

THE DEVELOPMENT OF THE LEGAL REGULATION OF INNOVATIVE RELATIONSHIPS IN THE ENERGY SECTOR OF ECONOMY

DOI 10.18572/2410-4396-2021-1-64-67



Lisitsyn-Svetlanov Andrey G.

Doctor of Law, Professor

Member of the Russian Academy of Sciences

director@igpran.ru



Considering that the problem of innovations is “open-ended” for any branch of the economy including the energy one and that the Russian energy branch objectively is export-oriented, its substantial development, as well as the legal regulation, should be built taking into account the international tendencies of innovations in energetics and the principle of coordination of national and international law. Russian energetics can flourish in case of the advanced development of technologies in all of its branches. Russian energetics staying on the technological level of the West, let alone lagging behind, means the loss of its independence and thus a blow to the national security. The external market exists in the conditions of tough competition between companies of the same sector, for example, oil and gas, as well as between companies operating in various sectors, i.e., energetics based on non-renewable and renewable energy sources. The appearing competition in international markets has now no adequate international law regulation.

Keywords: energy law, innovative development of the fuel and energy complex, legal regulation of strategic tasks in energetics.

Issues of the innovative development of national economy are rooted in the Soviet perestroika era. In was in that period, that the bases of present-day intellectual property laws were laid. The statutory regulation of contractual relationships of transfer of intellectual deliverables is reflected in the contemporary Russian history in part IV of the Civil Code of the Russian Federation and has become one of the few examples for the world practice. Such certainty in the legal policy has

given rise to confidence in the further successful innovative development of all economy sectors including the energy sector. However, the expectations did not materialize.

More than two decades have passed, the concepts of the “knowledge-driven economy”, “nanotechnologies”, “digital economy” have been proclaimed followed by their supreme form, the “economy/era of ‘artificial intelligence’”, but the problem of the national innovative development still remains relevant.

This concerns the majority of the economy spheres, and energetics is not an exception.

Almost all Russian government authorities are puzzled by the absence of due innovative development. Business that faces limitations in the use or acquisition of foreign equipment, is forced to significantly review its program projects. Technological restrictions in respect of Russian enterprises are viewed by foreign governments as optimal measures notwithstanding that they are damaging economic interests of their own companies.

The existing situation can be explained by a number of factors, among which the legal ones are of essence. One should distinguish general measures, for example, tax and customs regulation in the legal regulation of innovative relationships aimed at their development. The special regulation covers the issues of creation, protection and transfer of intellectual deliverables. The complementary regulation covers, inter alia, the issues of the status of innovative process participants, license regulation, technical standards, natural resource use and other public legal regulation spheres. The role of the state on all the innovative process stages and export and import regulation in energetics acquires special importance for the national energy law. [1]

It is worth noting that the state is constantly taking measures aimed at encouragement of innovative relationships including the ones in energetics. A distinctive feature of the legal regulation of the energy complex in the Russian Federation is the recurrent adoption of program documents by the state aimed at ensuring the intensive development of energetics. Such practice can be explained taking into account the role of energetics in the Russian economy. What is particular noticeable is that the tasks of the innovative development of energetics are specifically highlighted in such documents. They are not only an essential condition of the economic development in the modern world but also ensure national security. Among the latest strategic planning documents, the Energy Strategy of the Russian Federation for the Period until 2035, approved by Resolution of the Government of the Russian Federation

No. 1523—p of June 9, 2020, is worth noticing. It is designed to ensure the implementation of a number of earlier adopted program documents including the Energy Security Doctrine of the Russian Federation approved by the Order of the President of the Russian Federation of May 13, 2019.

The provisions of the Strategy and the Doctrine concerning the innovative development issues are aimed at the improvement of the legal regulation of innovative relationships in terms of law making and in the contractual practice on the national and international levels. With no prejudice to the importance of the above documents, one should note that the determination of some tasks in strategic planning documents is not a guarantee of their achievement. [2]

The tasks of the legal regulation of innovations may be viewed from at least two standpoints. Firstly, as legal regulation of the whole innovative relationship chain: from the development of a new idea to the sale of finished products or services produced/rendered using new technologies. Secondly, the use of law as an incentive for the innovative development of economy in general and its energy sector in particular. The fulfillment of these tasks requires special legal regulation.

In the first case, Russian laws technically have the full set of statutory acts required for the regulation of the whole innovative relationship chain. However, this regulation cluster has for years shown its low efficiency in all economy branches except for the military industrial complex (the criticism is mostly related to the issues of production of dual-use goods).

In the second case, one should rather refer not to the consistency of the legal regulation, but to the qualitative characteristics of the law able to intensify innovative processes. The energetics being the driving force of the Russian economy, requires the regulation that can solve this very problem.

In this respect, the above-mentioned program documents should be viewed only as landmarks for the possible development of laws meeting the challenges of internal and external markets.

From the standpoint of legal regulation, energetics may be represented by the whole range of branches: gas, oil, coal, nuclear, electrical power engineering and heat supply. As V.V. Romanova correctly notes, in order to determine the current state of the energetic law and order, it makes sense to study primarily the status of the general statutory regulation of social relationships in energetics and the special statutory regulation covering social relationships in a specific branch of energetics, on both national and international levels. [3]

The legal regulation structure will be different in countries having no such range of energy resources that Russia has.

