

# Are Certain Minerals Still Under State Monopoly?

## HISTORY OF STATE MONOPOLY

When the Mining Law No. 6309<sup>1</sup> 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<sup>2</sup>, 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.

In 1985, Mining Law No. 3213<sup>3</sup> (the "Min-ing Law"), which repealed Mining Law No. 6309, came into effect. Exploration and operation of *thorium* and *uranium* mines after the effective date of the Mining Law were made subject to the Mining Law, and as a result, the State monopoly was abolished with respect to *thorium* and *uranium*.

Since no change was made with the Mining Law with respect to *trona* and *asphaltite* mines, these mines were still under the monopoly of the State. As the expected efficiency of the operation of these mines could not be obtained and many zones remained inactive as an outcome of the State operation of these mines, the minerals *trona* and *asphaltite* were removed from the scope of Law No. 2840 by Law No. 3971<sup>4</sup>, in other words, they are no longer subject to the State monopoly.

As a result of many subsequent changes, the government reached the intended result and kept boron salts under its monopoly and opened thorium, uranium, trona and asphaltite mines to private sector.

## CAN RADIOACTIVE MINERALS BE OPERATED BY THE PRIVATE SECTOR?

After the changes enacted by Law No. 3971, the terms "*uranium*" and "*thorium*" remained in the text of the older Law No. 2840 and this caused confusion as the intended result was not to maintain these mines under the State monopoly. Hence, in practice, despite the contradiction in the relevant legislation, the General Directorate of Mining Affairs has been issuing licenses

for *uranium* and *thorium* mines pursuant to the Mining Law.

We believe that interpretation is ambiguous based on the wording of the Law No. 2840. However, when the intentions of the lawmaker and the implementing governmental authorities are taken into consideration, the operation of *uranium* and *thorium* mines should be subject to the Mining Law, i.e., operated by the private sector. The intent and purpose of the lawmaker is evident since the Mining Law explicitly revoked the State monopoly on *uranium* and *thorium* mines imposed by Law No. 2840. Also, the Mining Law is the most recent legislation; due to the general principle of law (lex posterior derogat legi priori) the latter law shall supersede the prior law.

## DRAFT LAW ON BORON SALTS

There is no doubt that *boron salts* are still under State monopoly. Eti Maden (Eti Mine Works), a state economic enterprise holding the boron licenses in Turkey, outsources the majority of its operations. However, some NGOs have been filing lawsuits claiming that mining operations cannot be outsourced due to the State monopoly over *boron salts*. Most of these cases have been settled in favor of Eti Maden; however, 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 (*Danıştay*) 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* mines. 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 has faced 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

- <sup>1</sup>) Published in the Official Gazette No. 8655 dated 11 March 1954.
- <sup>2</sup>) Published in the Official Gazette No. 18076 dated 13 June 1983.
- <sup>3</sup>) Published in the Official Gazette No. 18785 dated 15 June 1985.
- <sup>4</sup>) Published in the Official Gazette No. 21854 dated 19 February 1994.

## CONTACTS

**Şebnem Önder<sup>1</sup>, Ayşe Eda Biçer<sup>2</sup>, Işıl Selen Denemeç<sup>3</sup>**

Çakmak Avukatlık Bürosu  
Attorneys at Law

**Address:** Piyade Sokak, Portakal Çiçeği  
Apt. No: 18, C Blok, Kat: 3, 06550, Çankaya -  
Ankara - Turkey

- <sup>1</sup>) Partner, Çakmak Avukatlık Bürosu
- <sup>2</sup>) Associate, Çakmak Avukatlık Bürosu
- <sup>3</sup>) Legal Intern, Çakmak Avukatlık Bürosu

**Phone:** +90 (312) 442 46 80

**Fax:** +90 (312) 442 46 90

**Website:** cakmak.av.tr