

ON CONCEPT OF “OIL” IN THE RUSSIAN LEGAL SYSTEM AND IN THE LAWS OF FOREIGN COUNTRIES

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Gusyakov Vyacheslav Yu.,

Candidate of Legal Sciences

Deputy Chairman of the International Union of Lawyers,
Associate Professor of the Sevastopol State University,

■ Apkrf1@bk.ru

At present, the Russian gross domestic product consists mainly of revenues related to the sale of oil. At the same time, the current Russian laws has no definition of oil, while in the neighbouring countries, including Kazakhstan, Kyrgyzstan, Tajikistan and Ukraine, such a definition is present in the laws. In Russia, many attempts have been made to regulate public relations related to oil in detail, both on the federal and regional levels. However, such initiatives have always faced opposition, despite the fact that even today the legal regime of relations related to oil in Russia is not comprehensive. The author justifies the need for a legislative definition of oil and attempts to provide such a definition. The definition of oil may be particularly important when disputes arise between legal entities on different levels (whether private companies or public authorities acting on behalf of the state), since even the basic concepts may not coincide in their legal meaning in different national legal systems.

Keywords: energy law, oil legal regime, legal regulation of public relations in the oil industry.

As to the significance of this topic, it should be mentioned that its relevance is dictated, first of all, by the fact that previously Russia and the neighbouring countries comprised a common economic space within a single country, and despite the centrifugal forces between the parts of the former country that are now independent, strong economic and sociocultural ties has preserved. The conceptual framework is extremely important, since relations between legal subjects are usually contractually based. According to a general rule, the literal meaning of words and expressions shall be taken into account when interpreting the provisions

of a contract. However, each party understands a particular word contained in the contract, first of all, in the way that is directly provided in the law, and specifically in its national law. Otherwise, it is necessary to look for a definition in regulatory acts of other levels, which is less legally effective than legislative regulation. This may be particularly important when disputes arise between legal entities on different levels (whether private companies or public authorities acting on behalf of the state), since even the basic concepts may not coincide in their legal meaning in different national legal systems. Any legal truth is ultimately learned through the judicial

process, since the court decision is the final result for the parties in dispute. At the same time, the discrepancy between legal concepts means that judicial discretion shall be used in a judicial dispute. And the ruling on the case in the court will ultimately depend on it (judicial discretion).

It is worth mentioning that in the basic laws regulating relations in the energy sector of the neighbouring countries, the legal technique is based on the initial definition of the concepts provided in the law, since these are special laws the legal terms which are not general. The examples include law “On Oil”, the law “On Subsurface and Subsurface Use” of the Republic of Kazakhstan [1]. Other examples are the Code of the Republic of Belarus “On Subsurface” [2], the Law of the Republic of Azerbaijan “On Subsurface” [3], the Law of the Kyrgyz Republic “On Oil and Gas” [4], the Law of the Republic of Tajikistan “On Oil and Gas” [5], the Law of Ukraine “On Oil and Gas” [6], etc. Due to the current historical situation in Russia, the gross domestic product mainly depends on oil and gas. This is an obvious fact that needs no proof. To be precise, oil revenues (despite of the wide-spread myth) as a part of the Russian GDP are several times higher than revenues from natural gas in the neighbouring countries, whose gross domestic product also significantly depends on oil and gas. These are, first of all, Kazakhstan and Azerbaijan. However, due to the transit role, some countries also pay significant attention to oil and gas issues in their laws, such as Ukraine. Some neighbouring countries have also adopted their own laws on oil and gas. This applies to Kyrgyzstan and Tajikistan. Despite the significant importance of the oil and gas industry in the economies of neighbouring countries, their legislation has developed differently. For example, neither Russia nor Azerbaijan has adopted a separate law “On Oil and Gas” yet.

In the Russian legal system, the concept of “oil” has to be collected literally bit by bit. We do not find such a concept in the bylaws of the Russian Federation as well. The Decree of the Government of the Russian Federation dd. May 16, 2014 No. 451 [7] “On Approval of the Rules of Oil Metering” contains the definition of such objects as “oil deposit”, which is “a natural local (single) oil and gas accumulation, which is the object of oil reserves metering in the national

