WOJCIECH KONASZCZUK

Legal Problems of Energy Dependence of the EU and its Members on Russia as a Background for the Disintegration of the EU

Abstract

The main thesis of this paper is aimed at the conclusion that currently the EU, as an international organization, will not be able to ensure the energy security of its member states in the next ten years. The second thesis, as a consequence of demonstrating the validity of the first thesis, is related to the system of human rights protection in the EU, according to which every EU citizen has the right to an adequate standard of living. One of the basic elements of an adequate standard of living is to ensure the right of EU residents to have access to energy sources at a price acceptable to them. In conclusion, it will be shown that the EU and the Member State governments are not in a position to guarantee a sense of energy security for citizens and all sectors of the economy. The study is divided into two periods. The first period is up to the start of the armed conflict in February 2022. The second period under study, on the other hand, begins after Russia invades Ukrainian territory.

KEYWORDS: EU energy dependence on Russia, energy poverty, armed conflict, EU energy security, EU disintegration

WOJCIECH KONASZCZUK – associate professor, Maria Curie-Sklodowska University, ORCID – 0000-0003-0364-0727, e-mail: Wojciech.Konaszczuk@yahoo.com

HTTPS://DOI.ORG/10.36128/PRIW.VI52.1023

1 Introduction

The dependence of the countries of the current European Union on oil and natural gas supplies from Russia is not new. However, it is one of those issues that are not well enough known in individual European societies. It can be counted among the inconvenient facts that successive governments of France, Germany, Hungary, Italy and other countries of the present Union have scrupulously concealed. This dependence of the majority of the countries of the present Union to over a hundred years resembles the disease of a drug addict. The addict, on the one hand, knows that it is a road to nowhere, but on the other hand is unable to cope with the problem. This addiction, tragic in its present and future consequences, has been going on since the late 19th century, when cooperation with Russia began. At that time, representatives of France and Germany in 1897 signed the first on the subject of importing petroleum products from the Baku region of Azerbaijan.

The development of technology and industry has resulted in a rapid increase in demand for energy carriers. In the process of ensuring the energy security of a country or a group of countries, oil and natural gas play the most important role, which are the basis for further redistribution of products or obtaining from them the final product in the form of diesel fuel or electricity. It should also be noted that the aforementioned natural resources belong to the so-called primary energy sources, as opposed to white or green energy, which belong to the renewable energy group.

The main purpose of this analysis is to prove that the dependence of the EU and its members on Russia occurred both horizontally and vertically. The vertical level of dependence consists in being bound by bilateral agreements with Russia on the supply of energy carriers, while the horizontal level means dependence at the level of multilateral agreements in both the GATT/WTO system and the EU-Russia system.

The main thesis of this paper is aimed at the conclusion that currently the EU, as an international organization, will not be able to ensure the energy security of its member states in the next ten years. The second thesis, as a consequence of demonstrating the validity of the first thesis, is related to the system of human rights protection in the EU, according to which every EU citizen has the right to an adequate standard of living. One of the basic elements of an adequate standard of living is to ensure the right of EU residents to have access to energy carriers at a price acceptable to them. In conclusion, it will be shown that the EU and the Member State

governments are not in a position to guarantee a sense of energy security for citizens and all sectors of the economy. The study is divided into two periods. The first period is up to the start of the armed conflict in February 2022. The second period under study, on the other hand, begins after Russia invades Ukrainian territory.

2 The genesis of Western European countries' dependence on Russia within energy carriers

It is also impossible not to mention at the outset that since the end of the Second World War, the countries of Western Europe have been trying, with little success, to become independent of oil and gas supplies from the Union of Soviet Socialist Republics (USSR). The establishment of the European Atomic Energy Community was intended to serve this purpose. It is worth noting that the importance of this problem was such that it became one of the bases for the creation, by intergovernmental agreement, of the European Atomic Energy Community (EAEC)[1], one of the three communities now referred to as the monuments of a united Europe.

The pursuit of nuclear energy through physical transformation, which was to be the spiritus movens of the development of the economies of the countries of the Communities and lead to complete independence from primary carriers, as well as to be the cheapest source of energy and influencing the increase in the standard of living of the citizens of the countries of the Communities, has unfortunately not been fully realized. The main reasons for this lack of success, there were mainly technical-economic and political factors[2]. A positive aspect of the idea of a „common energy and financially independent Europe"[3] turned out to be the successful pursuit of regulation in the energy sector in the later period. This trend has influenced

1 Dz.U.04.90.864/3, as EAEC Treaty.

2 Peter Cameron, *Legal aspects of EU energy regulation: implementing the New directives on electricity and gas cross Europe* (New York: Oxford University Press, 2005), 164-167.

3 Anthony Teasdale, „Churchill W., Zurich Speech on the United States of Europe", [in:] *The Penguin Companion to European Union*, red. Anthony Teasdale, Timothy Bainbridge (United Kingdom: Penguin, 1996), 78-148.

normalisation not only in the field of primary and renewable energy, but also in areas directly related to it: the liberalisation of international trade, the security of EU member states, and the establishment within the EU of institutions whose remit includes matters directly related to energy[4].

