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Issues on the Definition of Administrative-Legal System of Principles for Regulation of Natural Monopoly Subjects' Activities in the Sector of Electric Power Engineering in Ukraine

*W sprawie określenia systemu zasad regulacji
administracyjno-prawnej działalności podmiotów monopoli
naturalnych w sektorze energii elektrycznej Ukrainy*

Statement on the problem. Recently, the crisis situation in the Ukrainian economy has led to many problems in various spheres of lifetime activity, concerning both the state itself and society in the whole. The electricity industry has not remained an exception.

The urgency of determining the content of the principles on administrative and legal regulation of natural monopoly entities' activities in electricity sector of Ukrainian economy is explained by the necessity of regulated competition on the electricity market, as well as by preventing corruption and other negative consequences of monopoly in the economy, bearing in mind the increase of investment attractiveness in this kind of national economy industry. The opinion of

Taras V. Bolotsky should be agreed with, emphasizing that “the most important function of state regulation of electricity on the market economy is subject to the state regulation of prices. The basic principle of this regulation is to be the income guarantee of the enterprise enough for its development”¹.

Valid legislation of Ukraine establishes relevant standards that determine the degree of suitability of electricity for its intended use, and minimal requirements for the provision of services in the field of electricity, bearing in mind the direction of activity of the authorized bodies of state power, as well as the content of state policy in the specified sphere of administrative and legal regulation. Therefore, the question of defining a system of principles for administrative and legal regulation of subjects of natural monopolies’ activity in the electricity sector of Ukraine remains quite relevant.

Review on recent scientific research. State regulation of subjects of natural monopoly entities’ activities has been under consideration in the works of such domestic scientists like V.B. Averyanov, A.I. Berlach, I.P. Golosnichenko, V.K. Kolpakov, A.V. Kuzmenko, E.P. Riabchenko, and others. At the same time, various aspects of the administrative and legal regulation of natural monopoly entities’ activities in the field of electricity in Ukraine have been investigated by I.A. Anokhin, G.I. Baliuk, M.S. Blokhin, Yu.V. Vashchenko, M.A. Kordiukova, P.G. Lakhno, P.C. Melnyk, E.V. Petrov, Yu.S. Shemshuchenko, P.A. Yakovlev, etc.

It should be emphasized that the analysis of scientific, educational, methodological and reference literature manifests that at present day the question of defining the system of principles for administrative and legal regulation of subjects of natural monopolies’ activities in the sector of the electric power industry of Ukraine has been examined fragmentarily, within the framework of a wide administrative and legal issue.

The main purpose of this article is to analyze scientific views of different scholars, valid legislation regarding the definition of a system of principles for administrative and legal regulation of natural monopoly entities’ activities in the field of electric energetics in Ukraine.

The main material. Proceeding to investigation of the subject, we would like to note that the analysis of the principles of administrative and legal regulation of natural monopolies activities in the field of electricity is essential for both the theory and the practice, as far as just the principles of any activity indicate the most important determinations in their content, along with stability of state-legal relations in the process of its implementation.

¹ T. Bolotsky, *Principles and methods of state regulation and control within the electric power industry*, “Bulletin of the Institute of Economic Research” 2019, vol. 2(14), pp. 42–50.

Analyzing state provisions on the administrative and legal regulation of natural monopolies in the field of electric power engineering, we consider the study on the fundamental ideas and basic provisions of their implementation process to be sufficiently justified. In its turn, the proper definition and characterization of the principles for anti-crisis management depends to a large extent upon the efficiency of further public activity implementation. That is why the purpose of this scientific work is to distinguish the principles of administrative and legal regulation of natural monopolies activities right by the state, along with determining their place in the system of general principles of public administration. Professor Oleksandr M. Bandurka investigating the principles of activity, notes that this category is being the basic one, so that is why the principles are defined as the fundamental rules, guidelines, norms of activity for the system, and general processes management². Through the process of activities implementation like rulemaking, law enforcement, etc., the principles function as guiding initial inceptions, on which all specific legal acts, all legal actions of public administration bodies and officials are based. The principles also act as legal requirements (e.g., the principle of legality, the principle of priority of human and citizen's rights and freedoms, or the principle of ensuring personal security, etc.)³.

As Vladyslav I. Teremetsky points out, the principles of administrative and legal regulation should be named the basic rules and regulations established in the constitutional, physical laws and relevant normative acts, which serve as foundation for rulemaking in a specific sphere of social relations, guarantee its logic, sequence, consistency, and balance; reflect the most essential features and purposefulness of the country's activity; play the role of the main orientations within the formation of legal system; ensure the interconnection of the law system, legislation and public policy, promote abolition of the obsolete legal norms and adoption of new ones, etc.⁴.

