The Issue of Regional Reserves for Mineral Extraction in the Czech Republic and its Legal Context

Michaela VACHTLOVÁ[1)], Vítězslav URBANEC[1)], Vladimír LAPČÍK[2)], Martin LAPČÍK[3)]

[1)] Czech Mining Authority, Kozi 4, Prague 1, Czech Republic; emails: michaela.vachtlova@cbusbs.cz, vitezslav.urbanec@cbusbs.cz
[2)] VSB –Technical University of Ostrava, Faculty of Mining and Geology, 17. listopadu 15, 708 33, Ostrava-Poruba, Czech Republic; email: vladimir.lapcik@vsb.cz
[3)] Masaryk University, Faculty of Law, Veveří 70, 611 80 Brno, Czech Republic; email: lapcik.martin@gmail.com

http://doi.org/10.29227/IM-2019-02-02

Submission date: *28-07-2019* | Review date: *02-09-2019*

Abstract

The paper focuses on land – use planning (zoning) (hereinafter referred to as "planning") as a part of Building Law, specifically on the issue of regional reserves and their definition in the land use plan (hereinafter referred to as "plan"). There are examples of determination of areas of regional reserves for mineral extraction. At the same time, attention is also paid to potential environmental conflicts that may present regional reserves and the possibilities of their solution. The paper also deals with some links between the institute of regional reserves and the mining claim.

Keywords: land – use planning (zoning), regional reserves, Building Act, Mining Act, mineral extraction, planning documentation

1. Land – use planning (zoning)

Planning is one of the cross-cutting fields of public administration pervading numerous public and private interests that can be applied in a particular territory. Definition of the Planning objective contained is in the current amendment to the Building Act in Section 18 (1): "The objective of planning is to create the conditions for the construction and sustainable development of the territory, consisting in a balanced relationship between conditions for a favorable environment, for economic development and for cohesion in the community of the population of the territory and which satisfies the needs of the present generation without jeopardizing the living conditions of future generations." It may be perceived as a populist proclamation, but it is more than obvious how significant influence on changes in the territory and thus, it has such a document for the realization of investment plans.

Planning – like every other field of human activity – is undergoing some development. Some phenomena or legal institutes are disappearing, while others are entering. The delimitation of areas of regional reserves in planning documents is relatively young in terms of the history of legislation and is linked to the effectiveness of the existing Building Act, i.e. at the beginning of 2007. Until then, the regional reserves in the Building Act were not adjusted.

The principle of regional reserves is based on the provisions of Section 36 of the Building Act, which states: "The principles of the land use development may delimit the area or corridor and determine their use, whose need and area claims must be checked (hereinafter referred to as the "regional reserve"). Changes in the territory are prohibited in the regional reserves [Section 2 (1) (a)], which could make the specified use more difficult or impossible. It is only possible to change the regional reserve for the area or the corridor allowing for the specified use by updating the land use development principles. The evaluation of impacts on the sustainable development of the territory is being elaborated while the utilization of the regional reserve is not assessed in terms of environmental impacts and sites of European importance and bird areas. The provision of Section 43 of the Building Act, which refers to Section 36 for regional reserves in plans, also has its meaning.

Thanks to the aforementioned legal regulation, we can meet the defined areas of regional reserves in planning documentation. Currently these cases are increasing, not only in plans (i.e. at the level of municipalities), but also at the level of the land use development principles, i.e. at the level of regions. However, few in the public, sometimes even in the professional field, are aware of the reasons why areas of regional reserves are defined and, at the same time, what consequences they have on the realization of the investment plan of any investor in areas with a defined geographical reserve.

There is a number of problems for investors as well as for public authorities from the established regional reserves. The question is, above all, limiting the possibility of decision-making by administrative authorities on changes in the territory, which in turn affects virtually all investors, both private investment of individuals into their own housing (family houses) and large development projects (housing complexes, production or storage campuses); the aforementioned limitation also affects publicly beneficial buildings and on the minerals extraction . In the case of mineral extraction, there is no difference between the extraction of minerals reserved or non-reserved.

2. Practical experience with regional reserves

In the previous text, the meaning of the term regional reserve was explained, especially in terms of the legislation in force, and some impacts arising from this regulation were outlined. Here we need to describe the practice more closely in order to create a concrete picture of the importance of

the regional reserves and the potential conflicts associated with them.

