

Legal Aspects of Administrative Control in the Fuel and Energy Complex of Ukraine

Правові аспекти адміністративного регулювання в паливно-енергетичному комплексі України

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fuel and energy complex, administrative and legal regulation, national energy security.

Ключові слова:

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Statement of the problem and its relevance. Supporting the economy, as well as the social sphere of Ukraine with the main types of energy sources (electric power and heat, motor and boiler and furnace fuels) and raw materials for the needs of the chemical, oil and coal chemistry, metallurgic industry (coking coal, oil and gas derivative products) is vested with the fuel and energy complex of Ukraine, which has been and remains one of the foundations of the existence and development of the Ukrainian economy, and the national security factor.

The objective of the welfare state, such as Ukraine, in accordance with Article 1 of the Constitution of Ukraine, should be universal all-scale satisfaction of the needs of the population and the social production with the energy products¹. Therefore, the level of development of the fuel and energy complex of Ukraine has a significant impact on the solution of problems in the social sphere and people's living standards.

Improving the statutory regulation of the development and operation of the fuel and energy complex of Ukraine (FEC) should provide the main priorities, directions and mechanisms for implementation of the long-term state policy of Ukraine in this particular sphere of economy.

In the current conditions, Ukraine needs to create an entire system of organizational and legal foundations for the development and operation of the whole fuel and energy complex on the principles of a combination of market relations and public governance, including regulation to ensure sustainable economic and social development, national energy security, also taking into account national peculiarities in accommodation of the national legislation to the legislation of European Union.

Thus, the foregoing confirms the need for a scientific research of the matter of administrative and legal regulation of relations in the fuel and energy complex of Ukraine and the development of appropriate proposals.

The aim of the article is to deliver recommendations and suggestions for the action-oriented improvement of relevant legal provisions based on a comprehensive analysis of existing legal and statutory instruments regulating relations in the branches of fuel and energy complex. Also, to submit proposals on improvement of the administrative and legal regulation of relations in the sphere of fuel and energy complex of Ukraine.

Status of the topic. At the same time, today there is a significant number of negative factors hindering the development of said industry, namely: the duplication of powers of the management entities in the fuel and energy complex, the lack of a clear distinction in the legislation of Ukraine between the administrative offences in the sphere of fuel and energy complex of Ukraine and other offenses in this area, committing which provides not only for administrative, but also for disciplinary, civil or criminal responsibility, the presence of a large number of administrative jurisdiction entities and solidification of special procedure for application of administrative sanctions at the statutory level, in some cases in spite of the Administrative Offences Code of Ukraine (AoCU)². In

¹ Constitution of Ukraine: the Law of Ukraine: as of 28.06.1996 No 254k/ 96-BP // Vidomosti Verkhovnoyi Rady Ukrayiny. – 1996. – № 30. – P. 141.

² Galunko V.V. Concept and content of administrative and legal regulation / V.V. Galunko, O.M. Sshuk // ACTUAL PROBLEMS OF CORRUPTION, PREVENTION AND COUNTERACTION. – 2011. – [Electronic resource]. – Access mode : <http://www.law-property.in.ua>.

addition, penalties for committing administrative offenses in the sphere of fuel and energy complex of Ukraine do not carry an appropriate preventive, educational and punitive function, since their impact is not of a systematic and qualitative nature.

That is why an urgent need rises for a detailed research of the statutory instruments regulating relations in the sphere of fuel and energy complex of Ukraine and, accordingly, – submitting proposals on amending and supplementing the legislation in order to improve and increase the efficiency of the country's energy security.

As of today, the problem of improving the organizational and legal support of the administrative control over relations in the sphere of fuel and energy complex of Ukraine has not been researched on a scientific level specifically, and in the existing scientific studies the said matters are researched without an appropriate approach to the fuel and energy complex of Ukraine.

Thus, a comprehensive research study of the administrative and legal regulation of relations in the sphere of fuel and energy complex of Ukraine and its peculiarities, as well as improvement of the administrative responsibility by way of introducing changes and amendments to statutory documents shall have a positive impact on the fuel and energy complex of Ukraine, promote energy security as a component of the national security.

Basic material research. Improvement of the administrative and legal regulation of relations in the fuel and energy complex of Ukraine is one of the priority tasks of ensuring the energy security of the country. Any economic, institutional and other reforms in the fuel and energy complex, as well as the construction of internal and external policies in this area should be based exclusively on the provisions of the laws of Ukraine. Specifically the laws should form the basis for legal regulation of relations in energy. Said regulation should be as clear and detailed as possible to allow for minimization of the by-laws and avoidance of discriminatory application of the law.

