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On the Relevant Tasks of Energy Law Monograph Edited by V.V. Romanova

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Аннотация

The systematic study of energy law in the context of legal policy clearly indicates that energy industry issues today form the main agenda of international relations and, accordingly, their legal regulation at the national and international levels. For Russia, more than for any other country, the issues of energy industry in the global law order are of paramount importance. And, in light of the foregoing, the timeliness of the monograph *Relevant Tasks of Energy Law* edited by V.V. Romanova, is beyond doubt. It is Russian science that should become a generator of ideas for a new law order, including on issues of energy law. An essential condition for ensuring energy security in the “inner periphery”, including through legal means, should be the balance of the political interests of the state with the commercial interests of industrial and financial groups. To achieve this goal, a verified legal policy is required, ensuring a balance of market relations aimed at profit generation with the social security of the population, small and medium-sized businesses.

Ключевые слова: energy law, energy security, legal regulation of energy markets in the context of economic sanctions

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¹ Research in energy law in Russia over the past years has been reflected in a number of fundamental monographs devoted to issues of both the essence and subject of energy law and specific issues of regulating relations in the energy industry. I would especially like to mention the monograph by V.V. Romanova devoted to the current state and objectives of energy law order, [1] monographs edited by V.V. Romanova, devoted to the legal regulation of energy markets, [2] legal regulation of energy security. [3] In 2022, the monograph *Relevant Tasks of Energy Law* edited by V.V. Romanova, was published. [4]

² This journal, published the Musin Research Center for the Development of Energy Law and Modern Legal Science Autonomous Non-Commercial Organization, [5] quarterly introduces the reader to the issues arising in practice, as well as to the proposals of the expert network to improve the current laws and the analysis of law enforcement practices.

³ A systematic study of energy law in the context of legal policy clearly indicates that energy industry issues today form the main agenda of international relations and, accordingly, their legal regulation at the national and international levels.

⁴ The urgency of these issues was definitely revealed in the Nord Stream 2 issue, the fight against which became an integral part of the new crusade against Russia. In the context of the current events that have already closed the “book of international relations” written after World War II, the challenge of building a new law order arises, which should provide a way out of the military confrontation that has arisen and become the basis of future international political and economic relations. For Russia, more than for any other country, the issues of energy industry in the global law order are of paramount importance. And, in light of the foregoing, the timeliness of the monograph *Relevant Tasks of Energy Law* is beyond doubt. Under the circumstances, a monograph with such a general title cannot objectively reflect the whole complex of issues that have arisen and are pending. However, the material contained in it, addressing a number of urgent objectives, encourages further research. It is Russian science that should become a generator of ideas for a new law order, including on issues of energy law.

⁵ Russia can rightfully be called the world’s storehouse and keeper of the widest range of energy resources, as well as the guarantor of their fair use both on Russian and global markets. Almost all types of energy resources are represented in the territory of Russia. Russian laws contain provisions ensuring their exploration, production and transportation, both within the country and abroad. Modern trends in the development of energy industry, giving priority to renewable sources, also have favorable prospects in Russia, in view of the level of national scientific and technical research in this area and the possibility of using large territories for their development.

6 An essential condition for ensuring energy security in the “inner periphery”, including through legal means, should be the balance of the political interests of the state with the commercial interests of industrial and financial groups. To achieve this goal, a verified legal policy is required, ensuring a balance of market relations aimed at making profit with the social security of the population, small and medium-sized businesses.

7 Preservation of Russia’s traditional energy resources; improvement of technologies for their use and creation of new technologies in the renewable energy industry; ensuring fair competition within the country and in global markets; protection from political and military threats emanating from unfriendly countries: all this requires systematic legal regulation of Russian national interests and energy security.

8 The system of creation energy security requires identifying serious challenges that pose a threat to its security, as well as setting objectives for its organizational and legal regulation. This is a scheduled, but only the first step in the legal policy that forms the system of legal regulation at the national and international levels.

9 In view of the fact that the Russian energy industry, like no other branch of the economy, is connected with the world market, international economic, political and military factors have a serious impact on both the development strategy of national energy industry and its legal regulation.

10 Since 2014, the situation has changed significantly. The vector of political and legal orientation associated with the “outer periphery” has become dominant in the issue of ensuring energy security. The latest legal policy and its legal implementation are developing towards solving energy security issues against the background of military and political confrontation with the Collective West, with its unlawful, aggressive legal policy, expressed in unfair competition in the world market, as well as in sanctions and restrictive measures directed against Russia.

