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Бебас С. Окремі аспекти діяльності кримінально-виконавчої системи Польщі. Досліджено принципи та інститути діяльності кримінально-виконавчих установ у Польщі при застосуванні покарання у вигляді позбавлення волі. Розглянуто аспект захисту прав ув'язнених осіб відповідно до європейського права. Карний виконавчий кодекс упроваджує три типи карних установ, що відрізняються ступенем ізоляції, зокрема карні заклади закритого типу, карні заклади напіввідкритого типу, карні заклади відкритого типу. Кара позбавлення волі може бути виконана в трьох системах: програмного впливу, терапевтичному, звичайному. Система програмного впливу означає, що в'язень піддається виправному індивідуальному впливу за такою схемою: пенітенціарна діагностика, пенітенціарний прогноз, індивідуальна програма впливу, періодичні оцінки й кінцева оцінка. У програмах впливу встановлюються безпосередньо види працевлаштування та навчання засудженого, його контакти, передусім із сім'єю й іншими близькими особами, використання вільного часу, можливості виконання обов'язків та інші необхідні заходи для підготовки засуджених до повернення в суспільне життя.

Ключові слова: позбавлення волі, ув'язнений, кримінально-виконавча установа, Польща.

Bebas S. Selected Aspects of the Penitentiary System's Activity in Poland. Principles and institutions of the penitentiary institutions in Poland in the application of imprisonment are investigated. The aspects of prisoners' rights protection according to the European law are considered. Criminal Executive Code introduces three types of penal institutions, according to the different levels of insulation, including closed penal institutions, semi-open type of penal institutions, opened penal institutions. The punishment of imprisonment can be performed in three systems: the program influence, the therapeutic one and the ordinary one. The system of program influence means that the prisoner is subjected to the correctional individual exposure as follows: penitentiary diagnostics, penitentiary prediction, an individual program influence, periodical evaluation and final evaluation.
In programs of influence the types of employment and educating the convict, his contacts with the family and other close persons, using the leisure time, the possibility of performance his duties and other necessary steps to prepare convicts to return to public life are directly installed

Key words: imprisonment, convict, penal institution, Poland.

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Independence of the Regulatory Authority – Legal Aspects

Researched aspect of ensuring the independence of the President of Energy Regulatory Office of the European Union. It is shown that such independence is a guarantee of fair competition and consumer protection in the power and gas markets. The President of the ERO may be in possession of data justifying the sanctions in the case of a threat to a stable supply

Key words: energy and gas markets, governance, regulatory body, the President of the Energy Regulatory Office, the European Union

Formulation of Scientific Problem and its Meaning. One of the underlying directives of the European law pertaining to the achievement of a competitive European energy and gas market, besides the criteria of third party access (TPA) or unbundling, is the independence of the regulatory authority. If ensuring independence is a prerequisite for the achievement of the aforesaid objective, the question remains of what it should consist in. Doubts that may arise are multi-faceted. The most debatable issue is the scope of independence required by the European Union laws as well

as the manner of its employment. Finally, a pivotal question is whether the currently binding regulations actually safeguard this autonomy or merely omit to define the subordination of the regulating authority in terms of official capacity.

The Aim and Tasks of the Article. Last but not least, a question to be raised is the legal status of the President of the Energy Regulatory Office as an administrative governmental body, since the state remains one of the largest proprietors of enterprises in the energy sector.

The authors aim to address the aforesaid questions against the backdrop of the regulations of European Union laws and the domestic laws of the Republic of Poland.

The Basic Material and Justification of the Results of the Study. *Independence as a semantic notion.* Speaking of synonymy, independence is predominantly associated with sovereignty, freedom or autonomy of action [1]. Admittedly, the notion of independence should be perceived in its functional role. Thus, independent means free to choose, both when the choice is made and when the resultant action is taken, whatever its outcome may be (independent choice).

To cast more light of the issue of regulatory authority's independence, a comparison can be made to the judge in a lawsuit. When passing a judgement or making other decisions, the judge is impartial and independent [2]. It means that in his choice the judge utterly observes rules and regulations and relies upon his own life experience [3]. No guidelines will bind him in his choice that may ensue from his official position. What is more, he must not be demoted or recalled from his office as a consequence of his judgement [4].

