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2nd EUROPEAN CONFERENCE OF JUDGES

“JUSTICE AND THE MEDIA”

National report

**prepared by
the delegation of Lithuania**

2nd European Conference of Judges „Justice and the media“

I. Implementation of Recommendation Rec (2003) 13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings

The provisions of the above mentioned Recommendation mainly are implemented by the internal legal acts of the Republic of Lithuania, so particular examples of these provisions will be given answering the third question.

Also it must be pointed out that implementation of some principles indicated in the Recommendation and internal legal acts of the Republic of Lithuania, is not perfect. For instance, although the sixth principle (Regular information during criminal proceedings) and the fifteenth principle (Support for media reporting) provide for appreciable criterion, realization of the principles mentioned above is imperfect. Reasons for that mostly are objective, for example, the financing of the state institutions and courts is insufficient, there are also not enough resources to employ a press-officer, to create the internet site and so on and so forth. For these reasons some criticism of badly financed police for insufficient protection of witnesses can be heard from our (Principle 16 – Protection of witnesses).

To our mind, the means of the preamble of Recommendation could help to implement the provisions of Recommendation, i.e. promulgation of Recommendation amongst a wide range of state institutions and to the media.

II. Implementation of Recommendation Rec (2002) 2 of the Committee of Ministers to member states on access to official documents

After evaluation of internal legal acts of the Republic of Lithuania, which envisage quite particular means of realization of rights of familiarizing with official documents, it could be stated that the principle of accessibility to official documents, regulated by the section III of the Recommendation, is implemented in Lithuania.

The internal legal acts of Lithuania are in accordance with the minimal requirements of the Recommendation and sometimes actually ensure wider guarantees of acquaintance with official documents. This will be discussed after answering further questions.

III. National legislation and access to information, access by journalists to court hearings and judicial files, and the legal basis for responsibility on the part of the journalist.

Fundamentals of the right of a person to information are regulated by Article 25 of the Second Chapter „The Individual and the State“ of the Constitution of the Republic of Lithuania:

„Everyone shall have the right to hold opinions and freely express them.

No one may be prevented from seeking, receiving and imparting information and ideas.

Freedom of expression, freedom to receive and impart information may not be restricted in any way other than by law and when it is necessary for the protection of health, dignity,

private life, and morals, or for the protection of the constitutional order.

Freedom of expression and freedom to impart information shall be incompatible with criminal actions - incitement of national, racial, religious, or social hatred, violence or discrimination, slander or misinformation.

Any citizen shall have the right to obtain, in the manner established by law, any available information concerning him from public authorities.”

Another very important legal source on provision of information to the public is the Law on Provision of Information to the Public. Article 5 of the above mentioned law inter alia states that „Every person shall have the right to collect information and publish it in the media.“ The Article 6 provides for the machinery of implementation of the right to receive and impart information and provision of information to the public. Additionally, in some ways this legal rule implements Recommendations of the Council of Europe mentioned in the Chapter I and II:

„Article 6. Right to Receive Information from State and Municipal Institutions and Agencies

1. Every person shall have the right to receive from state and municipal institutions and agencies as well as other budgetary institutions public information relating to their activities, their official documents (copies) as well as information held by the aforementioned institutions about the requesting person.

2. State and municipal institutions and agencies must inform the public of their activities.

3. State and municipal institutions and agencies must, in accordance with the procedure established by the Law on the Right to Receive Information from State and Municipal Institutions and other laws, provide public information as well as private information available to the said institutions, except for cases specified in the laws where private information is not to be divulged.

4. Information for the preparation whereof no additional data is required shall be provided to the producers and/or disseminators of public information within one working day, while information for the preparation whereof additional data has to be collected shall be provided within a week.

5. State and municipal institutions and agencies as well as other budgetary institutions which have refused to provide public information to a producer of public information must not later than on the next working day inform the producer in writing about the reasons for refusal to provide information.

6. Public information of state and municipal institutions and agencies shall be free of charge. These institutions may accept payment only for the services involving information retrieval and the multiplication (copying) of information or documents. This payment may not exceed the actual costs of providing information.

7. Other institutions and enterprises as well as political parties, trade unions, political and public organizations, and other organizations shall provide the producers of public information and other persons with public information relating to their activity in accordance with the procedure

established in the articles of association (regulations) of these institutions, enterprises or organizations.”

Talking about possibilities of access by journalists to court hearings and judicial files a few aspects can be emphasized. As with other persons, journalists have the right to participate in court hearings unless the court decides to hear a case in camera (for example, when it contradicts the interests of protection of private or family life of a person, or interests of protection of state, professional or commercial secret and other similar cases). Besides, case matter is available for all persons. The said persons are qualified for this right after the judgement or final ruling on court proceedings has come into force. A person, wishing to access heard case matter, shall submit an application on the appropriate form to the chairman of the respective court and indicate his/her name, surname, place of residence and identification number as well as the purpose of accessing the heard matter (access to the case matter is free of charge).

