CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

DECISION ON
TERMINATING LEGAL PROCEEDINGS
IN CASE NO. 2017-20-0103

Riga *23 May 2018*

The Constitutional Court of the Republic of Latvia, comprised of: chairperson on the court hearing Ineta Ziemele, Justices Sanita Osipova, Aldis Laviņš, Gunārs Kusiņš, Jānis Neimanis, and Artūrs Kučs,

having regard to a constitutional complaint submitted by Ltd. "Skonto Būve", Ltd. "GRIF 1", and Ltd. "GRF",

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 and Para 3 of Section 16, Para 11 of Section 17 (1) as well as Section 19^2 and Section 28^1 of the Constitutional Court Law,

at the court hearing of 24 April 2018 examined, in written procedure, the case

"On Compliance of the Sixth and the Eighth Sentence of Section 7 (5) of the Law "On Official Secrets" with Article 92 of the *Satversme* of the Republic of Latvia and of the Second Sentence of Para 12 of the Cabinet Regulation of 23 May 2006 No. 412 "Procedure of Applying for, Granting, Registering, Using, Changing the Category of or Annulment of an Industrial Security Certificate" with Article 105 of the *Satversme* of the Republic of Latvia".

The Constitutional Court established:

1. On 17 October 1996, the *Saeima* adopted the law "On Official Secrets", which entered into force on 1 January 1997.

Section 7 (5) of the law "On Official Secrets" provides general regulation on the procedure of obtaining an industrial security certificate and has been in force, in the current wording, since 13 June 2006. The sixth sentence of this part provides that the decision by the Prosecutor General, adopted after having examined a complaint regarding the decision by the Director of the Constitution Protection Bureau on refusal to issue an industrial security certificate or on the annulment thereof, which denies the right to access official secrets, is final and not subject to appeal. Whereas pursuant to the eighth sentence of this part, the notification on refusal to issue an industrial security certificate or on annulment thereof is sent to the applicant without specifying the substantiation of this refusal.

The third sentence of Section 7 (5) of the law "On Official Secrets" provides that the procedure of applying for an industrial security certificate, the list of documents to be submitted, the procedure of issuing, registering, using of the industrial security certificate, of changing the category or annulling the certificate is regulated by the Cabinet Regulation. Pursuant to this legal norm, on 23 May 2006 the Cabinet adopted Regulation No. 412 "Procedure of Applying for, Granting, Registering, Using, Changing the Category of or Annulment of an Industrial Security Certificate" (hereinafter – Regulation No. 412), which entered into force on 27 May 2006.

"Amendments to Regulation No. 412 "Procedure of Applying for, Granting, Registering, Using, Changing the Category of or Annulment of an Industrial Security Certificate" of 23 May 2006" added a second sentence to Para 12 of Regulation No. 412, worded as follows: "If a decision is adopted to refuse to issue an industrial security certificate, a merchant may re-apply for receiving an industrial security certificate no sooner than five years after the adoption of the respective decision".

On 10 February 2017, the Constitutional Court passed the judgement in case No. 2016-06-01 "On Compliance of the Fifth Part of Section 11 and the Third and Fourth Part of Section 13 of the Law "On Official Secrets" with the First Sentence of Article 92, Article 96 and the First Sentence of Article 106 of the *Satversme* of the Republic of Latvia" (hereinafter – Judgement in Case No. 2016-06-01), which recognised, *inter alia*, Section 11 (5) and Section 13 (3) of the law "On Official Secrets", insofar these norms provided with respect to the decision on annulling the special permit that the decision by the Prosecutor General was final and not subject to appeal, as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*) and void as of 1 July 2018.

On 1 February 2018, the *Saeima* adopted the law "Amendments to the Law "On Official Secrets"" (hereinafter – Amendments to the Law "On Official Secrets"), which will enter into force on 1 July 2018. After these amendments enter into force, the fifth, sixth and seventh sentence of Section 7 of the law "On Official Secrets" will stipulate: "A merchant may appeal against a decision by the Director of the Constitution Protection Bureau on refusal to issue an industrial security certificate or on the annulment thereof in the same procedure as the decision on refusal to issue access to the official secrets, on the annulment thereof or lowering the category of it. The decision by the Director of the Constitutional Protection Bureau on refusal to issue an industrial security certificate or annulment thereof in connection with the right to use the classified information of foreign countries, international organisations and bodies thereof shall be final and not subject to appeal. If a decision is adopted on refusal to issue an industrial security certificate or the annulment thereof, the Constitutional Protection Bureau shall ensure that the merchant is informed and heard in the same procedure that is envisaged with respect to a person who applies for access to official secrets."

2. The applicants – Ltd. "Skonto Būve", Ltd. "GRIF 1" and Ltd. "GRF" (hereinafter – the Applicants) **–** hold that the restriction envisaged in the

second sentence of Para 12 of Regulation No. 412 violates their rights established in the first, second and third sentence of Article 105 of the *Satversme*. Whereas the procedure established in Section 7 (5) of the law "On Official Secrets" for adopting the decision on the refusal to issue an industrial security certificate and for appealing against it, allegedly, violates the Applicants' right to a fair trial, established in the first sentence of Article 92 of the *Satversme.* The sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" and the second sentence of Para 12 of Regulation No. 412 (hereinafter also – the contested norms), with respect to the Applicants, should be recognised as being void as of the moment when the infringement on the fundamental rights occurred, i.e., as of 1 July 2016.

Pursuant to the sixth sentence of Section 7 (5) of the law "On Official Secrets", the Applicants had been refused an industrial security certificate by a decision by the Prosecutor General, without specifying substantiation for the decision, in accordance with the eighth part of Section 7 (5) of the law "On Official Secrets". Pursuant to the second sentence of Para 12 of Regulation No. 412, the Applicants may re-apply for the industrial security certificate no sooner than five years after the adoption of the respective decision.

2.1. The Applicants hold that the requirements included in the law "On Official Secrets" and Regulation No. 412 regarding receipt of an industrial security certificate restrict their rights to engage in commercial activities that require access to official secrets and in which the Applicants have gained significant experience. Allegedly, the second sentence of Para 12 of Regulation No. 412 envisages an additional restriction – a prohibition to receive an industrial security certificate for additional five years following the refusal, irrespectively of the fact, whether the reason why the issuing of the certificate was refused still exists. The second sentence of Para 12 of Regulation No. 412 will not only prohibit the Applicants from participation in new public procurement procedures in connection with contracts, the fulfilment of which requires working with objects of official secrets, but also from performing contracts that have been concluded before the term of the previous industrial security certificates expired.

