LEGAL REGULATION OF RATIONAL SUBSOIL MANAGEMENT WITHIN THE SYSTEM OF ENERGY SECURITY TOOLS

DOI 10.18572/2410-4390-2018-3-73-79

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The tasks in the field of environmental and energy security as determined in the strategic instruments are addressed not only by social and economic measures, but also by the corresponding regulatory legal acts, adopted both at the level of the Russian Federation and regional level.

In general, the analysis of the laws showed that no systemic regulatory and legal base has been created ensuring an efficient and rational management of energy resources from the stage of the primary energy resources exploration and production to their sale and consumption. In practice, this results in disputable situations.

The legal regulation of rational subsoil management constitutes one of the legal measures ensuring energy security in the fuel and energy complex. The rational subsoil management laws requires updating; particularly, the inclusion of notion "energy security" in the laws and documenting of the energy resources (including the primary ones) use principles, including the principle of energy security, are advisable. The notion "rational subsoil management" and its meaning need including in the law.

The development and improvement of laws along this path constitute one of the legal measures to ensure energy security aimed at prevention of inefficient energy resources management.

Keywords: *energy law, energy law principles, legal regulation of energy security, rational subsoil management, energy efficiency.*

Development of economy under the modern conditions suggests an efficient use of the nature and resource potential and the potential of the fuel and energy complex as the core branch of economy. It is evident, that, along with economic benefits, the use of natural resources for the purposes of economic activity entails a range of problems. Those include the issues of ensuring sustainable development, balancing of interests of the present and future generations, as well as ensuring of industrial, environmental, energy, and other types of security. In this connection, it seems expedient to study the issues of the legal regulation of energy security within particular fields of economy within which business entities operate, as well as identifying of the measures, forms, and methods for energy security ensuring. This article will consid-

er the issues of legal regulation of rational subsoil management within the system of energy security tools.

The main lines, methods, and means to achieve the strategic goals of ensuring national security have been defined in strategic and policy documents, including Decree of the President of the Russian Federation dd. December 31, 2015, No. 683 On the National Security Strategy of the Russian Federation; Decree of the President of the Russian Federation dd. May 13, 2017, No. 208 On the Economic Security Strategy of the Russian Federation for the Period until 2030; Decree of the President of the Russian Federation dd. April 19, 2017, No. 176 On the Environmental Security Strategy of the Russian Federation for the Period until 2025.

The results in the sphere of ensuring national, economic, and environmental security are achieved through the consolidation of the efforts and resources of the state and local government authorities and development of their interaction with the civil society institutions, as well as through the comprehensive use of the political, organizational, social and economic, legal, informational, military, special, and other measures developed within the framework of strategic planning in the Russian Federation. The means of ensuring national (including energy) security include improvement of the government system and strategic planning in this field, development and implementation of the strategic planning documents, use of the political, organizational, social and economic, legal, informational, military, special, and other measures developed within the framework of strategic planning in the Russian Federation, and provision with qualified human resources. The rules of law, legal relations, and actual exercising of rights constitute the legal tools of ensuring security of any type. [1] Adequate and efficient laws in the field of rational subsoil management are one of the ways to achieve energy security. Certain principles are crucial for forming the law and its efficient implementation.

The principle of ensuring energy security is one of the fundamental principles of the state energy policy. In accordance with Decree of the President of the Russian Federation dd. December 31, 2015, No. 683 On the National Security Strategy of the Russian Federation, energy security includes:

— sustainable ensuring of domestic demand for energy carriers of standard quality,

— enhancement of energy efficiency and energy saving,

— competitiveness of domestic energy companies and energy resources producers,

— prevention of the fuel and energy resources deficit,

— creation of strategic fuel reserves and reserve capacities, accessory equipment manufacturing,

— stable functioning of the energy and heat supply systems.

All of the listed fields of energy security enhancement are connected, directly or indirectly, with the need for adequate provision with the primary energy resources reserves (oil, gas, coal, etc.). Obtaining of primary energy resources involves subsoil use. For the purposes of ensuring a balanced development and use of the mineral resources base for the satisfaction of the needs (including the export ones) of the country's economy for the mineral resources, as well as to benefit the geopolitical interests of the Russian Federation in the long-term outlook, state programs for subsoil geological study are developed providing for: the reproduction of the mineral resources in the volumes compensating for their consumption taking into account the interests of the present and future generations of citizens of the Russian Federation; ensuring of the geological certainty of the territory of the Russian Federation and its continental shelf and geological environment monitoring and protection; ensuring of a more efficient and rational use of mineral resources to satisfy the current and prospective needs of the core economy branches (the fuel and energy, the agroindustrial, and the construction complexes, the atomic industry, the ferrous and non-ferrous metallurgy, and the chemical industry). Addressing of the tasks listed is connected with ensuring of rational subsoil management.

