

PROBLEMS OF REGULATORY AND LEGAL SUPPORT OF RELATIONS IN THE FIELD OF ELECTRICITY AS A COMPONENT OF THE RIGHT TO A SAFE ENVIRONMENT: THE EXPERIENCE OF GERMANY AND UKRAINE

ПРОБЛЕМИ НОРМАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ВІДНОСИН У СФЕРІ ЕЛЕКТРОЕНЕРГЕТИКИ ЯК СКЛАДОВОЇ ПРАВА НА БЕЗПЕЧНЕ ДОВКІЛЛЯ: ДОСВІД ФРН ТА УКРАЇНИ

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It was determined that the efficiency of the use of electrical energy is one of the components of ensuring a person's right to a safe environment and a subsystem of ensuring a proper, high-quality existence of a person. It has been established that electric energy is the means that ensures both the living conditions of a person and the sphere of economy, which is a sign of the appropriateness of the state's performance of the social function entrusted to it. It was established that the energy system is a component of the country's national security system, protection of its sovereignty and territorial integrity. It has been established that the requirement to implement and intensify the processes of law-making and adaptation of legislation in the field of electricity and the right to a safe environment in accordance with European requirements and standards is an urgent task for Ukraine in the context of the implementation of the European Integration Agreement. It is argued that the negative characteristics of the current legislation of Ukraine in the field of electric power and the protection of the right to a safe environment are: an inadequate level of management in the field of energy, characterized by the absence or low efficiency of the processes of decentralization of the energy system of Ukraine; the presence of gaps in the regulatory regulation of land use where alternative electricity facilities are located; obsolescence of administrative and legal regulation of relations in the field of electric power and environmental law. The presence of a strategic administrative act until 2035 is included among the positive characteristics of the regulatory and legal regulation of relations in the field of electric power.

Key words: energy efficiency, energy system, national security, energy security, strategy, alternative energy sources, decentralization of the energy system.

Визначено, що ефективність використання електричної енергії відноситься до складових забезпечення права особи на безпечне довкілля та підсистемою забезпечення належного якісного існування людини. Встановлено, що електрична енергія є тим засобом, що забезпечує як побутові умови людини, так і сферу господарювання, що є ознакою належності виконання державою покладеної на неї соціальної функції. Встановлено, що енергетична система є складовою системи національної безпеки країни, захисту її суверенітету та територіальної цілісності. Встановлено, що вимога із здійснення та активізації процесів із правотворення та адаптації законодавства у сфері електроенергетики та права на безпечне довкілля згідно із європейськими вимогами та стандартами, є актуальним завданням України в умовах виконання Угоди про Євроінтеграцію. Аргументовано, що негативними характеристиками чинного законодавства України у сфері електроенергетики та охорони права на безпечне довкілля є: неналежний рівень здійснення управління у сфері енергетики, що характеризується відсутністю чи низькою ефективністю процесів із децентралізації енергетичної системи України; наявність прогалин щодо нормативного регулювання використання земель, де розташовані об'єкти альтернативної електроенергії; застарілість адміністративно-правового регулювання відносин у сфері електроенергетики та права навколишнього природного середовища. Серед позитивних характеристик нормативно-правового регулювання відносин у сфері електроенергетики віднесено наявність стратегічного адміністративного акту до 2035 року.

Ключові слова: енергоефективність, енергетична система, національна безпека, енергетична безпека, стратегія, альтернативні джерела енергії, децентралізація енергетичної системи.

Statement of the problem. The use of electrical energy is an integral part of every person's life. Electric energy is used in everyday life and economic activity, allows the state to fulfill its social function, and contributes to the protection of the sovereignty and territorial integrity of the state. At the same time, every year, the state looks for the most optimal and effective approaches to optimize the process of energy supply to end users, minimizing costs and damage to the environment, while at the same time maximizing the level of realization of public needs and benefits.

In the conditions of the European integration of Ukraine, it is extremely important that the administrative and legal regulation of relations in the field of electric power corresponds to modern socio-economic conditions and realities, is independent of political influence, and eliminates corruption risks in relations in the field of electric power.

