

УДК 347

DOI: 10.26140/bgз3-2021-1001-0096

УПРАВЛЕНИЕ МИНЕРАЛЬНЫМИ РЕСУРСАМИ: АКТУАЛЬНЫЕ ПРАВОВЫЕ ВОПРОСЫ

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Аннотация. Целью работы является рассмотрение актуальных правовых вопросов управления минеральными ресурсами недр. В статье также раскрывается специфика подземных объектов права, анализируются актуальные проблемы кадастрового учета и государственной регистрации прав на горное недвижимое имущество. Применимые в работе методы включают сравнение, толкование, методы формальной логики и другие. Полученные результаты: особенность права недропользования заключается не только в стабильном и бессрочном характере использования, но и в прочной связи с правами на земельный участок, участок недр и подземные сооружения. Подземные участки и подземные сооружения следует идентифицировать как трехмерные объекты права. Заключение. Необходим комплексный пакет поправок по совершенствованию горного и гражданского законодательства, в том числе в Закон от 21 февраля 1992 г. № 2395-1 «О недрах» с изменениями, внесенными Законом от 8 декабря 2020 г. № 429-ФЗ. В информационной системе должны быть созданы условия для трехмерной регистрации объектов. Исследование выполнено при финансовой поддержке РФФИ в рамках научного проекта № 20-011-00043.

Ключевые слова: недропользование, правоотношение, недропользование, участки недр.

MINERAL RESOURCE MANAGEMENT: ACTUAL LEGAL ISSUES

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Abstract. Objective of the article is to consider the actual legal issues on mineral resource management. The article also deals with the specifics of subsurface objects of law, actual problems of Cadastral Registry and State registration of real property mineral rights are analyzed. Applied methods: include case study, comparison, legal norm interpretation, methods of formal logic and others. Results: the peculiarity of the mineral right is not only in a stable and termless nature of use but also in the strong connection between the rights to the subsurface parcel, surface plot and subsurface structures. The underground sites and underground structures should be identified as three-dimensional objects of law. Conclusion. An integrated amendment package to improve the mining and civil legislation is needed, including the Law dated February 21, 1992 No. 2395-1 "On Subsoil" modified by the Law of December 8, 2020 N 429-FZ. In the cadastral information system, conditions for three-dimensional registration of facilities should be created. Acknowledgments: The reported study was funded by RFBR, project number 20-011-00043. Исследование выполнено при финансовой поддержке РФФИ в рамках научного проекта № 20-011-00043.

Keywords: mineral resource management, legal relations, mineral rights, underground sites

INTRODUCTION

The awareness of the benefits underground space can bring is a first step towards a systematic use of underground space [9].

The legal regulation of the mentioned relationships does not fully take into account the features of subsurface structures as objects of law. This is particular true for Russia and other countries, where the development of underground spaces is slower than in other densely populated countries [3, 5]. But even in populous China, underground rights representing a special form of land use are the cause of ownership disputation nowadays [11, 7]. This leads to the inefficiency of subsoil use in general, to the environmental problems and to the emergence of conflicts of interests of the concerned parties.

MATERIALS AND METHODS

The whole systematization of the empirical material involved, ending with its systematic and holistic presentation is used. The materials of the study are legal norms, normative acts, laws, judicial practice and doctrine. Methods include empirical methods of comparison and interpretation, methods of analysis and formal logic; legal dogmatic method, legal comparison and method of legal norm interpretation.

There are also used the following methods: 1) case study — analysis of a particular cases connected with the subsurface structures; 2) binary comparison — study of two phenomena in order to identify the general and particular in them; 3) regional comparison — comparison of groups of regions, States in terms of similarity and difference of some parameters; 4) cross-temporal study, dynamic analysis.

METHODOLOGICAL FRAMEWORK

Paragraph 3 of Article 3 of the Code envisages that the property relationships of possession, use and disposal of land plots are to be governed by the civil legislation unless otherwise specified by the land, forestry, water, subsoil legislation. The law recognizes a land plot as the two-dimensional object, so the question is in its possible admission as a part of the Earth surface (subsurface). In N. Mukhitdinov's opinion, the Earth surface can be viewed as the upper boundary of the subsoil only when the minerals located in the depth of the earth have underground exits [15]. It is thought, such formulation of the question was urgent only for the Soviet legislation, which did not stipulate a special type of subsoil use for the construction and maintenance of underground objects (with emphasis on underground space).