Consequently, Professor Oksana V. Kuzmenko notes that the principles form a structural conglomerate that forms ideological basis for activities of the public administration and its officials in meeting public interests. The researcher has systematically analyzed the principles of various administrative proceedings and referred to them as administrative procedural principles⁵. Principles are the leading category in the administrative law in all continental European countries.

² O. Bandurka, *Management within the Internal Affairs Authorities of Ukraine*, Kharkiv 1998, p. 32.

³ O. Sytnichenko, *Administrative and Legal Principles the Internal Affairs Authorities as for Secure the Sanitary and Epidemic Well-Being of the Population of Ukraine*, Kyiv 2014, p. 84.

⁴ V. Teremetsky, *The principles and functions of administrative-legal regulation of taxation relationships*, "Law and Security" 2011, vol. 4(41), pp. 92–97.

⁵ O. Kuzmenko, *Theoretical Grounds for Administrative Process*, Kyiv 2005, p. 351.

In these principles, the content of law has been revealed in deep: they directly manifest the essence of law, its basis, regularity of social life, trends and needs. Within the Theory of Law, the principles of law are meant as the most general and stable requirements that contribute to the establishment and protection of public values; they determine the nature of law and the direction of its further development⁶.

As Alla A. Pukhtetska notes, the etymological aspect in understanding the concept of “principle” allows us to reveal the meaning of this category, which has been used since the Middle Ages, derived from the ancient French language word *principe* and from the Latin *principium*, which, in turn are derived from Latin *princeps* (“leader”, “emperor”)⁷. Exploring the category of principles, Professor Roman S. Melnyk emphasizes precisely on the principles of administrative law and accentuates that they constitute a certain combination of rules, ideas and theories that are laid as foundation for administrative law. The principles of administrative law, as the author continues, are not a constant; they evolve along with the development of administrative law. Although sometimes the principles of administrative law can surpass the development of administrative law. The principles of administrative law occupy a dominating position with regard to the rules of administrative law. They are a kind of mega-norms, on the basis of which “ordinary” rules of administrative law should develop⁸.

In this regard it should be appropriate to emphasize that the majority of scientists agree with the division of the principles for administrative and legal regulation into general (inherent to the entire system of state regulation) and special ones (reflecting characteristic features of state regulation in some particular spheres)⁹. Objectivity, universality, democracy, legality, distribution of powers, delegation of powers, social orientation, principle of optimization of management, competition, principle of complexity, controllability, publicity can be referred to as the general principles of administrative and legal regulation¹⁰.

The above-mentioned provisions are related to the implementation of administrative and legal regulation within the majority of public relations in the fields

⁶ O. Petrishin, S. Pogrebniak, V. Smorodinski, *Theory of State and Law*, Kharkiv 2015, p. 368.

⁷ A. Pukhtetska, *Principles of Administrative Law: Administrative Law and Legal Integration Aspects on Content and Practice of Application*, Kyiv–Kharkiv 2016, p. 443.

⁸ R. Melnik, V. Bevzenko, *Common Administrative Law*, Kyiv 2014, p. 376.

⁹ O. Zaychuk, *Legal principles in the context of theory of law and state development*, “The Almanac of Law” 2012, no. 3, pp. 22–28; T. Gurzhii, *Public consultations in Ukraine: Topical legal issues*, “Rocznik Administracji Publicznej” 2017, no. 3, pp. 309–318; T. Gurzhii, A. Gurzhii, V. Seliukov, *Public administration of personal data protection in modern Ukraine*, “Political Sciences” 2018, vol. 21(2), pp. 138–140.

¹⁰ O. Riabchenko, *State and Economy: Administrative and Legal Aspects of Cooperation*, Kharkiv 1999, p. 304.

of labor and social policy, education and science, health care, law enforcement, national security, etc.

The principles of priority of the rights and freedoms of the individual and the citizen are distinguished as general ones, also including the principle of equality of citizens before the law; the principle of democratic rulemaking and the exercise of law; the principle of mutual responsibility of the state and the person; the principle of humanism and justice in the relationship between the state and individual¹¹. Regarding the theory of administrative law, there are some other groups of principles of administrative and legal regulation, which we represent as follows:

- structurally purposeful (coherent within the goals of state influence on public relations by the basic parameters; complementarity mutual goals in which one purpose contributes to another; subordination of private, local purposes to general goals),

