when the obligation to pay the royalty for the mining product extracted is established, should refer to other temporal moments, such as the extraction or primary processing.

In conclusion, the situation of the transfer of ownership right over the mineral resources directly affects the inalienable nature of the public property right over it, which must be regulated at a higher level in the special legislation referring to the present time.

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3.2. Indefeasibility

We hold this second nature of public property particularly relevant in the matter of legal prosecution of mineral resources, in case of an illegal exploitation or an exploitation out of the terms of exploitation license.

From this point of view, the main legal action available to the owner of an asset who loses possession of it is the **claim proceedings**. The claim proceedings are a real action for the recognition of the ownership right, as a means of defence of the dispossessed owner.

Among all the means of defence of the private property right, the claim proceedings are, as it was stated in doctrine, "the most energetical means of defence of the ownership right, because it appears as the legal possibility that allows the owner to defend its real right over the asset and to claim its recovery of possession from the person who acquired it without legal basis." [10]

An interesting definition offered by doctrine is as follows: the action by which the person who claims oneself as holder of ownership right over an asset, but does not have material possession of it, *sues the person who has material possession of the asset, asking the Court to recognize his/her ownership right, and following this recognition, to recover the material possession of the asset*" [11]. Concisely, we claim often that the claim proceedings are the action of the non-possessive owner against the possessive non-owner [12].

The claim proceedings are set out by article 563 of the Civil Code. Thus, the asset can be claimed not only from the possessor, but from any other person who holds it without right (i/e/ a precarious holder).

The provisions of article 563, paragraph 2 of the Civil Code set forth that the claim proceedings are imprescriptible, as a rule, normative txt applicable by virtue of article 865, paragraph 3 of the Civil Code to the public property right.

If the person is a precarious holder, the owner has available two actions: (i) a personal action, generated by the contract signed with the precarious holder (concessionaire); and

(ii) a claim action. The claim action can be exercised only by the holder of the ownership right, and in this case by the Romanian State by the Ministry of Finances, in this context, in trial we believe that the National Agency for Mineral Resources and the National Agency for Natural Protected Areas do not have active capacity to stand trial.

The claim action is a real, petitionary and imprescriptible action [10]. Being a real action, the claim action can be initiated against any person who holds an asset without right.

Being a petitionary action, it is different from the possessory action because, for admission of claim proceedings, it is necessary to establish the existence of the ownership right, which in the matter of mining resources is established *ope legis*.

The effects of admission of claim action are indicated in Article 566 of the Civil Code, these effects are mainly the following: (i) the respondent is obliged to return the asset; (ii) the respondent will be obliged to return fruits and products; (iii) the claimant will be obliged to return the necessary expenses for the taxation of fruits and products; (iv) return of useful expenses.

We hold that these effects strictly concern the situation of mineral resource illegally exploited, **the cessation of the concession contract represents the second level of analysis (being in this case an element which entails contractual liability)** which is not the subject matter of this exposition.

As for the first effect indicated above, following the admission of the claim action, the respondent will return the asset in kind. Therefore, the asset will become the patrimony of the claimant free of any encumbrances instated by the respondent on the asset (including the mortgage situation previously treated).

A legitimate question appears when the asset perished and cannot be returned in kind.

In doctrine it was shown that in this case, "the restitution obligation changes into an indemnification obligation. *Thus, if the asset perished by the fault of the respondent or was alienated, the respondent will be obliged to pay the claimant the indemnification. When the asset perished by fortuitous case or force majeure, the respondent will not owe indemnification, regardless of whether he/she was a good-faith or bad-faith possessor."* [12] If the asset perished or was alienated, the indemnification will be granted in the matter of civil tort liability. [11]

However, we note that in such a situation, in relation to the restitution principle mainly in kind, given that the mineral resources are fungible assets, the respondent entity that is obliged to restitution can provide similar assets, of the same technical quality.

Article 566, paragraph (2) of the Civil Code sets forth that the bad-faith possessor and the precarious holder will be obliged, upon request, to return the fruits produced by the asset. *Per a contrario*, the good-faith holder will not be obliged to restitution of the fruits. A good-faith possessor can be strictly the co-contractors of holders of exploitation licences, regarding the transfer of ownership, who were subject to bad-faith manoeuvres in view of establishing the contractual relationship.

As for products, the Civil Code is clear: both the good-faith holder and the bad-faith holder must return the products or their countervalue (Article 566 paragraph (1) of the Romanian Civil Code).

To the extent that it requested the restitution of fruits and products, the Romanian State will have to return the necessary expenses for their production and collection, according to Article 566 paragraph (6)-(7) of the Civil Code, the respondent has **a lien on the products until the restitution of expenses,** unless it offers a sufficient guarantee.

We hold that in Mining Law there is no special norm derogating from this situation.

The Romanian State can be obliged to return the respondent the necessary and useful expenses incurred with the asset, but the owner cannot be obliged to return the voluptuary expenses incurred in view of obtaining the mining product.

According to the mining legislation, we noted that the claim action can always be used by the Romanian State as a measure of protection of its own exclusive ownership right.

In fact, the imprescriptible nature has a concrete valence in the matter of acquisition, no private entity can claim the acquisition of ownership right over the mineral resources by the good faith possession of movable assets or usucapion on the immovable assets which represent mining perimeters.

Also, the mining products cannot be acquired by occupancy, according to Articles 941-947 of the Civil Code, and the fruits that they could produce cannot be acquired by the good-faith holder of a frugiferous asset (art. 948, Civil Code).

3.3. Immunity from distraint / seizure

The mining products which make the object of public property are also immune from distraint / seizure; they cannot be prosecuted by the creditors of the Romanian State for the accomplishment of their receivables. The State is considered solvable, its receivables over the asset are guaranteed and its assets cannot be prosecuted, especially the mineral resources.

The immunity from distraint operated in the hypothesis that the asset is held by another person than the Romanian State, according to the exercise of an administration or concession right, such as the acquisition of an exploitation license.

In the immunity nature falls the interdiction of creating securities on the assets of public property, in this case, concrete clauses must be established directly by the exploitation license or the concession agreement.

Or, from this point of view, the transfer of ownership right of the mining resources from the public property to the private property must be concisely regulated. We mention that this case doubles the guarantees for the mining works, for the constructions or machinery used for the exploitation itself.

The legislative gaps concerning this issue can make it difficult for the private entity who wants to initiate a mining project, because it is in inferiority position in the relationship with the Romanian State.

4. Conclusions

The ownership right over mineral resources, assigned *ope legis* to the Romanian State exclusively, can be transferred according to the legal incidental provisions in favour of private entities. The method of transfer, the time of transfer and its consequences represent however practical unknown matters to the legal practitioners, the current legislation does not provide sufficient norming elements.

The lack of regulations and the normative overlapping in some places, as well as the affluence of practical cases represent as many attempts as possible to obtain an overview of the concise way in which the mining exploitations can be made in Romania.

Under the terms of evolving the need to make the national mining resources exploitable, we must synthesize these legal elements, which can only be based on technical elements due to the specificity of the field.

Or, at the basis of valorisation of mineral reserves of Romania resides the ownership right over them, which must be understood effectively in the plenitude of its attributes.

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