The Applicants do not contest that the restriction envisaged in the second sentence of Para 12 of Regulation No. 412 has been established by law. Since an industrial security certificate ensures access to objects of official secrets the restriction on such access is said to have a legitimate aim – protection of public security.

It is alleged that the second sentence of Para 12 of Regulation No. 412 is not appropriate for reaching the legitimate aim since it does not ensure that untrustworthy merchants do not gain access to objects of officials secrets and, in some cases, even allows revealing official secrets to an unnecessary broad circle of persons. The restriction envisaged in this legal norm does not have a direct impact on the protection of public security. Even if the merchant knew the reasons why it was refused issuing of an industrial security certificate, this merchant would lack incentives for eliminating the respective circumstances since for the following five years it, nevertheless, could not apply for an industrial security certificate. As the result of applying the second sentence of Para 12 of Regulation No. 412, the works that need to be done during the warranty period must be performed by a merchant who has received an industrial security certificate but still has to familiarise itself with those objects of official secrets that another merchant had familiarised itself with previously.

Allegedly, the legitimate aim of the restriction established in the second sentence of Para 12 of Regulation No. 412 could be reached by restricting the merchants' rights to a lesser extent. The legislator had had the possibility to choose a more commensurate approach and to differentiate the consequences of refusal of an industrial security certificate depending on the reasons for not issuing this certificate and depending on the fact whether these reasons continue to exist. The causes that are the grounds for not issuing an industrial security certificate often can be eliminated faster and more simply compared to the causes for annulling or not issuing a special permit. Hence, the conclusion made in the Judgement in Case No. 2016-06-01 that there were no grounds for prohibiting from re-applying for a special permit if the conditions, due to which it was

annulled, had been eliminated, so should be applied to the prohibition from re-applying for the receipt of an industrial security certificate.

Moreover, the restriction envisaged in the second sentence of Para 12 of Regulation No. 412 could be implemented in a more lenient way; i.e., if an industrial security certificate were not issued the merchant would be allowed to meet the commitments that it undertook during the term of validity of the previously issued certificate. This solution would ensure reaching the legitimate aim in the same quality since in order to meet the commitments that were undertaken previously the merchant would have to work with the same objects of official secrets, which it had already familiarised itself with.

Neither can the restriction on fundamental rights caused by the second sentence of Para 12 of Regulation No. 412 be justified by the benefit that society gains by the application of this norm. Even if, within five years, the Applicants would be issued an industrial security certificate again, their possibilities to participate effectively in such public procurement of construction works that are linked to official secrets could be restricted to a large extent. It is not clear what kind of damage could be inflicted on the national security or the general public interests if the Applicants' right to receive an industrial security certificate were re-examined.

The restriction envisaged in the second sentence of Para 12 of Regulation No. 412, which does not depend on whether the cause for not issuing an industrial security certificate still exists, is said to not only infringe upon a merchant's fundamental rights but, also to be contrary to public interests, which would be compatible with access by as extensive circle of bidders as possible to procurement procedures. The second sentence of Para 12 of Regulation No. 412 is causing situations, where the national security interests are not endangered at all but competition is restricted without grounds and the expenditure of state budget resources increases.

It is alleged that the refusal to issue an industrial security certificate infringes on the Applicants' rights and lawful interests in the meaning of the first sentence of Article 92 of the *Satversme*. The findings included in the Judgement

in Case No. 2016-06-01 should be applicable also to the procedure established by the sixth and eighth sentence of Section 7 (5) of the law "On Official Secrets".

A person does not have access to court, in the institutional meaning of this word, in the procedure of appealing against the decision on refusal to issue an industrial security certificate referred to in the sixth sentence of this part. The eighth sentence of this part, in turn, ensures even to a lesser extent a person's fundamental right to be heard in the procedure of refusing an industrial security certificate compared to the procedure for annulling a special permit, which was examined in the Judgement in Case No. 2016-06-01. It is alleged that the sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" substantially deny the right to a fair trial, guaranteed in the first sentence of Article 92 of the *Satversme*, therefore there is no need to examine whether the restrictions included in this legal norms are justifiable.

3. The institution, which issued the contested act, – the *Saeima* – does not uphold the Applicants' view and is of the opinion that legal proceedings in the case regarding compliance of the sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" with Article 92 of the *Satversme* should be terminated on the basis of Para 2 of Section 29 (1) of the Constitutional Court Law.

The industrial security certificates issued to the Applicants had been valid until 30 June 2016. Pursuant to Para 32 of Regulation No. 412, a merchant submits an application requesting extension of the term for using an industrial security certificate four months prior to the expiry of this term. If the term for submitting the application is missed, the application is examined in the procedure, in which the applications for receiving an industrial security certificate are examined. It follows from the materials appended to the constitutional complaint that the Applicants applied for extension of the term of the industrial security certificate belatedly. Hence, the request to recognise the contested norms as being void from 1 July 2016 is said to be unfounded.

In the present case, the refusal to issue to the Applicants an industrial security certificate should be regarded as a refusal to grant a certain privilege compared to other merchants operating the respective field. It is also important that Ltd. “GRIF 1” and Ltd. “GRF”, during the time they have been operating, have not concluded agreements, the performance of which would require working with objects of official secrets. The Applicants, referred to above, have not used the industrial security certificate issued to them in order to engage in commercial activities and, hence, it cannot be claimed that the decision on refusal to issue this certificate would have had a significant impact on their activities thus far or the ones planned for the future.

In the Judgement in Case No. 2016-06-01, the Constitutional Court had recognised that in the period until the norms contested in the respective case became void the current procedure for appealing against a decision could be applied also with respect to other persons if it was ensured that a person was heard and was informed about the reasons for refusing to issue the special permit, insofar this did not jeopardise the national security and other persons’ rights. The aforementioned findings made by the Constitutional Court had been applied to the Applicants during the screening.