- structural and functional (differentiation and fixation of functions through the issuance of legal acts and consolidation of management functions within the competence of state authorities; concentration, which stipulates the necessity for provision to a certain body particular administrative functions so that its governmental influence could really direct their actions, organize and regulate managerial objects; combining; corresponding to various management requests of the latter in number and content; regulatory impact on the real requirements and demands of regulatory entities),

- structural-organizational (unity of the system of state power, which ensures the integrity, coherence and effectiveness of state-administrative processes; diversity of organizational ties, which reveal the vertical and horizontal organizational relationships of public authorities and local self-government in the system of regulation of public relations; the collegiality and unity of command caused by specific organizational structure and procedure of activities for performing administrative regulation),

- structural and procedural (correspondence of elements [methods, forms, stages] of regulatory activity of public authorities to their functions; concretization of regulatory activity and personal responsibility for the results; stimulation of rational and effective activity through the implementation of administrative and legal regulation)¹².

It should be noted that all the principles listed above are, to a greater or lesser extent, inherent in the process of functioning for anti-crisis administrative and legal regulation of the economy. Nevertheless, pointing to the fundamental ide-

¹¹ V. Averyanov, *Administrative Law of Ukraine*, vol. 1, Kyiv 2004, p. 584.

¹² S. Kivalov, L. Bila, *Administrative Law of Ukraine*, Odessa 2002, p. 312.

as of implementation of such a regulation, we would like to affirm that they are characterized by significant features and, as a consequence, they require more detailed study.

Carrying out a detailed analysis of scientific approaches to defining the content of the concept of *principles*, we have to note that the principles of administrative and legal regulation of the natural monopolies' activities in the field of electricity should be understood as the basic ideas that reflect patterns in public administration being related to the process of public relations regulations, emerging activities of the authorized bodies of public administration that ensure regulatory management, monitoring, licensing and control after business activity entities in the sector of electric energy production.

Defining the system of principles on the basis of administrative and legal regulation of natural monopoly entities' activities in the field of electricity, the proceedings should be carried out initially from the positions as follows. First, the administrative and legal regulation of natural monopoly entities' activities in the field of electricity as for its content is state-administrative, organizational-managerial, executively functional activity and, therefore, its principles must comply with the principles of the state administration. Second, the administrative and legal regulation of natural monopoly entities' activities in the field of electric power is an integral part of the activity of public administration authorities. Third, the mechanism for administrative and legal regulation of natural monopoly entities' activities in the field of electric power has certain features that distinguish it from other types of regulation, and therefore the relevant principles should be formulated in such a way as to take into consideration these features (for example, through implementation of licensing power activities or the implementation of supervisory power in the field of electricity).

The study of legislation system shows that there is no single unanimous approach to establishing the system of principles on state regulation in the field of electricity energetics. For example, in the Law of Ukraine "On the Electric Energy Market", the legislator exclusively defined the principles of functioning of the electricity market (Art. 3 of the Law) and some particular principles of activity of the subjects of power authorities in this sphere (Art. 2, par. 12 of the above mentioned Law).

At the same time, the Law of Ukraine "On Natural Monopolies" consolidates the basic principles of state regulation of natural monopolies subjects' activity (Art. 9), which include: publicity and openness of regulatory procedures; targeted regulation, its focus on specific subject of natural monopoly; self-sufficiency of subjects of natural monopolies; stimulation of the improvement in terms of the quality of goods and satisfaction of demand for them; protection of consumer rights; increase of efficiency of natural monopolies subjects' functioning and

activity of managerial subjects on the adjacent markets in the field of combined production of electric and thermal energy through the way of application of stimulating regulation¹³.

At the same time, the norms of Art. 4 of the Law of Ukraine “On the National Commission for State Regulation in the Field of Energy and Public Utilities” establishes the basic principles of the National Commission activity, that are as follows: legality; self-sufficiency and independence; competence; efficiency; justice; predictability and timeliness of decision making; targeting of regulation; impartiality and objectivity in decision making; openness and transparency, clearness of the state regulation process; non-discrimination; responsibility for decisions made¹⁴.

However, in the Law of Ukraine “On the Basic Principles of State Supervision (Control) in the Field of Business Activity” completely different principles of state supervision (control) are consolidated, including: priority of safety in matters of human life and health, functioning and development of society, environmental and vital activities concerning any kind of interests and goals in the field of economic activity; control and accountability of the state supervision authority (control) to the relevant bodies of state power; equality of rights and legitimate interests of all economic entities; safeguarding the rights and legitimate interests of each entity; implementation of state supervision (control) only if there are grounds for and in the manner specified by the law; non-interference into state supervision (control) authority within the activity of the business entity, if it is carried out through the framework of the law; the responsibility of the state observation (control) authority and its officials for the damage caused to the business entity as a result of violation of the legislation requirements, violation of the rights and legitimate interests of the enterprise; the presumption of the lawfulness of the enterprise in the event that the norm of law or other normative legal act issued on the basis of the law, or if the norms of different laws or different legal acts allow ambiguous (multiple) interpretation of the rights and obligations of the entity and/or the authority of the state body supervision (control)¹⁵.

