

LietuviškaiTHE CONSTITUTIONAL COURT OF
THE REPUBLIC OF LITHUANIA

R U L I N G

On the compliance of Part 2 of the Preamble of the Republic of Lithuania Law on Trade Unions as well as Part 4 of Article 10, Article 17, Part 1 of Article 18, Article 21 and Part 2 of Article 23 of the same law with the Constitution of the Republic of Lithuania

Vilnius, 14 January 1999

The Constitutional Court of the Republic of Lithuania, composed of the Judges of the Constitutional Court Egidijus Jarašiūnas, Kęstutis Lapinskas, Augustinas Normantas, Vladas Pavilonis, Jonas Prapiestis, Pranas Vytautas Rasimavičius, Teodora Staugaitienė, and Juozas Žilys,

with the secretary of the hearing Daiva Pitrenaitė, in the presence of:

the representative of the party concerned Jadviga Andriuškevičiūtė, a senior consultant to the Law Department of the Seimas 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 Republic of Lithuania Law on the Constitutional Court, on 29 December 1998 in its public hearing conducted the investigation of Case No. 8/98 subsequent to the petition submitted to the Court by the petitioner Vilnius City District Court No. 2-requesting to investigate if Part 2 of the Preamble of the Republic of Lithuania Law on Trade Unions as well as Part 4 of Article 10, Article 17, Part 1 of Article 18, Article 21 and Part 2 of Article 23 of the same law were in conformity with Article 50 of the Constitution.

The Constitutional Court
has established:

I

On 23 April 1997, the petitioner Vilnius City District Court No. 2-was investigating a civil case following the claim of E. Bieliauskienė to annul a disciplinary penalty which had been imposed on her. By its ruling the court suspended the investigation of the case and appealed to the Constitutional Court with a petition requesting to investigate whether Part 2 of the Preamble of the Law on Trade Unions (Official Gazette Valstybės žinios, 1991, No. 34-933; 1994, No. 42-758) as well as Part 4 of Article 10, Article 17, Part 1 of Article 18, Article 21 and Part 2 of Article 23 of the same law were in conformity with Article 50 of the Constitution.

II

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

On 11 February 1997, by order of the director general of the joint-stock company Vilniaus mėsos kombinatas the plaintiff was imposed a disciplinary penalty-severe reprimand for failing to ensure security of entrusted material values. The plaintiff requested Vilnius City District Court No. 2 to annul the disciplinary penalty which had been imposed on her. On 23 April 1997, by its ruling the court suspended the case and

established time limits during which the plaintiff had to appeal to the commission for labour disputes at the joint-stock company Vilniaus rėšos kombinatas requesting to annul the disciplinary penalty. As the plaintiff never appealed to the said commission, on 20 June 1997 by its ruling the court dismissed the civil case. On 25 September 1997, by its ruling the Vilnius Regional Court annulled the said ruling of Vilnius City District Court No. 2 and referred the case back to the same court to investigate the case in essence.

In the course of the investigation of the case it became evident that the plaintiff was basing her refusal to protect her rights at the commission for labour disputes on the provisions of the Law on Trade Unions which provide that trade unions shall protect the interests and rights of their members. Meanwhile, the petitioner was not a member of the trade union. The plaintiff was of the opinion that even though Chapter 15 of the Code of Labour Laws regulating the procedure of settling labour disputes remained unchanged, it was impossible to demand that trade unions protect the rights of someone who is not their member.

In the opinion of the petitioner, the norms of the Law on Trade Unions providing for obligation of trade unions to protect their members only contradict Article 50 of the Constitution which provides: trade unions shall be freely established and shall function independently; they shall defend the professional, economic, and social rights and interests of employees.

The petitioner also maintains that all employees, and not only trade union members, must follow the procedure of labour disputes settling as provided for by Chapter 15 of the Code of Labour Laws. Therefore the district court requests to decide whether Part 2 of the Preamble of the Law on Trade Unions as well as Part 4 of Article 10, Article 17, Part 1 of Article 18, Article 21 and Part 2 of Article 23 of the same law is in conformity with Article 50 of the Constitution.