The statutory instruments governing the general principles of the operation of enterprises, primarily economic, basically do not cover the specifics of the relationship in the fuel and energy complex. In general, the legislation governing the relations in the FEC is fragmented and has a lot of rough edges, because there was no appropriate sector reform concept.

As of this moment, the legal regulation of the fuel and energy complex has a non-systemic nature and is characterized by the absence of a framework law which would establish the basic principles and approaches to the regulation of relations in the electric power, nuclear industry, coal, oil and gas complexes.

Each of the branches in the fuel and energy complex is governed by a separate law and by-laws adopted for the purpose of executing it. For example, the primary law for the electric power complex is the Law of Ukraine "On Electric Power Industry"³, for nuclear energy – the Law of Ukraine "On Nuclear Energy Use and Radiation Safety"⁴, for the Coal Industry – the Code of Ukraine on Mineral Resources⁵ and Mining law⁶, for the oil and gas sector – The Law of Ukraine "On Oil and Gas"⁷ and other. Generality in the wording of many of the provisions in the laws listed causes the need for adoption of multiple by-laws by different authorities. Thus, the number of by-laws in the coal industry alone exceeds 600. This approach to legal governance creates conditions for the unequal application of the legal requirements and accordingly – failure to achieve or partial achievement of specified goals and objectives.

Given the current situation of legislation in the field of energy complex, the new legislation should be developed and adopted taking into account the following principles:

- Creating a single comprehensive energy law on the Energy Policy – The Law of Ukraine "On the General Principles of Operation of the Fuel and Energy Complex of Ukraine", which is to establish a unified approach to terminology, provide for the basic principles of legal governance for the entire energy sector, de-

³"On Electric Power Industry": the Law of Ukraine as of 16 October, 1997 No 575/97-BP // Vidomosti Verkhovnoyi Rady Ukrainy. – 1998. – No 1. – P. 1.

⁴"On Nuclear Energy Use and Radiation Safety": the Law of Ukraine as of 08 February, 1995 No 39/95-BP // Vidomosti Verkhovnoyi Rady Ukrainy. – 1995. – No 12. – P. 81.

⁵The Code of Ukraine "On Mineral Resources" as of 27.07.94 No 132/94-BP [Electronic resource]. – Access mode : <http://sfs.gov.ua/normativno-pravova-baza/kodeksi-/59020.html>

⁶The Mining law of Ukraine as of 06 October, 1999 No 1127-XIV // Vidomosti Verkhovnoyi Rady Ukrainy. – 1999. – No 50. – P. 433.

⁷"On Oil and Gas": the Law of Ukraine as of 12 July, 2001 No № 2665-III // Vidomosti Verkhovnoyi Rady Ukrainy. – 2001. – No 50. – P. 262.

termine national interests in this sphere, establish rules of operation for all of the participants of the energy relations (both public authorities and business entities) on the basis of equity, non-discrimination and transparency, provide requirements for the preparation and implementation of statutory instruments and policy documents. In the future, such law should become the basis for the Energy Law of Ukraine;

- The transfer of the legal regulation to the level of laws and reducing the role of by-laws in regulation of energy relations;

- Conduct of examination (including independent) of existing legal instruments and their projects for compliance with existing international obligations of Ukraine in the energy field stipulated in the Energy Charter Treaty⁸, the Kyoto Protocol⁹ and other bilateral international agreements, as well as requirements of the energy law of EU.

Taking into account certain principles of the establishment and improvement of legislation in the sphere of fuel and energy complex, it should be further developed in the following directions:

1. The adoption of laws as a matter of priority to address the key challenges of the complex, namely:

- Systematization and alignment of property relations in the fuel and energy complex area;
- Detailed definition of state governance and management structure, a clear distinction between these functions, inter alia, in formulation of rules of operation in the energy markets, the settlement of the powers and responsibilities of the central and regional authorities, local governing bodies in matters of energy supply and energy efficiency;
- Improving the operation of the wholesale market of electricity and the definition of the foundations of the natural gas market operation, providing a legislative framework for assigning the functions of establishing the rules of the market to the regulatory body;
- Establishing of effective financial and tax incentives for the modernization of energy facilities and the application of energy-saving technologies;
- Improving the competitive markets of compressed and liquefied gas, oil products and the definition of powers of the public regulatory authority in this area, preventing unjustified administrative regulation of prices in competitive markets;
- Alignment of the terms and conditions of state support, including subsidies, to the FEC companies;
- Enforcement of environmental commitments of the entities in the energy sector related to reduction of environmental pollution and ensuring of civil protection in the field of technogenic security and increasing responsibility for their violation;
- Definition of the legal basis for the establishment of relevant structures and their powers in the implementation of state corporate rights management.

