The Impact of Poland's Democratic Transition on Mining Law: the Evolution of Mineral Resources Ownership and Extraction Rights

BŁAŻEJ TAZBIR[1]
Ph.D. student, University of Miskolc,
Central European Academy
E-mail: blazej.tazbir@centraleuropeanacademy.hu

ABSTRACT
This research paper delves into the evolution of mining legislation in Poland, with a particular focus on the ownership of mineral deposits and the rights associated with their extraction. The analysis centres upon two pivotal periods in the nation's history: first, the era of the Polish People's Republic (hereinafter PRL), during which the political and economic order was dictated by Soviet-style totalitarian regime; and, second, the subsequent transition to democracy, marked by the ascendancy of private ownership and the establishment of a free-market economy. The study commences by examining the nationalisation of the mining industry after the Second World War and the enactment of the 1953 Mining Act. This Act reinforced state dominion over mineral extraction, yet notably failed to address the issue of mineral ownership. The inquiry then proceeds to consider the transformative repercussions of the democratic transition upon these issues. Legislative reforms in this period provided clarity on mineral ownership and introduced a concession licensing system, thereby enabling private entities to engage in mining activities. This regulatory shift proved instrumental in facilitating the engagement of non-state actors in the extraction of minerals of critical importance to Poland's economic growth and national strategic interests. By juxtaposing the legal frameworks of the PRL with those of the democratic transition, this paper underscores the enduring significance of mineral deposits in Poland's development, while illuminating the nation's progression towards economic liberalisation—albeit tempered by the continued supervisory role of the state over key resources.
KEYWORDS
Mining law, ownership of mineral deposits, extraction of mineral deposits, property rights, Polish People's Republic, democratic transition, economic transformation.

1 ORCID: 0009-0005-1948-4839.

Impactul tranziției democratice a Poloniei asupra legislației miniere: evoluția proprietății resurselor minerale și a drepturilor de exploatare

REZUMAT
Această cercetare explorează evoluția legislației miniere în Polonia, cu un accent deosebit pe proprietatea zăcămintelor minerale și drepturile asociate exploatării acestora. Analiza se concentrează pe două perioade din istoria Poloniei: epoca Republicii Populare Polone (denumită în continuare PRL), unde sistemul politic și economic a fost modelat de o dictatură de tip sovietic, și faza ulterioară a tranziției democratice, caracterizată prin trecerea către proprietatea privată și o economie de piață liberă. Studiul începe prin examinarea naționalizării industriei miniere după cel de-al Doilea Război Mondial și introducerea Legii Miniere din 1953. Această lege a consolidat controlul statului asupra extracției minerale, fără a aborda problema proprietății resurselor minerale. Cercetarea analizează apoi impactul transformator al tranziției democratice asupra acestor aspecte. Reformele legislative au clarificat regimul proprietății asupra resurselor minerale și au introdus sistemul licențelor de concesiune, care a facilitat implicarea entităților private în activități miniere. Acest sistem a fost esențial pentru a permite actorilor non-statali să extragă resurse minerale semnificative pentru creșterea economică a Poloniei și pentru interesele sale strategice naționale. Comparând cadrele juridice ale PRL și ale tranziției democratice, această lucrare subliniază rolul zăcămintelor minerale în dezvoltarea Poloniei și tranziția către liberalizarea economică, menținând totodată rolul de supraveghere al statului asupra resurselor esențiale.
CUVINTE CHEIE
Dreptul minier, proprietatea zăcămintelor minerale, exploatarea resurselor minerale, drepturi de proprietate, Republica Populară Polonă, tranziție democratică, transformare economică.

I. INTRODUCTION

Poland is a country endowed with a considerable wealth of mineral resources,[2] and accordingly, the mining industry has long stood as one of the most vital sectors of its economy. The earliest traces of mining on Polish lands date back to the 2nd–5th century B.C., when flint was quarried and fashioned into tools.[3]

By the mid-13th century, the extraction of rock salt had commenced in Bochnia and Wieliczka. Both mines operated under the enterprise *Żupy krakowskie*[4] and emerged as

2 The notion of *mineral resources* will be used interchangeably with the term *mineral deposits* in this research paper.
3 Kazimierz Piesiewicz (1981): Górnictwo, in Antoni Mączak (ed.): *Encyklopedia historii gospodarczej Polski do 1945 roku*, Wiedza Powszechna, Warszawa, p. 209.
4 *Żupa* is the Old Polish word for salt mine, meanwhile the adjective *krakowskie* was used because both salt mines were located close to Kraków – the city that was the capital of Poland from 1038 to 1795.

the largest production facility in Poland, serving as a principal source of revenue for the Polish Crown across the centuries.[5]

During the period of the partitions in Poland, the mining industry—particularly the extraction of hard coal in Upper Silesia—underwent significant expansion, marking a defining phase in the region's industrial growth.[6] It is therefore unsurprising that, following Poland's restoration of independence, considerable efforts were made to unify the fragmented mining legislation, a legacy of the partition era.[7] These efforts culminated in the enactment of the 1930 Regulation of the President of the Republic of Poland—Mining Law.[8]

This regulation introduced the concept of *mining property,* which, in principle, could be acquired through vesting by any individual legally capable of acquiring ownership of the land, as determined by the prevailing legislative framework.[9] The notion of mining property encompassed minerals classified under the category of *mining will*—those not intrinsically tied to land ownership. However, an exception to this principle applied to minerals enumerated in Article 1 (2) of the 1930 Mining Law, which could only be vested as mining property to the state. Consequently, during the period of the Second Polish Republic, the legal framework governing mining rights was relatively liberal, permitting private individuals to obtain mining property beyond the confines of land ownership, save for minerals deemed of strategic significance to the state.

With the outbreak of the Second World War, the Second Polish Republic effectively ceased to exist. Throughout the war, communist factions gradually consolidated their influence within Poland, marking the nascent stages of a profound political transformation. As part of this ideological shift, ownership structures in Poland were redefined in alignment with the Soviet-style dictatorship's ideological opposition to capitalism, which sought to curtail private property. These changes extended to the mining industry, a sector of paramount importance to the Polish economy. Following reforms to mining legislation, the constructs of *mining property* and *mining will* were abandoned, supplanted by alternative legal mechanisms. *The right to extract* mineral deposits was introduced, yet the matter of mineral ownership was largely disregarded.

