

ENVIRONMENTAL LIMITATIONS OF THE LAND USE

Introduction

According to the Czech law, a real estate is a piece of land and/or buildings connected to the land by a solid base. Because of the environmental aspects of the real-estate, this contribution will be focused mainly to the land, which must be considered as a part of nature even though it is used and reshaped by man. Therefore it must be protected and its use is regulated according to the environmental law.

In the Czech Republic, the owner of the real estate property is limited by numerous environmental regulations, related mainly to the way how the land can be used. These regulations are contained in various laws dealing especially with nature protection, forest and agricultural land protection and others. Because of its limited scope, this contribution is aimed at selected legal instruments in this field.

Land-use Categories and Development Projects

The whole area of land in the Czech Republic is divided into different categories according to the prevailing and most effective use of the particular piece of land. These categories are arable land, hop fields (hop gardens), vineyards, gardens, orchards and meadows and pastures (grass areas). These categories altogether represent the agricultural land. Non – agricultural land (other than agricultural) includes categories of forest land, water areas (land covered by surface water bodies), developed areas and other areas¹.

There is a basic rule that the land should be used for the purpose which is designated by the specific category that the lot is part of. It means, for example, that vineyards should be used for raising wine, orchards for planting fruit trees while municipal parks or parking lots represent the last category – other areas. If the owner intends to change one category of land into another one, he generally needs to have

¹ Act No. 344/1992 Sb. on the Real Estate Cadaster, as subsequently amended.

a permit (development consent or other land-use permit). The authority competent to issue this permit is the building authority. In certain cases, before this decision is made, an approval issued by another authority is needed. Those are situations, for example, if forest land should be used for construction of a high-way or agricultural land should be used as a parking lot or for other purposes. The approvals issued by different environmental protection authorities (air protection authority, water protection authority, nature protection authority, etc.) are always needed if environmental components could be affected significantly by the projected activity.

It is necessary to say, at the same time, that the development project, resp. the projected change of category, has to be consistent with land use plans that were accepted and approved according to the law. Inconsistent projects may not be permitted; otherwise the permitting decision would be illegal.

Moreover, the Act No. 334/1992 Sb., on the agricultural land protection, as subsequently amended, enables the agricultural land protection authority to impose the duty to change the present category into another one for environmental protection purposes. In this case, the owner of the land is entitled to recover the expense needed for the change as well as the economic loss that he had suffered by the change of category. However, this owner's right is not set quite clearly and this is probably the reason why this provision is not applied in practice.

A special instrument of environmental protection related to development is represented by the environmental impact assessment procedure (EIA). EIA is the procedure enabling the assessment of all the impacts the proposed activity might have on the environment. The goal of the environmental impact assessment is to embody the environmental protection to development programs and projects and to incorporate the environmental aspects to decision-making processes. Not all activities are assessed in this procedure, though. They are delimited in the Annex I to the Act² and by the screening procedure which is a part of the environmental impact assessment. Such activities must be assessed in the EIA procedure before they are permitted.

Land as a Part of the Nature

The Act No. 114/1992 Sb., on nature protection, as subsequently amended, set various legal requirements in relation to the use of the land. First of all, the basic duty of all landowners is to protect territorial systems of ecological stability that

2 The Czech Act No. 100/2001 Sb., on the Environmental Impact Assessment, as subsequently amended, comes out of the Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as subsequently amended by the Directive 97/11/EC, and the Directive 2001/42/ES on the environmental assessment of certain plans and projects.

were established at their real estates. Creation of those ecosystems is considered to be a public interest. If the change of category of land is needed for the sake of the system of ecological stability, the landowner can either agree with the change of category or the land authority has a duty to offer him another lot owned by the state. At the same time, the Building Act No. 183/2006 Sb. declares the establishment of territorial system of ecological stability elements as a reason for possible expropriation. Therefore, the landowner does not have another choice than to agree with the offer; otherwise he could lose his real estate based on the expropriation decision.

The provision dealing with the necessary change of land category is similar but different to the above mentioned possibility of the agricultural land protection authority to impose the duty to change the present category into another one for environmental protection purposes according to the Act on agricultural land protection. This regulation, however, cannot be applied for the land needed for the establishment of territorial systems of ecological stability³.