The concept of energy security for the countries of the of the European Union until the end of 2021 was based on the primary model, which is based on natural sources. In the case of the European Union, the total consumption of energy carriers in all EU member states accounts for 18% of global demand[5]. Within this group, the shares of the individual raw materials are as follows: oil 36.9%, natural gas (including LPG and LNG[6]) 24.5%, solid fuels (coal, wood) 17.6%, nuclear energy 14.2%, renewable sources 6.6%, other 0.2%[7].

3 Differences in the European and Russian approaches to energy security

It is undeniable the thesis that the original concepts of the „founding fathers" of the European Communities were put to the practical test in the 1970s, when the so-called global energy crisis occurred. This phenomenon was caused mainly by the embargo imposed on the Arab countries, which are the main exporters of oil. In 1973, the price of oil for a barrel of

4 The energy crisis in most of the countries belonging to the „Christian family of nations," a result of the so-called „Russian crisis," which peaked at the turn of 2001/2002, made it necessary to institutionalize the EU energy regulatory framework. Among others, the advisory committee „European Energy Forum" (Official Journal of the EU L. 01.195.58), the European Regulatory Authority for Electricity and Gas (Official Journal of the EU.L.03.296.34), the Intelligent Energy Executive Agency (Official Journal of the EU 04.5.85) were established while in 2005. The European Commission established the High Level Group on Competitiveness, Energy and the Environment (Official Journal of the EU 04.5.85).

5 Q&A Ukraine Gas Raw BBC News, January 4, 2006.

6 LPG-Liquified Petroleum Gas, LNG-Liquified Natural Gas.

7 EU Energy Policy Data. European Commission Document SEC 12, 2007, January 10, 2007.

„Brent"[8] crude listed on the NYMEX[9] rose from $2.7 to $11 for the same volume. Faced with this situation, the representative of the countries of the European Communities decided to implement the so-called energy security program and formulate specific conclusions. Firstly, it became clear that the Communities had no institutional mechanisms to protect the countries from the crisis. Secondly, there was no established form of cooperation between the member states themselves, and thirdly, the Communities had no guarantees under international agreements with third countries that could ensure a continuous supply of raw materials in the future and protect them from the effects of a possible crisis. These conclusions led to the need to formulate a concept of energy security backed up by legal provisions. State security took on a new, unprecedented form, distinct from military issues.

After the Cold War, there was a tendency to think about security far beyond the military sphere. The concept of security has been broadened to include economic, social or environmental issues. The tendency to reduce the importance of the military factor and threats of this kind has manifested itself in the displacement of the term security from this language in favor of such concepts as „challenges and risks"[10]. Undoubtedly, such a concept is correct if one emphasizes the fact, that currently the legal mechanisms are designed to ensure the stable development of countries within the EU with an uninterrupted level of supply of basic energy carriers.

It is also necessary to quote the definition of energy security of the Russian Federation because it is necessary to know the mechanisms of construction of legal instruments in this area. According to Professor Fortov Vladimir, „the concept of energy security is related to the oil embargo of early 1973 and refers to the self-sufficiency of any state in access to internal and external energy carriers at a price acceptable to that state and in sufficient quantity". At the same time, as the same author emphasizes, oil and natural gas in ensuring the energy security of the state should now account

8 Brent- a species of crude oil, one of the most popular varieties that is the subject of production of such giants as Shell UK Exploration, ExxonMobil, Royal Dutch Shell.

9 NYMEX – New York Mercantile Exchange.

10 Roman Kuźniar, „Tradycyjne zagrożenia dla bezpieczeństwa międzynarodowego", [in:] *Stosunki międzynarodowe. Geneza, struktura, dynamika*, red. Roman Kuźniar, Bolesław Balcerowicz et al. (Warszawa: Scholar, 2012), 43-48.

for nearly 70% of all energy carriers[11]. In the case of Russia, however, energy security has always been linked to the military sphere rather than trade. The oil and gas sector has been closely linked to the arm industry.

From a historical point of view, it is necessary to refer to the definition developed in 1974 within the framework of the Council for Mutual Economic Assistance. According to this definition, „energy security defines the degree of protection of vital interests of citizens, society and the state from threats of interruption of electricity supply, curtailment and deficit of supply of fuel and energy resources in ordinary and emergency situations"[12]. The concepts presented have common and unified elements. These are guarantees of supply of energy carriers to consumers, a system of legal regulations, state guarantees for citizens.