The study of the current state of administrative and legal regulation of relations in the field of electricity as a right to a safe environment will allow us to establish the level of compliance of the current legislation in this area with the challenges that our state is currently facing, to search for ways to increase the effectiveness of the regulation of relations in the field of electricity, and its relevance in modern conditions.

The need to adapt administrative legislation in the field of electric power to European requirements and standards and,

as a result, the actual complete renewal of legislation in this area, the emergence of the electric power market in Ukraine, the permanent struggle for the independence and stability of the Ukrainian electric power industry cause scientific interest in issues related to administrative and legal regulation of relations in this field in Ukraine. Since the current state of administrative-legal regulation of relations in the field of electricity is characterized not only by negative, but also positive aspects, in the context of the European integration of Ukraine, the study of the advantages and disadvantages of the current state of administrative-legal regulation of relations in the field of electricity acquires special importance.

Determining the shortcomings of the current state will allow us to establish the causes of ineffective administrative and legal regulation in the field of electric power, identify gaps and conflicts in the current legislation in this field, and therefore predict ways to solve them.

In turn, highlighting the advantages of the current state will allow us to understand which aspects of the administrative and legal regulation of relations in the field of electric power are important to preserve in the reform process and ensure their further development.

The state of scientific development of the problem. The question of the advantages and disadvantages of the current state of administrative and legal regulation of relations in

the field of electric power in the conditions of the European integration of Ukraine has hardly been studied in the scientific literature of our country. Certain aspects of the specificity of administrative and legal regulation of relations were studied by such scientists as: M. S. Blokhina, D. L. Vityuk, O. L. Voloshyn, M. Ya. Gvozd, A. Yu. Deina, I. I. Doronina, N. V. Kuzminchuk, S. V. Maistro, V. V. Mushenok, S. R. Plyat-sko, T. V. Sak, B. V. Slupskyi, D. K. Tkach, I. L. Trofimov, V. Yu. Ulida, M. K. Shapochka. However, it is worth considering that the concept of "modern state" is dynamic, and therefore the advantages and disadvantages of the state of administrative and legal regulation of relations in the field of electricity, which was "modern" at the time of writing the works of such authors, may not be relevant in modern conditions. That is why the analysis of this issue is important for our research.

The purpose of the article is to determine the problems of regulatory and legal support of relations in the field of electricity as a component of the right to a safe environment, taking into account the experience of Germany and Ukraine.

Presentation of the main material. Modern administrative and legal regulation of relations in the field of electric power cannot be unequivocally evaluated positively or negatively, since the level of legislative support for the implementation of various rights and obligations within the limits of these legal relations will not be the same.

For example, D. K. Tkach notes the need to improve the legal framework regarding the use of methods that meet modern conditions, as those currently operating create obstacles for attracting investments and further development. In addition, cross-subsidization of the same categories of the population is a problem. The imperfect payment mechanism for used electricity contributes to the formation of debts to generating companies [1, c. 50].

That is, the administrative and legal regulation of relations in the field of electric power of Ukraine uses the imperative method to clearly define the methods of activity of economic entities.

The problem of the imperative method and, accordingly, of the administrative legislation is the complex and slow procedure of its change, which will cause the legislation to become permanently obsolete, because any changes made during the time from the discovery of the problem to the introduction of the proposal and its adoption will lose their relevance. That is why it will be more appropriate to prevail over the dispositive method with the partial use of administrative means for licensing, control and supervision, and standardization. The gradual introduction of dispositive regulation of relations in the field of electric power can be considered positive, but it is not universal, which creates problems in the actual application of the norms of administrative legislation.

The problem of cross-subsidization, which concerns electricity consumers and is already connected with the harmonization of financial and administrative legislation, should be considered separately.

It is possible to consider the introduction of a unified procedure for forming prices and payment for used electricity as a way to solve it, which will be clear to consumers, will prevent abuse of rights by other legal entities involved in the relationship, and will be transparent and public, which will facilitate control.

S.V. Maistro emphasizes the need to increase the information support of the state regulation of the electricity industry, which includes improving communication, introducing informative Internet resources, ensuring the broadcasting of relevant information online for business entities and promoting the ideas of ecological and renewable energy [2, c. 42].

