



A case initiated with respect to a norm, which regulates prevention of over-compensation to electricity producers who receive state support in the form of mandatory procurement of electricity

On 16 September 2020, the 1st Panel of the Constitutional Court initiated the case “On Compliance of the Second Sentence of Section 31⁴ (1) of the Electricity Market Law with Article 1 and the First Sentence of Article 105 of the *Satversme* of the Republic of Latvia”.

The Contested Norm

The second sentence of Section 31⁴ (1) of the Electricity Market Law provides that, with respect to an electricity producer, who, prior to being granted the rights referred to in Section 28, 28¹, 29 or Section 30 of the Electricity Market Law, had been granted another type of support for the production of electricity, it is included into the calculation of the internal rate of return of the total capital investments; moreover, the period between the support periods is included into these calculations.

The Norm of Higher Legal Force

Article 1 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*):
“Latvia is an independent democratic republic.”

The first sentence of Article 105 of the *Satversme*: “Everyone has the right to own property.”

The Facts

The case was initiated on the basis of a constitutional complaint, submitted by limited liability company “KRĪGAĻU DZIRNAVAS” and farm “DZIRNAVAS” of Bērze rural municipality, Dobeles Region. In 2009 and 2007, the applicants were granted the right to receive State support; i.e., they were granted the right to sell in the framework of mandatory procurement electricity that was produced from renewable resources. The

applicants hold that, pursuant to the legal norms valid at that time, the State support had been granted to them for the period of 20 years – until 2029 and 2027, respectively.

On 30 January 2020, the *Saeima* adopted the law “Amendments to the Electricity Market Law”, which entered into force on 15 February 2020. It, *inter alia*, establishes regulation for preventing over-compensation to electricity producers. The applicants hold that the new calculation for preventing over-compensation is unfounded. I.e., in calculating the internal rate of return of the total capital investments, also other type of support is taken into account, *inter alia*, historical support. After the new calculations are made, the coefficient for price differentiation, applicable to the applicants, will be re-calculated and the amount of support will be decreased significantly.

The applicants have turned to the Constitutional Court, being of the opinion that the second sentence of Section 31⁴ (1) of the Electricity Market Law is incompatible with the right to property, included in the first sentence of Article 105 of the *Satversme* as well as several general principles of law, included in Article 1 of the *Satversme*, for example, the principle of legitimate expectations, legal certainty, good legislation and sustainable development.

The Legal Proceedings

The Constitutional Court has requested the *Saeima* to submit a written reply on the facts of the case and the legal reasoning by 16 November 2020.

The term for preparing the case is 16 February 2021. The Court will decide on the type of procedure and the date for hearing the case after it has been prepared.

The decision on initiation of the case is available here:

https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/09/2020-52-01_Lemums_par_ierosinasanu.pdf

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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