Now, let us deal specifically with the issue of the regional reserves for the mineral extraction, i.e. the situation in which the plan is a mineral deposit and on which the regional reserves for the mineral extraction are defined.

If a municipality has a specific area in its plan as a regional reserve for the mineral extraction, it means that this area was not part of the assessment of impacts on the sustainable development of the territory and in terms of environmental impacts and sites of European importance and bird areas were not assessed when the plan was acquired. It also means that until such areas change from regional reserves to so-called "pledged areas" (i.e. areas designed with functional utilization of mineral extraction, production and storage or mixed production areas), it is not possible for administrative authorities to decide on changes in the territory (issue land-use decisions, building permits, or other decisions about changes in the territory, which could make future use of reserve areas considerably more difficult or even impossible. What change in the territory meets the conditions stipulated by law and it is possibility to decide on it (i.e. to issue a zoning decision and a building permit) is the administrative consideration of a particular administrative body (which will most often be the building authority).

Usually, the area of the regional reserves for mineral extraction is defined to verify the possibility of the mineral extraction, with the intention to examine it in particular in relation to other interests and intentions in the territory. However, even here, the rule is that administrative authorities cannot decide on changes in the territory that could make future use more difficult or impossible. Thus, a change in the territory consisting in permitting the mineral extraction with the technology of surface mining can thus appear to be an investment project that cannot make or hinder future use, i.e. the extraction itself. Although we might agree with this idea, however, it is only possible to permit the extraction, including the related basic technical equipment of the territory, when the area of the regional reserve is not defined in the plan. It is unrealistic to attain the decision to permit a surface extraction for a mining organization, at least until the change in the plan, despite the fact that the regional reserve is defined for the mineral extraction. Obviously, this cannot be applied if the mining technology is to be carried out in a deep underground way, because within the existing deep mining there are not only the undeveloped areas but also the entire settlement units or parts thereof, over and above the permitted mining activity and there is a common life and construction.

A more detailed analysis is needed for this case. For several decades, the mining claim has been one of the most important topics of Czech mining law and one of its most important institutes with a very close relationship to the issue of planning and the building code. The mining claim was first introduced by the Mining Act No. 41/1957 Coll. and replaced the traditional lending rates of the mines, surpluses, and surface measures adjusted until then in the General Mining Act (i.e. Act No. 146/1854, Reich Code). Contemporary today Mining Act No. 44/1988 Coll. the Institute of mining claim has taken over and modified it in Sections 24 to 28; the records of mining claims are then dealt with in section 29.

Pursuant to the provisions of Section 24 (1) of the Mining Act, the organization establishes an authorization to extract reserved deposits by establishing a mining claim. It is necessary to understand this provision that only the determined mining claim gives the organization the right to apply for a mining activity permit consisting in the opening, preparation and extraction of reserved deposit covered by the mining claim; this is usually the case only in the future, but if legal conditions are met, it is possible to apply for a mining permit at the same time with a request to set a mining claim. The mining claim also guarantees the organization that the mineral, or the reserved deposit of such a mineral, for which the mining claim is set, will not be conquered by another organization. Consequently, the determination of the mining claim does not imply the permission of mining activities (compare Act No. 61/1988 Coll.), nor does it constitute the granting of a general business authorization to conduct business activities (compare Decree No. 15/1995 Coll.). These three institutes need to be very carefully distinguished from each other.

Act No. 44/1988 Coll. does not contain an explicit definition of what is meant by the mining claim; what is to be understood by this phrase must therefore be inferred from the text of the law. It follows from the law that the mining claim is a part of the Earth's surface defined by a closed geometric figure (polygon), which is intended to extract to a reserved deposit. Its vertices are determined by the coordinates given in the valid coordinate system. The mining claim can also be defined in depth.

Several factors must be taken into account when determining the mining claim and a number of conditions are met. The mining claim is determined on the basis of the survey of the deposit according to the extent, location, shape and thickness of the reserved deposit, taking into account its reserves and storage conditions so that the bearing can be economically recovered. The determination of the mining claim is based on a defined protected deposit area and the mining of adjacent deposits and the influence of mining operations must also be taken into account. The specified mining claim may include one or more reserved deposits, or, if appropriate, only a portion of the reserved deposit, due to the extent of the deposit. The mining claim is determined either for the extraction of a reserved deposit of a certain mineral or for the extraction of a whole group of minerals. At the same time, the decision to determine the mining claim determines which minerals of the reserved deposit will be temporarily deposited. In practice, we can also mention the nature of the anticipated future mining activity (surface, underground, water, etc.).

