NATURAL GAS SUPPLY CONTRACT: ENERGY RIGHTS

Abstract. Energy is one of the Ukrainian economy’s strategic sectors whose functioning and development is vital for most aspects of social life and public welfare. Additionally, energy consumers are the key parts of the ensuring process in the energy security among European continents.

The natural gas market is a fundamental natural resource component of the functioning of Ukraine as an industrialized state with the established interaction of market entities with domestic gas consumers for the supply of natural gas. The relevant interaction is based on contractual regulation with certain characteristic features inherent in the legal field of the gas market in Ukraine.

The article is devoted to the analysis of the legal acts of consumer rights in the field of energy in accordance with Ukrainian and European legislation and their consolidation in natural gas supply contracts, the main conflicts and legal challenges faced by the legislator for the protection of consumer rights are investigated.

Nowadays, Ukraine is a party to the Treaty on the Establishment of the Energy Community on the path to joining the European Union, and hopefully, recently will be a member of the "Energy European Union".

The signing of the Ukraine–European Union Association Agreement obliged the government to enforce a range of EU regulations concerning the functioning of the gas market and to ensure the wider consumers’ rights. To achieve this, it is necessary to initiate a billing system based on the calculation of the consumed or transported gas in energy units in the Ukrainian gas market.

It urges better protection of consumers in relation to public utilities, by enhancing clarity and fairness of service conditions, non-discriminatory treatment of consumers, service information, dispute resolution and easing of bills payment. Also, it encourages
competition in energy market through rigorous public procurement mechanisms and competitive negotiations.

**Keywords:** rights, energy, consumers, national legislation, contract, European legislation, energy market, European Union, gas supply contract.

**Problem statement.** Even after the adoption of several EU legislative energy packages, Ukrainian consumers often have difficulty effectively exercising their rights, and therefore the main features of a well-functioning retail energy market are still missing.

**Analysis of recent research and publications.** The issue of energy rights was dealt with by many national and international experts, including, but not exclusively, Gordon Walker, A.M. Ostrovsky, Yu. V. Vashchenko.

**The main aim of article:** to analyze the energy rights guaranteed by European and national legislation and their implementation in the supply gas contract in Ukraine.

**Presentation of the main material.**

Ukraine has successfully implemented several EU legislative packages, but Ukrainian consumers often have difficulties with the effective exercise of their rights.

In this case, the European Consumer Organization analyses the current state of consumer rights in the energy sector and identifies existing gaps and highlights future challenges for European and national legislators as well as for law enforcement bodies.

Among other things, they include:
- energy access is not guaranteed for all EU consumers;
- consumers should receive objective and reliable information about the offers available on the market and be able to compare such offers using independent comparison tools;
- the terms governing the contractual relationship between consumers and suppliers must be transparent and fair. This includes taking specific measures to help consumers understand complex contracts, for example through standardized model contract terms;
- consumers should also be protected from misleading and aggressive marketing practices;
- the single point of contact and the list of consumers established by the Third Energy Package should help consumers access information about their rights in the energy market;
- consumers should be able to evaluate and, if necessary, change their consumption patterns;
- the transition should be easier and faster for consumers (during the transition and renewal or termination of contracts);
- finally, better monitoring of enforcement by national authorities and consumer access to effective remedies in the event of disputes between consumers and service providers is essential to build confidence in the energy sector [1, p.3].

Since autumn 2021, the European Commission has worked on a number of measures to support consumers in the face of high energy prices, building on the recognised need to provide targeted support to reduce energy demand and offer structured assistance to those who need it most. In the winter of 2022/2023, the Commission facilitated the conclusion of a joint declaration on better consumer protection in December 2022 among key stakeholders representing consumers, regulators, suppliers and distributors in the energy sector. In addition, the promotion of members of the European Commission to implement measures such as deferment of payment of bills, protection against disconnection, minimization of unilateral changes to contracts, provision of clear information on natural gas prices and bills, as well as energy saving tips to help consumers in the winter months [2].

