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Categories "Subsoil Area", "Mining and Geological Allotments" in Russian law: Concepts Correlation and Improvement of Legal Regulation

Summary

The article considers the content, correlation and differentiation of such concepts of Russian subsoil legislation as: act certifying mining allotment, subsoil use license; subsoil area, geological allotment and mining allotment. Based on the analysis of the legal acts the authors conclude that in spite of the close interrelation between the concepts, subsoil area and mining allotment have a different legal status, which is best shown in the procedure for changing the boundaries of subsoil areas and mining allotments.

1. Introduction

For a long period of time – in the Soviet period and up to the entry into force of the Russian Federation law "On Subsoil" (April 16, 1992) the right to use subsoil in Russia was granted in the form of an "Act certifying mining allotment". This act constituted a permit of a specially authorized body of mining supervision and it was the sole document entitling its holder to use the subsoil. In physical terms the key category of mining legislation in that period of time was also mining allotment, which was understood as part of the earth interior, provided to a subsoil user for the development of mineral resources deposits (extraction of minerals)[3].

It should be noted that in the Soviet period of time the term "subsoil area" was used, but in the context of legal drafting methodology it had a secondary or optional meaning. The above conclusion can be made, for example, on the basis of analysis of the RSFSR Subsoil Code of 1976. However, in the USSR Mining Regulation adopted by the Resolution of the USSR Central Executive Committee and Sovnarkom of November 09, 1927, the term

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[3] Clause 1.1. of the Instruction on the Order for Mining Allotments Provision for the Purposes of Mineral Resources (Except Widespread) Fields Development, approved by the Regulation of the USSR Commission for Mining and Technical Supervision of 24/10/1986 No 34. However, the similar understanding of the notion "act, certifying mining allotment" and "mining allotment" existed in the RSFSR Council of Ministers Regulation of 08/09/1960 No. 1385 "On the approval of the Instruction on the Order for Mining Allotments provision for the Purposes of Development of Widespread Mineral Resources Fields".

"subsoil area" was not used at all. The notion of "geological allotment" was not applied in the basic legal acts of the Soviet period as well.

With the adoption of the Russian Federation Law "On Subsoil" the system of subsoil granting changed, and the subsoil started to be provided on the basis of a "special permit in the form of a license" – a document certifying its holder's right to use a subsoil area within certain boundaries in accordance with a specified purpose and within a fixed period of time, provided that the holder observes the stipulated requirements and conditions.[4]

At the same time such categories as "mining allotment" and "act certifying mining allotment" were not automatically replaced by the terms "subsoil use license" and "subsoil area" and remained in the legislation. However, they acquired a new meaning if compared with the Soviet period of time. Thus, a mining allotment act ceased to be the document certifying the right to use subsoil and this role was taken by the license. In physical terms a part of the subsoil granted to a subsoil user on the basis of a license started to be called "subsoil area".

2. Current Legal Regulation in the Russian Federation

The current legislation does not provide for an unambiguous differentiation of categories "subsoil area" and "mining and geological allotments". However, it is clear that in practice these concepts are not equal. The category "subsoil area" is presently more universal and can be used both for the purposes of subsoil administration as a whole and for the realization of subsoil use granting procedure. The categories "mining allotment" or "geological allotment", in their turn, are used with regard to technical description of subsoil area boundaries in order to ensure complete geological study, rational use and protection of the subsoil. In particular, allocation of a mining allotment is necessary in order to ensure safe conduct of mining works and rational use and protection of the subsoil since the boundaries of the mining allotment not only determine the configuration of a minerals deposit, but also specify the limits of safe conduct of mining and explosive works, sanitary zones providing protection from the hazardous effects of mining operations, zones of rock faults, contours of safety pillars under natural features, buildings and facilities, a distance between the sides of quarries and cuttings, as well as other factors impacting the condition of subsoil and Earth's surface related to geological exploration and use of subsoil (paragraph 2 of article 7 of the Subsoil Law).

The analogous regulation is provided for in the Model Code of Subsoil and Subsoil Use for CIS countries. The term "subsoil area" is defined as "a geometrically defined subsoil block with the boundaries specified in the established order". A subsoil area is granted upon obtainment of a subsoil use license, conclusion of a production sharing agreement or execution of another document which entails accrual of subsoil use rights. The procedure of subsoil area granting ends in allocation of a mining or geological allotment, constituting

[4] Article 11 of the RF Law "On Subsoil" of 21/02/1992 No. 2395-1.

technical actions for determination of subsoil area boundaries due to which the boundaries and surface of the provided subsoil area, as well as extraction level are specified. [5]

In accordance with articles 2 and 7 of the Subsoil Law both subsoil areas and mining allotments constitute geometrically defined subsoil blocks. Geological allotment, in its turn, is not geometrically defined since it can be granted either with or without limitation of the depth.[6]

Russian subsoil legislation also stipulates that the boundaries of a subsoil area are defined at the moment of the license issue (article 12 of the Subsoil Law). At the same time, according to article 7 of the subsoil Law, the preliminary boundaries of a mining allotment are defined at the moment of the license issue as well. If a subsoil area is provided for the purposes of geological study such subsoil area acquires the status of a geological allotment. Therefore it is possible to conclude that at the moment of a subsoil use license issue the boundaries of the subsoil area and preliminary mining allotment (or geological allotment) coincide.

