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DOI <https://doi.org/10.32849/2663-5313/2022.6.12>**Liudmyla Shemetenko,***Judge at the Fifth Administrative Court of Appeal, 19-21 Gagarina Avenue, Odesa, Ukraine, postal code 65039, shemetenkoliudmyla@ukr.net***ORCID:** orcid.org/0000-0001-9964-9147Shemetenko, Liudmyla (2022). Fuel and energy complex as an actor of administrative jurisdiction. *Entrepreneurship, Economy and Law*, 6, 82–86, doi: <https://doi.org/10.32849/2663-5313/2022.6.12>

FUEL AND ENERGY COMPLEX AS AN ACTOR OF ADMINISTRATIVE JURISDICTION

Abstract. Purpose. The purpose of the article is to conduct a study of the fuel and energy complex as a systemic subject of administrative jurisdiction, its individual differences from an individual subject.

Results. A study of the fuel and energy complex as a systemic subject of administrative jurisdiction and its peculiarities from a single such subject was carried out. Its branches, systems and enterprises, which are determined by the subjects of the administrative jurisdiction of the fuel and energy complex, have been established. The administrative jurisdictional activity of its bodies and the specifics and shortcomings of administrative responsibility for administrative offenses in the oil and gas sector are indicated. It is emphasized that in general, the administrative jurisdiction of the system entity is carried out by a significant number of legislative and by-laws, which regulate the sphere of jurisdiction in various aspects and in accordance with the specifics of its activity. **Conclusions.** It was concluded that the administrative powers of the system formation of the subject of administrative jurisdiction are regulated by legal acts of different legal force, including the Code of Ukraine on administrative offenses and separate legislative acts, in various aspects and in accordance with the specifics of the activity. Each separate body of public administration of the subject of administrative jurisdiction has both general powers and principles of activity, as well as specific ones determined by its competence, as well as its own structure and specificity of subordination. The peculiarities of exercising the powers of a subject of public administration, which is a systemic entity, include first of all management activities, close functional connections and direct interaction in achieving a general result, coordination of forms and directions of activity, its adjustment depending on the circumstances of implementation. The activity of subjects of administrative jurisdiction has both an administrative-jurisdictional and an administrative-non-jurisdictional character. Administrative and jurisdictional powers are exercised according to the general principles of special laws and norms of the Code of Ukraine on administrative offenses.

Key words: fuel and energy complex, administrative jurisdiction, oil and gas sphere, main pipeline transport, administrative-jurisdictional proceedings.

1. Introduction

The actors of administrative jurisdiction are state bodies and their officials, local self-government bodies, their internal structural units, which perform administrative-jurisdictional activity and have the appropriate powers related to the decision of cases on administrative violation and execution of administrative proceeding. The administrative jurisdiction of various public administrators has both common and specific features, which are determined by the sector of activity, the purpose and tasks assigned to the state authorities, responsible for implementing them.

Mostly scientists study actors of administrative jurisdiction such as the court and the National Police of Ukraine. Complex system formations, such as agro-industrial complex and fuel-energy complex (FEC), composed of bodies operating

in one field, but have different objective, tasks, functions are not under focus frequently. Therefore, the above-mentioned problem is relevant.

The administrative and legal framework for public policy on the fuel and energy complex is considered by O.Yu. Tkachenko, administrative liability for violations in this field is studied by O.Ye. Kostrbitska, the mechanisms for its public regulation are studied by A.V. Treskov, administrative and legal principles of main pipeline transport are considered by O.A. Onatskyi, crime in fuel energy and ways of its prevention are under focus by B.M. Holovkin, H.Yu. Darnopykh, I.O. Hrystych. Much less attention is paid to the fuel and energy complex as an actor of administrative jurisdiction.

The purpose of the article is to study the fuel and energy complex as a system actor of administrative jurisdiction, some its differences from the single actor.

2. Actors of administrative jurisdiction in the fuel and energy complex

The fuel and energy complex as an actor of administrative jurisdiction is a complex system entity. The researchers define the fuel and energy sector in different ways: as an intersectoral system of energy resources reproduction, the main task of which is to ensure the energy security of the country (Holovkin, Darnopykh, Khrystych, 2013, p. 13); as a field of social relations between economic entities, whose activity is connected with exploration, mining, refining, production, storage, transportation, transfer, distribution, trade, marketing or sale, use of energy products (energy carriers) (Tkachenko, 2016, p. 243); as a complex sector of the economy regulated by law and consisting of structural interdependent parts such as electric power, coal and oil, gas, which meet (extract, produce and supply) public needs of fuel and energy resources (Kostrubitska, 2010). In our opinion, differences in definitions depend on the meaning, broad or narrow, in which it is considered and what features scientists consider to be the most significant.

