

THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF LITHUANIA

R U L I N G

On the compliance of Articles 5 and 10 of the Law of the Republic of Lithuania on State Secrets and Their Protection with the Constitution of the Republic of Lithuania as well as on the compliance of the 6 March 1996 Resolutions No. 309 and 310 of the Government of the Republic of Lithuania with the Constitution of the Republic of Lithuania and the norms of the Republic of Lithuania Code of Civil Proceedings

19 December 1996, Vilnius

The Constitutional Court of the Republic of Lithuania, composed of the Justices of the Constitutional Court Egidijus Jarašiūnas, Kęstutis Lapinskas, Zigmas Levickis, Augustinas Normantas, Vladas Pavilionis, Jonas Prapiestis, Pranas Vytautas Rasimavičius, Teodora Staugaitienė, and Juozas Žilys, the secretary of the hearing - Daiva Pitrenaitė, the party concerned - Ramutė Ruškytė, the representative of the Government of the Republic of Lithuania, pursuant to Part 1 of Article 102 of the Constitution of the Republic of Lithuania and Part 1 of Article 1 of the Law on Constitutional Court of the Republic of Lithuania, in its public hearing on 4 December 1996 conducted the investigation of Case No. 3/96 subsequent to the petition submitted to the Court by the petitioner - Vilnius City District Court No. 1 - requesting to investigate if Articles 5 and 10 of the Law of the Republic of Lithuania on State Secrets and Their Protection are in compliance with Parts 3 and 5 of Article 25 of the Constitution of the Republic of Lithuania as well as if the provisions of the 6 March 1996 Resolution No. 309 of the Government of the Republic of Lithuania "On the approval of the list of the information which is considered a state secret of the Republic of Lithuania" and those of the 6 March 1996 Resolution No. 310 of the Government of the Republic of Lithuania "On the approval of the list of duties whereby the persons who discharge them are entitled to familiarise themselves with the information which is considered a state secret without exceeding their competence established by law, as well as on notifying these persons of liability for disclosure or loss of such information" are in compliance with Parts 3 and 5 of Article 25, Part 1 of Article 29 of the Constitution of the Republic of Lithuania, and Articles 4, 31, 197, Part 3 of Article 220, Articles 222 and 253 of the Republic of Lithuania Code of Civil Proceedings.

The Constitutional Court
has established:

I

On 1 April 1996, the petitioner - Vilnius City District Court No. 1 - was investigating a civil case subsequent to the

complaint of the plaintiff V. Šulcas against the respondent the Ministry of Internal Affairs regarding the restoration to work of the former. The court by its interlocutory ruling suspended the investigation of the case and appealed to the Constitutional Court with the request to investigate if Articles 5 and 10 of the Law of the Republic of Lithuania on State Secrets and Their Protection (Official Gazette "Valstybės žinios" No. 96-214, 1995) are in compliance with Parts 3 and 5 of Article 25 of the Constitution. The petitioner also requests to investigate if the provisions of the 6 March 1996 Resolution No. 309 of the Government of the Republic of Lithuania "On the approval of the list of the information which is considered a state secret of the Republic of Lithuania" (Official Gazette "Valstybės žinios", No. 22-579, 1996) and those of the 6 March 1996 Resolution No. 310 of the Government of the Republic of Lithuania "On the approval of the list of duties whereby the persons who discharge them are entitled to familiarise themselves with the information which is considered a state secret without exceeding their competence established by law, as well as on notifying these persons of liability for disclosure or loss of such information" (Official Gazette "Valstybės žinios" No. 22-580, 1996) are in compliance with Parts 3 and 5 of Article 25, Part 1 of Article 29 of the Constitution, and Articles 4, 31, 197, Part 3 of Article 220, Articles 222 and 253 of the Republic of Lithuania Code of Civil Proceedings.

II

The petitioner grounds his request on the following arguments.

1. Articles 5 and 10 of the Law on State Secrets and Their Protection which restrict the right and freedom of people to obtain information contradict the provisions of Parts 3 and 5 of Article 25 of the Constitution as Article 5 delegates to the Government the right to restrict obtaining of information. Besides, the disputed articles do not implement the requirement of the Constitution under what procedure citizens should obtain any available information which concerns them from state agencies.