The multi-vector nature of national energetics stipulates the use of a broad range of legal institutions aimed at the development of each of its branches. For example, the task of the innovative development of carbon energetics in the modern conditions is raising the level of ecological cleanness in the use of all fuel types, for nuclear energetics is its technological security and efficiency of waste storage, for renewable energy sources it is the development of conceptually new solutions related to their creation and exploitation, as well as the cost. Innovative relationships have basic principles of building and, consequently, legal regulation notwithstanding the diversity of branches of energetics. They act as stimulating factors but can also produce a negative effect.

The reasons for the innovative stagnation in Russia root back to the times of privatization of the 1990s. From the economy standpoint, the need for privatization stipulates overcoming the technological gap and the development of market relationships based on upgraded production. However, the persons having obtained the ownership of the state property have not considered the upgrade of the privatized enterprises as a top priority task. The Russian legislator has then in fact “pardoned” the failure to fulfill the upgrade programs for the privatized enterprise by setting the general three-year term of limitation of action which also covered the privatization cases (see the amendments to the Civil Code of the Russian

Federation introduced by Federal Law No. 109-Φ3 of July 21, 2005). In fact, it has deprived the state of any legal bludgeon to force enterprise owners to discharge their upgrade obligations.

Research centers that were potentially able to create new technologies have remained budgetary institutions but have been forced to survive in conditions of the establishing market. The reform of the Russian Academy of Sciences performed in 2013 has shown its failure over the past years. The currently existing model of the organization of scientific and scientific and engineering research has seriously damaged the organization and carrying out of fundamental research, the absence of which makes it impossible to create advanced technologies able to occupy a decent place in the market rather than just be an import substitution tool. Besides, scientific centers have now no adequate resources in terms of organizational or financial parameters to promote intellectual deliverables from scientific developments or R&D to industrial technologies.

Economy branches where the state participation remains significant, including the energy sector, have objectively preserved the financial resource allowing to abandon technological development for a rather long period of time.

The availability of a unique resource base will for some time continue to play the role of a “sleeping pill” for the innovative development of national energetics. The underlying reason is the objective disproportion between the huge natural energy resource of Russia and objective demands of its market. This factor is significantly jeopardized by the presence of natural monopolies in energetics, the categorical abandonment of which would be a serious mistake in the modern conditions.

However, considering that the problem of innovations is “open-ended” for any branch of the economy, including the energy one, and that the Russian energy branch objectively is export-oriented, its substantial development as well as the legal regulation should be built taking into account the international tendencies of innovations in energetics and the principle of

coordination of the national and international law.

The external market exists in the conditions of tough competition between companies of the same sector, for example, oil and gas, as well as between companies operating in various sectors, i.e., the energetics based on non-renewable and renewable energy sources.

The appearing competition in international markets has no adequate international law regulation today. The situation when the interests of energy companies in the competitive struggle are protected by the national laws to the prejudice of foreign companies, in particular, Russian, has emerged. In these cases, the favorable regime for national companies becomes too protectionist.

The remarkable fact is that the national protective measures are in such cases based on the requirements related to the technical and environmental security of energy objects. Nuclear energetics is the most vivid example. Some countries having imported nuclear power stations are closing them due to potential danger in case of an accident. However, it is difficult to imagine that in the event of an accident in one of the European countries, contamination will not affect other countries even if they prohibit exploitation of nuclear power stations. The more likely reason is that the club of nuclear power station exporting countries is small while the use of energy generated by nuclear power stations in the countries having no own technologies gives rise to serious competition for local power generating companies.

A similar situation appears in respect of “green energetics” programs. Today, the key

issue related to the creation of new technologies is green energetics and the legal problems concerning the transition to green energetics. The need for the active development of the legal regulation of the use of renewable energy sources is fairly noted by V.V. Romanova. [4]

Programs of the technical development and the legal regulation of national energetics adopted by various countries and showing a tendency towards reduction in the carbon fuel use are conditional upon the transfer to green energetics taking into account ambiguousness of the arising issues and the problems associated with the global warming thesis.

This tendency is most consistently observed in the European Union. The work on and planning of terms of transfer of automobile transport to electrical energy serves as a clear confirmation. Besides, the “carbon footprint” tax planned in the EU gives sufficient ground to believe that the implemented legal policy is aimed at more ambitious aims, the redistribution of the world market. The introduction of such tax will have a serious impact not only on the Russian oil and gas complex but also on other national industry branches using electrical energy generated by the facilities determined in Brussels as leaving the “carbon footprint”.

Based on the above, we may conclude that Russian energetics can flourish in case of the advanced development of technologies in all of its branches. The Russian energetics staying on the technological level of the West, let alone lagging behind, means the loss of its independence and thus a blow to the national security. ■

References

1. Lisitsyn-Svetlanov A.G. Energy Law: The Tasks of Further Development of the Branch / A.G. Lisitsyn-Svetlanov // The Legal Regulation of Electric Power Engineering and Heat Supply : files of an international scientific and practical conference (Moscow, December 13, 2013) : collection of scientific articles. Moscow : Yurist, 2013. P. 10-15.
2. Lisitsyn-Svetlanov A.G. Parameters of the Legal Policy in Energetics / A.G. Lisitsyn-Svetlanov // Energy Law Forum. 2020. № 2. P. 7-15.
3. Romanova V.V. Energy Law Order: Current Status and Tasks / V.V. Romanova. Moscow : Lawyer, 2016. 255 p.
4. Romanova V.V. On Strategic Tasks of the Use of Renewable Energy Sources and the Legal Regulation Development / V.V. Romanova // Energy Law Forum. 2020. № 4. P. 22-28.