4 Status of the Russian Federation as an exporter of natural gas under EU legislation until the end of 2021

The Russian Federation was and is one of the world's largest exporters of oil and natural gas. It is the eighth largest OPEC country. Cooperation between the USSR and the European Communities dates back to the period of the so-called „Cold War", when representatives of the ECSC (France, Germany, Italy, Belgium, the Netherlands, Luxembourg) were forced by economic factors to sign an agreement and import oil and natural gas from the USSR. The large-scale supply of „blue fuel" to Western Europe began at the end of the 1950s. A special period, that affected the sharp increase in exports to Europe was 1971-72 and 1981-83, when there was a reduction in the supply of energy carriers from Arab countries. Undoubtedly, this increased the level of energy security and contributed to closer mutual relations between the European Communities and the USSR[13]. After the collapse of

11 Fortov, Makarov, Mitrova, „Globalnaya energeticheskaya bezopasnost: problem i puti resheniya", 100-105.

12 Elena Vladimirovna Bykova, „Energy security and controlled transmission lines" *Proceedings-2020,* No. 11 (2020): 65-69.

13 Kaweh Sadegh-Zadeh, „Russia: A threat to the European Gas Security" *OGEL*, No. 4 (2007). https://www.ogel.org/journal-browse-issues-toc.asp?key=28.

the USSR, the process of establishing of mutual relations between these entities can be divided into three basic stages. The first, was initiated when the Dutch Prime Minister R. Lubbers, at a conference of EU member states in Berlin in 1991, proposed to include the successor to the USSR (the Russian Federation) in the programme of European cooperation in the energy sector. Earlier, at the Dublin European Council meeting in June 1990, the Dutch Prime Minister had suggested that economic recovery in Eastern Europe and the then Union of Soviet Socialist Republics could be stimulated and accelerated by cooperation in the energy sector. The proposal was favorably received by the Council, which asked the Commission of the European Communities to study how best to implement such cooperation. In February 1991, the Commission put forward the idea of creating a European Energy Charter. As a result of the discussion of the Commission's proposal in the Council of the European Communities, the European Communities invited the other countries of Western and Eastern Europe, the Union of Soviet Socialist Republics and the non-European members of the Organization for Economic Co-operation and Development to attend a conference in Brussels, in June 1991, to begin negotiations on a European Energy Charter.

The negotiations on the Energy Charter ended in 1991, and the Charter was adopted by the signing tof he Final Document at a conference held in The Hague on 16-17 December 1991.The signatories of the European Energy Charter committed themselves to implement the objectives goals and principles of the Charter. Accordingly, the European Energy Charter Conference began negotiations on a Basic Agreement – later called the Energy Charter Treaty – structured to promote East-West industrial cooperation by providing legal guarantees in areas such as investment, transit and trade. It also began negotiations on protocols on energy efficiency, nuclear safety and hydrocarbons, although negotiations on the latter case were later suspended pending completion of the Energy Charter Treaty. Negotiations on the Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects were successfully concluded in 1994[14]. The Energy Charter Treaty entered into force on 16 April 16 1998.

Among its provisions, the promotion of cooperation between the Communities and third countries and the diversification of the supply of energy carriers fall among its most important demands[15]. Within the framework

14 Energy Charter Treaty and Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects. Lisbon.1994.12.17. (OJ.2003.105.985).

15 Energy Charter Organization. http://www.encharter.org/.

of this stage, the Foreign Ministers of the Russian Federation, Germany, France, the Netherlands and the United Kingdom prepared the institutional framework for the creation of a common working area. The second stage, in turn, was initiated in 1994 with the signing of a partnership and cooperation agreement between the Russian Federation and the European Union, which established a formal basis for contacts between them in the energy field. In the same year, the Russian Federation also signed the Energy Charter Treaty[16]. This agreement established a formal basis for trade between the European Union and third countries, including the Russian Federation on the basis of transitional provisions. It regulates the principles of trade in energy carriers between members, establishes the principles of investment in this sector, formulates standards for the sale of energy products, and introduces dispute settlement mechanisms[17]. The provisions of the Charter form the essential basis for the EU's trade in energy products with Russia.

However, the Treaty was not ratified by the lower house of the Russian Parliament (the Duma) and the President of the country. Therefore, in accordance with Article 45(3)(a) of the ECT, the last day of Russia's provisional application of the ECT was 18 October 18 2009.

The main reason for not being fully bound by this international agreement is related to transit issues, in particular the lack of legislation at the European level that would address the issue of transit through oil and gas pipelines. Within the framework of the third stage, important legal documents have been signed, creating the basis for technical cooperation between subjects of international law. First of all, the Partnership and Cooperation Agreement (signed in 1994) entered into force in 1997. The Russian Federation was also admitted to the strict „Group of Eight" at the Denver Conference and signed the Kyoto Protocol at the same time. The next stage was the signing of a memorandum between the Russian Federation and the European Union, which emphasized cooperation in the energy sector as an overarching goal. The last stage initiated real cooperation

16 Steivan Defilla, „Energy Trade under the ECT and Accession to the WTO" *Journal of Energy and Natural Resources* Law, No. 4 (2003): 428-446.

17 To date, the Energy Charter Treaty has not been signed by the United States. However, they have observer status in the organization, whose members include 51 countries, including all EU member states.

between the European Union and the Russian Federation from the point of view of the latter country's oil and gas exports[18].

