
RIGHT TO ACCESS TO MODERN ENERGY SERVICES: INTERNATIONAL DIMENSIONS, NATIONAL APPROACHES AND PERSPECTIVES REGARDING CONSTITUTIONALIZATION IN UKRAINE*

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Annotation. *This paper aims to explore the nature and content of the right to access to modern energy services within the framework of international and national approaches and to determine the perspectives of its constitutionalization in Ukraine.*

An analysis of the right to access to modern energy services access in frames of International Human Rights Law has been provided. Based on the review of International Law sources and theoretical approaches, it has been concluded that the right to access to modern energy services is commonly considered in connection with the right to housing, as a vital condition of its adequate realization. The development of the General Comment of the United Nations Committee on Economic, Social and Cultural rights on the right to modern energy services and its connection with other human rights stipulated by the International Covenant on Economic, Social and Cultural Rights has been suggested.

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Based on the review of national constitutions of several countries it is concluded that the constitutional regulation of the right to decent housing can be defined as a common approach. Thus, the access to energy services can be considered as a part of the abovementioned right. Taking into account the importance of access to modern energy services, in particular, its role in tackling poverty, it is recommended that the right to access to modern energy services, primarily in the developing countries for the purpose of the adequate recognition, fulfilment and protection of this right at the national level be constitutionalized. This right should be recognized as a separate human right or as a separate element of the right to an adequate standard of living (not just as a part of the right to adequate housing). The perspectives of the constitutionalization of the right to modern energy services in Ukraine have been considered. Based on the analysis of the domestic theoretical approaches, Ukrainian legislation and considering that constitutional reform is currently being implemented in Ukraine, it is recommended that the Constitution of Ukraine be amended with provisions on the right to access to modern energy services.

Keywords: Human rights, energy law, right to access to modern energy services, right to an adequate standard of living, constitutionalization

Introduction

It is hard to imagine our present-day life without energy services, primarily without electricity and heat supply. Energy is fundamental to economic growth and environmental sustainability. Access to affordable, reliable and sustainable energy is vital to ending extreme poverty and promoting shared prosperity¹.

The European Parliament stresses that energy supply is a key element for the successful participation of citizens in social and economic life². As J. M. D. Barroso reasonably mentions, without access to sustainable and modern energy services, there can be no real development³.

Currently, one in five people in the world still lacks access to modern electricity; 3 billion people rely on wood, coal, charcoal or animal waste for cooking and heating⁴. In Ukraine, the level of poverty of citizens, according to expert assessments, is

- 1 World Bank. Overview [interactive]. 2016 [accessed 2017-02-11]. <<http://www.worldbank.org/en/topic/energy/overview#1>>.
- 2 European Parliament Resolution of 19 June 2008 on Towards a European Charter on the Rights of Energy Consumers [2008] OJ, CE 286/24.
- 3 BARROSO, J. M. D. Empowering the world: Can Europe bring an end to energy poverty in our lifetime? EU Sustainable Energy For all Summit Brussels [interactive]. 2012 [accessed 2017-02-11]. <http://europa.eu/rapid/press-release_SPEECH-12-262_en.htm>.
- 4 Sustainable development goals: 17 goals to transform our world [interactive]. [accessed 2017-02-10]. <<http://www.un.org/sustainabledevelopment/energy/>>

approximately 40%, while trust in the state policy of housing and communal services tariffs is absent⁵. Many people in Ukraine suffer from a lack of access to modern energy services of adequate quality and for affordable prices.

Therefore, encouragement of the access to modern energy services is one of the most important tasks of the state, and human energy security is one of essential elements of state energy security.

In considering the importance of modern energy services, as well as the current situation with the lack of access to these services for many people all around the world, ensuring access to affordable, reliable, sustainable and modern energy for all was defined by the United Nations among 17 Goals of Sustainable Development of the 2030 Agenda for Sustainable Development (Goal 7)⁶.

Undoubtedly, an access to modern energy services establishes conditions for the efficient realization of the majority of human rights: civil, political, social, economic and cultural. In particular, the realization of the right to an adequate standard of living (including adequate food, clothing and housing), the right to safe working conditions, the right to health, the right to healthy environment, the right to education, and even the right to equality rely on access to modern energy services.

An understanding of the significance of access to modern energy services for the realization of fundamental human rights raises the logical question: Is the right to access to energy services one of today's modern human rights?

U.S. President Barak Obama, during a press conference devoted to visiting President Hu of the People's Republic of China in January 2011, stressed that "I believe part of justice and part of human rights is people being able to make a living and having enough to eat and having shelter and having electricity"⁷. Thus, the access to electricity is considered by B. Obama to be a human right essential for tackling poverty.

Famous scientist V. Solov'ov in his work "The Justification of the Good", written in 1897, used the notion that "the right to a decent human existence", defining the "duty of society to recognize and encourage the right to a decent human existence"⁸. The scholar included food, clothes and housing with heat and a means of living in

5 Shchorichna dopovid' Upovnovagenogo Verkhovnoi Rady Ukra'iny z prav lyudyny pro stan dodergannya ta zahystu prav i svobod lyudyny i gromadyanyna [Annual report of the Ukrainian Parliament Commissioner for Human Rights on state of fulfillment and protection of human rights] [interactive]. 2016 [accessed 2017-02-10]. <<http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=3>>.

6 Sustainable development goals: 17 goals to transform our world [interactive]. [accessed 2017-02-10]. <<http://www.un.org/sustainabledevelopment/energy/>>.

7 Press Conference with President Obama and President Hu of the People's Republic of China [interactive]. 2011 [accessed 2017-01-22]. <<http://www.whitehouse.gov/the-press-office/2011/01/19/press-conference-president-obama-and-president-hu-peoples-republic-china>>.

8 SOLOV'YOV, V. Opravdaniye dobra [Solov'yov, V. The Justification of Good] [interactive]. Moskva, 1897 [accessed 2017-02-01]. <<http://www.litmir.co/br/?b=122661>>.

the content of the abovementioned right. In 1905, another outstanding scientist, P. Novgorodsev, stressed the importance of the legal placement of the right to a decent human existence⁹.

It should be noted that the question regarding the nature of the right to access to energy services (primarily, electricity supply) and its place in the system of human rights has attracted the attention of scholars¹⁰, politicians and practitioners more and more often in recent years.

In particular, the attempts of scientific research devoted to the abovementioned problem and certain proposals on its solutions can be found in the papers of A. J. Bradbrook, J. G. Gardam, M. Cormier¹¹, S. R. Tully¹², D. M. Smolin¹³, A. Pederson¹⁴, and M. P. S. Solis¹⁵.

