

# ENSURING ENERGY SECURITY: SOME TASKS OF THE INTERNAL AND EXTERNAL LEGAL POLICY OF THE RUSSIAN FEDERATION

DOI 10.18572/2410-4396-2021-4-84-87

**Andrey G. Lisitsyn-Svetlanov**

Doctor of Law, Professor

Member of the Russian Academy of Sciences

■ [svetlanov@yust.ru](mailto:svetlanov@yust.ru)

*Justified singling out of serious challenges to the energy security as well as setting of tasks involving its organizational and legal support is a program step but just the first step in the legal policy that forms the legal regulation system at the domestic and international levels. Further on, the current legal policy is essentially the development of concepts of regulatory acts, identification of priorities in the use of various sources of law and building of a balance between the domestic and international legal regulation. The development and implementation of the legal policy aimed at ensuring energy security of Russia starts from the security of the energy infrastructure. The regulatory support of this sphere seems to be operating on the due level in Russia. The challenging issue is the one of ensuring the innovative development of the industry. This issue concerns the entire innovation chain: from fundamental studies to deployment technologies and from survey of energy resources to the end energy consumer.*

**Keywords:** energy law, energy security, innovative development of the energy industry.

Problems related to the strategy ensuring the energy security of Russia are a subject of fundamental legal research [1] and strategic acts adopted by the executive branch of the government that determine planning in the national security sphere. Such acts include: the Energy Security Doctrine of the Russian Federation approved by Order of the President of the Russian Federation No. 216 of May 13, 2019, that is the result of the development of provisions of the National Security Strategy of the Russian Federation, the Economic Security Strategy for the Period up to 2030, the Scientific and Technical Development Strategy

of the Russian Federation, Fundamentals of the State Policy of the Russian Federation in the Industrial Safety Sphere for the Period up to 2050 and Further.

Justified singling out of serious challenges to the energy security as well as setting of tasks involving its organizational and legal support is a program step but just the first step in the legal policy that forms the legal regulation system at the domestic and international levels. Further on, the current legal policy is essentially the development of concepts of regulatory acts, identification of priorities in the use of various sources of law and building of a balance

between the domestic and international legal regulation [2].

Russia possesses unique energy resources in terms of volume and variety. However, considerable volumes or the variety of energy sources cannot independently ensure unconditional energy security of the country. Potential problems are related to general negative factors existing in the economic and social structures of Russia as well external problems arising in conditions of international competition and age-old struggle between the countries in view of the objective economic, political, ideological, religious, national and other differences.

The set and acuteness of problems can vary depending on the historical period, which affects the character and forms of response reaction of the Russian state and the business community. It seems that the key challenges and threats to the energy security of Russia in modern conditions are attributable to external factors.

The Energy Security Doctrine of the Russian Federation approved by Order of the President of the Russian Federation No. 216 of May 13, 2019, contains a rather complete list of reasons of and threats to the energy security of Russia. Some of them have appeared due to objective processes. For example, collapse of the USSR and the economic integration of the Council for Mutual Economic Assistance (CMEA) has radically changed the position of Russia on the world economic market in general. Man-caused processes affecting the environment and climate can be referred to objective processes affecting the energy security, although the subjective factor is also in place here, being linked to the desire of rapid change of the world energy market. Thus, the problem of the speediest introduction of carbon taxes was discussed at the 14th Eurasian Economic Forum in Verona. In this respect, it is appropriate to mention the prudent position of I.I. Sechin, who noted that the introduction of carbon taxes on traditional energy resources and the need for huge investments in the “new energy industry” will result in the growth of energy prices for end consumers [3].

The sanctions policy pursued by the USA and their allies can serve as an example of targeted injurious actions creating an energy security threat. Finally, the factors posing threats to the energy security of Russia are: non-uniformity of the technological development and management of the energy industry in various states and inter-state unions and amendments to their domestic laws and the supranational regulation [4].

The listed reasons and threats are generalized. In real life, they are manifested differently and are often interrelated. This stipulates the need to develop the legal policy not only by taking into account the admissibility of possible measures of combating of some challenges and threats but also by evaluation of their efficiency from legal and economic standpoints.

The development and implementation of the legal policy aimed at ensuring energy security of Russia starts from the security of the energy infrastructure. The regulatory support of this sphere seems to be operating on the due level in Russia. The challenging issue is the one of ensuring the innovative development of the industry. This issue concerns the entire innovation chain: from fundamental studies to deployment technologies and from survey of energy resources to the end energy consumer. The innovative development tasks are referred both to traditional branches of the energy industry and the developed “clean” or “green” energy industry. In order to build a system of adequate legal regulation, one needs to take into account that from the technical standpoint, the innovative development in modern conditions gives examples of the growing transnational development by contrast with the legal regulation of objects of innovative activities that bear the territorial character by their nature but are used in the stream of commerce as instruments of the international competitive and political struggle on the international stage.