For the purposes of enhancement of the state regulation in the sphere of subsoil use, The Fundamentals of the State Policy in the Field of the Mineral Resources and Subsoil Use have been approved by Regulation of the Government

of the Russian Federation dd. April 21, 2003, No. 494-p. The Long-Term State Program for Study of Subsoil and Reproduction of the Mineral Resources Base of Russia Based on the Mineral Resources Base Consumption-Reproduction Balance was approved by Order of the Ministry of Natural Resources and Environment of the Russian Federation dd. July 16, 2008, No. 151.

The powers of the federal government authorities in the field of the subsoil relations regulation include, according to Article 3 of the Law of the Russian Federation On Subsoil: establishment of the procedure for state supervision of subsoil geological exploration, rational management, and protection; organization and implementation of the federal state supervision of subsoil geological study, rational management, and protection. The powers of the government authorities of the constituent entities of the Russian Federation in the field of the subsoil relations regulation include, in particular, the organization and implementation of the federal state supervision of subsoil geological study, rational management, and protection as related to the subsoil areas of local importance (Decree of the Government of Russia dd. May 3, 2012, No. 429 On the Approval of the Regulations on the Establishment and Changing of the Borders of the Subsoil Areas Provided for Use). When providing the subsoil for use, the license shall contain, among other statutory conditions, the terms and conditions regarding the compliance with the requirements for the rational subsoil management and protection, the safe performance of work related to the subsoil use, and the environmental protection. Subject to the provisions of the strategic and policy documents, the subsoil legal provisions aimed at ensuring rational subsoil management need updating. Thus, for example, the Accounts Chamber of the Russian Federation has revealed that the Ministry of Natural Resources and Environment of Russia failed to develop and approve the procedure for formation and keeping of the state cadaster of mineral deposits and occurrences as provided for in Clause 5.2.6 of the Regulations on the Ministry of Natural Resources and Environment of Russia, with the necessity to keep the same documented in Article 30 of the Law On Subsoil. Due to that, the Federal State Unitary Scientific and Production Enterprise Russian Federal Geological Fund (which keeps the state cadaster of mineral deposits and occurrences in accordance with Clause 2.2.8 of the charter as approved by Order of the Federal Agency for Subsoil Use dd. August 31, 2005, No. 917) follows the USSR Instruction on Keeping the State Cadaster of Mineral Deposits and Occurrences and the Methodological Guidelines on Passport Generation for the Items to be Included in the State Cadaster of Mineral Deposits of the USSR as approved by the USSR Ministry of Geology dd. July 25, 1980, No. 312, which have not been incorporated in the laws of the Russian Federation in accordance with order of the President of the Russian Federation dd. March 18, 2011, No. 158-рп.[2]

Business entities develop mineral (including oil) fields in accordance with the current laws on subsoil on the basis of licenses and according to the technical projects approved. The main requirements for rational subsoil management and protection are set forth in Section *3 Rational Subsoil Management and Protection* of the Law of the Russian Federation On Subsoil. The Subsoil Protection Rules were approved by Decree of the Federal Mining and Industrial Supervision Service of the Russian Federation dd. June 6, 2003, No. 71 subject to the requirements of the Law On Subsoil.

One should note that the current Russian law on subsoil establishes the requirements for the development of mineral deposits in general, lacking the definition of rational subsoil management.

At the same time, in our opinion, the notion "rational subsoil management", and its meaning need documenting in laws. For example, companies' economic activity in the sphere of subsoil use involves considerable pollution of the territories they operate in. Apart from that, the introduction of new technology, for instance, hydraulic fracturing to boost the production volume, is always associated with risks (environmental, technological, technical, etc.), while the implications of new technology use are still obscure.

In this connection, special rules are required to regulate both deposit development engineering involving new technology and the process, *per se*,

of the technology application and mitigation of the environmental and other impact.

As it was mentioned in the work by R.N. Salieva [3], in Article 123 of the Model Code on Subsoil and Subsoil Use for the CIS Member States, rational subsoil management is understood as the implementation of such a complex of technical, technological, legal, organizational, financial and lending, tax, and other measures, which result, in the course of the subsoil resources study, exploration, and use in compliance with the established limits, norms, standards, and rules, in the best social and economic effect of the natural subsoil resources use for the state and the society. Subsoil protection is a system of measures implemented for the fullest (comprehensive) extraction of the mineral resources from the subsoil and the economically reasonable mitigation of losses in the course of the deposits development to the most extent possible, as well as for the preservation of the balance of the geological environment taking into account the anthropogenic impact.