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- 9 NOVGORODTSEV, P., SOCHINENIYA [NOVGORODTSEV, P., Writings]. Moskva: Raritet, 1995, p. 321.
 - 10 VASHCHENKO, Y. Prava spogyvachiv energii yak prava lyudyny [Vashchenko, Y. Energy consumer rights as human rights]. Problemy ta stan dotrymannya zahysty prav lyudyny v Ukraini: zbirnyk materialiv III Vseukr. nauk.-teoret. konf. Kyiv, 2012. p. 172–173; ANIBAL, A. L. Electric Energy Access in European Law: a Human Right? [interactive]. 2012 [accessed 2017-01-22]. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2008887>; DANIELSEN, K. Gender equality, women's rights and access to energy services: an inspiration paper in the run-up to Rio+20. [interactive]. 2012 [accessed 2017-01-22]. <http://213ou636sh0ptphd141fqe1.wpengine.netdna-cdn.com/gender/wp-content/uploads/publications/1975_Gender%20Rights%20and%20Energy%20Report%20final.pdf>; ISAKOV, I. Osnovnye prinzipy energeticheskogo sotrudnichestva gosudarstv [Isakov, I. The main principles of energy cooperation of states]. Evrazijskiy yuridicheskyy gurnal. 2007, 2: 76–82.
 - 11 BRADBROOK, A. J. Access to energy services in a human rights framework. [interactive]. 2005 [accessed 2017-01-22]. <http://www.un.org/esa/sustdev/sdissues/energy/op/parliamentarian_forum/bradbroom_hr.pdf>; BRADBROOK, A. J., GARDAM, J. G., CORMIER, M. A Human Dimension to the Energy Debate: Access to Modern Energy Services [interactive]. 2015 [accessed 2017-01-22]. <<http://www.tandfonline.com/doi/abs/10.1080/02646811.2008.11435198#.VbDX3Pntmko>>; BRADBROOK, A. J., GARDAM, J. G. Energy and poverty: a proposal to harness international law to advance universal access to modern energy services [interactive]. 2010 [accessed 2017-01-22]. <<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=7638280>>; Bradbrook, A. J., GARDAM, J. G. PLACING Access to Energy Services within a Human Rights Framework [interactive]. 2010 [accessed 2017-01-22]. <http://muse.jhu.edu/journals/human_rights_quarterly/summary/v028/28.2bradbroom.html>.
 - 12 TULLY, S. R. The Contribution of Human Rights to Universal Energy Access. *Northwestern Journal of International Human Rights*. 2006, 4(3): 518–548; TULLY, S. R. Access to Electricity as a Human Right. *Netherlands Quarterly of Human Rights*. 2006, 24(4): 557–587; TULLY, S. R. The Human Right to access electricity. *The Electricity Journal*. 2006, 19(3): 30–39.
 - 13 SMOLIN, D. M. The Paradox of the future in contemporary energy police: a human rights analysis [interactive]. 2009 [accessed 2017_01_22]. <<https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=40+Cumb.+L.+Rev.+135&srctype=smi&srcid=3B15&key=08b3a318211f12c6d8d8f8801c35c77e>>.
 - 14 PEDERSON, A. Financing energy access on the edge of the world [interactive]. [accessed 2017-01-22]. <<http://www.colorado.edu/law/sites/default/files/Vol.21.2.pdf>>.
 - 15 SOLIS, M. P. S. From right to light: a human rights-based approach to universal access to modern

This paper aims to explore the nature and the content of the right to access to modern energy services in frames of international and national approaches and to determine the perspectives of its constitutionalization in Ukraine. The first part deals with the analysis of the right to access to modern energy services in frames of International Human Rights Law. Based on the review of International Law sources and theoretical approaches, it has been concluded that the right to access to modern energy services is commonly considered in connection with the right to housing, as a vital condition of its adequate realization. It is concluded with a recommendation on the development of the General Comment of the United Nations Committee on Economic, Social and Cultural rights on the right to modern energy services and its connection with other human rights stipulated by the International Covenant on Economic, Social and Cultural Rights. The second part provides the analysis of national approaches to the right to access to modern energy services. Based on the review of the national constitutions of certain countries, it has been concluded that the constitutional regulation of the right to decent housing can be defined as a common approach. Thus, access to energy services can be considered as a part of the abovementioned right. The provisions of the Constitution of Switzerland concerning energy access for citizens have been considered to be a good example of constitutional regulation of a state's social obligation regarding the encouragement of access to energy services. The third part is devoted to the perspectives of constitutionalization of the right to modern energy services in Ukraine. Based on the analysis of the domestic theoretical approaches, Ukrainian legislation and considering the current situation of access to energy services in Ukraine, it has been recommended that the Constitution of Ukraine be amended with provisions on the right to access to modern energy services.

This paper's research was carried out on the basis of different methods, in particular, document analysis, systematic and statistical analysis, and comparative, historical and generalization methods.

This paper is based on the speech presented at the International Conference "Protection of Constitutional Rights and Freedoms: Problems and Solutions" that was held by the Mykolas Romeris University and other partners on 28 October 2016 in Vilnius.

1. The right to access to modern energy services in frames of International Human Rights Law

Scientists have paid attention to the importance of adequate legal regulation concerning the right to access to modern energy services at the international level.

In particular, I. Isakov considers the access to electricity to be one of the main principles involved in the energy cooperation of states. He emphasizes that the problem of the existence of such a principle has not been analysed in the theory of international law¹⁶

A. J. Bradbrook considers access to energy services to be an essential condition of sustainable development and tackling poverty, and stresses the importance of its legal placement at the international level¹⁷.

According to Article 22 of the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) everyone, as a member of society, has the right to social security and is entitled to its realization through national effort and international cooperation, and in accordance with the organization and resources of each State, including the economic, social and cultural rights indispensable for his dignity and the free development of his personality¹⁸. Undoubtedly, the adequate realization of the majority of human rights in certain areas is impossible without access to energy services.

In order to define the nature of the right to access to energy services, it is necessary to analyse the provisions of the International Covenant on Economic, Social and Cultural rights (ICESCR)¹⁹. First of all, according to Article 11 of the ICESCR, the States as Parties to the present ICESCR recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. There are no provisions concerning the access to energy services in this Article; however, the scholars logically connect the right to an adequate standard of living with the availability of energy services, primarily electricity supply²⁰.

It should be noted that the Committee on Economic, Social and Cultural rights (CESCR) defines the right to energy access as a part of the right to an adequate standard of living, however, as an element of the right to adequate housing. Thus,

16 ISAKOV, I., p. 76–82.

17 BRADBROOK, A. J., GARDAM, J. G. Placing Access to Energy Services within a Human Rights Framework. [interactive]. 2006 [accessed 2017-01-22]. <http://muse.jhu.edu/journals/human_rights_quarterly/summary/v028/28.2bradbrook.html>.

18 Universal Declaration of Human Rights (adopted by the UN General Assembly on December 10, 1948), 217 A (III).

19 International Covenant on Economic, Social and Cultural Rights (adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI). December 16, 1966). 993 UNTS 3.