During the late 1980s and early 1990s, Poland embarked upon a democratic transition that ultimately precipitated the collapse of the Soviet-style dictatorship. Though this transformation was chiefly political in nature, it also served as a catalyst for

5 Marek Tarabuła (2017): *Historia Wyższego Urzędu Górniczego na tle dziejów nadzoru górniczego na ziemiach polskich*, Wyższy Urząd Górniczy, Katowice, p. 11. Available at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwioud7YsK-CAxX22QIHHTRVCwEQFnoECA0QAQ&url=https%3A%2F%2Fwww.wug.gov.pl%2Fdownload%2Fhistoria_nadzoru_broszura%2C3722.pdf&usg=AOvVaw0i7gWSXH0hQZHUsLRoJdxp&opi=89978449 (accessed on 29.11.2023).

6 Jerzy Jaros (1973): *Historia Górnictwa Węglowego w Polsce Ludowej (1945–1970)*, Państwowe Wydawnictwo Naukowe, Warszawa–Kraków, p. 18.

7 Aleksander Lipiński, Ryszard Mikosz: Rozwój Ustawodawstwa górniczego w Polsce w latach 1918–1939, *Prawne problemy górnictwa*, 6/1983, pp. 83–105, pp. 83, 93.

8 The Regulation of the President of the Republic of Poland of 29 November 1930 Mining Law, Dziennik Ustaw (Law Gazette)1930, No. 85, item 654.

9 Art. 16 of 1930 Regulation of the President of the Republic of Poland – Mining Law.

far-reaching economic reforms. Central to this economic realignment were the establishment of a free-market system, the influx of foreign capital, and a restructuring of ownership models with an emphasis on the expansion of private property rights. These sweeping changes extended to the legal frameworks governing mining law, particularly with respect to the ownership of mineral resources and the rights pertaining to their extraction. New legal mechanisms were introduced to facilitate greater participation by private entities in this vital sector of the economy.

The impact of Soviet-era political doctrine, as well as the subsequent democratic transition, upon the legal arrangements concerning mineral ownership and extraction rights, will form the subject of further analyses.

II. MINING LEGISLATION DURING THE PERIOD OF THE POLISH PEOPLE'S REPUBLIC

1. Nationalisation of the mining industry after the Second World War

On 1 January 1946, an Act came into force mandating the transfer of key sectors of the economy into state ownership.[10] The new law led to the nationalisation of mining and oil industry enterprises, as well as mining and oil property. Although the pre-war legal framework governing remained formally intact, the creation of new mining or oil property was henceforth restricted to state entities—effectively, state-owned enterprises. Notably, the mineral deposits themselves were not nationalised, leaving their legal status unresolved.

Contrary to public perception, the situation remained unchanged after the adoption of the Constitution of 1952.[11] While Article 8 did declare that "*national property: mineral resources, waters, national forests, mines [...] is subject to the special care and custody of the state and all citizens,*"[12] scholarly consensus held that this provision did not, in itself, effect nationalisation.[13] Rather, its purpose was to establish the state's and the wider community's obligation to safeguard and manage national property in the broadest sense.[14] Additionally, the described provision identified those means of production that, if not already in state ownership, ought to become the exclusive state

10 Act on taking over the essential branches of the economy into state ownership of 3 January 1946, Dziennik Ustaw (Law Gazette) 1946, No. 3, item 17 with amendments.

11 The Constitution of the Polish People's Republic of 22 July 1952, Dziennik Ustaw (Law Gazette) No. 33, item 232 with amendments.

12 After the 1976 amendment to the Constitution, this provision was expressed in Article 12.

13 Antoni Agopszowicz: Prawo wydobywania kopalin, *Ruch Prawniczy Ekonomiczny i Społeczny*, 3/1966, pp. 21–45, p. 21.; Aleksander Lipiński: Własność złóż kopalin, *Studia Cywilistyczne*, 1977, pp. 175–200, p. 186.

14 Jan Wasilkowski (1969): *Prawo własności w PRL. Zarys wykładu*, Państwowe Wydawnictwo Naukowe, Warszawa, p. 41.; Emanuel Iserzon: Prawo państwa do dysponowania kopalinami, *Annales Universitaitis Mariae Curie-Skłodowska*, *Sectio G, Ius*, 3/1957, pp. 155–266, p. 239.

property. It follows, therefore, that the precise scope of scope of state-owned property could not be inferred from constitutional provisions alone but had to be determined through specific legislative enactments.[15]

Another step in the modernisation of mining law and its alignment with the framework of a centrally planned economy was the adoption of the Mining Act[16] in 1953. This new legislation was founded upon the principle of the socialised management of mineral resources and their extraction. The whole regulatory framework was designed to be fully compatible with the prevailing economic plans and political ideology, which prioritised industrialisation and projected a significant expansion in mineral extraction, especially in hard coal production.[17]

2. The right to extract mineral deposits

One of the main controversies widely debated in legal scholarship following the introduction of the new Mining Act was the absence of a clear determination regarding who exactly the owner of the mineral resources is.[18] Rather than addressing this fundamental question, the provisions of the Mining Act focused primarily on the right to extract mineral resources. According to Article 5 of the 1953 Mining Act, "*the right to extract minerals serves exclusively for the state, unless the Mining Act provides otherwise.*"[19] However, the opaque nature of this provision, combined with the prevailing system of property relations that strongly favoured state ownership, rendered it impossible to ascertain which entity was legally entitled to ownership of mineral resources.[20]

A critical question, deemed essential for an adequate understanding of the legal norm expressed in Article 5, was raised in the literature shortly after the introduction of the 1953 Mining Act. The debate centred on whether the exclusive right of the state to extract minerals applied to all mineral resources or only those explicitly governed by the Mining Act. Some legal scholars argued that the discussed norm concerned all mineral resources, including those not expressly covered by the Mining Act.[21]

15 Wasilkowski (1969): p. 41.; Lipiński (1977): p. 187.

16 Decree of 6 May 1953 on mining law, Dziennik Ustaw (Law Gazette) 1953, No. 29, item 113 with amendments. Although this legal act was formally issued as a decree, it is frequently referred to as the "*Mining Act*" in academic literature. To ensure consistency with prevailing nomenclature in the subject literature, this terminology will be adopted throughout this text.

