

Case No. 36/2000

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

RULING

ON THE COMPLIANCE OF ARTICLE 8 AND PARAGRAPH 3 OF ARTICLE 14 OF THE
REPUBLIC OF LITHUANIA LAW ON THE PROVISION OF INFORMATION TO THE
PUBLIC WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA

23 October 2002

Vilnius

The Constitutional Court of the Republic of Lithuania, composed of the Justices of the Constitutional Court Armanas Abramavicius, Egidijus Jarašiunas, Egidijus Kuris, Kestutis Lapinskas, Zenonas Namavicius, Augustinas Normantas, Jonas Prapiestis, Vytautas Sinkevicius, and Stasys Staciokas,

with the secretary of the hearing-Daiva Pitrenaite,

in the presence of:

the representative of a group of members of the Seimas of the Republic of Lithuania, the petitioner, who was Žibartas Jackunas,

the representative of the Seimas of the Republic of Lithuania, the party concerned, who was Darius Karvelis, a senior consultant to the Legal Department of the Office of the Seimas,

pursuant to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Article 1 of the Republic of Lithuania Law on the Constitutional Court, on 23 September 2002 in its public hearing heard Case No. 36/2000 which originated in a petition of a group of members of the Seimas requesting to investigate whether Article 8 of the Republic of Lithuania Law on the Provision of Information to the Public was in compliance with Paragraph 1 of Article 29 of the Constitution of the Republic of Lithuania and whether Paragraph 3 of Article 14 of the same law was in compliance with Article 22 of the Constitution of the Republic of Lithuania.

The Constitutional Court

has established:

I

On 2 July 1996, the Seimas adopted the Republic of Lithuania Law on the Provision of Information to the Public (Official Gazette Valstybes žinios, 1996, No. 71-1706). On 29

August 2000, the said law was altered and set forth in a new wording (Official Gazette Valstybes žinios, No. 75-2272; hereinafter also referred to as the Law).

The group of members of the Seimas, the petitioner, requests to investigate whether Article 8 of the Law on the Provision of Information to the Public is in compliance with Paragraph 1 of Article 29 of the Constitution, and whether Paragraph 3 of Article 14 of the Law is in compliance with Article 22 of the Constitution.

II

The request of the petitioner is based on the following arguments.

1. The principle of equality of all persons before the law, the court, and other state institutions and officers is entrenched in Paragraph 1 of Article 29 of the Constitution.

Article 8 of the Law on the Provision of Information to the Public consolidates the right of the producer and imparter, of the owner of the producer and/or imparter of public information and of the journalist to preserve, without any reservations, the secret of the source of information and not to disclose the source of information. The petitioner doubts whether the norm establishing such an absolute right is in compliance with Paragraph 1 of Article 29 of the Constitution, since in other laws the rights of similar content are restricted by the reservations that the data, information or other facts must be disclosed provided the court, prosecutor's office and other state institutions of law and order demand this in connection with the existing criminal or civil cases under their jurisdiction, as well as in the other cases provided for by laws.

In the opinion of the petitioner, Article 8 of the Law establishes a privileged situation of the producer, imparter and other entities pointed out therein, they are granted more rights than other natural and legal persons.

The petitioner notes that the principle of the secret of the source of information is evaluated as one of the basic guarantees of the freedom of the press, the said principle is established in international legal acts. On the other hand, the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter also referred to as the Convention) does not obligate to establish the principle of absolute secret of the source of information of the media in domestic laws. It is recognised that the public interest may require that such a secret be disclosed when this is connected with the preparation or commission of a grave crime. Paragraph 3 of Article 25 of the Constitution also consolidates certain restrictions on the right to impart information, which are determined by the necessity to safeguard the health, honour and dignity, private life, or morals of an individual, or to protect constitutional order. The petitioner draws one's attention to the fact that the second paragraphs of Articles 294, 295 and 296 of the Criminal Code of the Republic of Lithuania (hereinafter referred to as the CC) do not provide for the secret of the source of information as the ground of the pardon from criminal responsibility for the crimes specified in the said articles, either.

The petitioner also doubts whether the absolute right, entrenched in Article 8 of the Law on the Provision of Information to the Public, to preserve the secret of the source of information and not to reveal the source of information does not create pre-conditions to abuse the said right, or whether it does not induce to act in an irresponsible or unprofessional manner, since even the court may not obligate to disclose the source of published information. The petitioner

also doubts whether the disputed provision of Article 8 of the Law does not hinder the implementation of the constitutional provisions on the legal protection of the dignity of an individual (Article 21 of the Constitution) and the right of an individual to privacy (Article 21 of the Constitution).