The fuel and energy complex is divided into branches, systems and enterprises:

1) Extraction: coal mining, oil extraction, gas extraction, extraction of peat and shale, uranium and other nuclear materials;

2) Conversion (refining): coal refining, oil refining, gas refining, peat and shale refining; electric power engineering, nuclear power engineering boiler facilities, local energy sources;

3) Transportation and distribution: transportation of coal, peat and shale, oil pipelines and other ways of transportation of oil and oil products, gas pipelines, transportation of gas tanks, electric networks, including high-voltage power transmission lines and low-voltage distribution power networks, steam and heat pipelines, pipelines of local energy carriers, gas cylinders;

4) Consumption and use: they are present in all fields and at all levels of economy of the country; aimed at providing technological, sanitary-and-technical, and communal-household needs. The energy consumption and use include the industrial energy, transport energy, agriculture energy, communal energy, etc. (Holovkin, Darnopykh, Khrystych, 2013, p. 13).

Each of these sub-systems of the fuel and energy complex has its structure and specificity of subordination, but they are closely connected with each other vertically and horizontally, endowed with certain competence and powers, including the administrative liability for offenses in the fuel and energy complex.

The actors of administrative jurisdiction directly in the fuel and energy complex

are: the Ministry of Fuel and Energy, which is the main body in the system of central executive bodies to make public policy in the power, nuclear, industrial and oil and gas complexes; the State Agency on Energy Efficiency and Energy Saving of Ukraine; State Agency for Investments and National Projects of Ukraine, State Nuclear Regulatory Inspectorate of Ukraine; National Energy and Utilities Regulatory Commission (NEURC), State Inspectorate for Energy Supervision of Ukraine, their heads and officials, and other the executive authorities of the FEC with the appropriate administrative and jurisdictional powers.

For example, the NEURC establishes fines, administrative penalties, and sanctions to officials for violations of the law in the form of: 1) caution and/or warning about the need to eliminate violations; 2) imposition of a fine; 3) suspension of the license; 4) revocation of the license (Law of Ukraine On the National Energy and Utilities Regulatory Commission, 2016). Administrative activity of jurisdictional actors of public policy in the fuel and energy sector of Ukraine, for example, the NEURC: 1) is made at four stages within jurisdictional proceedings according to the procedure; 2) results in a law-enforcement regulation (resolution on administrative penalty) (Tkachenko, 2016, p. 243).

Executive authorities, competence thereof includes the administrative jurisdiction of the fuel and energy complex, is a system of interrelated and interacting public administration entities, responsible for coordination and management of the activities of all subsystems of the mentioned field. It should be noted that the functioning of the fuel and energy complex is specific because there is no organisational unity of its sub-systems, in the present conditions there is even more organisational separation of parts of the fuel and energy complex with formation of local economic units (joint-stock companies) with participation of state capital and capital of administrative-production structures. However, the technological unity of production and consumption of fuel and energy resources requires close information links between different parts of the fuel and energy sector, especially in the power industry. A single system of operational management unites all power-generating facilities regardless of the level of management (power stations, networks, systems, United Energy Systems of the country) and forms of ownership (state, joint-stock, collective, private) (Treskov, 2021, p. 25).

Administrative jurisdictional activity of the bodies of the FEC is provided for in many laws of Ukraine quite fully and thoroughly.

However, the analysis of laws of Ukraine "On natural monopolies", "On the market of natural gas", "On oil and gas" of July 12, 2001, "On pipeline transport", "On licensing of types of economic activity", "On use of nuclear energy and radiation safety" of February 08, 1995, "On heat supply" of June 02, 2005, etc.), regulating the fuel and energy complex, shows shortcomings of definition of administrative and jurisdictional proceedings, which cannot but affect the activity of administrative jurisdiction actors.