17 Aleksander Lipiński (2019): *Prawne Podstawy Geologii i Górnictwa*, Wolters Kluwer, Warsaw, p. 24 et seq. Available at: https://sip.lex.pl/#/monograph/369457093/8?keyword=w%C5%82asno%C5%9B%C4%87%20&tocHit=1&cm=SREST (accessed on 29.11.2023).

18 The issue has been addressed, among others, in: Aleksander Lipiński: Uprawnienie do wydobywania kopalin, *Prawne Problemy Górnictwa*, 1979, pp. 107–130, pp. 107–108.; Jan Stefanowicz: Regulacje prawa geologicznego i górniczego a efektywność wykorzystania zasobów złóż kopalin, *Polityka Energetyczna*, special issue 2/2007, pp. 159–175, p. 165.; Agopszowicz (1966): p. 24 et seq.

19 In the primary version of the 1953 Mining Act, indicated regulation was expressed in Article 4.

20 Ryszard Mikosz: Ewolucja prawnej regulacji dotyczącej korzystania z zasobów naturalnych wnętrza ziemi w kontekście przemian ustrojowych w Polsce, *Górnictwo i Geoinżynieria,* 3/2010, pp. 17–31, p. 21.

21 This legal assertion was adopted in: Agopszowicz (1966): p. 27.

This interpretation was founded on the belief that the principle expressed in Article 5 constituted a fundamental legal rule, referring to Article 8 of the 1952 Constitution. According to this view, the omission of such a principle from Article 1 of the 1953 Mining Act was merely a legislative oversight.[22] Proponents of this argument pointed out that, like Article 5, Article 8 of the Constitution made no distinction between the mineral resources subject to the Mining Act and those falling outside its scope. Additionally, they maintained that if, pursuant to Article 1 (4) of the Mining Act,[23] the Council of Ministers was empowered to determine by decree which mineral resources were subject to the Mining Act, this authority could derive solely from Article 5. In fact, the Council of Ministers could exercise this power expressed in Article 1 (4) without restriction only if the state's exclusive right to extract minerals extended to all mineral resources.[24] Ultimately, however, this interpretation was refuted after the legislative changes of the Mining Act, which clarified the issue and provided a definitive resolution to the uncertainty.

3. The scope of applicability of the Mining Act after the 1977 amendment

The legal uncertainty surrounding Article 5 of the Mining Act appears to have stemmed from the flawed legislative technique employed during its drafting.

Fundamentally, aside from Article 1 (4), the only provision that could be interpreted as defining the scope of the Act's applicability was Article 1 (1). This provision stated that the Mining Act set out the rules and conditions for the extraction of minerals found in natural deposits. Based on this wording, one might have reasonably assumed that all mineral resources fell within the Act's purview.

However, in 1977, the Mining Act was amended,[25] which notably altered its approach to this issue. One of the most consequential revisions was the introduction of the new content of Article 3 (1), which named *expressis verbis* mineral resources subject to the Mining Act. Furthermore, Article 3 (2) paragraph 1 granted the Council of Ministers the authority to expand or narrow the list of minerals falling under the Act's jurisdiction. The described change clarified the prevailing uncertainties, reinforcing the interpretation that the state's exclusive right to extract minerals, as expressed in Article 5, applied solely to the mineral resources expressly listed in the Mining Act.

4. Ownership of mineral resources

As noted at the outset of this chapter, the Mining Act did not determine who held ownership of mineral resources within the country. Furthermore, the 1977 amendment to the Act introduced no provisions that would have clarified this matter. This legislative

22 Agopszowicz (1966): p. 27.
23 In the primary version of the 1953 Mining Act, the indicated regulation was expressed in Article 1(2).
24 Agopszowicz (1966): p. 27.
25 The Act of 26 November 1977 on the amendments to the Mining Law, Dziennik Ustaw (Law Gazette) 1978, No. 4, item 12 with amendments.

ambiguity might not have posed a significant issue had the right to extract mineral resources been an exclusive prerogative of the state, entirely independent of land ownership.[26]

However, such an assumption would be erroneous in light of Article 30 of the Mining Act. This provision implied that a mining entity was required to hold a legal title to the land from which mineral resources were to be extracted.[27] Such an approach corresponds to another view presented by the legal doctrine, according to which mineral resources located within the boundaries of a landholding might be considered an integral part of that land.[28] Consequently, unless a particular mineral deposit was not exempted from the scope of land ownership by a *lex specialis*, it remained part of this land. In practical terms, this meant that the landowner was simultaneously the owner of any mineral deposits situated beneath their property.[29]

This conclusion finds support in an analysis of the provisions of the 1964 Civil Code[30] on the matter of land ownership and property. Two provisions, in particular, were of relevance: Article 46 § 1 and Article 143 of the Civil Code. According to Article 46 § 1, land was defined as a section of the earth's surface constituting a separate object of ownership. On the other hand, Article 143 stipulated that within the limits set by socio-economic use of land, ownership of land extends to the space above and below its surface. In the second sentence of Article 143, it was provided that this regulation was without prejudice to the provisions regulating rights to water and rights to mineral resources. This wording indicated that if property rights related to waters and minerals were to be shaped differently under separate legal acts, those provisions would take precedence. Regarding the water resources within the borders of Poland, the exclusive ownership belonged to the state. This principle was explicitly derived from Article 1 of Water Law,[31] which established that all waters constitute state property.

As previously noted, the 1953 Mining Act did not introduce analogous provisions which would determine *expressis verbis* whether mineral resources were owned by the state or any other entity. Therefore, the property rights over mineral deposits had to be determined by reference to the Civil Code provisions, as outlined above.

From this legal framework, it follows that ownership of the mineral deposits located within the boundaries of privately owned land, in principle, belongs to the landowner. However, this conclusion gives rise to a more complex question: who owns mineral deposits situated outside of any land ownership within what is known as the Earth's crust? Some legal scholars posited that minerals found within the Earth's crust were

26 This view was presented by some of the representatives of the Polish legal doctrine, e.g. in: Wiktor Pawlak (1963): *Podstawowe systemy prawa górniczego*, Wydawnictwo Naukowe Uniwersytetu Adama Mickiewicza, Poznań, p. 153.

27 Antoni Agopszowicz (1974): *Zarys system prawnego górnictwa*, Państwowe Wydawnictwo Naukowe, Warszawa, p. 68.

28 Zygmunt Nowakowski (1969): *Prawo rzeczowe. Zarys wykładu*, Państwowe Wydawnictwo Naukowe, Warszawa, p. 33.; Agopszowicz (1966): p. 29.; Lipiński (1977): p. 187.

