GOALS OF FURTHER DEVELOPMENT OF LEGAL REGULATION IN HEAT SUPPLY AND PROTECTION OF RIGHTS OF PLAYERS IN THE HEAT ENERGY MARKET IN THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

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A certain legal base that regulates public relations in the heat power industry has currently been formed. However, representatives of legislative authorities, government agencies, and the expert community note that it is advisable to improve the regulatory framework in heat supply and, above all, legal regulation of accident-free operation of heat supply and network facilities. Legal analysis of provisions of the current laws in the field of heat supply, debating points arising upon consideration of draft laws, and court practice indicate presence of inaccuracies, gaps, and contradictions that need to be addressed, and great work needs to be done to this end. The need to work to improve legal regulation in heat supply is also confirmed by the Decree of the Constitutional Court of the Russian Federation. In 2018, two Decrees of the Constitutional Court of the Russian Federation were adopted (No. 30-П dated July 10, 2018, and No. 46-П dated December 28, 2018). According to them, the following provisions were found not to comply with the Constitution of the Russian Federation: Part 1, Article 157 of the Housing Code of the Russian Federation, the third paragraph, clause 42 of Regulation 354, and the second paragraph, clause 40 of Regulation 354.

Considering significant number of lawsuits in the field of heat supply, it seems very important to work on timely analysis of court practice and a more mobile response to cases when gaps in legal regulation are identified in order to prepare necessary addenda and amendments to existing regulatory legal acts to ensure a balance of interests of players in the heat energy market without waiting for the next acknowledgement of certain provisions of the laws in the heat supply industry non-complying with the Constitution of the Russian Federation.

Keywords: *energy law, legal regulation in heat supply, energy market players, procedure for payment for public heating service, Constitutional Court of the Russian Federation.*

Legal regulation of public relations in heat supply involves various sources of energy law, including the Constitution of the Russian Federation, the Civil Code, the Housing Code of the Russian Federation, the Code of Administrative Offenses of the Russian Federation,

Federal Law dated July 27, 2010 No. 190-ФЗ *On Heat Supply*, subordinate regulatory legal acts, etc.

The key part in legal regulation of public relations in heat supply is played by Federal Law dated July 27, 2019 No. 190-ФЗ *On Heat Supply* (hereinafter referred to as the Federal Law on Heat Supply). Pursuant to the Federal Law On Heat Supply, within the powers provided for by the legislator, the Government of the Russian Federation approved, among other things: the requirements to heat supply schemes and the procedure for their development and approval; the rules for organization of heat supply in the Russian Federation; the Fundamentals of Pricing in Heat Supply; the Rules for Price (Tariff) Regulation in Heat Supply; the Rules for Connection (Technological Connection) to Heat Supply Systems, including the Rules of Non-Discriminatory Access to Services for Connection (Technological Connection) to Heat Supply Systems; the Rules of Non-Discriminatory Access to Services for Transfer of Heat Energy, Heat Carrier, the Rules for Consideration (Settlement) of Disputes and Disagreements Related to Establishment and/or Use of Prices (Tariffs).

Moreover, relations with regard to heat supply and provision of relevant utilities are governed by the Regulation on Provision of Utilities to the Owners and the Users of Premises in Apartment Buildings and Residential Buildings approved by Decree of the Government of the Russian Federation dated May 6, 2011 No. 354 (hereinafter referred to as Regulation 354).

Work on further development of legal regulation in heat supply is performed in accordance with Order of the Government of the Russian Federation dated November 29, 2017, No. 2655-p, which approved a plan of priority measures ("road map") for implementation of the target model of the heat energy market aimed at implementing Federal Law dated July 29, 2017 No. 279-ФЗ *On Amendments to the Federal Law On Heat Supply and Certain Legislative Acts of the Russian Federation on Improvement of the System of Relations in Heat Supply*.

Therefore, a certain legal base that regulates public relations in the heat power industry has currently been formed. However, representatives of legislative authorities, government agencies, and the expert community note that it is advisable to improve the regulatory framework in heat supply and, above all, legal support for accident-free operation of heat supply and network facilities [1].

