ENERGY SECURITY: RUSSIAN AND EUROPEAN LEGAL APPROACHES

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The author continues the study of issues of legal support of energy security. The first part of the study was published in the Energy Law Forum journal 2018, No. 3. The first part of the study considers the legal meaning of the concept of energy security taking into account the energy interests of various states, outlines and analyzes the main components of the energy security and the state's role in ensuring thereof. While examining the role of the state in ensuring energy security, the author notes that the state uses both public law and private law methods, and concludes that the role of the state in ensuring security of energy supply consists, on the one hand, in forecasting supply and demand, securing favorable conditions for the activities of energy companies, regulation, state control (supervision), control of quality of energy (energy resources), and implementation of the national energy policy and, on the other hand, in the direct impact on production of energy (energy resources) by private law methods through participation in the authorized (share) capital of energy companies and adoption of corporate resolutions. In the second part of the article, the author examines the legal framework of energy security in the European Union, and analyzes the sources of European and national legal regulation (using Germany as an example). Based on the results of the study, including those set forth in the first part of the article, a number of conclusions and proposals were made, in particular, on the need to consolidate the concept of "energy security" in the effective laws.

Keywords: *energy law, legal framework of energy security, affordable energy, energy prices.*

In Germany, as well as in the European Union on the whole, the substantive content of the concept of energy security is based on three "pillars" (the so-called energy triad): security (including reliability and continuity), competitiveness, and eco-friendliness of the energy supply (environmental protection and climate policy aimed at sustainable development).

Herewith, it should be noted that ensuring European energy security shall become a common task within the *Energy Union* being formed.

Energy security is one of the top priorities in the Framework Strategy of the Energy Union [1]. Particular proposals for its provision are specified in the *Sustainable Energy Supply Package* published by the European Commission in February 2016 [2]. On the basis of these proposals, in October 2017, the European Commission adopted the *Decree (Regulation) on Security of Gas Supply*

(Regulation (EU) 2017/1938 dated October 25, 2017) aimed at prevention of possible gas supply crises and introduction of the principle of solidarity in emergency situations [3]. The development of this document as well as the creation of the Energy Union as a whole was largely due to numerous Russian-Ukrainian gas conflicts as well as the political crisis in relations between the countries as a result of the events of 2014, which led to a particularly serious threat to the European energy security associated with the risk of reliable transit of Russian gas through Ukraine since Russia supplies the European energy market with about 35% of all natural gas imported to the EU. The escalation of the conflict between Naftogaz and Gazprom in March 2018, which led to the initiative of Gazprom, PJSC to terminate transit contracts [4], virtually confirms the timeliness of the adoption of this decree in terms of the EU interests.

Speaking about the energy triad of the European energy security, it should be noted that the competitiveness and eco-friendliness of energy supply are based on the principles of a common European energy policy for the development of competition (in this case, the main legal source is the Third Energy Package) and the implementation of a tough environmental policy applied to the energy sector (including striving for complete abandonment of the use of fossil fuels, development of RES, etc. [5]). And in these areas, in contrast to the third "pillar" of energy security, supply security, there is a relative consensus among the EU member states.

As is well known, the most ferocious debates are lately being held among the EU member states on the key component of the European energy security, security and reliability of energy supply, which for the European Union consists primarily in the diversification of supplies and reduction of energy dependence on exporting countries [6], among which Russia plays the most important part. The main one is the issue of reliability of supplies of Russian energy resources (including the reliability and expediency in terms of energy security of building of Nord Stream-2 gas pipeline) and the need for a deeper diversification of energy supplies. In the current geopolitical conditions, this discussion is one of the most topical in the field of ensuring the EU energy security.

In accordance with paragraph "b", Article 194 of the Treaty on the Functioning of the European Union, ensuring security of energy supply within the EU is one of the main objectives of the EU common energy policy [7].

Nevertheless, it seems that full Europeanization and unification of energy security policy within the EU is impossible by definition due to the very nature of energy security, which, as already noted, is linked to the national peculiarities. Each state, including the EU member states, has its own national interests in the energy sector, which is clear in the example of construction of Nord Stream-2 gas pipeline. In the electricity markets, the difference in approaches of the EU member states to energy security is also caused by different ideas about the use of nuclear energy, coal, and RES.

It should also be noted that due to its nature, national energy security is an unconditional public interest, and its ensuring is one of the most important public tasks. Attention to this circumstance is drawn in the judicial practice. Thus, while considering one of the cases back in 1971, in the Resolution dated March 16, 1971, the Federal Constitutional Court of the Federal Republic of Germany (BVerfG) noted that "the security of energy supply... is the public interest of the highest rank. The constant availability of a sufficient amount of energy is a decisive prerequisite for functioning of the economy as a whole" [8], and in the Resolution dated March 20, 1984, it emphasized that "ensuring energy supply through adoption of relevant measures... is a public task of the highest importance" [9].

Nevertheless, based on the performed analysis of the components (bases) of energy security [10], it cannot be said that energy security is a purely public interest. Ensuring national (state) energy security is inextricably linked to the private interests of individuals and legal entities primarily in terms of the availability and affordability of energy. That is why, speaking

about ensuring energy security, it is important to find a balance between the private interests of individuals and the public interests.

The basis of European energy security law is the primary and the secondary law of the European Union. As already noted, Article 194 of the Treaty on the Functioning of the EU establishes the objectives of the EU energy policy, which include ensuring security of energy supply in the Union, and, therefore, it establishes the primary legal competence of the European Commission in the field of energy security. Herewith, the second paragraph of the same article establishes the right of each EU member state, according to the general rule, to independently determine the terms and conditions for the use of their energy resources, to choose different energy sources, and the overall structure of their energy supply.