In April 1998, the so-called TKE Transit Protocol was adopted[19]. Its purpose was to align the provisions of the Energy Charter Treaty with the rules and regulations of the World Trade Organization (WTO)[20]. The amendments have been ratified by 35 states parties, while 10 states parties are applying them provisionally[21]. Undoubtedly, the provisions of this international agreement were the result of the Russian side's demands and requests to facilitate trade in energy carriers, including „blue fuel".

Indeed, Article 1 of the abovementioned Agreement, which amends Article 29 of the Energy Charter Treaty, provides that if neither Party is a member of the WTO, the provisions of the Energy Charter Treaty shall apply to trade in energy materials and products and energy-related equipment. Trade in energy materials and products and energy-related equipment between countries, at least one of which is not a member of the WTO, shall be governed, by the provisions of the WTO Agreement, as applied and practiced with respect to energy materials and products and energy-related equipment, by WTO members among themselves, as if all Contracting Parties were members of the WTO. The exception applies to those countries that were part of the Union of Soviet Socialist Republics. In this situation, it may be governed by an agreement between two or more such States, subject to the provisions of the Annex to the TFU, until 1 December 1999 or until the date of accession of that Party to the WTO, whichever is the earlier[22].

18 Aleksandr Sereyevich Gusev, *Politicheskiye aspekty energeticheskogo dialoga RF i EC: problemy i perspektivy* (Nizhnij Novgorod: Izdatelstvo Gosudarstvennogo Lingvisticheskogo Universiteta imenii N.A.Dobrolubovo, 2009), 12-19.

19 Final Act of the International Conference and Decision of the Energy Charter Conference with regard to Amendments to the Trade-Related Provisions of the Energy Charter Treaty (OJ.EU.L.98.252.23,OJ.EU-sp.12-2-42). Noteworthy is the fact that the agreement entered into force on July 23, 1998 while it was not promulgated until September 12, 1998.

20 Robert Liesen, „Energy Law-Transit Under the 1994 Energy Charter Treaty" *Journal of Energy and Natural Resources Law*, No. 1 (1999): 56-69.

21 Energy Charter Organization. http://www.encharter.org/.

22 Final Act of the International Conference and Decision of the Energy Charter Conference with regard to amendments to the trade provisions of the Energy Charter Treaty (OJ.EU.L.98.252.23,OJ.EU-sp.12-2-42).

Such an arrangement was dictated by the Russian Federation's reservations about its „unequal" treatment vis-à-vis the countries of the World Trade Organization.

The Energy Charter Treaty was an attempt to regulate energy relations in Europe with emphasis on Russia's strong position. It was among the very important documents of a legal nature, which undoubtedly formed the basis for further dependence on Russian supplies. Since 2012, trade between the European Union and the Russian Federation in the field of natural gas has not been regulated by a single, coherent convention, but solely by the rules of the World Trade Organization and bilateral agreements between EU Member States and the Russian Federation[23].

5 Restrictions on natural gas and oil shipments from the Russian Federation to the European Union via Ukraine before 2022

The European Union imports about 130 billion cubic metres of gas per a year from Russia, covering about 25% of the Community's gas needs. Up to 80% of this gas reaches the European Union via Ukraine. The territory of Poland is crossed by very large capacity pipelines from the Russian Federation: the Yamal pipeline through Belarus, Ukraine and the Druzhba pipeline through Belarus, Ukraine.

The transit of more than 100 billion cubic metres of gas through Ukrainian territory indicates the very important position that Ukraine will fulfill in the European Union's relations with the Russian Federation. The pipeline is a very important element and instrument of both politics and the broader spectrum of international relations. Decision-makers in Brussels, Kyiv and Moscow are fully aware of this fact. In order to illustrate the thesis of the importance of the Brotherhood pipeline for the European Union and Poland, not only from the economic and legal point of view, but

23 The Russian Federation, after a period of eighteen years of negotiations for WTO membership, became its 156th full member, following ratification of the required documents by the Russian Duma on August 22, 2012. http://www.wto.org/english/news_e/news11_e/acc_rus_10nov11_e.htm/.

also from the point of view of international law and security, it is necessary to present several events from the recent past within the framework of cooperation between the countries in the field of energy trade.

On 24 December, 2005, one of the world's largest oil storage facilities in Iraq was destroyed by a terrorist attack. As expected, this led to a sharp rise in the price of oil on world markets.

During the same period, events occurred on the European continent which had an impact on the future energy policy of the Union. At the end of December and the beginning of January 2005/2006, the largest operator and exporter of energy sources, Gazprom, cancelled the provisions of the agreement with Ukraine. The reason, according to representatives of this company, was that the price of selling raw materials to Ukraine was too low. As a result of the lack of agreement between the parties, Gazprom cut off gas supplies to Ukraine. As Ukraine did not have enough strategic energy resources to meet the increased winter demand, gas supplies to Poland, Germany, Hungary and the Czech Republic, and to a lesser extent to Austria and Italy, were reduced. Ukraine, in an effort to secure its market, partially benefited from supplies destined for other customers. In the case of importers from Austria, Germany, Poland and Italy, the reduction in supplies during the few days of the crisis was 31% of the expected level[24].