Results of long-term monitoring of the innovative development practice within the framework of its legal regulation make it possible to conclude that welfare of the Russian energy

industry is possible in case of advanced development of technologies in all of its branches. The focus on the development and introduction of analogues of foreign technologies and industrial equipment for the Russian energy industry, let alone the technological inferiority, means a loss of its self-sufficiency and consequently a threat to the national security [5].

The use of a foreign pipe layer in the construction of Nord Stream 2 is an obvious example to the above statements.

Taking into account financial advantages of competitors, their economic and political domination on international markets and the growth rate in terms of the development of applied technologies by the world's leading economies, Russia can achieve an innovation breakthrough primarily by relying on fundamental studies opening the door to fundamentally new technologies. However, the past years show that the reform of the academic science in 2013 and further reforms of the system of education, from schools to universities, have been working in the opposite direction. Russia needs a new concept of laws on science and the adoption of respective federal laws. In this regard, it is worth noting that for the purposes of the innovative development required by the Russian economy, the scientometrics system existing in respect of research centers and universities that is focused on foreign publications and citation instead of the implementation of scientific results, does not facilitate the national security in any way but causes substantial damage to the country including the energy security.

A significant role in the legal support of the innovative development of industry belongs to the practice and the development of technical regulations. This legal regulation form can not only positively affect the development of the technological competition but be a kind of legal protection against unfair competition. Technical standards and regulations will play an especially important role in conditions of the modern campaign of an intensive transition to the zero-carbon energy industry.

Notwithstanding the positive meaning of this development path, the transition to the clean energy industry is a challenge, especially for the countries that are the main producers of energy resources. Russia is in the forefront. Considering that the policy of the "clean energy industry" is acquiring not only regional but also universal character, technical regulations with preferential characteristics are able not only to provide competitive advantages to exporters of energy resources but also to ensure efficient legal protection of such exporters.

The domestic energy security has been under a constant external pressure for the last 40 years. Remembering the export gas projects of the 1980s, it is worth noting the U.S. sanctions imposed in respect of the Urengoy-Pomary-Uzhgorod gas pipeline. The imposed sanctions were based on the then current version of the U.S. Export Control Act. The prohibitions introduced by the American administration in respect of the supply of large diameter pipes were expected to be extended to cover the German supplier, Mannesmann AG, through the mechanism of the western export control organization, COCOM. However, the German government refused to acknowledge legitimacy of the extraterritorial effect of the American laws and the adopted governmental resolutions. The pipes were supplied and the gas pipeline was commissioned.

The feature of the American export control laws of those years was that they were built on the consecutive implementation of the principle of separation of powers. The Congress adopted an act establishing the export control principles and implementation procedure and the executive government determined the list of goods and technologies subject to different control levels and the lists of countries falling under such control. The opportunity to carry out transnational control over export with the assistance from COCOM was limited as this international organization had no rights to make decisions that are legally binding for the member states.

The modern practice of western countries poses substantially greater threats to the

Russian energy projects. From the legal regulation standpoint, the USA has undergone series changes in the concept of the principle of separation of powers, at least for the purposes of ensuring of the national security, external policy and market protection. The sanction laws adopted by the Congress have in fact become punitive decisions aimed against specific legal subjects, which is admissible for the actions of an administration, but inadmissible for a legislator. The ambitions of the USA in terms of the extraterritorial character of their law and order were to a great extent accepted by the structures of the European Union; and resolutions of the latter are legally binding in contrast with the ones made by COCOM.

As a result, there has appeared a legal situation, where the strict sanctions regime in each of the jurisdictions will be quite hard to change. Whilst in the past, the American sanctions against a particular country could be amended or canceled by resolution of the President, the current sanctions are addresses specifically and can be lifted by resolution of the Congress. Speaking of European states,

their decisions depend on the position of the structures of the European Union. As a result, the threat to the energy security of Russia from western countries acquires a stable character, which will be extremely difficult to change due to political discrepancies or the circumstances existing in these countries.

These considerations bring us to a conclusion that the Russian legal policy aimed at ensuring the energy security should be built on new conditions with regards to the external circumstances. Firstly, speaking of the international legal regulation, the Russian Federation should play a pro-active, initiative role in the development of international legal documents and not be an “acceding party” as was the case with the Energy Charter. Secondly, the approach towards the development of energy projects needs to be changed. In the existing situation, the legal concept and the text (offer) of any energy project should be prepared by the Russian side and stipulate protection against risks from third parties. Thirdly, the choice in favor of the Russian jurisdiction should dominate in the review of disputes over energy projects. ■

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