Certainly, by no means may the rules governing the idea of court's impartiality and independence be transferred to administrative bodies, even if some degree of independence from the superior authority is required for their proper and effective operation. Nevertheless, it seems that considering the function of a regulatory authority in the energy market these rules may be applied accordingly. An administrative body should enjoy the legal position that would guarantee the autonomy of decision-making, i.e. freedom from being extrinsically constrained, save the commonly binding law – acts and regulations. Consequently, it should be deemed to exclude ordinances or circulars, which are the instruments of domestic law.

Another important aspect of regulatory authority's independence is the principle of non-removability from the position if a lawful decision has been made that does not meet the expectations of the state – the owner of the vast share of energy undertakings. It may appear reasonable that this objective be achieved by the enumeration of instances in which the removal from office can take place.

At the same time, being a component of the administrative framework, the regulatory authority would – under the binding law – be obliged to implement governmental policies in a specific province of economy. Against all appearances, autonomy of action and obligation of implementing state policies are not mutually exclusive. In the author's opinion, the development of a regulating system that would allow effective and autonomous regulation of the energy sector and would be capable of embodying state policies in the desired branches is by far workable.

Independence of the regulatory authority according to Directives 2009 / 73 / EC and 2009/72/EC of the European Parliament and of the Council. Directive 2009 / 73 / EC [5] explicitly imposes on the member states the obligation of establishing a national regulatory authority (or authorities) that will be accountable for no less than ensuring non-discrimination, effective competition, functioning and monitoring of the gas market in individual member states. Fundamental condition for the achievement of the objectives is absolute independence of the regulatory authority from the interests of the gas industry [6]. A similar solution is provided by Directive 2009/72/EC [7], which transfers the same responsibilities and competences of the regulatory authority on the energy market. The directive unambiguously provides for the regulatory authority's autonomy from the interests of the electricity industry [8]. It is also visible in the scope of responsibilities of such an authority, including the monitoring of the functioning of the energy market, validation of tariffs and unbundling of accounts with a view to eliminating cross subsidies between generation, transmission, distribution and supply activities [9]. The area of the authority's involvement is not only limited to its enumerated, prospective responsibilities. It encompasses a scope of competences indispensable for ensuring the functioning of a competitive market but on top of that a minimum autonomy of the regulatory authority that permits effective and independent exercise of its duties.

In accordance with Directive 2009 / 72 / EC and the Directive 2009 / 73 EC, one of the most central competences of the regulatory authority is to approve tariffs or the methodologies of their calculation. It primarily concerns the level or methodologies of calculating the rates, prior to their entry into force, for connection and access to networks and the provision of balancing services [10]. A pivotal competence of the

regulatory authority is the control of the effective unbundling of accounts of vertically integrated undertakings in order to eliminate cross subsidies. Doing so, the authority in question de facto assumes the role of a controlling body for the partition of the management in generation, transmission, distribution and sale (supply) [11]. Finally, the regulatory bodies should be eligible to require from transmission and distribution undertakings that they alter the rules of functioning pertaining to, for example, the access of third parties to the networks, if these rules should rule out the equality (proportionality) of all market players and lead to discrimination of some enterprises. In such a case, the regulatory authority has the right to demand the modification of adopted terms and conditions, or mechanisms having adverse effect on market competitiveness [12].

The listed examples of competences of the regulatory authority prove its confirmed influence on the functioning of the energy sector, especially when it comes to the observance of the rules of competitiveness. It often entails the need to restrict the entitlements of the dominant players in the energy market or the need to alter the management and financing structures within individual energy undertakings. Thus, the adequate level of autonomy of the regulatory authority guarantees the effectiveness of its operation. Yet, to achieve this is an arduous process. In particular, when the state's share in the ownership structure of energy undertakings is overwhelming. Therefore, conclusively as it may be, the provisions of Directive 2009 / 72 / EC Directive 2009 / 73 / EC stress the need to separate the regulatory authority's activity from the interests of the energy sector players.

