Satversmes tiesa

Press Release | Case No. 2020-52-01 | 31.05.2021.

The Constitutional Court terminates legal proceedings in a case with respect to provisions that regulate implementation of the mandatory procurement of energy because the term for submitting the constitutional complaint was not respected

On 28 May 2021, the Constitutional Court decided to terminate legal proceedings in case No. 2020-52-01 "On Compliance of the Words "or another aid to the activity for the generation of electricity" in Para 3^1 of Section 1 (2), the First and the Second Part of Section 30^4, the Second Sentence in Section 31^4 (1) and Para 83 of the Transitional Provisions 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 norms

- Para 3^1 of Section 1 (2) of the Electricity Market Law provides: "Aid period is a period forming part of the life cycle of a power plant during which the power plant receives State aid for the generation of electricity from renewable energy resources or in cogeneration or another aid to the activity for the generation of electricity."

- The first and the second part of Section 30^4 of the Electricity Market Law provide: that the total aid period, upon summing up the aid of all types to the generation of electricity, for one power plant shall not exceed 20 years. When the total aid period reaches 20 years, the disbursement of aid shall be discontinued.

- The Second Sentence in Section 31^4 (1) of the Electricity Market Law provides that if prior to granting the rights referred to in Sections 28, 28^1, 29 or 30 of the Electricity Market Law another aid for electricity generation has been granted to the producer, it is included in the calculation of the internal rate of return of the total capital investments of the power plant, moreover, the period between aid periods shall be included in such calculation.

- Para 83 of the Transitional Provisions of the Electricity Market Law provides: "For electricity producers which have been granted the right to State aid before 15 February 2020 for the period of time exceeding 15 February 2023 and for which the aid period on the particular day has reached 20 years, the provision of such aid shall be continued until 15 February 2023."

Norms 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

As part of their commercial activity, the applicants produce electricity in the hydroelectric plants that they own by using renewable energy resources. Before the applicants acquired the right to sell electricity in the framework of mandatory electricity procurement, they received another type of state aid for generation of electricity.

It is noted in the applications that the legislator, by adopting the contested norms, had, *inter alia*, specified the concept of the aid period, including in it also the aid that the producers of electricity had received before the right to sell the generated electricity in the framework of mandatory electricity procurement had been granted to them.

Consequently, for the applicants, the staid aid within the framework of the system of mandatory procurement, will be discontinued earlier than they had planned, i.e., already on 15 February 2023. Whereas amendments to the regulation on over-compensation provides that, in calculating the internal rate of return of the total capital investments, also other aid for electricity generation, including the historical aid, will be taken into account.

When the new calculations are made, allegedly, the coefficient for price differentiation to be applicable to the applicants to prevent over-compensation will be impacted and the amount of state aid will be decreased.

The applicants note that their right to property, included in the first sentence of Article 105 of the *Satversme* has been infringed upon and, likewise, several general principles of law, derived from the basic norm of a democratic state governed by rule of law and falling within the scope of Article 1 of the *Satversme*, i.e., the principle of legal certainty, the principle of legitimate expectations and the principle of sustainable development have been violated.

The Court's Findings and Ruling

The Constitutional Court recognised: the *Saeima's* assertion that the applicants' right to property, included in the first sentence of Article 105 of the *Satversme*, has not been infringed upon by the contested norm is not the grounds for terminating legal proceedings in the present case. However, in the course of reviewing the case, in order to decide whether there are grounds for continuing legal proceedings, the Constitutional Court must verify whether the application complies also with other requirements set out in Section 18 and Section 19[2] of the Constitutional Court Law, *inter alia*, whether the applicants have respected the term for submitting a constitutional complaint to the Constitutional Court. If the decision on initiating legal proceedings is incompatible with the requirements set out in Section 20 (5) of the Constitutional Court Law, the Constitutional Court may terminate legal proceedings in the case before a judgement is delivered by the Constitutional Court's decision. [14., 15. and 16.]

The Constitutional Court pointed out that, with respect to the term for submitting a constitutional complaint, it had to be taken into account that the term defined in the Constitutional Court Law was a rule constituting the content of a constitutional complaint, and the failure to respect it denied access to the Constitutional Court. Upon expiry of the term defined in the Constitutional Court Law, a person's right to submit a constitutional complaint to the Constitutional Court is lost. Therefore, if the Constitutional Court establishes that the applicant has not respected the term for submitting a constitutional complaint to the Constitutional Court, defined in the Constitutional Court Law, legal proceedings in the case must be terminated. [16.]

The Constitutional Court recognised that Section 19^2 (4) of the Constitutional Court Law defined exhaustively what was to be regarded the starting point for counting the term for submitting a constitutional complaint, i.e., the date on which the ruling by the last institution had entered into force if the person had the possibility to protect their fundamental rights, defined in the *Satversme*, by general legal remedies, or the moment when the infringement on fundamental rights occurred if the person did not have such a possibility. [16.1.]

As regards counting of the term, in turn, the rules of the Civil Procedure Law are applicable. This means that the term defined in Section 19^2 (4) of the Constitutional Court Law is respected if the application has been forwarded by e-mail to the Constitutional Court on the last date of the term by 24:00. Of course, the decisive moment is when the electronic document has been forwarded to the Constitutional Court and not the moment when the Court has received it in its e-mail address. [16.1., 16.2.]

The Constitutional Court underscored that only such evidence that could be objectively verified could serve as a proof that the respective document, indeed, was forwarded on the respective date, for example, the time of forwarding indicated in the print-out from the applicant's e-mail address. If the Constitutional Court, in assessing the compliance with the term for submitting a constitutional complaint, would rely only on the

applicant's statements regarding the time when the document had been forwarded, it would act contrary to the requirements of foreseeability and certainty that are derived from the principle of legal certainty. Whereas the date of adding the time stamp and the time indicated on the electronic document only prove that the document had been signed on the date and at the time indicated therein. Thus, the time stamp on an electronic document cannot be regarded as evidence proving the time when the document had been forwarded. [16.2.]

Having assessed the actual circumstances of the case, the Constitutional Court concluded that the applicants had not respected the term for submitting a constitutional complaint, defined in Section 19^2 (4) of the Constitutional Court Law. Consequently, in accordance with Para 3 of Section 29 (1) of the Constitutional Court Law, legal proceedings in the present case must be terminated. [16.3.]

The Constitutional Court held:

to terminate legal proceedings in case No. 2020-52-01 "On Compliance of the Words "or another aid to the activity for the generation of electricity in Para 3^1 of Section 1 (2), the First and the Second Part of Section 30^4, the Second Sentence in Section 31^4 (1) and Para 83 of the Transitional Provisions of the Electricity Market Law with Article 1 and the First Sentence of Article 105 of the *Satversme* of the Republic of Latvia".

The decision is not subject to appeal.

The text of the decision is available on the Constitutional Court's homepage: https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/09/2020-52-01_lemums_par_tiesvedibas_izbeigsanu.pdf

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The press release was prepared to inform society about the Constitutional Court's work. More detailed information about recent developments, cases initiated and heard by the Constitutional Court is available on the Constitutional Court's webpage www.satv.tiesa.gov.lv. Please follow also information published on the Court's *Twitter* account @Satv_tiesa and *Youtube* channel.

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