However, the development of a mineral deposit is a long process and with the passage of time the dimensional characteristics of the subsoil area and mining or geological allotments change. The differences can be seen in the procedure of changing boundaries of a subsoil area and a mining allotment provided for in the existing legal regulation.[7]

3. Changing boundaries of a mining allotment

After the development of an engineering design, receipt of a state expert review positive findings as well as endorsement of the engineering design, the preliminary boundaries of the mining allotment are subject to amendment and a new (specified) mining allotment shall be issued. The procedure for mining allotments issue as well as for amendment of their boundaries is provided for in the Instruction on Mining Allotments Issue for the Development of Mineral Deposits approved by the Ministry of Natural Resources on 07/02/1998 No.56 and the State Committee for Industrial and Mining Safety Supervision on 31/12/1997 No.58[8], as well as in the specialized instructions on issuance of mining allotments for oil and gas deposits and for the purposes not related to the extraction of mineral resources[9].

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[5] Adopted in St. Petersburg during the 20th plenary meeting of the Interparliamentary Assembly of CIS countries. Resolution No. 20-8 dated 07/12/2002.

[6] Clause 3.8 of the Regulation on the Procedure for Subsoil Use Licensing, approved by the Resolution of the RF Supreme Soviet No. 3314-1 dated 15/07/1992.

[7] Due to the lack of appropriate legal regulation with regard to the procedure of changing of geological allotments boundaries (in accordance with clause 6.2 of the Regulation on the Procedure for Subsoil Use Licensing the boundaries of the geological allotments change together with the boundaries of the subsoil area) the present article only analyses the procedure for changing of mining allotments boundaries.

[8] Registered in the RF Ministry of Justice on 13/03/1998, No. 1485.

[9] The Resolution of the RF Commission on Mining and Technical Supervision No.35 dated 11/09/1996 “On the approval of the Instruction on the Order for Mining Allotments Provision for the Development of Oil and Gas Fields” (Registered in the RF Ministry of Justice on 09/10/1995, No.1175).

Pursuant to clause 12 of the Instruction on Mining Allotments Issue for the Development of Mineral Deposits the specified boundaries of a mining allotment are only determined with regard to the part of a subsoil area, the mineral resources on which have passed state examination of mineral resources reserves. The act certifying the mining allotment is issued by the authorities of the Federal Service for Ecological, Technological and Nuclear Supervision upon submission by a subsoil user of an application and a draft mining allotment (which can be part of the engineering design for the development of the mineral deposit). In addition the following documents shall be enclosed to the application:

- a copy of the license for subsoil use including all annexes;
- a copy of the state examination of engineering designs for the development of the mineral deposit and copies of the approvals of the authorized bodies, including copy of the state ecological examination report;
- a copy of the state expert examination of mineral resources reserves as well as the appropriate extras from the tables of their calculation.

In this connection application to the Federal Service for Ecological, Technological and Nuclear Supervision with a request to specify the boundaries of a preliminary mining allotment is only possible after the completion of the state examination of mineral resources reserves within the preliminary boundaries of the mining allotment and after the development (or amendment) of the engineering design based on the data of examination of mineral resources report. As it was already mentioned above, the state examination of the engineering design as well as receipt of the necessary approvals shall also precede the correction of the preliminary mining allotment boundaries.

Extraction of mineral resources can only be carried out after the receipt of documents certifying the specified boundaries of a mining allotment. A subsoil user can only carry out extraction works within such specified boundaries.

In other words, the spatial boundaries of a mining allotment initially imply the necessity of their changing (specification). It should be stressed that specification of preliminary mining allotment boundaries only means allocation of a certain block for conducting extraction works and does not affect the size of the subsoil area provided for in the subsoil use license. The boundaries of the subsoil area remain the same.

Moreover, the specified boundaries of a mining allotment, in their turn, can be additionally changed. Such necessity may arise if a subsoil user who received a specified mining allotment and started extraction on a part of the subsoil area continues further exploration on the remaining part.

According to the Instruction on Mining Allotments Issue if there is a necessity to change the specified boundaries of a mining allotment within the subsoil area due to changes of the license terms and conditions, or license reissue (subsequent to the results of exploration, appraisal and survey of mineral resources, design and research works etc.) the documents certifying the mining allotment are reissued by the Federal Service for Ecological, Technological and Nuclear Supervision. The mining allotment act and topographic plan are

subject to reissue and the draft of the new mining allotment should be supplemented with argumentation of the necessity to change the previously established boundaries.

In this case the specified boundaries of a mining allotment can be changed within the boundaries of the subsoil area, which means that the subsoil area itself remains the same.