20 TULLY, S. R. The Contribution of Human Rights to Universal Energy Access. [interactive]. 2006 [accessed on 2017-01-22]. <<http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1043&context=njihr>>; DANIELSEN, K. Gender equality, women's rights and access to energy services: an inspiration paper in the run-up to Rio+20. [interactive]. 2012 [accessed 2017-01-22]. <http://213ou636sh0ptphd141fqi1.wengine.netdna-cdn.com/gender/wp-content/uploads/publications/1975_Gender%20Rights%20and%20Energy%20Report%20final.pdf>.

according to General Comment of the CESCR No. 4 of 13 December 1991, "Right to adequate housing" (Art.11 (1) ²¹, the right to adequate housing includes a sustainable access to energy for cooking, heating and lighting. Additionally it is stated that steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations identified under Article 11 of the ICESCR.

The same approach is used by the European Committee of Social Rights (ECSR) – the body responsible for the monitoring of the implementation of the provisions outlined in the European Social Charter by the various State Parties. In particular, the ECSR in the Conclusions of 2003 (France) on the fulfilment of Article 31 of the Revised European Social Charter of 3 May, 1996 defines the possession of such basic amenities as heating and electricity as an essential part of the right to adequate housing²².

The recognition of the importance of access to energy services as a vital part of the realization of the right to adequate housing by the UN Committee on Economic, Social and Cultural Rights, as well as by the European Committee of Social Rights is quite important. However, such an approach has been considered to be too narrow. In this context, the recommendation of S. R. Tully to stress the importance of access to electricity in the General Comment regarding the right to an adequate standard of living²³ should be supported. Moreover, it should be stressed that the access to electricity (as the access to modern energy services in general) is not only necessary for the realization of the right to an adequate standard of living. Article 15 of the ICESCR defines the right of everyone to enjoy the benefits of scientific progress and its applications. Undoubtedly, energy production and its use refer to the most important results of scientific progress; it is impossible to imagine further development without them. The efficient realization of other rights defined by the ICESCR depends on access to energy services, in particular, the right to work (Article 6) and the right to favourable conditions at work, including safe and healthy working conditions (Article 7), the right to the highest attainable standard of physical and mental health (Article 12), the right to education (Article 13), the right to take part in cultural life, including the freedom of scientific research and creative activity (Article 15).

The issue of access to energy should also be considered in the context of gender equality and the prevention of discrimination against women. K. Danielsen argues

21 CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) [interactive]. 1991 [accessed 2017-01-22]. <<http://www.refworld.org/docid/47a7079a1.html>>.

22 European Committee of Social Rights: Conclusions 2003 – France – Article 31-1 [interactive]. 2003 [accessed 2017-01-24]. <[http://hudoc.esc.coe.int/eng/#{"ESCArticle":\["31-00-163","31-01-163"\],"ESCDcType":\["CON","FCO"\],"ESCStateParty":\["FRA"\],"ESCDcIdentifier":\["2003/def/FRA/31/1/EN"\]}](http://hudoc.esc.coe.int/eng/#{)>.

23 TULLY, S. R. The Contribution of Human Rights to Universal Energy Access [interactive]. 2006 [accessed 2017-01-22]. <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1043&context=njihr>.

that in developing countries, women are suffering more from energy poverty than men. Without access to modern energy services, she says, women and girls spend most of their days performing basic subsistence tasks, including the time-consuming and physically draining tasks of collecting biomass fuels. She concluded that the unequal relations between genders limit the ability of women to participate and express their energy needs in decision-making at all levels within the energy system²⁴. It should be noted that K. Danielsen considers access to energy services to be a human right, mentioning that individual energy consumers – men and women – are rights-holders who have a legitimate claim on the State as the primary duty bearer to protect, promote and uphold their rights regarding access to basic energy services. Members of the international community, the scholar stresses, also have responsibilities as duty bearers in assisting rights-holders in realizing their energy rights²⁵.

The necessity for the encouragement of access to electricity for women that live in rural areas is stressed in the Convention on the Elimination of All Forms of Discrimination against Women of 19 December 1979. According to Article 14 of the abovementioned Convention, the States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on the basis of the equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity, water supply, transport and communications²⁶.

Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the “Protocol of San Salvador”²⁷, stipulates the right to a healthy environment. The right of everyone concerning access to basic public services is defined as a part of the abovementioned right. Energy services are traditionally considered to be basic public services.

The World Health Organization stresses the importance of the right to adequate housing aimed at the highest attainable standard of health²⁸. Considering the appro-

24 DANIELSEN, K. Gender equality, women’s rights and access to energy services: an inspiration paper in the run-up to Rio+20. [interactive]. 2012 [accessed 2017-01-22]. <http://2130u636sh0ptphd141fqei1.wpengine.netdna-cdn.com/gender/wp-content/uploads/publications/1975_Gender%20Rights%20and%20Energy%20Report%20final.pdf>.

25 DANIELSEN, K. op. cit.

26 Convention on the Elimination of All Forms of Discrimination against Women (adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979; entry into force 3 September 1981, in accordance with article 27(1)). 1249 UNTS 13.

27 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" (adopted on November 17, 1988). OAS, Treaty Series No. 69.

28 The right to health: Fact sheet No. 323 [interactive]. 2012 [accessed 2017-01-22]. <<http://www.who.int/mediacentre/factsheets/fs323/en/>>.

aches towards adequate housing mentioned above, it is also about the right to access to basic energy services.

According to the preamble to the European Energy Charter, broader energy cooperation among its signatories is essential for economic progress and more generally for social development and a better quality of life. Thus, the direct connection between the access to energy services and quality of life is recognized²⁹.

It should be concluded that currently, the right to access to modern energy services is one of the main human rights; it is essential for the realization of many other human rights: civil, economic, social, cultural and political. This fact is recognized by the professional community and society as a whole. Thus, it is time to recognize the right to access to modern energy services as a human right primarily at international level. Therefore, it is recommended that the General Comment of the CESCR on the right to modern energy services and its connection with other human rights as stipulated by the ICESCR be developed.

2. The right to access to modern energy services from the perspective of the regulation of social and economic rights in the national constitutions

In regard to the definition of the right to modern energy services in national constitutions, it should be noted that there are different approaches to the legal regulation of social and economic rights in general, and the right to an adequate standard of living in particular and other rights directly connected with energy supply.

In particular, the Constitution of South Africa³⁰ includes at least two sections that can be applied in relation to the access of energy services. First of all, Section 10 of the Constitution stipulates that everyone has an inherent dignity and the right to have their dignity respected and protected. Section 26 of the Constitution defines the right to adequate housing, stipulating that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.

According to Article 25 of the Constitution of Japan³¹, all people have the right to maintain minimum standards for a wholesome and cultured life. In all spheres of life, the State shall use its efforts to assure the promotion and extension of social welfare and security, including public health.

29 European Energy Charter (signed on December 17, 1991) [interactive]. 1991 [accessed on 2017-01-22]. <<http://www.energycharter.org/fileadmin/DocumentsMedia/Legal/ECTC-en.pdf>>.

30 Constitution of the Republic of South Africa [interactive]. 1996 [accessed 2017-02-01]. <<http://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-1>>.

31 Constitution of Japan [interactive]. 1946 [accessed 2017-02-01]. <http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html>.