2. Development of the legislative regulation of FEC must ensure compliance with international obligations of Ukraine, stipulated by international energy agreements ratified, particularly the Energy Charter Treaty¹⁰ and the Kyoto Protocol to the UN Framework Convention on Climate Change¹¹:

- Legislative enforcement of performance under the obligations of Ukraine pursuant to the Energy Charter Treaty should provide mechanisms for access to the energy markets of Ukraine, the creation and development of open competitive energy markets, promotion and protection of investments in the energy sector, trade with energy products, transit of energy sources, resolution of disputes related to the international investments and environmental protection;
- Legislative support of Ukraine's commitments under the Kyoto Protocol should provide trading mechanisms for greenhouse gas emissions allowance allocations, in particular through the implementation of joint projects.

⁸ On the Ratification of the Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects: The Law of Ukraine as of 06 February 1998. No 89/98-BP // Vidomosti Verkhovnoyi Rady Ukrayiny. – 1998. – No 26. – P. 150.

⁹ Law of Ukraine "On the ratification of the Kyoto Protocol to the United Nations Framework Convention on the Climate Change" as of 04 February 2004 No 1430-IV [Electronic resource]. – Access mode : [https:// rada.gov.ua/](https://rada.gov.ua/).

¹⁰ On the Ratification of the Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects: The Law of Ukraine as of 06 February 1998 No 89/98-BP // Vidomosti Verkhovnoyi Rady Ukrayiny. – 1998. – No 26. – P. 150.

¹¹ Law of Ukraine "On the ratification of the Kyoto Protocol to the United Nations Framework Convention on the Climate Change" as of 04 February 2004 No 1430-IV [Electronic resource]. – Access mode : [https:// rada.gov.ua/](https://rada.gov.ua/).

3. Development of the legislative regulation of FEC through the mechanism of accommodation of energy legislation of Ukraine to the European Union's legal system must ensure compliance with the requirements of the European energy legislation under the program of Ukraine's integration into the European Union, approved by the Decree of the President of Ukraine as of September 14, 2000 No 1072/2000¹², under the National Programme for Adaptation of Ukraine's Legislation to EU Law, approved by the Law of Ukraine as of March 18, 2004 No 1629-IV¹³, the Protocol on Ukraine's accession to the Treaty establishing the Energy Community, ratified under the Law of Ukraine as of December 15, 2010 No 2787-VI¹⁴.

Alignment with the EU legal system is necessary for the following legal and statutory regulations:

- Laws of Ukraine "On Electric Power Industry"¹⁵, "On Oil and Gas"¹⁶, "On Alternative Types of Liquid and Gaseous Fuels"¹⁷, "On alternative sources of energy"¹⁸, "On Energy Saving"¹⁹, "On the Licensing of Certain Types of Business Activities"²⁰, "On the Natural Monopolies"²¹, "On the State Material Reserve"²²;
 - Decrees of the President of Ukraine, the Resolutions of the Cabinet of Ministers of Ukraine and other by-laws in the area of fuel and energy complex.
4. Development of the legislative regulation of energy relations should be carried out through enhancing international cooperation and the conclusion of appropriate bilateral and multilateral international agreements, which should be directed towards the achievement of the goals of the energy security of Ukraine and the national interests.

Conclusions. Based on the materials contained in the article the following conclusions may be drawn.

Fuel and Energy Complex of Ukraine – is a complex sector of the economy, governed under the rules of law, consisting of interconnected structural industries such as electric power, coal, oil and gas, which support (extract, produce and supply) the public needs for fuel and energy resources. Legal aspects of administrative control in the fuel and energy complex provide for the establishment of common rules for the operation in the fields belonging to the FEC. Legal regulation as a starting point of administrative and legal control over the fuel and energy complex – is a system of basic means (the rule of law, legal relations, instruments of interpretation and application of legal norms, etc..) of state influence on social relations for the purpose of continuous support of the subsystems of the fuel and energy complex of Ukraine, extracting, producing and supplying fuel and energy resources, which are interconnected and operate in strict collaboration in accordance with the law, it is defined by the presence of a specific object, methods, types and stages of the impact on social relations with a view to their settlement.