Contrary to the statement made in the constitutional complaint, in the course of examining the application requesting granting an industrial security certificate, the Applicants’ right to be heard had been ensured at the institution of national security. According to the information provided by the Constitutional Protection Bureau, the Applicants’ representatives had been invited for discussions and had been appropriately heard. During these discussions, the Applicants’ representatives had been informed about the reasons why the issuing of an industrial security certificate could be refused, insofar it had been admissible, without jeopardising the national security and other persons’ rights. Hence, there is no need to recognise the contested norms as being void retroactively with respect to the Applicants.

By Amendments to the Law “On Official Secrets”, the legislator has changed the procedure for appealing against the refusal to issue the special

permit. These amendments provide that the decision on refusal or annulment of a special permit or lowering its category, a person may appeal against to the Prosecutor General, whereas the Prosecutor's General decision may be appealed against in the administrative court. Likewise, the aforementioned amendments added to Section 10 of the law "On Official Secrets" regulation that envisaged a series of procedural safeguards in a case, where a person might be denied access to official secrets. The law will refer to particular cases, where a person may be not heard, as well as information that can be not disclosed to a person. These procedural safeguards, *inter alia*, the procedure for appealing against a decision, pursuant to the fifth sentence of Section 7 (5) of the law "On Official Secrets" in the future will be applied also to the decision by the Director of the Constitution Protection Bureau to refuse issuing an industrial security certificate or annulling this certificate.

Additionally, the *Saeima* notes that the Cabinet, in developing the procedure for issuing an industrial security certificate, may set such procedural terms that ensure that the procedure for issuing a certificate (extending its term of validity) would be effective and timely but the Constitution Protection Bureau could perform a comprehensive assessment of the respective merchant. The Cabinet had the right to set reasonable term, in which a merchant, who had been refused issuing of an industrial security certificate, before re-applying to the Constitution Protection Bureau with an analogous application, had to eliminate deficiencies identified in its work and prove its compliance with the requirements that have been set. Moreover, Amendments to the Law "On Official Secrets" specify the scope of authorisation granted to the Cabinet, noting, in particular, the right to establish the procedure and the terms for submitting an application for an industrial security certificate as well as the list of documents to be submitted.

4. The institution, which issued the contested act, – the Cabinet – does not uphold the Applicants' view and is of the opinion that the second sentence of Para 12 of Regulation No. 412 complies with Article 105 of the *Satversme*.

The Applicants had been informed about the reasons why the issuing of an industrial security certificate had been refused. During the special screening, the Constitution Protection Bureau had invited the Applicants' representatives for a discussion, and the time allocated for it had not been less than 60 minutes. During this discussion, the Applicants' representatives had been informed, insofar possible, about the conditions identified during the screening that were deemed to be sufficient grounds for prohibiting the merchant from receiving an industrial security certificate.

The purpose of an industrial security certificate is not linked to controlling commercial activities and limiting the number of merchants bidding for State's orders for working with official secrets. Essentially, this certificate does not grant the right to engage in commercial activities but confirms a merchant's ability to bid for work with official secrets and ensure the protection of official secrets. A merchant, who has been granted an industrial security certificate, gains the right to engage in commercial activities in objects that are related to official secrets only after winning a tender and concluding a contract with the commissioning party. It is possible that the right to perform a certain order is not obtained.

The requirement to obtain an industrial security certificate, in the context of both its purpose and consequences, cannot be compared to the requirement to obtain a licence to gain the right to engage in commercial activities in a certain area. I.e., the fact that a merchant has an industrial security certificate is not a mandatory pre-requisite for the merchant to engage in commercial activities of its own choice but rather an additional advantage. Thus, this certificate cannot be considered as being legal grounds for a merchant to demand a certain order or property in the meaning of Article 105 of the *Satversme*. Likewise, the certificate does not guarantee to all merchants who have obtained it the possibility to gain profit.

The statement that procurements requiring an industrial security certificate constituted a significant part of the Applicants' commercial activities is said to not be true. The refusal to issue this certificate, allegedly, will not cause such direct impact on the Applicants' commercial activities, which could lead to a

significant decrease in turnover and profit. Whereas the fact that the Applicant will not be able to ensure its warranties or to maintain its reputation should be deemed to be only an abstract possibility and, hence, should not be linked to an object of property rights. Likewise, in the different situations that the Applicants are in, as noted in the application, the second sentence of Para 12 of Regulation No. 412 does not restrict the fundamental rights envisaged in Article 105 of the *Satversme* of any of them.

The conditions for refusing an industrial security certificate indicated by the Applicants, allegedly, do not fall within the scope of Article 105 of the *Satversme*, and the second sentence of Para 12 of Regulation No. 412 is said to be proportionate with its legitimate aim – defending the national security, even if it restricts a person's right to property. The analysis of experience of foreign states allows concluding that the approach to controlling the flow of merchant's applications as practised in Latvia has been favourable both for merchants and the State as the procuring party. The requirements regarding a certain term after the expiry of which a company may re-apply for an industrial security certificate is valid since any changes implemented in the company should be verifiable in its actual operations not only be formally recorded.

5. The summoned person – the Ombudsman – notes that information mentioned by the participants of the case regarding hearing the Applicants' representatives before adopting the decision on refusal to issue an industrial security certificate differs. The State has the obligation to ensure that a person is heard before the decision is made and to inform about the circumstances that are the basis for the decision; moreover, a person should have the possibility to appeal against the decision adopted with respect to it in court. The sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets", insofar they do not envisage informing a legal person about the reasons for refusal to issue an industrial security certificate or to annul it an also deny the possibility to appeal against the Prosecutor's General decision in court, are said to be incompatible with Article 92 of the *Satversme*.

Provisions of Para 12 of Regulation No. 412, insofar they prohibit an institution of national security from performing an individual assessment of a merchant's operations and set a term that is shorter than five years, in which the merchant could re-apply for the receipt of an industrial security certificate, place disproportionate restrictions on a merchant's possibilities to participate in competitions for orders that are linked to objects of official secrets.

However, an industrial security certificate does not create rights of financial nature for the merchant or grounds for legal expectations that it will obtain a State's order or profit as the result of performing the order. In general, the absence of an industrial certificate does not deny the right to engage in commercial activities and gain profit in the respective area of business. Hence, there are no grounds to consider that the second sentence of Para 12 of Regulation No. 412 restricts the rights guaranteed in Article 105 of the *Satversme*.

