

Criminal Legal Means against Trunk Cross-Border Pipelines Theft

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Abstract: One of the acts punishable by criminal law is the theft of energy resources from the pipeline cavity. Pipeline transportation of oil, petroleum products and gas often becomes an object of unlawful encroachment. Unauthorized connections with the subsequent seizure of energy resources located in the pipeline cavity have recently become widespread. Today the embezzlement of hydrocarbons has a transboundary character. The purpose of this study, first of all, is to determine the borders of jurisdiction and the spatial effect of the criminal law of individual states, as well as to study the degree of development and consistency of international acts in the process of counteraction to this negative unlawful phenomenon. The achievement of the considered goals is possible by solving the following tasks: studying the international legal status of pipeline networks running simultaneously on the territory of two or more states, taking into account the criminal legal assessment of socially dangerous acts committed against them; consideration of the principles of operation of the criminal law in space when the analysed type of theft is committed; using the content analysis method to find out the total volume and dynamics of thefts from cross-border pipelines. During the research the logical legal and comparative legal methods were mainly used. On the basis of the received information the author draws a conclusion about the jurisdictional boundaries and the possibility of applying the principles of the operation of the criminal law in relation to certain types of transboundary pipelines and identifies prospects for further research. The significance of the study is manifested in the delimitation of the jurisdiction and powers of the states on whose territory transboundary pipelines pass, in terms of the use of criminal legal means of influencing the perpetrators.

1 INTRODUCTION

Criminal legal means of counteraction to the theft of energy resources from pipelines represent a combination of criminal legal norms, with the help of which criminal liability for the commission of the corresponding criminal act is implemented, other legal consequences for the subject are determined, and they are aimed at preventing new crimes. Such norms include not only the provisions of the Special Part of the Criminal Law, which determine the particular types of punishable acts, but also the norms of the General Part that establish the principles of the law (in time, space, in a circle of persons), the basis of complicity, guilt, types and amount of penalty, other criminal legal consequences, etc.

It is difficult to imagine the modern world without hydrocarbons. Oil, petroleum products and gas (in various states) are the most commonly used energy resources in the world, accounting for over 57.5% of total primary energy consumption (Dudley, 2019). Raw materials are transported from the places of production or processing to the final consumer using a pipeline transport system. Transmission of oil, petroleum products and gas over long distances (interstate and interregional transportation) takes place using transnational (transboundary) pipelines of a trunk nature.

The trunk pipelines are essential infrastructure that connects production areas, processing plants with citizens and legal entities purchasing such raw materials (Shaikh et al., 2017). The system of main pipelines has a high efficiency, speed and scale of the transmitted primary energy resources. However, the

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significant length of pipeline transport does not allow to constantly control over every meter (section) of the pipe, even with the presence of specialized security services (Sun, 2016).

For example, the total length of oil pipelines, petroleum product pipelines and gas pipelines owned only by the Russian global energy companies PJSC Gazprom and PJSC Transneft is over 1 million kilometres in total. The United States has over 200,000 kilometres of oil pipelines and over 2.5 million kilometres of gas pipelines (Ralby, 2017). The large-scale prevalence and relative availability, together with the valuable transported resource (oil, petroleum products and gas), give rise to the spread of criminal encroachments in relation to pipeline transport and, first of all, a theft.

The trunk pipelines theft is a socially dangerous act prohibited by the criminal law in the form of unlawful withdrawal of raw materials from the pipe cavity using an unauthorized connection. This type of theft harms not only economic relations, but also endangers public safety and environmental order. Spills of oil and petroleum products as a result of theft and damage to the pipeline can lead to an environmental disaster. The issues of criminal legal counteraction to this kind of embezzlement, general and special prevention have been considered more than once in the pages of juridical literature, including international works (Huiting L., 2018; Ajao, 2018; Chen, 2021 and others).

The problem of hydrocarbons theft is especially acute in those countries whose economies are based on the sale of oil, petroleum products or gas. For example, the national economy of Nigeria is completely dependent on the oil sector, since it accounts for 80% of all government revenues. Every year there are more than 1,500 attacks on pipeline systems in order to illegally seize raw materials only in Nigeria. It poses a huge threat to the country's national security (Anifowose 2012).

In addition to Nigeria, the hydrocarbon theft is widespread in Mexico, Iraq, Indonesia and Russia (Naanen, 2019). Russia possesses a colossal reserve of oil and other hydrocarbons; this type of mineral seems to be a socially significant resource (Pleshakov, 2018). The theft of oil, petroleum products and gas often goes beyond the national borders of one state, which allows us to talk about the transnational nature of the crime. This circumstance was also emphasized in the reports of international organizations (UNEP and Interpol, 2016). A proper criminal legal assessment is, of course, an urgent component of protection and counteraction to raw

materials theft in those countries where cross-border pipeline transport passes.