The analysis of the aforementioned materials provides for the formulation of the following basic features of the administrative and legal control in the fuel and energy complex: 1) it is defined by certain elements: administrative and legal law, methods and stages of operation of the executive authorities in the exercise of delegated functions; 2) the subject of administrative law in the regulation of fuel and energy complex combines the exer-

¹² Decree of the President of Ukraine No 1072/2000 and the Program of Ukraine's integration into the European Union as of 14 September 2000 [Electronic resource]. – Access mode : zakon.rada.gov.ua/laws/show/n0001100-00.

¹³ On the National Programme for Adaptation of Ukraine's Legislation to EU Law: Law of Ukraine as of 18 March 2004. No 1629-IV // Vidomosti Verkhovnoyi Rady Ukrainy. – 2004. – No 29. – P. 367.

¹⁴ Law of Ukraine "On Ratification of the Protocol on Ukraine's Accession to the Treaty Establishing the Energy Community" as of 15.12.2010 No 2787-VI [Electronic resource]. – Access mode : <https://rada.gov.ua/>.

¹⁵ "On Electric Power Industry": the Law of Ukraine as of 16 October, 1997 No 575/97-BP // Vidomosti Verkhovnoyi Rady Ukrainy. – 1998. – No 1. – P. 1.

¹⁶ "On Oil and Gas": the Law of Ukraine as of 12 July, 2001 No 2665-III // Vidomosti Verkhovnoyi Rady Ukrainy. – 2001. – No 50. – P. 262.

¹⁷ On Alternative Fuels : The Law of Ukraine as of 14 January 2000 No 1391-XIV // Vidomosti Verkhovnoyi Rady Ukrainy. – 2000. – No 12. – P. 94.

¹⁸ The Law of Ukraine "On Alternative Energy Sources" as of 20.02.2003 No 555-IV [Electronic resource]. – Access mode : http://search.ligazakon.ua/l_doc2.nsf/link1/T030555.html.

¹⁹ The Law of Ukraine "On Energy Saving" as amended [Electronic resource]. – Access mode : <http://zakon3.rada.gov.ua>.

²⁰ On the Licensing of Certain Types of Business Activities : the Law of Ukraine as of 02 March 2015 No 222-VIII // Vidomosti Verkhovnoyi Rady Ukrainy. – 2015. – No 23. – P. 158.

²¹ On Natural Monopolies : the Law of Ukraine as of 20 April 2000 No 1682-III // Vidomosti Verkhovnoyi Rady Ukrainy. – 2000. – No 30. – P. 238.

²² On the State Material Reserve : the Law of Ukraine as of 24 January 1997 No 51/97-BP // Vidomosti Verkhovnoyi Rady Ukrainy. – 1997. – No 13. – P. 112.

cise of classic authority and administrative powers of the executive bodies, as well as their activities related to the preparation and adoption of all sorts of customized solutions and the application of administrative coercive measures; 3) all subjects of public administration, as well as officials and officers of management entities use a "special permit" in the activities as a type of legal regulation.

Thereat, a decisive role in the legal regulation of relations between the state and the person lies in the field of administrative law, the rules which are designed to ensure the specific application of the constitutional requirements for the various rights and freedoms of citizens in their numerous dealings with the executive authorities, local government bodies, since so far, unfortunately, former Soviet and, relatively speaking, "neo-Soviet" approaches and stamps (dogmas) prevail in the national doctrine of administrative law. They do not reflect the true role of administrative law as a primitive means of public law regulation of relations between public authorities and the man which have long been accepted as a standard in the democratic countries of the world.

Summarize all said above, we should note that the statutory and legal support for the operation of the fuel and energy complex requires fundamental reform due to the need of implementation of EU legislation into the national laws (in accordance with the obligations assumed under the international agreements), the obsolescence of a large number of existing instruments. Accordingly, it is necessary to adopt the Law of Ukraine "On the General Principles of Operation of the Fuel and Energy Complex of Ukraine", which should comprehensively regulate the relations of the entire fuel and energy complex of Ukraine, and will address the key issues of the fuel and energy complex of Ukraine, in particular alignment of property relations in the fuel and energy complex delineation of management and regulation functions in said area, the creation of incentives for the modernization of enterprises, institutions and organizations of the fuel and energy complex of Ukraine.

Summary

The article examines the problems of developing the organizational and legal support of the administrative control of relations in the sphere of fuel and energy complex of Ukraine. It substantiates proposals on improving the administrative and legal regulation of relations in the sphere of fuel and energy complex of Ukraine.

Анотація

Стаття присвячена вивченню проблем удосконалення організаційно-правового забезпечення адміністративного регулювання відносин у сфері паливно-енергетичного комплексу України. Обґрунтовано пропозиції щодо вдосконалення адміністративно-правового регулювання відносин у сфері паливно-енергетичного комплексу України.

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