6. The summoned person – the Ministry of Justice – upholds the opinion expressed in the written reply by the *Saeima* that legal proceedings in the part regarding the compliance of the sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" with Article 92 of the *Satversme* should be terminated.

The essence and purpose of an industrial security certificate are to confirm that a merchant has the required capabilities to ensure the protection of official secrets and, thus, to bid for the conclusion of a procurement contract. Legal regulation does not create legal grounds for the merchant to expect that the received industrial security will be at its disposal continuously. Likewise, it does give the grounds for the commissioning party to expect that during the whole period when the contract is performed the respective certificate will be at the disposal of the other party to the procurement contract. The rights that are derived from this certificate cannot be considered as being a subject of civil law transaction.

The purpose of the law "On Official Secrets" is not to ensure and protect a merchant's access to an object of official secrets so that the merchant could engage in its commercial activities. Allegedly, the Applicants have no legal grounds to expect that they would be able to exercise the rights granted by an industrial security certificate without restrictions or to demand protection of these rights, even if that would cause financial consequences. Hence, the prohibition for the Applicants to apply, within the next five years, for the receipt of an industrial security certificate does not restrict the fundamental rights envisaged in Article 105 of the *Satversme*.

7. The summoned person – the Prosecutor's General Office – notes that legal proceedings in the present case should be terminated on the basis of Para 2 and Para 6 of Section 29 (1) of the Constitutional Court Law.

After the adoption of Amendments to the Law "On Official Secrets", the deficiencies in legal regulation indicated in the application should be eliminated and the sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" will become void. Allegedly, these amendments will ensure that the term set in the Judgement in Case No. 2016-06-01 – 1 July 2018– will be abided by. Moreover, it can be established that during the discussion held at the institution of national security, the Applicants had been heard and, insofar possible, had been informed about the expected decision.

As regards compliance of the second sentence of Para 12 of Regulation No. 412, the Prosecutors' General Office upholds the statements made by the Cabinet. A merchant cannot perceive the existence of an industrial security certificate as legal grounds for demanding to be entrusted with the performance of a particular order. It is alleged that the refusal of an industrial security certificate does not fall within the scope of Article 105 of the *Satversme* and, thus, does not infringe upon a person's right to property.

8. The summoned person – the Constitution Protection Bureau – upholds the statement made in the Cabinet's written reply and notes, besides,

that, although heightened safety requirement are set for merchants in classified procurements, its right to work in conditions of narrow competition is to be considered a privilege. The State does not interfere into commercial activities since the absence of an industrial security certificate does not restrict a merchant's right to operate in the field of business of its own choice. The Applicants' statements that procurements that require an industrial security certificate constitute a significant part of their commercial activities are said to not be true.

The restriction envisaged in the second sentence of Para 12 of Regulation No. 412, i.e., the term of five years, has been established for a legitimate aim – protection of national and public security. One of the State's tasks is to minimise the possibility that untrustworthy merchants could be entrusted with official secrets. The established restriction is said to comply with all criteria of proportionality.

The requirements that a merchant must meet in order to receive an industrial security certificate are included in Chapter II of Regulation No. 412. In accordance with these requirements, institutions of national security verify information provided by a merchant and also obtain additional information as the result of operational, intelligence or counter-intelligence activities. Institutions of national security conduct discussions with merchants in the form of interviews and inform them about the deficiencies that should be eliminated before the decision on issuing an industrial security certificate or on refusal to issue it is adopted. What is said during the interviews point to the methods of operation of security institutions and the information that is at the disposal of these institutions. Institutions of national security take a very reserved approach regarding the possibility of providing detailed information to merchants regarding disqualifying circumstances since their operations are based on the protection of the source of information. However, to the extent possible, merchants are informed about deficiencies that they can eliminate. This had been done also in the Applicants' case.

Until now, following the review of the current application, an industrial security certificate had been issued to the Applicants for a shorter term each time, and this condition indirectly pointed to the risk that it would be impossible to retain the certificate. The State should not provide incentives to a merchant for eliminating deficiencies identified in its operations since the direct incentive for a merchant's activities is said to be profit. The national security risks are said to be smaller if even a slightly more extensive circle of verified persons become familiar with official secrets rather than persons, whose ability to keep official secrets has caused doubts, continue working with it. The solution referred to by the Applicants that in the case where the certificate is refused the merchant should be allowed to perform the commitments it undertook would be contrary to the guidelines on protecting official secrets. In this case, the restriction on individual rights should be deemed to be less important *vis-à-vis* the general interests of the State and society.

9. The summoned person – the Security Police – notes that an industrial security certificate grants special rights to a merchant to ensure that public procurement is performed in objects of official secrets. Merchants and their employees with access to objects of official secrets are subject to the risk of being recruited by foreign special services. The State has the right to set restrictions on working with objects of official secrets and requirements for the protection of official secrets.

A merchant's primary interest will always be gaining profit from commercial activities. Therefore it is the State's obligation – to eliminate, to the extent possible, risks related to objects of official secrets and ensure a comprehensive system for the protection of these objects. The introduction of an industrial security certificate had allowed preventing a situation, where a merchant who is unable to ensure the protection of official secrets has access to an object of official secrets.

The absence of an industrial security certificate, allegedly, has no impact on a merchant's right to engage in commercial activities, and the receipt of the

certificate is a merchant's free choice. The protection of official secrets is said to prevail over the restrictions established for the merchant and the losses that the State or the merchant could incur. An industrial security certificate does not affect a merchant's right to engage in commercial activities nor its reputation outside the specific type of commercial activities related to official secrets. A merchant should be aware that an institution of national security will verify its activities and it might be imposed restrictions and it would have to abide by the requirements set for the protection of official secrets.

The proposals integrated into the law "On Official Secrets" will ensure a merchant's procedural rights during the screening in accordance with both the right to a fair trial and the requirements set for the protection of official secrets.

10. The summoned person – Defence Intelligence and Security Service – is of the opinion that in the case where a merchant applies for an industrial security certificate the safeguards and procedural safeguards should be the same as the persons' rights to receive the special permit to access official secrets established in the law "On Official Secrets". Therefore, in view of the findings made in the Judgement in Case No. 2016-06-01, the sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" should be deemed to be incompatible with Article 92 of the *Satversme*.