Should such a scenario be implemented, the independence of the regulatory authority would be no more but an infeasible appeal. On the other hand, the implementation of free competition in the energy market – no doubt one of the fundamental must-do's of regulatory endeavours – would be at variance with the interests of energy undertakings primarily owned by the State Treasury represented by a competent minister of economy. In the authors' view, such a condition would be unavoidable even if the ownership supervision were entrusted to another minister responsible for this kind of administration. As a rule, the government executes a uniform state's policy. To transfer the regulation and ownership supervision to separate bodies would eventuate in incoherent or contradictory actions of two entities of the same government subscribing to one strategy of state management. All things considered, an effective, efficient and congruous operation of these bodies would by no means be expedited.

Upon the analysis of the provisions of the Directive 2009 / 72 / EC and the Directive 2009 / 73 / EC, a conclusion to be drawn reveals the legislator's intention to establish national regulatory authorities which would enjoy an adequate level of autonomy, yet within the existing administrative structure. To define the regulatory authorities as administrative bodies was aimed to furnish them with competences to affect the legal position of the energy market entities by unilateral decisions, such as administrative ones. Admittedly, the aim was not to integrate the regulatory entity in the system of superiority and subordination featuring in every administration. This would definitely diminish its autonomy and re-adjust its activity to serve state's interests – certainly not allowing for an extensive competitiveness in the energy market.

The President of the Energy Regulatory Office – the central body of governmental administration. In the authors' opinion, the legal position of the President of the Energy Regulatory Office (ERO) should be viewed in the following contexts. First, their position in the structure of state authorities, second, their powers and third the ultimate object of their designation – all set against the backdrop of the above-discussed provisions of European legislation.

The President of the ERO is a central body of government administration designated with the aim of regulating fuel and energy economy and promoting competitive energy market [13]. Such a definition of the position of the President of the ERO within the system entails a number of consequences. What follows, the president is numbered among the so-called central bodies, or quasi-ministries [14], which comprise a vital element of public administration. This position is attributed to the operation in highly specialized branches and undertaking executive and implementation functions [15]. In principle, however, they are not empowered to shape administrative policies within their own duties. It is traditionally the domain of the head administration, i.e. competent ministers or, less frequently, the Prime Minister. The central bodies chiefly assume the responsibility of restricting, controlling and protection that consists in the production of individual acts, such as administrative decisions. Less frequently, or next to never, they are equipped with the capacity for creating general administrative acts [16].

One of the basic features of the central bodies, characteristic of almost all entities inside this framework, is an adequate degree of autonomy. In spite of the fact that they are ranked lower in the administration structure than the chief bodies (ministers), and because they are obliged to implement the objectives commissioned by those bodies, they enjoy broad independence in their own decisions. In these circumstances, the supervisory functions of the chief bodies are confined to the necessary minimum and, more importantly, often fail to encompass the examination of lawfulness of those bodies' authoritative activities, e.g. administrative decision-making. This function is generally administered by courts – administrative or common, depending on the type of activities. Such a systemic solution for the operation of the chief bodies may – in the authors' opinion – be acknowledged. This view is fully justified. The most noteworthy fact is that, if the central bodies exercise their restricting powers, this invariably entails considerable limitation of civil liberties, for example, economic freedom. Hence, it is more than desired that the legitimacy of decisions taken be assessed by an independent entity from outside the administrative framework – most preferably an independent court. This may guarantee impartiality of settlements made in an appeal or validation proceedings.

The autonomy in decision-making does not yet suffice for utter independence. The superior bodies are or may administer other unofficial enforcement measures toward the central bodies. This is mainly political pressure taking advantage of fairly liberal principles governing the appointment and dismissal of persons in charge of the central bodies. This leads to the condition in which, despite the formal lack of capacity for direct influence on decision-making, a superior body may elect to overcome this impediment, since it has the power to change the person responsible for the functioning of the bodies in question. Hence, in order to achieve a desired degree of independence of a central body, of utmost importance is precise laying down of the rules for holding central offices, especially with regard to the appointment and recall from office.

According to the authors' judgement, the independence of a central body will consist in determining the proper balance between a decision-making autonomy – which does not need to be absolute – and the degree of independence of the body understood as a guarantee (also not absolute) of retaining the office even if the decisions made are unpopular or incompatible with the policy of superior bodies in a broad sense.