The mining claim is determined by the relevant District Mining Authority. The law presupposes and this confirms that the mining claim is determined predominantly at the request of the organization submitting the relevant documentation to the application, including the prior consent of the Ministry of Environment.

The decision to determine the mining claim is also a decision to change the land use to its extent on the surface. This statement, set out in Section 27 (6) of the Mining Act, binds the mining law with the building law and its objective is to ensure that mining of to a reserved deposit is a priority in a particular territory. In practice, however, there is a relatively frequent occurrence of activities other than mining in mining claim, such as construction, agricultural, transport, etc.

3. Conflict resolution options

The issued final and valid spatial decisions (including the decision on the determination of the mining claim) must include the planning documentation as part of the propositional part (both textual and graphic); it is not possible to restrict an authorized person from an administrative decision (determination of a mining claim) by providing regional reserves for this territory.

There are two ways to deal with the conflict between the issue of a zoning decision (including the determination of a mining area) and the establishment of territorial reserves. At the stage where the territorial reserves are already set, the solution is to change the zoning plan. In the period prior to the determination of territorial reserves, prevention is the solution, i.e. the mining organization must monitor the acquisition of the plan so that the conflict situation does not occur and do not allow the determination of regional reserves where the mining claim is already established.

The Plan takes the form of a measure of a general nature pursuant to Section 171 of Act No. 500/2004 Coll., Administrative Procedure Code, as amended. The municipal council often justifies its decision to define a regional reserve in areas of mineral deposits (protected deposit areas) as a protection of the deposit for future generations use in justifying measures of a general nature. It is difficult to object to this justification, because the objective of protecting the deposit against disabling its use, which is contained in Section 15 of the Mining Act, has been fulfilled. If the mining organization is to "defend" the timing of the start of the surface extraction intent, it is solely up to how active its approach will be in acquiring plans and their changes.

Change of the plan can be started on the basis of a decision of the council, either on a proposal or on its own initiative (Section 44 of the Building Act). Here it is necessary to draw attention to the fact that there is no legal entitlement to change the plan. If the municipal council decides not to comply with the application to change the plan, then it is almost always impossible to enforce the revocation of such a resolution.

In this context, it is necessary to draw attention to the legal possibilities of mining organizations to enter the procurement process. The first option is when the mining organization submits a proposal to the municipality for a change to the plan. This situation may arise if the plan is already issued and the mining organization's intentions are not consistent with the propositional part of the measure of a general nature in the areas concerned, because a regional reserve for mineral extraction is defined in the deposit area. The requirements of the proposal to amend the plan can be found in Section 46 (1) of the Building Act. However, the petitioner of a change to the plan must also allow for the possibility that the municipality may make its acquisition conditional on the partial or full payment of the costs referred to in Section 55 (2) letter f) of the Building Act. In practice, there may also be a situation where the municipal council will decide to make a change to the plan; this may be due, for example, to the negative opinion of the authority concerned, where neither the outcome of the conciliation procedure has ended in favor of the petitioner and his ideas on the amendment of the zoning plan. In another case, an objection to the draft amendment to the land use plan may be filed and the municipal council will comply with this objection, which in essence will cause the mining organization's proposal to reject the plan.

Another possibility is the situation when the existing plan is in accordance with the intentions of the mining organization, which is the situation when the planned expansion of the extraction is in accordance with the development areas defined in the main drawing of the graphic part of the zoning plan as mineral extraction or production and storage, but the council municipalities decided to make such a change to the zoning plan (e.g. to classify mineral deposits into areas of territorial reserves or into unplanned areas that would disrupt this compliance. In this case, it is already possible to make written comments (according to Section 47 (2) of the Building Act) and to raise written objections (pursuant to Section 52 (2) of the Building Act) at the stage of public deliberation of a change to the land use plan. Mining organizations must duly justify their objections. One of the reasons for this may be the use of so-called compensation for change in the territory (according to Section 102 of the Building Act). The objections are always decided solely by the municipal council.

In terms of information to the general public, including mining organizations, it is necessary, in the context of planning issues, to constantly monitor the status of planning documentation, preferably through the official board of the competent authority or municipality.

Acknowledgements

This work was financially supported by the Technology Agency of the Czech Republic within the Project TE0200029 “Competence Centre for Effective and Ecological Mining of Mineral Resources”.