29 The only exception to this rule was groundwater, which was exclusive state property. This rule could be derived directly from Article 1 of the 1974 Water Law; Lipiński (1979): pp. 114–116.

30 The Act of 23 April 1964 Civil Code, Dziennik Ustaw (Law Gazette) 1964, No. 16, item 93.

31 The Act of 24 October 1974 on water law, Dziennik Ustaw (Law Gazette) 1974, No. 38, item 230.

not subject to ownership by any entity and should therefore be regarded as *res nullius*—ownerless property.[32]

This interpretation, however, was not widely accepted in legal doctrine. The first and most fundamental objection stemmed from the principles underpinning the economic and political system of the Polish People's Republic. It was inconceivable that mineral deposits in the Earth's crust, which are of decisive importance for the economic development of the country, could exist without an owner in a socialist state.[33] A further counterargument was rooted in civil law principles. It was based on the premise that the Earth's crust should be considered immovable property. Under Article 180 of the Civil Code, only movable property could constitute *res nullius.* Additionally, pursuant to Article 179 § 2 of the Civil Code, immovable property that had been effectively relinquished by its owner automatically became state property.

By this reasoning, immovable property must always be a subject of ownership, whether an owner is a private entity or the state. In consequence, since the Earth's crust, which constitutes immovable property, could not be owned by any private entity, it belonged to the state.[34]

Regardless of the precise legal reasoning adopted, the prevailing consensus among legal scholars during the era of the Polish People's Republic was that mineral resources located outside privately owned land, within the Earth's crust, constituted state property.[35]

5. Extraction of mineral resources by mining companies and private entities

Building upon the conclusions drawn in previous subchapters, it is necessary to clarify how the rule on the extraction of mineral deposits, as set forth in Article 5 of the Mining Act, should have been applied.

A systemic interpretation of the Mining Act's provisions suggests a general rule: the entities entitled to extract the groups of minerals subject to the Mining Act were mining companies. As mentioned earlier, following the adoption of the 1946 Act on the nationalisation of key economic sectors, all mining companies were brought under state ownership.

However, in the versions of the Mining Act preceding the 1977 amendment, mineral resources could also be extracted by cooperatives and non-socialised economy units,[36] provided that they obtained special permission. Such permission could only be granted if the extraction served socially legitimate economic needs and was issued

32 Jan Wasilkowski (1972): *Pojęcie własności we współczesnym prawie polskim*, Książka i Wiedza, Warszawa, pp. 98–99.
33 Agopszowicz (1974): p. 66.
34 This argument was presented in: Lipiński (1977): p. 195.
35 Agopszowicz (1966): p. 29.; Lipiński (1977): p. 192.; J. Ignatowicz: Przemiany prawa własności w świetle przepisów kodeksu cywilnego, *Studia Cywilistyczne*, 13–14/1969, p. 77.
36 The notion *non-socialised economy units* referred to an economy unit in which the dominant form of property was the private property.

by the competent authority of the praesidium of the provincial national council.[37] Additionally, the Council of Ministers retained the authority to issue executive orders specifying which minerals, in which areas, that is, in the whole territory of the state or within particular areas of the state, and under what conditions, a landowner was permitted to extract for personal use.[38]

The 1977 amendment to the Mining Act brought significant *novum,* especially regarding the extraction of minerals by cooperatives and non-socialised entities. In the amended version of the act, Article 5 (1) non-state units of the socialised economy were permitted to extract only those minerals explicitly indicated in Article 3 (2) of the Mining Act. This effectively meant that the mineral resources of strategic and economic relevance, listed in Article 3 (1), could only be extracted by the state-owned companies. Despite these changes, the provision that enabled a landowner to extract the minerals—subject to the conditions outlined in an executive order of the Council of Ministers—remained in force.[39]

6. The mining area

A legal act that had a significant influence on the exercise of certain rights by landowners was the decision on the establishment of a mining area. This act delineated a zone within which a mining company was authorised to extract the deposits of indicated minerals.

The boundaries of the mining area were defined by the surface lines of the land and the vertical planes passing through them, extending to the depth of the mineral deposit.[40] The commencement of mining operations and the extraction of minerals could only take place once the mining area had been established.[41] The authority responsible for creating a mining area was vested in the Minister of Mines.[42] The legal act of the establishment of the mining area was understood as an administrative decision, grounded in the provisions of the Code of Administrative Procedure.[43]

37 Article 5(1–2) of 1953 Mining Act, Dziennik Ustaw (Law Gazette) 1953, No. 23, item 113.
38 Article 6 of the 1953 Mining Act, Dziennik Ustaw (Law Gazette) 1953, No. 23, item 113.
39 Article 6 of 1953 Mining Act (after 1977 amendment), Dziennik Ustaw (Law Gazette) 1978, No. 4, item 12.
40 Lipiński (1977): p. 196.
41 Article 22 of the 1953 Mining Act, Dziennik Ustaw (Law Gazette) No. 4, item 12.
42 § 15 and §20 of Regulation of the Council of Ministers of 27 March 1954 on mining areas, Dziennik Ustaw (Law Gazette) 1954, No. 14, item 52. Later, the Regulation of Council of Ministers of 30 November 1965 on mining areas, Dziennik Ustaw (Law Gazette) 1965, No. 54, item 332, slightly amended the existing provisions in such a way that the authority responsible for the decision to establish a mining area for a specific mineral occurring in a natural deposit or a deposit was the minister with jurisdiction over the intended extraction of that mineral in economic plans (§ 10); subsequently, another regulation on mining areas slightly amended the existing provisions, specifying that the authority responsible for the decision to establish a mining area for a specific mineral, found in a natural deposit or geological formation, would be the minister with jurisdiction over the intended extraction of that mineral as outlined in economic plans. (§ 10 of the Regulation of the Council of Ministers of 30 November 1965 on mining areas).
43 The Act of 14 June 1960 Code of Administrative Procedure, Dziennik Ustaw (Law Gazette) 1960, No. 30, item 168; Lipiński (1977): p. 96.

The conclusions drawn from the preceding section indicate that, with the exceptions specified in the Mining Act, the mining company was the only entity authorised to extract mineral deposits. Moreover, the right to extract minerals was intrinsically linked to land ownership, in that the exercise of this right required a separate legal title to the area from which mineral deposits were to be extracted. It could not be exercised only on the basis of the decision concerning the mining area.