The Council of Courts of Lithuania by the decision of 16th of January, 2004 ordered the National Courts Administration to use its own internet site for the dispersal of information on the activity of particular courts (press-releases, dates of hearings, the decisions passed, hours of attendance of court administration), though higher courts of Lithuania have their own internet sites and announce the said information on their own. By the above mentioned decision presidents of all courts were entrusted to appoint officials of courts or other public servants responsible for preparation of reports for the media on decisions passed in complicated and prominent cases, regular rendering of information about proceedings, explanation of the motivation of the decisions passed, organization of press-conferences and the like. Moreover, on the basis of the above mentioned decision of the Council of Courts, courts annually prepare and announce publicly annual reports on the work of courts referring to both number of cases and decisions passed and other urgent matters (financial welfare of courts, changes of personnel and so on).

However, journalists have not only rights related to reception of information but also substantive duties for the state to pursue principles of provision of information to the public without prejudice to legal interests of other persons.

Supervision of the above mentioned duties in Lithuania is granted to self-regulatory institutions of journalists. Still it has to be noted that their responsibility mostly is of moral more than legal character. So it could be possibly stated that the laws of the Republic of Lithuania do not provide for exceptional conditions of legal responsibility of journalists. It means that journalists are responsible for offences on the provision of information to the public the same as any other citizen of the Republic of Lithuania. Under appropriate circumstances journalists could be arraigned to criminal or administrative responsibility for an inappropriate dissemination of information (for example, for defamation or indignity). Journalists also could suffer civil responsibility and be obliged to compensate both material and moral damages. The media (newspaper, television and so on) is responsible for dissemination of information in three cases: 1) for whispering campaign; 2) when information has been announced by the servant of the media; 3) when the producer of public information has promulgated anonymous information and refuses to indicate the author. Otherwise responsibility lies on the person who has disseminated the information.

The relevant national case-law on freedom of expression and protection of private life and human dignity

Legal regulation of the right to information, freedom of expression and inviolability of private life in Lithuania has passed a procedure of constitutional control several times. Consequently, we can find particularly important aspects of the content of said rights in the jurisprudence of the Constitutional Court of the Republic of Lithuania. The Constitutional Court has stated:

- That the freedom of information is not absolute and could be restricted, though the said restriction should be directly determined in laws, not acts of delegated legislation;
- That freedom of expression, freedom to receive and impart information may not be restricted in any way other than by law and when it is necessary for the protection of health, dignity, private life, and morals, or for the protection of the constitutional order;
- That the right to private life embodies the private, family and home life, physical and mental inviolability of a person, honor and reputation, privacy of personal data, prohibition of publication of confidential information received and collected and other.
- That the information concerning the private life of a public figure (state political figures, public servants, heads of political parties and public organisations as well as other persons participating in public or political activity) may be made public without his consent if such information discloses the circumstances of the aforementioned person's private life or personal traits which are of public significance;
- That the margins of protection of private life end when a person by his criminal behavior or other illegal actions violates legal interests, commits harm to separate persons, society and state. These are only a few conclusions of the Constitutional Court though courts of common jurisdiction as well as administrative courts frequently refer to the aforementioned references in dealing with concrete cases.

We consider that in this regard Lithuania does not diverge from other states. Usually violations of rights mentioned above occur when newspapers, magazines, television and radio programs disseminate information which is untrue and degrades the honour and dignity of a natural person, also when the media announces facts relating to family life, health condition of a person, his representation without a person's consent, and so on. Sometimes servants of the media try to access sensational information by illegal means, i.e. illegal observation of a person, listening in telephone calls or trespassing on private land.

Good practices implemented at national level with a view to improving relations between justice and the media

It could be mentioned that for some years Lithuanian courts and administration, especially the highest autonomy institution of judges – the Council of Courts and the Lithuanian

Association of Judges give considerably much of attention to cooperation between Lithuanian courts and judges and the media and journalists, because namely the content of the information given by journalists determines the attitude of the society to the courts, confidence in judicial authority and the state in general.

As was mentioned above in 2004, the Council of Courts in 2004 has passed a decision binding the presidents of all courts to appoint persons administering the functions of press-officer, also to ensure regular rendering of information on the activity of courts to the mass media. Additionally, the Council of Courts has recently passed a permanent training programme for judges according to which Lithuanian judges participate in periodically organized practical seminars concerning „the judge and the media“.

The Lithuanian Association of Judges has organized similar seminars and conferences more than once. For example, the Lithuanian Association of Judges is organising and financing the conference „Judge-society-media“. This will take place on the 31st of March, 2005. It can be presumed that the conference will provoke the interest of persons concerned because it will be attended, for example, by the judge of the European Court of Human Rights, Professor Pranas Kūris, who will share his experience and ideas on the practice of the European Court of Human Rights. Reports will also be delivered by the chairman of Lithuanian society of journalists, Dainius Radzevičius, the director of Lithuanian department of Transparency International and journalist, Rytis Juozapavičius and other interesting speakers.

It should be noted that the above mentioned seminars and conferences are designed not only for judges, but also so court staff, assistants and advisers of judges, aspiring to become judges in the future.