Article XI of the American Declaration of the Rights and Duties of Man³² defines the right to the preservation of health and wellbeing. In reference to this Article, every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

The constitutions of some countries (in particular, Articles 10 and 12 of the Constitution of Austria³³, Articles 72, 73, 74, 87c of the Basic Law of the Federal Republic of Germany³⁴, Articles 117, 118 of the Constitution of Italy³⁵, Article 219 of the Constitution of Angola³⁶, Article 128 of the Constitution of Croatia³⁷) mention energy services in the context of the separation of powers between central and local public authorities, or between public and self-governmental authorities.

According to Article 20 of the Constitution of the Kingdom of the Netherlands³⁸, it shall be the concern of the authorities to secure the means of subsistence of the population and to achieve the distribution of wealth. Article 22 of this Constitution stipulates the obligation of the authorities to provide sufficient living accommodation in the context of the health of the population. It should be stressed that the Constitution of the Kingdom of Netherlands emphasizes the obligation of a state instead of just a definition of the responsible social right.

The Belgian Constitution does not include a special provision on the access to energy services. However, according to Article 23 of the Belgian Constitution³⁹ the encouragement of economic, social and cultural rights is an essential condition of the right to lead a life in keeping with human dignity. The right to decent housing is among such rights.

32 American Declaration of the Rights and Duties of Man [interactive]. 1948 [accessed 2017-02-01]. <<http://www.oas.org/dil/1948%20American%20Declaration%20of%20the%20Rights%20and%20Duties%20of%20Man.pdf>>.

33 Austria Constitution [interactive]. 1920 [accessed 2017-02-05]. <http://www.servat.unibe.ch/icl/au00000_.html>.

34 Basic Law of the Federal Republic of Germany. [interactive]. [accessed 2017-02-01]. <<https://www.btg-bestellservice.de/pdf/80201000.pdf>>.

35 Constitution of the Italian Republic [interactive]. [accessed 2017-02-01]. <http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf>.

36 Constitution of the Republic of Angola. [interactive]. 2010 [accessed 2017-02-01]. <<http://www.embangola-can.org/pdf/constitution.pdf>>.

37 Constitution of the Republic of Croatia [interactive]. 2008 [accessed 2017-02-01]. <<http://www.usig.org/countryinfo/laws/Croatia/Constitution%20of%20Croatia.pdf>>.

38 The Constitution of the Kingdom of the Netherlands [interactive]. [accessed 2017-02-01]. <<http://www.government.nl/documents-and-publications/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008.html>>.

39 The Belgian Constitution [interactive]. [accessed 2017-02-01]. <https://www.unodc.org/tldb/pdf/Belgium_const_1994.pdf>.

According to Section 19 of the Constitution of Finland⁴⁰, the public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing.

The Constitution of the Republic of Philippines stipulates the right to modern energy services from the perspective of the right to decent housing for underprivileged and homeless citizens. Thus, according to Section 9 of this Constitution, the State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make decent housing and basic services to underprivileged and homeless citizens available at an affordable cost, in urban centres and resettlement areas⁴¹.

The Constitution of the Kingdom of Sweden⁴², the motherland of the institute of ombudsman, stipulated (in Article 2) that public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the private person. The personal, economic and cultural welfare of a private person shall be fundamental aims of public activities. In particular, it shall be incumbent upon the public institutions to secure the right to health, employment, housing and education, and to promote social care and social security. The public institutions shall promote sustainable development leading to a good environment for present and future generations.

In reference to Article 59 of the Constitution of the Republic of Albania, the fulfilment of the housing needs of its citizens is among the social goals of the State⁴³.

Access to adequate housing is mentioned among the social obligations of the state in the Constitution of the Argentine Nation (Section 14bis)⁴⁴.

The Constitution of Armenia includes the right to an adequate standard of living (Article 34)⁴⁵. The right to adequate housing as well as the improvement of living conditions, is part of the abovementioned right. The Constitution also prescribes the obligation of the state to take the necessary measures for the exercise of this right by its citizens.

40 The Constitution of Finland [interactive]. 1999 [accessed 2017-02-01]. <<http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf>>.

41 Constitution of the Republic of the Philippines [interactive]. 1987 [accessed 2017-02-10].

42 The Constitution of the Kingdom of Sweden [interactive]. [accessed 2017-02-01]. <<http://www.parliament.am/library/sahmanadrutyunner/Sweden.pdf>>.

43 The Constitution of the Republic of Albania [interactive]. [accessed 2017-02-10]. <<http://www.osce.org/albania/41888?download=true>>.

44 The Constitution of Argentine Nation [interactive]. [accessed 2017-02-10]. <<http://www.biblioteca.jus.gov.ar/argentina-constitution.pdf>>.

45 The Constitution of the Republic of Armenia [interactive]. [accessed 2017-02-10]. <<http://www.parliament.am/parliament.php?id=constitution&lang=eng#2>>.

The Constitution of Georgia prescribes the right to a minimum standard of living in the context of unemployment (Article 32), however, it does not fully define and establish these elements⁴⁶.

The right to a dignified standard of living is stipulated by the Constitution of the Republic of Belarus (Article 21)⁴⁷. Appropriate housing is one of the key elements of this right.

It should be noted that ensuring decent living conditions for the citizens of the Republic of Azerbaijan is one of the highest objectives of the State according to Article 12 of the Constitution of the Republic of Azerbaijan⁴⁸. Article 16 of this Constitution prescribes the obligation of the state to take care about the improvement of prosperity of all people and each citizen, including their social protection and proper living conditions. There is also a special Article devoted to the right to a home – Article 43. According to this Article, the state assists in the construction of living premises and takes special measures for the realization of the right to a home.

According to Article 47 of the Constitution of Moldova⁴⁹, the State shall be obligated to take actions in order to encourage that every person has a decent standard of living, which can ensure the welfare their family members, including, in particular, shelter.

The right to housing is stipulated by the Constitution of the Republic of Kazakhstan (Article 25)⁵⁰. It is prescribed that conditions shall be created to provide citizens with housing.

The obligations of the state to encourage the adequate realization of energy interests for its citizens are strictly defined in the Constitution of Switzerland⁵¹, which includes a separate section devoted to energy and communications – Title 6. In reference to Article 89 of the Constitution of Switzerland, within the scope of their powers, the Confederation and Cantons shall endeavour to ensure a sufficient, diverse, safe, economic and environmentally sustainable energy supply, as well as the economic and efficient use of energy. The Confederation shall establish principles regarding the use of local and renewable energy sources and on the economic and efficient use of energy.

46 The Constitution of Georgia [interactive]. 1995 [accessed 2017-02-10]. <http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf>.

47 The Constitution of the Republic of Belarus [interactive]. 1994. [accessed 2017-02-10]. <http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_127420.pdf>.

48 The Constitution of the Republic of Azerbaijan [interactive]. [accessed 2017-02-10]. <http://azerbaijan.az/portal/General/Constitution/doc/constitution_e.pdf>.