In light of these considerations, if the landowners wanted to extract the minerals subject to the Mining Act, they would need to *become* a mining company, for which a decision establishing a mining area would need to be issued in their favour. In practice, however, most private—particularly natural persons whose land contained mineral deposits subject to mining law—were unable to extract such minerals. This, in turn, meant that they were effectively precluded from exercising some of the rights covered by the land ownership.[44]

Nevertheless, this did not signify that the right to extract minerals had lapsed for the landowner. The circumstances in which an owner was unable, due to factual or legal reasons, to exercise certain rights did not lead to their termination. The right remained intact and could be exercised once the adverse conditions had ceased.[45]

Another critical consideration was that the establishment of the mining area within the boundaries of certain land did not result *ex lege* in the transfer of land ownership or mineral deposits' ownership to the mining company. A mining company could only acquire ownership of the land through a separate, appropriate legal act.

III. MINING LEGISLATION IN POLAND DURING THE PERIOD OF DEMOCRATIC TRANSITION

1. General information and provisions

In the late 1980s and early 1990s, Central and Eastern Europe embarked on the process of democratisation, a shift that was profoundly reflected in social and political landscapes. Poland stood at the forefront of this transformation. The ideas of democratisation began to take tangible form with the enactment of the Act of 29 December 1989 on amendments to the Constitution of the Polish People's Republic.[46]

The direction of changes was immediately evident in Article 1 (1) of the aforementioned act, which renamed the Polish Constitution from the Constitution of the Polish People's Republic to the Constitution of the Republic of Poland, thereby founding the Third Republic.

44 Lipiński (1979): p. 116.
45 Wasilkowski (1969): p. 106.
46 The Act of 29 December 1989 on amendments to the Constitution of the Polish People's Republic, Dziennik Ustaw (Law Gazette) 1989, No. 75, item 444.

Regarding the political system, the most significant provisions were found in Article 1, Article 2 and Article 5 of the amended Constitution.[47] The first of the provisions stated that "*[t]he Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice.*" From Article 2, it could be derived the norm, which established that "*supreme power in the Republic of Poland shall be vested by the Nation*" (section 1) and that

> *"the Nation shall exercise such power directly or through their representatives elected to Sejm, Senate and national councils, while the exercise of power is also carried out through the expression of will by way of referendum, the rules and procedure for the holding of which shall be specified by legal act" (section 2).*

The final key provision in this transformative process was Article 5, which affirmed that "*[t]he Republic of Poland guarantees the participation of local self-government in the exercise of power and the freedom of other forms of self-government.*"

The Constitution of 1952 lost its validity with the enactment of the so-called Small Constitution of 1992[48]. Ultimately, this was superseded by the 1997 Constitution of the Republic of Poland,[49] which remains in force to this day.

In order to maintain a proper course for the democratic transition, changes at the constitutional level had to be followed by adjustments in the lower levels of the hierarchy of the legal acts among various branches of law. On 1 January 1989, the Act on Economic Activity came into force,[50] which established the rule of "economic freedom." The primary goal of this legislation was to stimulate economic expansion by encouraging private-sector growth. More specifically, it allowed state-owned enterprises, private entities, or individuals to engage in economic activities. Furthermore, the law emphasised the equal significance of all the sectors within the economy. However, certain activities, owing to their specific nature or strategic significance to the country's economy, or due to their hazardous practices, required a concession licence issued by the state authorities. Most of the activities governed by the Mining Act were subject to this licensing requirement.[51]

Another key aspect of the democratic transition in Poland was the introduction of foreign capital. Foreign investments were regulated by the 1991 Act on Companies with Foreign Participation.[52] The act facilitated foreign investments and provided a more flexible

47 Mikosz (2010): p. 18.

48 The Constitutional Act of 17 September 1992 on mutual relations between the Legislative and Executive Powers of the Republic of Poland and on self-government, Dziennik Ustaw (Law Gazette) 1992, No. 84, item 426.

49 The Constitution of the Republic of Poland of 2 April 1997, Dziennik Ustaw (Law Gazette) 1997, No. 78, item 483.

50 The Act of 23 December 1988 on Economic Activity, Dziennik Ustaw (Law Gazette) 1988, No. 41, item 324 with amendments.

51 Aleksander Lipiński, James Otto: Polish Mineral Legislation and Policies in Transition, *Journal of Energy and Natural Resources Law*, 1/1993, pp. 17–26, p. 18.

52 The Act of 14 June 1991 on Companies with Foreign Participation, Dziennik Ustaw (Law Gazette) 1991, No. 60, item 263 with amendments.

approach than was allowed under the prior legislation. According to its provisions, creating a company with foreign investment did not require government approval, and most activities were regulated similarly to those of Polish-owned companies. The 1953 Mining Act also treated Polish and foreign investors equally, with concession licence rights and obligations remaining unchanged regardless of the owner's nationality.[53]

2. Ownership of mineral resources

The political and economic changes also had a profound impact on the Mining Act, culminating in its amendment in 1991.[54] The revised version of the act provided greater clarity regarding property issues considering mineral resources.

A pivotal provision introduced by the amendment to the Mining Act was Article 5. Article 5 (1) explicitly stated that mineral resources were the property of the State Treasury, thereby imposing a limitation on the rights of landowners. This limitation applied to the extent that mineral resources were components of the given plot of land, they remained subject to the property right vested in the land.

Conversely, the State Treasury's ownership extended to all deposits located beneath the lower boundary of the real estate, namely, in the Earth's crust.[55] This principle found further legal grounding in the provisions of the Civil Code.[56] According to Article 46 § 1 of the Civil Code, real estate was defined as a section of the earth's surface constituting a distinct object of property (i.e., land). However, Article 143 of the Civil Code specified that ownership of land extended both above and below its surface, but only within limits determined by the socio-economic purpose of the land. From this, it followed that real estate was a spatial entity only to a finite depth beneath the earth's surface, beyond which ownership rights did not apply.[57]

In Article 5 (2), the legislator further defined the scope of the mineral resource property rights vested in the State Treasury. The aforementioned provision stated that

> *"within the limits established by legal acts, the State Treasury, with the exclusion of other persons, shall use mineral resources mentioned in section 1, in accordance with the social and economic purpose of its right and may issue the concession licence[58] for mining to other subjects."*