2 MATERIALS AND METHODS

The methodological basis of the study is the logical legal and comparative legal methods, which are based on a systematic analysis of juridical literature and regulatory legal acts. During the research, the method of content analysis of the media was also used. This method was aimed at forming a general understanding of the volume and dynamics of thefts committed by foreign citizens from Russian main pipelines running on the territory of other states, or pipelines that transport Russian hydrocarbon raw materials in transit. The study analysed regional and international legislative acts, scientific literature of both Russian and foreign experts, official statistics and publications in the media.

3 RESULTS AND DISCUSSION

According to official statistics, for the period from 2007 to 2020, on average, over four hundred thefts (of various forms) of Russian oil, petroleum products and gas from trunk pipelines are recorded annually. Existing trends in judicial and investigative practice indicate that a decrease is not expected in the number of registered criminal acts and prosecuted persons.

Illegal withdrawal of oil, petroleum products or gas from the main pipeline is carried out using a previously made hole in the pipe cavity (tie-in), to which a fitting is welded and (or) a hose or pipe is attached. Raw materials are taken into pre-prepared containers or tank cars, in some cases, the guilty persons construct a branch from the pipeline to specially equipped places (storage facilities, premises, areas with dug-in barrels, etc.). Obviously, the specified complex of actions and the scale of theft are not always within the power of one criminal; therefore, the theft from main pipelines is characterized by a group nature of the commission, which in turn increases the social danger of this phenomenon.

Russian trunk pipelines supply hydrocarbons, including other states. The main pipelines of an international character are: gas pipelines Blue Stream (Turkey, over 1200 km), Turkish Stream (Turkey, South and South-Eastern Europe, over 900 km), Yamal-Europe (Belarus, Poland, Germany, over 2000 km), Nord Stream (Germany, over 1200 km) and one

of the world's largest oil pipelines Druzhba (Belarus, Poland, Ukraine, over 8900 km). Nord Stream 2 is the main gas pipeline that will run under the Baltic Sea from Russia to Germany through the economic zones and territorial waters of Denmark, Finland and Sweden. It is in the final stage of construction (Sziklai, 2020).

Since 2021 the so-called “green” liquefied natural gas is being delivered to Europe from Russia. This gas is carbon neutral that it is particular relevant in the light of global environmental problems. The above mentioned and other similar variations of the main pipeline transport are named as transboundary in science, i.e. pipelines that cross the borders of sovereignty and / or jurisdiction, originated in the territory of one state and laid through the territory of another state. Energy carriers are transported through cross-border pipelines from the territory of the sender state to the territory of the recipient state (Urshulya, 2016).

It is obviously that oil, petroleum products and gas transported through the above mentioned pipelines are a potential subject of theft. However, in this regard, a completely natural question arises, according to the criminal legislation of which country will there be responsibility for such an act if the pipeline originates on the territory of Russia (or belongs to the Russian Federation), and the crime is committed outside its borders? To answer this question, it is necessary to determine the jurisdictional boundaries and the extension of the scope of the law of a particular state through which the pipeline passes.

The operation of the criminal law of a separate state is subordinated to certain principles in relation to acts committed outside its borders. In particular, according to the principle of citizenship, if a citizen of the Russian Federation or a person who permanently resides in the territory of Russia commits unlawful actions in relation to a main pipeline passing through the territory of other countries in order to remove hydrocarbons from its cavity, he or she is liable for the criminal law of Russia. The responsibility of citizens with citizenship of another state and stateless person is possible on the basis of the “real principle” of the operation of the law in such a situation. In accordance with the considered principle, the implementation of responsibility in compliance with the criminal law of the Russian Federation is also possible in relation to foreign citizens, stateless persons, if the criminal acts are committed by them outside Russia, but are directed against the interests of the Russian Federation or the interests of citizens of the Russian Federation

(Lebedev, 2017). Of course, the theft from cross-border pipelines belonging to Russia or transporting Russian raw materials can also be attributed to the indicated socially dangerous acts.

In this regard, it is necessary to establish the jurisdiction of the Russian Federation over the main pipelines carrying out transnational transportation of fuel. There are two terms “legally unified pipeline” and “legally connected pipeline” within the framework of international law. A legally unified pipeline is understood as such a cross-border pipeline, which is controlled by common owners throughout its entire length, has unified transportation conditions and a management system. The legally connected pipelines include pipelines in which the ownership and legal regime of a particular section are determined by the national legislation of the state through which it passes (Urshulya, 2016).