2. Paragraph 3 of Article 14 of the Law provides that information about the private life of the person may be published without the consent of the latter, in cases when the publication of the source of the information does not inflict damage on the person, as well as that the information about the private life of the public person (state politicians, public servants, heads of political parties and public organisations as well as other persons participating in public and political activities) may be published without the consent of the latter provided this information discloses the circumstances of the private life or personal characteristics of the public person, which are of public importance.

According to the petitioner, Paragraph 3 of Article 14 of the Law points out greatly unspecified reasons due to which, in the course of publishing the information about the private life of a person, the principle of the inviolability of the private life of an individual, entrenched in Article 22 of the Constitution, may be disregarded; the said reasons can be interpreted in a varied manner. In the opinion of the petitioner, the notion "public person" employed in disputed Paragraph 3 of Article 14 of the Law is not clearly defined and has an "evaluative shade", since not only state politicians are attributed to public persons, but also the other persons participating in social and political activities. Thus, on the grounds of the bases established in Paragraph 3 of Article 14 of the Law, the private lives of many individuals may become the object of general scrutiny.

III

In the course of the preparation of the case for the judicial consideration, a written explanation of the representative of the party concerned D. Karvelis was received.

1. In the opinion of D. Karvelis, Article 8 of the Law would be in conflict with the Constitution only in the case that if a certain group of persons to whom this legal norm is designated, if compared to the other addressees of the same norm, were assessed in the said article in a different manner, although there are not any differences of such nature and extent between the said groups so that such an assessment would be objectively justifiable. According to the representative of the party concerned, the activities of the producer and impartor of public information, and of their owner, or of the journalist are different from those of, e.g. the advocate, notary or physician, and their activity is regulated by different legal acts. Therefore, the argument of the petitioner that the right established in Article 8 of the Law to preserve the secret of the source of information and not to disclose the source of information, even though in other laws the rights of similar content are restricted on certain conditions, is inconsistent with Paragraph 1 of Article 29 of the Constitution, is groundless.

2. According to D. Karvelis, the principles of the freedom of information, thus, of the freedom of the source of information as well, are enshrined in Article 25 of the Constitution. The representative of the party concerned maintains that the right to seek, obtain and impart information must be assessed together with the other rights, while taking account of the fact, as to which right is more important in a particular case. According to the representative of the party concerned, the legislator has legitimised more than once the superiority of the public need in cases of seizure of ownership from a private person. The provision of the disputed

provision of Article 8 of the Law on the Provision of Information to the Public which, in the interest of the information for the public, raises the secret of the source of information above the other interests, is an analogous one, too.

3. The right to the freedom of information is entrenched in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is analogous to Article 22 of the Constitution. The representative of the party concerned points out the 1996 case *Goodwin v. United Kingdom* considered by the European Court of Human Rights, in which the Court defended the right of the journalist to the secrecy of the source of information and held that, having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest.

The representative of the party concerned draws one's attention to the fact that the 18 January 1994 European Parliament Resolution on confidentiality for journalists' sources and the right of civil servants to disclose information links the right of the secret of the source of information with the Convention and with such a domestic policy, which would permit the courts, while construing Article 10 of the Convention, to define the freedom of information and establish such exceptions to the said freedom, which are necessary so that the other fundamental rights, or such rights as the right to privacy, be protected in the public interest. In the opinion of the representative of the party concerned, the disputed provision of Article 8 of the Law should not be assessed straightforwardly, but it should be interpreted, while taking account of the jurisprudence of the European Court of Human Rights.

4. According to D. Karvelis, the Law regulates only certain social relations and does not have a higher power than other laws (e.g. the CC). It is established in Paragraph 3 of Article 25 of the Constitution that freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than as established by law, when it is necessary for the safeguard of the health, honour and dignity, private life, or morals of a person, or for the protection of constitutional order. The representative of the party concerned also points out that Article 40 of the Republic of Lithuania Law on the Bar consolidates virtually an analogous provision as in Article 8 of the Law on the Provision of Information to the Public: the advocate may not act as a witness or give explanations concerning the circumstances which he has learned in the course of fulfilment of his professional duties. It is only the court that can decide on the relation of the legal norms, while construing and applying the legal norms in every particular case.

5. In the opinion of the representative of the party concerned, Paragraph 3 of Article 14 of the Law is in compliance with Article 22 of the Constitution, as the former virtually establishes the same as Article 22 of the Constitution, i.e. that interference with the private life is prohibited save the cases when this is connected with the office held by the person. Besides, Article 2.23 of the Civil Code of the Republic of Lithuania regulates these social relations in virtually the same manner.

IV

In the course of the preparation of the case for the Constitutional Court hearing, written explanations were received from V. Vadapalas, Director General of the European Law

Department under the Government of the Republic of Lithuania, G. Songaila, Chairman of the Commission for Ethics of Journalists and Publishers, and Assoc. Prof. Dr. E. Šileikis who works at the Department of Public Law of the Faculty of Law, Vilnius University.