Legal analysis of provisions of the current laws in heat supply, debating points arising upon consideration of draft laws, and the court practice indicate presence of inaccuracies, gaps, and contradictions that need to be addressed, and great work needs to be done to this end.

Draft law No. 388059-7 *On Amendments to the Federal Law On Heat Supply* (in terms of establishing the criteria and the procedure for referring the owners of heat networks to heat supplying organizations) [2] is under consideration in the State Duma. The draft law proposes to grant to the Government of the Russian Federation the authority to establish criteria for referring the owners of heat networks to heat supplying organizations. The explanatory note to the draft law states that there is no clear legal content on the notion of the heat supplying organization, while the heat supplying organizations fully function at the expense of tariffs. Therefore, a situation arises when a significant number of "formal" heat supplying organizations that do not have specialized equipment for prompt mitigation of possible emergencies in heat networks on their balance are formed. In the official opinion, the Government of the Russian Federation supports this draft law subject to certain comments. The following is mentioned among the comments: the draft law does not contain rules defining the status of the owners of sections of heat supply networks, the owners of small networks, it does not determine their legal status and procedure for interaction with the heat supplying organizations with regard to purchase of sections of heat supply network and relevant land plots belonging to the owners of small networks. The State Duma's Committee on Energy also supported the draft law with comments, which relate, among other things, to the fact that the draft law does not cover not only the legal status of small heat supplying organizations, but also the heat supplying organizations that own heat points, that is, generating heat energy.

The relevance of the introduced draft law as well as the submitted comments and recommendations for its revision is beyond doubt. It should be noted here that the Federal Law on Heat Supply

does not currently contain definitions of the notions of the small or minor heat supplying organization as well as the organizations that own heat points or the procedure for interaction of these heat supplying entities with each other and other parties to public relations in heat supply. It does not contain the definition of the notion of "small-scale" networks, the division of heat networks depending on their size either.

Without introduction of these notions at the level of a legislative act that establishes rights and obligations, including those of the heat supplying organizations, legal bases for use, creation and operation of heat supply systems, there will be obvious legal uncertainty in the determination by the Government of the Russian Federation of the procedure for classifying organizations as the heat supplying organizations as well as for setting requirements to the legal regime of heat networks depending on the size as well as the requirements to the legal regime of the heat points. That is, the Government of the Russian Federation will have to determine the criteria for the subjects and the objects, the independent status of which is not established by law specifying the general notions of the heat supplying organization, the heat supply system, the heat network, and the heat supply facilities. A significant number of small or minor heat supplying organizations and uncertainty of their legal status mentioned in the explanatory note to the draft law, opinions and conclusions on the draft law suggest that there is a gap in legal regulation that needs to be filled at the level of a legislative act.

Draft law No. 651016-7 *On Amendments to Article 20 of the Federal Law On Heat Supply* [3] is currently under consideration in the State Duma. The draft law relates to involvement of the unified heat supplying organization in the control over readiness for the heating season.

The draft law provides for involvement of the unified heat supplying organization, to the heat networks of which the heat-consuming installations of the heat energy consumers are directly connected, in control by the municipal authorities of readiness of the heat supplying organizations, the heat network organizations, and the heat energy consumer to the heating season.

It follows from the explanatory note to the draft law that the unified heat supplying organizations and the heat supplying organizations regularly deal with refusal of the municipal authorities to include a representative in commissions upon control of readiness of the housing stock for the heating season. In regions, the certificates of readiness are issued to the consumers that do not properly meet the requirements to readiness. Therefore, it is further concluded that the absence of the requirement for the mandatory participation of representatives of the unified heat supplying organization in the commission means impossibility of ensuring control by the unified heat supplying organization over the connection of the heat supplying and heat network organizations, and the housing stock at the beginning of the heating season.

According to clause 28, Article 2 of the Federal Law *On Heat Supply*, the unified heat supplying organization is a heat supplying organization, to which, in accordance with the established procedure, the status of the unified heat supplying organization in the heat supply scheme is assigned. The definition of the heat supplying organization is given in clause , Article 2 of the Federal Law *On Heat Supply*, according to which the heat supplying organization means an organization selling produced or acquired heat (capacity), heat carrier to the consumers and/or the heat supplying organizations and owning sources of heat energy and/or heat networks in the heat supply system, by means of which heat is supplied to the consumers, on the basis of the right of ownership or other legal grounds.

