



Satversmes tiesa

Press Release

Case No. 2022-06-03

24.02.2022.

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A case initiated regarding the term of 10 years for the right to participate in the mandatory procurement

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On 24 february 2022, the 2<sup>nd</sup> Panel of the Constitutional Court initiated the case “On compliance of the number and word “10 years”, included in Para 53<sup>1</sup> of the Cabinet Regulation of 10 March 2009 No. 221 “Regulation on Producing Electricity and Setting Prices in Producing Electricity in Cogeneration”, and the number and word “10 years”, included in Para 68, of the Cabinet Regulation of 2 September 2020 No. 561 “Regulation on Producing Electricity, Supervision and Setting Prices in Producing Electricity in Cogeneration”, with Article 105 of the *Satversme* of the Republic of Latvia”.

#### THE CONTESTED NORMS

- Para 53<sup>1</sup> of the Cabinet Regulation of 10 March 2009 No. 221 “Regulation on Producing Electricity and Setting Prices in Producing Electricity in Cogeneration” defined two alternative points of reference, from the occurrence of which the public trader purchased for 10 years electricity produced in the cogeneration process from a merchant who had obtained the right to sell the produced electricity within the framework of mandatory procurement and whose installed electricity capacity of a cogeneration power plant or a separate cogeneration unit of this power plant did not exceed four megawatts.

- Also Para 68, of the Cabinet Regulation of 2 September 2020 No. 561 “Regulation on Producing Electricity, Supervision and Setting Prices in Producing Electricity in Cogeneration” (hereafter – Regulation No. 561) defines the term of 10 years for purchasing electricity within the framework of mandatory procurement.

### **NORMS OF HIGHER LEGAL FORCE**

Article 105 of the *Satversme* of the Republic of Latvia (hereafter – 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 joint-stock company “Sātiņi Energo LM” (hereafter – the Applicant). The Applicant owns a biomass cogeneration station and, by the decision of 16 July 2009 of the Ministry of Economics, it had been granted the right to sell electricity in the framework of mandatory procurement. However, the term of 10 years, defined in Para 68 of Cabinet Regulation No. 561, currently in force, for the right to participate in the mandatory procurement has been applied to Applicant. The Applicant had not expected infinite state aid in the form of the component of mandatory procurement; however, the Applicant holds that depriving of this aid after 10 years infringes upon its right to property, included in Article 105 of the *Satversme*.

### **LEGAL PROCEEDINGS**

The Constitutional Court has requested the Cabinet, the institution, which issued the contested act, to submit to the Constitutional Court **by 25 April 2002**

a written reply to the Constitutional Court, presenting the facts of the case and legal substantiation.

- The term for preparing the case is **25 July 2022**.

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

The decision on initiating the case is available here:

[https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/09/2021-38-01\\_lemums\\_par\\_ierosinasanu.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/09/2021-38-01_lemums_par_ierosinasanu.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](http://www.satv.tiesa.gov.lv). Please follow also information published on the Court's *Twitter* account [@Satv\\_tiesa](https://twitter.com/Satv_tiesa) and *Youtube* [channel](#).

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