After Russia and Ukraine entered into negotiations and agreed on a satisfactory price, the previous level of supplies to EU countries was restored.

A similar situation, triggered by the dissatisfaction of the Russian Federation authorities with the policies of President Lukashenko, took place in Belarus in January 2007. In that case, the Russian gas operator Transneft company, which, like Gazprom, depends on government spheres, reduced oil supplies to Belarus via the „Friendship" pipeline. This pipeline supplies Germany with oil. In the 72-hour period following the reduction in transmission, supplies of the product to Germany fell by 25%.

The most difficult situation occurred in the late 2008 and early 2009, when the Russian Federation significantly reduced supplies to Ukraine. In this case, there was also a situation of reduced gas supplies to EU countries as a result of Ukraine's use of gas from the Federation. Serbia, Slovakia (where a state of emergency was declared due to the fact that the country is 100% dependent on Russian gas supplies), Hungary, Bulgaria and Austria were most affected.

24 Q&A Ukraine Gas Raw BBC News, January 4, 2006.

It seems that the problem of limiting gas supplies to the Union via transmission lines is part of a deeper policy of the Russian Federation. Undoubtedly, the restriction of supplies to Ukraine around the New Year and holidays usually celebrated by Orthodox believers later, was not accidental. International relations have been affected by the worsening energy crisis in Iraq, reduced budget spending in the US due to the financial crisis, and criticism of Russian policy by the Western European world.

It appears that the Russian Federation's main aim in taking these actions was to achieve two separate objectives, which it did in a valuable way. First, the Federation obtained new, higher gas prices from Ukraine, thus compensating Russia for its loss of influence in Ukraine. Second, it succeeded in convincing Western European societies that Ukraine was to blame for the restrictions on supplies to Europe. This is because it has not fulfilled its obligations to the Federation. Thus, for the future, the Russian Federation has potentially gained an ally in the EU countries, while the burden of blame has been shifted to Ukraine.

Undoubtedly, this may have unfavorable connotations for Ukraine in the future through the prism of its cooperation with the EU.

From a formal point of view, the reduction of gas supplies to the Union has led to unprecedented action on the part of Union governments. In the case of Poland, under the Act of 27 April 2007 on Crisis Management[25] and the Act of 16 February 2007 on Stockpiles of Crude Oil, Petroleum Products and Natural Gas and the Principles of Handling Situations of Threat to the State's Fuel Security and Disturbances on the Oil Market[26]. Deputy Prime Minister and Minister of Economy Waldemar Pawlak signed regulations on the possibility of reducing supplies to industry[27].

25 Dz.U.2007.89.590 z późn. zm.

26 Dz.U.2009.52.343 z późn. zm.

27 Ordinance of the Council of Ministers of January 6, 2009 on the introduction on the territory of the Republic of Poland of restrictions on the off-take of natural gas for certain customers (Journal of Laws No. 1, item 6) According to §1, restrictions on the off-take of high-methane natural gas E (GZ-50) and nitrogenated natural gas Lw and Ls (GZ-41.5 and GZ-35) were introduced on the territory of the Republic of Poland from January 7, 2009 from 2200 hours to February 15, 2009 until 2200 hours. The subsequent Ordinance of the Council of Ministers of February 10, 2009, amending the Ordinance on Introducing on the Territory of the Republic of Poland Restrictions on the Consumption of Natural Gas for Certain Customers (DZ.U.2009.23.129) restricted gas consumption until April 30, 2009. In turn, subsequent ones extended the provisions of the original decree of January 6, 2009 until March 31, 2010. As can be seen from the cited normative acts,

The reduction in gas supplies led to an imbalance in Poland's gas supply. The signing of this decree was a consequence of the procedures laid down in the Law on Oil Stocks. In accordance with the provisions of this law (Article 33 et seq.), in order to counteract threats to the supply of natural gas, measures are first of all taken by energy companies, i.e. legal entities that carry out economic activities in the field of natural gas trade with foreign countries, or entities that transport natural gas and entities that contract natural gas transport services. These measures include, first and foremost, increasing supplies from domestic sources and imports, activating the company's fuel reserves and reducing the consumption of natural gas by consumers.

In addition to measures of a normative nature, the state administration has also undertaken negotiations with the Russian side on increasing gas supplies through the territory of Belarus via the Druzhba pipeline. The Russian side conditioned the delivery of additional volumes of gas on the conclusion of an annex to the Agreement between the Government of the Republic of Poland and the Government of the Russian Federation on the construction of a gas pipeline system for the transit of Russian gas through the territory of the Republic of Poland and the supply of Russian gas to the Republic of Poland, concluded on 25 August 1993, as amended. The terms of this annex, unfortunately, were not favorable to the Polish state, hence the negotiations failed on essential points. On 2 June 2009, a short-term contract was signed for the supply of 1 billion cubic metres of natural gas to replace the amount not supplied to Poland by RosUkrEnergo.