III

In the course of the preparation of the case for the court hearing, the representative of the party concerned explained in writing that it is possible to assess the provision of Article 50 of the Constitution, whereby trade unions shall defend the professional, economic, and social rights and interests of employees, in its wide meaning as a definition of the purpose of trade unions and their purpose in the public life of the state. Trade unions have been granted the right to defend the professional, economic, and social rights and interests of all employees irrespective of whether they are trade union members or not.

It is also indicated in the document that assessing the content of the Law on Trade Unions in a formal way, it is possible to perceive that its certain articles indicate a narrower circle of subjects than Article 50 of the Constitution. Part 4 of Article 10 of the Law on Trade Unions prescribes that trade unions shall defend the labour, economic, and social rights and interests of their members, and it is also established that trade unions shall represent trade union members in their relations with the employer or his authorised representative. Part 1 of Article 18 of the Law on Trade Unions provides that trade unions shall be entitled to demand that the employer rescind his decisions which violate the labour, economic and social rights of trade union members which are established by laws. In the opinion of the representative of the party concerned, Part 4 of Article 10 and Part 1 of Article 18 of the Law on Trade Unions contradict Article 50 of the

Constitution.

IV

In the course of the preparation of the case for the court hearing explanations of A. Sysas, Chairman of the Alliance of Trade Unions of Lithuania, and A. Kvedaravičius, a deputy chairman of the Centre of Trade Unions of Lithuania, were received.

A. Sysas, Chairman of the Alliance of Trade Unions of Lithuania, noted in his explanation that the freedom of citizens to form associations is established by Article 35 of the Constitution. One type of associations is trade unions. Employees unite to form trade unions so that they could defend their professional, economic and social rights. Therefore the Constitution points out the main direction of the activity of trade unions, which is to defend the professional, economic and social rights and interests of employees. The provisions contained by the Law on Trade Unions whereby trade unions shall defend the labour, economic and social rights and interests of their members do not contradict the Constitution even though the latter indicates a wider circle of subjects to be defended by trade unions. The Law on Trade Unions which provides that trade unions shall defend their members does not prohibit trade unions from defending the employees who are not trade union members.

A. Kvedaravičius, a deputy chairman of the Centre of Trade Unions of Lithuania, pointed out in his explanation that the provision of Article 50 of the Constitution whereby trade unions shall defend the professional, economic, and social rights and interests of employees grants the right and opportunity to trade unions to defend the rights and interests of all employees, trade union members included, while it grants the right to the employees who are not trade union members to entrust the protection of their rights to trade unions and to charge them to be their representatives. A concrete mechanism of representation of employees and trade union members and that of protection of their rights is established by laws. The disputed norms of the Law on Trade Unions are in compliance with Article 50 of the Constitution as they merely particularise the protection of the rights and interests of trade unions, their members and the employees who are not trade union members.

In the course of the preparation of the case for the court hearing an explanation by G. Švedas, a vice-minister of justice of the Republic of Lithuania, was received.

V

In the court hearing the representative of the party concerned virtually reiterated her arguments set forth in writing.

The Constitutional Court
holds that:

Part 1 of Article 50 of the Constitution provides: "Trade unions shall be freely established and shall function independently. They shall defend the professional, economic, and social rights and interests of employees."

Construing the content of these constitutional norms, one has to take account of the following aspects which are peculiar to the activities of trade unions.

First of all, it needs to be noted that trade unions are voluntary and independent organisations of employees. They join trade unions in order to defend their rights better, i.e. in an

organised way. A person who joins a trade union, of its own free will chooses this organisation as one of the forms of the protection of his labour rights and interests. Therefore the defence of the rights of trade union members as provided for by the norms of the Law on Trade Unions is line with the main purpose of these organisations. Such an aspect of the activity of trade unions becomes especially conspicuous in settling individual labour disputes when trade unions defend their members from unlawful decisions of employers and, if necessary, these members are represented in court by the organisations of their trade unions.