When comparing these legal provisions to those implemented under the Soviet-style dictatorship, it becomes evident that the structure of ownership over mineral resources did not undergo substantial transformation. While it was systematised and *expressis*

53 Lipiński, Otto (1993): p. 18.
54 The Act of 9 March 1991 on the amendments to the Mining Law, Dziennik Ustaw (Law Gazette) 1991, No. 31, item 128.
55 Mikosz (2010): pp. 21–22.
56 The Act of 23 April 1964 Civil Code, Dziennik Ustaw (Law Gazette) 1964, No. 23, item 96 with amendments.
57 Tomasz Dybowski (ed.): *System Prawa Prywatnego. Prawo rzeczowe*, C.H. Beck, Warszawa, p. 286 et seq.
58 The right obtained by the holder of a mining concession was a so-called *mining usufruct*.

verbis indicated in the act, it was not significantly liberalised. This continuity underscores the strategic importance of mining in maintaining state stability. As previously emphasised, mineral resources play a fundamental role in ensuring the country's sustainable development. Therefore, the state has a vested interest in retaining control over resources critical to maintaining its proper functioning and economic growth.

Nevertheless, one notable development signals a shift in the paradigm concerning private equity in the post-democratic transition era: the introduction of the concession-granting mechanism. This innovation facilitated the participation of private entities in mining activities, marking a departure from the previous centralised model. The details of this mechanism will be explored in the following subchapters.

3. Applicability of the Mining Act after the 1991 amendment

To fully grasp the changes introduced to the Mining Act following the period of transition, it is necessary to delineate the scope of applicability of the Mining Act after its 1991 amendment. The same fundamental question arises as was posed concerning the legal framework during Soviet-style dictatorship: which mineral resources fell under the jurisdiction of the Mining Act?

Before addressing this issue, it is worth recalling the legal solution adopted when the 1977 amendment to the Mining Act came into force. The legislator, in Article 3 (1) of the act, introduced an exhaustive list of the mineral resources that were subject to the Mining Act. Furthermore, Article 3 (2), paragraph 1, conferred upon the Council of Ministers the authority to expand or narrow the range of minerals governed by the Act. This approach resulted in the distinction between two categories of minerals: those to which the Mining Act applied and those falling outside its scope. This distinction carried significant implications, as it determined whether certain minerals were exempt from state control under Article 5 of the Mining Act. Additionally, it reinforced the principle that minerals not subject to the Mining Act constituted an integral part of land ownership. Notably, this fundamental distinction remained unchanged following the 1991 amendment.

However, the legislator introduced an additional provision to refine the regulatory framework. A new section, Article 3 (3), was appended, stating that for the extraction of mineral resources not listed in Article 3 (1) or those excluded from the Mining Act under Article 3 (2) paragraph 1, the provisions of Article 4 would apply.

Article 4, in turn, set out a procedure for obtaining authorisation to mine such mineral resources. In cases where a legal entity sought to extract a mineral not explicitly included in the exhaustive list of Article 3 (1) or recognised by an executive order, it was required to draft a comprehensive development plan for the mineral deposit. This plan had to be submitted for approval to a designated regulatory body. The specific requirements for drafting the project, as well as the procedural steps for its approval, were to be determined by the Minister of Environmental Protection, Natural Resources and Forestry through an executive order.

This solution marked a conspicuous departure from the legal framework established under the Soviet-style dictatorship. Under the previous legislation, there existed a lack of clarity regarding the extent to which the provisions of the Mining Act applied to mineral resources that were neither enumerated in Article 3 (1) nor included in the executive

orders of the Council of Ministers. This ambiguity left the legal status of such unlisted resources uncertain and failed to establish a clear procedure for their extraction.

4. Introduction of concession licence

Another notable transformation brought about by the 1991 amendment to the Mining Act was the introduction of the concession licence. This regulatory instrument had not been recognised during the period of the Polish People's Republic by the Mining Act. Previously, the sole avenue for a private entity to obtain the right to extract mineral resources was through an executive order issued by the Council of Ministers, which enabled the extraction of certain minerals by private entities or by gaining permission. However, the latter option was strictly limited to minerals not exhaustively listed in Article 3 (1) and such permits were granted exclusively to non-state socialised economy units. Therefore, private entities found it exceedingly difficult to exercise any right to mineral extraction. Furthermore, those minerals deemed essential to the state's economy and thereby subject to the Mining Act remained entirely beyond the reach of private enterprises.

A concession licence was introduced to organise and simplify the process of mineral extraction by private entities, granting them the ability to exploit even those minerals falling within the remit of the Mining Act.

This shift had already begun towards the end of the preceding socio-economic era and was closely related to the emerging economic freedom in Poland. The Act of 23 December 1988 on Economic Activity laid the groundwork for this development, with Article 11 (1), point 1, prescribing that any economic activity involving the exploration and extraction of minerals subject to the Mining Act would require a licence.[59]

The 1991 amendment to the Mining Act subsequently reinforced this principle. In the amended version of the act, Article 5 (2) the State Treasury was empowered to confer its mineral extraction rights upon other parties through the granting of a concession licence.

This mechanism significantly facilitated the participation of private entities taking part in the mineral extraction market. The licensing framework led to the creation of mining *usufruct* in favour of the concession holder, thereby formalising private sector involvement in resource extraction. Notably, the concession licence conferred upon its holder an exclusive right to extract mineral resources within the boundaries defined by the concession.[60]

5. Character of the rights granted by concession licence

The introduction of the possibility to obtain a concession licence for mining, as provided by the 1991 amendment to the Mining Act, was accompanied by a degree of legal uncertainty. In the legal literature, questions arose regarding the basic character of the rights obtained by a concession holder under the Mining Act.[61] Article 12a sought to

59 Mikosz (2010): p. 23.
60 According to Article 12a of the Mining Act after the 1991 amendment.
61 Lipiński, Otto (1993): p. 21.; Mikosz (2010): p. 23.

clarify this by prescribing that "*a concession licence grants an exclusive right to the concession holder to mine a mineral within the prescribed area.*"

The relevant provisions of the Mining Act fostered the understanding that the right to engage in a specified activity existed as an independent right vested in the state. Thus, the concession agencies, acting on behalf of the state, upon granting the concession, effectively transferred the right to undertake the designated activity to the concession holder.[62]

However, in case the concession licence pertained to the mineral resources that were located within the State Treasury property, then the concession's character could be perceived as dichotomous. On the one hand, such a concession constituted an act that conferred upon the concession holder the right to utilise a specific parcel of land. On the other, it served as a mechanism through which the state could exercise its supervisory authority over the activities undertaken by the concession holder.