Beside systems of ecological stability, the Nature protection act introduces so called “significant landscape components”. These significant landscape components are forests, marshes, watercourses, ponds, lakes and river valleys. They are designated directly by the law. Beside those, other parts of nature can be proclaimed as significant landscape components based on the decision of the nature protection authority in the process of registration.

Significant landscape components are protected against destruction. They can be used; however, their ecological functions may not be threatened or damaged. Activities that could seriously affect significant landscape components, such as changes of land-use categories, development projects, changes of watercourses and similar ones, must be approved by the nature protection authority in advance. A similar rule relates to landscape protection. To put a building in the landscape and to do other activities that could significantly affect the landscape, the nature protection authority’s approval is required as well.

Landowners are also limited in their right to cut solitary trees growing outside the forest. The basic legal rule is that they need to have a permit. There are certain exemptions from this rule, for example, if the tree threatens the lives of people and/or their property, one does not have to have a permit to cut it down, or natural persons do not need to have a permit to cut down smaller trees up to a certain size, etc. Aside from the permit, the nature protection authority is entitled to ask for compensation in the form of planting a new tree at another site with the consent of the owner of that site.

3 Section 59(3) of the Nature protection act No. 114/1992 Sb., as subsequently amended.

Specific conditions are set by the law for specially protected areas. The Czech law differentiates various categories of specially protected areas. These are bird areas, national parks, protected landscape areas, national nature reserves, nature reserves, national nature monuments and nature monuments. Some of them form the European system of protected areas NATURA 2000.

Based on the Directive 79/409/EHS, bird areas were established by several governmental regulations. The landowners in those bird areas may develop their economic activities; however, the government was enabled to set activities taking place in the specific bird areas which must be approved by the nature protection authority.

On the territory of the first zone of national parks or protected landscape areas it is prohibited to permit placing and construction of new buildings. In second and other zones, if it is not prohibited directly by the law, any development activities must be approved by the nature protection authority in the form of a binding opinion with the exception of a developed area in the fourth zone where the land-use planning documentation is in existence, part of which is the nature protection authority's opinion.

On the whole territory of national parks the land can be used in a manner not causing substantial changes in biodiversity or threatening the functions of its ecosystem. The forests in national parks must be managed in a special way with the aim to support biodiversity. Timber production cannot be a primary goal in national parks. Similar limitations and conditions of their use are set for other categories of specially protected areas including their protective areas. Instead of an obligation to respect those legally set conditions for especially protected areas established by the nature protection authority, landowners can enter into agreements with the nature protection authority. Based on those agreements, national nature reserve, nature reserve, national nature monuments and nature monuments can be established along with the conditions of their use and care about them.

The only way how to permit an activity which is prohibited under the especially protected areas regime is to get an exemption according to Section 43 (Nature Protection Act). The exemptions can be awarded by the government in cases when another public interest significantly prevails the interests of nature protection.

A particular piece of land is eligible to serve as a habitat of especially protected species of animals and plants that are endangered, highly endangered or critically endangered according to the Czech law. In this case, the landowner is also limited in using his property, because those species are protected and it is generally prohibited to damage or otherwise disturb them or their habitats. The exemption of the ban can be decided upon by the nature protection authority only if the public interest significantly prevails the nature protection interests in cases specified by the law.

It is obvious that because of the limitations landowners can suffer substantial economic loss. That is why they are entitled to compensation if they own agricultural land, forest land or a pond with fish or poultry farming. The same right to compensation belongs to the tenant of the land if the owner does not apply for it. The right to adequate compensation arises from the Charter of Basic Human Rights and is specified in Section 58 of the Nature Protection Act. The application of this provision, however, is complicated. There are some question marks if the landowner is entitled to the compensation each year or at a single time, and if his right relates to the so called “potential economic loss” or to actual loss that the landowner had suffered.

Another substantial limitation of landowners under the Nature Protection Act is the priority transfer right of the state to the undeveloped land outside the developed areas of municipalities which is consequently in the territory of national parks, national nature reserves and national nature monuments. If the owner of this land intends to sell it, he has a duty to offer it to the nature protection authority. Only if the state is not interested in the property, then the landowners are free to complete a deal.