2. The contested resolutions of the Government restrict the opportunities of the persons participating in a case to implement the rights established by Article 31 of the Code of Civil Proceedings as well as the opportunity to appropriately implement the provisions of Articles 4, 197, 222, 253, and Part 3 of Article 220 of the said code. This contradicts the principle of equality of all people which is consolidated in Article 29 of the Constitution. The disputed Government resolutions violate the principle of people's equality which is consolidated in Article 31 of the Code of Civil Proceedings.

III

While the case was being prepared for the judicial investigation, an explanation from Prime Minister M. Stankevičius was received wherein it was indicated that the Government, when adopting the disputed resolutions, did not establish a new circle of persons who were entitled to familiarise with the information which is considered a state

secret but merely enumerated the duties of the state officials and persons provided for by the Constitution, and who are appointed by the President of the Republic, the Seimas, the Government and the Prime Minister to the aforementioned duties. The Government had not restricted people's right to information by its disputed resolutions.

P. Vitkevičius, the Chairman of the State and Law Committee of the Seimas, explained in writing that the right to information may be restricted only by law. Item 2 of Article 5 of the disputed law provides that the Government shall approve the list of state secrets. This and other issues indicated in the provisions of that article should be regulated by law. Article 10 of the disputed law is in compliance with Article 25 of the Constitution. The contested Government resolutions are in compliance with Part 1 of Article 29 of the Constitution, however, they contradict Article 25 of the Constitution. The contested resolutions are in compliance with Articles 4, 197, 222, 253, and Part 3 of Article 220 of the Code of Civil Proceedings.

G. Švedas, a secretary of the Ministry of Justice, explained the practice of European institutions for human rights protection. He pointed out that the European Commission for Human Rights and the European Court of Human Rights raises 2 requirements: 1) the person concerned must be given the opportunity to acquire information about the applied regulations; 2) the law must be formulated in a sufficiently precise manner so as the person would be able to act in accordance to it.

T. Birmontienė, Director of the Lithuanian Centre for Human Rights, emphasised in her paper that Article 5 of the disputed law delegates to the Government the regulation of state secrets. Therefore Government Resolution No. 309 contradicts the Constitution while Government Resolution No. 310 is not linked with Part 5 of Article 25 of the Constitution.

K. Pėdnyčia, an assistant director of the Department of State Security, and K. Šimkus, Head of the Department of the Operational Tactics of the Police Academy of Lithuania, explained in writing certain circumstances of the question at issue.

During the court hearing, the representative for the Government virtually reiterated the arguments set forth in the paper of the Prime Minister.

The Constitutional Court

holds that:

Article 25 of the Constitution guarantees each individual the right to express his convictions and the right to information. Part 2 of the said article stipulates: "Individuals must not be hindered from seeking, obtaining, or disseminating information or ideas".

It is universally recognised that in today's society information is a need of the individual, as well as the measure of his knowledge. Information eliminates ignorance, it makes human behaviour meaningful. The implementation of human rights and freedoms is directly linked with the individual's

opportunity to obtain information from various sources and make use of it. This is one of pluralistic democracy achievements ensuring the progress of society.

Alongside, it should be noted that the right of the individual to seek, obtain and disseminate information is not an absolute one. The relation of this constitutional value to other legal values expressing the rights and freedoms of other persons as well as necessary public needs determines the restrictions of the right to information. One of such needs is a necessity to protect certain information for the good of interests of the society and individuals. This is state, commercial, professional, technological secrets or information concerning private life of individuals. The state proclaims some especially important military, economic, political or other information the disclosure of which may harm national interests to be a state secret. In attempt to prevent disclosure of such information, its protection is established by law and the use of such information is restricted. However, the protection of common interests in a democratic state may not deny the human right to information as such. The doctrine of human rights and freedoms, as well as the international and national law which are based on the former, links the solution of this issue with the rational relation of legal values which guarantees that the essence of the respective human right is not violated. Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms guaranteeing the right for the individual to hold opinions, to receive and impart information and ideas provides for an opportunity to restrict this freedom under these conditions: 1) providing it is necessary in a democratic society, 2) providing it is provided for in national law, and 3) providing it is sought to protect by restrictions such values as national security, territorial integrity, public safety, prevention of disorder or crime, the protection of health or morals, etc. Most states follow these standards. Parts 3 and 4 of Article 25 of the Constitution prescribe:

"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."