This issue did not arise when a concession licence was granted to the owner of the land upon which mining operations were to take place. In such an instance, the concession licence was only an act on the basis of which the state could exercise its supervisory role, since the property rights to mineral resources derived from the landowner's existing rights over the land itself.[63]

6. The licensing procedure

In light of the ambiguities surrounding the nature of the rights conferred upon the concession holder following the issuance of the licence, the process of obtaining such a licence was, for the most part, well-defined, though certain aspects remained unclear.

The 1991 amendment to the Mining Act identified three activities for which a concession was required: the extraction of mineral deposits,[64] the tankless underground storage of liquids and gases, and underground storage of waste, including toxic and radioactive debris.[65]

In the case of concession licences for mining mineral deposits, the issuing authority varied depending on whether the deposits were regulated by the Mining Act or fell outside its scope. For the mineral deposits which were subject to the Mining Act,[66] a concession licence was granted by the Minister of Environmental Protection, Natural Resources and Forestry in consultation with the Minister of Industry, planning authorities and competent self-government bodies. The issuance of the licence

62 Lipiński, Otto (1993): p. 21.

63 Lipiński, Otto (1993): pp. 20–21.; Mikosz (2010): p. 23. It is necessary to mention that the concession licence was introduced during the transition period also in another act, namely in the Act of 16 November 1960 on Geological Law, Dziennik Ustaw (Law Gazette) 1960, No. 52, item 303 with amendments. The norm established in Article 16b(1) of this act constituted that the concession licence provides an exclusive right to an economic entity to conduct geological activities, listed in Article 16a, within the prescribed area.

64 Article 12b(1) of the Mining Act after the 1991 amendment.

65 Article 12b(4) of the Mining Act after the 1991 amendment.

66 The same authorities also issued a licence for the extraction of minerals located within the Polish maritime areas [art. 12b(2) of the Mining Act after the 1991 amendment.]

also required the opinion of a concession commission appointed by the concession authority.[67]

By contrast, the extraction of minerals not governed by the Mining Act, as well as the recovery of minerals from post-mining waste accumulated in mining dumps, fell under the jurisdiction of the competent voivode, who issued the relevant concession licence following consultation with the appropriate self-government bodies.[68]

It is crucial to consider this framework within the historical context of the Soviet-style dictatorship. Under the legal order of that era, the extraction activities concerning minerals subject to the Mining Act were exclusively reserved for state-owned companies, with private entities strictly prohibited from engaging in the extraction of minerals deemed essential to the national economy. The legal framework established by the authorities back then did not provide for the involvement of private capital in such operations, reflecting the centrally planned economic policies of the time.

Given these historical and regulatory considerations, the role of self-government in the process of issuing concession licences deserves particular emphasis. The approval of local self-government was a mandatory prerequisite for the issuance of concession licenses not only for the mining of mineral resources but also for other activities regulated under the Mining Act, namely tankless underground storage of liquids and underground storage of wastes, including hazardous and radioactive debris.[69]

The significance of local governments in the licensing process is a clear reflection of the broader trajectory of political transformation following the 1989 transition. During the Soviet-style dictatorship period, local government institutions were relegated to the periphery, with power concentrated in the hands of national councils. The Act of 20 March 1950 on Territorial Organs of Uniform State Power introduced solutions drawn from the Soviet model, abolishing the offices of voivodes and starosts, restricting the principles of self-government, and transferring the powers of these abolished bodies to the national councils.[70] Representatives on these councils were not elected by popular vote, but instead delegated by the Polish Workers' Party and associated organisations.[71]

The political shifts of 1989 were also manifested in the reform of municipal self-governance, initiated by the enactment of the Law on Municipal Self-Government on 8 March 1990.[72] This systemic transformation enabled the reconstruction of local self-government, culminating in the first free local government elections on 27 May 1990. On the grounds of mining law, the restoration of the local self-government's legal and institutional significance was exemplified by its enhanced role in the licensing process for mining activities, which was highlighted by significant scholars.[73]

67 Article 12b(2) of the Mining Act after the 1991 amendment.
68 Article 12b(3) of the Mining Act after the 1991 amendment.
69 Article 12b(4) of the Mining Act after the 1991 amendment.
70 Waldemar Janosiewicz: Samorząd terytorialny w Polsce – zarys historyczny, *Homo Politicus*, 2018, pp. 7–21, p. 14.
71 Gracjana Dutkiewicz: Dzieje Samorządu Terytorialnego w Polsce po II Wojnie Światowej, *Colloquium Wydziału Nauk Humanistycznych i Społecznych*, 2/2010, pp. 193–206, p. 196.
72 The Act of 8 March 1990 on Municipal Self-Government, Dziennik Ustaw (Law Gazette) 1990, No. 16, item 95.
73 See: Lipiński, Otto (1993): p. 22.; Mikosz (2010): p. 25.

Another element in the procedure of issuing the mining concession licence, which indicated the turn in the Polish system and opening up to private capital participation in the state economy, was the introduction of the provision Article 12j in the 1991 amendment to the Mining Act. This provision allowed for the possibility of a bidding round prior to the granting of a concession licence. The rules governing this process were to be specified by the Regulation of the Council of Ministers. However, the concession agency was not bound by the result of the bidding round. Therefore, the agency was not required to grant a winning bidder the concession licence.[74]

The element that brought some uncertainty to the licensing procedure for the mining activities, including the extraction of mineral deposits, was the requirement to conclude a contract between the applicant and the issuing agency. According to the provisions of the amended Mining Act, this contract should have contained specific regulations on the rights and obligations of the parties. The contract shall also be null and void unless made in writing.[75]

This provision faced criticism in the legal literature, as the notion of a quasi-administrative contract preceding an administrative decision was unfamiliar to Polish law and, in some cases, seen as incompatible.[76] The contract had no binding authority and could not serve as a foundation for any claim to obtain a concession licence. One of the primary purposes of a concession granted under the Mining Act was to ensure state supervision over specified geological and mining activities, and this supervision could not be established by contract. All provisions of such a contract had to be incorporated into the concession licence.[77]

Mining concession licences were issued for a fixed term as specified in the licence itself and could be revoked if the concession holder, following notice from the concession agency, failed to comply with the law, neglected environmental protection, or violated the obligations stipulated in the concession licence.[78]

It is important to note that the mining concession licence was considered an administrative decision, which meant it could also be withdrawn, cancelled, or amended under the 1960 Code of Administrative Procedure.[79]

IV. CONCLUDING THOUGHTS

The comparative analysis of the issue of mineral ownership and the right to mineral extraction during the periods of the Polish People's Republic and the democratic transition offers a profound insight into the broader scope of political and economic changes in Poland after 1989.