49 Constitution of the Republic of Moldova [interactive]. 1994 [accessed 2017-02-01]. <<http://www.presedinte.md/const.php?page=8220&lang=rus#8220>>.

50 The Constitution of the Republic of Kazakhstan [interactive]. [accessed 2017-02-10]. <http://www.akorda.kz/public/index.php/en/official_documents/constitution>.

51 Federal Constitution of the Swiss Confederation [interactive]. [accessed 2017-02-01]. <<http://www.admin.ch/ch/e/rs/1/101.en.pdf>>.

The Confederation shall legislate on the use of energy by installations, vehicles and appliances. It shall encourage the development of energy technologies, particularly in the fields of saving energy and the renewable energy sources. The Cantons shall be primarily responsible for measures relating to the use of energy in buildings. The Confederation shall take account of its energy policy in the efforts made by the Cantons, communes and business community; it shall take account of the conditions in the individual regions of the country and the limitations of what is economically feasible.

It should be mentioned that recommendations regarding the constitutionalization of the right to access to modern energy services are provided in the context of tackling energy poverty. Primarily, such proposals are developed in countries that suffer from poverty in general and from energy poverty. In particular, in 2012, the Lahore High Court Bar Association (LHCBA) demanded that the country's Constitution be amended to include the provision of electricity as a fundamental right⁵².

Taking the above into account, the right to modern energy services is not separately stipulated in the constitutions of the countries mentioned above. It can be presumed that access to energy is part of the right to an adequate standard of living (as an element of the right to adequate housing). The provisions of the Constitutions of the Switzerland on energy access for its citizens have been considered as a good example of the legal regulation of the state's social obligation for the encouragement of access to energy services. Considering the importance of modern energy services for the realization of the majority of fundamental rights, it is recommended that the right of access to modern energy services, primarily in the developing countries, be constitutionalized, and in particular, for the purpose of tackling poverty.

3. Perspectives of the constitutionalization to the right to access to modern energy services in Ukraine

It is impossible to imagine modern life without access to basic services, including energy services. Energy security is one the key goals of the current policy of Ukraine. The obligations regarding the adaptation of energy legislation in accordance with the requirements of the EU legislation are defined by the EU-Ukraine association agreement⁵³. The encouragement of basic energy services, as well as the protection of energy consumer rights is one of the main requirements of the EU legislation. However, a lot of people in Ukraine currently suffer from a lack of access to qualitative energy services for affordable and economically sustainable prices. As reasonably mentioned by Valeria Lutkovska in the 2015 Annual report of the Ukrainian Parliament's

52 Bar association. Provision of electricity should be a fundamental right. [interactive]. 2012 [accessed 2017-02-01]. <<http://tribune.com.pk/story/358830/bar-association-provision-of-electricity-should-be-a-fundamental-right/>>.

53 Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. [2014] OJ, L 161/3.

Commissioner for Human Rights⁵⁴, the current practices for the setting of prices and tariffs within the housing and communal sector continue to violate the human rights stipulated by the Constitution of Ukraine, laws of Ukraine, and the provisions of international law. The Ukrainian ombudswoman emphasizes that the state shall encourage the adequate life and development conditions for its citizens. A difficult situation arose from the heating tariff hikes imposed in 2016 – the beginning of 2017 requires resolute steps from the public authorities. According to the Decision of the National Security and Defense Council of Ukraine of 16 February 2017 “On Priority Actions regarding the Neutralization of Threats towards the Energy Security of Ukraine and Strengthening the Protection of Crucial Infrastructure” entered into force by Presidential Decree No. 37/2017⁵⁵, the Government of Ukraine, together with the National Commission that Conducts State Regulation in the Fields of Energy and Utilities, shall explore without delay whether the tariffs on energy resources, electricity, housing and communal services are fair, economically and socially reasonable, and develop possible actions for the enhancement of the state regulation mechanisms in the field of natural monopolies and economic agents with publically-owned corporate rights, as well as inform the citizens on the results of the abovementioned work.

It should be noted that the legitimacy of the decisions of the National Energy and Utilities Regulatory Commission (hereinafter – the Commission) regarding energy service tariffs can be questionable, considering the problem of the legal status of the Commission, as explored by the author of this article in several papers⁵⁶. Currently, the special Law of Ukraine “On the National Commission that Conducts State Regulation in the Fields of Energy and Utilities”⁵⁷ forms the main legal framework of the Commission. However, the problem of the legal status of the Commission was

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- 54 Shchorichna dopovid' Upovnovagenogo Verhovnoi Rady Ukraïny z prav lyudyny pro stan doderhannya ta zahystu prav i svobod lyudyny i gromadyanyna [Annual report of the Ukrainian Parliament Commissioner for Human Rights on state of fulfillment and protection of human rights] [interactive]. Kyiv, 2016. [accessed 2017-02-10]. <<http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=3>>.
- 55 Ukaz Prezydenta Ukrainy No. 37/2017 Pro rishennya Rady natsionalnoi bezpeky I oborony Ukrainy vid 16 lyutogo 2017 roku “Pro nevidkladni zahody z neytralizatsii zagroz enerhetychny bezpetsi Ukrainy ta posylennya zahystu krytychnoi infrastruktury”: [Decree of the President of Ukraine No. 37/2017 on the Decision of the National Security and Defense Council of Ukraine of 16 February 2017 “On Priority Actions on Neutralization of Threats for Energy Security of Ukraine and Strengthening the Protection of Crucial Infrastructure”] Golos Ukrainy. 2017, No. 32.
- 56 VASHCHENKO, Y. National Regulatory Authorities in the Energy Sector of Ukraine: Problems of the Legal Status in the Context of the European Integration and the Administrative Reform. *Jurisprudence*. 2013, 20(3): 1231–1248; VASHCHENKO, Y. Energy Regulator in Ukraine: Legal Aspects of the Independence in the Light of the EU Requirements. *Jurisprudence*. 2014, 21(1): 185–203.
- 57 Zakon Ukrainy “Pro natsionalnu komisiyu, shcho zdiisnyuye dergavne rehulyuvannya u sferah enerhetyky ta komunalnyh poslug” [Law of Ukraine on National Commission that Conducts State Regulation in the Fields of Energy and Utilities]. Golos Ukrainy. 2016, No. 225.

not solved by means of approval of the abovementioned Law. According to this Law, the Commission has the status of a permanent independent state collegial body (Article 1 of the Law). This means that the Commission has been separated from other state bodies of legislative, executive, and judicial power. However, according to the Constitution of Ukraine⁵⁸ (Article 6), only bodies of legislative, executive, and judicial power exist in Ukraine. Also, in reference to the abovementioned Law, the members of the Commission shall be appointed and dismissed by the President of Ukraine. However, according to the Constitution of Ukraine (Article 106), the powers of the President of Ukraine are exhaustively defined by the Constitution. The Constitution of Ukraine does not include such powers of the President of Ukraine.

