

The Development of an Integrated Legal Regulation System in Energy

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Abstract—The article discusses the issues of getting energy legislation into an integrated system as a necessary basis for the formation of energy law as a branch of the Russian legal system.

Keywords—energy legislation; energy law; subject and method of legal regulation of public relations in the energy sector

I. INTRODUCTION

In the modern period (over the past 10–15 years), the activities of scientists to study the features of the legal regulation of public relations in the energy sector have intensified significantly. Their works served as the basis for the development of national energy legislation, its improvement in the field of the international energy cooperation, contributed to the enhancement of law enforcement activity and to the conflict resolution through the judicial arbitration system.

It is to be noted that at the initial stage works of such scientists as A.G. Bykova, P.G. Lakhno, A.I. Grishchenko and many others contributed to the promotion of the energy law. In 1995 at the International Scientific and Legal Conference “Energy and Law” A.G. Bykov was the first who presented his point of view on the Energy Code draft considering it not as a single codified act, but as a code, i.e. a system of consolidated laws that are to guide our national energy policy. Scientists started to move from general ideas to studying the particularities of regulating energy relations in the electricity and thermal power generation, oil and gas sector, nuclear energy and etc.

There is no doubt that the further scientific focus of the problems in point should be predetermined by the unity of the goals and objectives of legal regulation concerning all the relations which arise in the energy sector of economy, as well by the particularities of individual branches of law.

This is particularly relevant in this process to determine the circle and the legal essence of social relations which fall within the scope of special regulation by the energy law provisions, their particularities, determining the particular branch belonging within the legal system and consequently identifying specific ways to regulate them.

II. DISCUSSION

National science research has no fundamental general theoretical guidance made in that regard. Arising of this problem is usually associated with the notion of energy law, the general characteristics of the range of social relations

regulated by energy legislation which is applied to their individual groups of regulation methods. There is no unity of points of view on these issues. An overall view of the issue in point which served as the basis for distinguish the energy law in the legal system, has not been developed yet in science.

The conclusions of scientists which contribute to understand the subject of energy law regulation through the range of social relations arising in the sphere of fuel and energy sector of economy, should be recognized as the main ones. In characterizing this sphere, all authors mainly proceed from the fact that the core of the subject area of law is social relations that arise in the energy sector, covering energy resources, generation, transformation, transmission and use of various types of energy and energy resources, but at the same time energy itself and energy resources only reflect the specifics of the latter, while they are not the subject of energy law, since the subject structure of any law branch does not include anything but public relations [1].

Some authors are not inclined to consider energy law as an independent law branch, regarding it as an institution of civil law, which is defined as a set of general and special rules of civil law regulating property and related non-property relations between persons engaged in energy activities [2]; others consider it as a sub-branch of business law [3].

Despite the wide range of publications where the authors characterize energy law, there are still ambiguous approaches to solving the question about which sphere should be the relations regulated by it related to: public or private. So, A.P. Vershinin substantiates that energy law is an institution of economic public law, the main content of which is constituted by the rules of administrative law, and the private law rules regulating economic activity in the energy sector are auxiliary [4]. Hence, the existing approach, when the energy law is considered as a special part only of public law does not correspond to the existing system of energy legislation and its enforcement. Therefore, the statements of those authors who note that attempts to consider the branches of public and private law in the context of their opposition and artificial isolation are not meaningless do not comply with the general sense of legal regulation, the logic of building and development of law system, especially in the field of regulation of the energy sector of the economy [5].

The formation of an integrated system of public relations legal regulation in the energy sector is currently underway by incorporating the legal norms of most existing branches of law and, above all, the concerned main branches of law.

In this system of legal norms designed to ensure the legal order in the energy sector primary importance is given to the main basic branches of law: constitutional, civil, administrative, natural resources law etc. Almost all branches of law are involved in the regulation of relations in this sphere, starting with constitutional law.

The Constitution of the Russian Federation contains not only certain starting points; its terms indicate that the methods of public and private law should be combined in the regulation of relations in this sphere. Of fundamental importance for establishment of a regulatory framework in the use of natural resources, energy are the provisions of Articles 8-9, 36 of the Constitution of the Russian Federation [6].

Of great importance for characterizing property relations emerging in the field of energy markets are the classical approaches of civilians to comprehension of property relations as a subject of legal regulation. Firstly, these are relations between isolated in property entities, because each of the parties has its own property and does not have power over the property of the other side. Secondly, each of the parties has property and administrative independence, i.e. having power over his property, he disposes of it independently on the basis of his own will and expression of will. Thirdly, both parties have separate rights in property and have administrative independence; they have an equal position in relations to each other. There are no power of one person over another person or his property.

