

Theoretical and Practical Issues of Systematization of Russian Energy Legislation when Bringing it into a Coherent System

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ABSTRACT

The urgency of the problems stated in the paper is conditioned by the need to develop and adopt a new concept of legislation, which would have fixed the starting positions and the principles of legal regulation of relations in the sphere of fuel and energy complex, including the forms of Russia's participation in international projects in the conditions of civilized market relations. The aim of the paper is to develop basic methods and techniques of energy legislation's systematization, which should be an integrated complex of the Russian Federation legislation, a set of normative legal acts regulating the relations arising in the sphere of organization and functioning of the fuel and energy complex of the Russian economy. The leading method to the study of this problem is the simulation method allowing addressing of this issue as a purposeful and organized process of systematization of energy legislation when activating it in an efficient integrated system. The authors conclude that the modernization of the regulatory framework in the energy sector should be carried out on the basis of the developed general economic and legal concept of energy development and energy legislation of modern Russia and must be based on the accumulated legislative experience of Russia and foreign countries, take into account the successful international practice in this area. The proposals made in the paper are aimed at improving the procedural forms of commercial justice in Russia, first of all - support of and use in the practice of pretrial forms of conflicts resolution, alternative forms, such as negotiations, mediation, arbitration courts, commercial arbitration, negotiations within trial to conclude settlement agreements, including with the use of experts and facilitators, as well as integration with the consent of the parties of simplified, expedited forms of proceedings in a relatively small and less complex cases.

KEYWORDS

Energy, energy legislation, economy, resources

ARTICLE HISTORY

Received 20 September 2016
Revised 28 November 2016
Accepted 09 December 2016

Introduction

Energy as a branch of the economy and existing in the framework of this sector public relations for production, distribution, transmission, use (consumption) of energy are the basis for regulating by standards of energy law.

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Problems in the energy sector in the twenty-first century are of particular importance for the modern world economy as a whole, and for the Russian economy. The success of their solution necessitates the improvement of legislative regulation of the relations of the fuel and energy sector (Fuel and Energy Complex), its systematization. In this connection it is possible to support the opinion of those scientists and experts who talk about the need to develop and adopt a new concept of legislation, which would have fixed the starting provisions and the principles of legal regulation of relations in the sphere of Fuel and Energy Complex, including the forms of Russia's participation in international projects on the conditions of civilized market relations.

The current Russian legislation unequivocally establishes the right of ownership of the entities on industrial and other material objects. For example, according to the Federal Law "On Electric Power Industry" the entities of electric power industry may possess the right of ownership on industrial and other property objects (Article 3).

Federal Law "On Gas Supply" notes that the gas mains and branch pipelines, compressor stations and other industrial facilities possess the right of ownership of gas transportation organizations engaged in the transportation of gas (Article 2). However, Article 2 of the same Federal Law also identifies the supplier (gas suppliers) as the owner of the gas. In other legal acts, including the Regulation of gas supply in the Russian Federation, such a formulation has not found its further confirmation and fixing.

Thus, there is no a uniform solution to the question of the possibility to establish property rights on the objects such as power and energy recourses in legislation and jurisprudence.

Further updating of the regulatory and legal framework in this area should be carried out on the basis of a developed common economic and legal concept of electric power industry's development and energy legislation, and should be based on the accumulated legislative experience of Russia and foreign countries (Ellis & Tridimas, 1995), to take into account the successful international practices in this direction.

Methodological framework

Formation of legislation of electric power industry and bringing it into a coherent system should be based on a thorough scientific analysis of a number of issues of particular importance for this.

It is necessary to define on scientific and theoretical and legislative levels the basic concepts in the field of energy law (the notion of energy, energy resources, energy products, concept and types of energy sources, primary energy sources, natural mineral resources, alternative sources, renewable energy sources, etc.);

— Energy concept as a system that converts natural potential into the final consumer product;

— the ratio of concepts: energy, electric power industry, energy resources, energy products, energy services.

In the legal field of electric power industry the particular importance belongs to the ecological and environmental problems, the solution of which calls for the development of the mechanism of legal regulation of relations in this sphere, improvement on this basis of energy legislation which is adequate to modern economic conditions, ensuring the development of large-scale national projects in the oil and gas sector, as well as in international cooperation. Promising problems of legal regulation in this area include the following: legal support for the development of mineral

resources in the Arctic, and the preservation of its ecosystems; development of the legal regime for exploitation of mineral resources of the Caspian Sea and the preservation of its biological resources; ensuring of the safe development of nuclear electric power industry, and others (Shevchenko, 2015).