The regulation included in Amendments to the Law "On Official Secrets" regarding a merchant's procedural safeguards, the right to be heard and to be duly informed before the decision on granting an industrial security certificate, refusal to grant it or to annul it is adopted will fully comply with a merchant's s right to defend its rights and lawful interest in a fair court, enshrined in Article 92 of the *Satversme*.

The term, in which a merchant may re-apply for an industrial security certificate should be equalled to the term, in which a natural person may re-apply for the special permit. The summoned person upholds the considerations expressed by the Cabinet regarding the purpose of an industrial security certificate and the fact that the absence of the certificate does not restrict a

merchant's right to operate in the chosen field. The term of five years, set in the second sentence of Para 12 of Regulation 412, is said to be proportionate.

11. The summoned person – Latvia's representative in international human rights organisations Kristīne Līce – notes that legal proceedings in the present case regarding the compliance of the sixth and the eighth sentence of Article 7 (5) of the law "On Official Secrets" with Article 92 of the *Satversme* should be terminated, whereas the part of the constitutional complaint regarding the compliance of the second sentence of Para 12 of Regulation No. 412 with Article 105 of the *Satversme* does not fall with the scope of property rights. By Amendments to the Law "On Official Secrets", the legislator has eliminated the deficiencies indicated in the constitutional complaint, which, in the Applicants' opinion, restrict the right to a fair trial.

The summoned person subscribes to the statements made in the Ministry's of Justice opinion and holds that a refusal to issue an industrial security certificate *per se* does not cause negative consequences for a merchant as regards its core business operations. Hence, in view of the special function of an industrial security certificate, these aspects are said to be outside the scope of the right to property in the meaning of Article 105 of the *Satversme*. None of the Applicants had indicated that the refusal to issue an industrial security certificate had in any way influenced its core business. Notwithstanding the different actual situations of the Applicants, the part of their constitutional complaint regarding compliance of the second sentence of Para 12 of Regulation No. 412 with Article 105 of the *Satversme* does not fall within the scope of property rights.

Even if an infringement on the Applicants' rights defined in Article 105 of the *Satversme* was established, it should be recognised that the legislator had chosen a measure with the least impact on the right to property and that this choice had struck a fair balance between a merchant's rights and lawful interests and the interests of the State as the procuring party and the general public good.

12. The summoned person – *Dr. iur.* Kaspars Balodis, Professor at the Department of Civil Law, the Faculty of Law, the University of Latvia, – notes that the second sentence of Para 12 of Regulation No. 142 does not comply with Article 105 of the *Satversme*.

Allegedly, a merchant's right to apply for an industrial security certificate falls within the scope of the right to property protected by Article 105 of the *Satversme*. Whereas the prohibition defined in the contested norm to re-apply for the receipt of this certificate following the refusal to grant it restricts the property rights established in the *Satversme*.

The fact that the actual situation of each Applicant differs is said to be of no principal importance in adjudicating the case, and the prohibition included in the second sentence of Para 12 of Regulation No. 412 equally restricts the property rights defined in Article 105 of the *Satversme* of all Applicants since they had been refused an industrial security certificate. In the present case, it is not essential, which of the Applicants had been engaged to a smaller or larger extent in construction activities linked to an object of official secrets.

A restriction on fundamental rights is said to be a sufficiently important matter for the legislator itself to decide on. By issuing the second sentence of Para 12 of Regulation No. 412 and defining a term, during which a merchant was prohibited from re-applying for an industrial security certificate, the Cabinet had interpreted the words included in the authorisation granted by the *Saeima* – "the procedure for issuing certificates" – broadly. In the particular case, this is a restriction of substantive law nature and should be considered as significant interference into a person's fundamental rights.

In view of the above, it should be recognised that the restriction on fundamental rights included in the second sentence of Para 12 of Regulation No. 412 had not been established in accordance with law and that this legal norm was incompatible with Article 105 of the *Satversme*. Moreover, this restriction on rights is said to be also incompatible with the principle of proportionality.

13. The summoned person –*Dr. iur.* Aldis Lieljuksis, Associate Professor at the Faculty of Law of Riga Stradins University, – holds that the problem indicated by the Applicants – incompatibility of the sixth and the eighth sentence with Section 7 (5) of the law "On Official Secrets" with Article 92 of the *Satversme* – has been resolved by Amendments to the Law "On Official Secrets".

As regards the issue whether an industrial security certificate should be linked to the property rights enshrined in Article 105 of the *Satversme*, the summoned person subscribed to the statement made in the Cabinet's written reply, i.e.: the Applicants had not substantiated concrete losses that they had incurred or particular financial interests that had been infringed upon, hence, their right to property had not been affected.

A refusal to issue an industrial security certificate or the annulment of it is matters that should be examined on a case-by-case basis. An industrial security certificate is said to have a broad meaning – ensuring the protection of official secrets, and, hence, official secrets need to be protected irrespectively of the economic sector in which a merchant operates.

After Amendments to the Law "On Official Secrets" enter into force, it will be possible to appeal against a refusal to issue an industrial security certificate, therefore the prohibition to re-apply for an industrial security certificate for the term of five years is said to be proportional. There are no grounds for linking a merchant's possibilities to perform the commitments envisaged in the warranty with the said term. This matter should be resolved by envisaging in contracts the procedure for meeting the commitments of the warranty period in the case a certificate is not issued as well as the merchant, which could perform the respective works.

The Constitutional Court found:

14. In its written reply, the *Saeima* has requested the Constitutional Court to terminate legal proceedings in the present case in the part regarding

compliance of the sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" with Article 92 of the *Satversme* on the he basis of Para 2 of Section 29 (1) of the Constitutional Court Law. The *Saeima* notes that it has amended the procedure established in the law "On Official Secrets" with respect to the refusal to issue an industrial security certificate or annulling thereof. Amendments to the law "On Official Secrets" will enter into force on 1 July 2018. The persons summoned in the case – the Ministry of Justice, the Prosecutor's General Office and Latvia's representative in international human rights organisations Kristīne Līce – also uphold the *Saeima's* opinion on terminating legal proceedings in the case.

