

Expert review of dissertation thesis

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Topic of the dissertation thesis: Protection of investments in gas sector: perspectives of legal relations between European Union and Russian Federation

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Expert review:

1) Topicality of the subject matter of the research

The author chose a topic focusing on economic relations between EU and Russian Federation with a focus on the protection of investments in the gas sector. It is topical in all three aspects covered in the title of the dissertation thesis. Namely the economic relations between EU and Russia are much scrutinised including current economic sanctions that burden mutual relations. EU/its Member States and Russia are long-term economic partners. Similarly topical is the focus on energy sector both for the EU (as an importer from Russia) and Russia (as a significant exporter to the EU). The dominant position in this sector is the import of gas. Lastly, the author correctly decided to narrow the topic with a special focus on the protection of investments. This is relevant evidently on the EU side as under the Lisbon Treaty foreign investment was included in the exclusive competence of the EU and previous treaties on the protection of investments between EU Member States and third countries (including the Russian Federation) must be put in line with the EU common policy. This process will take some time and, therefore, it is still not closed. At the same time the topic has not been fully covered by expert literature and there are still a number of questions which need be clarified by expert public. In summary I find the topic very up-to-date and well suited to be a subject for a dissertation research.

2) Evaluation of the content of the thesis

The opening part of the thesis rightly focuses on introduction and methodology of the research. It makes an outline of individual chapters, namely the second chapter focused on the importance of the gas sector.

In the second chapter the author described various ways how gas is imported in Europe and also comparison of technical issues concerning natural gas as well as liquid gas, etc. This chapter shows that the author has a sufficient insight into these logistics and technical issues. Though it does not deal primarily with legal issues, it is undoubtedly of great importance for EU energy policy as the diversification of energy sources is one of the aims of the EU policy in this area. The accessibility of other resources and gas supply routes will be an important factor for possible re/negotiation of EU-Russia relations in this sector. In that regard it could be discussed how the author evaluates the potential for diversification of gas supply, f.e. from Central Asia or from the overseas? What role would be played by the renewable resources or energy savings projects? Could they partly substitute the gas and decrease the demand of natural gas in the EU?

Third chapter focuses on the current state of international law, its fragmentation in the area of research and absence of adequate normative basis between EU and Russia. The author widely discusses especially the Energy Charter Treaty which, however, is not binding on Russia nowadays. How the author evaluates its impact at present? The author also in detail focuses – as far as investments are concerned – on the expropriation and compensation. There the author focuses particularly on the *Yukos* case. Her evaluations are well substantiated in this regard. One of the questions which could be discussed during the defence of the thesis is what is the role of politically motivated expropriations *vis-à-vis* expropriations justified by the real needs and priorities of the society (f.e. to control natural resources so that the whole society might benefit therefrom).

The fourth chapter deals with the current state of national legislation in Russian Federation and European Union. An interesting and potentially key issue is the question how the mutual relations will be transformed in the future, also due to the change of EU law competences by the Lisbon Treaty (their unclear division between EU and Member States, comp. p. 171 of the thesis). Also in that regard a comparison is made in relation to investment regulation between EU and other third countries, namely USA (TTIP), Canada or ASEAN. It might be in more detail discussed whether these examples could really be used also in EU-Russia relations. Is the result of negotiations transferrable? In that regard what is the relevance of the specificities of the gas sector in Russia (comp. also discussion at p. 139 et seq. of the thesis)?

An interesting part concerned the problematic of jurisdiction in investment cases and possible doubling of bodies that might decide a case. Could the author explain her position in relation to this problem? What are the practical implications for private investors? What would be the pros and cons of establishing an independent international dispute settlement body? Does the author think that this option would be acceptable for both partners, namely EU and Russia? (comp. some conclusions presented at page 128 et seq. of the thesis).

The concluding chapter brings a summary of interim conclusions. Actually the main aim of the thesis was to bring concrete proposals how to settle mutual relations for the future. The individual chapters, though analytic, did not in detail elaborate on proposals; the concluding chapter returns to this issue and brings some suggestions. One question which could be discussed in more detail is what role will be played in the revised framework of EU-Russia investment relations by arbitration? Further the author concludes that in the future relations it will be necessary to pay attention to the analysis of the binding mechanism of future cooperation. Does the author have any suggestion in this regard?

A minor objection might concern the extensity of the presented research. The main focus was the protection of investment in gas sector; having in mind this aim it seems that some parts not directly touching the EU-Russia relations might have been reduced (f.e. the second chapter); this would open more research-question-focused analysis, namely the investment protection, rights of individuals and state obligations. However, when in general evaluating the content of the thesis, I find it clearly structured, topical, sufficiently analytical and showing that the author has very good insight in the subject matter. In that regard I may accept the outcomes of the research.

3) Research methods used in the thesis, formal layout of the thesis

The author enumerates the research methods she was going to use in the thesis in the opening chapter. The suggested methods are the classic ones used in research in the area of law and I have no objections in that regard.

Formally, the paper is well structured, each chapter having its own summary. The language used is appropriate and understandable with minor grammatical inaccuracies which do not affect the clarity of expression and understanding of the text. The author uses standard quotations with sufficient resources both academic and judicial.

4) Final assessment of the thesis

The thesis may be evaluated as complex and well argued. It shows a very good insight and compound analysis of the author in the topic and it brings new research outcomes as is required by this type of qualification thesis.

Questions for discussion during the defence of the thesis were raised directly in the previous paragraphs.

Thus, **I can fully recommend it for the final defence** before the commission for defence of Ph.D. theses; in Czech: “Práci doporučuji k obhajobě před příslušnou komisí pro obhajobu disertačních prací”.

Done in Olomouc, August, 22, 2017

Doc. JUDr. Václav Stehlík, LL.M., Ph.D.