11 The current confrontation with the Collective West requires not only a thoughtful application of the current laws ensuring Russia’s energy security, including the regulatory provisions adopted after February 24, 2022, as a response to the sanctions of the Collective West, but also the development of a new legal regulation. A new approach to the “outer periphery” of relations in the energy industry should provide for a material comprehensive revision of international and national legal regulation that **ensures energy security and promotes the national interests of Russia.**

12 It should be noted that in the new conditions, the development and application of foreign economic laws as a tool for the implementation of foreign policy comes to the fore.

13 In this regard, the issued presented in the monograph are of rightful interest.

14 The monograph *Relevant Tasks of Energy Law* edited by V.V. Romanova examines the trends in the development of legal regulation of the fuel and energy complex in the conditions of economic sanctions, formulates the objectives of energy law for the further formation of energy law at the national and international levels in the conditions of economic sanctions. The authors consider problematic aspects and promising areas of innovative development in the energy industry. Sufficient attention is paid to the legal regulation of the climate agenda, including aspects of the development

of the use of renewable energy sources and hydrogen energy industry. The paper examines the trends in the development of legal regulation of the oil and gas complex. The authors also present the relevant objectives of the development of contractual regulation and corporate governance in the energy industry.

¹⁵ The undoubted advantage of the work is the analysis of both national and foreign laws.

¹⁶ The paper was prepared on the basis of modern laws and analysis of existing law enforcement practices.

¹⁷ The research performed has not only theoretical, but also obvious practical importance.

¹⁸ Under the current conditions, energy security issues are of particular importance, both in the short and long term. The monograph fairly examines the issues of energy security in the context of the actions of Russia and Russian legal entities with regard to the relations developing within the framework of the “inner Russian periphery” and the “outer periphery”. During the preparation of the monograph, the issues of the “inner periphery” were mainly related to the elaboration and implementation of technical standards in the energy industry. However, the act of international terrorism in relation to Nord Stream 1 and Nord Stream 2 requires that the provisions of the Strategy and the Doctrine be significantly supplemented in terms of ensuring energy security from deliberate external influences.

¹⁹ The anti-Russian political and economic sanctions imposed by the Collective West required Russia to take protective measures promptly and legally. It is important to note that initially the legal policy of anti-sanctions did not have as an exclusive goal to give a mirror response, especially since the sanctions were directed both against the Russian economy as such and against individuals. The primary objective was to “neutralize” the harmful effects of sanctions. The complexity of solving the issues that arose was due to the fact that, despite the multi-vector nature of the sanctions, the main blow was directed against the energy industry of the economy, in which the national and foreign economic components are essentially equal.

²⁰ In this regard, attention is drawn to the clear systematization of the legal regulation adopted in Russia aimed at protecting the Russian economy, including its energy industry formulated in the monograph. [6] Rightly emphasizing the political and legal importance for ensuring energy security of such a strategic planning document as the Energy Security Doctrine, the monograph consistently dwells upon the system of adopted Laws of the Russian Federation, Executive Orders of the President and Government Resolutions, as well as the existing practices of their application on the example of landmark cases.

²¹ The multidimensional nature of the sanctions imposed, currently in force in the context of military operations, is in any case limited in the duration of its validity. Any crises and conflicts end with the establishment of more or less peaceful relations on the basis of agreements that draw a line under conflicts, which also implies the establishment of new relations between states, including economic relations.

²² The monograph offers a scientifically-based scheme for the development of Russian laws, starting with the basic issues related to the content of the new Energy Security Strategy for the period up to 2050, as well as specific proposals for improving the legal regulation of the industry, including objectives of its codification.

²³ Paying tribute to the research performed and the conclusions drawn, it should be noted that in a rapidly changing international crisis situation, where energy issues are becoming systemic, program in nature, the establishment of the law order at both the national and international levels should be based on the prevailing realities, taking into account, firstly, historical experience and, secondly, the fact of the extension of sanctions and restrictions to almost all sectors of the economy and legal regulation.

²⁴ The sanctions recently adopted by the United States, the European Union and their allies against the Russian Federation and its citizens are unprecedented in scale. However, from a lawyer's point of view, they only supplemented the previously existing export control laws. This is especially true of the practices of the USA and the UK.

²⁵ The laws of these countries in matters of export control and related sanctions have more than a century of history. By its content, it did not contribute to the development of bona fide competition in the world trade. Sometimes, especially on the part of the United States, attempts were made to give it an extraterritorial character. However, in the bipolar world, these attempts were limited and not always found support in European countries. Now the picture has changed dramatically.

²⁶ The restrictive measures taken by the Collective West were coordinated in advance; their extraterritorial nature took on global scale. Only some economies managed to resist them, and even then, to a greater or lesser extent. Now the problems of energy and economic security in general, have taken on not only national or regional, but also global character. Thus, it seems realistic to conclude that the completion of the acute phase of the crisis will not radically eliminate the political and economic confrontation. Moreover, the objective status of Russia as a sovereign state with a self-sufficient resource base and capable of standing in the first row of exporters of the entire spectrum of energy resources, and in the future will be the subject of attacks from certain international forces claiming world leadership.