The position of the central bodies of government administration within the system may – in most of its aspects – be assigned to the President of the ERO. None of the chief bodies in exercising their superior position is authorized to intervene in the president's decision-making. Furthermore, their decisions are reviewed by District Court in Warsaw – the Consumer and Competition Protection Court [17] – the entity falling outside the administrative structure. A noteworthy fact is that the procedure before the President of the ERO corresponds to the provisions of the Code of Administrative [18], thus the general regulations on administrative jurisdictional procedure. This will promise the observance of the fundamental rights of the parties to a procedure [19] and simultaneously enable them to take an active part in evidence-taking [20]. Yet, the most material fact is that, since the majority of proceedings held before the President of the ERO pertains to the limitation of freedom of conducting economic activity, this body is obliged to conform to the principle of legality [21], also understood as the principle of formal legality. Consequently, the body is compelled to take action exclusively within the confines of the binding law. No transgression of the relevant legal norm is acceptable.

A different facet of president's autonomy, besides the independence in decision-making, is the stability of their position. According to statute, the President of the ERO is appointed from among the candidates participating in an open competition by the Prime Minister as proposed by the competent minister in charge of the economy [22]. Insofar as the method of appointment escapes criticism, for it guarantees the choice of a knowledgeable and experience person, the dismissal procedure leaves much to be desired. There are two decisive factors in this regard.

As noted above, in order to enjoy independence imperative for the proper regulation of the energy market, the President of the ERO should be guaranteed that they will hold the office even is the decisions made do not comply with the government's policy. Surprisingly, the relevant legislation is concise and merely provides that the president is recalled by the Prime Minister [23]. Such a wording of the legal norm necessitates the recourse to general regulations governing the entrance into labour relations by appointment as well as the labour relations in the civil service.

The labour relation by appointment is entered into by the employee under a relevant act issued by an authorized body. Appointment, as in the case of the President of the ERO, may be preceded by a competition in search of the most appropriate candidate. The labour relation, although concluded under a

unilateral act, is a conditional obligation. The appointed persons need to accept the designation and approve the employment terms. A distinguishing feature of appointment is the option of dismissing the employee at any time without providing any justification [24]. Regrettably, particular regulations in this area [25] fail to provide a norm for this issue, which means that the president may be required to resign his position. It appears that from the viewpoint of the function to be performed by this body, a more appropriate approach would be to appoint a person for a term and accept the circumstances of dismissal as provided by law. Otherwise, the autonomy of activities undertaken by the President of the ERO appears impracticable and hypothetical.

The assessment of appropriateness of the legal approach adopted for the position of the President of the ERO in the existing system falls outside an unambiguous conclusion. On the one hand, the President of the ERO is able to act within a specifically defined decision-making autonomy; on the other, the regulations on the appointment and dismissal of the president allow their acting methods and trends to be readily interfered with. For this reason, the idea of amending the position of this body in the system should be open for debate – it can, for example, resemble the solution adopted in the Monetary Policy Council. In this institution, the members are appointed for a term of 6 years and may be recalled only in strictly specified cases [26]. Designated as a collegial body, the council may ensure that, in given circumstances, the most appropriate decisions are taken on the monetary policy of the National Bank of Poland.

Due to the fact that the impact exerted by the energy sector on the economic condition of the country is prevalent and gradually mounting, the authors subscribe to the idea that there are no contraindications for nominating a regulatory body to be a collegial body reporting to the President of the ERO. It would offer a chance of prior achievement of the features inherent to this body, i.e. independence and decision-making autonomy.

Competences of the President of the Energy Regulatory Office. One of the underlying components of the functioning of every administrative body is to determine its ratione materiale competence. It is a catalogue of competences that embrace their powers and obligations. The scope of activity does result from the body's position in the system, yet it also defines it. The standards of competence should be perceived as distinct from the standards of responsibilities that particularize the areas of the body's operation. These regulations may not be the basis for administrative decisions, since they merely define the boundaries of the body's activity [27].

