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Improvement Of Energy Laws In The Post-Sanctions Era: Future Considerations

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Аннотация

Being sure that sanctions turbulence in economic and, first of all, energy relations, both on the international and Russia scale, will not last for decades, the author reviews the problems of energy law, which will remain in the post-sanctions era. At the same time, a number of basic provisions in the energy sector will remain unchanged, but the changes, in general, will be drastic, as the world order will change. According to the author, we need to be ready to address the problems of improving energy law and legislation of the post-sanctions era, which will require appropriate scientific support, first of all, the efforts of scholars capable of solving fundamental problems, whom we need to train today. The author believes that these steps shall be part of a federal target comprehensive program that we need to start developing.

Ключевые слова: energy law, sanctions turbulence, post-sanctions relations, scientific personnel training, target program

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¹ The energy sector of the economy has recently experienced numerous multidirectional, profound, and extensive changes not only in our country but all over the world. In fact, this is geopolitical turbulence, which, of course, also affected legislative and other statutory regulation at the national level, in foreign countries, and at the international level.

² It is difficult to predict how long this turbulence will last, especially for the author of this article, who is a judge with many years of judicial experience (because this is mostly about politics, and judges, as we know, try to stay away from politics), but it is obvious that this period is unlikely to last for decades. We “survived” all kinds of foreign sanctions and pressure on our country, primarily in the economic, and what is more important, energy sector, right after the Civil War, after the Great Patriotic War, and during the Cold War. The reasons for the sanctions were clearly fabricated: for example, in November 1962 the U.S. imposed an embargo on the supply of large-diameter pipes to the USSR (which was acceded by Germany and France) for the reason of a “military threat” from Moscow in the form of rapid oil and gas supplies to Western Europe; in June 1982 the U.S. imposed an embargo on supplies of not only US companies’ products, but also equipment manufactured abroad under the US licenses to the USSR, and the occasion was the construction of the Urengoy-Pomary-Uzhgorod gas pipeline, etc. These circumstances did not hinder the steady development of our economy, especially in the 21st century, which was greatly facilitated by the powerful energy sector of our economy.

³ Presently, as of August 17, 2022, there are 11,812 anti-Russian sanctions in total, of which 9,117 sanctions were introduced after February 24 (for comparison, as of August 17, 2022, there are 9,167 sanctions against Iran, 2,665 sanctions against Syria, 2,697 sanctions against North Korea, and 1,113 sanctions against Belarus).

⁴ At the same time, it is obvious that the world economy and the world, in general, will no longer be the same once the said turbulence ends. It is not only about international trade and other economic relations. It seems that the entire multi-layered complex of international and interstate relations will be different, restructured, and based on different worldview principles of international law. But this is a geopolitical point of view. However, we will preserve hydrocarbon reserves (and this is our timeless wealth stored in the most secure natural bank, which belonged to our ancestors, belongs to our generation, and will belong or already belongs to our descendants; this is our global advantage, which, unfortunately, we do not use properly; instead of exporting hydrocarbons, it is better to export petrochemicals subjected to a number of technological processing operations), energy sector facilities of the national economy, highly qualified energy specialists, etc. The problem of green energy will also remain and will directly affect the green economy, and, primarily, not in our country but in leading Western countries.

⁵ The problems of environmental safety in the energy sector, the problems of energy consumption alignment throughout our country, the problems of minimizing energy costs in various industries, etc. will remain significant to a greater or lesser extent.

6 In terms of science, in the field of fundamental science, researches aimed at discovering new physical laws and new types of energy (quantum, chrono...) (by the way, a prototype nuclear fusion reactor has been launched in China recently) will remain relevant. Finding an answer to the central question: who owns the undiscovered (geologically) reserves of raw hydrocarbons and other strategic values in the Earth's subsoil (here we should document the answer to this question in the Constitution of the Russian Federation, which is currently not present in the Constitution of the Russian Federation) will still be an important problem of fundamental legal science in energy relations.