According to part 1, Article 20 of the Federal Law On Heat Supply, the readiness of the following for the heating season shall be controlled: 1) municipalities; 2) heat supplying organizations and heat network organizations; 3) consumers of heat energy, whose heat-consuming installations are connected (technologically connected) to the heat supply system. In addition to the fact that the heat supply facilities and the heat-consuming installations rather than entities, to which the said facilities belong, shall be inspected, the question of the subject composition of the entities being inspected, for which the inspection is performed, arises. If the unified heat supplying organization as well as the heat supplying organization that does not have the status of the unified heat supplying organization, own the heat supply facilities on the basis of the

right of ownership or other legal basis, then why the unified heat supplying organization is not included in the list of entities to be inspected.

In accordance with clause 4, Article 6 of the Federal Law *On Heat Supply*, the authority to control readiness of the heat supplying organizations, the heat network organizations, and certain categories of consumers for the heating season is granted to the municipal authorities. If, as follows from the explanatory note to the draft law, in practice, the municipal authorities do not actually perform monitoring functions or improperly perform them on a regular basis, this already indicates unenforceability of the norm set forth in clause 4, Article 6 of the Federal Law On Heat Supply, and then it is necessary to work out proposals on the assignment of control functions to another entity, possibly to the Federal Service for the Supervision of Environment, Technology and Nuclear Management. This will correspond to the authority of the Federal Service for Environmental, Technological, and Nuclear Supervision to exercise control and supervision over compliance, within their competence, by the heat supplying organizations and the heat network organizations with the safety requirements in the field of heat supply. Moreover, if, as indicated in the explanatory note to the draft law, in the regions, issue of the certificate of readiness to the consumers that do not properly comply with the requirements to readiness is widespread, it seems advisable to consider introduction of amendments into the Code of Administrative Offenses of the Russian Federation and into the Criminal Code of the Russian Federation, which provide for administrative and criminal liability of the officials for issue of the certificate of readiness to the entities, in the event of actual non-compliance with the requirement to readiness of the heat supply facilities and the heat-consuming installations for the heating season.

It should be noted that many other issues deserve attention. They include those relating to a clearer definition of the content of the legal status of players in the heat supply market and the procedure for their interaction, the content of the legal regime of the heat supply facilities.

Thus, according to clause 5_1, Article 2 of the Federal Law *On Heat Supply*, the heat supply facilities shall include sources of heat energy, heat networks and their complex. Pursuant to clause 14, Article 2, the heat supply system means a complex of sources of heat energy and heat-consuming installations technologically connected by heat networks. The reasons, for which heat-consuming installations, which, according to clause 4, Article 2 of the said law, mean devices intended for use of heat energy and heat carrier for the needs of the consumer of heat energy, are not referred to the heat supply facilities, are not absolutely clear. The Federal Law *On Heat Supply* sets forth the definition of the notion of reserve thermal capacity (clause 21, Article 2), but it does not give the definition of the notion of capacity and does not disclose the content of the legal regime of thermal capacity. The law does not have a clear delineation of the rights and obligations of the heat supplying organization and the unified heat supplying organization, which significantly increases the risks of disagreements.

The need to work on improvement of legal regulation in heat supply is confirmed by acts of the Constitutional Court of the Russian Federation. Legal analysis of data on court decisions of the Constitutional Court of the Russian Federation showed the following. In the period from 2012 to 2019, the following provisions of the Federal Law *On Heat Supply* were challenged in terms of their constitutionality: sub-causes 20 and 29, Article 2. These sub-clauses set forth the definitions of the notions of the heat supply scheme and of consumption of heat energy without a contract [4]; Part 1, Article 11 establishing that tariffs for heat energy (capacity) supplied to the consumers, the tariffs for the services of transfer of heat energy can be set by the regulatory authority in the form of a single-rate or double-rate tariff [5]; Part 15, Article 14 setting forth a ban on heating of residential premises in apartment buildings using individual apartment sources of heat energy [6]; Part 6, Article 17, according to which the owners or other legal possessors of heat networks do not have the right to impede transfer through their heat networks of heat energy to the consumers, the heat-consuming installations of which are connected to these heat networks, as well as to demand from the consumers or the heat supplying organizations reimbursement of the expenses for