Maintaining an appropriate level of communication between state and business entities and consumers corresponds to the concept of service and public administration.

It is possible to evaluate the administrative and legal support for the variety of ways of paying for electricity and receiving consultations for consumers as positive.

At the same time, the process of communication between state authorities and business entities in the field of electricity remains excessively bureaucratized and creates opportunities for corruption, which is also explained by the lack of awareness of the latter about their rights and the possibilities of their protection.

Accordingly, one of the vectors of administrative and legal regulation of relations in the field of electric power should be informational activities, both in terms of training (conducting trainings and seminars) for the subjects of relations in the field of electric power in order to increase the level of their legal education and legal awareness, and in terms of highlighting the specifics of the activity of the authorized bodies themselves (implementation of powers, protection against excess of powers).

A. Yu. Deina defines the problem of energy independence, which guarantees the normal functioning of the economy in the field of energy and the satisfaction of the social needs of society, but it is still not adequately ensured [3, c. 163].

The given problem has both economic, legal and organizational nature, and therefore it is impossible to solve it only with the help of administrative and legal regulation. It vividly illustrates the content of the reasons that cause problems in the functioning of relations in the field of electricity.

Therefore, the task of administrative and legal regulation should be not only the proper regulation of the procedures for the production or supply of electric energy, but also the protection of the electric power industry from undue political, economic, technical or social influence in order to minimize unforeseen situations and prevent threats to the normal functioning of all procedures within its limits. The Energy Efficiency Act of the Federal Republic of Germany defines that it is necessary to carry out an energy audit procedure as a systematic procedure for taking measures to increase energy efficiency aimed at reducing energy consumption in the company by obtaining sufficient information about the energy consumption profile of the company, its buildings, the activities of its facilities, the determination and quantitative assessment of the possibility of final energy saving, determination of the potential for the use and production of renewable energy and recording the results in a report carried out by authorized entities from the energy service and audit. Energy efficiency is the establishment of a ratio of the volume of production of services, services, goods or energy to the use of energy [4].

I.I. Doronina positively assessed the separation of the concepts of "alternative" and "renewable" energy sources in the legislation, the legislative regulation of the principles of functioning of the electricity market, the state's encouragement of the use of alternative methods of electricity production and the introduction of the "green" tariff. The researcher attributed the backwardness of Ukrainian legislation to EU legislation to the problematic aspects of the current state of administrative and legal regulation of relations in the field of electricity [5, c. 40]. However, for our part, we note that the EU legislation is also dynamic, which means that until Ukraine joins the European Union, Ukraine will always be forced to always "catch up" with it. Therefore, at the moment, the backwardness of Ukrainian legislation from EU legislation has objective prerequisites for this.

Thus, in Ukraine, there is a certain regulatory and legal basis for the use of electrical energy obtained from solar radiation as an alternative non-traditional type of energy natural resource [6].

Thus, after analyzing the works of domestic scientists and normative acts of domestic legislation in the field of electricity, we can conclude that the current state of administrative and legal regulation of relations in the field of electricity is characterized by a number of advantages and disadvantages.

In particular, it is worth noting that there is no significant lag between Ukrainian legislation and European legislation. Rather, it refers to the mechanism of implementation, provision and protection of administrative and legal norms.

Thus, in our opinion, the advantages of the current state of administrative and legal regulation of relations in the field of electricity include the following advantages:

- 1) modern administrative and legal regulation of relations in the field of electric power is carried out in accordance with the long-term state strategy for the development of this industry;
- 2) modern administrative and legal regulation of relations in the field of electric power encourages the use of alternative and renewable energy sources.

Among the shortcomings of the current state of administrative and legal regulation of relations in the field of electric power of Ukraine, we include the following shortcomings: 1) modern administrative and legal regulation of relations in the field of electric power of Ukraine does not ensure coordination of authorized public authorities in the field of electric power; 2) modern administrative and legal regulation of relations in the field of electric power has gaps in the regulation of the issue of land use for alternative energy sources, namely, changes in their intended purpose; 3) modern administrative and legal regulation of relations in the field of electricity does not sufficiently protect the rights and interests of consumers in the conditions of the introduction of a new electricity market; 4) separate regulatory and legal acts of administrative and legal regulation of relations in the field of electricity are outdated [7, c.305].

