



Satversmes tiesa

Press Release

Case No 2021-03-03

19 January 2021

A case initiated with respect to the provisions determining the compensation to be paid by the user of energy in case of violation of the regulations on the use of natural gas

On 15 January 2021, the 1st Panel of the Constitutional Court initiated the case “On compliance of sub-paragraph 88.1 and paragraph 89 of the Cabinet of Ministers Regulation No 78 of 7 February 2017 ‘Regulations regarding the trade and use of natural gas’ (in the wording that was in force until 24 January 2020) with Articles 64 and 105 of the Constitution of the Republic of Latvia and with Section 107(7) of the Energy Law”.

CONTESTED PROVISIONS

Sub-paragraph 88.1 of the Cabinet of Ministers Regulation No 78 of 7 February 2017 ‘Regulations regarding the trade and use of natural gas’ in the wording that was in force until 24 January 2020 (hereinafter – Regulations No 78):

“In view of the violation referred to in para 87 of these regulations, the system operator calculates the amount of natural gas consumed as follows: for a non-household consumer – based on the maximum load permitted to the user or the maximum possible load of the user’s natural gas installations and appliances if it exceeds the maximum load permitted to the user.”

Paragraph 89 of Regulations No 78:

“If the violation referred to in para 87 of these regulations has been committed, the distribution system operator recalculates the amount of natural gas consumed and the fee for the distribution system services at a double rate in accordance with para 88 of these regulations, by deducting the amount of natural gas recorded with a commercial meter for the period in which the recorded amount of natural gas consumed was underrated and setting the price of natural gas in the amount of that for the supply of last resort in the month when the violation was found. Based on the recalculated natural gas consumption, the system operator issues an invoice to the user, showing the

recalculated natural gas consumption and the payment date. The user is obligated to settle accounts with the distribution system operator timely and in full.

PROVISIONS OF SUPERIOR LEGAL FORCE

- Article 64 of the Constitution (Satversme) of the Republic of Latvia (hereinafter – the Constitution): “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 Constitution: “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.”
- Section 107(7) of the Energy Law: Procedures for supplying natural gas to the users and for terminating its supply, requirements for the safe use of the natural gas system, the rights and responsibilities of the trader, public trader, system operator, user, and the owner of a gasified object in supplying and using natural gas, the procedure for settling accounts for the services received, the amount of late charge, the procedures for changing traders and for supplies to users in case of natural gas supply interruptions, as well as the procedure for providing the liquefied natural gas services shall be determined by the Cabinet of Ministers.

FACTS OF THE CASE

The case was initiated on the basis of an application filed by Riga Regional Court. The Applicant is hearing a civil case, in which a debt claim was brought against a private individual and a legal entity – non-household users of natural gas. It follows from the application that the contested provisions must be applied in the mentioned case.

The Applicant holds that the contested provisions of Regulations No 78 were issued in violation of the authorisation granted to the Cabinet by Section 107(7) of the Energy Law. Furthermore, the obligation to pay for the natural gas in accordance with the calculation performed by the energy supply merchant diminishes the property of the energy user and thus infringes on the right to property of the respondents in the case under consideration by the Applicant. Allegedly, the legitimate aims of this restriction of fundamental rights can be achieved by more proportionate means.

LEGAL PROCEEDINGS

The Constitutional Court has requested the Cabinet of Ministers to submit a written reply stating the facts of the case and the legal reasoning by 15 March 2021.

- The case is to be prepared by 15 June 2021.

The Court will decide on the type of proceedings and the date of hearing once the case has been prepared.

- The decision to initiate the case is available here: https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/01/2021-03-03_lemums_par_ierosinasanu.pdf

This release has been prepared to inform the public about the work done by the Constitutional Court. More detailed information on current issues, cases initiated and decided by the Constitutional Court is available on the website of the Constitutional Court at www.satv.tiesa.gov.lv. You are also invited to follow the information on the Court's *Twitter* account [@Satv_tiesa](https://twitter.com/Satv_tiesa) and *YouTube* [channel](#).

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