7 Unfortunately, if no decisive steps are taken, national troubles will also remain: underfunding of fundamental science, inconsistency of scientific research management, brain drain (both to non-scientific national sectors and other countries), imitation of vigorous scientific activity without real results, while the achieved results cannot be properly applied in the real-world economy sector, public sphere, etc.

8 At the same time, Deputy Prime Minister D. Chernyshenko's words at the plenary session "What Needs to be Done to Achieve the Technological Sovereignty of Russia" of the 9th Technoprom International Forum of Technological Development in August 2022 make me hopeful. He said, "We will also have a new institution: by December deputies for scientific and technological development will be appointed in federal ministries and departments... Sectoral centers of competence will be created under ministries and will be supervised by the deputies..." (Search, August 26, 2022, No. 34-35).

9 Creation of an institution of high-status deputy ministers of science in federal ministries and departments is certainly an excellent idea. But it seems that its real implementation will be possible subject to two obligatory conditions: 1) a deputy minister of science should be, first of all, a scholar who knows the methodology of scientific search and has organizational skills, and not just an effective manager, because only a specialist who understands science can not only arrange such research but also manage the implementation of scientific achievements in the system of their ministry (especially holding the position of a deputy minister); 2) this deputy minister should have a considerable amount of legal knowledge, because it is impossible to implement or arrange the implementation of scientific achievements, albeit on a department scale, manually by giving personal instructions. We need mostly legal means here.

10 This means that in geopolitical terms the new world order will be fixed in a new reality; within Russia, we will need to re-launch our economy based on new inputs; the Russian legal framework will need a new solid legislative and other statutory foundation for both development vectors; legal science will have to provide scientific support for the said legal foundation, and, most likely, by drafting a new Constitution of the Russian Federation in the first place.

11 Of course, research and development to create the said legal foundation does not in any way mean denial, neglect, or even decreased interest in applied and even exploratory research in this field.

12 Nevertheless, the fundamental science of energy law is (or at least should be) a kind of "locomotive" pulling exploratory and applied research in its wake. In general,

modern science covers a vast body of knowledge and includes about 15 thousand disciplines, which interact even more closely and affect each other; almost all phenomena studied today are interdisciplinary. [9]

¹³ However, most of the scientific researches in our country are in engineering, biology, physics, medicine, etc. The studies in the social sciences are manifold less in number, and among them, there are very few legal science studies. Most of them are of manifestly applied nature, meant to develop proposals on how to adjust (or “improve” if said nicely) some provisions of the current laws (to a lesser extent) and regulations (to a greater extent) with the works on departmental and sectoral regulations being predominant among the latter.

¹⁴ The latter in the Soviet period was the responsibility of legal scientific divisions of research institutes of economic ministries and departments at the union and union-republican levels, which succeeded in this sphere, but with the collapse of the USSR and the transition of the Russian economy from planned to market principles such legal science divisions, as well as the research institutes that housed them, and even the economic ministries themselves, were eliminated.

¹⁵ As a result, the past thirty years resulted in the following situation in our country, as part of the problem analyzed in this article. It is known that not everyone awarded scientific degrees and titles is able to conduct fundamental scientific research (no offense meant), which requires, in addition to extensive knowledge, the appropriate methodology of scientific research, a special unbiased view of the surrounding reality and the problem studied, the ability to see not only today’s but also “day after tomorrow’s” problems, the so-called “over-the-horizon” problems, etc. But the majority of these scholars, who are objectively capable of fundamental research, are not engaged in “free search”, but mostly do work related to applied or, at best, exploratory research. Because the vast majority of them are scientists working in higher education institutions. There has been a long-standing, for almost three hundred years, tradition in Russia, to leave fundamental science for research institutes of the Academy of Sciences.

¹⁶ This is true about legal sciences. However, there are a small number of legal research institutes, including higher education institutions. There are significantly fewer research institutes that have scientific departments engaged in energy law research, and the number of departments that are actually engaged or could in principle be engaged in energy law research and development at the fundamental level can be counted on one hand. The only scientific organization specializing in this segment is V.A. Musin Research Center for the Development of Energy Law and Modern Legal Science Autonomous Non-Commercial Organization.