These concepts are widely used in normative legal acts to a greater extent as the technical terms. For example, the Federal Law of November 23, 2009 № 261-FZ "On energy saving and energy efficiency improvements and on Amendments to Certain Legislative Acts of the Russian Federation" considers the energy resource as a carrier of energy, the energy of which is used or can be used in the implementation of economic and other activities, as well as the type of energy (nuclear, thermal, electrical, electromagnetic energy, or other form of energy) (Oppermann, 1999).

Taking into account the characteristics due to the natural properties of energy, it is necessary to give them a description as the objects of civil rights, and determine the location in the system of objects, from the point of view of the classification of the latter, provided for in Article 128 of the Civil Code of the Russian Federation. In the legal literature there are attempts to identify specific energy features as the object of civil rights, but it is important to identify and take into account the peculiarities of energy in all its various forms and manifestations, as well as the understanding which is invested in this concept in science and the law in other foreign jurisdictions, an international legal practice (Biryukov, 2006). It should be noted that economic theory in general allows understanding of energy as the special goods (Ipsen, 1999).

Of particular importance is the identification of the legal entity of power relations and their specificity as a subject of legal regulation and variety of property relations. In domestic science there are no special general theoretical developments in this direction. Fundamental significance for the characteristics of property relations in the field of energy markets belongs to the classical jurist approaches to the understanding of property relations as the subject of legal regulation.

First, it is the relationship between isolated entities, each party has its own property and does not have authority over the other side's property.

Second, each party has the property and administrative independence, i.e., having power over their property dispose of it independently based on their own will and volition.

Thirdly, both sides are separated by property and have regulatory autonomy, they have an equal position with respect to each other. There are no elements of the power of one person over another person or his property. Further, the property relations in the sphere of civil transactions are compensatory relationship - a relationship of equivalent exchange (Alekseev, 1959; Yakovlev, 2000). For proper and effective regulation of these relations an important significance belongs to technical and technological conditions (in the sense of energy, energy sources, etc.), based on the findings of the natural sciences. It should be noted that without the knowledge and consideration of these qualities of energy relations the development and application of legal norms is incomplete, and in many cases, wrong (Craig, 1998).

Results

During the development of energy legislation it is important to take into account that the legal regulation of relations in this sphere is based on the combination and interaction of public and private law means of regulation, which generally reflects the current legislation. However, the invasion of the private sector in the economy initially and partly is spontaneous in the present period. It is necessary to provide an organic



combination of private and public, moreover the strengthening of public-law starts when updating the legal framework of the relationship that is an objective reality.

The current practice of management in the energy industry shows the irrational use of natural resources, violation of ecological processes, the extremely uneven distribution of income received from this activity (Yakovlev, 2001). Entrepreneurial freedom must be combined with the state (public) interests. The government at the legislative level should provide stability, security, availability of energy sources and their economical and efficient use, taking into account national interests.

The authors conclude that the modernization of the regulatory framework in the energy sector should be carried out on the basis of the developed general economic and legal concept of development of electric power industry and energy legislation of modern Russia and must be based on the accumulated legislative experience of Russia and foreign countries, take into account the successful international practices this direction (Topornin, 1999).

Discussions

As in the domestic and so in foreign civil law the possibility of establishing property rights to energy and energy resources is not actually studied, there are only various statements on the issue concerning, as a rule, electric power (Dozortsev, 1998; Korneev, 1956). There is an opinion that the category of ownership cannot be applied to electrical energy and instead of the right of ownership a kind of "right of use" is proposed to introduce, which can be, in their opinion, qualified as a "right of the person who paid or is obliged to pay money to the buyer." According to the authors such turnover in the field of electricity supply is carried out by the deal on onerous assignment of this right. Thus, it refers only to the right on energy (itemized scientific and practical commentary to the Federal Law "On electricity", 2003).

French jurist R. Savatier (1972) denies the possibility of establishing of property law on energy, according to which "legally power can be expressed only in the form of an obligation. The lender can never require a particular transmission of the facility because being transmitted, the energy disappears. Its presence is determined only by the result of the action. Representing an important object of obligations by itself, it cannot be the object of property rights "(Savatier, 1972) At the same time, the position of R. Savatier (1972) is characterized by some uncertainty, because at the same time, he notes the following: Obligation, the subject of which is energy is determined by measuring the units (in kilowatts, calories or degrees, x-rays, Curie)". The object of such an obligation is never determined by individual features; it's always the thing with certain generic characteristics, which is expressed only in the results of its use and is sold in accordance with the units of measurement." And further on, he writes: "Sometimes the state sells energy in the form of real things, of which this energy can be extracted (coal, liquid gas, hydrocarbon). Sometimes directly electricity is sold. In all cases, the energy is turned into circulation in the form of commitments; it cannot be expressed in any physical form. «Other authors advocate this view more categorically: rejecting the possibility of assigning energy to specific things, they claim that property mechanism is not designed to describe the benefits' belonging without the material, the outer shell (Ilyin, 2002). Even in any way individualized energy - for example, located in the battery, etc. - cannot be the object of property rights; it will be the material medium in which energy is enclosed (Civil Law, 2009).

