

Constitutional Court No. I.ÚS 394/04 - Resolution

Free press depends on a free flow of information from the media to their readers and from readers to the media. Journalists in the whole world, whether they work for local or national newspaper, for national or international TV, generally depend on non-journalists with the supply of information in the issues of public interest. Some individuals (further referred to as sources) provide secret or sensitive information, relying on journalists, that they will supply it to the national or international public, to achieve publicity and arouse public discussion. In many cases the anonymity of the source is a preliminary condition on which the provision of the information from the source to the journalist is based, this might be motivated by, for example, fear of divulgement that could unfavorably affect physical safety or employment security of the informer. In this regard journalists often argue with a right to refuse reveal both their source and nature of information that was handed confidentially; such argument is used not only in connection with written information, but to other documents and materials, including photographs as well. Journalists argue, that without means to secure confidentiality of their sources, the ability to lay obstacles, for example to the corruption of state officials or to perform investigative journalism, would be substantially limited.

The need to protect information sources is such that many journalists feel bonded by professional ethical codes, which impose not to reveal the source. Many journalists rely upon these codes even during court hearing, when they are ordered to reveal identity of their sources. Despite this, there are situations, when the interest of journalists and the right of public access to information collide with interest of more or less powerful individuals or institutions. Frequently such collision relate to questions of justice, usually if given information is – or may be – relevant to criminal or civil proceedings. This then is a task of the Constitutional Court to consider such a conflict with a test of proportionality and weigh, whether in the specific case the public interest to disclose a source of the journalist is such, that it will overweight even the constitutional right of freedom of expression, whose derivative is the right of media on nondisclosure of the source of information.

The answer is positive. Articles 17, para 1 of the Charter and 10 para 1 of the Convention (on Human Rights and Basic Freedoms) confirm right of freedom of expression, which is one of the cornerstones of a democratic state. Those are especially press, radio and television who distribute and mediate the information; in this connection, the freedom of information has an extraordinary importance (compare e.g. decision of the European Court of Human Rights in a suit *Sunday Times vs. Great Britain* 1978, A-30). According to the established practice of the European Court, one of the aspects of freedom of media is a protection of sources, exactly the subject of this Constitutional Appeal. Constitutional Court infers that authorities in charge of the criminal proceedings ("authorities") ignored basic rules set for security of journalist sources of information. Procedure of these authorities was not in accord with articles 17 para 4 of the Charter and art. 10 para 2 of the Convention, because necessity of interference with right to freedom of expression – as was stipulated – has to be interpreted restrictively and not vice versa. From contents of the file results that authorities in charge of the criminal proceedings did not consider at all (Police) or insufficiently (Public prosecution) reasons of the plaintiff to deny disclosing identity of his source, although his concrete information, consistently speaking, identity of the source, although not particularly, revealed. The aforementioned authorities had – in view of detailed plaintiff's information – alternative possibility to identify the source themselves. In this connection it is not possible to overlook, as the plaintiff rightfully objects, that when the journalist discloses his source – in spite of the promise of not disclosing it – he jeopardizes his own journalistic work, especially in the sphere of investigative journalism, which is with a serious approach valuable and conductive for the society. It is obvious, that such a conclusion does not signify the non-existence of events when journalist has a duty to disclose his source.