These provisions of the Constitution circumscribing restrictions of the human right to information are the main criterion of legal regulation of protection relations of classification, use and making public of the information which is considered a state secret. The legislator determining how the information which is considered a state secret must be protected is obligated to decide on such legal measures whereby to groundlessly restrict the right of the individual to information would be impossible.

Article 145 of the Constitution also provides for

exclusive principles of temporary restriction of the right to information during martial law or a state of emergency.

1. On the compliance of Articles 5 and 10 of the Law on State Secrets and Their Protection.

1.1. The Law on State Secrets and Their Protection defines what a state secret is as well as how the information which is considered a state secret is classified, used, and made public in the Republic of Lithuania and its diplomatic embassies and consulates abroad.

Article 5 of the law wherein the protection of the information which is considered a state secret is regulated stipulates:

"Protection of the information which is considered a state secret shall be regulated by this Law and, in the manner prescribed by laws, the Government of the Republic of Lithuania which shall:

1) establish the procedure for drawing up and amending the list (hereinafter referred to as the list of state secrets) of the Republic of Lithuania information which is considered a state secret;

2) approve the list of state secrets;

3) approve the list of subjects of state secrets, as well as establish the procedure for drawing up, approving and amending detailed lists of the information which is considered a state secret, relating to the activities of subjects of state secrets;

4) establish the procedure for familiarising of the persons who hold office provided for in Part 4 of Article 10 of this Law, with the information which is considered a state secret, as well as for notifying these persons of liability which is established by laws of the Republic of Lithuania for disclosure or loss of the information which is considered a state secret;

5) prolong the term of classifying of the information which is considered a state secret;

6) approve normative acts which regulate protection of the information which is considered a state secret; and

7) establish the procedure for release of the information which is considered a state secret to other states or international organisations, as well as for permitting citizens of other states to have access to or familiarise themselves with the information which is considered a state secret."

Article 10 of the law stipulates:

"To familiarise oneself with the information which is considered a state secret shall have the right only a person who has been granted the permit to work with such information, and only with that of information which is related with the performance of his duties.

A permit to familiarise oneself with the information which is considered a state secret, and which another subject of state secret has at its disposal, shall be granted to the person by the head of the institution which disposes of such information. The person must produce a purposive order issued by the head of the institution he works wherein. It must be confirmed in the order that the person has the permit to work with the information which is considered a state secret, specified the type and volume of information the person needs

to familiarise himself with, as well as the motive for familiarising with such information.

If a decision is adopted not to allow the person to familiarise himself with the information which is considered a state secret specified in the order, the head of the institution which disposes of such information must give reasons for his decision, as well as familiarise within 10 days the head of the institution, which has sent the person, with this decision.

The following shall ex officio have the right to familiarise themselves with the information which is considered a state secret, without exceeding their powers established by laws:

- the President of the Republic,
- the Prime Minister, and
- the members of the Seimas of the Republic of Lithuania;
- the persons who are appointed to discharge their duties

by:

- the President of the Republic,
- the Seimas of the Republic of Lithuania,
- the Government of the Republic of Lithuania, and
- the Prime Minister."

The petitioner is of the opinion that Article 5 of the Law on State Secrets and Their Protection which delegates to the Government the right to restrict information obtaining, as well as Article 10 which restricts the right and freedom of the individual to obtain information, contradicts the provisions of Parts 3 and 5 of Article 25 of the Constitution. Furthermore, the requirement provided for by Part 5 of Article 25 of the Constitution to establish the procedure whereby citizens are entitled to obtain any available information concerning them from state agencies is not implemented in Articles 5 and 10 of the said law.

It is clear from the content of Article 25 of the Constitution that two conditions must be followed, when restricting human rights to seek, obtain, and disseminate information: they may be restricted only by law and only when the values enumerated in Part 3 of Article 25 must be safeguarded or protected.

When deciding the question whether the Seimas may delegate to the Government to decide state secret protection issues linked with the establishment of restrictions of human right to information, one must take account of the principle of separation of powers as established in the Constitution.