V

At the Constitutional Court hearing, the representative of the party concerned reiterated the arguments set forth in the written explanations.

The Constitutional Court

holds that:

I

On the compliance of Article 8 of the Law on the Provision of Information to the Public with Articles 25 and 29 of the Constitution, as well as the constitutional principle of a law-governed state.

1. Article 8 of the Law on the Provision of Information to the Public provides: "The producer and imparter of public information, the owner of the producer and/or imparter of public information and the journalist shall have the right to preserve the secret of the source of information and not to disclose the source of information."

The petitioner requests to investigate whether Article 8 of the Law is in compliance with Paragraph 1 of Article 29 of the Constitution, as, in his opinion, the right of the producer and imparter of public information, the owner of the producer and/or imparter of public information and of the journalist to preserve the secret of the source of information and not to disclose the source of information, means that the situation of the said persons, if compared with other persons, is a privileged one.

2. Article 29 of the Constitution provides:

"All persons shall be equal before the law, the court, and other State institutions and officers.

A person may not have his rights restricted in any way, or be granted any privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions, or opinions."

3. The relations regulated in Article 8 of the Law, which is pointed out by the petitioner, are linked with seeking, reception and imparting information. The right of a person to seek, obtain and impart information unhindered is entrenched in Article 25 of the Constitution.

The Constitution shall be an integral and directly applicable act (Paragraph 1 of Article 6 of the Constitution). The constitutional right of a person to seek, obtain and impart information unhindered is inseparably linked with the striving for an open, just, and harmonious civil society and law-governed state, proclaimed in the Preamble to the Constitution. The striving for an open, just, and harmonious civil society and law-governed

state is expressed by the constitutional principle of a law-governed state, which is a universal principle upon which the entire Lithuanian legal system and the Constitution itself are based.

4. Article 25 of the Constitution provides:

"Individuals shall have the right to have their own convictions and freely express them.

Individuals must not be hindered from seeking, obtaining, or disseminating information or ideas.

Freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than as established by law, when it is necessary for the safeguard of the health, honour and dignity, private life, or morals of a person, or for the protection of constitutional order.

Freedom to express convictions or impart information shall be incompatible with criminal actions-the instigation of national, racial, religious, or social hatred, violence, or discrimination, the dissemination of slander, or misinformation.

Citizens shall have the right to obtain any available information which concerns them from State agencies in the manner established by law."

5. The constitutional freedom to seek, obtain and impart information and ideas unhindered is one of the fundamentals of an open, just, and harmonious civil society and law-governed state. This freedom is an important pre-condition for the implementation of various rights and freedoms of the person which are entrenched in the Constitution, since the person can implement most of his constitutional rights and freedoms in an all-sufficient manner only if he has the right to seek, obtain and impart information unhindered. The Constitution guarantees and safeguards the interest of the public to be informed.

The provisions of Article 25 of the Constitution are inseparable from other provisions of the Constitution which consolidate the guarantees of the freedom of the person to seek, obtain and impart information unhindered: from the provision of Paragraph 1 of Article 44 that censorship of mass media shall be prohibited, from the provision of Paragraph 2 of the same article that the state, political parties, political and public organisations, and other institutions or persons may not monopolise means of mass media, from the provisions of Paragraph 2 of Article 33 that each citizen shall be guaranteed the right to criticise the work of state institutions and their officers, and to appeal against their decisions, and that it shall be prohibited to persecute people for criticism etc.

6. The freedom to seek, obtain and impart information is not an absolute one. The Constitution not only consolidates the freedom of the individual to seek, obtain and impart information, but also defines the limits of this freedom. For instance, under Paragraph 4 of Article 25 of the Constitution, freedom to express convictions or impart information shall be incompatible with criminal actions-the instigation of national, racial, religious, or social hatred, violence, or discrimination, the dissemination of slander, or misinformation, while under Paragraph 3 of the same article, freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than as established by law, when it is necessary for the safeguard of the health, honour and dignity, private life, or morals of a person, or for the protection of constitutional order; Article 28 of the Constitution

provides that, while exercising their rights and freedoms, persons must observe the Constitution and laws, and must not impair the rights and freedoms of other people.

The values entrenched in the Constitution constitute a harmonious system, and there is a balance between them. Under the Constitution, it is not permitted to establish such legal regulation by which, while consolidating the guarantees for implementation of the freedom of information, conditions would be created to violate the other constitutional values and the balance among the constitutional values. In its ruling of 16 March 1999, the Constitutional Court held that at the junction of the values protected by the Constitution, decisions ought to be found ensuring that neither of these values would be denied or unreasonably restricted.