In the case of the President of the ERO, the majority of competence and responsibility standards are laid down in one legal act, contrary to common practice. Consequently, the President of the ERO is obliged to act in the areas of concessions and approval of tariffs, defining corrective coefficients, aligning development plans of energy undertakings, designation of system operators or assigned suppliers [28]. Although this catalogue omits to include the remaining responsibilities of the president, they can be roughly grouped into four basic categories. These are strictly regulatory, supervisory, reporting and consultative functions. This division is not disjunctive, i.e. individual categories may fall within two or more groups. To illustrate the point, one can take the issuing and redeeming of certificates of origin. This competence combines regulatory and supervisory characteristics but also, in a sense, reporting ones.

Regrettably, this study may not afford to contain an in-depth analysis of all the competences of the President of the ERO, therefore the remaining space will treat of two most characteristic privileges of the president, i.e. granting concessions and controlling tariffs.

Concessions are one of the most central regulatory instruments [29]. However, to isolate their distinguishing features, the definition of the notion should be provided in the first place. Concession is one of the traditional forms of restricting business activity and consists in the public authority's consent to a specific activity undertaken by a designated economic entity [30]. Sharing some features with a licence, concession is granted in a limited range, has a different purpose and justification [31]. In other words, concession is a qualified licence where the competent body of the public administration accedes to the conducting – within a specific branch, scope and terms and conditions contained in the regulations and the concession itself – of business activity by the entrepreneur indicated in the concession [32]. The fields under concession are strictly defined by law [33] and generally include the businesses that are strategic for the state. Currently, concessions are required in the following fields of business activity: prospecting and recognizing mineral deposits, extracting minerals from deposits, containerless storage of substances and waste in orogens, including underground mining pits, manufacture and trade in explosives, arms and

ammunition as well as military and police products and technology, manufacture, processing, storage, transmission, distribution and trade in fuels and electricity, protection of persons and property, radio and television broadcasting, air transport, and casino leading [34] – the terms and conditions of conducting a business in the listed fields are provided for in separate statutes. The same applies to concessions for economic activity in the field of energy. The President of the ERO is a body granting concessions to economic activity of generation of fuels or electricity, with the exception of solid or gas fuels [35], generation of electricity using sources of the total capacity of not more than 50 MW other than renewable energy sources or sources generating electricity in cogeneration, generation of heat using the sources of the total capacity of not more than 5 MW. Moreover, concessions are mandatory for the storage of gaseous fuels in storage installations, liquefaction of natural gas and regasification of liquefied natural gas in the installations of liquefied natural gas as well as the storage of liquid fuels, excluding local storage of liquefied gas in installations of the total capacity of not more than 1 MJ/s, and storage of liquid fuels in retail trade. Concessions are also granted to transmission or distribution of fuels or electricity, excluding: the distribution of gaseous fuels in grids of less than 1 MJ/s capacity and the transmission or distribution of heat if the total capacity ordered by customers does not exceed 5 MW. Furthermore, the President of the ERO grants concessions to the trade in fuels or electricity, excluding: the trade in solid fuels, the trade in electricity using installations of voltage lower than 1 kV owned by the customer, the trade in gaseous fuels if their annual turnover value does not exceed the equivalent of EUR 100,000, the trade in liquid gas, if the annual turnover value does not exceed EUR 10,000, and the trade in gaseous fuels and electricity performed on commodity exchanges by brokerage houses which conduct the brokerage activity on the exchange commodities [36].

Laying aside the detailed analysis of the procedure of granting a concession for the listed economic activities, it should be noted that the President of the ERO is authorized to audit business entities both before and after granting the concession. What is more, for the sake of social interest, in this case understood as the safeguarding of an adequate level of energy security, the president may require a business to continue its activity under concession despite its expiry [37].

It transpires that the independence of the regulatory authority, and bearing in mind its empowerment to interfere so deeply in entrepreneurs' freedom, is an essential attribute of efficient operation. In particular, as pointed above, when the state's share in the ownership structure of energy undertakings is considerable.