Undoubtedly, the situation related to the shortage of gas in Poland was also related to the guidelines of the Act of 26 April 2007 on crisis management[28]. Indeed, in accordance with Article 3 Section 1 in conjunction with Article 5 of the cited Act, it was possible to speak of the emergence of a crisis situation. This is because, in light of the Act, a crisis situation occurs when „a situation adversely affects the level of security of people, property of significant size or the environment, causing a significant limitation in operations [...] due to the inadequacy of the forces and resources at one's disposal".

The definition of critical infrastructure, which includes the transmission and transportation of energy carriers, is defined as a set of systems and

---

the possibility of limiting the consumption of natural gas for more than a year after the triggering events was introduced.

28 Dz.U.2007.89.590.

their constituent facilities, including construction, installations, services that are key to the security of the state and its citizens, as well as serving to ensure the smooth functioning of public administration bodies, as well as institutions and entrepreneurs[29].

It should also be noted that the reduction in the supply of „blue fuel" has had a far-reaching impact on Community regulations. The European Parliament and the Council of the European Union have adopted a directive on internal market rules and natural gas[30].

It seems that the coincidence of the EU directive and the energy crisis with the Russian Federation was no coincidence. This is suggested by the preamble to the document. It shows the need to „ensure real choice for all consumers in the European Union, whether citizens or businesses, create new economic opportunities and increase the level of cross-border trade, thereby achieving increased efficiency, competitive prices and higher standards of service, and contributing to security of supply and stability"[31]. In addition, reference should be made to the provisions of Article 6

29 Art. 3.para.2 of the Crisis Management Act.

30 OJ.EU.L.09.211.94.

31 OJ.EU.L.09.211.94. In the preamble, there are explicit references to the risks of gas supply constraints and the indication that „security of energy supply is one of the essential elements of public security and is therefore closely linked to the smooth functioning of the internal gas market and the integration of the isolated gas markets of the Member States. Gas can only reach the citizens of the Union through the network. Functioning open gas markets and, in particular, networks and other gas supply assets, are important for public security, the competitiveness of the economy and the well-being of Union citizens. Persons from third countries should therefore be allowed to control a transmission system or transmission system operator only if they meet the requirements for effective unbundling that apply in the Community. Without prejudice to the international obligations of the Community, the Community considers that the gas transmission system sector is of very high importance for the Community and therefore additional safeguards are necessary with regard to maintaining the security of energy supply to the Community in order to avoid any threats to public order and security in the Community and to the welfare of the citizens of the Union. Security of energy supply to the Community requires, in particular, an assessment of the independence of network operation, the level of dependence of the Community and individual Member States on energy supplies from third countries, and the treatment of both domestic and foreign energy trade and investment by the third country in question. Security of supply should therefore be assessed in the light of the facts of each case, as well as in the light of rights and obligations under international law, in particular international agreements concluded between the Community and the third country in question. Where appropriate, the Commission is encouraged to

on regional solidarity in Europe with regard to the marketing and import of natural gas. The essence of this article points to the need to promote cooperation between EU countries.

In practice, the situation is quite different. Germany[32] and Italy are at the forefront of contacts. Both countries have signed long-term contracts with Gazprom for the supply of oil and natural gas. The Hungarian oil company Mol, in turn, has teamed up with Gazprom to build a pipeline across the Black Sea and the Balkans to Hungary[33]. Bulgaria also signed an agreement with Gazprom in the past, agreeing to buy the oil products delivered by the pipeline under construction.

6 The EU's energy situation after the outbreak of the Russia-Ukraine conflict

Russia's invasion of Ukraine in February has made European Union governments aware of years of neglect in the process of energy diversification. The moment can be described as critical. On 18 May 2022. The European Commission announced a plan to restore the EU's energy security in the face of the armed conflict in Ukraine and the destabilisation of energy supplies. The Commission set out the following requirements: reduce dependence on fossil fuels, diversify supplies and supply routes, develop the hydrogen market, improve the interconnection of European gas networks, improve energy efficiency, support the transition to clean energy, save energy, reduce greenhouse gas emissions, combat energy poverty[34]. Secondly, the EU has drastically reduced its imports of Russian gas. By the

submit recommendations for the negotiation of relevant agreements with third countries covering issues of security of energy supply to the Community, or to include the necessary issues in other negotiations with those third countries".

32 Angela Merkel said in an interview that „for Germans, Russia is a key supplier of oil products and a partner. For this reason, it cannot be ignored" more: Stanisław Żerko, „Niemiecka Russlandpolitik na rozdrożu?" *Colloquium Wydziału Nauk Humanistycznych i Społecznych*, Nr 4 (2013): 57-72.