Here are some examples. Article 51 of the Law of Ukraine "On oil and gas" establishes liability for violations of legislation regulating activities in the oil and gas sector. This provision lists types of offenses, such as: violation of established safety standards, which threatens the safe life of the population and operating personnel; violation of the guard rules of the oil and gas industry facilities; acts of violence, which impede the performance of official duties by operating personnel and officials of the oil and gas industry facilities; violation of the conditions and rules of activity stipulated by the relevant special permit for the use of oil and gas-bearing subsoils and the agreement on the conditions for the use of oil and gas-bearing subsoils; failure to comply with orders, expert conclusions, prescriptions of bodies which exercise state supervision and control over compliance with the current legislation in the oil and gas industry, as well as interference for performance of official duties by representatives of these bodies (Code of Ukraine on Administrative Offenses, 1984). However, it does not specify persons that shall be responsible for such violations.

It should be noted that the responsibility for administrative violations in the fuel and energy complex has its specificity, in particular, for some violations of the legislation in the oil and gas sector, administrative liability is absent.

In particular, for damage of devices of accounting of oil, gas and products of their refining, creation of interference in performance of works connected with maintenance of objects of oil and gas industry, violation of rules of protection of oil and gas industry facilities, violation of established safety standards, which threatens safe life of population and operating personnel (The Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety recommends that the Parliament support the proposed changes to the Code of Ukraine on Administrative Offenses regarding liability for violations of legislation in the oil and gas sector, 2021).

3. Problems of regulatory mechanism for administrative jurisdiction in the fuel and energy complex

Administrative and jurisdictional proceedings in respect of legal entities in the field of main pipeline transport activity are not regulated enough. The shortcomings of the Law of Ukraine "On pipeline transport" are the unspecified legal nature of the penalties imposed on the enterprises of main pipeline transport; the unregulated procedure for state registration and inventory of main pipelines; incoordination of management bodies in these fields. In most cases, this is made in by-laws and shattered, which leads to uncertainty in a number of issues concerning the terms of the prosecution, the procedure for appealing decisions of the relevant bodies. In this connection, E.A. Onatskyi considers it expedient to develop and adopt a single procedure for administrative and jurisdictional proceedings in respect of legal actors, including legal entities of main pipeline transport (Onatskyi, 2010).

Other legal regulations only specify the right of authorised persons to apply administrative liability to economic entities for violations. For example, Section VI "Responsibility for Violations of the Legislation in the field of Heat Supply" of the General Conditions "On Heat Supply" imposes penalties to be applied by authorised persons to the economic actors for violation. The guilty actions of economic actors are established on ten points, such as for violation of license terms or for production of heat energy, supply of heat energy, parameters of which do not correspond to the approved regulations on heat energy, terms of purchase-sale agreement and others. Cases of fines for violations are considered by the central executive body, which makes public policy on supervision (control) in the field of heat supply, and the state regulatory bodies within their competence and are transferred to the State Budget of Ukraine (Law of Ukraine On Heat Supply, 2005).

There are two administrative-jurisdictional proceedings within activity of the FEC bodies: application of administrative charges to legal entities in accordance with the provisions of the Code of Ukraine on Administrative Offenses; application of administrative charges to legal entities, which is not regulated by the provisions of the CoAO.

Administrative offenses in the field of fuel and energy resources use are established by the CoAO. These are: Article 95 "Violation of the rules and standards of nuclear and radiation safety", Article 98 "Consumption of fuel and energy resources", Article 101 "Violations connected with the use of gas", Article 101-1 "Non-compliance with requirements for efficient use of fuel and energy resources", Article 102 "Violations connected with inefficient opera-

tion of fuel and energy-efficient equipment", Article 103 "Non-readiness for operation of reserve fuel economy", Article 103-2 "Damage of gas pipelines during work". It should be noted that the administrative liability of natural persons is established only by Article 103-2 of the CoAO, other articles establish liability in respect of officials (Article 95 of the CoAO), heads of enterprises, establishments, organisations regardless of the forms of ownership (Article 101-1 of the CoAO), heads, deputy heads, chief engineers, chief power engineers (main mechanics), heads of workshops, heads of administrative and economic services (Article 98 of the CoAO) (Code of Ukraine on Administrative Offenses, 1984). The common features of the penalties are: application of public coercion specifically to the offender, namely, to the responsible officials; material; collected once; carried out during the administrative proceedings.