The successful functioning of the modern energy market is impossible without improving the contractual regulation system that is developing between participants of contractual relations.

For the proper and effective regulation of these relations in the energy sector, technical and technological conditions (in the understanding of energy, energy sources, etc.), based on the conclusions of the physical sciences, are of great importance. It should be noted that without knowledge and consideration of these internals of energy relations, the development and implementation of legal norms will be incomplete, and in many cases erroneous.

Administrative and legal regulation of the market is carried out, as a rule, through legal norms that are based on the power of governmental authorities and include, first, prohibitive measures and measures of binding orders.

The current management practice in the fuel and energy sector evidences the natural resources misallocation, environmental dysfunction, and an extremely unfair income distribution from this activity [6]. Freedom of enterprise in the aforementioned area should be coupled with state (public) interest. The state at the legislative level should provide stability, security, energy resource availability, cost-effectiveness and efficiency of their use, taking into account national interests. By virtue of administrative law using, the following is carried out: the determination of a procedure for licensing in a separate energy sector, antimonopoly regulation, etc.

In view of the aforementioned, one cannot disagree with the opinion of the scientists who believe that energy law should be construed as a complex branch of law [1, 6].

The conclusion about complex industries and their nature was first justified in the works of Russian scientists, such as V.K. Reicher, S.S. Alekseev, Yu.K. Tolstoy.

The arguments of V.K. Reicher are relevant on the nature and features of the complex industrial branch and his conclusions about following conditions for referring legal entities to this branch: the adequacy of the rules used to regulate legal norms for the certain, specific sphere of social relations (substantive unity); their social significance; the implementation of this body of socially significant relations with an extensive volume of regulatory material [7].

The issue of complex legal branches was further provided by S.S. Alekseev in his works. In the Russian law system Alekseev distinguishes the main (key, basic) branches, which include constitutional, civil, administrative, criminal law, procedural branches, and special ones that determine the legal regime of special spheres of life (labor law, family law, social security law, etc.). Characterizing complex branches, he noted that “the legal norms incorporated in complex branches remain according their main provisions in the main branches, and the general provisions of the corresponding main branches apply to them. They enter the secondary structure always, while being the norms of, for example, civil, criminal, administrative, labor law” [8, 9].

Thus, energy law as a complex branch is the result of modeling, amalgamation of certain types of social relations regulated by legal norms related to the subject of regulation of the main (key) branches, where specific groups of energy relations are created.

Extremely significant to mention is the statement of Yakovlev V.F., who characterizes the features of the fuel and energy economical complex, as well as the nature of the legal regulation of public relations arising in this sphere, indicated that one of the main features of this legal complex is the organic interweaving of private and public law.

It should be noted, despite the huge number of scientific researches, dissertations, a significant array of legislation that determine the specifics of the legal regulation of public relations in the energy sector, inadequate attention is paid to issues of identifying the legal regimes of various kinds of the equipment in the energy sector, as well as possession rights and rights on property, their bearers, related with energy resources, natural resources, mineral resources including natural resources of the continental shelf, that are not only national (domestic), than international. The study of these issues is of special significance for the sustainable development of energy law and international energy cooperation in the modern period.

At present, the problems of the development of energy law are becoming one of the main topics of the ongoing scientific discussions in Russia. So, in October 2019, a simultaneous discussion of these issues took place within the framework of the IX St. Petersburg International Gas Forum (October 3, 2019), the International Energy Forum “Russian Energy Week 2019” (October 1-4, 2019), scientists and practitioner from Russia and a number of foreign countries discussed the legal aspects of energy at the international conference “Energy Law: Models and Development Trends”, held on October 4, 2019 at Belgorod State University. The main issues that scientists and practitioners drew attention to were related to the

modernization of energy legislation, the impact of international law on the development of energy law in Russia, and the environmental and legal aspects of energy development.

III. CONCLUSION

Of particular importance for the development of energy law in Russia is the creation of the Center for Energy Law based on St. Petersburg Economic University. The center was created by decision of PJSC Gazprom to carry out scientific, educational, expert activities in the specified sector. The round table participants at the center's presentation at the international gas forum noted the importance of creating an Energy Law Center for the development of energy legal regulation in the field of energy at the national and international levels, emphasized the need for fundamental and applied legal research on energy law, and noted the relevance of international cooperation in specified area of the economy.

Thus, further development and improvement of energy legislation, its bringing into an integrated system should be carried out on a thorough scientific analysis of a number of problems that are of particular importance for the institutionalization of energy law, due to the unity of goals and objectives of legal regulation of the totality of social relations arising in the energy sector of the economy.

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