Regarding the understanding of energy law in science the consensus is not developed. It is important to ascertain whether the right on energy is a separate energy sector (integrated and complex) with the specific matters of regulation or a single set of

legal regulations. V.F. Yakovlev (2000) writes on this subject: "Energy Law is a reality. Another thing, what sense we put in this term. What is it - a branch of law or legal subsector? We can use that phrase similar to the way we talk about the agricultural, industrial, transport law, etc. Indeed, it is a set of rules, laws, sources of law, ensuring the regulation of this crucial sector of the economy" It is possible to say that there was some single legal industry emerged, but only in a certain sense, as about a comprehensive industry (Yakovlev, 2000).

P.G. Lakhno (2009), considering the energy law as a sub-sector of business law, points to the need to establish a comprehensive and effective legal framework for the regulation of energy relations, covering the entire production and distribution cycle of the energy business - prospecting, exploration, extraction, transformation, transportation, distribution and consumption of energy resources. It is noted that the existing in the Russian Federation, energy legislation is not sufficient, so there is a need to create a single, comprehensive, consistent system of normative - legal regulation of the whole set of relations, and in this connection it is proposed to provide the development of a single comprehensive law - Energy Code of the Russian Federation.

According to some scientists, such a Code in the future should be the basis of Energy Law as an independent complex branch of law (Shemshuchenko & Oleshchenko, 2009).

Conclusion

Determination and legislative strengthening of the legal status of organizations is required operating in the sphere of fuel and energy complex, federal energy systems (paragraph 2 "and" Article 71 of the Constitution of RF.); organizational and management structures of Fuel and Energy Complex (primarily vertically integrated oil companies - VIOC, economic entities in the sphere of gas trunk pipeline transportation of crude oil and petroleum products; small and medium enterprises as the business entities in the energy sector. There is a need to study and to strengthen legally of features of merger, takeover, allocation and other integration processes of legal entities in the Fuel and Energy Complex.

The complexity and scale of the business activities in the energy sector gives rise to complexity and scale of economic disputes between the parties to such activities. To resolve such disputes one must have special knowledge, both in the economy and in a very difficult economic law, including corporate, banking, insurance, transport, in construction spheres, etc. All this creates for an objective need to use business (economic) justice in the Fuel and Energy Complex (Hartley, 1999).

Commercial justice is a historical tradition in Russia, i.e. the same courts existed in our country before 1917, their activity was regulated by the Charter of the trade proceedings. In Soviet times, disputes between socialist enterprises, as it is known, were resolved by the state arbitration, which was liquidated in 1991, simultaneously with the establishment of the arbitration courts system.

Established in the modern period in Russia a new system of economic justice, represented by courts of arbitration is inherent continuity of pre-revolutionary commercial courts, as well as from existing in the Soviet period, the state arbitration.

This allows one to save and use the centuries-old tradition and experience in solving the most complex commercial disputes (Oppermann, 1999). On the other hand, economic justice operates in a modern economy, so it should take into account the international experience of the judicial system, characterized by the presence of the whole system of specialized courts (Streinz, 1999).



In different countries: France, Denmark and other countries specialized courts commercial courts the administrative courts, including the settlement of disputes between employers and the state, the bankruptcy courts (e.g. in the US), tax courts, which resolve largely disputes involving entrepreneurs, patent courts, and others may be allocated. In Germany, in addition to ordinary courts, there are separate specialized court systems, carrying out administrative justice, financial justice, justice for labor disputes and social justice in disputes (Judgment of the European Court of Justice of 13 November 1964, 1964). Specialized courts system typically provides resolution of disputes in a much shorter period of time, which is especially important for business disputes, as well as at the highest professional level because of the deep specialization of courts and judges in cases with significant features (Bradbrook, 1996).

