

Public Law Aspects for Undertakings in both Electricity and Gas Industries

The doctoral thesis named “Public Law Aspects for Undertakings in both Electricity and Gas Industries” is focused on bringing a complete view how the public interest is represented in relation to the conduct of enterprise in infrastructural businesses as the sectors of electricity and gas industries concern that are in many ways similar to each other and are also managed by the comparable European law regulation. The public interest, either comes from the European or Czech legal regulations interferes in many different variations and modifications into the energy business. From time to time, legislator emphasizes the partial individual interest (e. g. being part of the constitutional order as in the case of the protection of ownership) in the wording of the Energy Act as well as in the other public law as goods protected by the public law. On the other way, also much more typical general interest is defended to achieve wellbeing of the whole society that is to be preferred to those interests of individuals.

The thesis in question primarily analyses the wording of the Czech Energy Act in not amended version, which has not been modified yet in accordance with the binding European law framework consisted of the so called Winter Energy Package, with the goal to introduce strong as well as weak facets of the analysed legal regulation. The aim of the thesis was mainly to guide each reader through a labyrinth of interpretatively very demanding legal regulation that claims to have, besides the legal education, also the respective technical and economical background to understand correctly the studied regulation. And in such a way, the relevant conclusions could be drawn when using both the methods of logical analysis and international comparison. Secondly, the thesis should discover whether the analysed legal regulation is sufficient to defend effectively the aimed public interest, typically to ensure a universal, faithful and safe supplies of energy to the customers, to respect the fair competition based on the independence of the monopoly energy infrastructural undertakings but also to protect weaker parties in frame of the contractual relations concluded in order to be supplied by electricity or gas. The author carried out the aforementioned analyses of the relevant legal regulations in the case of the duly functioning of the energy infrastructure in a normal state as well as for the occurrence of emergency situations, no matter they were conditioned upon the economical or technical (in)security. In addition, marginal effects of the recent pandemic of Covid-19 disease are evaluated herein.

Results of the author’s effort represent conclusions on which parts of the energy law are as from the regulatory point of view underestimated, therefore, they could also deserve to be affected by an effective stroke made by the legislator. On the other side, superfluous public

regulation has been also discovered. As an example of the former one could be introduced material as well as the processual legal regulation of price for infrastructural undertakings in energy sectors, i. e. concerning the transmission and distribution electricity and gas operators, which does not guarantee mainly in relation to the regulated persons an ownership right when lacking on the setting of the conditions how to regulate as well as taking no regard to determinate specifics of the procedural framework for protecting their economic positions vis-à-vis the regulator (ERO). Similarly, there is not enough regulation for the market and legal positioning of the supplier of last resort as well as for the unique monopoly position of the market operator under the Czech law.

For the latter, non-essential public regulations had been passed by the legislator based chiefly on the later amendments of the Energy Act, following a present political demand for some attractive themes to be solved. These revealed parts of the Energy Act complicate in many result in the misinterpretation of the respective provisions of the Energy Act as they are challenging the basis and tenets of this piece of legislation. Among such attempts one could find some provisions trying to ease the legal conditions for non-business activities within the electricity production using renewables, even though such terms had not been stipulated before as the Energy Act is based on the entrepreneurial principle. Similarly, a permanently changing legal regulation of the protective consumers' provisions specified merely for the energy sectors that could be seen as harming their legal interpretation as well as decreasing a general knowledge of law.

The doctoral thesis introduces consequently an analytical critics of recent wording of the Czech Energy Act in connection to the interrelated legal regulations of the Consumer Protection Act, Civil Code and Competition Act that could not be omitted when interpreting the Energy Act in all its dimensions. Based on that, many recommendations are provided by this thesis in order to stimulate *de lege ferenda* amendments to the current state of energy legislation.

Key words: energy, public interest, public law