The other specific competence of the President of the ERO is approval and control of tariffs proposed by the energy undertakings [38]. A tariff is defined as a collection of prices and rates, including the terms and conditions, drawn up by an energy undertaking and launched as applicable to all customers listed therein according to statute [39]. It should be pointed out that the prices concern the commodity, that is, supplied energy, while the rates concern the services provided: transmission and distribution of the commodity [40]. Tariffs are prepared following the guidelines contained in the regulations issued by the competent minister of economy [41]. In principle, they are made up on the basis of the so-called duly substantiated costs, i.e. expenditure incurred for the conducted activity and justified return of capital [42]. Besides other important tariff-specific factors, by approving the proposed prices and rates, the President of the ERO de facto becomes a subject determining the volume of prospective profit of an energy undertaking and by doing so supplants the rules governing free market competition. Also in this situation, the independence of this body is a prerequisite of its effective and rational activity. Isolation from the interests of energy undertakings safeguards the interests of both customers and enterprises (equal treatment). Autonomy in the administrative structure rules out the influence of administrative bodies on the pricing policy favouring state's interests – often not aligned with those of the customers (pressure to reap high benefits from state enterprises).

To conclude the discussion on the independence of the President of the ERO in the context of their competences, it should be stressed that they correspond to this body's position within the system. However, it seems that when it comes to the supervision over the functioning of the market, especially in terms of its impact on the energy security, the regulations defining the competences of the President of the ERO ought to be restated.

According to applicable law, the supervision over the functioning of domestic energy systems fell to the minister competent in economic affairs [43]. It is the chief authority in government administration competent to handle the issues of energy policy [44]. Among the responsibilities, such as the preparation of

draft energy policies and the coordination of their implementation, the drawing up of exhaustive conditions of planning and functioning of fuel and energy supplies as well as the coordination of collaboration with intentional governmental organisations, there is the supervision over the security of gaseous fuels and electricity supply and the control of the functioning of national electricity systems [45]. Regrettably, besides defining law-making capacity, law does not indicate any means to be referred to by the minister in charge of economic affairs in performing the supervisory duties [46]. Moreover, regulations fail to offer a definition of national electricity systems, which may entail certain interpretation obstacles. The analysis of legal regulations pertaining both to the position of the minister of economy and the President of the ERO in the system as well as the assessment of competences shared between these bodies leads to a conclusion that it would be justifiable to entrust the supervision over the security of supply and the functioning of national electricity systems to the latter body. There are two decisive factors in this regard. This body oversees the activity of energy undertakings participating in the market which have been entrusted with the responsibilities in terms of energy security by, for instance, the supervision of conducted business activity [47] or monitoring of the operation of the gas or electricity systems [48].

Conclusions and Perspectives for Further Researchs. The President of the ERO may be in possession of data justifying the sanctions in the case of a threat to a stable supply. Second, the structure of the office (eight branch offices) facilitates the development of a suitable supervision system headed by the President of the ERO and, for instance, covering the responsibility of maintaining the obligatory reserve.

The transfer of the supervision over the supply in gaseous fuels and electricity would not certainly entail the total revocation of the minister's competences in this area. He would retain competences in the drawing up of administrative policies as well as the law-making and controlling functions, exclusive of the supervisory capacity. Consequently, the minister would be the primary body coordinating state's activities for the correct functioning of every facet of the energy market. Still, the undertaken activities should be more of political character, both in the domestic (administrative policies) and international dimension (e.g. the policy for sourcing energy supplies).

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Домагала М. Незалежність регулюючого органу – правові аспекти. Одна з основних директив європейського права, що спрямована на досягнення конкурентного європейського енергетичного й газового ринку, крім засад вільного доступу третьої сторони та справедливого поділу, установлює принцип незалежності регулюючого органу – Президента управління з регулювання енергетики. Дискусійним питанням є сфера його незалежності, а також спосіб забезпечення його функціонування. Ключовим є питання, чи здатні чинні зараз норми права насправді забезпечити його незалежність чи вони лише декларують його непідпорядкованість іншим посадовим особам Європейського Союзу. Складним є питання відносин Президента управління з регулювання енергетики з національними урядами, адже багато держав – це найбільші власники підприємств в енергетичному секторі. Зроблено спробу розв'язати вказані питання на основі дослідження норм права Європейського Союзу й національного законодавства Республіки Польща. Отримано висновок, згідно з яким президент управління з регулювання енергетики може вимагати від урядів інформацію про стан внутрішнього

енергетичного ринку, має право накладати санкції в разі загрози для стабільних поставок носіїв енергії. Передача контролю щодо поставок паливних матеріалів та електроенергії не тягне за собою анулювання загальної компетенції національних міністрів у цій сфері. Вони збережуть повноваження щодо адміністративної політики, а також законотворчої й контрольних функцій.