7. From Article 25 of the Constitution as well as the other provisions of the Constitution consolidating and guaranteeing the freedom of an individual to seek, obtain and impart information stems the freedom of the media. Under the Constitution, the legislator has a duty to establish the guarantees of the freedom of the media by law.

8. It needs to be emphasised that the legislator, by establishing the guarantees of the freedom of the media by law, must pay heed to the imperative of an open, just, and harmonious civil society entrenched in the Constitution, the constitutional principle of a law-governed state, and must not violate the rights and freedoms of the person. It is not permitted to establish such legal regulation by laws whereby, while consolidating the right of the journalist to preserve the secret of the source of information and not to disclose the source of information, preconditions would be created to violate the values entrenched in the Constitution.

Thus, by establishing the right of the journalist, by the Law, to preserve the secret of the source of information and not to disclose the source of information, the legislator may not establish such legal regulation, whereby pre-conditions would be created not to disclose the source of information even in the cases when in a democratic state it is necessary to disclose the source of information due to vitally important or other interests of society, which are of utmost importance, also, in attempt to ensure that the constitutional rights and freedoms of a person be protected, and that justice be administered, since the non-disclosure of the source of information might cause much graver effects than its disclosure. Thus the balance of the values protected by the Constitution, the constitutional imperative of an open harmonious civil society, the constitutional principle of a law-governed state would be violated.

9. It needs to be noted that upon the consolidation of the right of the journalist to preserve the secret of the source of information and not to disclose the source of information, in case the question arises whether the source of information should be disclosed, one must assess in every particular case whether by the non-disclosure of the source of information the values safeguarded by the Constitution would not be violated. In a democratic state under the rule of law, the decision of such questions is the competence of court. The Constitutional principle of judicial defence is a universal one (Constitutional Court ruling of 2 July 2002).

Thus, the legislator, while establishing, by law, the right of the journalist to preserve the secret of the source of information and not to disclose the source of information, has a duty to establish, by law, also that in every case it is only the court that can decide whether the journalist must disclose the source of information. When establishing such powers of the court, the legislator is bound by the concept of the freedom of the media, under which it is permitted to demand that the source of information be disclosed only when this is necessary in

order to ensure vitally important or other interests of society, which are of utmost importance, also, in attempt to ensure that the constitutional rights and freedoms of persons be protected, that justice be administered, i.e. only when it is necessary to disclose the source of information due to a more important interest safeguarded by the Constitution. Thus, it is not necessary to disclose the source of information if the court decides that the interest to disclose the source of information is not more important than the interest not to disclose the source of information. In the cases when the source of information is disclosed, the court, while taking account of the circumstances of the case, may adopt a decision on the restriction of the dissemination of the disclosed information to the public. Thus, by establishing the powers of court to decide whether or not the source of information should be disclosed, the legislator may not deny the duty of court, which follows from the Constitution, in the course of deciding the issue of disclosure of the source of information, to assess, in every particular case, whether one requires to disclose the source of information namely due to the fact so as to ensure vitally important or other interests of society, which are of utmost importance, also, in attempt to ensure that the constitutional rights and freedoms of a person be protected, and that justice be administered.

It also needs to be noted that the legislator, while establishing, by law, the powers of court to decide the issue of disclosure of the source of information, has a duty to establish such legal regulation whereby the court has to decide whether the journalist must disclose the source of information only in the case that all other means of the disclosure of the source of information have been used.

10. In the context of the case at issue, it needs to be noted that Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is a constituent part of the legal system of the Republic of Lithuania, provides:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. <...>

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The European Court of Human Rights, while noting an important role of the press in a democratic society, also while having regard to the interest of a democratic society to guarantee and protect press freedom, has held that the restriction of the right of journalists not to disclose the source of information is justifiable if one follows the requirements set in Article 10 of the Convention and laws: such restrictions must be necessary for the protection of the interests of a democratic society; the hindrance to exercise press freedom cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest (European Court of Human Rights, Judgment in the Case *Fressoz et Roire v. France* of 21 January 1999, Report of judgments and decisions 1999-I). In the Case *Goodwin v. United Kingdom* (European Court of Human Rights, Judgment in the Case *Goodwin v. United Kingdom* of 27 March 1996, Report 1996-II) the European Court of

Human Rights held that although there is a general public interest in the free flow of information to journalists, the journalist must recognise that his express promise of confidentiality may have to yield to a greater public interest.

It needs to be noted that the jurisprudence of the European Court of Human Rights as a source of construction of law is also important to construction and applicability of Lithuanian law (Constitutional Court ruling of 8 May 2000).