operation of these heat networks prior to setting a tariff for the services for transfer of heat energy through these heat networks [7]; and Article 22 establishing the procedure for limitation and termination of supply of heat energy and heat carrier to the consumers in the event of improper performance by them of the heat supply contract as well as in the event of detection of heat consumption without a contract [8]. Moreover, constitutionality of Part 1, Article 157 of the Housing Code of the Russian Federation, the third and the fourth paragraphs of clause 42_1 of Regulation 354 [9], and the third and the fourth paragraphs of clause 42 of Regulation 354 [10] was also challenged in the Constitutional Court of the Russian Federation.

Let us give examples of recognition by the Constitutional Court of the Russian Federation of the provisions of the laws in the field of heat supply as non-complying with the Constitution of the Russian Federation. In 2018, two Decrees of the Constitutional Court of the Russian Federation were adopted (No. 30-П dated July 10, 2018 and No. 46-П dated December 28, 2018). According to them, the following was found not to comply with the Constitution of the Russian Federation: Part 1, Article 157 of the Housing Code of the Russian Federation, the third paragraph of clause 42 of Regulation 354, and the second paragraph of clause 40 of Regulation 354.

Constitutionality of Part 1, Article 157 of the Housing Code of the Russian Federation, the third and the fourth paragraphs of clause 42 of Regulations 354 was verified by the Constitutional Court of the Russian Federation in connection with complaints of citizen S.N. Demints.

These provisions of the Housing Code of the Russian Federation and the Regulation were challenged due to the fact that they did not provide for the possibility of taking into account the readings of individual heat meters while determining the amount of payment for public heating service.

By Decree of the Constitutional Court of the Russian Federation dated July 10 No. 30-П (hereinafter referred to as Decree No. 30-П), the interrelated regulatory provisions contained in Part 1, Article 157 of the Housing Code of the Russian Federation and the third paragraph of clause 42_1 of Regulation 354 were recognized as non-complying with the Constitution of the Russian Federation, its Articles 17 (Part 3), 19 (Part 1), 35 and 55 (Part 3), to the extent that these provisions, within the meaning assigned to them in the system of current legal regulation by the law enforcement practice, do not provide for consideration of readings of individual heat meters while determining the amount of payment for public heating services in an apartment building, which, when commissioned, including after capital repairs, in accordance with the regulatory requirements, was equipped with a collective (common) heat meter and residential and non-residential premises in which were equipped with individual heat meters, but their integrity in some premises was not ensured.

Compliance with the Constitution of the Russian Federation of the second paragraph of clause 40 of Regulation 354 was verified by the Constitutional Court of the Russian Federation in connection with applications filed by nationals V.I. Leonova and N.Ya. Timofeev.

The applications were filed due to the following circumstances. Individual apartment sources of heat energy not connected to the centralized heating system were installed in the applicants' apartments. In the apartment of V.I. Leonova, which was previously classified as non-residential premises, this source was installed at her expense. Her apartment was not connected to the centralized heat supply networks of the apartment building and the internal heating systems. In the apartment of N.Ya. Timofeev, work on arrangement of autonomous heating was executed in 2005. After installation in the applicants' apartments, no payment for the heating service was charged, but the relevant payments started to be charged on V.I. Leonova from 2017 by the management organization and on N.Ya. Timofeev from October 2014 by the resource supplying organization. The citizens have attempted to protect their rights in court. In both cases, while refusing to satisfy the claims, the courts noted that according to the effective laws, the utility fees shall be paid whether or not there are individual sources of heat energy in it and in accordance with the uniform procedure, and no special procedure for calculation of the amount of payment for heat energy in the building, certain premises in which are disconnected from the centralized heating system, is provided.

The citizens applied to the Constitutional Court of the Russian Federation. The case on verification of constitutionality of the second paragraph of clause 40 of Regulation 354 by the Constitutional Court of the Russian Federation. On December 20, 2018, Decree No. 46-П was adopted by the Constitutional Court of the Russian Federation (hereinafter referred to as Decree No. 46-П).