The doctrine of human rights and freedoms treats the state as the major guarantor of these rights and freedoms, and as the subject which may potentially violate these rights and freedoms. When actually implementing the principle of separation of powers, it is possible to reinforce human rights guarantees. The state governance may be divided into relatively independent branches: the legislative, executive, and judicial. Different, still equally important roles fall upon these powers in the sphere of major rights and freedoms. Every institution of power is granted competence corresponding to its purpose.

Article 67 of the Constitution consolidates the exclusive right of the Seimas to pass laws. The most important issues of public life are regulated by legal norms. Item 2 of Article 94

of the Constitution provides that the Government shall implement laws and other resolutions of the Seimas. Substatutory acts adopted by the Government particularise and specify legal norms. Thus the main issues of the hierarchy of legal acts are consolidated in the Constitution.

It should be noted that the Constitutional Court, when judging the question whether the Seimas may commission the Government to regulate relations linked with human rights and freedoms, held in its 26 October 1995 ruling:

"The delegating of the right of legislation to the Government must be legitimate, i.e. based on the provisions consolidated in the Constitution of the State. In the Constitution of the Republic of Lithuania the delegation of legislation is not provided for, only executive legal acts therefore may be adopted by the Government.

The regulation limits of laws and executive acts depend on many factors - traditions of law, level of political and legal culture of the society, however, from the standpoint of both the theory of law and the practice of legislation, certain priority matters of a society must be regulated only by laws. In a democratic society the priority is given to an individual, therefore, everything that is related to the fundamental human rights and freedoms is regulated by laws. That comprises the confirmation of human rights and freedoms, determination of the contents thereof, legal guarantees of protection and defence, their permissible limitation, etc."

Human rights and freedoms are the most important legal value, therefore, as a rule, the legislator establishes such ways and means to protect a state secret which would not create conditions to groundlessly restrict the right of the individual to information. The law as the legal source, along with the manner of its adoption, best guarantees that the common interests conditioned by the constitutional order to protect a state secret are co-ordinated with ensuring of the right of the individual to seek, obtain and disseminate information. Such rights of the individual, along with the observance of the reciprocity principle of the law restricting them, is a significant guarantee for implementation of human rights and freedoms.

1.2. Item 1 of Article 5 of the Law on State Secrets and Their Protection provides that the Government shall establish the procedure for drawing up and amending the list of the information which is considered a state secret. The content of this norm depends upon the norm of item 2 of Article 5 of the law, therefore, in the first place, the issue of compliance of the latter to Part 3 of Article 25 of the Constitution is to be judged.

Item 2 of Article 5 of the law provides that the Government shall approve the list of state secrets. The state protects the information entered into the list, a special procedure concerning its use is established. Therefore the approval of the list of state secrets (respective selection of information, the establishment of the content of the list, etc.) is directly related to restriction of human right to information. The issue of solution of the compliance of this norm with Part 3 of Article 25 of the Constitution is to be linked with the notion "a state secret" which is formulated in

Article 2 of the said law. Therein it is indicated that a state secret shall be construed to mean "political, economic, military, law-and-order, scientific, technological or other information, the disclosure or loss whereof can violate sovereignty of the Republic of Lithuania, military or economic power, cause damage to the constitutional system and political interests, and which is specified in the list of the Republic of Lithuania, approved by the Government of the Republic of Lithuania, concerning the information which is considered a state secret". This notion does not precisely enough define what information is held a state secret. Information becomes a state secret if it is entered into the list of state secrets which is made by the Government. Thus the restrictions of the right of the individual to information are actually established by a substatutory act norm but not by law.

Neither does Article 8 of the said law regulating what information may not be a state secret ensure the right of the individual to information. When defining such information, a substatutory act norm is given priority but not that of law.

Thus, there being no precise criteria formulated by law of recognition which information is a state secret, the Government is virtually commissioned to regulate relations which are the matter of legal regulation but not to particularise the law. Thereby the constitutional principle of human rights legal protection is violated. Taking account of the motives set forth it should be concluded that items 1 and 2 of Article 5 of the disputed law contradict Part 3 of Article 25 of the Constitution.