A general duty of the landowner is to improve the status of the natural environment with the aim to conserve the biodiversity and to support its system of ecological stability. To provide the nature with favorable care, the landowners are encouraged to enter into agreements with the Nature Protection Authorities. Those agreements set conditions of the proper management of the land. The owners are eligible to apply for a financial subsidy. On the other hand, if the owner refuses to take measures to improve the natural state of the environment, the nature protection authority is entitled to do so. The landowners and tenants are obliged to let persons carrying out such measures to enter the property and to take those measures.

Another limitation in relation to investors and landowners is contained in Section 66 of the Nature Protection Act. According to it, the nature protection authority is entitled to set conditions for activities taken by the natural and legal persons who could cause illegal change of generally or especially protected parts of the nature, and even to prohibit such activity. It means that even legally permitted activity can be stopped for the sake of nature protection. If the activity is taking place according to the Building Act No. 183/2006 Sb., the investor having discovered protected parts of the nature has a duty to report this finding to the building authority or to the nature protection authority. At the same time he is obliged to take measures to secure it and to interrupt or stop the activity so that the protected part of nature would not be damaged or destroyed. The authorities then set conditions for activities taken, they can even decide on interruption of the work until the approval to proceed is issued. Based on the announcement of the finding, the building permit/development

consent can be changed in the public interest. Even though the investors are entitled to compensation of expenses that were incurred due to the above mentioned process, they are generally reluctant to keep the law.

Forest Land

The owners of the forests are limited in use of this land because of the environmental functions of the forests not only according to the Nature Protection Act, but also in the regime of the Forest Act No. 289/1995 Sb., as subsequently amended. While using the forest the owner must take care of its environmental functions. The forest land may not be used for other purposes without the approval issued by the state forest administration. Beside that, legal requirements for the change of category of land must be fulfilled. In this case, the approval will serve as a basis for the development consent or another land-use permit.

To prevent injuries and damage to the property, for example by falling stones, trees or by avalanches, it should be necessary to take measures to prevent it. The owner of the forest land is obliged to withstand those measures. Moreover, the forest state administration is entitled to decide on the changes of forest management or to limit the use of the particular forest lot. The landowner has the right to compensation for the loss that he had suffered based on this decision.

Other limitations are related to the forest management. Landowners have to renew the forest stand and obey various regulatory requirements; for example, they are allowed to cut down only trees older than 80 years of age and exploit timber according to the forest management plans setting the maximum amount of timber, to take measures to prevent pests and others. Substantial limitations are related to protective forests and to special purpose forests (for example forests in national parks and other) because their management should be aimed at other functions than timber production. The owner of the forest has the right to compensation of expenses paid for measures imposed by the forest state administration and the loss he had suffered by the limitation of economic use of his property.

Conclusion

The environmental law in the Czech Republic sets very strong requirements limiting the owners of the land for the sake of nature, resp. environmental components and environment as a whole. Fulfillment of those duties is secured by sanctions that may be imposed for illegal behavior. However, the requirements are so strong that very often it pays off to breach the law. Fines are usually set too low and in a certain range without regard to time when the illegal behavior is taking place. If fines were

set for each day in which the law was broken, in certain situations it would be more effective.

Provisions establishing the owner's right to adequate compensation for the limitation of the use of his land were missing for quite a long time in the Czech law which resulted in noncompliance with the Czech Charter of Basic Human Rights in the past. Nowadays, those provisions were incorporated into the law; however, the right to compensation is not set clearly enough to be applied without difficulties.

Streszczenie

W Republice Czeskiej właściciela nieruchomości ograniczają liczne przepisy „środowiskowe” związane głównie ze sposobem w jaki może być wykorzystany grunt. Przepisy te zawarte są w różnych ustawach, w szczególności tych dotyczących ochrony środowiska, ochrony lasów i gruntów rolnych. Ze względu na ograniczony zakres niniejszy artykuł ma na celu przedstawienie wybranych instrumentów ograniczających swobodę korzystania z prawa własności nieruchomości.