register, that includes other reserves objects”. It contains the definition of “oil and gas mixture”, which is “a mixture extracted from the subsurface that contains hydrocarbons of a broadly different physical and chemical composition, associated petroleum gas, water, mineral salts, mechanical impurities and other chemical compounds”. According to this act, the concepts of “oil and gas mixture” and “oil well fluid” are equivalent. However, we will not find the normative definition of “oil” itself. The most complete definition of the “oil” concept can be found in the Technical Regulations of the Eurasian Economic Union “On Safety of Oil Prepared for Transportation and (or) Use” (approved by the Decision of the Council of the Eurasian Economic Commission dd. December 20, 2017) [8]. Paragraph 4 of Section “Basic Concepts” specifies that “oil” is a liquid natural fossil mixture of hydrocarbons of a broad physical and chemical composition, prepared for transportation by the major pipeline, railway, road and water transport, and (or) for use as raw materials by oil refining and petrochemical plants” This definition reflects the belonging of oil to natural resources, to the group of hydrocarbons, to raw materials. V.V. Romanova correctly states as follows: “Even in the absence of special regulatory legal act that would regulate public relations in the oil industry, a special legal oil regime has been established, in particular, (1) as a strategically significant energy resource, (2) as a hazardous substance, (3) as a product, (4) as an object of stock trading; (5) as an object of relations on transportation by the major pipeline, (6) as an object of foreign trade transactions”. [9]

The laws of Kazakhstan in this area began with the law with the same title “On Oil” dd. June 28, 1995 [10]. Article 1 defined quite a wide range of concepts, including oil, which was defined as “crude oil, gas condensate and natural gas, as well as hydrocarbons obtained after refining crude oil, natural gas liquids and natural gas as well as hydrocarbons obtained after purification of crude oil, natural gas and treatment of oil shale or resinous sands”. Subsequently, the law became invalid due to the adoption of Law “On Subsurface and Subsurface Use” dd. June 24, 2010. [11] Article 1 of this law also defined many concepts used in this law, oil was defined as crude oil, natural gas and associated gas, as well as hydrocarbons obtained after refining

crude oil, natural gas and processing oil shale or resinous sands. A specific feature of this is the inclusion of associated gas in the concept of oil, which made it necessary for subsurface users to take into account associated gas as part of oil and use it more efficiently, at least, dispose of it without harming the environment, and not just burn it. By the way, this was the purpose of Draft Law of the Russian Federation “On Associated Petroleum Gas” as of 2009 [12], which was never adopted. Subsequently, the Law of Kazakhstan “On Subsurface and Subsurface Use” became invalid due to the adoption of the new Code “On Subsurface and Subsurface Use” dd. June 29, 2018. The new Code abandoned the original definition of many concepts that were previously contained in Law “On Subsurface and Subsurface Use” including some of them into the text of subject-related articles. In my modest opinion, this fact is not the advantage of the new Code. Interestingly, pursuant to Article 12 of this Code, hydrocarbon minerals are divided into oil, crude gas and natural bitumen. In its turn, oil is defined as “crude oil, gas condensate, and also as hydrocarbons obtained after refining crude oil and processing oil shale, oil bitumen rocks or resinous sands”, i.e. the definition returned to the original one contained in the Law “On Oil”. Apparently, “pressure groups” had their influence here as well. An interesting definition is given in the Law of the Republic of Tajikistan “On Oil and

Gas” dd. January 07, 2015 [13], where in Article 1 “Basic Concepts” oil is defined as “a combustible oily liquid distributed in the sedimentary shell of the earth, consisting of a complex mixture of hydrocarbons, some types of cyclanes and arenes, oxygen, sulphur and nitrogen compounds, which is considered to be the most important natural mineral”. An indication that oil is an essential natural mineral can be crucial in a legal dispute if judicial discretion is required. The Law of the Kyrgyz Republic “On Oil and Gas” dd. June 08, 1998 [14] defines oil in Article 3. “Oil is crude oil, as well as hydrocarbons obtained after refining crude oil, processing of oil shale and bituminous rocks”. In its turn, the Law of Ukraine “On Oil and Gas” dd. July 12, 2001 [15] contains the following definition of oil: “Oil is a mineral that is a mixture of hydrocarbons and components dissolved in them, which are in a liquid state under standard conditions (pressure of 760 mm Hg and temperature of 20 deg. C), and is a marketable product”. Russia needs a special Federal Law on oil, in which the concept of “oil” can be defined as follows: oil is a liquid fire-hazardous natural fossil mixture of hydrocarbons of a broad physical and chemical composition, which can be transported by the major pipeline, rail, road and water transport and (or) used as raw materials by oil refining and petrochemical plants, and is a strategic non-renewable resource.

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