The above-mentioned indicates the absence of systematic approach to consolidating the principles of administrative and legal regulation of natural monopolies’ activities in the electric power industry. The analysis of normative legal acts shows that up to date, the legislating authorities have fixed the principles in some

¹³ The Law of Ukraine “On Natural Monopolies” of 20 April 2000, Verkhovna Rada of Ukraine 2000, no. 30, Art. 238.

¹⁴ The Law of Ukraine “On National Commission Executing State Regulation in the Field of Energy and Utility Services” of 22 September 2016, Verkhovna Rada of Ukraine 2016, no. 51, Art. 833.

¹⁵ The Law of Ukraine “On the Main Principles of the of State Observation (Control) in the Sphere of Business Activity” of 5 April 2007, Verkhovna Rada of Ukraine 2007, no. 29, Art. 389.

particular areas of regulation in this sphere, applied without proper systematic and science-based approach¹⁶. In our opinion, such a situation may complicate law enforcement practice because it is not clear, which system of principles is necessary to apply.

As we have already noted, several certain attempts to determine the principles of administrative regulation were made within scientific investigations¹⁷. However, up to the present day, there are no special scientific studies dedicated to research issues. Basing on these grounds, it should be noted that the modern system of principles of administrative regulation in the electric power engineering of Ukraine should be focused on the formation and the use of investment potential within this industry. Taking into consideration the existing European integration processes and national priorities for development of the electric power industry of Ukraine, the following main groups of principles can be distinguished.

The first group of principles are general legal principles, which comprehensively are to include the following: the rule of law; legality, priority of human and civil rights; observance of lawful interests among legal entities.

The second group should include organizational and managerial principles, namely: predictability and timeliness of decision-making; external and internal interaction; publicity of the state regulation process; competence; non-discrimination, responsibility for decisions made; interdependence of the regulator with a business entity operating in the fields of electric energetics and consumers.

The third group consists of organizational and functional principles, in particular: the effective operation of public administration bodies; participation of citizens and their associations in administrative legal regulation; social orientation; targeted regulation, focus on a specific subject of natural monopoly; objectivity in decision making.

The fourth group of principles consists of economic principles, in particular: self-sufficiency of subjects of natural monopolies; stimulation on improving the quality of services; ensuring consumer protection; increasing the efficiency of natural monopolies' functioning within the electric power industry; increase in investment resources of the electric power industry due to budgetary and extra-budgetary sources, financial resources of private domestic and foreign capital; regulated distribution of preferential investments for individual projects

¹⁶ A. Berlach, L. Deshko, O. Radyshvska, *State audits in modern Ukraine: Issues, challenges, perspectives*, "Public Policy and Administration" 2019, vol. 2(18), pp. 281–298.

¹⁷ V. Galunko, P. Dikhtiyevskiy, O. Kuzmenko, S. Stetsenko et al., *Administrative Law of Ukraine*, Kherson 2018, p. 446; A. Berlach, *Administrative Law of Ukraine*, Kyiv 2005, p. 472; eadem, *Principles of legal enforcement in the context of administrative reform in Ukraine*, "Crimean Legal Newsletter" 2008, vol. 1(2), pp. 10–14; O. Kuzmenko, *The Course of Administrative Law of Ukraine*, Kyiv 2018, p. 904.

of electric power enterprises; increase in investment security of electric power enterprises (including enterprises located in certain areas of Donetsk and Lugansk regions).

It is important to emphasize that the implementation of this system of principles should be based on combination of the powers of public administration bodies determined by the norms of the Constitution of Ukraine and on high level of their responsibility; highly trained personnel potential in terms of a wide range of issues of general public administration (including the issues of particular administrative and legal regulation in the electric power industry) and high-quality scientific and methodological support for their preparation.

At this point, it would be appropriate to emphasize that these principles play an important role in implementation of administrative and legal regulation of natural monopolies' activities in the field of electricity, since they lay down fundamental provisions that are reflected in the process of such regulation and its results. Along with the general fundamental ideas of administrative and legal regulation, it is also necessary to take into account special principles, namely: the principle of constant readiness for possible disturbance of economic balance. In their own system these principles allow public authorities to act most effectively in the field of electric engineering in Ukraine.