33 We are talking about the Blue Stream Pipeline.

34 https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/repowereu-affordable-secure-and-sustainable-energy-europe_en [dostęp: 22.07.2024]

end of 2021, 40% of the EU's needs will be met by Russia. This included increased imports from Norway, the US and Qatar. The war accelerated the EU's transition to renewable energy as a way of reducing dependence on imported fossil fuels[35]. The EU has increased its renewable energy targets, aiming for 45% of energy consumption to come from renewable sources by 2030 (up from the previous target of 40%), and the development of green hydrogen as an alternative energy source has also been prioritised with significant financial and regulatory support. In addition to considering global dependencies, the EU is forced to import gas and oil from other states[36].

7 The impact of the Russia-Ukraine conflict on the supply of energy carriers to the EU

As mentioned above, pipelines supplying EU countries with oil and natural gas run through Ukrainian territory. Six months after the conflict broke out, on 10 October 2022, the Russians began a massive bombardment of Ukraine's energy infrastructure. A month later, there was a blackout that shut down all power units at Ukrainian-controlled nuclear power plants. The power system was restarted thanks to electricity from Western partners. According to the Prosecutor General's Office, the Russians attacked energy facilities 255 times in the first year of the full invasion. The Donetsk, Dnipropetrovsk and Kyiv regions suffered the most. At the same time, natural gas, coal and electricity supplies were destabilised[37].

35 More on the topic of diversification of energy resources in EU: Dominik Bierecki, „Energy Cooperatives in the System of Polish Cooperative Law" *Review of Institute of the Grand Duchy of Lithuania,* No. 1 (2021): 8-15.

36 LaythLuay Salih, „European Alternatives of Russian Gas After the 2022 Russian-Ukrainian War" *Pakistan Journal of Life and Social Sciences*, No. 1 (2024): 1992-2003. https://doi.org/10.57239/PJLSS-2024-22.1.00145.

37 David Yatsyna, „Significant Energy Problems During the War in Ukraine" [in:] *Materialy XI Vseukrainskoj Naukovo-Technichnoj Konferencii Edobuvachiv Vishchoj Osviti za Pidsumkami Naukovih Doslidzen 2023 roku* (Dmytro Motornyi Tavria State Agrotechnological University, 2024), 32-34.

Paradoxically, despite the sanctions imposed on Russia by both the EU and the US, supplies to the EU via Belarus and Ukraine have not been stopped. Both oil and gas are reaching EU countries, including through Ukraine[38][39].

8 Conclusions

The analysis presented leads to the following conclusions, which confirm the theses presented in the introduction. Firstly, most EU countries do not have sufficient energy resources to meet their own needs; secondly, the EU as a whole will not have a common unified energy policy until 2022; thirdly, the degree of dependence of EU countries on supplies of energy carriers from Russia has lasted for decades; fourthly, the current political classes of the economically strongest countries, i.e. Germany, France, Spain, will probably continue to rely on supplies from Russia in the future. Hastily introduced programmes, changes in the EU in connection with the Russia-Ukraine war will not bring about the intended changes in the long run[40].

An important factor, in addition to restrictions on the development of energy-absorbing industry, heading towards the collapse of the EU will be a factor of a livelihood and social nature. In the EU, the system of guarantees for the protection of human rights also includes energy security, including the right to an adequate standard of living. The current situation has caused a sharp increase in energy poverty among EU citizens.

38 https://forsal.pl/finanse/surowce/artykuly/9471499,rynek-gazu-ziemnego-po-dwoch-latach-wojny-w-ukrainie.html. [dostęp: 22.07.2024].

39 Pavel Polizov, „The Challenges the Ukrainian Energy System" [in:] *Materialy XI Vseukrainskoj Naukovo-Technichnoj Konferencii Edobuvachiv Vishchoj Osviti za Pidsumkami Naukovih Doslidzen 2023 roku* (Dmytro Motornyi Tavria State Agrotechnological University, 2024), 26-28.

40 The problem of dependency of countries such as Poland, Hungary, the Czech Republic, Slovakia, Romania, Bulgaria in the legal layer is also related to a peculiar legal heritage in the context of the mentioned countries as former socialist bloc countries. More: Tomasz Demendecki, „Basic Directions of the Reform of the Polish Civil Procedure and Its Significance for Contemporary States which Emerged from the Dissolution of the Union of the Soviet Socialist Republics", [in:] *The Influence of the European System of Human Right into National Law, red. Piotr Steczkowski, Michał Skwarzyński* (Lublin: Wydawnictwo KUL, 2018), 152-157.

The next undoubted stage of energy poverty will be social unrest, riots and, consequently, the need for countries to create energy policies on their own. It seems that countries such as Germany, Austria, Italy, Hungary will become the forerunners of the exit from the EU to protect the welfare of their citizens[41] . Confirmation of this regulatory state of affairs is the EU Council President's statement on the EU's withdrawal from the Energy Charter Treaty in 2025.