In Russia, despite the introduction of the new Law "On the State Registration of Real Property" started from the January, 2017, there is still no legal definition of a subsurface structure and regulation of its registration. This circumstance causes difficulties in the practice. At the same time, the current Federal Law "The Technical Regulations on the Safety of Buildings and Structures" dated December 30, 2009 provides for a legislative definition of a more general concept "construction". According to Article 2 of the Law, a construction is a result of civil engineering work representing a planar or linear extensional construction system having ground, above-ground and (or) underground parts consisting from framings and, in some cases, from enclosing building constructions, and intended for performance of production processes of a various kind, for the storage of the products, for the temporary accommodation of people as well as for the movement of persons and goods. From the legal point

of view, the constructions are objects put into operation, or objects recognized by the State as finished construction facilities if a commissioning permit is not required.

So, no doctrine, no legislator can give us an understandable, clear concept of subsurface structure reflecting its volumetric nature and also legal specifics connected not only with “horizontal” but “vertical” ownership rights. As the saying goes, no definition of the object – no undisputed right to it. Nevertheless, there is also a point of view that the three-dimensional property is less a problem of legal definition and more a problem of delineation [16].

Thus, I find two problematic issues which need to be addressed.

DISCUSSION

O. Burlachenko expresses an opinion that the special role of the land plot in the immovable property system arises from the physical impossibility of exploitation of other real estate facilities without using a surface, and this causes a certain “priority” of the land plot over another absolutely unmovable property object in the form of subsurface parcel. In his view, mentioned impossibility and other interconnections do not arise in relation to subsurface plot at all [4]. The author does not take into account the interrelationships between the objects involved. The immovable property system factually deals with a deepening (under the Earth’s surface). So, the subsoil parcel (not the land plot) plays the main role in the system. Therefore, the subsoil parcel right has to get the priority. The fact that not only a new physical thing has been created in the form of a subsurface structure, but a new object of civil rights appear in this connection, makes it necessary to analyze it from a perspective of a *complex thing*. Article 134 of the Civil Code of the Russian Federation provides for the rule on combining several diverse objects used for a single purpose into a complex thing, considered as one thing and one object of law. The effect of a deal made with respect to the complex thing concerns all its component parts, unless otherwise stipulated by the contract.

The complex thing cannot consist of such “natural” real property units as a land plot and subsurface plot. The last one, along with the land plot, is called upon to serve as an organizational center with legal linkages for the facility (subsurface construction) in space. Mostly, in fact, the upper boundary of the subsurface site provided for the construction of an underground structure happens to be the lower boundary of the surface above it. And although the current legislation of the Russian Federation “tears” the subsurface site and related land plot, that is, identifies them as separate objects of law, nevertheless, the subsurface site has its own mission to maintain the newly constructed subsurface formation.

The immovable property items (subsurface site and adjoining land plot) may be used as the basis or territory (space), where the location of any complex thing is possible. S. A. Stepanov believes that the underground building activity for commercial purposes (for instance, creating shopping center or manufactory owned by an individual or collective merchant on the right for private ownership) inevitably requires fundamentally different legal regulation in the sphere of the subsoil use [24, 6]. He cites a case, an example from judicial practice illustrating the fact of existence of the underground construction which leads, in his opinion, to the termination of the legal fate of a subsurface site as single immovable object, and includes in the free civil-law turnover another object, namely a subsurface structure.

Granting a subsoil parcel in use assumes obtaining the license by the user according to the procedure established by law. The mineral water well in the form of a hydraulic construction does not belong to the category “subsoil” and such kind of facility are not to be excluded from the civil circulation. As follows from the case, recognition of a subsurface parcel as an integral part of a complex thing would mean not only its “legal death” that is end, discontinuance of an object of law, but also the termination of the subsoil use right, the main purpose of which is the construction and maintenance of a subsurface structure.

The current legislation (covering the Law of the Russian Federation dated February 21, 1992 No. 2395-1 “On Subsoil” modified by the Law of December 8, 2020 N 429-FZ) does not provide for a legal ground for the termination of the subsoil use right and de lege does not stipulate any conveyancing (circulability) of such objects. The last aspect matters. Under any circumstances, underground space without or with a subsurface structure in it, has its own strategic importance.

