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ON THE ISSUE OF IMPROVING THE LEGAL REGULATION OF SUBSOIL USE RELATIONS IN THE KYRGYZ REPUBLIC

Abstract: This article examines the basic legal documents regulating relations in the field of subsurface use in the Kyrgyz Republic, identifies problems and identifies the main directions for improving the legislation on subsurface resources, taking into account foreign experience. The author emphasizes the modern legal regulation of subsurface use relations in the Kyrgyz Republic, which is carried out by regulating a significant number of normative legal acts of various legal force, which can be differentiated by the following three levels.

Key words: natural resources, the system of interaction between companies of the mineral resource complex and the state, regulatory acts regulating subsurface use, mining legislation, legislation on subsurface use, mining law, mining industry, subsurface use.

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Introduction

The territory of Kyrgyzstan is rich in natural resources with high potential for development. To date, Kyrgyzstan has identified manifestations of deposits of metals, non-metals, and combustible minerals that are accounted for by the state balance sheet. The main natural resources extracted in Kyrgyzstan are gold, silver, mercury, antimony, tin, rare earths, tungsten, iron, aluminum, copper, coal, non-metallic materials, as well as underground thermal and mineral waters. Extracted natural resources are the basis of the country's industrial production, the mining industry provides more than 8.5 percent of Kyrgyzstan's GDP, more than 50 percent of the country's industrial production and exports, and more than 15 percent of tax revenues (2017).

The existing system of interaction between mineral resource companies and the state with the current legislative and regulatory acts regulating subsurface use, together with the current tax regime, does not provide favorable conditions for processing

raw materials and increasing the share of added value produced within the Republic.

Modern legal regulation of subsurface use relations in the Kyrgyz Republic is carried out by regulating a significant number of normative legal acts of various legal force, which can be differentiated by the following three levels.

First level. Acts of the highest legal force. These include the Constitution, constitutional laws and laws, which are the basic Law of the KR "ON subsoil", dated may 19, 2018 No. 49, Law of the KR "on agreements ON production sharing in subsoil use" dated April 10, 2002, No. 49, Law of the Kyrgyz Republic "On coal" dated 3rd February 1999, No. 18, the Law of the Kyrgyz Republic "ON oil and gas" dated 8 June 1998 and a number of other laws regulating relations in the sphere of possession, use and disposal of the state subsoil Fund.

Second level. Subordinate legislation includes regulations and orders of the Government of the Kyrgyz Republic and decrees of the President of the Kyrgyz Republic, which is also very much, such as: regulations on the procedure for subsoil use licensing

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approved November 29, 2018. The resolution of the Government of the Kyrgyz Republic No. 561, the Resolution of the KR Government "ON the draft laws of the Kyrgyz Republic "On subsoil", "On concessions", "On mining concession", "On agreements on production section", "On amendments and additions to the Tax code of the Kyrgyz Republic" and "On amendments and additions to the Land code of the Kyrgyz Republic" dated 15 December 2009, № 759 "On precious metals and precious stones" dated may 14, 1998 No. 61 and other materials.

Third level. Regulatory legal acts of ministries and departments issued within their competence, such as the State Committee for industry, energy and subsoil use, the State Agency for Geology and mineral resources, the State Agency for architecture, construction and housing and communal services, the State Inspectorate for environmental and technical safety, the State customs service, etc., for example: Regulations "on the State Committee for industry, energy and subsurface use of the Kyrgyz Republic (as amended by resolution of the government of the Kyrgyz REPUBLIC No. 549 of October 16, 2019).

However, the current legal acts regulating subsurface use contradict each other. The case is in the lack of attention to existing rules, experts say. Companies that could have been engaged in field development for a long time have not yet received a license from the state Committee for industry, energy and subsoil use of the Kyrgyz REPUBLIC. Experts speak about the consequences of the adoption in November 2018 of the new law of the Kyrgyz REPUBLIC "on subsoil". The draft document was initiated by the previous government. In its original form, the articles of the law prohibited the extraction of loose gold in riverbeds. However, after repeated "redrawing" in the Jogorku Kenesh, the law took a different form: "the right to use the subsoil is not granted in cases when such use of the subsoil will be carried out in the channels or on the banks of border rivers and other reservoirs. When applying for the right to use mineral resources in riverbeds or on the banks of rivers and other reservoirs, the applicant additionally attaches to the application the consent of the authorized state body for emergency situations and the Ministry of agriculture, food industry and melioration of the Kyrgyz REPUBLIC (Department of water management)," reads paragraph 8 of article 22 of the law of the Kyrgyz REPUBLIC "on subsoil" [1].