Bibliography

Bierecki Dominik, „Energy Cooperatives in the System of Polish Cooperative Law" *Review of Institute of the Grand Duchy of Lithuania,* No. 1 (2021): 7-16.

Cameron Peter, *Legal aspects of EU energy regulation: implementing the New directives on electricity and gas cross Europe.* New York: Oxford University Press, 2005.

Defilla Steivan, „Energy Trade under the ECT and Accession to the WTO" *Journal of Energy and Natural Resources* Law, No. 4 (2003): 428-446.

Demendecki Tomasz, „Basic Directions of the Reform of the Polish Civil Procedure and Its Significance for Contemporary States which Emerged from the Dissolution of the Union of the Soviet Socialist Republics", [in:] *The Influence of the European System of Human Right into National* Law, red. Piotr Steczkowski, Michał Skwarzyński. 151-159. Lublin: Wydawnictwo KUL, 2018.

Fortov Vladimir Evgenevich, Aleksey Alexandrovich Makarov, Tatyana Aleskeyevna Mitrova, „Globalnaya energeticheskaya bezopasnost: problem i puti resheniya" *Vestnik Rossiyskoy Akademii Nauk*, No. 2 (2007): 99-107.

Gusev Aleksandr Sergeyevich, *Politicheskiye aspekty energeticheskogo dialoga RF i EC: problemy i perspektivy.* Nizhnij Novgorod: Izdatelstvo Gosudarstvennogo Lingvisticheskogo Universiteta imenii N.A.Dobrolubovo, 2009.

Kamusella Tomasz, „On the Invisibility of Russian Imperialism: Russian Studies in the West", [in:] *Language and Decolonisation. An Interdisciplinary Approach,* red. Finex Ndhlovu, Sabelo J. Ndlovu-Gatsheni. 294-319. London: Routledge, 2024.

41 More: Wojciech Konaszczuk, „Energy Poverty as an Effect of the Global Energy Crisis in Selected Countries in the Context of the Human Right Violations", [in:] *Efektywność krajowych i międzynarodowych systemów ochrony praw człowieka trzeciej generacji*, red. Jerzy Jaskiernia, Kamil Spryszak (Toruń: Wydawnictwo Adam Marszałek, 2024), 311-324.

Konaszczuk Wojciech, „Energy Poverty as an Effect of the Global Energy Crisis in Selected Countries in the Context of the Human Right Violations", [in:] *Efektywność krajowych i międzynarodowych systemów ochrony praw człowieka trzeciej generacji*, red. Jerzy Jaskiernia, Kamil Spryszak. 311-324. Toruń: Wydawnictwo Adam Marszałek, 2024.

Konaszczuk Wojciech, *Prawnomiędzynarodowe aspekty obrotu ropą na świecie.* Lublin: Towarzystwo Wydawnictw Naukowych, 2017.

Kuźniar Roman, „Tradycyjne zagrożenia dla bezpieczeństwa międzynarodowego", [in:] *Stosunki międzynarodowe. Geneza, struktura, dynamika*, red. Roman Kuźniar, Bolesław Balcerowicz et al. 40-56. Warszawa: Scholar, 2012.

Liesen Robert, „Energy Law-Transit Under the 1994 Energy Charter Treaty" *Journal of Energy and Natural Resources Law*, No. 1 (1999): 56-73.

Polizov Pavel, „The Challenges the Ukrainian Energy System" [in:] *Materialy XI Vseukrainskoj Naukovo-Technichnoj Konferencii Edobuvachiv Vishchoj Osviti za Pidsumkami Naukovih Doslidzen 2023 roku*. 26-28. Dmytro Motornyi Tavria State Agrotechnological University, 2024.

Sadegh-Zadeh Kaweh, „Russia: A threat to the European Gas Security" *OGEL*, No. 4 (2007). https://www.ogel.org/journal-browse-issues-toc.asp?key=28.

Salih Layth Luay, Wasan Ihsan Abdulmunen, „European Alternatives of Russian Gas After the 2022 Russian-Ukrainian War" *Pakistan Journal of Life and Social Sciences*, No. 1 (2024): 1992-2003. https://doi.org/10.57239/PJLSS-2024-22.1.00145.

Teasdale Anthony, „Churchill W., Zurich Speech on the United States of Europe", [in:] *The Penguin Companion to European Union,* red. Anthony Teasdale, Timothy Bainbridge. 12-448. United Kingdom: Penguin, 1996.

Yatsyna, David, „Significant Energy Problems During the War in Ukraine" [in:] *Materialy XI Vseukrainskoj Naukovo-Technichnoj Konferencii Edobuvachiv Vishchoj Osviti za Pidsumkami Naukovih Doslidzen 2023 roku*. 32-34. Dmytro Motornyi Tavria State Agrotechnological University, 2024.

Żerko Stanisław, „Niemiecka Russlandpolitik na rozdrożu?" *Colloquium Wydziału Nauk Humanistycznych i* Społecznych, Nr 4 (2013): 57-78.