

# TOPICAL ISSUES OF HARMONIZATION AND DEVELOPMENT OF THE LEGISLATION OF THE MEMBER STATES OF THE COLLECTIVE SECURITY TREATY ORGANIZATION IN THE FIELD OF STRENGTHENING OF ENERGY SECURITY

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**Abstract:** Energy security is an important component of the national security of the member states of the Collective Security Treaty Organization (the CSTO), and ensuring national security is one of the main objectives of the state energy policy. Under these circumstances, existence of uniform legislative rules allowing the member states of the CSTO to efficiently and adequately implement mechanisms for ensuring their own and collective energy security is one of the key condition of ensuring national and collective security within the framework of the CSTO. The article considers: the role and importance of energy security in the system of ensuring the national security for the CSTO member states, key directions of ensuring energy security for the CSTO member states, and their main lines of cooperation in the specified area; it gives general characteristic of the legislative systems of the CSTO member states in the sphere of ensuring energy security, and defines the main directions for improvement of the regulatory framework of the CSTO member states. The Model Law On Energy Security adopted on October 13, 2017 by the Parliamentary Assembly of the CSTO is considered as a positive example.

**Keywords:** energy law, energy security, state national security, Collective Security Treaty Organization, member states of the Collective Security Treaty Organization, state security, laws on ensuring energy security, energy security hazard, ensuring energy security, energy security monitoring, energy security indicators.

The main conclusions set forth in this article were made by the author as a result of work on the draft Recommendations for Harmonization of the Legislation of the Member States of the Collective Security Treaty Organization (CSTO) in the Field of Strengthening of Energy Security and the draft Model Law of the CSTO On Energy Security.

The CSTO is an international regional organization whose mission is to strengthen peace, international and regional security and stability, to collectively protect independence, territorial integrity and sovereignty of the member states, the priority in fulfillment of which the member states give to political means [1]. The CSTO currently includes: the Russian Federation, the Republic of

Belarus, the Republic of Armenia, the Republic of Tajikistan, the Republic of Kazakhstan, and the Kyrgyz Republic.

The worsening of the interstate relations of the Russian Federation with the United States of America, the EU countries and a number of other states, their attempt to influence politics in the regions adjacent to the borders of the Russian Federation as well as in other parts of the world, poses new challenges to Russia and its CSTO partners in ensuring collective security. The armed conflicts in the post-Soviet territories, military conflicts in Donbass, escalation of the conflict in Nagorny Karabakh also cause great concern. Serious threat, both to the global security and to the security of the CSTO member states, is represented by numerous terrorist groups cultivated in the Middle East including the notorious ISIL.

In this regard, an urgent task for the CSTO member states is to strengthen collective security in all areas including energy security.

Energy security is one of the most important components of the national and economic security of any state, and it is aimed at ensuring protection of its constitutional system and territorial integrity as well as the vital interests of nationals, society and the state as a whole.

Scientists and experts currently identify many aspects of energy security, however, there is no uniform definition of energy security adopted around the world. At the same time, in recent years, disagreements between different countries in the energy sector are intensifying as the energy consuming countries and the energy producing countries demonstrate different approaches to the concept and aspects of energy security. So far, many countries have understood energy security, primarily as energy independence of a particular country. This approach has led to the fact that the competition for energy resources in the world is constantly increasing and causes many conflicts, escalation of which we have observed in recent decades [2]. Herewith, many hazards in the sphere of energy security, for example, depletion of natural resources, ecology, etc., have long become global, which, in theory, should force the world community to move towards development of a uniform concept of global energy security.

However, the current tensions in the world caused primarily by the “imposition” of democracy in the countries of the Middle East and the redistribution of world energy markets, introduction of economic sanctions against Russia that created discriminatory conditions for foreign trade including trade in energy resources, and the crisis in the world economy give evidence of the fact that the issues of their own energy security and energy independence are still of high priority for any country.

It should be noted that energy security is one of the most important components of the national and economic security of any state, and it is aimed at ensuring protection of its constitutional system and territorial integrity as well as the vital interests of nationals, society and the state as a whole.