As the commissioning of the Government to approve the list of state secrets violates constitutional provisions, then the commissioning of the Government to establish the procedure of drawing up and amending the list as provided for by item 1 of the said law contradicts Part 3 of Article 25 of the Constitution, too.

As it was already mentioned above, items 1 and 2 of Article 5 are related to each other, therefore item 1 of this article is to be assessed correspondingly as item 2 was above.

Item 3 of Article 5 of the Law on State Secrets and Their Protection provides that the Government shall approve the list of subjects of state secrets, as well as establish the procedure for drawing up, approving and amending of detailed lists of the information which is considered a state secret, relating to the activities of subjects of state secrets. The provision of this item "[the Government shall] approve the list of subjects of state secrets" is to be assessed while taking account of the norms of Articles 4 and 2 of the disputed law.

According to Article 4 of the law, subjects of state secrets shall be public institutions or other legal persons vested with special powers of the Government of the Republic of Lithuania, the activities whereof are related to use or protection of the information which is considered a state secret. The entering of these institutions or legal persons into the list of subjects of state secrets means that the organisation and its respective employees are entitled to use the information which is considered a state secret. The vagueness of the regulation provides the executive power with the opportunity to condition by a substatutory act the volume

of use of the information. Furthermore, Article 4 of the law mentions 'other legal persons'. This permits the Government to give the status of a subject of a state secret not only to public but also to private legal persons as well.

The norms of Article 4 link giving the status of a subject of a state secret, first of all, with a formal entering into the list of subjects of state secrets but never with a state secret itself. Such a conclusion is confirmed by the fact that the Government by its 31 January 1991 resolution approved the list of subjects of state secrets, which was earlier than the list of state secrets itself was approved. Institutions of culture and education, special purpose stock companies, private companies, stock companies, etc., were entered into the former list. As there are no clear legal criteria on the grounds of which information is considered a state secret in the norm of Article 2 of the law, pre-conditions are created for the executive power to consider certain information of limited use (which would constitute a professional, official, commercial or technological secret) as a state secret. Thus the use of this information is additionally restricted.

Taking account of the motives set forth a conclusion is to be drawn that the provision "[the Government shall] approve the list of subjects of state secrets" of item 3 of Article 5 of the law contradicts Part 3 of Article 25 of the Constitution.

Another provision of the said item that the Government shall "establish the procedure for drawing up, approving and amending of detailed lists of the information which is considered a state secret" is the commissioning of the Government to merely specify legal norms, therefore this provision is in compliance with Part 3 of Article 25 of the Constitution.

Items 4, 5, 6 and 7 of Article 5 provide for concrete authorisations for the Government. They are devoted for implementation of the law, therefore there are no grounds to conclude that the said items of Article 5 of the law contradict the Constitution.

1.3. The petitioner requests to investigate whether the norms of Article 10 of the Law on State Secrets and Their Protection are in compliance with Part 3 of Article 25 of the Constitution and points out that in one particular civil case the Ministry of Internal Affairs presented the information which is considered a state secret and which was necessary for the investigation of the case only to the judge. In the opinion of the petitioner, thereby the rights of the parties participating in the case are violated.

The norms of Article 10 of the Law on State Secrets and Their Protection regulate the permit to familiarise oneself with the information which is considered a state secret. They regulate relations the parties of which, on the one hand, are the subject of a state secret, and, on the other hand, the persons who have been granted the permit to work with the information which is considered a state secret, as well as the persons who discharge the duties enumerated in Part 4 of Article 10 of this law. The analysis of the content of this article permits to assert that a person is entitled to familiarise himself with the information which is considered a state secret only in order to discharge certain duties. Thus

these norms do not directly regulate citizens' relations with subjects of a state secret.

Article 10 does not directly indicate that a judge, when discharging his duties, is entitled to familiarise himself with the information which is considered a state secret. This may be assessed as a deficiency of the law. The Constitutional Court deems that the right of a judge who investigates a case to familiarise himself with the information which is considered a state secret is grounded on Article 109 of the Constitution prescribing that the courts shall have the exclusive right to administer justice, as well as on Article 117 of the Constitution providing the solution of issues related to state secrets during court trials. It should be noted that the right of a judge to familiarise himself with the information which is considered a state secret and which is necessary for the investigation of a case is determined by the function of the court as a state institution to implement justice but never by entering the position of the judge into any lists.