In my view, the subsurface site should not form a part of a complex thing, and, respectively, should not cease its legal existence, because we must consider the “ratio legis” of the norm about complex thing provided by Article 134 of the Civil Code: as stated above, the assembly of the components is recognized as one thing, and the effect of the transaction, made with respect to the thing, concerns all its integral parts. Here the subsurface parcel just performs the same organizational and spatial functions for the any complex located within it, as the ones performed by the land plot for complexes located above the surface. In addition, it must also be noted that the assignment of a subsurface parcel to the complex thing would be contrary to Article 1.2 of the Law “On Subsoil”, according to which the subsurface sites cannot be the subject of purchase, sale, donation, inheritance, deposit, pledge or alienate in another form. The lawmaker himself considers the subsurface structure and the serving subsurface site as various independent objects of law.

Abroad, science already develops actively in this direction. The options for introducing the information about subsurface facilities into modern information state systems are different. For example, it can be a complete three-dimensional cadaster or three-dimensional maps in the current cadastral system (Denmark), a mixture of these options (Norway), the cadaster of engineering networks (at the stage of pilot projects in several European countries) [26-28].

The factors influencing the location of objects created in the underground space are different. They can be city parameters (area, length, altitude, etc.), relief, natural, geological and hydrological conditions; functional purpose of different zones and patterns of built-up areas. In turn, these factors are closely related to the solution of the issue of legal regulation and cadastral registration. The allocation of land plots for the placement of underground constructions requires the registration of rights to the land plot and cartographic mapping. But, in accordance with the current Russian legislation, a land plot is a part of the Earth surface, and the ground part of land plots is not necessarily granted for the functioning of subsurface facilities. There arise the problem of determining the legal status of subsurface spaces and facilities located in them, as well as that of registering the rights to them, taking into account not area but space (volume). Positioning software allows the obtaining highly accurate three-dimensional geospatial data in the real time mode. Three-dimensional digital models provide for high and visual quality of visualization of terrain at the expense of the volumetric image of a situation, expand possibilities of taking the effective architectural and town-planning decisions.

Underground technical networks can cross the plots of different owners. The lack of information on the exact location of such objects causes difficulties in the division of plots as well as determining restrictions and rights [1, 2]. In relation to indoor spaces in complex constructions, the right to the size and not to the entire volume is actually registered now. The possibility of determining the rights of the owner for the external space around a building is absent.

Subsurface plots, underground shopping malls cannot be reliably displayed in a flat projection. Subsequently, this makes it impossible to record not only underground but other objects, for example, complexes overhanging above someone’s territory. There is a case, in the Vladikavkaz city it was necessary to fulfill an order for surveying (geodesic-cadastral works) of a medieval fortress hanging on a rock

and projecting onto a neighboring registered land plot, so this fact impeded the possibility of registering a fortress [20, 12].

The Public cadastral map as a reference and information service can show the location of the land plots by adding the flat coordinates of their boundaries to the cadaster, which allows observe the area, configuration, etc. However, information on the relief and vertical boundaries of the underground constructions and parcels involved cannot be reflected. The Russian State Cadaster as a national information system has the most complete and reliable information about the recorded and registered immovable property, but it is executed in a system of flat rectangular coordinates, which does not allow the correct registration of spatial objects, such as underground road junctions, tunnels, subways. In other words, the modern Russian cadaster is two-dimensional. At one point, the registering body had to refuse to provide the information from the official Register to the buyer of one of the Moscow buildings because of the local collector under it, so that it was impossible to identify the object located at the same address in the Registry [26].

Basically, the situation is similar in Slovenia, Romania, Brazil, Pakistan and most other countries where the two-dimensional Cadaster forms the main type of the State Registry, bearing in mind the presence of historical, political, economic and cultural context [22, 10, 19, 23, 17, 18].

Thus, one of the main drawbacks of the Russian Public Cadaster is the absence of subsurface facilities which are spatial objects. The Register does not allow clearly seeing underground pipes, multilevel complexes of non-standard form. This limits the ability to register rights for them and generates various questions concerning property rights.

CONCLUSION

The Law of the Russian Federation dated February 21, 1992 No. 2395-1 "On Subsoil" should provide a clear concept for the development of underground space reflecting the fundamental principles on the legal capacity of the subsurface structure owners and users, the legal system of transfer and registration of mining rights, as well as the limitations and encumbrances.

An integrated amendment package to improve the mining and civil legislation is needed, including the Law dated February 21, 1992 No. 2395-1 "On Subsoil" modified by the Law of December 8, 2020 N 429-FZ. In the cadastral information system, conditions for three-dimensional registration of facilities should be created.

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The reported study was funded by RFBR, project number 20-011-00043.

Исследование выполнено при финансовой поддержке РФФИ в рамках научного проекта № 20-011-00043.

Статья поступила в редакцию 09.11.2020
Статья принята к публикации 27.02.2021