Provision of energy security suggests full satisfaction of the state’s needs for energy resources of appropriate quality at reasonable prices under the normal conditions of functioning of the state and guaranteed provision of the minimum needs of the state for energy resources in conditions of military operations or emergency situations as well as various external political and external economic threats.

The following wording of the concept of “energy security” was first presented by the International Energy Agency after the oil crisis in 1973: “energy security is the belief that energy will be available in quantity and of quality that are required under given economic conditions”.

In the post-Soviet territories, the concept of energy security was set forth in the Fundamentals of the Energy Policy of the Member States of the Eurasian Economic Community approved by Resolution No. 103 of the EAEC Interstate Council dd. February 28, 2003. It was declared that the goal of the energy policy of the EAEC states was ensuring energy independence and energy security of the Community countries by forming a common energy market, creating a reliable energy base for their sustainable economic growth.

Herewith, “energy independence” was defined by this document as provision of the EAEC countries with local energy resources with due account for the market needs as well as the

possibility of using and (or) reserving alternative sources of fuel and energy import, and “energy security”, as a state of protection of the energy sector of the EAEC states against internal and external conditions, processes and factors that threaten its sustainable development and energy independence [3].

In 2012, the draft concept of energy security of the EAEC member states was developed. It represented a set of agreed opinions and coordinated approaches to issues of ensuring energy security of the EAEC member states and defined the main tasks, principles and lines of cooperation of the EAEC member states in the sphere of energy security. This concept defined energy security as the protection of the energy sector of the EAEC member states against internal and external influences, processes and factors that threaten the energy supply to the EAEC member states and the associated sustainable development of their economies [4].

In the Russian Federation, energy security as a special political and legal category was first introduced into the national legislation by the Federal Law *On Gas Supply in the Russian Federation*. This concept was further used in the Federal Law *On the Electric Power Industry*, which secured provision of energy security of the Russian Federation as one of the general principles of organization of economic relations and the basis of the state policy in the electric power industry, in the Federal Law *On the State Information System of the Fuel and Energy Complex*, and in a number of other laws.

By Decree No. 537 of the President of the Russian Federation dd. May 12, 2009 *On the National Security Strategy of the Russian Federation up to 2020*, reliable supply of demand with sufficient quantity of energy carriers of standard quality, efficient use of energy resources by improvement of competitiveness of domestic producers, prevention of possible shortage of fuel and energy resources, creation of strategic fuel reserves, reserve facilities and associated equipment, and ensuring stable operation of energy and heat supply systems were considered as the main content of energy security.

The term “energy security” is currently contained in a number of Russian regulatory

legal acts, but the concept of “energy security” is defined only in Resolution No. 1715-p of the Government of the Russian Federation dd. November 13, 2009 *On the Energy Strategy of Russia for the Period up to 2030*. In accordance with this document, energy security is considered as a structural element of a broader concept — national security of the country, — and it is defined as the state of protection of nationals, society, the state, and the economy against adverse consequences in the form of interruptions in fuel and energy supply.

However, it should be noted that up to date, the legal definition of the concept of “energy security” at the level of the federal law has not been secured in Russia, and the legal regulations governing energy security of the Russian Federation are not systematized into a single special regulatory legal act and they are contained in regulatory legal acts of various levels relating to different branches of law and inter-sectoral institutions.

In the context of expansion of the global energy crisis and its significant negative consequences for most countries of the world, and deterioration of the political situation in the world, the problem of ensuring energy security, especially in the current era of hybrid wars, is relevant for any state. The CSTO member states are not an exception. Moreover, the growing political disagreement between the Russian Federation and the NATO member states creates new challenges for Russia and its CSTO partners in the sphere of ensuring energy security.

As a multidisciplinary international structure, the CSTO is qualified, among other things, to ensure energy security system of the CSTO member states. Interaction on problems related to identification and elimination of causes and conditions that contribute to emergence of threats to energy security, elimination of consequences of their emergence requiring an integrated approach and joint efforts in all directions seems a particularly important, relevant and socially demanded line of cooperation of the CSTO member states.