In the 8 March 2000 Recommendation of the Committee of Ministers of the Council of Europe to member states on the right of journalists not to disclose their sources of information it is stated that the protection of journalists' sources of information constitutes a basic condition for journalistic work and freedom as well as for the freedom of the media. It is held in the recommendation that such protection has its limits and is not absolute as well as it is pointed out therein that competent authorities may order a disclosure of the source of information if there exists a public interest and if circumstances are of a sufficiently vital and serious nature. The disclosure of information identifying a source should not be deemed necessary unless it can be convincingly established that the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure. Where journalists respond to a request or order to disclose information identifying a source, the competent authorities should consider applying measures to limit the extent of a disclosure.

The 18 January 1994 European Parliament Resolution on confidentiality for journalists' sources and the right of civil servants to disclose information urges that the institutions of authority lay down the conditions for the respect of journalists' professional secrecy by the authorities together with the justifiable and at all events limited exceptions thereto.

11. It has been mentioned that Article 8 of the Law *inter alia* provides that the journalist has the right to preserve the secret of the source of information and not to disclose the source of information.

Article 8 of the Law also provides that the producer and imparter, the owner of the producer and/or imparter of public information as well shall have the right to preserve the secret of the source of information and not to disclose the source of information. The formula "the producer and imparter, the owner of the producer and/or imparter of public information" is to be interpreted as meaning that the producer and imparter, the owner of the producer and/or imparter of public information have the right to preserve the secret of the source of information and not to disclose the source of information only inasmuch as they, because of their professional ties with the journalist, take part in seeking, obtaining and imparting information.

12. The provision of Article 8 of the Law means that the producer and imparter, the owner of the producer and/or imparter of public information and the journalist shall have the right to preserve the secret of the source of information and not to disclose the source of information in all cases. Thus, even in such cases when in a democratic state it is necessary to disclose the source of information due to vitally important or other interests of society, also, in attempt to ensure that the constitutional rights and freedoms of persons be protected, and that justice be administered, the persons indicated in Article 8 of the Law have the right to refuse to disclose the source of information.

It has been held in this Ruling of the Constitutional Court that the legislator, by establishing, by law, the right of the journalist to preserve the secret of the source of information and not to disclose the source of information, must pay heed to the imperative of an open, just, and harmonious civil society and law-governed state which is entrenched in the Constitution, and may not establish such legal regulation whereby preconditions would be created to violate the values entrenched in the Constitution.

It has been mentioned that the freedom to seek, obtain and impart information is not absolute, and that, under Paragraph 4 of Article 25 of the Constitution, freedom to express convictions or impart information shall be incompatible with criminal actions-the instigation of national, racial, religious, or social hatred, violence, or discrimination, the dissemination of slander, or misinformation, while under Paragraph 3 thereof, freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than as established by law, when it is necessary for the safeguard of the health, honour and dignity, private life, or morals of a person, or for the protection of constitutional order. The balance between the freedom of information and other constitutional values is entrenched in the Constitution.

It has been held in this Ruling already that, upon the consolidation of the right of the journalist, by law, to preserve the secret of the source of information and not to disclose the source of information, and in case the question arises whether the source of information should be disclosed, one must assess in every particular case whether by the non-disclosure of the source of information the values safeguarded by the Constitution would not be violated.

After it had been established in Article 8 of the Law that the producer and imparter, the owner of the producer and/or imparter of public information, and the journalist shall have the right to preserve the secret of the source of information and not to disclose the source of information in all cases, a legal situation was created when in the event that a question arises whether it is necessary to disclose the source of information due to vitally important or other interests of society which are of utmost importance, also, in attempt to ensure that the constitutional rights and freedoms of persons be protected, and that justice be administered, the court is deprived of a legal opportunity to assess in every particular case whether the balance between the freedom of information entrenched in the Constitution and other constitutional values is not violated. Thus, the provision Article 8 of the Law that the producer and imparter, the owner of the producer and/or imparter of public information, and the journalist shall have the right to preserve the secret of the source of information and not to disclose the source of information to the extent that the specified entities have the right to preserve the secret of the source of information and not to disclose the source of information even in the cases when in a democratic state, upon a decision of the court, it is necessary to disclose the source of information due to vitally important or other interests of society which are of utmost importance, also, in attempt to ensure that the constitutional rights and freedoms of persons be protected, and that justice be administered is incompatible with Paragraphs 3 and 4 of Article 25 of the Constitution and the imperative of an open, just and harmonious civil society and the constitutional principle of a law-governed state.

13. Taking account of the arguments set forth, one is to conclude that Article 8 of the Law on the Provision of Information to the Public to the extent that it is established that the producer and imparter, the owner of the producer and/or imparter of public information, and the journalist have the right to preserve the secret of the source of information and not to disclose the source of information even in the cases when in a democratic state, upon a

decision of the court, it is necessary to disclose the source of information due to vitally important or other interests of society which are of utmost importance, also, in attempt to ensure that the constitutional rights and freedoms of persons be protected, and that justice be administered conflicts with Paragraphs 3 and 4 of Article 25 of the Constitution and the constitutional principle of a law-governed state.