If arguments that could be the grounds for terminating legal proceedings have been expressed in the case these must be examined first ad foremost (*see, for example, Judgement of 27 June 2016 by the Constitutional Court in Case No. 2015-22-01, Para 12)*. Para 2 of Section 29 (1) of the Constitution Court Law provides that legal proceedings in a case may be terminated before the judgement is pronounced if the contested legal norm has become void. This paragraph of the Law is aimed at ensuring procedural economy of the legal proceedings before the Constitutional Court so that the Court should not pass a judgement in cases, where a dispute no longer exists (*see, for example, Judgement of 12 February 2008 by the Constitutional Court in Case No. 2007-15-01, Para 4*). However, the law envisages a possibility to terminate legal proceedings but not an obligation to do so. The fact that a norm contested in a case has become void *per se* is not always the grounds for terminating legal proceedings (*see, for example, Decision of 29 March 2011 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2010-68-01, Para 8*). Therefore the Constitutional Court must examine whether no other considerations exist that would point to the need to continue legal proceedings in the case (*see Judgement of 11 January 2011 by the Constitutional Court in Case No. 2010-40-03, Para 6*).

Hence, to decide on terminating legal proceedings on the basis of Para 2 Section 29 (1) of the Constitutional Court Law, it must be established: 1) whether

the contested norms have become void and 2) whether circumstances requiring continuation of legal proceedings do not exist (*see, for example, Decision of 11 March 2015 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2014-33-01, Para 6, and Decision of 3 May 2017 on Terminating Legal Proceedings in Case No. 2016-20-01, Para 5*).

14.1. The case has been initiated with regard to the compliance of the sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets", in the wording that has been in force since 13 June 2006, with Article 92 of the *Satversme*. By Amendments to the Law "On Official Secrets", Section 7 (5) of the law "On Official Secrets" was expressed in new wording and the sixth and the eighth sentence of this section that are currently in force will become void on 1 July 2018.

14.1.1. Although Para 2 of Section 29 (1) of the Constitutional Court Law has been worded to apply, if interpreted grammatically, only to cases, where the contested norm already has become void at the moment when the decision on terminating legal proceedings in the case is made, this paragraph has a wider meaning. I.e., it is applicable also in those case where at the moment of making the decision the norm formally has not become void but the institution, which issued the contested act, already has eliminated the dispute; i.e., has stipulated that the norm will become void (*see, for example, Decision of 23 May 2005 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2005-01-01, Para 7*).

Thus, the fact that the sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" will become void on 1 July 2018, could be considered as being the grounds for terminating legal proceedings referred to in Para 2 of Section 29 (1) of the Constitutional Court Law.

14.1.2. If the content of legal regulation has been amended the Constitutional Court must establish also the scope of these amendments to conclude that the content of a legal norm has substantially changed; i.e., that the institution, which issued the contested act, has genuinely eliminated the dispute. Otherwise, the issuer of legal norms could only change the wording of the text,

which would always be considered as being legal grounds for requesting termination of legal proceedings in the case. A situation like this would be contrary to the principle of a state governed by the rule of law, would not facilitate protection of a person's fundamental rights or realisation of the State's and society's interests (*see, for example, Decision of 18 April 2016 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2015-15-01, Para 6, and Decision of 12 December 2016 on Terminating Legal Proceedings in Case No. 2015-23-01, Para 8*).

The sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" provides that the Prosecutor's General decision, which he has adopted in examining a complaint regarding the decision by the Director of the Constitution Protection Bureau on refusal to issue an industrial security certificate or on annulling it, which denies the right to use official secrets, is final and not subject to appeal and that the notification regarding the refusal to issue an industrial security certificate is sent to the applicant without stating in it the grounds for refusal.

However, by Section 1 of Amendments to the Law "On Official Secrets", which will enter into force on 1 July 2018, the fifth sentence of Section 7 (5) of the law "On Official Secrets" is worded as follows: "A merchant may appeal against the decision by the Director of the Constitution Protection Bureau on refusal to issue an industrial security certificate, on annulling it or on lowering its category in the same procedure as the decision on refusal of the special permit for accessing official secrets, annulment of it or lowering of its category." Likewise, this Section of Amendments to the Law "On Official Secrets" deletes from the law the sixth sentence of Section 7 (5) of the law "On Official Secrets". By the amendments referred to above, the eighth sentence of this Section is worded as follows: "If a decision is adopted on refusal to issue an industrial security certificate or annulment of if, the Constitution Protection Bureau shall ensure that a merchant is informed and heard in the same procedure that is envisaged with respect to a person who applies for access to official secrets."

Pursuant to Section 9 of Amendments to the Law "On Official Secrets", after these amendments have come into force, in accordance with Section 16 of the law "On Official Secrets", a person will be able to appeal against a decision on refusal to issue a special permit, annulment on it or lowering of its category by submitting a complaint to the Prosecutor General, and it will be possible to appeal against the Prosecutor's General decisions, in turn, in an administrative court. A merchant will be able to contest and appeal against the decision by the Director of the Constitution Protection Bureau on refusal to issue an industrial security certificate or annulment of it in the same procedure.

Thus, the content of Section 7 (5) of the law "On Official Secrets" has been changed substantially and this norm will become void.

14.2. In establishing whether circumstances that require continuing legal proceedings in the case do not exist, it should be taken into account that a person submits a constitutional complaint to protect his or her fundamental rights established in the *Satversme*. Therefore, in examining the matter of terminating legal proceedings in the case, the Constitutional Court must consider, first and foremost, the necessity to protect the fundamental rights that the *Satversme* grants to persons (*see Judgement of 12 February 2008 by the Constitutional Court in Case No. 2007-15-01, Para 4).* The fact that the person submitting the constitutional complaint has requested recognising the contested norm as being void from a certain past date might also be indicative of the need to continue legal proceedings in the case. It might be insufficient to introduce amendments to the legal act, as the result of which the contested norm becomes void, to eliminate all adverse consequences that a person might have incurred in connection with the contested norm. The Constitutional Court's judgement may be the only way, in which the submitter of the constitutional complaint can continue defending his infringed rights (*see Decision of 18 April 2016 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2015-15-01, Para 7*).