As it follows from the above definition, rational subsoil management can be ensured by a complex of measures (technical, technological, legal, organizational, financial and lending, and tax) resulting in economic benefits for the state and the society, while, however, ensuring compliance with the production limits (restrictions) and norms and with the standards and rules of performing the production economic activity as established in regulatory documents. For us, the legal measures are the most interesting of all the listed tools of ensuring rational subsoil management. As it has been clarified, the Russian Law On Subsoil contains no definition of rational subsoil management.

Certain rules of law establish general requirements, particularly, the requirements for the mineral deposit development are determined. Thus, in accordance with Article 23.2 of the Law of the Russian Federation On Subsoil, mineral deposits development and the use of subsoil for the purposes not related to the mineral resources production shall be performed in accordance with the approved technical projects. The Government of the Russian Federation establishes the procedure for the preparation, coordination, and approval of the technical projects for the mineral deposits development, and other project documentation for the performance of work related to the use of the subsoil areas, according to the types of mineral resources and the types of the subsoil use. Presently, this sphere of legal regulation is governed by Decree of the Government of the Russian Federation dd. March 3, 2010, No. 118 On the Approval of the Procedure for Preparation, Coordination, and Approval of the Technical Projects for the Mineral Deposits Development, and Other Project Documentation for the Performance of Work Related to the Use of the Subsoil Areas, According to the Mineral Resources Types and the Subsoil Use Types (hereinafter referred to as "Decree No. 118"). Clause 12, Article III of the Main Requirements for the Contents of Project Documentation of Decree No. 118 establishes that project documentation shall include:

a) measures on safe performance of work related to the subsoil use,

b) measures on rational subsoil management and protection,

c) measures on ensuring the compliance with the requirements in the field of environmental protection and ensuring of environmental safety in the course of the subsoil use,

d) information on the terms and conditions of performing the work on suspension and/or abandonment of mines, wells, and other subsoil structures, as well as on land reclamation.

The main requirements for rational subsoil management and protection are defined in the Subsoil Protection Rules approved by the Federal Mining and Industrial Supervision Service of the Russian Federation of Russia dd. June 6, 2003, No. 71, containing a range of the requirements for subsoil protection; particularly, the subsoil protection requirements shall be observed in the course of engineering, construction, and commissioning of the subsoil use facilities. Subordinate regulatory legal acts have also been adopted: GOSTs, Instructions, and Methodical Recommendations establishing the requirements aimed at the preparation of technical projects of mineral deposits development to ensure rational subsoil management at various stages of the economic (entrepreneurial) activity of subsoil users.

The court practice materials testify to that disputes in the sphere of subsoil use arise in connection with violation of the requirements for rational subsoil management and protection due to the following reasons:

— the lack of the deposit commercial development project, or the license holder's failure to develop an action plan on prevention and elimination of emergency oil and oil product spills at production facilities;

— the failure to comply with the oil production levels, as well as the quantitative indicators of well drilling and commissioning within the established period;

— the deposits development projects do not reflect, in particular, the technological process of the gas condensate field treatment and a package of process operations to condition the extracted gas condensate to achieve the proper quality standard;

— amendments due to changes in the technology used for the mineral resources production are not made to the technical project of the mineral deposit development in a timely manner.

Mitigation of the adverse effect the business entities operating in the sphere of subsoil use have on the environment is a priority; that is why legislating of environmental protection as the fundamental principle of rational subsoil management in dedicated laws is required.

In our opinion, the model law of the CIS countries plays an important role in the work on the laws improvement. Particularly, the rational subsoil management provisions of the model Subsoil and Subsoil Use Code for the CIS Member States become significantly and practically important determining both the general provisions on rational subsoil management and special requirements in the sphere of mineral deposits engineering and development.

We suggest that inclusion of similar definitions in the Law On Subsoil is advisable.

It is evident that addressing of the tasks defined in the strategic documents in the sphere of environmental and energy security is ensured by the corresponding regulatory legal acts adopted at the level of the Russian Federation and the regions as well rather than by social and economic measures only. One should specifically note the expediency of the development of corresponding laws in the regions of the Russian Federation. The Energy Strategy of the Russian Federation notes that regional energy policy has for its strategic objective the establishment of a sustainable and inherently stable system of ensuring the regional energy security with due account of optimization of the territorial structure of production and consumption of the fuel and energy resources. In implementation of regional energy policy in such country as Russia (with various natural and climatic and social and economic conditions), it is expedient to take into account the specific features of the country's regions, as well as the state's general strategic objectives of the long-term development of economy and energy industry. For example, Law of the Republic of Tatarstan dd. June 17, 2015, No. 41-ЗРТ On the Approval of the Development Strategy for the Fuel and Energy Complex of the Republic of Tatarstan for the Period until 2030 states that the Strategy has for its objective ensuring of sustainable development of the mineral base of the fuel and energy complex of the Republic of Tatarstan and best efficient use of the fuel and energy resources and the potential of the energy sector to guarantee the growth of the gross regional product and a better quality of life for the people of the Republic. Among the first tasks, improving of the efficiency of the geological prospecting work and ensuring of rational subsoil management, based on the innovative technology implementation for energy-saving and recourse-saving full extraction of the hydrocarbon raw-stock from subsoil and for its comprehensive and deep processing are listed. And Article 4 of the Law On Subsoil of the Republic of Tatarstan documents, among others, the principle of rational and comprehensive subsoil management. Article 73 of the Law On Subsoil of the Republic of Tatarstan contains the main requirements for rational subsoil management and protection, which, in particular, include: observance of the statutory procedure for subsoil allocation for use and prevention of unauthorized subsoil use; ensuring of the comprehensive nature of geological surveys and of rational comprehensive subsoil management and protection; conducting of proactive subsoil geological surveys ensuring valid evaluation of the mineral