Another important issue regarding access to modern energy services in Ukraine is the low quality of such services. In particular, the bad condition of old district heating networks and lack of investments for its modernization have decreased the quality of the district heating supply services. The situation is even worse in the existing old multi-family buildings. The new, independent state of Ukraine provided her citizens with an opportunity for the privatization of flats, however, the problems connected with the management of joint ownership within multi-family houses have remained unsolved. The bad condition of old technical building systems and lack of adequate insulation of the buildings have also contributed towards deterioration in the quality of services supplied for district heating. In many circumstances, the legal regulation in the housing and communal services sector has left its citizens alone with the abovementioned problems. According to Article 382 of the Civil Code of Ukraine⁵⁹, the owners of the flats and non-residential premises in the multi-family houses are co-owners of a joint property (including the technical building systems) in such houses. The Law of Ukraine “On Peculiarities Regarding the Enjoyment of the Right to Property in a Multi-family House”⁶⁰ imposes a maintenance duty on the owners of flats and non-residential premises located within the joint property of a multi-family house. It should be mentioned that the Law of Ukraine “On Condominiums”⁶¹, prescribed the mandatory participation of the previous owner (as mentioned earlier in Article 24) of a multi-family house in the organization and funding of the first (after the transferring of a condominium) major renovation. However, this provision was excluded in accordance with the abovementioned Law of Ukraine “On Peculiarities

58 Konstitutsia Ukrainy. [The Constitution of Ukraine]. Vidomosti Verkhovnoyi Rady Ukrainy. 1996, No. 30.

59 Tsvilny Kodeks Ukrainy [Civil Code of Ukraine] [interactive]. Vidomosti Verkhovnoyi Rady Ukrainy. 2003, No. 40–44.

60 Zakon Ukrainy “Pro osoblyvosti zdiysnennya prava vlasnosti u bagatokvartyrnomu budynku” [Law of Ukraine on Peculiarities of Enjoyment of a Right to Property in a Multi-family House]. Vidomosti Verkhovnoyi Rady Ukrainy. 2015, No. 29.

61 Zakon Ukrainy “Pro objednannya spivvlasnykiv bagatokvartyrnogo gytlovogo budynku” [Law of Ukraine on Condominiums]. Vidomosti Verkhovnoyi Rady Ukrainy. 2002, No. 10.

Regarding the Enjoyment of the Right to Property in a Multi-family House”. The current economic conditions in Ukraine have made it unable to adequately apply energy efficiency measures in old multi-family houses.

There are no efficient mechanisms for the protection of energy consumers concerning the provision of energy services of insufficient quality. In particular, the district heating companies do have direct contracts regarding district heating supply services with the end consumers, however, their responsibility ends at the building service entrance. According to the explanations of the Kyiv City State Administration on the district heating service in December 2016⁶², today, 95 % of houses in the capital are equipped with heat meters. In reference to Article 6 of the Law of Ukraine “On Heat Supply”⁶³, the encouragement of the installation of heat meters and regulators is one of the key principles found in the state’s policy towards the heat supply sector. It should be noted that the reduction of energy consumption, as well as use of energy from renewable sources in the buildings sector are important measures needed to reduce energy dependency and greenhouse gas emissions according to Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings⁶⁴. However, in many circumstances, the residents of old multi-family houses in Ukraine do not have the opportunity to regulate their heat consumption. This is particularly due to the buildings’ vertical heat distribution and lack of heat regulators. In cases where the equipment of a multi-family house only has a building meter, the owners/tenants have no right to decrease their payments for the services supplied by the source of district heating, even if the supplied heat is of insufficient quality caused by the inappropriate state of the building’s technical system.

In considering the cases mentioned above, the state should take appropriate measures in order to encourage the adequate realization and protection of the right to access to modern energy services. The recognition of the people’s right to access to modern energy services, and respectively, the obligation of the state to respect, protect, and fulfil such a right at the highest legislative level should be considered as an essential step.

It should be mentioned that the Constitution of Ukraine does not stipulate the right to energy services. However, it is crucial for the realization of the majority of fundamental rights prescribed by the Constitution. In particular, access to energy services is essential condition for the encouragement of the right to life and health

62 Rozyasnennya shchodo narahuvan kyyanam za poslugu opalennya otrymanu v grudni [Explanations on charging for the district heating service received in December]. [interactive]. 2017 [accessed on 2017-02-21]. <<https://kievcity.gov.ua/news/46804.html?PrintVersion>>.

63 Zakon Ukrainy “Pro teplopostachannya [Law of Ukraine on Heat Supply]. Vidomosti Verkhovnoyi Rady Ukrainy. 2005, No. 28.

64 Directive 2010/31/EU of the European Parliament and the Council of 19 May 2010 on the energy performance of buildings. [2010] OJ, L153/13.

(Article 27 of the Constitution of Ukraine⁶⁵), the right to an adequate standard of living for a person or family, including adequate food, clothes, housing (Article 48), and the right to life and a health-friendly environment (Article 50). A continuous and efficient energy supply is necessary for the realization of the freedom to conduct a business (Article 42), as well as the right to labour (Article 43). It is impossible to assure the right to education (Article 53), freedom of artistic, literary, scientific and technical activity (Article 54), and the right to a vocation (Article 45). The sufficient participation of citizens in elections and public governance is required for the realization of many political rights (in particular, Articles 36, 37, 38, 40 of the Constitution of Ukraine) and requires a sustainable energy supply.

N. Shuklina reasonably argues that modern doctrines of Constitutional Law and legislation in Ukraine underestimate economic, social and cultural rights⁶⁶. She pays attention to the fact that there are no special constitutional guaranties for the right to an adequate standard of living in the Constitution of Ukraine, as well as no legal liability in case of its violation⁶⁷. The same conclusion is reasonable for the right to adequate housing and the access to modern energy services as its component as well.

Ukrainian scholars consider the right to an adequate standard of living to be an essential social right that forms a legal base for the whole system of human rights: the right of everyone to life and the right of everyone to personal dignity⁶⁸. In particular, V. Matsokin concluded that the right to an adequate standard of living is an integrating social right that not only combines all social rights into one unified system, but simultaneously determines the nature and content of the legal regulation of the majority of civil and political rights by certain means⁶⁹. He considers the right to an adequate standard of living to be one of the most essential and socially important rights for everyone, and the encouragement of this right as a goal of every democratic state and one of the most fundamental constitutional principles of a modern state. V. Matsokin suggests the consideration of this right from two mutually connected perspectives: on the one hand, the state establishes the conditions for the real possibilities of a healthy, legally capable person to encourage an adequate standard of living, while on the other hand,

65 Konstitutsia Ukrainy. [The Constitution of Ukraine]. Vidomosti Verkhovnoyi Rady Ukrainy. 1996, No. 30.

66 SHUKLINA, N. Konstytutsiyno-pravove reguluvannya prav i svobod lyudyny I gromadyanyna v Ukraini (problem teorii ta praktyky): monographia [Shuklina, N. Constitutionally-legal regulation of Human Rights and Freedoms in Ukraine (problems of theory and practice: a monograph)]. Kyiv, Tsentri navchalnoi literatury, 2005, p. 270.