The norms of Article 10 of the law do not regulate the procedure of use of the information which is considered a state secret in court trials. The Constitutional Court will investigate the relation between a state secret and norms of civil proceedings in Item 2 of this ruling.

The imperfection of the aforementioned legal regulation does not provide grounds to assert that Article 10 contradicts the Constitution.

1.4. When implementing the right of citizens to seek, obtain and disseminate information, the provision "citizens shall have the right to obtain any available information which concerns them from State agencies in the manner established by law" of Part 5 of Article 25 of the Constitution is of no less importance. Thereby the legislator is directly commissioned to establish by law the procedure under which state agencies must present information to citizens which concerns them.

The norms of various parts of Article 25 of the Constitution constitute an indivisible whole complex. Part 3 of the said article provides for an opportunity to restrict by law the right of the individual to obtain information when corresponding constitutional values are protected. One of such laws is the Law on State Secrets and Their Protection. The norms of this law may be assessed from the standpoint of the content of Part 5 of Article 25 of the Constitution only while taking into consideration the content of Part 3 of the same article of the Constitution, therefore the right of the individual to obtain any available information which concerns them from state agencies in the manner established by law may be restricted when seeking to protect state secrets.

The norms of Articles 5 and 10 of the Law on State Secrets and Their Protection do not regulate citizens' right to obtain any available information which concerns them from state agencies. Taking account of the motives set forth, it should be concluded that the norms of the said articles are in compliance with Part 5 of Article 25 of the Constitution.

2. On the compliance of the provisions of the 6 March 1996 Resolution No. 309 of the Government of the Republic of Lithuania "On the approval of the list of the information which is considered a state secret of the Republic of Lithuania" and

the 6 March 1996 Resolution No. 310 of the Government of the Republic of Lithuania "On the approval of the list of duties whereby the persons who discharge them are entitled to familiarise themselves with the information which is considered a state secret without exceeding their competence established by law, as well as on notifying these persons of liability for disclosure or loss of such information" with Parts 3 and 5 of Article 25, Part 1 of Article 29 of the Constitution of the Republic of Lithuania and Articles 4, 31 and 197, Part 3 of Article 220, Articles 222 and 253 of the Republic of Lithuania Code of Civil Proceedings.

2.1. While implementing the Law on State Secrets and Their Protection, by its 6 March 1996 Resolution No. 309 "On the approval of the list of the information which is considered a state secret of the Republic of Lithuania" (hereinafter in the ruling referred to as Government Resolution No. 309), the Government approved which information is considered a state secret. The information which is considered a state secret is defined on the basis of certain specific indications.

By its 6 March 1996 Resolution No. 310 "On the approval of the list of duties whereby the persons who discharge them are entitled to familiarise themselves with the information which is considered a state secret without exceeding their competence established by law, as well as on notifying these persons of liability for disclosure or loss of such information" (hereinafter in the ruling referred to as Government Resolution 310), the Government approved the list of duties whereby the persons who discharge them are entitled to familiarise themselves with the information which is considered a state secret without exceeding their competence established by law, and also established the procedure for the said persons to familiarise themselves with the information which is considered a state secret as well as their notification of liability for disclosure or loss of such information.

The petitioner deems that the contested Government resolutions contradict Parts 3 and 5 of Article 25 of the Constitution wherein it is prescribed that freedom to obtain information and restriction procedure of its obtaining may be regulated only by law.

2.2. Part 3 of Article 25 of the Constitution establishes conditions under which people's right to information may be restricted. When discharging its commission made by the legislator, by Item 1 of its Resolution 309, the Government approved the list of information which is considered a state secret.

The norm of item 2 of Article 5 of the Law on State Secrets and Their Protection whereby the right is delegated to the Government to approve the list of state secrets has been assessed in this ruling of the Constitutional Court as contradicting Part 3 of Article 25 of the Constitution, therefore it should be concluded that Item 1 of Government Resolution No. 309 whereby such delegation is implemented contradicts Part 3 of Article 25 of the Constitution, too. The remaining part of the said resolution whereby other Government resolutions are recognised as null and void is not linked with this norm of the Constitution. The Constitutional Court shall not investigate and assess it.