To mark World Consumer Day on 15 March 2023, the UN Conference on Trade and Development convened a meeting of experts to explore how countries can better protect the rights of all consumers, especially the most vulnerable, to essential services, including in relation to gas supplies.

As the point of the UN system on competition and consumer protection, the UN Conference on Trade and Development advocates a policy framework to protect consumers' right to energy, making such needs more accessible and accessible to the most vulnerable.

In addition to the general consumer rights guaranteed by EU law, citizens also enjoy several energy-related rights defined at EU level and set out in national law.

The EU law doctrine formulates several principles underlying the Union's energy policy. Moreover, they are considered synonymous with the principles of EU energy law:

- the principle of non-discrimination arising from the general legal principle of non-discrimination and for the energy sector means, first of all, the prohibition of discrimination in the energy market, the prohibition of the inclusion of discriminatory conditions in energy supply agreements, the possibility of "third party access";
- the principle of transparency, which characterizes the transparency of the situation in the domestic energy market, the possibility of obtaining information by consumers about the level of energy prices, as well as the Union's monitoring of energy supplies and transit;
- the principle of non-harm to the environment, reflecting the need to take preventive measures to protect the environment in the implementation of energy supply activities;
- the principle of considering the social factor in energy policy, which requires paying attention to the dependence of unemployment in the energy sector on market conditions, ensuring the safety of workers in the energy sector, increasing the social significance of services of the general economic level [3, p. 70-71].

The rights and obligations of the consumer in Ukraine are determined by the Law of Ukraine "On the Natural Gas Market," the Civil and Commercial Codes of Ukraine, the Rules for the Supply of Natural Gas, other regulatory legal acts, as well as the contract for the supply of natural gas.

According to Article 14 of the Law of Ukraine "On the Natural Gas Market," all consumers are guaranteed the right to choose a supplier. The current supplier does not have the right to establish conditions for termination of the supply contract, which limit the consumer's right to change the supplier [4].

At the same time, the list of consumer rights is not clearly stipulated at the level of legislation and can be expanded at the level of contractual relations between the parties. Among the basic rights enshrined at the level of the law, it is necessary to allocate the right to receive natural gas in the volumes determined by the contract for the supply of natural gas, subject to its conditions, to simultaneously receive natural gas from several suppliers to one point of commercial accounting, to which a separate EIC code is assigned, to receive free information on the supplier's prices for natural gas and the payment procedure, to stop (limitation) of natural gas extraction for own needs in compliance with the requirements of the current legislation, subject to notification of all natural gas market entities with which the relevant agreements and other rights provided for by these Rules and current legislation are concluded [5].

It should be noted that the conditions for the supply of natural gas are established by the contract for the supply of natural gas in accordance with the current legislation. According to the natural gas supply contract, the supplier is obliged to supply the consumer with the volume of natural gas agreed upon by the parties, and the consumer is obliged to receive natural gas from the supplier and pay the cost of natural gas in accordance with the current natural gas supply contract.

The terms of supply of natural gas also include the following essential conditions that should be included in the contract for the supply of natural gas in compliance with the requirements of the Rules for the supply of natural gas: the obligation of the supplier to provide the consumer with all the necessary information regarding the general conditions for the supply of natural gas (including the price), the rights and obligations of the supplier and the consumer, the regulatory legal acts that govern the relationship between the supplier and the consumer, the ways of resolving disputes; the supplier's obligation to provide the consumer free of charge with information on the volumes and other characteristics of natural gas consumption by the relevant consumer; the supplier's obligation to inform the consumer of its intention to change the natural gas supply terms set out in the natural
Gas supply contract before they enter into force, and to give the consumer the right to terminate the natural gas supply contract if the new terms are unacceptable to the consumer; the obligation of the supplier to give the consumer the right to choose the forms of payment for consumed natural in order to avoid discrimination; the supplier's obligation to offer the consumer transparent and accessible means of extrajudicial settlement of disputes with such supplier; give the consumer the right to terminate the Natural Gas Supply Agreement if the new conditions are unacceptable to the consumer [6].

