

THE CONCEPT AND LEGAL REGULATION OF ENERGY SECURITY AS THE BASIS OF THE ENERGY LAW ORDER

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The research of the issues related to the development of legal mechanisms aimed at the assurance of global energy security acquires especial significance in the modern period due to the increased importance of the energy component of the modern economy, its influence on the development of the system of international relations, world economy and geopolitics. The analysis of national laws, national and foreign doctrines will make it possible to determine the general features characterizing the understanding of energy security, single out its essential attributes, identify the main factors significantly affecting safe functioning of the fuel and energy complex. Solution of these issues is a necessary step in the further development and improvement of the legal regulation of relationships in energetics including the statutory consolidation of the complex of required measures assuring its security, which will undoubtedly facilitate strengthening of the energy law order on the global scale.

Keywords: energy law, energy security, national security, energy law order.

The assurance of guaranteed energy security is viewed by each state as the main strategic development task while the understanding of energy security is related to the fact that the latter is one of the most importance components of the national security of the country. However, such approach gives no opportunity for a full determination of the understanding of energy security, showing its essential attributes to be used as a basis for the development of the corresponding concept applicable for statutory consolidation, which should serve as a basic factor defining the legal and economic ground of the state energy security assurance mechanism.

The energy security assurance concept, tasks and conditions are worded in the following strategic documents: the National Security Strategy of the Russian Federation for the Period until 2030, the Economic Security Strategy of the Russian Federation for the Period until 2030, the Strategy of the Scientific and Technological Development of the Russian Federation, the Fundamentals of the State Policy of the Russian Federation in Industrial Security for the Period until 2025 and Thereafter, and in the specialized document, the Energy Security Doctrine approved by an Order of the President of the Russian Federation of May 13, 2019.

A detailed analysis of the aims, principles, main areas and tasks of energy security assurance as well as modern energy law order tasks worded in these documents is given by V.V. Romanova. [1]

The mentioned documents reflect approaches towards the understanding of energy security. Thus, the National Security Strategy of the Russian Federation notes that the main content of energy security is the stable satisfaction of the demand in the required amount of energy carriers of standard quality, the effective use of energy resources by raising competitiveness of national producers, the prevention of possible deficit of fuel and energy stock, establishment of strategic reserves of fuel and components and assurance stability of energy supply. The energy security concept is defined in the Energy Security Doctrine of the Russian Federation through such categories as challenges, threats and risks in the energy sphere.

The complex of relationships assuring effective functioning of the energy industry, its energy security is generally based on fundamental constitutional law provisions obligating government and local self-government authorities as well as economic entities to treat land and natural resources in due manner, ensure their protection, sparing use of energy sources, not allowing violation of the corresponding environmental and technological integrity conditions (Articles 9, 36, 58, 71 of the Constitution of the Russian Federation).

Energy security is mentioned in the Federal Law On Security of Objects of the Fuel and Energy Complex (Article 2), but this law reviews energy security in a narrow sense, only in relation to objects of the fuel and energy complex.

It is worth mentioning that the basic energy security concepts are not duly systematized in the applicable statutory acts of Russia, such documents have no clear and uniform understanding of energy security and mechanisms of its assurance.

The issue of understanding of energy security is a subject of scientific discussions

both in the economic and legal science. The opinions submitted on this issue present a variety of approaches. Scientists assigning different meanings to this concept, often use this term to attach deeper significance or relevance to some energy problems that in their essence not always cover the issues directly related to energy security. [2]

Many Russian researchers define energy security as the state and level of protection of the system consisting of separate citizens, the society and economy in general against threats to uninterrupted and reliable energy supply. A.I. Tatarkin notes that energy security in this quality is a regulated system of reliable and safe movement of fuel and energy resources and accompanying production factors on a global scale assuring stable economic and social development in the world. [3]

Thus, energy security is most often defined by the Russian authors as the state of protection of citizens, the society, state, economy against the following threats:

- Failure to meet justified demands in energy, energy resources, uninterrupted energy supply in the conditions of economically reasonable and justified prices on fuel and energy resources;
- Deficit of energy carriers, economically available energy resources;
- Energy supply interruptions, etc.

It seems that such narrow approaches to the understanding of energy security and its component parts (risk, threat, danger) can lead to its imprecise interpretation and use in law making and in practice. It cannot go unnoticed that the understanding of energy security as the state of protection against threats is hardly sufficient, such measures need to be aimed not only and not so much at protection against various threats as primarily at their prevention and averting.

Scientific publications present approaches, where energy security is not associated with the corresponding threats and the level of protection, while emphasis is made on its link to systematic provision of fuel and energy resources to the country or the level of reliable and safe movement of fuel and energy

resources and accompanying production factors on a global scale. In the opinion of K.S. Zykov, energy security is the state of the society and economy allowing to maintain the energy consumption level required for the socioeconomic development of the country, the best level of supply to the world energy markets from the commercial criterion standpoint based on the effective use of fuel and energy stock. [4] The position of L.L. Gryaznov is based on a slightly different approach viewing energy security as availability of fuel and energy resources for the economy at the cost allowing their reproduction in the industries of the fuel and energy complex as well as positive added value in the chief national economy spheres of the country. [5]

Summing up all of the above-mentioned standpoints concerning the understanding of energy security, it is important to note that one needs to disclose various essential attributes of the definition of this concept rather than show this or that characteristic trait. It should be taken into account that this concept has multiple facets and is used to solve various problems: political, economic, environmental, social referred to in the above stated strategic documents.