²⁷ This situation implies gradual adjustment of the current Russian laws and international contractual practices. The relevant proposals are contained in the published monograph. At the current stage, the "unfriendly state" category is being introduced into legal circulation, which implies the introduction of prohibitions or restrictions on a number of transactions, among which a ban on transactions with shares and participatory interests of enterprises identified as strategic should be noted. The adopted regulation has primarily a protective purpose. However, restrictive measures are always forced measures and objectively are not a legal incentive for market development. In the future, it is necessary to properly balance the legal regulation that ensures the attractiveness for foreign capital of doing business in Russia with the protection of national industry and finance from excessive pressure of foreign capital and technological dependence.

²⁸ The solution of this issue, and first of all, for the energy industry, largely depends on the reform of foreign investment regulation system. For many years, the idea of creating favorable regimes for foreign investment has occupied the central place in

investment legal policy. Clearly insufficient attention was paid to promoting national interests and ensuring security in terms of global policy. However, the successful development of Russia in political, social and economic terms cannot be ensured by the traditional rules that are offered by some countries the economies of which depend on the export of any energy resource. Russia's objective presence on any global international agenda implies the need to create an independent legal policy and specific arrangements for its implementation. In this case, we are not talking about some kind of isolationism or deliberate opposition of Russia to the Collective West. The task is to dynamically, proactively develop new arrangements of legal regulation in the energy industry based on the interests and capabilities of countries with the necessary resources.

²⁹ The monograph clearly shows the foreign experience of developing a modern international agenda in the energy industry, based solely on the interests of the "Golden Billion". This is manifested both in the dosed provision of available technologies used in the energy industry abroad, and in the adoption of energy development programs, where attempts at unfair competition are hidden behind environmental hyper-threats of the climate agenda bandied about, and in the role of offshore companies.

³⁰ Against the background of these negative realities, which are clearly far from the interests of national energy industry, the monograph objectively reveals the objectives of regulating the oil and gas complex. Issues related to regulation in subsoil use are worth mentioning. This topic deserves further study, especially in the context of the Russian historical experience of legal regulation.

³¹ An important place is also given to the issue of energy supply. The legal aspects of this issue are not only of an applied nature, which is described in the monograph, but raise questions in broader terms. Legal regulation in the energy industry touches upon the issues of the correlation of freedom of contract and regulatory requirements required for both the safe use of electrical grids and the determination of tariffs. In addition, this energy industry in a market economy needs special regulation related to such a legal institution as a natural monopoly.

³² The energy capabilities of many Russian companies objectively make their activities transnational. This factor was taken into account when forming their management bodies. The current sanctions crisis, expressed in the adoption of sanctions that apply not only to legal entities, but also to individuals, leads to the need to carefully study the existing practices in order to prevent the paralysis of the work of companies in the future.

³³ Global crises are always accompanied by an increase in the number of legal disputes, as well as the relevancy and diversity of their content. Russian oil and gas companies have faced this issue to the greatest extent. Although the issues of the arbitration process for dispute resolution with foreign participation in the practice of Russian companies have a long history, in the modern conditions its shortcomings have manifested themselves particularly seriously. The main negative factor was the excessive use of foreign jurisdictions as a place of dispute resolution. Energy industry, especially related to its sphere as investment, is an area of economic relations where public interest and public law regulation play a special role. To solve the problems that arise, the monograph proposes to use additionally relatively soft procedures, in

particular, a dispute resolution board. [7] Without questioning the importance of “soft forms” of dispute resolution, it seems to us that in the current conditions, we should pay more attention to the appeal not to some “neutral jurisdictions” but to the national one, taking into account the fact that the public law aspects contained in energy projects, in principle, should not be the subject of arbitration.

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Abstract

The systematic study of energy law in the context of legal policy clearly indicates that energy industry issues today form the main agenda of international relations and, accordingly, their legal regulation at the national and international levels. For Russia, more than for any other country, the issues of energy industry in the global law order are of paramount importance. And, in light of the foregoing, the timeliness of the monograph *Relevant Tasks of Energy Law* edited by V.V. Romanova, is beyond doubt. It is Russian science that should become a generator of ideas for a new law order, including on issues of energy law. An essential condition for ensuring energy security in the “inner periphery”, including through legal means, should be the balance of the political interests of the state with the commercial interests of industrial and financial groups. To achieve this goal, a verified legal policy is required, ensuring a balance of market relations aimed at profit generation with the social security of the population, small and medium-sized businesses.

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