

Greek government law some measures, trying to follow the direction of the European policy for the promotion of renewable energy sources. In order to attract investment interest, considerable legislative and regulatory texts were made from time to time, which were mainly based on the preferential pricing of electricity produced from RES. The promotional mechanism that was introduced into the country as an incentive was the FiT (Feed in Tarif). This mechanism promotes electricity produced from RES, which is purchased on the one hand in its entirety and priority over the electricity produced from conventional fuels (lignite, natural gas) and on the other hand it is compensated at a fixed price which is higher than the price at which electricity produced from conventional fuels is sold to cover the increased cost of electricity production from RES.

Legal issues of purely constitutional nature.

The conflicting views of the laws have, on the one hand, raised a significant number of issues of purely constitutional nature and, on the other hand, other but not minor legal issues.

Issues raised by Article 5 (1) of the Constitution on economic freedom and the principle of proportionality (see also Article 25 (1) (d) of the Constitution)

RES investors claim that the legislative provisions of paragraph M of Law 4254/2014, which re-determined the electricity tariffs of the in operation and having active contracts for the sale of electricity from RES and Syntheas, at the same time, their right to economic freedom and set limits to freedom of contract, enshrined in Article 4 (1) of the Constitution. Usually, the contested acts are the relevant Information Notes issued in accordance with the aforementioned provisions of the newer law, on the basis of the claim that there was a unilateral redefinition at the detriment of the sale price of the produced RES energy compared to the contractually stipulated , who, according to them the complainants' allegations suffer serious legal defects, constitutional, and not only, nature.

In particular, Article 5 (1) of the Constitution expressly states that: "1. Everyone has the right to freely develop his / her personality and to participate in the social, economic and political life of the Country, as long as it does not violate the rights of others and does not violate the Constitution or morality. " Considering the above definition of the right to economic freedom, it is more appropriate to say that the rights deriving from it are not unlimited. On the contrary, they may be subject to significant delimitations and restrictions, which

(restrictions) should be imposed on the basis of the public interest, in compliance with basic constitutional principles and conditions, such as the principle of proportionality.

The principle of proportionality, as interpreted by theory and jurisprudence, is a technique of constitutional control of state actions when they are overburdened by citizens and their rights. It defines, in other words, the extreme limits of the constitutionally permissible state interference with fundamental human rights, requiring a reasonable analogy between the objective pursued and the limitation of constitutional right as a means of achieving the objective. Its particular utility is first and foremost in the case of conflicts of law, in which the authority serves to delimit the conflicting goods or values.

Issues raised with regard to the principle of equality (Article 4 (1) of the Constitution).

Article 4 (1) of the Constitution proclaims "The Greeks are equal before the law". The principle of equality is a fundamental general principle of law, explicitly enshrined in the Constitution, which differs in all branches of law. Its regulatory content has the meaning of assimilation of persons in similar situations. This principle obliges both the legislator and the administration to ensure equality not only for citizens before the law but also for the law before the citizens. An indispensable methodological tool for the expansive application of favorable regulation is the criterion of analogical interpretation. The paradox of this principle is that the national courts do not hold a single stance on this issue, but they seem to accept the position that, in the event of unjustified discrimination by the legislator, by establishing a favorable provision for a category of persons, the courts extend the favorable arrangement to those who are unjustifiably excluded from this application.

Taking into account the principle of equality, as outlined above, from the point of view of RES producers, it could be argued that the measures imposed under Law 4254/2014, and in particular the paragraph IG.1 in question, dealing with the deficit in the Special Account RES, violate this principle since they concern non-proportional, non-symmetrical and non-objective burden sharing between RES producers themselves and suppliers.

In addition, a different legal complaint is the claim that the disputed arrangements violate the principle of equality because the new compensation prices for RES and CHP producers have been determined on the basis of "wrong parameterization" and "wrong legislative approaches" and that the IRR (Internal Rate of Return) method was applied "scientifically correct", which leads to unequal treatment between RES and CHP producers themselves.

Based on the analysis and assumptions contained in the explanatory memorandum of Law 4254/2014, the customization was based on general, objective and relevant criteria, such as technology, the cost of construction of RES and TEA plants, the size of the facilities, etc. In addition, for the assessment of the re-pricing, the legislator also took into account a scientifically sound application of the IRR method, which was not disputed during the consultation period of the project Law for the investors concerned.

The contested provisions of Law 4254/2014 appear to ensure that this required profitability of the electricity produced from RES is rationalized, within the framework and the relevant aid framework it also explicitly recognizes EU law without, however, leading to the deplorable effect of maintaining profit-sharing over all costs by virtually passing all the costs of maintaining the financially advantageous for the RES producers a financial situation for the final consumer of electricity, with the result that it is gradually being jeopardized or at least substantially limit its access to the basic living and living property of electricity.

Issues raised in relation to the principle of the protected confidence of the person in charge.

The principle of the protected confidence of the governor derives from the fundamental principle of the rule of law and Article 2 (1) of the Constitution and concerns the legitimate trust of the citizen in the applicable legal provisions. This principle protects the expectation of the citizen-citizen to develop, depending on the legislation, the economic activities he chooses. The principle of legitimate expectation is not only binding on the Administration but also on the legislator.

On this basis, it could be argued by the RES producers that when they took the decision to implement their investment, they took into account the specific

technical and economic data, which clearly included a stable favorable pricing regime. Consequently, a successive, and indeed retrospective, retroactive application by the legislature in the context of the pricing of electricity sales contracts in force and already in force, clearly contradicts the principle of the protection of trust.

However, it is clear from the review of the consistent case law of the CoE (Council of State) that the principle of the Confidential Trust of the Principal does not lead to a quasi-a priori and ipso facto consolidation of legal relations nor does it deprive the legislative authority of the possibility of intervening already legally binding, especially contractual, relationships when it is necessary to safeguard and protect the public interest. On the contrary, according to the CoE's case law on ex nunc⁴⁴, the governor cannot establish trust worthy of protection in maintaining a favorable regime for him and not changing it in the future, even if the application of the previous legislation has been a long- , since the new legislative framework is based on general, objective and proportionate criteria and serves a specific purpose in the public interest.

Consequently, taking into account, on the one hand, the existence of a serious (overriding) public interest reason such as the drastic treatment of the RES account deficits and on the other hand the specific provisions of the legislation to ensure the economic viability of the RES , it can legitimately be argued that in this case the legislator has moved within the limits of intervention prescribed by that constitutional principle.

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