¹⁷ Therefore it is not enough that the volume, depth, width of coverage and other parameters, and consequently, the effectiveness of fundamental energy law research differ significantly from that of the research in other branches of law and legislation. It ultimately differs in terms of the effectiveness/ineffectiveness of research results. The point is that the consolidated budget of our country is made up of the energy market revenues by more than a third (in fact, almost a half), and we can state a priori, the better and more effective the legal regulation of relations in the energy market (and it is extremely diverse and extensive), the more money goes to our budget, and vice versa.

And it goes without saying that the effectiveness of this legal regulation largely depends (should depend) on the successes of energy law science. Even insignificant achievements of scientific research in energy law make (will make!) a real contribution to the budget; and vice versa, mistakes and defects in the legislative and statutory regulation in this area will lead to potential budget losses, which might be quite significant.

¹⁸ Therefore, we should welcome the adoption of the important Federal Law on March 6, 2022, stipulating relevant measures to limit greenhouse gas emissions in the form of an experiment in certain constituent entities of the Russian Federation only. [11] It also seems important to develop research tools meant to assess, monitor, and control positive and negative risks in the energy sector of the economy, first of all, in drafting laws. Serious scientific work on risk management in IT projects is being performed at the Tomsk State University of Control Systems and Radioelectronics, [3, p. 4, 5] but, unfortunately, the authorities of our country do not pay enough attention to the problem of risks in external relations, otherwise excessive currency would be spent, for example, to upgrade the production, to improve our education, science, and healthcare, rather than transferred to overseas accounts, which are blocked and unavailable today in huge amounts.

¹⁹ It is also insufficient because a mere increase in the number of scientific structures where researchers work and conduct research in energy law on purpose or “part-time” with their teaching will not have an immediate effect. There are few researchers objectively capable of doing work in this area, at the fundamental level, and the newly created structures will not have enough of them, and entrusting such studies to people objectively incapable of fundamental research is like ordering a person to become smart.

²⁰ At the same time, it is encouraging that in the pre-sanctions era, before February 2022, scholars who study the problems of energy law identified, outlined, formulated, and proposed ways to address the problem tasks in energy law.

²¹ Thus, Professor V.V. Romanova in 2016 studied in the form of a monograph the state and tasks of energy law order in the electric power industry, the gas industry, the oil industry, and the area of nuclear energy use. [10, p. 254] In 2018, she also studied the problems and tasks of legal regulation of energy markets, and the legal analysis of the current laws helped her to identify conditional classifications of legal regimes of energy markets, inter alia, on the following grounds: by the energy industry (electric power, gas, oil, coal, thermal energy, nuclear energy); by the category of buyers, wholesale and retail markets; by the methods of energy resource trading, exchange and over-the-counter markets; by the type of goods (works, services), the market of energy resource production, supply, and processing, the market of energy resource transmission, transportation, and storage services. [12, p. 13 - 71]

²² And in 2019, V.V. Romanova, when analyzing the problems, strategic goals, and objectives of legal regulation of energy security (how timely (← M.K.)), formulated the following definition of the concept of legal regulation of energy security: it “...is a combination of rules governing relations, inter alia, between energy resource suppliers and consumers, establishing requirements to the quality of energy resources, their price,

requirements for energy efficiency and energy saving, legal regimes of energy systems, energy equipment, establishing the powers of public authorities and delineation of their authority, regulating the legal status of energy companies, establishing the procedure for investment activities, stipulating the protection of parties to public relations associated with the production, supply, transportation, and storage of energy resources, the construction and upgrade of energy facilities within the country and abroad”. [4, c. 14, 15]

²³ The author has also contributed to the research of the specified problems in the pre-sanctions era [6, p. 16-23]. It is worth noting that this periodical, currently, the only specialized edition in Russia, publishes a lot of worthy scientific publications on the problems of energy law.