Item 1.1 of Government Resolution No. 310 approves the list of duties whereby the persons who discharge them are entitled to familiarise themselves with the information which is considered a state secret. When approving the list of the duties, the Government established which persons are entitled to familiarise themselves with the information which is considered a state secret. It should be noted that the provisions of Item 1.1 of the said resolution have no legal basis. The introductory part of the resolution points out that it has been adopted conforming to item 4 of Article 5 of the Law on State Secrets and Their Protection, however, in the said item the legislator merely commissions the Government to establish the procedure for familiarising with the information which is considered a state secret but never is it commissioned to establish the duties themselves. In reality, the norm of the said resolution is grounded on Item 4 of the 25 October 1995 Seimas Resolution "On implementation of the Republic of Lithuania Law on State Secrets and Their Protection" whereby the Government was suggested that such a list be approved, however, the Government was not granted this right by the Law on State Secrets and Their Protection. Taking account of the hierarchy of legal acts, the Government may have entered only the officials who are appointed and dismissed by the Government and Prime Minister into such a list. After it had entered therein other officials who are appointed by the President of the Republic and the Seimas, it intruded into the prerogatives of other powers. It contradicts the constitutional nature of executive power.

Taking account of the indicated motives, it should be concluded that Item 1.1 of Government Resolution No. 310, in its volume whereby the duties are established which are appointed by the President of the Republic or the Seimas, contradicts Part 3 of Article 25, and Part 2 of Article 5 of the Constitution.

The remaining part of the Government resolution whereby the procedure is established for the persons who ex officio are entitled to familiarise themselves with the information which is considered a state secret without exceeding their competence established by law, as well as notifying these persons of liability for disclosure or loss of such information, is devoted to implementation of the provisions of this law. This part of the resolution merely settles procedural issues, therefore it is in compliance with Part 3 of Article 25 of the Constitution.

2.3. The provision "citizens shall have the right to obtain any available information which concerns them from State agencies in the manner established by law" of Part 5 of Article 25 of the Constitution is an obligation for the legislator to establish by law the procedure under which state agencies must provide a citizen respective information which concerns him.

The norms of the contested resolutions do not regulate providing citizens with information which concerns individuals, therefore the issue of their compliance with the Constitution is not to be assessed.

2.4. In the opinion of the petitioner, the contested Government resolutions also contradict Part 1 of Article 29 of the Constitution wherein the principle of the equality of all

people is consolidated.

Part 1 of Article 29 of the Constitution defines the equality of people by pointing out that "all people shall be equal before the law, the court, and other State institutions and officers". This provision is linked with the provisions of Part 2 of the said article which establish that 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 options.

The petitioner is of the opinion that the principle of equality of people which is consolidated by Part 1 of Article 29 of the Constitution is violated by the contested Government resolutions as only the judge investigating a case may familiarise himself with the information which is considered a state secret during the investigation of the case, however, the persons participating in the case and who are enumerated in Article 30 of the Code of Civil Proceedings may not do so.

The aforesaid universal principle of law manifests itself in civil proceedings as procedural equality of parties. The procedural rights of parties are equal. The rights of one party correspond those of the other; for instance, the plaintiff is entitled to sue some person, the respondent is entitled to defend his case by rebutting the demand of the plaintiff or by counter-claiming, etc. This principle is of great importance as only equal sides of pleadings may contend on equal grounds. It is important that the principle of procedural equality of parties were observed in all stages of the proceedings as the implementation of other principles of the proceedings depends upon their implementation.

The notion "court" is used in its most general meaning in procedural relations when the court is understood not only as a collective body but also as the judge himself. The court is a special subject of procedural legal relations. It is only the court which is authorised to implement justice. When implementing this function, the court acts on behalf of the state. It does not depend upon the persons participating in the case and it obeys only the law.

Thus the essence of the equality of persons participating in the case is their equality before the court but never the equality between the court (the judge) and the persons participating in the case. Otherwise the nature of the court as an institution which implements justice would be denied.