14. In Article 29 of the Constitution the principle of equality of all persons before the law, the court, and other state institutions and officers is enshrined. The constitutional principle must be observed when passing and applying laws, as well as administering justice (Constitutional Court ruling of 24 January 1996). This principle is a constitutional guarantee for the inborn human right to be treated on the equal basis with the others (Constitutional Court ruling of 27 October 1998). In its ruling of 13 November 1997, the Constitutional Court held that, in law, the principle of equality before the law means an "equal measure" when one has to apply the same norm for different persons. This principle obligates to apply uniform legal assessment to homogeneous facts and prohibits to arbitrarily assess essentially homogeneous facts in a different manner (Constitutional Court ruling of 24 January 1996).

The constitutional principle of equality of people of its own accord does not deny the fact that law may establish different legal regulation concerning certain categories of people who are in different situations (Constitutional Court ruling of 28 February 1996).

The problem of equality of persons in the laws cannot be adequately decided without assessment of the fact in each case whether peculiarities of legal regulation are reasonably established in respect to these persons (Constitutional Court ruling of 13 November 1997).

15. The right of the journalist to preserve the secret of the source of information and not to disclose the source of information is one of the conditions of the freedom of the media. Under Article 8 of the Law, the producer and imparter, the owner of the producer and/or imparter of public information and the journalist have the right to preserve the secret of the source of information and not to disclose the source of information in all cases. Thus, even in such cases when in a democratic state when, upon a decision of the court, it is necessary to disclose the source of information due to vitally important or other interests of society which are of utmost importance, also, in attempt to ensure that the constitutional rights and freedoms of persons be protected, and that justice be administered, the aforementioned persons have the right to preserve the secret of the source of information and not to disclose the source of information.

Under the Constitution, in the Republic of Lithuania, the courts shall have the exclusive right to administer justice (Paragraph 1 of Article 109 of the Constitution). It is established in the Constitution that every person may defend his or her rights on the basis of the Constitution (Paragraph 2 of Article 6 of the Constitution), and that any person whose constitutional rights or freedoms are violated shall have the right to appeal to court (Paragraph 1 of Article 30 of the Constitution). The unconditional consolidation, in the Law, of the right of the journalist to preserve the secret of the source of information and not to disclose the source of information in all cases means that even when it is necessary to disclose the source of information because of the more important interest protected by the Constitution, the court does not have an opportunity to investigate all the circumstances of the case objectively and impartially, thus it cannot protect the constitutional rights and freedoms of the person and administer justice.

It has been mentioned that in Article 29 of the Constitution inter alia the principle of equality of all persons before the court is enshrined. It has been held in this Ruling of the Constitutional Court that Article 8 of the Law to the extent that it is established that the producer and imparter, the owner of the producer and/or imparter of public information, and the journalist have the right to preserve the secret of the source of information and not to disclose the source of information even in the cases when in a democratic state, upon a decision of the court, it is necessary to disclose the source of information due to vitally important or other interests of society which are of utmost importance, also, in attempt to ensure that the constitutional rights and freedoms of persons be protected, and that justice be administered conflicts with Paragraphs 3 and 4 of Article 25 of the Constitution and the constitutional principle of a law-governed state. Alongside, after it has been established that the producer and imparter, the owner of the producer and/or imparter of public information, and the journalist have the right to preserve the secret of the source of information and not to disclose the source of information even to the court, although it is necessary to disclose the source of information so that justice be administered, one disregards the constitutional principle of equality of persons before the court.

16. Taking account of the arguments set forth, one is to conclude that Article 8 of the Law on the Provision of Information to the Public to the extent that it is established that the producer and imparter, the owner of the producer and/or imparter of public information, and the journalist have the right to preserve the secret of the source of information and not to disclose the source of information even to the court, although it is necessary to disclose the source of information so that justice be administered, conflicts with Article 29 of the Constitution.

II

On the compliance of Paragraph 3 of Article 14 of the Law on the Provision of Information to the Public with Article 22 of the Constitution.

1. Paragraph 3 of Article 14 of the Law on the Provision of Information to the Public provides: "Information about the private life may be published without the consent of the human being in cases when the publishing of the information does not inflict damage on the person or when the information helps to reveal violations of laws or crimes, as well as when the information is submitted during the consideration of a case in open court proceedings. Besides, the information about the private life of the public person (state politicians, public servants, heads of political parties and public organisations as well as other persons participating in public and political activities) may be published without the consent of the latter provided this information discloses the circumstances of the private life or personal characteristics of the public person, which are of public importance."