67 Ibid.

68 IVANENKO, V., IVANENKO V. Socialnye prava cheloveka I socialnye obyazannosti gosudarstva: megdunarodnyei i konstitutsyonnye aspekty [IVANENKO, V., IVANENKO V. Social human rights and social obligations of the state: international and constitutional legal aspects]. SPb, Yurid. Tsentri Press, 2003, p. 108.

69 MATSOKIN, V. Pravo gromadyan Ukrainy na dostatniy gyttyevy riven' [Matsokin, V. Right of citizens of Ukraine to adequate standard of living]. Kyiv, 2006, p. 6.

the state should use all the material, political, organizational and their resources necessary for the encouragement of an adequate standard of living for vulnerable people⁷⁰.

In analysing the performance of local self-government bodies regarding the mechanism involved in the institutional encouragement and protection of human rights, V. Matsokin stresses the importance of the proper execution of their functions in the field of utilities for the protection of the citizens' right to an adequate standard of living⁷¹. The role of self-governmental bodies in the mechanism of the protection of social and economic rights is stressed by O. Batanov. He argues that economic and social human rights are key instruments involved in the realization of economic self-organization and, at the same time, the main goal of autonomous solutions of local tasks (including the utilities sector) by the territorial communities⁷². The scholar stresses that the right to an adequate standard of living plays an essential role in the system of social rights. The participation of self-governmental bodies in the approval of consumption norms and quality of utility services, control of its fulfilment, management of communally-owned objects in the housing and communal services sector, and the encouragement of their adequate maintenance and efficient exploitation are all examples of the establishment of a mechanism aimed at the realization of the abovementioned constitutional right⁷³.

Considering mentioned above, there is time for legal definition of the obligation of a state to respect, to protect and to fulfil the citizens' right to reliable access to modern energy services. This right can be recognized as a separate human right or as a separate element of the right to an adequate standard of living (not just as a part of the right to adequate housing).

The necessity for constitutional regulation of the right to access to modern energy services is proved, in particular, by the following arguments. As Y. Shemshuchenko reasonably stresses, the democratization of each country is defined by its attitude towards human rights and freedoms⁷⁴. S. Shevchuk pays attention to the fact that the norms of the Constitution of Ukraine are norms of direct application, i.e. they are the direct regulators of social relations⁷⁵. The scholar concludes in a well-argued manner that it is not necessary to approve other legal acts in order to

70 Ibid., p. 11.

71 MATSOKIN, V. *Pravo gromadyan Ukrainy na dostatniy gyttvevy riven'* [MATSOKIN, V. Right of citizens of Ukraine to adequate standard of living]. Kyiv, 2006, p. 14.

72 BATANOV, O. *Munitsypalna vlada v Ukraini: problem teorii ta praktyky: monographiya* [BATANOV, O. *Municipal power in Ukraine: problems of theory and practice: a monograph*]. Kyiv, Vydavnytstvo "Yurydichna dumka", 2010, p. 581.

73 Ibid., p. 595.

74 SHEMSHUCHENKO, Y. *Vybrane*. [SHEMSHUCHENKO, Y. *Collected Edition*]. Kyiv, Vydavnytstvo "Yurydichna dumka", 2005, p. 201.

75 SHEVCHUK, S. *Pryntsyp verkhovenstva prava ta naivysycha yurydychna syla Konstytursii Ukrainy*. [SHEVCHUK, S. *The Rule of Law Principle and the Supreme Force of the Constitution of Ukraine*]. *Pravo Ukrainy*. 2011: 5:175-185, p. 184.

encourage their adequate realization; bodies of judicial power cannot deny its implementation with reference to the necessity of the approval of certain additional “detailing” statutory norms. Such norms are directly implemented regardless of the approval of the developing laws and regulations (para 2, point 2 of the motivational part of the Decision of the Constitutional Court of Ukraine of 19 April 2001 No. 4-пп/2001), notably, as it applies to the realization of the constitutional norms concerning human rights and fundamental freedoms⁷⁶.

It should be concluded that the right to access to modern energy services is an important human right that requires adequate legal regulation, primarily to its legal placement within the Constitution of Ukraine. Thus, it is necessary to define the content of the abovementioned right.

A. J. Bradbrook argues that the right to access to energy services should be designed to ensure access on the basis of equality and non-discrimination for a sufficient, regular, reliable, efficient, safe, and affordable supply of (ideally clean and sustainable) energy⁷⁷. The scholar reasonably concludes that ‘irrespective of the difficulties in identifying and enforcing socio-economic rights, the existence of a concrete norm undoubtedly provides a focus for efforts at both the national and international level to bring pressure to bear on States to fulfil their responsibilities to their citizens’⁷⁸.

The following key features of modern energy services could be defined as:

- Accessibility
- Affordability
- Equal access for all categories of citizens
- Life, health and environmental safety
- Continuity
- Reliability
- Diversification of energy supply sources
- Efficiency and sustainability
- Use of energy resources from renewable energy sources.

It should be mentioned that constitutional reform is currently being implemented in Ukraine. The Constitutional Commission was established as a special auxiliary agency in accordance with the Decree of the President of Ukraine of 3 March 2015 No.119/2015⁷⁹. In particular, this body is responsible for the development of proposals focused on consideration of the implementation of constitutional reform in

76 Ibid.

77 BRADBROOK, A. J. Access to energy services in a human rights framework [interactive]. 2006 [accessed 2017_02_01]. http://www.un.org/esa/sustdev/sdissues/energy/op/parliamentarian_forum/bradbrook_hr.pdf.

78 Ibid.

79 Ukaz Prezidenta Ukrainy “Pro Konstytutsiynu Komisiyu” [Decree of the President of Ukraine “On the Constitutional Commission”]. Uryadovyi kuryer. 2015, No. 41.

Ukraine. Therefore, it is time to provide recommendations on the constitutionalization of the right to access to modern energy services in Ukraine.

Considering mentioned above, it is recommended that the right to access to modern energy services be recognized as a separate human right and to amend the Constitution of Ukraine with the following provision: “Everyone has the right of access to life, health and environmentally-friendly energy services of appropriate quality at economical and affordable prices under the terms of continuity, reliability, diversification of energy supply sources, efficiency and sustainability, and the use of energy resources from renewable energy sources, including equal access for all categories of citizens”.

Conclusions

Nowadays the right to access to modern energy services should be considered to be one of the main human rights. It is essential for the realization of many other human rights: civil, economic, social, cultural and political. This fact is recognized by the professional community and society as a whole. Thus, it is time to recognize the right to access to modern energy services as a human right, primarily at the international level. Therefore, the development of the General Comment of the United Nations Committee of Economic, Social and Cultural Rights on the right to modern energy services and its connection with other human rights stipulated by the International Covenant on Economic, Social and Cultural Rights is recommended.

Taking into account the importance of the access to modern energy services, in particular, its role in tackling poverty, it is recommended that the right to access to modern energy services be constitutionalized, primarily in the developing countries, for the purpose of adequate recognition, fulfilment and protection of this right at the national level. This right should be recognized as a separate human right or as a separate element of the right to an adequate standard of living (not just as a part of the right to adequate housing).