The present case has been initiated on the basis of a constitutional complaint. The Applicants have requested the Constitutional Court to recognise

with respect to them, *inter alia*, as being void the sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" since the moment when the infringement on fundamental rights occurred (*see application in Case Materials, Vol. 1, pp. 27 –28*). Therefore it might be necessary to continue legal proceedings in the case to ensure the protection of the Applicants' fundamental rights that had been, possibly, infringed upon. The fact that the norms contested in the present case will become void in the future cannot be deemed to be sufficient grounds for terminating legal proceedings on the basis of Para 2 Section 29 (1) of the Constitutional Court Law since this might leave a possible infringement on fundamental rights not eliminated.

Hence, legal proceedings in the present case must be continued.

15. The Applicants request recognising the sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" as being incompatible with Article 92 of the *Satversme*, which provides: "Everyone has the right to defend his or her rights and lawful interests in a fair court. Everyone shall be presumed innocent until his or her guilt has been established in accordance with law. Everyone, where his or her rights are violated without basis, has a right to commensurate compensation. Everyone has a right to the assistance of counsel."

Pursuant to the sixth sentence of Section 7 (5) of the law "On Official Secrets", the Applicants had been refused an industrial security certificate by the Prosecutor's General decision – the final decision, pursuant to the eighth sentence of Section 7 (5) of the law "On Official Secrets", without stating the substantiation of the refusal. The present case applies to cases where a person has been refused an industrial security certificate. The issues to be examined in the case could pertain to the first sentence of Article 92 of the *Satversme*.

15.1. The Constitutional Court already has presented its considerations regarding the content of the first sentence of Article 92 of the *Satversme* with respect to the law "On Official Secrets" and in interconnection with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms" in the Judgement in Case No. 2016-06-01. In the aforementioned

case, the Constitutional Court examined the norms of the law "On Official Secrets" with respect to the annulment of a special permit (*see Judgement of 10 February 2017 by the Constitutional Court in Case No. 2016-06-01, Para 27–29*). It is not disputed in the present case either that any person does not have the subjective right to access official secrets and that the State enjoys broad discretion in selecting measures for protecting official secrets. However, this does not mean that persons' rights and lawful interests that should be defended in a fair trial could not be restricted in the process of protecting the official secrets.

Therefore the Constitutional Court must establish, whether the contested norms – the sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" – apply also to such rights and lawful interests of the Applicants, the defending of which in a fair trial has been envisaged in Article 92 of the *Satversme*.

15.2. It follows from the application that if a person has been refused an industrial security certificate then the restriction on fundamental rights and lawful interests could be manifested as the consequences that the particular decision causes with respect to the particular person's right to engage in commercial activities in an area that requires working with official secrets. The Applicants are of the opinion that these consequences are a restriction on their fundamental rights established in Article 105 of the *Satversme*. Thus, these consequences must be taken into account in assessing, whether the contested norms restrict a person's rights and lawful interests in the meaning of the first sentence of Article 92 of the *Satversme*.

If a person's fundamental rights established in Article 105 of the *Satversme* are restricted then the person should have the possibility to protect his or her rights in a way that complies with the first sentence of Article 92 of the *Satversme*. Therefore it must be established in the present case whether the contested norms – the sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" – restrict a person's fundamental rights, i.e., property rights. Pursuant to the Constitutional Court Law, a restriction on a person's fundamental rights can be established if: firstly, a person's particular

fundamental rights have been established in the *Satversme*; i.e., if the contested norm falls within the scope of particular fundamental rights; secondly, the contested norm directly infringes on a person's fundamental rights established in the *Satversme* (*see Decision of 23 November 2016 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2016-02-01, Para 5*).

Hence, the Constitutional Court will examine, whether the contested norms – the sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" – affect such rights that fall within the scope of Article 105 of the *Satversme*.

16. Article 105 of the *Satversme* provides: "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."

It is not disputed in the present case that the Applicants' property would be used contrary to the interests of the public and that the contested norms envisage expropriation of property for public purposes in the meaning of the fourth sentence of Article 105 of the *Satversme*. The sixth and the eighth sentence of Para 7 (5) of the law "On Official Secrets" could be examined only in the context of the first and the third sentence of Article 105 of the *Satversme*.

16.1. Article 105 of the *Satversme* establishes comprehensive guarantee for rights of financial nature. "Right to property" is to be understood as all rights of financial nature that a person may use on his behalf and can exercise as one wishes, including the right (on the basis of a licence) to engage in commercial activities (*see, for example, Judgement of 30 March 2011 by the Constitutional Court in Case No. 2010-60-01, Para 17.1.*) A person's economic interests that are linked to commercial activities also may fall within the scope of the first sentence of Article 105 of the *Satversme* (*see, for example, Judgement of 12 December 2014 by the Constitutional Court in Case No. 2013-21-03, Para 10.1.*). Claims, the satisfaction of which could be demanded in the presence

of clear legal grounds, also can be regarded as property. Likewise, future revenue is also to be regarded as property if it already has been earned or if there is a claim that can be satisfied (*compare Judgement of 27 October 2010 by the Constitutional Court in Case No. 2010-12-03, Para 7, and Judgement of 3 November in Case No. 2011-05-01, Para 15.2.*). Property rights include also contractual rights with economic value (*see Decision of 20 April 2010 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2009-100-03, Para 8.2.*).

16.2. Pursuant to the second sentence of Section 7 (5) of the law "On Official Secrets", a merchant registered in the Enterprise Register, which in its work needs to use official secrets, classified information of foreign states or international organisations and institutions thereof must receive and industrial security certificate, which is issued by the Constitution Protection Bureau after a special examination is conducted. Pursuant to Para 2 of Regulation No. 412, an industrial security certificate confirms a merchant's right, in a particular area of commercial activities, in performing public procurement, to use objects of official secrets, classified information of the North Atlantic Treaty Organisation, the European Union and foreign institutions as well as confirms the merchant's readiness and ability to ensure protection of such information. In accordance with the norms of the law "On Official Secrets" and Regulation No. 412, the existence of an industrial security certificate is only a pre-condition for a merchant's participation in performing such public construction works, where official secrets must be used.