The petitioner requests to investigate whether the provision of Paragraph 3 of Article 14 of the Law that information about the private life of the person may be published in cases when the publishing of the information does not inflict damage on the person, and also that the information about the private life of the public person (state politicians, public servants, heads of political parties and public organisations as well as other persons participating in public and political activities) may be published without the consent of the latter provided this information discloses the circumstances of the private life or personal characteristics of the public person, which are of public importance, is in compliance with Article 22 of the Constitution.

2. Article 22 of the Constitution provides:

"The private life of an individual shall be inviolable.

Personal correspondence, telephone conversations, telegraph messages, and other intercommunications shall be inviolable.

Information concerning the private life of an individual may be collected only upon a justified court decision and in accordance with the law.

The law and the court shall protect individuals from arbitrary or unlawful interference in their private or family life, and from encroachment upon their honour and dignity."

3. Article 22 of the Constitution consolidates the inviolability of the private life of an individual. The right of an individual to privacy encompasses the inviolability of private, family and house life, of honour and reputation, physical and psychological inviolability of persons, secrecy of personal facts and prohibition to publicise obtained or acquired confidential information etc.

The right to the inviolability of private life is not absolute. Under the Constitution, it is permitted to restrict the constitutional rights and freedoms of the individual in case the following conditions are observed: this is done by law; the restrictions are necessary in a democratic society in attempt to protect the rights and freedoms of other persons and the values entrenched in the Constitution as well as the constitutionally important objectives; the restrictions do not deny the nature and essence of the rights and freedoms; the constitutional principle of proportionality is followed (Constitutional Court ruling of 19 September 2002).

The provisions of Article 22 of the Constitution, consolidating inviolability of the private life, are related with other provisions of the Constitution and are to be construed, while taking account of them and, in the context of the case at issue, of the provisions of Article 25 of the Constitution, consolidating the right to information. There is a balance between the values entrenched in Articles 22 and 25 of the Constitution. In the course of the regulation of the relations of informing the public, a duty arises for the legislator to pay heed to the balance of the constitutional values.

4. Paragraph 3 of Article 14 of the Law *inter alia* provides that information about the private life may be published without the consent of the human being in cases when the publishing of the information does not inflict damage on the person.

This provision of Paragraph 3 of Article 14 of the Law reflects one of the obligations and principles of the activities of the media-to publish objective and true information. Thus, under the Law, in every case when information about the private life of a person is published without the consent of the latter, one must weigh all the circumstances and assess whether the publication of the information about the private life of the person will not inflict damage on him. It needs to be noted that the said provision of Paragraph 3 of Article 14 of the Law may not be interpreted as permitting to publish any information about the private life of the person without the consent of the latter. There are such areas of private life (for example, intimate life) the information about which may neither be collected nor published without the consent of the person, unless (and only inasmuch as) this helps to reveal a crime committed by the person.

Article 28 of the Constitution provides that, while exercising their rights and freedoms, persons must observe the Constitution and the laws of the Republic of Lithuania, and must not impair the rights and freedoms of other people. Under Paragraph 2 of Article 30 of the Constitution, the law shall establish the procedure for compensating material and moral damage inflicted on a person. The legislator has a duty to establish by law that in the case that information about the private life of an individual is imparted without the consent of the latter and due to this damage is inflicted on the said individual (save the cases when dissemination of such information helps to reveal crimes or violations of law, or when this reveals circumstances of the private life of the said person, which are of public importance), then the inflicted damage must be compensated. The compensation of damage includes both material and moral damage. The compensation must be adequate for the material and/or moral damage inflicted. The petitioner does not dispute the legal regulation of damage compensation established by law.

5. Taking account of the arguments set forth and only solely interpreting the provision of Paragraph 3 of Article 14 of the Law on the Provision of Information to the Public in the manner that information about the private life of a person may be published without the consent of the latter in the cases when the publication of this information does not inflict damage on the person, one is to conclude that this provision is in compliance with Article 22 of the Constitution.

6. Paragraph 3 of Article 14 of the Law *inter alia* provides that the information about the private life of the public person (state politicians, public servants, heads of political parties and public organisations as well as other persons participating in public and political activities) may be published without the consent of the latter provided this information discloses the circumstances of the private life or personal characteristics of the public person, which are of public importance.

7. While assessing whether the indicated provision of Paragraph 3 of Article 14 of the Law is in compliance with Article 22 of the Constitution, it needs to be noted that in the Constitution the imperative of an open, just and harmonious civil society and law-governed state is entrenched, that Paragraph 3 of Article 5 of the Constitution provides that institutions of power shall serve the people, that Paragraph 2 of Article 33 of the Constitution provides that each citizen shall be guaranteed the right to criticise the work of state institutions and their officers, and to appeal against their decisions, and that it shall be prohibited to persecute people for criticism. It has been held in this Ruling of the Constitutional Court that the Constitution guarantees and safeguards the interest of the public to be informed, and also that the freedom of the media stems from the Constitution.