Decree No. 46-П states that the unified procedure provided for by the second paragraph of clause 40 of Regulation 354 for payment for the public heating service for all consumers of utility services in an apartment building does not make it possible to pay for this utility only to the extent of its consumption to maintain common property in this building. As a result, while in the current legal regulation there is no special procedure for calculation of the consumption standard of the heating services for common needs, those owners and users of residential premises connected to centralized heat supply networks in apartment buildings that have switched to individual residential sources of heat energy in accordance with the established procedure shall be charged, contrary to Articles 35 (Part 3) and 55 (Part 3) of the Constitution of the Russian Federation, with payment not only for consumption of heat energy to maintain common property in an apartment building, but also for heat energy not directly supplied to their premises, which puts these people in a worse position as compared to the owners and the users of the remaining premises in this building heated only by heat energy supplied to the building through the centralized heat supply networks, and also leads to violation of the principles of legal certainty and maintaining citizens' confidence in law and actions of the state, justice and proportionality of restrictions on rights and freedoms.

Decree No. 46-П also specifies that according to public information, cases when the management companies or resource supplying organizations charge payment for public heating service to be made by those owners and users of residential premises in an apartment building connected to the centralized heat supply networks that switched to heating using individual apartment sources of heat energy in the manner provided for by the second paragraph of clause 40 of Regulation 354, and the debt under relevant utility bills is subsequently collected in a judicial proceeding are rather widespread.

Considering these circumstances, the Constitutional Court of the Russian Federation resolved to recognize the second paragraph of clause 40 of Regulation 354 as non-complying with the Constitution of the Russian Federation (Articles 17 (Part 3), 19 (Part 1), 35 (Parts 1 to 3), 40 (Part 1), and 55 (Part 3) to the extent that it contains a regulatory provision not allowing the consumer to separately pay a utility bill for heating for consumption of this service in residential or non-residential premises and a fee for its consumption to maintain common property in an apartment building, obliges the owners and the users of residential premises in an apartment building connected to the centralized heat supply networks, who, following the established procedure for rebuilding the system of internal heating applicable at the time of execution of this type of work, switched to heating of specific premises using individual apartment sources of heat and at the same time ensure temperature regime in this premises that meets the regulatory requirements, to pay for heat energy not actually used by them to heat these premises supplied to the apartment building through the centralized heat supply networks.

The Constitutional Court of the Russian Federation also ruled that the Government of the Russian Federation should immediately make necessary amendments to the existing legal regulation.

It should be noted that the above-mentioned Decrees of the Constitutional Court of the Russian Federation indicate gaps in the current legal regulation. The presence of gaps in legal regulation was also indicated in judicial acts that were adopted before the nationals applied to the Constitutional Court of the Russian Federation. Herewith, the applications on similar disagreements are multiple, which is also mentioned in the Decrees of the Constitutional Court of the Russian Federation. Thus, the gaps in the current legal regulation in the heat power industry were already identified several years ago, but relevant addenda and amendments to the regulatory legal acts were made only after this was indicated in Decree No. 30-П and Decree No. 46-П.

It should be noted that, pursuant to Decrees No. 30-П and No. 46-П, by Decree of the Government of the Russian Federation dated December 28, 2018, No. 1708, which entered into force on January 1, 2019, Regulation 354 was amended.

As for the implementation of Decree No. 30-П with regard to introduction of amendments into Part 1, Article 157 of the Housing Code of the Russian Federation, there are two draft laws under consideration by the State Duma. Draft law No. 567690-7 *On Amendments to Article 157 of the Housing Code of the Russian Federation* submitted by State Duma Deputies S.M. Mironov, G.P. Khovanskaya, D.A. Ionin, A.A. Remezkov, A.V. Terentyev, and O.A. Nikolaev on October 17, 2018 [11], and draft law No. 620233-7 *On Amendments to Article 157 of the Housing Code of the Russian Federation submitted by the Government of the Russian Federation* on December 29, 2018 [12].

The draft laws differ in the following. Draft law No. 567690-7 proposes to add a reference rule to Part 1, Article 157 of the Housing Code of the Russian Federation. According to the proposed amendment, the procedure for determining the amount of payments for utilities in apartment buildings, which are equipped with collective (common) meters and in which not all premises are equipped with individual and/or common (apartment) meters, taking into account the readings of individual and/or common (apartment) meters, should be provided for in Regulation 354.