74 Lipiński, Otto (1993): p. 23.
75 Article 12c (1–2) of the Mining Act after the 1991 amendment.
76 See: Lipiński, Otto (1993): p. 22.
77 Lipiński, Otto (1993): pp. 22–23.
78 Article 12 (k) of the Mining Act after the 1991 amendment.
79 The Code of Administrative Procedure of 14 June 1960, Dziennik Ustaw (Law Gazette) 1960, No. 30, item 168; Lipiński, Otto (1993): p. 24.

The 1946 nationalisation of mining companies reflected the increasing role of the state in controlling the key sectors of the economy. The process of nationalisation of the mining industry culminated in 1953 with the introduction of the Mining Act, which established the state's exclusive right to extract mineral resources governed by the Act. However, somewhat paradoxically, the legislator did not conclusively address the issue of mineral deposit ownership, especially in relation to landowners.

The legal doctrine sought to address this inconsistency in the provisions of the 1964 Civil Code by concluding that mineral deposits located within the boundaries of private land ownership were deemed to belong to the landowner. In contrast, mineral deposits situated beyond the confines of private land, particularly those found in the Earth's crust, were regarded as the property of the state.

However, it should be emphasised that, in connection with Article 5 of the Mining Law, which provided for the state's exclusive right to mineral deposits, private entities were essentially deprived of the ability to extract minerals subject to the Mining Act. While Articles 5 (1) and 6 of the Mining Act did allow for potential private sector involvement in the extraction of minerals, this applied only to minerals not governed by the Act and required the acquisition of a permit or adherence to regulations issued by the Council of Ministers. Accordingly, private entities were entirely excluded from the extraction of minerals of state interest, and the extraction of other minerals was also strictly controlled by the state.

This raises the question of whether the omission of defining mineral ownership under the Soviet-style dictatorship was intentional—in order to create the impression of apparent respect for private property, especially concerning landowners, and prevent potential conflicts between state and private entities—or whether it was simply due to legislative errors.

Considering the political doctrine of the Polish People's Republic and the provisions of the 1952 Constitution of the country[80] and other legal acts,[81] which were, in principle, unfavourable towards capitalism and private property, one must conclude that the first hypothesis is unlikely. Thus, it appears more plausible that the lack of clarity

80 See for example: the Preamble of the 1952 Constitution of the Polish People's Republic, Article 3 (4) of the 1952 Constitution of the Polish People's Republic, which provided that "*Polish People's Republic restricts, displaces and abolishes social classes, living off the exploitation of workers and peasants*."

81 See for example: the Decree of the Polish Committee for National Liberation (PKWN) of 6 September 1944 on carrying out land reform. The Soviet-style dictatorship, under this legislative act, expropriated the properties of many owners, transferring their assets to the State Treasury. Public authorities abused their power by taking legal and factual actions that violated the laws in force at the time. See more: Agnieszka Gralewicz (2015): *Problem własności, przekształceń własnościowych oraz reprywatyzacji na tle dekretu Polskiego Komitetu Wyzwolenia Narodowego*, Uniwersytet Kardynała Stefana Wyszyńskiego w Warszawie, Warszawa, p. 61 et seq. Available at: https://www.academia.edu/66693855/Problem_własności_przekształceń_własnościowych_oraz_reprywatyzacji_na_tle_dekretu_Polskiego_Komitetu_Wyzwolenia_Narodowego_z_dnia_6_września_1944_roku_o_przeprowadzeniu_reformy_rolnej (accessed on 29.11.2023). The resolution of the full Civil Chamber of the Supreme Court of Poland of 26 October 2007, III CZP 30/07. Available at: https://www.saos.org.pl/judgments/86751 (accessed on 20.10.2024).

regarding mineral ownership was a result of negligence in the drafting of legal acts. There remains a third possible option, according to which the legislator, by not explicitly stating that mineral resources were state property, aimed to create the impression that mineral resources constituted a common good.

Nevertheless, the political and economic shifts at the turn of the 1980s and 1990s radically transformed the concept of private property and the participation of private capital in the Polish economy. This prompted a comprehensive reform of the Mining Act in 1991, which addressed the interpretational ambiguities of the 1953 Act.

The reform addressed the interpretational issues stemming from the lack of clarity in the 1953 Mining Act by explicitly establishing, as outlined in Article 5 (2) of the Mining Act following the 1991 amendment, that ownership of mineral deposits belongs to the State's Treasury with the limitation to the rights of the owners of the land.

This solution *de facto* confirmed the thesis presented in the scientific literature of the Soviet-style dictatorship period that mineral deposits located beyond the boundaries of private landownership, specifically within the Earth's crust, constitute the property of the state, while those situated within private land boundaries are considered as the property of the landowner. This approach was, without a doubt, the most appropriate, considering the economic and strategic importance of mineral deposits to the functioning and stability of the state. It should be emphasised, however, that the legislator had also explicitly affirmed its respect for property rights arising from land ownership.

The most significant change in the Mining Act, emphasising the shift toward liberalisation and opening the market to private capital, was the introduction of the concession licence. Although it was not an ideal solution—the legal literature highlighted the unclear character of the rights obtained by a concession holder, as well as procedural inaccuracies in the licensing process, such as the requirement for a contract between the licensing authority and the applicant—the transformative nature of this reform is undeniable. The key outcome of this legislative change was the possibility for private entities to be authorised to engage in the extraction of minerals regulated under the Mining Act. Consequently, private companies which obtained concession licenses were granted the right to mine minerals critical to the state economy's functioning.

The procedure for issuing concession licences reflected not only the process of market liberalisation but also the broader movement towards democratisation and increased public participation in state governance. The market liberalisation aspect was exemplified by the introduction of provisions that allowed concession licenses to be issued through a competitive bidding process. Meanwhile, the democratisation dimension was evident in the mandatory involvement of local self-governments in the licensing process, with the requirement that no concession could be granted without their formal consent.