8. While deciding whether the disputed provision of Paragraph 3 of Article 14 of the Law that the information about the private life of the public person (state politicians, public servants, heads of political parties and public organisations as well as other persons participating in public and political activities) may be published without the consent of the latter provided this information discloses the circumstances of the private life or personal characteristics of the public person, which are of public importance is in compliance with Article 22 of the Constitution, it needs to be noted that the personal characteristics, behaviour and certain circumstances of the private life of the persons participating in social and political activities may be of importance to public affairs. The interest of the public to know more about these persons than about others is constitutionally grounded. The said interest would not be ensured if in every particular case, when publishing the information of public importance

about the private life of a person participating in social and political activities, the consent of the said person were necessary. Thus, the media may inform the public about the private life of such a person without the consent of the latter inasmuch as the personal characteristics, behaviour and certain circumstances of the private life of the said person may be of importance to public affairs and due to this the published information is of public importance. The person participating in social and political activities cannot not anticipate a greater attention of the public and the media towards him. Such persons, as a rule, are called public persons.

The persons who, due to the office that they hold or due to the character of the work that they perform, participate in the public life are to be attributed to public persons in the first place. They are politicians, state and municipal officials, heads of public organisations. Other persons may also be considered public persons, if their activity is of importance to public affairs.

The Constitution does not employ the notion of the public person. When establishing the institute of the public person, the legislator must define the criteria under which certain persons may be attributed to public persons. It needs to be noted that the post of the person or his participation in social activity in themselves are not to be considered necessary or sufficient criteria under which the person may be attributed to public persons. The legislator, establishing, by law, the criteria under which the person may be attributed to public persons, must pay heed to the balance between the right of an individual to privacy enshrined in Article 22 of the Constitution and the interest of the public to be informed about all the factors capable of exerting influence on public affairs, which is guaranteed and safeguarded by the Constitution.

It needs to be noted that certain facts of the private life of public persons, their personal characteristics in their public activity, as a rule, reveal themselves of their own accord. In its ruling of 8 May 2000, the Constitutional Court held that when the person carries out actions of public character and comprehends it or must comprehend it or is capable of understanding it, whether at home or other private premises, then such actions of public character will not enjoy protection under Article 22 of the Constitution and the person may not expect privacy.

9. Taking account of the arguments set forth, one is to draw a conclusion that the provision of Paragraph 3 of Article 14 of the Law that the information about the private life of the public person (state politicians, public servants, heads of political parties and public organisations as well as other persons participating in public and political activities) may be published without the consent of the latter provided this information discloses the circumstances of the private life or personal characteristics of the public person, which are of public importance, is in compliance with Article 22 of the Constitution.

10. Summing up, one is to draw a conclusion that Paragraph 3 of Article 14 of the Law is in compliance with Article 22 of the Constitution.

Conforming to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Articles 1, 53, 54, 55 and 56 of the Republic of Lithuania Law on the Constitutional Court, the Constitutional Court of the Republic of Lithuania has passed the following

ruling:

1. To recognise that Article 8 of the Republic of Lithuania Law on the Provision of Information to the Public to the extent that it is established that the producer and imparter, the owner of the producer and/or imparter of public information, and the journalist have the right to preserve the secret of the source of information and not to disclose the source of information even in the cases when in a democratic state, upon a decision of the court, it is necessary to disclose the source of information due to vitally important or other interests of society which are of utmost importance, also, in attempt to ensure that the constitutional rights and freedoms of persons be protected, and that justice be administered conflicts with Paragraphs 3 and 4 of Article 25 of the Constitution of the Republic of Lithuania and the constitutional principle of a law-governed state.

2. To recognise that Article 8 of the Republic of Lithuania Law on the Provision of Information to the Public to the extent that it is established that the producer and imparter, the owner of the producer and/or imparter of public information, and the journalist have the right to preserve the secret of the source of information and not to disclose the source of information even to the court, although it is necessary to disclose the source of information so that justice be administered, conflicts with Article 29 of the Constitution of the Republic of Lithuania.

3. To recognise that Paragraph 3 of Article 14 of the Republic of Lithuania Law on the Provision of Information to the Public is in compliance with the Constitution of the Republic of Lithuania.

This Constitutional Court ruling is final and not subject to appeal.

The ruling is promulgated on behalf of the Republic of Lithuania.

Justices of the Constitutional Court:

Armanas Abramavicius

Egidijus Jarašiunas

Egidijus Kuris

Kestutis Lapinskas

Zenonas Namavicius

Augustinas Normantas

Jonas Prapiestis

Vytautas Sinkevicius

Stasys Staciokas