The FEC is a complex system, and it is regulated by a large number of laws and by-laws, in which the powers of the public administration bodies covered by it are fully and comprehensively established, but there are some shortcomings in the definition of administrative jurisdiction.

In comparison with the single actor of administrative jurisdiction, the FEC fuel and energy complex as a system entity in the appropriate complex has specific characteristics. Comparative analysis of such public administrators has shown that: in general administrative jurisdiction of system-based formation is carried out by a considerable number of laws and by-laws, which regulate the jurisdiction in a diverse way and in accordance

with the specifics of its activity; if the administrative jurisdiction is carried out by a public administrator composed of bodies, then in this case each separate state authority has both general powers and principles of activity, and specific ones, determined by its specific competence; the specificities of the exercise of powers of such a public administrator are direct interaction of public administration bodies in the achievement of the general result, coordination of forms and areas of activity, its adjustment under the conditions of realisation.

4. Conclusions

Therefore, in general, the administrative powers of the system actor of administrative jurisdiction are regulated by legal regulations of different legal forces, including the CAoO and separate legislative acts, variously and in accordance with the specifics of the activity. Each separate public administration body of the administrative jurisdiction actor has both general powers and principles of activity, and specific, conditioned by its competence, as well as its structure and specific subordination. The specificities of the exercise of powers by a public administrator as a system entity are primarily managerial activity, close functional relations, and direct interaction of public administration bodies in the achievement of the general result, coordination of forms and areas of activity, its adjustment under the conditions of realisation. The activity of actors of administrative jurisdiction has both administrative-jurisdictional and administrative and non-jurisdictional character. General principles of special laws and provisions of the CoAO govern administrative and jurisdictional powers.

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Людмила Шеметенко,

суддя, П'ятий апеляційний адміністративний суд, проспект Гагаріна, 19-21, Одеса, Україна, індекс 65039, shemetenkoliudmyla@ukr.net

ORCID: orcid.org/0000-0001-9964-9147

ПАЛИВНО-ЕНЕРГЕТИЧНИЙ КОМПЛЕКС ЯК СУБ'ЄКТ АДМІНІСТРАТИВНОЇ ЮРИСДИКЦІЇ

Анотація. Мета. Метою статті є здійснення дослідження паливно-енергетичного комплексу як системного суб'єкта адміністративної юрисдикції, його окремі відмінності від одноосібного суб'єкта. **Результати.** Здійснено дослідження паливно-енергетичного комплексу як системного суб'єкта адміністративної юрисдикції та його особливості від одноосібного такого суб'єкта. Встановлено його галузі, системи і підприємства, які визначені суб'єктами адміністративної юрисдикції паливно-енергетичного комплексу. Зазначено адміністративну юрисдикційну діяльність його органів та специфіку і недоліки адміністративної відповідальності за адміністративні правопорушення в нафтогазовій сфері. Наголошено, що загалом адміністративна юрисдикція системного утворення здійснюється значною кількістю законодавчих та підзаконних актів, які врегульовують сферу юрисдикції різноаспектно та відповідно до специфіки своєї діяльності. **Висновки.** Зроблено висновок, що адміністративні повноваження системного утворення суб'єкта адміністративної юрисдикції регулюються правовими актами різної юридичної сили, у тому числі Кодексом України про адміністративні правопорушення та окремими законодавчими актами, різноаспектно та відповідно до специфіки діяльності. Кожен окремий орган публічної адміністрації суб'єкта адміністративної юрисдикції має як загальні повноваження та засади діяльності, так і специфічні, зумовлені його компетенцією, а також свою структуру та специфіку підпорядкування. До особливостей здійснення повноважень суб'єкта публічної адміністрації, який є системним утворенням, віднесемо насамперед управлінську діяльність, тісні функціональні зв'язки та безпосередню взаємодію в досягненні загального результату, узгодження форм та напрямів діяльності, її коректування залежно від обставин реалізації. Діяльність суб'єктів адміністративної юрисдикції має як адміністративно-юрисдикційний, так і адміністративно-неюрисдикційний характер. Адміністративно-юрисдикційні повноваження здійснюються за загальними засадами спеціальних законів та нормами Кодексу України про адміністративні правопорушення.

Ключові слова: паливно-енергетичний комплекс, адміністративна юрисдикція, нафтогазова сфера, магістральний трубопровідний транспорт, адміністративно-юрисдикційне провадження.

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