Are Certain Minerals Still Under State Monopoly?

HISTORY OF STATE MONOPOLY

When the Mining Law No. 6309 was in effect during the 1950s, exploration and operation of minerals were open to private entities.

During the '80s, the government enacted Law No. 2840, and subjected boron salts, uranium, thorium, asphaltite and trona to the State monopoly. The licenses issued for these minerals under Law No. 6309 were to be canceled. These minerals under Law No. 2840 were to remain in the text of the older Law No. 3971, the terms “thorium” and “uranium” to the State monopoly. Hence, some service procurement agreements were cancelled. It is also observed from the reasoned rulings that not all of the judges of the Council of State (Danıştağ) share the same view. This dissention between the judges has led to disruptions in the activities of Eti Maden, resulting in losses of exorbitant sums.

For the purpose of clarifying the ambiguity, Eti Maden proposed a draft amendment to Law No. 2840, which is currently in the agenda of the Turkish Grand National Assembly. The draft in question explicitly lists the works to be carried out for the procurement of services with respect to boron salts.

CONCLUSION

We believe that outsourcing mining activities by way of service procurement does not constitute a violation of the “State monopoly”, as State monopoly does not mean that any and all activities shall be strictly carried out by the State, since the State preserves ownership over products and license zones. However, as an ambiguity has arisen, a clarification is necessary. Thus, with good reason, the draft amendment has been proposed. This amendment does not change the course of implementation; rather, it merely clarifies the implementation adopted by Eti Maden for the last twenty years.

Since Eti Maden proposed this amendment solely for boron salts as a clarification of the status of boron salts was urgently required, the ambiguity will still remain for uranium and thorium. In our opinion, there is no doubt that uranium and thorium can be explored and operated by private entities. However, in order to avoid any confusion that might be faced in the future, as Eti Maden faces for outsourcing mining activities with respect to boron salts, this draft amendment is a good opportunity to finally remove “uranium” and “thorium” from the text of Law No. 2840 as well.

REFERENCES

1) Published in the Official Gazette No. 8655 dated 11 March 1954.
2) Published in the Official Gazette No. 18076 dated 13 June 1983.
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