The main goal of the CSTO member states in the sphere of energy security is to ensure:

— military and antiterrorist protection of facilities of the fuel and energy complex (hereinafter

referred to as the FEC) of the CSTO member states;

- the ability of the FEC of the CSTO member states to reliably meet the energy needs of national economies;

- the resistance of the energy sector of the economy of the CSTO member states to the impact of external and internal economic, technogenic and natural threats as well as its ability to minimize damage caused by the impact of these factors;

- introduction and expansion of use of renewable energy sources as well as improvement of energy efficiency of the economies of the CSTO member states;

- the ability of the energy infrastructure of the CSTO member states including transport infrastructure, to ensure uninterrupted energy supply to energy consumers and other parties.

Unfortunately, the CSTO-level documents on provision of energy security of the CSTO member states have not been adopted; however, energy security issues were repeatedly raised at the meetings of various CSTO bodies, and attempts were made to develop energy security concepts.

Therefore, it seems necessary to develop joint conceptual approaches of the CSTO member states to the issues of strengthening of energy security, development and conclusion of interstate agreements on security issues in various energy sectors, establishment of an integrated system for monitoring threats and energy security of the CSTO member states, ensuring sustainable development of the energy sector of the CSTO member states, ensuring formation and functioning of common energy markets, development of competition in these markets, and ensuring their transparency.

The performed analysis showed that the legislative groundwork of the CSTO member states in the FEC sector is represented by regulatory legal acts of various levels. In some member states of the CSTO, the basis of legislation is formed by the laws in the energy sector (the Republic of Armenia, the Kyrgyz Republic, and the Republic of Tajikistan). Herewith, it should be noted that in the legal systems of the Russian Federation, the Republic of Belarus, and the Republic of Kazakhstan, basic laws directly related to the

legal regulation of the FEC are currently missing. At the same time, in these CSTO member states, there is a fairly extensive and solid legal framework regulating relations in various branches of the FEC. Moreover, a large number of subordinate laws detailing the procedure for operation of individual sectors of the FEC: electricity, oil, gas, coal, nuclear, and others, are in place in the CSTO member states. It is important to emphasize that regulatory legal acts containing legal norms regulating legal relations in the energy sector refer not only to energy legislation, but also are contained in regulatory legal acts of administrative, civil, tax, land, forest, antimonopoly, and investment laws, laws on natural monopolies and other branches.

The analysis of the legislation of the CSTO member states shows that there is no single special comprehensive regulatory legal act regulating the issues of ensuring energy security of the state in the legal systems of these states. However, in a number of countries, the concept and doctrine of energy security are approved and implemented as policy documents.

For example, in the Republic of Belarus, the Concept of Energy Security of the Republic of Belarus (approved by Resolution No. 1084 of the Council of Ministers of the Republic of Belarus dd. December 23, 2015) is currently considered as the main document determining the country's energy policy. Likewise, on October 23, 2013, the President of the Republic of Armenia approved the Concept of Energy Security of the Republic of Armenia for 2014-2020. In its turn, the Doctrine of Energy Security of the Russian Federation was adopted on October 29, 2012; however, it has not been officially published.

While considering the legislation of the CSTO member states, it is important to emphasize that development of the FEC in these countries is at different levels; therefore, the tasks of these states in the field of ensuring their own energy security are slightly different.

For example, due to the presence of large reserves of natural resources in their territories, Russia and Kazakhstan are among the world's major exporters of fuel and energy resources, and, therefore, the energy security aspects of these



states also include problems of non-discriminatory access to foreign energy markets, and ensuring security of transportation of energy resources, including transit, in the territories of partner countries.