Therefore, regarding the mentioned above, we consider it appropriate to supply the Law of Ukraine "On the Electric Energy Market" with Art. 3-1 "Principles of State Regulation of Natural Monopolies Activities in the Electric Power Sector". The results of a sociological survey show that the majority of respondents (71%) note that normative consolidation and application of this system of principles will ensure balance with regard to the interests of producers and suppliers of energy, consumers and society in general, as well as the entire economic system of the country.

As for the results of applied analysis, it can be concluded that Ukraine has established the system of administrative and legal regulation of natural monopolies' activities within the electric power industry, which allows solving assignments consolidated through the legislation. At the same time, the foundation for this system is a certain circle of both generally-legal and special (economic, organizational and managerial, organizational and functional) principles of administrative regulation in the field of electric power engineering.

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Abstract: The article deals with the analysis of modern scientific views on determining the content of the principles for legal regulation development. In particular, the author investigates issues of administrative and legal regulation of natural monopoly entities activity in the field of electric power engineering in Ukraine. This way of author's approach can be explained by the peculiarities of relations in the sector of electric energy production in Ukraine. These peculiarities include: the necessity to regulate competition on electricity market, prevention of corruption and other negative consequences of the monopoly, as well as the increasing of investment attractiveness in the electric power sector. The author shows that the relevance of this research is determined by the dynamic development of legislation within this industry along with conditions of legal relations in the field of electricity, in particular, the launch of new entities into the electricity market. There it is shown that the current legislation of Ukraine defines the relevant standards of functioning of the electricity market, concerning general approaches to the content of state policy in this sector of economy. At the same time, it was emphasized that the system of principles for administrative and legal regulation of the subjects of natural monopolies activity in the field of electricity is subject to further investigation. The content of sectoral legislation governing the electricity sector and anti-monopoly one that defines legal status of natural monopoly entities are analyzed in detail. It is shown that at present time the authorities that are to legislate these principles have established them just in some certain areas of administrative and legal regulation in this field without proper systematic and scientifically grounded approach. According to the author's idea, such a situation may complicate the law enforcement practice, since the question of the application of a particular system of principles remains dim. The author has formulated the conclusion on the need for improvement of sectoral legislation, which would ensure balance of interests between manufacturers and consumers of electricity, taking into account the whole economic system of the country.

Keywords: administrative and legal regulation; public administration authorities; principles; theory; practice; natural monopolies, electric energetics

Streszczenie: W artykule analizie poddano kwestie regulacji administracyjno-prawnej działalności podmiotów monopoli naturalnych w sektorze energii elektrycznej Ukrainy. Podejście autorki podyktowane jest cechami szczegółowymi stosunków prawnych w dziedzinie elektroenergetyki. Zaliczono do nich konieczność regulacji ochrony konkurencji na rynku elektroenergetyki oraz zapobiegania korupcji i innych negatywnych zjawisk towarzyszących funkcjonowaniu monopoli naturalnych, a także wzrost atrakcyjności inwestycyjnej sektora elektroenergetyki. Zdaniem autorki konieczność tego typu badania uwarunkowana jest dynamicznym rozwojem ustawodawstwa administracyjnego oraz stanem stosunków prawnych w dziedzinie elektroenergetyki, w szczególności pojawieniem się nowych podmiotów na rynku elektroenergetyki. Ustalono, że obowiązujące ustawodawstwo Ukrainy określa odpowiednie standardy funkcjonowania rynku energii elektrycznej w zakresie ogólnych podejść do polityki publicznej w tej dziedzinie gospodarki. Jednocześnie podkreślono, że system zasad regulacji administracyjno-prawnej działalności podmiotów monopoli naturalnych w sektorze energii elektrycznej wymaga dalszych badań, mimo że w niniejszym artykule dość szczegółowo zostało przeanalizowane ustawodawstwo administracyjne regulujące dziedzinę elektroenergetyki oraz ustawodawstwo antymonopolowe, określające status prawny podmiotów monopoli naturalnego. W ocenie autorki obecnie ustawodawca utrwalił zasady jedynie poszczególnych kierunków regulacji administracyjno-prawnych w tej sferze, jednak bez odpowiedniego podejścia systemowego. Taka sytuacja może skomplikować praktykę stosowania prawa, ponieważ nie do końca wyjaśnioną pozostaje kwestia zastosowania określonego systemu zasad. Konieczne jest zatem udoskonalenie ustawodawstwa administracyjnego, co zapewni równowagę interesów producentów i konsumentów energii elektrycznej oraz systemu gospodarczego państwa w całości.

Słowa kluczowe: regulacja administracyjno-prawna; administracja publiczna; zasady; teoria; praktyka; monopole naturalne; elektroenergetyka