This applies to all minerals without exception. The situation almost completely paralyzed the procedure for issuing licenses, since it is not an easy task to get the necessary permits from the Ministry of emergency situations and the Department of water management. It turns out that almost the entire territory to be developed, one way or another may fall under the ban. Perhaps for this reason, neither the Ministry of emergency situations nor the Department

assumes responsibility to allow mining. And if there is no consent of these bodies – there will be no right to use the subsoil. The issuance of licenses in Gecomprimeerde suspended. The fact that this definitely does not help attract investors and does not benefit the mining industry of Kyrgyzstan, we can not even say. It is also likely that the new law may call into question even the legality of mining pebbles – after all, they are deposited in riverbeds and may also fall under the definition of "mining". If the Department of water resources gives permission, it may violate water laws, and who wants to be held responsible? The fact is that the law "on subsoil" is completely inconsistent with the water code of the Kyrgyz REPUBLIC [2]. The water resource formation zone is not marked. According to experts, the problem will be solved by bringing the Water code in line with the law "on subsoil", so that passing procedures do not create internal contradictions and do not stop work. However, it is necessary to clearly specify the criteria that determine whether it is permissible to carry out any work on the banks of reservoirs in certain cases. Our legislation does not really protect nature, and at the same time harms business development. Therefore, when writing bills, it is necessary to take into account existing norms.

In turn, mining enterprises in some regions of the Republic face serious obstacles from local authorities when allocating land for the development of deposits. This situation arises due to the inconsistency Of the law "on subsoil" and the Land code. For example, the existence of a license for the development of mineral resources does not yet give the right to operate the land plot above the field [3]. In the regions of the Kyrgyz REPUBLIC, there are also significant differences in the procedure for granting the right to use mineral resources, and there is no single principle for classifying minerals as common.

Such disorganization in the mining legislation of the Kyrgyz Republic can be eliminated by improving the current legal framework.

Currently, there are discussions among domestic legal experts about which branch of law should regulate the relations of subsurface use and whether there is a need to allocate such an independent branch as mining law.

In this regard, it should be noted that the legal norms regulating the entire range of relations related to the geological study, use and protection of mineral resources retain their unity and consistency with the norms of other branches of law, including the norms of administrative, financial, land, environmental, etc. taking into account the specifics of subsurface use relations (special sources, method of legal regulation).

The appearance in the domestic legal system of such a new branch as mining law is an important event not only for the development of law as a science, but also for the state, which seeks to avoid the negative

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consequences of improper exploitation of mineral deposits at the legislative level.

To assess the current level of development of domestic mining law and identify certain distinctive features and shortcomings in it, a comparative legal analysis of its main provisions was carried out against the background of existing norms of mining law in foreign countries.

1. Thus, according to the branch division, the Western system of law does not correspond to the concepts of dividing law into legal branches and legal institutions adopted in Kyrgyzstan. In foreign law, it is generally accepted to divide the system of law into public and private law, where the first regulates the relations of the state with citizens and other subjects of law, and the second is related to the sphere of personal interests of citizens and private associations. In the system of law of the Kyrgyz Republic, another division has become universal, based on the allocation of material and procedural branches of law, where the former regulate the rights and obligations of subjects, and the latter establish the procedure for considering criminal and civil cases.

2. For this reason, among the subjects of mining law in foreign countries, there are subjects of mining relations of public law, i.e. legal entities with state authority, such as departments of France, States of the United States, Brazil, Federal lands of Germany, etc. [4]. They can also function as public corporations that are created and liquidated in a permissive or administrative manner. The second category of subjects of mining law is made up of subjects of mining relations of private law, formed by private individuals on the basis of the norms of mining and civil law, created, as a rule, on a voluntary basis in a normative-explicit or permissive manner. There is no such practice of division of subjects in Russian mining law.

3. since the core of mining legislation is the regulation of subsurface use relations, therefore, it should clearly define the object and subject of their regulation. They can be both minerals and their deposits, as well as those relationships that arise in the process of using the subsoil. In the domestic mining law, the subsurface resources and the resources contained in them are allocated as the object of relations. However, the law of the Kyrgyz REPUBLIC "on subsurface resources" of may 19, 2018, firstly, does not define the concept of "subsurface resources", and secondly, these resources themselves are not fully listed, although the relations associated with their use are subject to mining law.