The so-called acts of soft law (concepts, programs, strategies) play the most important part for the legal regulation of energy security issues. They determine the main directions of the energy policy of states or supranational associations, such as the European or the Eurasian Economic Unions, and, accordingly, establish the main vectors and bases for ensuring energy security.

In the context of the European Union, the European Energy Security Strategy, as well as, for example, the already mentioned packages for the creation of the European Energy Union (essentially analogous to the Russian road maps) can serve as an example.

The strategy proposes a series of short-, medium- and long-term measures aimed at improvement of European energy security. The measures provided for by the Strategy include without limitation: "stress tests" to identify the risks of potential failure to supply energy resources; strengthening of emergency relief and solidarity mechanisms of the EU member states as well as revision of the Regulation on Security of Gas Supply; diminution in demand for energy, including by increasing energy saving and the promptest achievement of energy efficiency indicators by 2020; formation of an operating and fully integrated domestic energy market; increase in energy production within the European Union, including through gradual Europeanization of RES support systems; diversification of import of energy (energy resources); further development of new energy technologies; and coordination of national external energy policies of the EU member states.

The main legal sources of secondary European law (Secondary Law) in the field of energy security are: Directive on Security of Electricity Supply (2005/89/EC dated January 18, 2006), Regulation on Security of Natural Gas Supply (Regulation (EU) 2017/1938 dated October 25, 2017) as well as Directive on Minimum Reserves of Oil and Petroleum Products (2009/119/EC dated September 14, 2009).

Specific measures for ensuring energy security are also set forth in the national laws of the EU member states.

In Germany, for example, the Law on Energy Supply (Energiesicherungsgesetz, EnSiG) is applicable in the field of energy security. It regulates energy supply in case of failure of the normal energy supply when these failures cannot be timely eliminated or there is a direct threat to the normal energy supply. Two regulations were adopted on the basis of this Law: the Regulation on Gas Supply (Gassicherungsverordnung, GasSV) and the Regulation on Electricity (Elektrizit tssicherungsverordnung, EltSV) having the force of law and specifying powers and specific measures that can be taken by the competent authorities (primarily the Federal Network Agency (Bundesnetzagentur) in crisis situations to satisfy the vital needs for gas and electricity.

It can be said that the fundamental Energy Law (EnWG) is aimed at the achievement of the global goal of ensuring energy security. In accordance with § 1 of this law, its goal is to provide the safest, the most affordable, consumer-friendly, efficient, and eco-friendly centralized (through a connected network) supply of the public with electricity and gas, which is based on the increasing use of renewable energy sources. These goals, primarily, represent the components of energy security.

In Russia, as well as in the European Union, there is a fundamental source of "soft law" on energy security issues, the Doctrine of Energy Security of the Russian Federation approved by the President of Russia. This document relates to strategic planning documents, and it is not deemed a regulatory legal act.

Among the federal laws, Federal Law No. 256-ФЗ dated July 21, 2011, *On the Security of Fuel and Energy Facilities* is devoted directly to the issues of energy security as related to prevention of unlawful interference with and ensuring security of fuel and energy facilities.

However, it seems that ensuring energy security should be generally a key task for energy law as a whole as a set of regulatory legal acts governing public relations in the energy sector. It is to ensure energy security (or some of its aspects) that laws and other regulatory legal acts adopted in various energy sectors should ultimately be intended. In this context, proper regulatory legal framework in the energy sector is the legal basis for the energy security of any state.

Therefore, the concept of "energy security" is complex, multi-aspect and global. The measures for achievement of national energy security of individual states are determined by many factors, including socio-economic, political, geographic, technological, and other as well as the energy interests of individual states and their position in the global energy markets.

Supranational regulation of energy security issues, for example, at the level of the European Union, is a serious challenge, which is primarily due to the divergent energy interests and national peculiarities of the energy sectors of the member states. Nevertheless, common approaches to energy security are an objective necessity in the context of operation of common (domestic) energy markets and implementation of a coordinated energy policy.

The Russian laws do not contain a legal definition of the concept of "energy security", despite the use of this term in various federal laws, and the definition contained in the Energy Strategy for 2030 is vague, non-specific and ambiguous. Therefore, given the critical importance of energy security, it seems necessary to clearly formulate and enshrine the legal definition of this concept. It is necessary for all actors involved in ensuring energy security to have an unambiguous and clear understanding of what national energy security is and what it is based on (what are its basic principles) as well as the correct choice of means and ways to ensure it, including legal measures.

An integrated, interdisciplinary approach should be applied to energy security issues, including their legal regulation. Legal and other measures for ensuring energy security should be developed taking into account new, modern challenges to energy security (for example, digitalization of the energy sector and, as a consequence, the need to protect energy facilities not only against physical unlawful actions, but also against cyber-attacks). Such challenges should also be taken into account in the development of program documents: concepts, strategies, programs and other acts of soft law. Complicated social relations in the energy sector and the problems arising in connection with them lead to the fact that legal problems are becoming more interdisciplinary and require an extensive use of intersectoral legal tools and scientific awareness based on an interdisciplinary, inter-branch approach from the point of view of completely different branches of public and private law for their settlement, taking into account that ensuring energy security is the task of not only the subjects of public authority, but also private entities. The most efficient measure for ensuring energy security is only possible through the cooperation of the public and the private entities. ■

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