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Legal Liability Issues for Mining Damages

1. Introduction

Mining activities constituting the whole of consisting undertakings involving the exploration, mining and processing of mineral resources is one of the anthropogenic activities causing negative transformation of the environment. Retention of deposits under developed areas and intensify their acquisition posed and continue to pose (even after the end of exploration) risks associated with the existing surface. Underground mining operations adversely affect the areas covered by its direct influence.

Negative aspects associated with the transformation of the area connect with the formation of defects in the infrastructure and facilities management area. This applies primarily to urbanized areas where mining activities are carried out often directly under buildings. It is in these areas may occur to those damages, so-called mining damage. A number of issues of legal nature is being associated with these problems, directly issue of liability for damages.

This article attempts to analyze the issue of liability for damages caused by mining facilities, according to legal status with the advent of the amendment to the Act of 9 June 2011 Geological and Mining Law (hereinafter abbreviated: g.m.l.). A considerable part of the publication is devoted to the legal construction of responsibility for damages caused by mining plant operations. Issues related to the premises of this responsibility, those responsible for the damage and their means of redress. In addition, it was also shown some aspects of the scope of compensation, changing with the upcoming changes g.m.l. The article pointed at connections of procedures of pursuing claims on account of appearing mining damages with other branches of the law.

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2. Comparison of Selected Legal Aspects in the Field of Compensations

Geological and Mining Law as the basic instrument governing the issue of damages over the years underwent considerable change in this scope. Procedures for claims arising from mining damage are fundamentally different from the previous regulations. The rules of substantive law and procedure for redress have significantly changed [2]. In order to show the changes taking place over several years, starting with the original version of their records, since 1953 in Table 1 was shown selected issues, the most important in terms of claims arising from mining damage.

Table 1. Comparison of selected aspects of legal provisions from the scope of compensations

Period of validity	Legal act	Redressing damage	Expiration date	Adjudicating institution
1 Dec 1953–1 Sept 1994	Decree of 6 May 1953, Mining Law [Journal of Laws 1953, no. 29, item 113]	1. Compensation for damage by restoring the property or its component to the previous state. 2. If reinstatement is not possible, then: a) the granting of building a replacement (if the property owner is the state administration body, b) the compensation of monetary in the amount of the difference between the value of the building before the damage occurred mining and the value of the building damaged by mining or acquisition of the damaged property	1 year from the date of discovering the damage	District Committee Damage Mining Appeal Committee Damage Mining (second instance)
1 Sept 1994–1 Jan 2012	Act of 4 February 1994, Geological and Mining Law [Journal of Laws 1994, no. 27, item 96]	1. Compensation for damage by restoring the previous state. 2. The payment of compensation only when it is not possible to comply with paragraph 1 or the cost of restoring exceed the amount of the damage suffered	3 years from the date of discovering the damage	The entrepreneur performing the mining plant activity-condition to exhaustion an amicable settlement proceeding Court of general jurisdiction (second instance)
1 Jan 2012–until now	Act of 9 June 2011, Geological and Mining Law [Journal of Laws 2011, no. 163, item 981 with amendments]	The ability to choose redressing the damage by: restitution, or cash compensation	5 years from the date of discovering the damage	

Source: based on [1, 7, 10]

According to the information contained in Table 1 the rules which permit seeking compensation along with any upcoming changes usually they favored applying for compensation for mining damage. First of all the deadline aging claims was extended and also the choice of remedying the damage was enabled. This important change, added an amendment dated 9 June 2011 meant that the applicant is entitled to choose redress through restitution (natural restitution) or payment of monetary compensation. So far remedy rests on the authority determining the matter. Today, the choice of method for repairing damages filed by the aggrieved is binding.

Another important modification in the Act of June 4 1994 g.m.l. was change in the institution deciding on the compensation proceedings. Until then a decision whether to grant or dismiss the petition take the District Committee Damage Mining or Appeal Committee Damage Mining (second instance), which were based on the opinions of experts. These authorities commissioned the execution of the expert opinion to the fact the share of mining in the uprising occurring damage. Now, in accordance with Art. 151 g.m.l., the first stage of the claim is an attempt at an amicable settlement between the entrepreneur, whose activities contributed to reveal the damage and the aggrieved. Only the failure of the tests settlement is a prerequisite for the admissibility of legal proceedings.

There is no doubt, however, that the most important factor in this type of proceedings is appropriate to identify and determine the damage caused mining in relation to the property, and its components. In this matter the current g.m.l. does not define clearly the issue. In contrast to the original wording of the law, where

> [...] the mining damage has been defined as the damage was caused by mining operations in real estate, building or other real estate components, as well as devices for feeding or removing water, gas, electric power and railway lines and other similar devices connected to the property, regardless of whether the damage was foreseeable and whether anyone is to blame failure [1].

Although the lack of this kind of writing does not preclude claims arising from e.g. damage of the technical infrastructure, though imprecision in this regard may imply difficulties in the way of proceedings for damages. This issue was raised in the judgment of the Supreme Court of 9 January 2014 [12], which states supposedly term 'damage' occurring in g.m.l. pointed to the need to modify the Civil Code in this regard. Compatible in this matter, case law assumes that

> [...] the damage in the legal sense is any harm in someone's possessions, which the law binds rise to liability for damages. It amounts to the difference between the current state of the property insurance and the state which would arise if not the harmful event occurred [12].