deposits reserves or the properties of the subsoil area allocated for use not related to the mineral resources production; conducting of the state examination and state recording of the mineral resources reserves and the subsoil areas, used for the purposes not related to the mineral resources production; ensuring of the fullest extraction from subsoil of the reserves of the mineral deposits, as well as associated minerals and components; valid metering of the reserves, extracted and left in the subsoil, of the main and associated mineral resources in the course of the mineral deposits development, and other provisions. Each of the stated requirements for the rational subsoil management implies corresponding regulatory framework. Eventually, the legal regulation of rational subsoil management is aimed at a stable and reliable satisfaction of the state's needs for energy resources and ensuring of energy security.

The current legislation describes energy security mainly within the framework of regulation of relations in energy industry. Thus, Paragraph 5 Energy Supply, Chapter 30 of the Civil Code of the Russian Federation deals with the safety of energy plants and grids. Federal Law dd. July 21, 2011, No. 256-ФЗ On Security of the Fuel and Energy Sector Facilities defines the security of the fuel and energy sector facilities as the condition of the fuel and energy sector facilities being protected against illegal intervention. Article 6 of Federal Law On the Electric Power Industry states that general principles of organizing the economic relations in the sphere of energy include, in particular, ensuring of energy security of the Russian Federation.

It seems expedient to include in the law the notion of energy security, as well as to establish the principles of regulation of energy relations broadly, i.e. covering all relations arising in the sphere of energy.

It should be noted that the CSTO model law On Energy Security [4] contains the notion of energy security which is defined as the "condition of protection of the citizens, the society, the state, and the economy against the threats of deficit in coverage of their needs in energy by affordable energy resources of acceptable quality and the threats to an uninterrupted energy supply". In general, the model law of the Collective Security Treaty Organization establishes the common approaches of the member states of the Collective Security Treaty Organization to the organizational and legal regulation of energy security within the context of ensuring the states' national security. Article 4 of the said law documents the principles of ensuring energy security, among which the principle of prevention of inefficient energy resources management is mentioned (the interrelation with the energy efficiency policy). It is evident that, in accordance with the basic principle of efficient and rational energy resources management, forming of legal regulation for all stages of the production and economic activity in the sphere of the search for energy resources, as well as their production, processing, transportation, storage, selling, and consumption.

In general, the analysis of the laws showed that no systemic regulatory and legal base has been created ensuring an efficient and rational energy resources management from the stage of the primary energy resources exploration and production to their sale and consumption. In practice, this results in disputable situations.

For the creation of systemic legislative regulation, the clarification of the legal regulation object in the energy efficiency law would be advisable, which shall be directly related to the rational subsoil management laws. For example, the CIS Model Law on Energy Saving states that the legal regulation objects in the field of enhancement of energy efficiency of the energy resources use are the relations existing in the course of implementation of the energy saving policy in all branches of the economy and non-industrial (social) sphere, including, inter alia, in the course of:

— production, processing, transportation, manufacture, storage, and consumption of all types of energy resources and secondary energy resources;

— the use of renewable energy sources;

— conducting of scientific research and experimental design work aimed at the enhancement of energy efficiency of the energy resources use;

— state monitoring and supervision, and supervision of the energy resources use;

— informational support regarding the energy saving issues; the use of new energy sources,

new fuel types, and tools for measuring, control, and monitoring the energy resources consumption [5].

We believe that legislative regulation of rational subsoil management constitutes one of the legal measures to ensure energy security within the fuel and energy complex. As V.V. Romanova correctly notes, taking into account that energy security is a component of the national security, the proper legal regulation is the key goal of energy law order. [6]

Generally, the rational subsoil management law requires updating: the inclusion of the notion "energy security" in the subsoil law; documenting of the energy resources (including the primary ones) use principles, including the principle of energy security ensuring. The development and improvement of laws in this direction constitute one of the legal measures to enhance the efficiency of the mineral base management and, eventually, to ensure energy security by way of prevention of inefficient energy resources management. ■

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