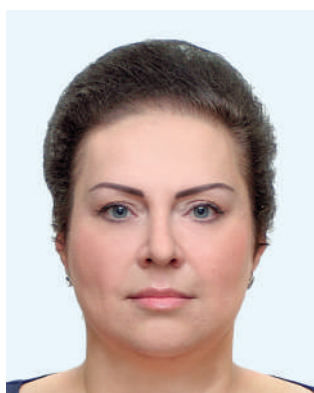


# CHALLENGING ASPECTS OF THE LEGAL SUPPORT OF SECURITY IN THE OPERATION OF MAIN GAS PIPELINES

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**Maria V. Zhukovskaya**

Postgraduate Student of the Center for Energy Law  
of the Saint-Petersburg State Economic University

[energylaw211@unecon.ru](mailto:energylaw211@unecon.ru)

*Despite some intensification of the development of energy laws, the legal regime of main gas pipelines as objects of operating relations is characterized by gaps and legal uncertainty elements, which entails the appearance of controversial situations and causes an imbalance of interests of energy markets players. The author singles out the most acute legal regulation problems, reviews the possible options for the further development of the legal support of the operation of main gas pipelines taking into account the available law enforcement practice. The paper concludes that it is expedient to study the raised problems further and unify the provisions governing the operation of main gas pipelines.*

**Keywords:** energy law, legal regime of power facilities as operation facilities, minimum distance zones.

The Russian Federation is one of the largest gas suppliers on the world market. The domestic economy of the country largely depends on gas supplied for the needs of enterprises, organizations and the population.

Gas is transported for export and across the country through main pipelines.

Ensuring security during gas transportation is a guarantee of the timely fulfillment of all undertaken obligations, safety of life and health of the population of the country and protection of the environment. The content of the legal regime of main pipelines, the zones of the minimum distance

to infrastructure facilities arouse fair interest in legal publications [1].

In this article, the author studies challenging aspects of the legal support of the operation of gas pipelines.

These challenging aspects include the following:

1) existing violations of the minimum distance zones (MDZ) preventing the operation of gas transportation system facilities at the maximum discharge capacity.

I will not rest separately on the causes of such violations, I will only note that despite the fact that the legislator has classified the minimum distance zones as zones with

special conditions of territories (ZSCT), the Government of the Russian Federation has still approved no regulations on a zone with special conditions for the use of the territory of the corresponding type, which keeps in suspense the operating of main gas pipelines put into operation as early as in the 1970s–1980s.

In the absence of detailed regulation, we are stuck in a vicious circle: there are coordinates of all MDZs, but the Federal Service for State Registration, Cadastre and Cartography refuses the cadastral registration as municipal or regional authorities provided land plots for construction to citizens and organizations within the borders of such MDZs, and requires a decision of local self-government authorities on the establishment of such MDZs dated as of today, although the pipelines were put into operation more than 30 years ago. Well, and the local self-government authorities do not approve such decisions, of course.

Despite the fact that such situation is typical for the entire country, there are regions without any MDZ violations, where such MDZs were registered as early as in 2018–2019.

Enterprises operating main gas pipelines are correcting MDZ violations in court. However, it has become more difficult after 2018 as the legislator has provided for compensation for damage caused in the event of demolition of buildings located within an MDZ to protect the owners of buildings, structures and constructions. One of successful solutions in this case is the inducement of owners of land plots and buildings to file claims against the municipalities that provided land plots and issued construction permits for compensation for damage associated with the impossibility to use the existing objects. An organization operating a main gas pipeline acts as a third party in the legal proceedings supporting the

plaintiff and submitting evidence that the municipality had no right to allocate the land plot for construction and allow construction. This approach was first applied in 2018. Over the course of two years positive judicial practice standing up at all judicial levels has established. There are satisfied judgments available as well.

2) refusal of owners of land plots, where underground pipelines are laid, to provide such land plots for temporary use (lease with compensation for damage caused to agricultural lands, easement, etc.) to carry out scheduled repairs of the main pipeline infrastructure due to the desire to receive the lease and compensation amount exceeding the market average by 2–7 times and the absence of a mechanism in the legal regulation that would promptly induce such owners to document the legal relations concerning the use of a land plot for the period of repair works, which jeopardizes secure operation of the relevant main pipeline section.