Draft law No. 620233-7 proposes a change in the wording of Part 1, Article 157 of the Housing Code of the Russian Federation. The general provision shall include a rule on peculiarities of the procedure for calculation of the amount of payment for the public heating service. This rule provides that the amount of payment for public heating service in the premises in an apartment building shall be calculated in the manner provided for by Regulation 354 taking into account the area of this premises and the amount of heat energy consumed in the apartment building as determined on the basis of the readings of the collective (common) meter, given there are individual and/or common (apartment) meters in the premises of the apartment building equipped with collective (common) meter, the readings of individual and/or common (apartment), and collective (common) meters, and in the absence of a common (collective) meter in the apartment building, on the basis of the standard consumption of public heating service approved by the public authority of the constituent entity of the Russian Federation in the manner established by the Government of the Russian Federation.

The Government submitted a negative opinion on draft law No. 567690-7, which states that the submitted version does not ensure implementation of Decree No. 30-П. The State Duma's Committee on Housing Policy and Housing and Public Utilities submitted objections to draft law No. 620233-7, referring to clause 4.3 of Decree No. 30-П, while stating that taking into account this clause, it is impossible to establish special legal regulation in the Housing Code of the Russian Federation for one kind of public service only.

In this context, it is necessary to pay attention to the following. Clause 4.3. of Decree No. 30-П actually states that Part 1, Article 157 of the Housing Code of the Russian Federation, while making it possible to calculate the amount of payment for consumed utilities based on their volume determined by readings of the meters, does not differentiate the readings of collective (common) and individual meters and, therefore, creates uncertainty making it possible to violate the constitutional parameters in regulation of this issue by the Government of the Russian Federation. Herewith, it should be borne in mind that, in accordance with the third paragraph of Article 74 of Federal Constitutional Law No. 1-ФКЗ *On the Constitutional Court of the Russian Federation*, the Constitutional Court of the Russian Federation shall adopt decrees only on the subject specified in the application. The subject matter in the case under consideration concerns recognition of the interrelated regulatory provisions of Part 1, Article 157 of the Housing Code of the Russian Federation and the third and the fourth paragraphs of clause 42_1 of Regulation 354 as non-complying with the Constitution of the Russian Federation to the extent that these provisions, within the meaning assigned to them in the legal regulation system by the law enforcement practice, do not provide for the possible consideration

of readings of individual heat meters when determining the amount of payment for the public heating service in an apartment building, which, when commissioned, including after capital repairs, in accordance with regulatory requirements, was equipped with a collective (common) heat meter, and residential and non-residential premises in which were equipped with individual heat meters, but their integrity in some premises was not ensured.

The proceedings as related to the fourth paragraph of clause 42 of Regulation 354 were terminated in accordance with the requirements of Articles 96 and 97 of the Federal Constitutional Law *On the Constitutional Court of the Russian Federation*, and, therefore, the subject matter of consideration by the Constitutional Court of the Russian Federation in this case are interrelated provisions of Part 1, Article 157 of the Housing Code of the Russian Federation and the third paragraph of clause 42_1 Regulation 354 insofar as based on them in the system of the current legal regulation, the issue of determining the amount of payment for public heating services for the owners and the users of premises in an apartment building, which, when commissioned, including after capital repairs, was equipped with a collective (common) heat meters, and residential and non-residential premises in which were equipped with individual heat meters, but their integrity in some premises was not ensured, is settled. This is explicitly stated in the last paragraph of clause 1 of Decree No. 30-П. Relevant conclusions are made in clause 1, clause 3 of the wording of the decision. These conclusions made in Decree No. 30-П are reflected in draft law No. 620233-7.

Considering the significant number of lawsuits in heat supply, it seems very important to execute work on timely analysis of court practice and a more mobile response to cases of detection of gaps in legal regulation in order to prepare necessary addenda and amendments to existing regulations so that the legal norm would ensure a balance of interests of players in the heat energy market, without waiting for the next acknowledgement of certain provisions of the laws in the field of heat supply non-complying with the Constitution of the Russian Federation. ■

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