For other CSTO member states, such as Kyrgyzstan, Belarus, Armenia, and Tajikistan, the issue of own energy supply is of current interest and priority. For example, according to experts, Tajikistan meets only 50% of the country's energy needs using its own energy base, while Belarus is provided with its own fuel and energy resources only by 16-17%, the missing share is purchased outside the country. At the same time, the Republic of Tajikistan (RT) has significant reserves of hydropower resources (the 8<sup>th</sup> place in the world and the 1<sup>st</sup> place among Central Asian countries), most of the water resources of the Central Asian region are formed in Tajikistan (53%) [5, page 26]. Therefore, implementation of energy conservation policy and improvement of energy efficiency, modernization and innovative development of the energy sector, development of generation using renewable energy sources, availability of reliable partner countries supplying energy resources and a reliable system for their transportation are of high interest for the above countries.

At the same time, despite the above-mentioned peculiarities, there are many common tasks faced by the CSTO member states in the sphere of energy security.

Settlement of two priority problems, which requires creation of efficient legal mechanisms and harmonization of energy legislation, is relevant for the CSTO member states:

- modernization of the technological base of the FEC, to a large extent morally obsolete and physically worn from the USSR's times, and ensuring reproduction of its produced resource base;

- changes in the structure of consumption and location of production of fuel and energy resources of the CSTO member states. Moreover, there are many other tasks, such as development and implementation of innovative technologies in the fuel and energy complex, increase in the level of import substitution of equipment in the FEC, exploration and development of new deposits of natural energy resources, and others.

Summarizing the above, it is necessary to single out priority energy sectors requiring step-by-step harmonization of the legislation of the CSTO member states in order to ensure energy security:

- ensuring sustainable development of the energy of the CSTO member states;

- ensuring formation and functioning of common energy markets, development of competition in these markets, and ensuring their transparency;

- ensuring antiterrorist protection of energy facilities;

- improvement of the system of industrial safety and physical protection of energy complex facilities;

- unification of norms, rules and technical regulations in the energy sector;

- energy saving and improvement of energy efficiency;

- development and support of the use of renewable energy sources;

- exercise of state control (supervision) to ensure security of the FEC facilities;

- training of specialists in the field of ensuring energy security.

At the same time, the legal science shall develop doctrinal approaches to the issues of ensuring energy security of the CSTO member states. As V.V. Romanova rightly notes, despite active development of legislation in the field of ensuring energy security and improvement of international regulation in this area, many issues deserve special attention, and they deserve to be the subject of complex legal research. V.V. Romanova also emphasizes that for energy law, energy security is a key category since its legal provision demonstrates compliance with the basic principles of energy law: legal support of the balance of interests of participants of public relations (private law and public law) in the energy sector and, above all, the balance of interests of the suppliers and the consumers of energy resources, legal protection of interests of participants of public relations in the energy sector, etc. [6, page 16 and page 9].

It is also necessary for the CSTO member states to develop common conceptual approaches to ensuring collective energy security, to develop and approve joint policy documents and interstate agreements on various aspects of

strengthening energy security, and to broadly expand international cooperation in this sphere.

In conclusion, a special attention should be paid to the importance of the Model Law On Energy Security adopted on October 13, 2017 by the Parliamentary Assembly of the CSTO [7]. This law should be a core of formation and harmonization of the legislation on energy security for any and all CSTO member states. This model law is intended not to restrict the legislator, but rather to give it freedom in the field of lawmaking, defining the main vector of the movement. It is what makes it universal.

In the CSTO Model Law On Energy Security, in elaboration of the provisions of the Recommendations on Harmonization of the Legislation of the CSTO Member States in the Field of Strengthening of Energy Security, in particular, a conceptual apparatus was developed, principles of ensuring energy security were formulated, goals and tasks of the system of energy

security of the CSTO member states were set, threats to energy security and main directions of ensuring security of FEC facilities were characterized, the procedure for interaction of the CSTO member states in the sphere of energy security was specified, etc.

It should also be taken into account that the CSTO member states, with the exception of the Republic of Tajikistan, are also members of the Eurasian Economic Union (hereinafter referred to as the EAEU). Herewith, the Government of Tajikistan expressed interest in joining the EAEU and stated that it is studying possible consequences for the country's economy in the event such a decision is made. Therefore, another priority task for the EAEU member states and, at the same time, the CSTO member states, in addition to ensuring sustainable development of the economies and energy security of these states, is formation of a common economic space and common energy markets. ■

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