Considering that constitutional reform is currently being implemented in Ukraine, it is suggested that Section II “Human Rights, Freedoms and Obligations” of the Constitution of Ukraine be amended with the following provision: Everyone has the right of access to life, health and environmentally-friendly energy services of appropriate quality at economical and affordable prices under the terms of continuity, reliability, diversification of energy supply sources, efficiency and sustainability, use of energy resources from renewable energy sources, including equal access for all categories of citizens”.

TEISĖ Į MODERNIOS ENERGETIKOS PASLAUGAS: TARPTAUTINIS IR NACIONALINIS POŽIŪRIS BEI KONSTITUCIONALIZAVIMO PERSPEKTYVOS UKRAINOJE

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Santrauka. Sudėtinga įsivaizduoti dabartinį pasaulį be energetikos paslaugų, kitaip tariant – be elektros ar šilumos tiekimo. Modernių energetikos paslaugų skatinimas yra viena svarbiausių valstybės užduočių, o energetikos apsauga yra vienas esminių elementų valstybės energetikos politikoje. Modernios energetikos paslaugos sudaro sąlygas efektyviam žmogaus teisių įgyvendinimui. Modernių energetikos paslaugų prieinamumo svarbos suvokimas įgyvendinant žmogaus teises iškelia logišką klausimą: ar teisė į modernias energetikos paslaugas yra viena iš modernių žmogaus teisių?

Klausimas, susijęs su teisės į energetikos paslaugas (konkrečiau – į elektros tiekimą) prigimtimi ir jos vieta žmogaus teisių sistemoje, pastaruoju metu vis labiau keliamas mokslininkų, politikų, praktikų.

Šiame straipsnyje tiriama teisės į modernias energetikos paslaugas prigimtis ir turinys, aptariant tarptautines ir nacionalines nuostatas. Taip pat straipsnyje bandoma nustatyti šios teisės konstitucionalizavimo perspektyvas Ukrainoje.

Straipsnyje analizuojama teisė į modernias energetikos paslaugas Tarptautinio žmogaus teisių įstatymo kontekste. Atsižvelgiant į tarptautinės teisės šaltinius ir doktrinas, darytina išvada, kad teisė į modernias energetikos paslaugas paprastai yra siejama su teise į būstą kaip esminę sąlygą. Toks požiūris yra pateiktas JT Ekonomikos, socialinių ir kultūrinių teisių komiteto, o taip pat ir Europos ekonomikos ir socialinių reikalų komiteto. Visgi toks požiūris atrodo siauras. Pabrėžtina, kad modernių energetikos paslaugų prieinamumas yra svarbus ne tik teisės į adekvataus gyvenimo standartą įgyvendinimui. Taigi, siūlytina plėtoti JT Ekonomikos, socialinių ir kultūrinių teisių komiteto požiūrį į modernių energetikos paslaugų teisę bei jos sąsają su kitomis žmogaus teisėmis, nustatytomis Tarptautiniame ekonominių, socialinių ir kultūrinių teisių pakte.

Straipsnyje analizuojamas nacionalinis požiūris į modernių energetikos paslaugų teisę. Apžvelgus kelių šalių konstitucijas (Pietų Afrikos Respublikos, Japonijos, Austrijos, Vokietijos, Italijos, Angolos, Kroatijos, Nyderlandų, Belgijos, Suomijos, Švedijos, Albanijos, Argentinos, Armėnijos, Gruzijos, Baltarusijos, Azerbaidžano, Moldovos, Kazachstano, Šveicarijos), darytina išvada, kad teisės į būstą konstitucinis

teisinis reguliavimas gali būti apibrėžiamas kaip pagrindinis analizuojamame kontekste. Todėl teisė į energetikos paslaugas gali būti suprantama kaip anksčiau minėtos teisės dalis. Rekomenduotina konstitucionalizuoti teisę į modernias energetikos paslaugas, ypač besivystančiose šalyse, siekiant tikslo tinkamai pripažinti šios teisės nacionaliniame lygmenyje įgyvendinimą ir apsaugą. Ši teisė turi būti įtvirtinta kaip atskira žmogaus teisė arba kaip atskira teisės į tinkamą gyvenimo standartą dalis (ne tik kaip teisės į būstą dalis).

Energetikos apsauga yra viena esminių krypčių dabartinės Ukrainos politikoje. Įsipareigojimai keičiant energetikos reguliavimą sutinkamai su ES teise yra numatyti ES ir Ukrainos asociacijos sutartyje. Energetikos paslaugų plėtra ir energetikos vartotojų teisių apsauga yra vienas svarbiausių ES teisės reikalavimų. Tačiau daugelis žmonių Ukrainoje šiuo metu kenčia nuo kokybiškų energetikos paslaugų trūkumo bei netinkamų ir neekonomiškai pagrįstų kainų už šias paslaugas. 2015 metais Ukrainos parlamento komisarė žmogaus teisėms Valerija Lutkovska teisingai pastebėjo, kad kainos ir tarifai už būstą ir komunalinį sektorių toliau pažeidžia žmogaus teises, įtvirtintas Ukrainos Konstitucijoje, Ukrainos įstatymuose ir tarptautinėje teisėje. Kitas svarbus aspektas teisės į modernias energetikos paslaugas kontekste yra prasta tokių paslaugų kokybė. Nėra veiksmingų mechanizmų energetikos paslaugų vartotojų apsaugai nuo nekokybiškai teikiamų energetikos paslaugų. Todėl valstybė turi imtis tinkamų priemonių tam, kad būtų skatinamas adekvatus teisės į modernias energetikos paslaugas įgyvendinimas ir apsauga. Tokios teisės pripažinimas, o taip pat valstybės pareigos pripažinimas gerbti, saugoti teisės į modernias energetikos paslaugas įgyvendinimą aukščiausiuose teisėkūros lygmenyje turėtų būti vertinamas kaip esminis žingsnis. Ukrainos Konstitucija neįtvirtina teisės į energetikos paslaugas. Tačiau tai yra svarbiausia, norint įgyvendinti daugumą fundamentalių teisių, įtvirtintų Ukrainos Konstitucijoje. Atsižvelgiant į nacionalinę doktriną, Ukrainos įstatymus, ir turint mintyje, jog Ukrainoje vykdoma konstitucinė reforma, siūlytina pakeisti antrąjį Konstitucijos skyrių „Žmogaus teisės, laisvės ir pareigos“ tokia nuostata: „Kiekvienas turi teisę į gyvybę, sveikatą, saugias aplinkas tinkamos kokybės, prieinamos kainos energetikos paslaugas, teikiamas nenutrūkstamai, patikimai, įvairiais energijos tiekimo šaltiniais, veiksmingai ir tvariai, naudojant atsinaujinančius energijos šaltinius, sudarant visiems lygias galimybes naudojantis energetikos paslaugomis“.

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