The Instruction does not provide for any limitations as to the number of possible changes of mining allotment boundaries. However, such changes are only possible subsequent to the license amendment, which makes the wording of the Instruction imperfect. Taking into account that the configuration of a mining allotment depends mostly on technical factors, it would be more reasonable to provide for a possibility to change the boundaries of a mining allotment depending on the conditions of the deposit development or construction and operation of an underground structure.

4. Changing boundaries of a subsoil area provided into use

If changing (specification) of the mining allotment is an inherent part of mineral deposits development, Russian legislators chose another approach with regard to the boundaries of subsoil areas. The boundaries of the subsoil area are determined in the subsoil use license and can remain unchanged for the whole license period.

The Subsoil Law specifies that boundaries of subsoil areas can be changed if such changes can ensure comprehensive geological study, rational use and protection of the subsoil[10]. The procedure for determining and changing the boundaries of subsoil areas is defined in the Resolution of the Russian Federation Government of 03 May 2012 No. 429[11]. In accordance with this legal act the boundaries of a subsoil area can be both expanded and reduced in any direction (either horizontally or in depth) in the following cases (the list is exhaustive):

If there are technologic necessities to expand the subsoil area without reserves growth based on safe conduct of mining and explosive works, sanitary zones providing protection from the hazardous effects of mining operations, zones of rock faults, contours of safety pillars under natural features, buildings and facilities, a distance between the sides of quarries and cuttings, as well as other factors impacting the condition of subsoil and Earth's surface related to geological exploration and use of subsoil;

If geological or other information confirm that balance mineral resources reserves beyond the subsoil area are part of the deposit or that the mineral resources deposit discovered in the process of geological study overrides the boundaries of the subsoil area granted for use for the purposes of geological study of a mineral deposit.

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[10] Resolution of the RF Ministry of Natural Resources and the RF Commission on Mining and Technical Supervision No. 18/24 dated 25/03/1999 “On approval of the Instruction for Issuance of Mining Allotments for the Purposes not Connected with Extraction of Mineral Resources (Registered in the RF Ministry of Justice on 27/04/1999, No.1766).

[11] Article 7 of the RF Law No. 2395-1 dated 21/02/1992 “On Subsoil”.

Expansion of subsoil area boundaries can only be performed once during the license period provided that the part of the subsoil which is planned to be integrated to the subsoil area is contiguous to the subsoil area provided into use; this part has not been granted into use (the only exception is when the part of the subsoil lies under the subsoil area and it is granted to the same subsoil user); there has been no decision to hold a tender or auction for subsoil use with regard to this part of the subsoil or to grant it into use to some subsoil users on other grounds specified in the Subsoil Law.

Unlike expansion of subsoil area, its reduction can be held more than once. However, such changing is only possible upon completion of geological study on the subsoil area and (or) minerals prospecting and submission of a geological report and geological information to the federal or appropriate territorial fund of geological information in accordance with the license provisions. Reduction of subsoil area shall not be allowed if the part of the subsoil area which is being reduced contains mineral reserves that are indicated in the license and which have been confirmed by the state examination.

5. Conclusion

Categories “subsoil area” and “mining and geological allotments” are closely related to each other. In some period of time (at the moment when subsoil use right is granted for the purposes of geological study, exploration and production of mineral resources, construction and operation of underground structures) their boundaries and meaning are equal.

However, the category “subsoil area” is more universal as it serves the purposes of the state subsoil fund management. Formation of mining and geological allotments, in its turn, is necessary in order to ensure comprehensive geological study, rational use, protection of subsoil and safe conduct of mining works. Upon completion of the field development project preparation and termination of geological study the boundaries of the preliminary mining allotment are subject to correction, while the boundaries of the subsoil area most often remain unchanged. A specified mining allotment represents the part of the provided subsoil area on which mining works and underground structures construction and operation works can be held.

The boundaries of a mining allotment are more “dynamic” if compared with the boundaries of a subsoil area. The mining allotment boundaries can be changed more than once since the limitations provided for in the Government Regulation of 03/05/2012 No.429 do not apply to mining allotments.

The legal regulation of mining, geological allotments and subsoil areas in the Russian Federation requires improvement for the following reasons.

First, in view of powers division on the federal level between authorities setting boundaries of subsoil areas and mining allotments, subsoil users face difficulties trying to conciliate the boundaries (positioning data) of mining allotments and subsoil areas. Such situation is unacceptable as it does not ensure protection of subsoil users’ rights and interests.

Second, the legislation of administrative entities of the Russian federation often does not make distinction between legal regulation of subsoil areas and mining allotments, which entails contradiction to the federal legislation, distinguishing the two concepts.

Third, the above analysis shows the underdevelopment of such category as “geological allotment” in the Russian legislation. In this connection either the legal regulation of this concept should be formed or the category of the “geological allotment” should be eliminated at all.

Finally, taking into account the above analysis, the limitation of subsoil users’ rights stipulated in article 22 of the Subsoil Law seems unreasonable. This article provides for a possibility to carry out geological study within the boundaries of the mining allotment without any additional permission. It would be more reasonable to allow geological study within the boundaries of the whole subsoil area provided for use for the purposes of mining resources exploration and production, as well as construction and operation of subsurface resources.