Ключові слова: енергетичний та газовий ринки, державне управління, регулюючий орган, Президент управління з регулювання енергетики, Європейський Союз.

Домагала М. Независимость регулирующего органа – правовые аспекты. Одна из основных директив Европейского права, направленная на достижение конкурентного европейского энергетического и газового рынка, устанавливает принципы свободного доступа третьей стороны и справедливого разделения, а также независимость регулирующего органа – президента управления по регулированию энергетики. Дискуссионным вопросом является сфера его независимости, а также способ обеспечения его функционирования. Ключевым является вопрос, способны ли действующие сейчас нормы права действительно обеспечить его независимость или они только декларируют его неподчинённость другим должностным лицам Европейского Союза. Сложным является вопрос отношений президента управления по регулированию энергетики с национальными правительствами, ведь многие государства являются наибольшими владельцами предприятий в энергетическом секторе. Авторы делают попытку решить указанные вопросы на основе исследования норм права Европейского Союза и национального законодательства Республики Польша. Сделан вывод, согласно которому президент управления по регулированию энергетики может требовать от правительств информацию о состоянии внутреннего энергетического рынка, вправе налагать санкции в случае угрозы для стабильных поставок носителей энергии. Передача контроля по поставкам топливных материалов и электроэнергии не влечёт за собой аннулирование общей компетенции национальных министров в этой сфере. Они сохраняют полномочия по определению национальной административной политики, а также законотворческую и контрольную функции.

Ключевые слова: энергетический и газовый рынки, государственное управление, регулирующий орган, президент управления по регулированию энергетики, Европейский Союз.

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A. Kunert-Diallo

Szczególne uprawnienia państw w przestrzeni powietrznej – aspekt militarny

W artykule określono regulację użycia obszaru powietrznego w wojskowych celach. Zestawiono zadanie obrony kraju z zasadą suwerenności państw. W przypadku operacji lotniczych, których status jest trudny do zdefiniowania, odpowiednie normy powinny być przyjęte przez społeczność międzynarodową. Zbadano ograniczenia prawne państw w użyciu obszaru powietrznego innych krajów.

Słowa kluczowe: obszar powietrzny, suwerenność, obrona wojskowa, prawo międzynarodowe.

Przedstawienie problemu naukowego i jego znaczenie. *Zasada suwerenności państw w ich przestrzeni powietrznej*. W zakresie korzystania z przestrzeni powietrznej rozciągającej się nad terytorium danego państwa, państwa te posiadają pełną i wyłączną władzę. Władza ta polega przede wszystkim na ustalaniu reguł w zakresie korzystania z przestrzeni powietrznej zarówno przez własne, jak i przez obce statki powietrzne.

Treść główna i uzasadnienie wyników badania. Artykuł 1 Konwencji o międzynarodowym lotnictwie cywilnym potwierdza tę zasadę i stanowi, że państwa konwencji uznają całkowitą i wyłączną suwerenność państw w przestrzeni powietrznej nad swoim terytorium [1]. Niekiedy zdarza się, że prawa wynikające z tej władzy ograniczone są na gruncie przyjętych zobowiązań międzynarodowych. Ponadto, jak słusznie zauważył Milde, zasada suwerenności państw nie może być rozpatrywana w oderwaniu od innych reguł wynikających z międzynarodowego prawa publicznego, w tym w szczególności powinna być interpretowana w zgodzie z Kartą Narodów Zjednoczonych, która w art. 2 formułuje podstawowe prawa państw w obrocie międzynarodowym:

– zasadę suwerennej równości;

– wykonywanie zobowiązań międzynarodowych w dobrej wierze;