The Nord Stream gas pipeline, which is fully managed by Nord stream AG, is an example of the first of these models. The company's shareholders are five legal entities – operators of transport networks, the controlling stake belongs to the Russian energy company PJSC Gazprom. The Druzhba oil pipeline is an example of the legally connected cross-border trunk pipeline.

Thus, the Russian section of the Druzhba oil trunk pipeline is owned by PJSC Transneft, the Belarusian section is owned by Gomeltransneft, the Ukrainian section is owned by UkrTatNaft, the Czech section of the pipeline is controlled by the Czech company Mero, and the Polish and German sections are owned by the Polish pipeline exploitation company Pern. In legally connected main oil pipelines, oil product pipelines and gas pipelines, the ownership of the transported resources (respectively, oil, petroleum products and gas) passes from one side to the other at the points of receipt and delivery of resources, which are often located near the borders of states. This procedure takes place with the participation of specialists from two countries and is accompanied by the drawing up of an appropriate act.

It is obviously that the implementation of criminal liability under the legislation of the Russian Federation, based on the real principle of action, is possible only in relation to encroachments on the pipelines of the first model, i.e. those that are jurisdictionally controlled by the Russian Federation or Russian transport network operators. Illegal actions of foreign citizens in relation to other sections of trunk pipelines supplying raw materials from the territory of Russia should be assessed in accordance with the domestic legislation of a particular state.

Transnational transit pipelines are an exception to the general rule. Transit transportation means the movement of oil, petroleum products or gas from Russia through the territory of at least one country to a third country. Such transfers of hydrocarbons are regulated by private international agreements between the concerned countries. Transit delivery implies that the pipeline passing through the territory of another state may not belong to the sending state of the raw material, but the raw material itself is owned by the supplier.

For example, in accordance with Article 10 of the Agreement between the Government of Russia and the Government of the Republic of Belarus "On the transport of natural gas through the territory of the Republic of Belarus and its supply to consumers in Belarus", gas transferred to the Republic of Belarus for transit transportation is the property of the Russian Federation. Consequently, the unlawful withdrawal of energy resources from transboundary pipelines of a transit nature is subordinated to the real principle and must be assessed in accordance with the criminal law of Russia.

To determine a general idea of the volume of thefts committed from cross-border trunk pipelines, we used the method of content analysis of the media, that is, a qualitative and quantitative study of the content of documents in order to identify or measure the facts and trends reflected in them (Danilov, 2003). The study results showed that covert thefts from trunk pipelines, committed outside the Russian Federation, are encountered in the practice of the judicial authorities, however, they are not widespread.

In total, more than 200 reports of the Russian, Ukrainian, Belarusian, Polish, German and Latvian press were studied and summarized for the period from 2007 to 2020. According to the overall volume of the received data 37 cases of unauthorized tie-ins were recorded with the subsequent theft of hydrocarbons from the Russian (or transit) pipeline. Oil and petroleum products became the subject of theft in 90% of cases. Most of the analysed illegal actions are committed in Ukraine (up to 75%).

In addition to the real one, there is a so-called universal principle of the operation of the law. On its basis criminal liability for the commission of socially dangerous acts outside the borders of a certain state is implemented, regardless of whose interests have suffered as a result of criminal encroachment. This principle is aimed at achieving a goal of the inevitability of criminal liability and punishment, crime prevention, regardless of the nationality of perpetrators, as well as a crime scene (Knyazev, 2018). The process of bringing a person (or a group

of persons) to criminal liability on the basis of a universal principle is possible only if there is an appropriate international legal act.

Such acts of an international character constitute multilateral conventions. The basis of the universal principle is the mutual assistance of the participant states in the criminal legal counteraction to dangerous criminal manifestations (Molchanov, 2018). Unfortunately, today, there are no agreements or other international acts aimed at combating crime in the fuel and energy complex, and primarily with the theft of raw materials. Due to lack of a regulatory framework, it logically follows that the universal principle of the criminal law in space in relation to the theft from transnational oil trunk pipelines, oil product pipelines and gas pipelines is not applied.

4 CONCLUSIONS

Thus, the jurisdiction of the criminal law of the Russian Federation extends to all thefts from trunk pipelines committed by Russian citizens regardless of a crime scene. On the basis of the real principle, the scope of the law can be extended to embezzlements committed by foreign citizens and stateless persons from the legally unified cross-border and transit pipelines, if the pipeline system itself or the transported resources are owned and controlled by the Russian Federation. The impossibility of applying the universal principle of action is due to lack of an international legal framework in the field of theft counteraction from pipelines. We believe it is expedient to consolidate and concentrate efforts on the part of the international community in order to provide a normative basis for the fight against the analysed negative phenomenon of a transnational character. Such a statement is a prospect for subsequent theoretical developments, including scientific journals.

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