The contested Government resolutions do not establish any privileges or restrictions whereby the procedural equality of persons were denied. They do not condition any rights of the persons participating in the case. Taking account of the motives set forth a conclusion is to be drawn that the said resolutions are in compliance with Part 1 of Article 29 of the Constitution.

2.5. In the opinion of the petitioner, the contested Government resolutions restrict the implementation of the rights of persons participating in the case provided for by Article 31 of the Code of Civil Proceedings, as well as the opportunity to properly implement the provisions of Articles 4, 197, Part 3 of Article 220, Articles 222 and 253 of the said code.

The norm of Article 4 of the Code of Civil Proceedings that every person concerned shall have the right to appeal to court so as violated or contested rights or interests safeguarded by law could be protected consolidates the principle which grants every person the right to protect his violated or contested rights or legitimate interests in court. Article 31 of the said code establishes the rights and duties of the persons participating in the case, Article 197 regulates the investigation of written evidence, Part 2 of Article 220 establishes the procedure of drawing up of the court decision, Article 222 establishes the content of the decision as a procedural document, Article 253 regulates the content of the record of proceedings. The procedure of argumentation is also regulated by other norms of the Code of Civil Proceedings which have not been indicated by the petitioner.

As Item 1 of Government Resolution No. 309 has been assessed in this ruling of the Constitutional Court as contradicting Part 3 of Article 25 of the Constitution, its conformity with the indicated norms of the Code of Civil Proceedings is not to be investigated. The remaining part of the said Government resolution whereby other Government resolutions are recognised null and void is not linked with the aforementioned norms of the Code of Civil Proceedings, therefore its compliance with the norms of the Code of Civil Proceedings is not to be assessed.

Government Resolution No. 310 has no influence upon the norms of the Code of Civil Proceedings which were pointed out by the petitioner. The norms of the said resolution do not prescribe the procedure under which such information should be used in civil proceedings, and how in such proceedings the principles of protection of state secrets and those of implementation of rights of persons who participate in the case are co-ordinated. The relations regulated by the Code of Civil Proceedings and those of the contested Government resolution are neither identical nor interdependent, therefore the issue concerning the compliance of the said Government resolution with the indicated norms of the Code of Civil Proceedings is not to be investigated.

The fundamentals of protection of state secrets in court trial are provided for by Article 117 of the Constitution which establishes that closed court sittings may be held in order to prevent the disclosure of state secrets when open investigation of cases endangers of disclosure of state secrets. This constitutional provision is virtually reiterated in Article 10 of the Code of Civil Proceedings. The Law on Protection of State Secrets and Their Protection has not solved the issue how state secrets in court trials should be used. As it is necessary to ensure the right of persons to judicial protection which is consolidated in Part 1 of Article 30 of the Constitution, it is necessary that the relations of use and protection of state secrets in court trials be regulated by a procedural law.

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

ruling:

1. To recognise that items 1 and 2 as well as the provision "[the Government shall] approve the list of subjects of state secrets" of item 3 of Article 5 of the Law on State Secrets and Their Protection contradict Part 3 of Article 25 of the Constitution. Other norms of Article 5 of the said law are in compliance with the Constitution of the Republic of Lithuania.

2. To recognise that Article 10 the Law on State Secrets and Their Protection is in compliance with the Constitution of the Republic of Lithuania.

3. To recognise that Item 1 of the 6 March 1996 Resolution No. 309 of the Government of the Republic of Lithuania "On the approval of the list of the information which is considered a state secret of the Republic of Lithuania" contradicts Part 3 of Article 25 of the Constitution of the Republic of Lithuania. Other norms of the said Government resolution are in compliance with the Constitution of the Republic of Lithuania.

4. To recognise that Item 1.1 of the 6 March 1996 Resolution No. 310 of the Government of the Republic of Lithuania "On the approval of the list of duties whereby the persons who discharge them are entitled to familiarise themselves with the information which is considered a state secret without exceeding their competence established by law, as well as on notifying these persons of liability for disclosure or loss of such information" in its volume whereby the list of duties which are appointed by the President of the Republic or the Seimas is established, contradicts Part 3 of Article 25, and Part 2 of Article 5 of the Constitution of the Republic of Lithuania. Other norms of the said Government resolution are 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.