The Applicants hold that the requirement regarding the receipt of an industrial security certificate restricts their right to engage in commercial activities in an area requiring the use of official secrets (*see the application in Case Materials, Vol. 1, p. 7*). The summoned person Kaspars Balodis notes that a merchant's right to apply for an industrial security certificate falls within the scope of property rights protected by Article 105 of the *Satversme* (*see Case Materials, Vol. 3, p. 125*). However, the Cabinet and several summoned persons – the Ombudsman, the Ministry of Justice, the Prosecutor's General Office and

Latvia's representative in international human rights organisations Kristīne Līce – note that the right to receive an industrial security certificate does not fall within the scope of property rights (*see*, inter alia, *the Cabinet's written reply in Case Materials, Vol. 3. pp. 15 and 16*). The *Saeima* holds that an industrial security certificate cannot be regarded as being a licence, the failure to obtain of which would directly and significantly influence a merchant's ability to engage in commercial activities in the chosen area (*see additional explanations by the* Saeima *in Case Materials, Vol. 3, p. 100*).

16.3. The law "On Official Secrets" does not regulate commercial activities in a particular area and does not grant to a merchant special rights that would be linked to the use of an object of official secrets or classified information and, thus, does not envisage a merchant's subjective right to accessing an object of official secrets. In particular cases, where a merchant performs public procurement, a merchant may have usufruct to objects of official secrets but only on the condition that the particular merchant has received an industrial security certificate. This requirement allows the State, as the commissioning party, to gain confirmation that the merchant is able to ensure that official secrets are protected.

Pursuant to Para 26 of Regulation No. 412, in public procurement procedures that are linked to an object of official secrets or information that has been classified accordingly, one of the requirements set for merchants registered in the Enterprise Register is the existence of an industrial security certificate. Pursuant to Para 4 of Regulation No. 412, for a merchant to be able to receive an industrial security certificate, it, *inter alia*, should be established at least one year ago.

Thus, the receipt of an industrial security certificate is the only way, in which a merchant, which is already engaged in commercial activities, can receive permission to perform commercial activities also in an area where official secrets, classified information of foreign and international organisations and institutions thereof have to be used. Upon receiving an industrial security certificate, a merchant, who wants to bid for a certain range of public

procurement, has an advantage for participation in classified procurement procedures. In these, heightened security requirements are set for a merchant but a merchant can obtain the right to work in objects linked to official secrets. However, even after the receipt of an industrial security certificate, a person has the right to perform commercial activities in objects linked to official secrets only if it concludes a contract with the commissioning party. In this case, a person has no legal grounds to expect that it will be able to use the right granted by an industrial security certificate for unlimited time, for example, by agreeing on such warranty period for construction works that exceeds the certificate's term of validity.

The existence of an industrial security certificate is not a mandatory requirement for the merchant that it has to meet in order to engage in commercial activities in an area of its choice. A refusal to issue an industrial security certificate does not restrict a merchant's right to engage in commercial activities and, following this refusal, a merchant has the right to continue its commercial activities in the chosen area. Existence of an industrial security certificate is an advantage that opens the possibility to participate in classified procurement procedures to a merchant, which already performs certain commercial activities, for example, is engaged in construction

Thus, the right to receive an industrial security certificate does not fall within the scope of property rights, therefore the contested norms – the sixth and the eighth sentence of Section 7 (5) of the law "On Official Secrets" do not restrict the Applicants' fundamental rights envisaged in the first and the third sentence of Article 105 of the *Satversme* and, consequently, do not pertain to such rights and lawful interests, the protection of which in a fair trial is envisaged in Article 92 of the *Satversme*.

17. However, the Constitutional Court draws attention to the fact that the main purpose of laws in a democratic state governed by the rule of law is to ensure justice. The *Satversme* does not envisage a lesser scope of the provisions on the protection of fundamental rights compared to the one defined by the

international human rights commitments; however, a State may guarantee in its law a broader scope of these rights and a higher standard of protection.

Although the refusal to issue an industrial security certificate does not pertain to persons' rights and lawful interests, the protection of which in a fair trial is envisaged in Article 92 of the *Satversme*, this norm of the *Satversme* does not prohibit from establishing within the state such procedural order, in the framework of which a person could contest the decision on refusal to issue an industrial security certificate or on annulling this certificate by submitting a complaint to the Prosecutor General, whose decision, in turn, could be appealed against in an administrative court.

After Amendments to the Law "On Official Secrets" enter into force, in the process of appealing against the refusal to issue an industrial security certificate a person will be granted access to a court. Since the State has established such procedural order by law it has become a part of the legal system and person should be ensured the right and procedural safeguards defined by the right to a fair trial.

18. The Applicants request the Constitutional Court to examine the compliance of the second sentence of Para 12 of Regulation No. 412 with Article 105 of the *Satversme*.

It follows from the conclusions made in Para 16 of this judgement that the prohibition established in the second sentence of Para 12 of Regulation No. 412 to re-apply for the receipt of an industrial security certificate five years after the refusal to issue it does not restrict the Applicants' fundamental rights envisaged in the first and the third sentence of Article 105 of the *Satversme* since the right to receive an industrial security certificate does not fall within the scope of property rights protected by Article 105 of the *Satversme*.

19. Pursuant to Para 6 of Section 29 (1) of the Constitutional Court Law, legal proceedings in a case may be terminated before the judgement is

pronounced if it is impossible to continue legal proceedings in the case. Since the sixth and the eighth sentences of Section 7 (5) of the law "On Official Secrets" do not pertain to such rights and lawful interests, the protection of which is envisaged in Article 92 of the *Satversme*, but the second sentence of Para 12 of Regulation No. 412 does not restrict the Applicants' fundamental rights envisaged in the first and the third sentence of Article 105 of the *Satversme*, legal proceedings in the case cannot be continued.

Thus, legal proceedings in the case must be terminated.

In view of the above and on the basis of Para 6 of Section 29 (1) of the Constitutional Court Law,

The Constitutional Court decided:

to terminate legal proceedings in case No. 2017-20-0103 "On Compliance of the Sixth and the Eighth Sentence of Section 7 (5) of the Law "On Official Secrets" with Article 92 of the *Satversme* of the Republic of Latvia and of the Second Sentence of Para 12 of the Cabinet Regulation of 23 May 2006 No. 412 "Procedure of Applying for, Granting, Registering, Using, Changing the Category of or Annulment of an Industrial Security Certificate" with Article 105 of the *Satversme* of the Republic of Latvia".

The decision is not subject to appeal.

Chairperson of the court hearing I. Ziemele