There are four solutions in such cases:

- to wait for success in negotiations (this almost never happens);

- to create a public easement as the required land plot is located in the protected zone of a main gas pipeline. For emergency situations, this is a time-consuming solution (obtainment of a decision on the creation of a public easement from the authorized executive authority; performance of an assessment to establish the easement fee; documentation of the contractual relations with the land plot owner. Plus, the trial period if the owner disagrees with the payment or other easement terms and conditions);

- to notify the owner of the commencement of works and start such works with no authorization or properly made documents in accordance with Art. 42 of the Land Code of the Russian Federation [2] and Art. 28 of the Federal Law On Gas Supply [3] as a land plot owner may not interfere with

the maintenance and repair works in respect of gas supply facilities located on and (or) underneath land plots performed by an organization owing a gas supply facility or its authorized organization. In this case, it is necessary to additionally notify the territorial department of the Federal Service for Veterinary and Phytosanitary Surveillance and the regional prosecutor's office that the land plot owner poses an obstacle to the performance of works and that the major repair deadlines may not be met. The risks in this situation are as follows: the land plot owner will suspend the works by addressing the law enforcement authorities and the Federal Service for Veterinary and Phytosanitary Surveillance. There may be imposed an administrative fine in the amount of 2 to 3 percent of the cadastral value of the land plot, but not less than one hundred thousand rubles;

— to document repair works as an emergency upon subsequent execution of all necessary documents. If the owner disagrees with the calculations and the price, the decision is made by court. In this case, there is a need to notify the Federal Environmental, Industrial and Nuclear Supervision Service of Russia and the EMERCOM, which will react to such message by conducting an unscheduled inspection. This mechanism should only be used in real emergency situations.

3) inclusion of lands that are part of the MDZs of main gas pipelines (MGP) in the boundaries of settlements, urban development zoning of such lands contradicts the goals and objectives of MDZ MGP functioning.

Developing cities and settlements inevitably grow in territory. Either local self-government or regional authorities carrying out the procedure for the inclusion of lands in the settlement boundaries do not often bother to check whether such lands enter the MDZ MGP boundaries according to the

available materials. This results in a consistent adoption of an act by the regional ministry of construction, urban development zoning, usually for district residential development, including for the implementation of national projects (Affordable Housing for a Young Family, Housing for Multi-Child Families, etc.). The operating organization learns about this when the actual land plot development begins: fences are installed, earthworks are performed, foundation is poured, and sends notifications to new owners informing them about the impossibility of construction works on such land plots, despite the issued housing construction permit. This, of course, becomes unpleasant news for people who planned to live in comfortable conditions. This is followed by lawsuits, resulting in court decisions on the demolition of such objects.

4) the procedure for the cadastral registration of the ZSCTs, the MDZ MGPs are currently referred to, does not provide for a clear sequence of actions for registering the EXISTING MDZ MGPs that were put into operation in the 1980s–1990s, which contributes to the new MDZ MGP violations due to the fact that such ZSCTs are not marked on a land plot development plan (LPDP) received by the owner for the land plot development.

The fact that the legislator has provided for the possibility of introducing such ZSCTs as the MDZ MGPs in the Unified State Register of Real Estate until 2025 does not relieve the tension as to how this procedure should be carried out for the MGPs that have been in operation for many years. Although municipalities have information about the MGP routes, protected zones and the MDZ MGPs, they allow themselves not to display this information in the LPDP, misleading the owners that plan construction.

5) Underdevelopment of provisions on the creation of local emergency warning systems by organizations operating the MGPs,

which leads to the appearance of additional opportunities for the supervisory authorities to exert pressure and issue orders with respect to operating organizations.

The territorial departments of the EMERCOM of Russia are now checking 151 control questions in total as part of the inspections in order to monitor the compliance with the mandatory (established) requirements in the field of civil defense and emergency situations according to the approved checklists (orders of the EMERCOM of Russia No. 77, 78 of February 27, 2018 On the Approval of Checklist Forms ...) [4]. A violation identified in 2021 is the absence of local warning systems (LWS) at main gas pipeline sections that are hazardous industrial facilities of the 1st hazard class (HIF).

MGPs are infrastructure, explosive and fire hazardous facilities of the 1st hazard class. Taking into account the requirements for their placement and the absence of any toxic substances, possible MGP accidents pose no threat to the life and health of the population outside the thermal and fragmentation damage range, which does not exceed the minimum distance zones

constituting 100–350 m in each direction from the axis depending on the MGP technical characteristics.

The high MGP accident development speed (decompression and combustion of the gas-air mixture) excludes the possibility of timely informing of people located in the vicinity. This fact, as well as the absence of any consequences of an accident on a main gas pipeline (radioactive, chemical contamination, flooding, etc.) makes the notification meaningless.

Moreover, there are currently no well-developed technical solutions for the construction of LWS along MGP sections, including the ones for coupling with the territorial warning systems within the boundaries of block valve stations (15 to 30 km) used for the localization of a possible accident.

The identified gaps and discrepancies in the legal regulation of the construction and operation of main gas pipelines give evidence of the need for the further improvement of energy laws to ensure a balance of interests of all participants of the studied legal relations; therefore, it is advisable to conduct relevant legal research, study the foreign legal regulation experience. ■

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