Another aspect, which can be ascribed to the damage, as the negative effects associated with the activities of mining companies, are spatial development plans adopted for the mining areas. Records of these plans may, for example, deprive property owners located in areas the impact of mining capabilities built or significantly influence their decline in value. The decision on this issue expressed judgment of the Supreme Court dated 22 September 2011 [11]. It stresses that there is no relationship between the provisions established in the spatial development plan of

the mining plant. It also states that the responsibility for impairments suffered by the owner or by the inability to limit the use of the property as usual in connection with the adoption or change of the local plan shall be borne by the municipality [9]. In summary, according to the above, there is no connection between the negative impact of mining activities, and shaping the policy of spatial properties located in the areas of their influence, authorizing pulling the mine to liability.

3. The Entity Responsible for the Damage and Premises of This Responsibility

The issue of compensation is an important socio-economic issue, both for property owners and mining companies. Act g.m.l. states that the aggrieved cannot claim the discontinuation of mining or oppose it in any way. Mining damages are thus inevitable, but in no case do not remain without consequences. As is apparent from the Art. 144 of the Act g.m.l. compensation may be applied by both the owner and the other entity, whose property rights have been threatened by a mining plant. It is also noted the need for a mining plant in accordance with the rules laid down in the Act. The basic document certifying the compliance of its operations with the requirements of the law is a concession. The license entitles the entrepreneur to carry out work in the area resulting from the ownership of mining. In addition, the application of these rules is possible if the activity is conducted in accordance with the terms of the license. Criterion compliance operation of the facility is also a kind of guarantee for entrepreneurs in order to against him could not have been direct claims prevention. In the case of causing damage by the company, it remains only proceedings to claim damages [3]. If, however, these circumstances do not apply, the legislature provides for the application of the principles set out in the Civil Code. On the other hand, the recording Art. 439 of the Civil Code specifies that in order to ward off the imminent danger permitted to use claims prevention. Therefore, it should be noted that although g.m.l. strongly appeals to the Civil Code, the protection in terms of the analyzed regulation is narrower than the Civil Code defines it.

For the emergence of civil liability for damage caused by mining plant operations, it is a necessary cumulative occurrence of three conditions:

- **events**, which involve the obligation to repair the damage,
- **damage**,
- **causal link** between the event (mining works) and injury.

Case law formed the view that the basic condition for applying compensation for mining damage is to demonstrate a causal link between the activities of the mine and the damage occurred [3]. In addition, an important issue indicated in g.m.l. is a specified directory of persons liable for the equipment failure. The first is the entrepreneur leading the movement of mining plant, as well as any other entity which conducts activities regulated by g.m.l. This provision derives in fact from the general

regulation on the basis of proceedings for damages, including Art. 415 of the Civil Code "who with his fault caused damage to another is obliged to redress" [5]. In a situation where the perpetrator cannot be identified, it is up to the entrepreneur, who on disclosure of the loss had a concession to carry out mining activities. However, if there is both an entrepreneur and his successor liability for damage shall be borne by the State Treasury, represented by the competent mining supervision authority. The directory of mining regulators was strictly defined in Art. 164 g.m.l. and as shown by the provisions of the Code of Civil Procedure, and shall take legal proceedings for the Treasury with which the associated asserted claims [6]. In case the damage occurred for other reasons than the movement of the mine, the responsibility of all parties is joint and several.

4. The Methods of Repairing Damage

Damages repairing are governed by the Civil Code and may be made in the manner established by the aggrieved. One of the ways is a natural restitution, involving the restoration of the previous state, such as it was originally. This can be achieved by providing land, buildings, equipment, premises, water or other goods of the same kind [10]. However, if restitution is impossible, or the cost of restoring the damage exceeds the value of the claim for damages can be made by cash compensation. It is also permissible for partial remedy by restitution original state, and in part by the payment of benefits in cash. Cited regulations due to changes dictated more by the solutions of the Civil Code, including Art. 363 of the Civil Code [3, 5].

The legislator also anticipated the situation restore the state before the damage to agricultural land and forestry, which have been degraded/ devastated due to mining. For such cases, the provisions contained in the Act of 3 February 1995 on the protection of agricultural and forest land. According to the provisions of this Act,

> [...] the land reclamation is meant granting or restoring degraded land or devastated utility or natural value through appropriate landscaping, improving physical and chemical properties, regulating waterways, regenerating soils, strengthening scarps as well as constructing or reconstructing necessary roads [8].

Any corrective action in this respect is derived essentially from this definition, it means that restoring the original state is done through their rehabilitation. There is no clear case law defining the manner of conducting the repair of damage in relation to the quoted definition [3].

In a situation where the aggrieved made an effort to repair the damage, the person responsible is obliged to take into account the costs incurred in the payment of compensation. It should be mentioned that the legislator defines the notion of spending by using the phrase "reasonable effort". In this case, the costs incurred by the aggrieved should be interpreted as a necessary expense for the repair of the damage. The aggrieved may claim within 5 years from the day of finding out about the damage.