²⁴ However, some works on energy law, including in the sanctions era, are published in journals specializing in various legal topics, [2, p. 10-18] not only energy. [5, p. 97-108]

²⁵ It follows from the above that there is a certain, and considerable, reserve for problematic scientific research in energy law at the fundamental level, and therefore for the qualitative improvement of energy laws in the post-sanctions era, but it is not enough.

²⁶ An example is the National Security Strategy of the Russian Federation approved by Order of the President of the Russian Federation No. 400 dd. June 2, 2021. [8, p. 32] This rather decent and extensive document has only one, the 15th sub-clause of clause 67, devoted to the problem of energy, which lists the achieved goals of economic security (this is the name of the section, which contains this clause) of the Russian Federation by way of solving the tasks listed. The task in the said sub-clause is defined as follows: “Ensuring the energy security of the Russian Federation, including sustainable heat and energy supply to the population and national economy entities, enhancing the energy efficiency of the economy and the effectiveness of public administration in the fuel and energy area.”

²⁷ No doubt, it is not enough today, in the sanctions era. But without a doubt, we should start addressing the post-sanctions problems of energy law today.

²⁸ This means that there is a need for a sufficient number and high efficiency of targeted training of highly qualified personnel in energy law, consistent and purposeful, through postgraduate and doctoral studies, which require proper conditions: organizational, material resources, financial, staffing, etc. It is advisable to adopt a state target federal program.

²⁹ In this respect, historical experience, although based on the former, pre-revolutionary scientific foundation, can serve as a bright example.

³⁰ In the most difficult conditions of the continuing Civil War, the Commission for the Development of the Electrification Plan of Russia (GOELRO) was established on February 21, 1920, and included major scientists, technologists, economists, and power engineers and was headed by G.M. Krzhizhanovsky. By the end of 1920, this Commission prepared the Plan of Electrification of the RSFSR, a volume of 650 pages

of text with maps and charts describing the construction of 30 power plants in eight major economic regions of the country with a total capacity of 1 million 750 thousand kilowatts. Herbert Wells, a famous science fiction writer, visiting Russia in 1920, considered this plan infeasible, but when he came to Russia in 1934, he was struck by the fact that the GOELRO plan was successfully implemented and even exceeded in many respects (although he did not know the cost).

³¹ Nevertheless, this plan was the first state project in the energy sector and, in general, in the economy, which was conceived and implemented in the shortest possible time and took our state to new social and economic frontiers. And an important conclusion is: it was the achievements in the energy sector that made a breakthrough in other sectors of the national economy possible and supported it. It is important to emphasize that the plan was drawn up by specialists with pre-revolutionary training considered good in those days.

³² Modern scientific and legal studies pay much attention to the problems of public policy in strategic planning. In particular, D.A. Afinogenov, E.V. Vinogradova, and T.A. Polyakova note that under the influence of new challenges and threats, strategic planning and strategic management become some of the key factors of scientific substantiation of long-term political, geostrategic, cultural, and worldview tasks, an effective toolkit for methodological research in national security, an ideological and methodological framework for long-term transformations and reforms. Such importance of the managerial component is due to the fact that new fundamental theoretical and legal approaches to the justification of the significant changes brought by the practice of public policy implementation to the theory of national security are increasingly sought after in the practice of public administration. It is obvious that practice is sometimes well ahead of the established system of fundamental views of national security and affects the system development of public policy in this area. [1, p. 27] And national security, [7, p. 11 - 33] largely ensured by the effectiveness of energy law, should be the core of public policy in strategic planning.

³³ As for the GOELRO plan, we should mention in conclusion that our modern energy specialists are equally well-prepared (in comparable terms, of course), and their work, if properly arranged, will make it possible to see and effectively address future problems in the energy sector of the economy. Proper legislative and other regulatory support will play an important role in this case, which means that we need, already today, specialists in energy law, who can see over-the-horizon, fundamental problems and propose real solutions.

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Abstract

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