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**A case initiated with respect to the procedure for refusal to issue an industrial security certificate**

On 9 August 2017 the 1<sup>st</sup> Panel of the Constitutional Court initiated case “On Compliance of the Sixth and the Eighth Sentence of Section 7(5) of the Law “On Official Secrets” with Article 92 of the *Satversme* of the Republic of Latvia” and of the Second Sentence of Para 12 of the Cabinet Regulation of 23 May 2006 No. 412 “Procedure of Applying for, Granting, Registering, Using, Changing the Category of or Annulment of an Industrial Security Certificate” with Article 105 of the *Satversme* of the Republic of Latvia”.

**Contested Norm**

The sixth sentence in Section 7 (5) of the law “On Official Secrets”: “The decision of the Prosecutor General shall be final and not subject to appeal.”

The eighth sentence of Section 7 (5) of the law “On Official Secrets”: “An applicant shall be sent a notification regarding refusal to issue an industrial security certificate or cancelling thereof without specifying the substantiation of such refusal.”

The second sentence of Para 12 of the Cabinet Regulation of 23 May 2006 No. 412 “Procedure of Applying for, Granting, Registering, Using, Changing the Category of or Annulment of an Industrial Security Certificate”: “If a decision is adopted to refuse issuing an industrial security certificate, a merchant may re-apply for receiving an industrial security certificate no sooner than five years after the adoption of the respective decision”.

**Norms of Higher Legal Force**

Article 92 of the *Satversme*: “Everyone has the right to defend his or her rights and lawful interests in a fair court. Everyone shall be presumed innocent until his or her

guilt has been established in accordance with law. Everyone, where his or her rights are violated without basis, has a right to commensurate compensation. Everyone has a right to the assistance of counsel.

Article 105 of the *Satversme*: “Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.”

### **The Facts**

The case has been initiated with respect to an application submitted by “Skonto Būve” Ltd., “GRIF 1” Ltd. and “GRF” Ltd., noting that the Constitution Protection Bureau had adopted decisions to refuse issuing to the applicants an industrial security certificate (special permit to merchants to work with objects of official secrets), without providing substantiation for this refusal. The applicants appealed against this decision to the Prosecutor General, who left the adopted decisions in force. Pursuant to law, a decision by the Prosecutor General is final and not subject to appeal.

The applicants hold that the prohibition to appeal against a decision by the Prosecutor General is incompatible with the right to a fair trial enshrined in Article 92 of the *Satversme*. Allegedly, the applicant’s right to be heard and to be informed about the substantiation of refusal is unfoundedly restricted.

The decision by which an applicant is refused an industrial security certificate restricts its possibility to participate in public procurement in the future and to implement such construction projects that require working with objects of official secrets. Allegedly, this decision also prohibits from meeting contractual commitments that follow from construction contracts concluded previously. The applicants may re-apply for an industrial security certificate only in five year’s time. Thus, the applicants’ right to

property, established in Article 105 of the *Satversme*, is said to be disproportionately restricted.

### **Legal Proceedings**

The Constitutional Court has requested the *Saeima* and the Cabinet of Ministers to provide a reply on the facts of the case and legal substantiation by 10 October 2017.

The term for preparing the case is 9 January 2018. The Court shall decide upon the procedure and the date for hearing the case after the case has been prepared.

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The press release was prepared with the aim to facilitate understanding of the actual facts of the case. It shall not be regarded as part of the judgement and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the home page of the Constitutional Court [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv).

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