4. Speaking about the internal structure of the mining law industry, it is impossible not to pay attention to the fact that in Western countries, the ownership rights to a Deposit or a subsoil plot depend mainly on the ownership rights to the land plot located above the Deposit. In the Kyrgyz Republic, however, this dependence is not observed due to the existing

absolute monopoly of state ownership of mineral resources and the lack of development of the Institute of private property related to land ownership. However, as in the system of foreign mining law, there is a division of natural resources into related and non-related land plots. For this reason, the main criterion for distinguishing between minerals extracted by the mine method and those extracted by the quarry method is determined. Although, in contrast to domestic legislation, there is a division into legislation on mines and legislation on quarries, which constitute independent sub-branches of mining law. This division has traditionally developed in France, England, Germany, and a number of other Western countries.

Due to the fact that domestic mining law is still developing into an independent branch of law, it is still difficult to compare it with the well-established mining law of foreign countries, but the application of their experience in regulating mining relations can allow us to quickly overcome the lag of our legislation from the needs of highly efficient development of natural resources.

Also, one of the ways to improve interaction between the state and companies in the mineral resource complex is to create a unified regulatory framework that ensures efficient use of mineral resources and simplifies the economic activities of mining enterprises, which can be implemented in two ways [11].

The first way to improve the regulatory framework is to increase the number and detail of by-laws and administrative regulations. It is based on a local solution to the problems of regulating mining relations and does not have a systemic nature.

The second way is much more promising, which allows regulating relations within mining law on a unified basis and on a systematic basis, and contains in one act the entire set of legal norms necessary for the exploration, development and reclamation of deposits. This would significantly increase the investment attractiveness of the mining industry itself and give an impetus to achieving a world level [9]. However, this path is in turn the most difficult, since the codification of mining legislation will require significant internal processing of all regulatory material [10].

At the same time, the structure of the subsoil code should consist of two parts: General and special. The General part should contain legal norms that are common to all types of subsurface use, and the special part should consist of sections that would regulate public relations that arise in each type of subsurface use [5].

It would be more appropriate if the subsoil Code of the Kyrgyz REPUBLIC regulated the relations of subsurface use in full. The French mining code, adopted by the National Assembly on may 26, 1955 and entered into force on August 16, 1956, is an

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example of This. To date, it consists of 2 books (from the General and special subsurface use regime) and 208 articles dealing with all aspects of mining relations.

It should be emphasized that the General and special mining law of France, in contrast to the domestic legal framework for subsurface use, does not regulate relations related to the rights and obligations of entrepreneurs, as well as persons managing mining enterprises, and also relies more on private law institutions and civil law relations [12].

At the same time, as in Kyrgyzstan, the French mining legislation is characterized by a high degree of intervention of administrative authorities in the activities of the subsurface user, where an active role is played by such bodies as the mining administration and the mining police, whose goal is to monitor compliance with numerous standards in the field of labor protection, ecology, and so on. Similar bodies exist in our country, such as the State Inspectorate for environmental and technical safety.

It can be particularly noted that article 83 of the Mining Code of France explicitly States that exploration and mining are carried out on the basis of an administrative permit [6].

At the same time, mineral exploration itself is carried out free of charge with the consent of the owner of the site or on the basis of the permission of the Ministry the French mining industry, which has the form of a license. Made a commercial discovery has the right to apply for concessions to develop the

field, which will be considered on a competitive basis, i.e. if a third party offers more favorable conditions for exploitation of the Deposit, the agreement may be concluded with that party if the payment of compensation to the person who made this discovery [7]. Also of particular interest is the provision spelled out in art. 25 of the French Mining Code, according to which a concession can only be granted after a public opinion poll and consultation with the management of the relevant local authorities. Putting the interests of citizens first, article 29 (3) of the French Mining Code provides state guarantees for all rights and obligations of the concessionaire in the event of its disappearance or bankruptcy.

Having thoroughly considered the mining law of France, we can conclude that the codification carried out in 1956 regulated in detail not only the General provisions and principles, but also created common mechanisms and legal instruments used by the subjects of such legal relations.

In conclusion, it should be noted that these recommendations do not exhaust all areas of development and improvement of legal regulation of subsoil use relations in the Kyrgyz Republic, but they can be taken into account when developing an economic mechanism for interaction between the state and companies of the mineral resource complex in the context of the need to reorient the raw material orientation of the Kyrgyz economy to innovative development [8, 11].

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