Conclusions. Among the advantages of the current state of administrative and legal regulation of relations in the field of electric power is a clear definition of vectors for the further development of relations in the field of electric power for a fairly long period. Thus, in 2017, the Cabinet of Ministers of Ukraine approved the Energy Strategy of Ukraine for the period until 2035 "Security, energy efficiency, competitiveness" [7]. Already in 2023, the Cabinet of Ministers of Ukraine approved a new concept – the Energy Strategy

of Ukraine for the period up to 2050, by order of April 21, 2023 No. 373-r. The above shows that one of the main advantages is longevity, which reduces the influence of political factors on its implementation and indicates priority goals, both in state regulation and reforming legislation and directions for investments in the field of electricity. Thus, within the framework of the energy strategy, the main development trends are defined, which is relevant for planning business activities. Another positive aspect should be considered the structuring of measures for the implementation of this strategy. This allows you to monitor the effectiveness of its action within a certain period of time, identify problems in implementation and quickly correct them to move to another stage.

Among the goals to be achieved during the implementation of the Energy Strategy of Ukraine, "achieving the maximum level of climate neutrality; maximum reduction of coal use in the energy sector; renewal and modernization of energy infrastructure; increasing the efficiency of the use of resources in the energy sector; comprehensive integration with the markets of the European Union and effective functioning of internal markets; providing the energy sector with its own resources, taking into account economic feasibility; development of alternative energy sources, new products and innovative solutions in the energy sector". Such spheres correspond to the direction of European integration in the development of administrative and legal regulation of relations in the field of electricity, taking into account the existing problems in this field. At the same time, the environmental problems caused by the production of electricity are not taken into account. However, increasing the level of environmental and legal awareness of the population in matters of electricity will allow to involve a larger number of public organizations in the control of its production, distribution and supply, and therefore guarantee the reliability and stability of such processes.

REFERENCES

1. Ткач Д. К. Сучасний стан паливно-енергетичного комплексу України. *Вчені записки університету «КРОК»*. 2018. Вип. 4. С. 45–51.
2. Майстро С. В., Волошин О. Л. Механізми державного регулювання розвитку альтернативної енергетики: теоретичні підходи до визначення та змісту. *Ефективність державного управління*. 2015. Вип. 43. С. 36–43.
3. Дейна А. Ю. Теоретичні основи статистичного забезпечення регулювання енергонезалежності України. *Економіка і організація управління*. 2017. Вип. 1. С. 160–170.
4. Gesetz zur Steigerung der Energieeffizienz in Deutschland¹ (Energieeffizienzgesetz – EnEfG). URL: <https://www.gesetze-im-internet.de/eneffg/EnEfG.pdf>
5. Дороніна І. І. Нормативно-правове забезпечення розвитку відновлюваної енергетики в Україні. *Механізми державного управління*, 2020. № 1 (44). С. 31–43.
6. Легеза Ю., Пушкіна О., Паутов Г. Використання сонячної енергії як напрям забезпечення вимог життєздатності населених пунктів: нормативно-правовий аспект. *Law. State. Technology*. 2022. № 3, 3–8. doi: 10.32782/LST/2022-3-1
7. Миколаєць Д. А. Концепція оптимізації адміністративно-правового регулювання відносин у сфері електроенергетики в умовах євроінтеграції України: дисертація на здобуття наукового ступеня доктора юридичних наук за спеціальністю 12.00.07 – адміністративне право і процес; фінансове право; інформаційне право. Київ : ПрАТ «ВНЗ «Міжрегіональна Академія управління персоналом», 2023. 467 с.
8. Про схвалення Енергетичної стратегії України на період до 2035 року «Безпека, енергоефективність, конкурентоспроможність» : Розпорядження Кабінету Міністрів від 18.08.2017 № 605-р. *Урядовий кур'єр*. 2017. № 167.