Literatura – References

1. MAKARIUS, Roman. České horní právo (Czech Mining Law), part I. Ostrava: Publishing house MONTANEX, 1999, 248 p. ISBN 80-7225-033-7.
2. MAKARIUS, Roman. České horní právo (Czech Mining Law), part II. Ostrava: Publishing house MONTANEX, 2000, 176 p. ISBN 80-7225-038-8.
3. MAKARIUS, Roman. Horní zákon: komentář k zákonu č. 44/1988 Sb., o ochraně a využití nerostného bohatství (horní zákon). Ostrava: Publishing house Anagram, 2012, 103 p. ISBN 978-80-7342-237-0.
4. MAKARIUS, Roman. Zákon o hornické činnosti: komentář k zákonu č. 61/1988 Sb., o hornické činnosti, výbušninách a o státní báňské správě v platném znění ke dni 1.3.2013, Ostrava: Publishing house Anagram, 2013, 115 p. ISBN 978-80-7342-276-9.
5. MAKARIUS, Roman; LUKS, Josef. Horní právo. Stanoviska k zákonu č. 44/1988 Sb., o ochraně a využití nerostného bohatství (horní zákon) a k zákonu ČNR č. 61/1988 Sb., o hornické činnosti, výbušninách a o státní báňské správě, Ostrava: Publishing house MONTANEX, 1999, 283 p. ISBN 80-7225-031-0.
6. VÍCHA, Ondřej. Základy horního a energetického práva, Praha: Publishing house Wolters Kluwer, 2015; 228 p. ISBN 978-80-7478-919-9.
7. MAREČEK, Jan; DOLEŽAL, Jiří; SEDLÁČKOVÁ, Vladimíra; SKLENÁŘ, Tomáš; VOBRÁTILOVÁ, Zdeňka. Komentář ke stavebnímu zákonu a předpisy související, Plzeň: Publishing house Aleš Čeněk, 2013, 960 p. ISBN 978-80-7380-430-5.
8. Decree No. 15/1995 Coll. (Vyhláška č. 15/1995 Sb., o oprávnění k hornické činnosti a činnosti prováděné hornickým způsobem, jakož i k projektování objektů a zařízení, které jsou součástí těchto činností, ve znění pozdějších předpisů)
9. Act No. 146/1854 Reich Code, General Mining Act, as amended
10. Act No. 41/1957 Coll., Mining Act, as amended
11. Act No. 44/1988 Coll., Mining Act, as amended
12. Act No. 61/1988 Coll. (Zákon č. 61/1988 Sb., o hornické činnosti, výbušninách a o státní báňské správě, ve znění pozdějších předpisů)
13. Act No. 183/2006 Coll., Building Act, as amended
14. Act No. 500/2004 Coll., Administrative Procedure Code, as amended
15. Electronic sources:
16. Electronic version of Legal Code of the Czech Republic: http://aplikace.mvcr.cz/sbirka-zakonu/
17. Internet pages of the Czech Mining Authority: http://www.cbusbs.cz/
18. Internet pages of Portal of Public Administration: https://portal.gov.cz/app/zakony/
19. Internet pages of Ministry of Environment: http://www.mzp.cz/cz/legislativa
20. Internet pages of Ministry for Local Development: https://www.mmr.cz/cs/Ministerstvo/Stavebni-pravo/Pravo-a-legislativa-(1)
21. ASPI (Automated system of law information)
22. CODEXIS

Problem rezerw regionalnych dla wydobycia minerałów w Republice Czeskiej i jej kontekst prawny

Artykuł koncentruje się na planowaniu przestrzennym (podział na strefy) (zwanym dalej „planowaniem") jako części prawa budowlanego, w szczególności na kwestię regionalnych rezerw i ich definicji w planie zagospodarowania przestrzennego (zwanym dalej „planem"). Istnieją przykłady określania obszarów regionalnych rezerw dla wydobycia minerałów. Jednocześnie zwraca się uwagę na potencjalne konflikty środowiskowe, które mogą stanowić rezerwy regionalne i możliwości ich rozwiązania. Artykuł dotyczy także niektórych powiązań między instytucją rezerw regionalnych a roszczeniami górniczymi.

Słowa kluczowe: planowanie przestrzenne (strefowanie), rezerwaty regionalne, ustawa budowlana, ustawa o górnictwie, wydobycie minerałów, dokumentacja planistyczna