Recommendations

In order to use foreign experience in Russia it is necessary to improve the procedural forms of commercial justice: in the first place - to support and use in the practice of pretrial forms of conflict resolution, alternative forms, such as negotiation, mediation, arbitration courts, commercial arbitration, negotiation in the framework of judicial proceedings with the aim to conclude settlement agreements, including the use of experts and facilitators, as well as introducing with the consent of the parties of simplified, expedited forms of proceedings in a relatively small and less complex cases. An important issue is the use of ensuring measures for the execution of court decisions (Yakovlev & Semigin, 2004).

Thus, the bringing of energy legislation into a coherent system should be based on a thorough scientific analysis of the above mentioned problems. Implementation of these activities will provide the legal energy rule of law in Russia, as well as its participation in the international relations in the conditions of civilized market relations. With all the differences in the approaches to the problem of systematization of energy legislation in general, it should be an integrated complex of system of Russian legislation, a set of normative legal acts regulating the relations arising in the sphere of organization and functioning of the fuel and energy complex of the Russian economy.

It should be noted that the Western doctrine in the modern period is characterized by a fundamental departure from the traditional understanding of the objects of property rights (Spinosi, 1998). The researchers note that the sharp increase in the economy of energy and raw material sources of production led to the expansion of the concept of real property. To the property as property object electricity and gas, and then other forms of energy and raw materials that go beyond the traditional understanding of things can be referred (Civil and commercial law of foreign countries, 2004).

Disclosure statement

No potential conflict of interest was reported by the authors.

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References

- Alekseev, S.S. (1959). Subject of Soviet socialist law. *Scientific works of the Sverdlovsk Law Institute*, 1, 252-330.
- Bradbrook, A. (1996). Energy Law as an Academic Discipline. *Journal of Energy & Natural Resources Law*, 14, 194-214.
- Civil and commercial law of foreign countries (2004). *Civil and commercial law of foreign countries*. Moscow: International Relations.
- Civil Law. (2009). *Actual problems of theory and practice. Under the general editorship of V.A. Belov*. Moscow: Yurayt.
- Craig, P. (1998). *Burca G. de, EC Law*. Direct access: <https://www.law.ox.ac.uk/people/paul-craig>
- Spinosi, J.K. (1998). *The main legal systems of modernity*. Moscow: International Relations.
- Dozortsev, V.A. (1998). *The principal features of the property rights in the Civil Code. Civil Code of Russia. Problems. Theory. Practice. Collection devoted to the memory about Khokhlov S.A.* Moscow: Nauka.
- Ellis, E. & Tridimas, T. (1995). *Public Law of the European Community*. London: Routledge.
- Hartley, T.C. (1999). *Constitutional Problems of the European Union*, Oxford: Oxford University.
- Ilyin, Y.D. (2002). *Lectures on the history of the European Union law*. Moscow: AST.
- Ipsen, K. (1999). *Völkerrecht*. München: C.H. Beck
- Itemized scientific and practical commentary to the Federal Law "On electric power". (2003). *Under the general editorship of V.Y. Sinyutin*. Direct access: <http://www.s-yu.ru/annotations/2015/9/>
- Judgment of the European Court of Justice of 13 November 1964. (1964). *Commission of the European Economic Community v Grand Duchy of Luxembourg and Kingdom of Belgium*. Direct access: <http://curia.europa.eu/juris/liste.jsf?num=90/63&language=en>
- Korneev, S.M. (1956). *Contract for the supply of electricity between the socialist organizations*. Moscow: Gosyurizdat.
- Lakhno, P.G. (2009). To energy business - a reliable legal basis. *Energy and Law*, 2, 386-392.
- Biryukov, M. (2006). *European Union, the European Constitution and international law*. Moscow: Science book.
- Oppermann, T. (1999). *Europarecht*. Muenchen: C.H. Beck Verlag.
- Savatier, R. (1972). *The theory of obligations. Legal and economic essay*. Moscow: Progress.
- Shemshuchenko, Y.S. & Oleshchenko, V.I. (2009). Status and Challenges of energy legislation of Ukraine, the prospects of its codification. *Energy and Law*, 2, 54-67.
- Shevchenko, L.I. (2015). *Contractual relations in the energy sector*. Moscow: Publishing house "MGIMO-University".
- Streinz, R. (1999). *Europarecht*. Heidelberg: Müller Verlag.
- Topornin, B.N. (1999). *European Law*. Moscow: Nauka.
- Yakovlev, V.F. (2000). *Russia: economics, civil law*. Moscow: Academia.
- Yakovlev, V.F. (2001). Legal regulation of the fuel and energy complex of Russia. *Energy and Law*, 11, 12-14.
- Yakovlev, V.F. & Semigin, G.Y. (2004). *Economic justice: in 4 volumes*. Moscow: Publishing house "Mysl".