



A case initiated with respect to norms that define the calculation of the consumed natural gas and compensation that the user of energy pays in the case of an infringement

On 14 June 2019, the 3rd Panel of the Constitutional Court initiated the case “On Compliance of Section 42³ (1) of Energy Law (in the wording that was in force until 7 March 2016) and Para 56 and Para 58 of the Cabinet Regulation of 16 December 2008 No. 1048 “Regulation on the Supply and Use of Natural Gas” with Article 105 of the *Satversme* of the Republic of Latvia as well as of Para 87 of this Regulation with Article 64 and Article 105 of the *Satversme* of the Republic of Latvia”.

The Contested Norms

Section 42³ (1) of Energy Law (here and hereinafter – in the wording that was in force until 7 March 2016):

“If the energy supply merchant detects that the user of energy has violated the Cabinet Regulation on the supply and use of natural gas or the agreement on the supply of natural gas and as the result the amount of consumed natural gas reading has been decreased or the possibility has been created to consume natural gas free of charge the user of energy shall pay to the energy supply operator for the natural gas consumed and compensation. The procedure, in which the energy supply merchant determines the amount of actually consumed natural gas as well as the amount of compensation, shall be established by the Cabinet.”

Para 56 of the Cabinet Regulation of 16 December 2008 No. 1048 “Regulation on the Supply and Use of Natural Gas” (hereinafter – Regulation No. 1048):

“If the system operators detects a violation of this Regulation or the agreement, due to which the result the amount of consumed natural gas reading has been decreased or the possibility has been created for the user to consume natural gas free of charge, the user shall pay to the system operator for the consumed natural gas as well as compensation.”

Para 58 of Regulation No. 1048:

“The system operator shall determine compensation envisaged in Para 56 of this Regulation by multiplying the calculated amount of consumed natural gas by the tariff in double amount.”

Para 87 of Regulation No. 1048:

“The system operators shall calculate the amount of natural gas for a household user consumed as the result of an infringement referred to in Para 56 of this Regulation in accordance with the differentiated consumption norms of natural gas in the procedure of payments approved by the system operator.”

Norms of Higher Legal Force

Article 64 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*): “The *Saeima*, and also the people, have the right to legislate, in accordance with the procedures, and to the extent, provided for by this Constitution.”

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 on the basis of an application by Aleksejs Petrovs. The applicant holds that the norm, which regulates payment for natural gas in cases where the energy user has violated regulations on the supply and use natural gas or an agreement on the supply of natural gas (hereinafter – an infringement), as well as the norms on compensation that the user of energy pays to the system operator in such cases are incompatible with the *Satversme*.

The Applicant holds that Para 87 of Regulation No. 1048 is incompatible with Article 64 and Article 105 of the *Satversme* because, by Section 42³ (1) of Energy Law, the Cabinet had been directly authorised to establish the procedure, in which the energy supply merchant determined the amount of natural gas consumed in the case of an infringement. By the aforementioned norm of the Regulation, the Cabinet, essentially, had re-delegated this task to the system operator. Thus, the Cabinet had exceeded the limits of authorisation established in law. Moreover, this restriction on fundamental rights is said to lack a legitimate aim and also is said to be disproportional.

The Applicant notes that Section 42³ (1) of Energy Law, insofar it establishes the energy user's obligation to pay compensation to the system operator in the case of an infringement as well as Para 56 and Par 59 of Regulation No. 1048, which define this compensation, establish punishment for an infringement committed by an energy user; however, this punishment, allegedly, lacks a legitimate aim. Moreover, the restriction on fundamental rights established in these norms is said to be disproportional.

The Legal Proceedings

The Constitutional Court has requested the *Saeima* and the Cabinet to submit a written reply on the facts of the case and the legal reasoning by 14 August 2019.

The term for preparing the case is 14 November 2019. The Court will decide on the type of procedure and the date for hearing the case after it has been prepared.

The press release was prepared with the aim to facilitate understanding of cases heard by the Constitutional Court. 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 homepage of the Constitutional Court www.satv.tiesa.gov.lv.

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