Energy security is a systemic process including national policy and international institutions. The aim of this system is quick and timely reaction to malfunctions and emergency situations, and the key role in due energy security assurance is played by the international cooperation based on international provisions and agreements.

Foreign countries associate energy security with the problems of its assurance (supply security and energy dependence). An example of a document officially proving this position is the European Security Strategy adopted by the European Council in 2003 (16) where energy dependence is understood as a state when up to 75% of EU energy resources will have to be imported from a limited number of countries, many of which are under a jeopardized stability. The supply security is understood as a complex of measures aimed at the creation of guaranteed external and

internal energy sources to overcome external energy dependence.

The criteria of determination of the status and level of energy security in the USA are security and stability of the transport infrastructure considering possible terrorist and military threats as well as threats of natural catastrophes and calamities, man-made disasters able to fully destabilize the global energy market. [6]

In the opinion of American scientist P. Roberts, energy security means the ability to meet the demand requirements, create the amount of electricity and fuel required by a consumer and supply and sell the same at adequate prices to the countries requiring such energy to assure operations of the economy, support normal conditions of life of the population, protect national borders. [7] Another author, F. Cornell, defines energy security as an interdependent system consisting of three links, assurance of security of each link affects the operations of the whole state system. [8] The first link (or the first level) includes the so-called “military energy security” representing a complex of measures to support and bring communication chains to areas of military operations and exercise control over and manage energy resource losses and demands. The second link includes secondary energy security mostly aimed at provision and supply of energy resources to all state spheres, such as education, transport, medicine and healthcare, industry, emergency response, etc. The third link or tertiary energy security is what the author calls security in energetics that primarily affects the economic sphere of the state, this refers to the adequate price policy and price regulation, malfunctions often taken place in this exact link.

It is commonly believed that due energy security assurance depends on sufficiency of resources, availability of economy, environmental and technological admissibility.

The sufficiency of resources is understood as a possibility of uninterrupted provision of energy resources to the population and the national economy. Economic availability is determined by the efficiency of such provision

at the corresponding pricing, technological and environmental admissibility means the opportunity to produce, process and use energy resources within the framework existing on each stage of technological and environmental limitations, which in their turn predetermine security of operations of energy objects.

The Energy Strategy of France views energy security as a constituent part of economic security, the state of protection not only of the country, its citizens, society and state but also protection of economy against threats to reliable fuel and energy supply. The Energy Strategy of France specifies that the main task of the state in this sphere is maintenance and raising the level of life of citizens by means of uninterrupted, highly effective and environmentally secure energetics. French laws single out the following energy security threats: physical, economic, social and environmental. Physical risks are primarily understood as depletion of combustible fuel fields, possible large-scale natural catastrophes and geopolitical crises that may affect stability of supplies. Economic risks may be associated with instability of prices on energy carriers on the world market. Environmental risks may include probability of accidents at nuclear power stations, oil spills, methane leaks and other accidents at fuel energetics enterprises. France pays increased attention at the adoption of measures to prevent global warming. [9] The development of the world economy, rapid competition growth, and the appearance of new information technology worsen the energy security problems. The best reliable level of economic security of a state can be reached in the conditions of sufficient economic stability when no possible external and internal destabilizations are able to undermine it.

The possibility of the fuel and energy complex of this or that state to ensure stable development of the energy sector of the

economy including first and foremost effective energy supply of business entities and the population in any taken period of time and in the long run and the possibility to implement its strategy on the international market based on the effective use of external and internal energy sources is important for energy security and its assurance.

Summing up the above, it can be noted that the basic energy security concepts are not duly systematized in the applicable statutory acts as well as in the doctrine, giving additional grounds to conclude that there is a need to develop and adopt a special legal act establishing clear understanding of energy security, mechanisms of its assurance, harmonization of these provisions with international acts in this sphere. The expediency of adoption of such act is noted by V.V. Romanova. [10]

The model law of the CSTO On Energy Security adopted at a plenary meeting of the Parliamentary Assembly of the Collective Security Treaty Organization (CSTO) becomes of special importance for such work and is recommended for the use by the Organization member states in law improvement. V.V. Romanova correctly emphasizes that this model law fairly names legal entities and individuals among energy security assurance subjects irrespective of whether they perform activities in the sphere of energetics. [11]

The International Economic Forum (IEF) plays an important role in the establishment of cooperation between countries in the energy sphere including the energy security assurance issues. This forum established in 1991 is a site for discussion and solution of various relevant issues concerning the development of world energetics, energy security and other issues. Such discussions take place in the form of multilateral and bilateral negotiations, often held unofficially, between heads of various departments implementing the energy strategy of more than 70 countries. [12] ■

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