5. The Admissibility of Judicial Proceedings

Before the issue of repairing the damage will be brought to court in the first investigation followed claims by attempting to reach a settlement. This is a mandatory condition, which precedes a possible referral of the matter to court. The legislator described the two conditions that must be satisfied in order for the settlement procedure to be considered ineffective: the trader has refused settlement or referral of the aggrieved person's claim against the entrepreneur 30 days had passed. In addition, according to records g.m.l. agreement should be concluded in the form of a notarial deed in accordance with the provisions of the Code of Administrative Procedure. The agreement shall be construed in accordance with its definition, the mutual concessions which make a page within the existing legal relationship between them, in order to avoid a potential dispute [5]. Detailed terms of the settlement are governed by Art. 114–122 c.a.p.

Based on their content, it highlights the basic conditions for a settlement [4]:

- favor the nature of the case,
- simplifying and expediting the procedure,
- no conflict with other laws.

Importantly, the agreement may be concluded only in an administrative authority in which the proceedings are pending. The initiative to its conclusion may experience the same legal institution or parties, but it is incumbent on the body striving for an amicable settlement of the case. Conciliation can both at first instance and on appeal, provided that all pending by the decision in the case. In a situation when one of the parties withdraws from the intention of the settlement, the authority to rule on the case by means of an administrative decision. The settlement is concluded in written form, in addition the Administrative Procedure Code specifies the required elements that must contain, in particular: the designation of the authority in which it was concluded, the parties, the subject and content of the agreement, etc. [4]. The most important issues are to determine the subject and content of the agreement. With regard to the particular circumstances of proceedings for compensation for mining damage, it should be clarified with the case against which proceedings were in progress and content of the rights and obligations of the parties as a result of the approved settlement. Generally, the legislature enacts the rule of freedom of contract, which includes the freedom to shape their content [3]. However, there are special cases imposed by the Act authorizing the authority to refuse to perpetuate the agreement, namely [4]:

- settlement has been concluded in violation of the law,
- settlement did not include the obligatory position of another body,
- settlement against the public interest or the legitimate interests of the parties.

However, the effects of correctly concluded an administrative repercussions identical with the decision made during the administrative procedure, thereby

having a commensurate rank agreement replaces the resolution of the case in the form of a decision. On validation of the settlement agreement produced an execution condition, both voluntary and involuntary, according to the findings of the administrative enforcement proceedings.

To summarize the procedure to claim compensation for damages mining below shows the sectional course of action, in accordance with the contents of the existing records g.m.l.:

I. **The request** to entrepreneur
   – form of compensation:
     • repair damages in buildings / soils and crops through restitution or
     • compensation.
II. **The decision** merits of the request (recognition of the existence of a causal link between the damage and kept or made by mining activities.
III. **Inspection**
   – made in the presence of the applicant by a representative of the mine having professional qualifications relevant to the subject matter,
   – preparation of the record of the inspection, along with photographic documentation.
IV. **Settlement** – if agreement is reached between the aggrieved and the mining plant, then determined the costs of claims; the settlement is necessary to take appropriate remedial work or possibly pay compensation.
   In the case of exhaustion of the amicable settlement proceeding, the aggrieved has the possibility to refer the matter to court, then:
V. **The request** to the local due to the disclosure of the damages court.
VI. **The expert opinion** of the fact determining the scope of influence of the movement of mining on the property.
VII. **Court judgment.**

6. Conclusions

On the issue of real estate in mining areas there are related a variety of issues, including issues raised in the article, the problem of valuation of these properties, difficulties concerning the transformation of these areas, etc. Based on conducted analysis of legislation in the field of compensation, as well as a review of the literature on the subject, a view is crystallizing for complexity of the issues which are mining damage. The multidimensionality of the problems of this phenomenon obligated to bring some aspects of the wider area of considerations, mainly because of the numerous g.m.l. connections with other branches of law (Fig. 1).

Strong connections of the geological and mining law with other branches of law, many times pose a challenge by way of its interpretation. The rules relating to the issue of damages does not constitute a comprehensive regulation in this area,

there are frequent problems with its interpretation [3]. It is deciding, in the process, about complications on land of compensatory processes with which numerous social groups touched with adverse effects of the mining activity are contending

Fig. 1. Connection the geological and mining law with other branches of law

It is important for the fact that the mining industry which is a form of human activity, actively interfering in the transformation of the environment. Damaged buildings, roads, technical infrastructure contribute to the deterioration of living conditions, which in turn imply a series of legal actions. Due to the escalation of the problem, it becomes necessary to search for comprehensive solutions enabling protective actions, as well as education for people living in mining areas. These activities should take into consideration the technical aspects, as well as legal and administrative. These issues are related to the relevant aspects of the negative effects of mining activities. These actions can constitute one of the attributes that contribute to the acceleration of the procedure for compensation, as well as to avoid recourse to legal action. There is no doubt that an amicable settlement of the dispute stays in the business of both the entrepreneur, and the aggrieved.

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