All conditions for the supply of natural gas under the contract must be fair and well known in advance. In any case, all relevant information must be provided to the consumer before the conclusion of the contract.

The consumer should be given proper notice of the supplier's intention to change the terms of the natural gas supply contract, while the consumer should be notified of his right to refuse the proposed changes. Such notification shall be given to the consumer not later than 30 days prior to the planned entry into force of such changes (except for the price of natural gas if it is set for the supplier by the relevant state authorities). Consumers have the right to withdraw from the contract if they do not accept the new conditions notified by the supplier.

The consumer and its supplier have the right to adjust during the calculation period the confirmed volumes of natural gas in accordance with the terms of the natural gas supply agreement. If, according to the results of the settlement period, the actual volume (volume) of natural gas supply to the consumer by its supplier exceeds the confirmed volume of natural gas for this period, the consumer must compensate the supplier for the difference between the confirmed volume of natural gas and the actual volume (volume) of natural gas consumption at the price of the cost of natural gas determined by the contract for the supply of natural gas.

Given the transparency and anti-discrimination of the legislative rules on the regulation of contractual relations for the supply of natural gas, the consumer has the right to conclude a contract for the supply of natural gas with any supplier, provided that there is no overdue debt for the supplied natural gas to the current supplier, for the entire expected volume of natural gas consumption in the calculation period required by the consumer, or by its point of commercial accounting, to which a separate EIC code is assigned.

Despite the approval of the form of a model contract for the supply of natural gas, the legislator in the Rules for the supply of natural gas determines the essential conditions that such a contract should contain, which indicates the lack of freedom of contract between the parties and the ability of the consumer to influence the terms of such a contract.

However, certain conditions, such as setting a price for the relevant supply, are determined by the parties in any order. Although this rule also contains certain restrictions: in 2021, in order to equalize the rights and interests of domestic
consumers, the Regulator established a basic annual offer for gas supply, which is set by the supplier himself and which cannot be increased or changed during the year and concerns the supply of natural gas to domestic consumers.

In relation to access to energy in European Union, the obligation to respect would mean that government action must not undermine existing access to energy. The role of the state in the obligation to protect might include regulating utility companies to ensure they do not hamper access to energy. To uphold the obligation to fulfil the state might establish policy that ensure all citizens have access to a minimum amount of energy, at an affordable cost.

Not surprisingly, the obligation to fulfil is the most difficult. Typically, it implies a positive duty by which the state helps people to exercise their rights. Hesselman highlights cases from Colombia, Bulgaria and Greece that show how action taken by – or on behalf of – individuals, communities and entire countries are leading to a growing body of precedents in which courts have recognised the right to energy. In some instances, the courts have found big players – such as utility companies and governments – at fault for not protecting or fulfilling such rights [7].

In fact, Hesselman finds that Sustainable Development Goal No. 7 (SDG7) – articulating that all humans somehow need ‘universal access to modern, affordable, reliable energy services’ – effectively encapsulates the current reality. It acknowledges the universal need while recognizing that the level of realization of rights is still (unfortunately) very different.

**Conclusions:** energy rights as a condition for the protection of consumers in the field of energy are the basic key to the formation of a legal state. At the same time, the contract for the supply of natural gas in Ukraine currently provides for a very narrow range of consumer rights.

First, this is influenced by the typical form of such a contract and the control of the Regulator. Secondly, the regulatory and legal framework of Ukraine only in the last couple of years began to embody the best principles of energy regulation of consumer rights in the EU countries.

Currently, the implementation of European directives continues with the aim of expanding the energy rights of consumers, eliminating corruption, promoting transparency and anti-discrimination.

Consumers are free to choose a supplier and can conclude a contract for the supply of natural gas with any supplier whose territory of licensed activity covers the location of the consumer's object. However, they must understand that the supplier has the right to refuse the consumer to conclude a contract.

**References:**