On the other hand, it is to be noted that historically trade unions were established as defenders of all employees. Therefore constitutions of many countries, including that of the Republic of Lithuania, provide that trade unions shall defend the professional, economic, and social rights and interests of employees. Through bilateral and tripartite negotiations with the representatives of the government and those of the employers they may solve social and economic problems of not only their members but also those of other employees. Taking account of the interests of employees, the trade union of an enterprise may act for the good of all of them and attempt, for instance, that fair wages be established or safe labour conditions be secured. As a rule, the interests of all employees are represented by making collective or other agreements with employers. Under Article 16 of the Republic of Lithuania Law on Collective Agreements, representatives of the parties to a collective agreement shall prepare a draft collective agreement, taking into consideration the proposal of the employees and agreements worked out during negotiations. The draft agreement must be discussed by the employees (at structural units) and must be submitted for further discussion to the meeting (conference) of the collective of employees. Upon the approval of the draft collective agreement at the meeting (conference), representatives of the parties shall sign the agreement within three days. It means that the laws obligate trade unions to represent all persons who work at enterprises or other organisations in the course of joint solution of their economic and social problems.

Thus the Constitutional Court underlines that the provision of Part 1 of Article 50 of the Constitution, whereby trade unions shall defend the professional, economic, and social rights and interests of employees, virtually expresses a double purpose and function of trade unions: first, to represent trade union members and defend them in the first place; second, defend all the employees of a respective enterprise, institution or organisation in the cases and ways as established by the law.

The purpose of trade unions to defend in an organised way not only their members but also all employees is also reflected by conventions of the International Labour Organization which were ratified by the Republic of Lithuania on 23 June 1994. For example, Article 5 of the 23 June 1981 Collective Bargaining Convention provides that measures adapted to national conditions shall be taken to promote collective bargaining, while the aims of these measures shall be the following: (a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this convention; (b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention (i.e. in cases of determining working conditions and terms of employment, regulating relations between employers and workers, and regulating relations between employers or their organisations

and a workers' organisation or workers' organisations).

Taking account of the circumstances set forth and the given construction of the content of Part 1 of Article 50 of the Constitution, the Constitutional Court will investigate whether Part 2 of the Preamble of the Law on Trade Unions as well as Part 4 of Article 10, Article 17, Part 1 of Article 18, Article 21 and Part 2 of Article 23 of the same law which, in the opinion of the petitioner, provide for the protection of the rights of trade union members only were in conformity with the Constitution.

1. On the compliance of Part 2 of the Preamble of the Law on Trade Unions as well as Part 4 of Article 10 of the same law with the Constitution.

1.1. Part 2 of the Preamble of the Republic of Lithuania Law on Trade Unions provides: "Trade unions shall be voluntary, independent and self-acting organisations which represent and defend the professional, labour, economic and social rights and interests of employees."

It needs to be noted that Part 2 of the Preamble of the Law on Trade Unions of the 21 November 1991 wording was set down in a different way by establishing that trade unions shall be voluntary, independent and self-acting organisations which defend the professional, labour, economic and social rights and interests of their members and which represent them. However, by Article 1 of the 24 May 1994 Law "On Amending and Supplementing the Republic of Lithuania Law on Trade Unions" the Seimas partially amended Part 2 of the Preamble and established that trade unions shall be voluntary, independent and self-acting organisations which represent and defend the professional, labour, economic and social rights and interests of employees and which represent them. After the Law on Trade Unions had been amended in such a way, Article 50 of the Constitution and Part 2 of the Preamble to this law became virtually identical. Thus the part of the Preamble which is disputed by the petitioner is in compliance with the Constitution.

1.2. Part 4 of Article 10 of the Law on Trade Unions provides: "Trade unions shall represent trade union members in the relations with the employer or his authorised representative. Trade unions shall defend the labour, economic, and social rights and interests of their members." By this norm trade unions have been granted the right, as well as an obligation has been established to them, to represent their members in the relations with the employer or a person authorised by the latter and in cases when they violate the rights of a trade union member or his interests which are protected by the law also to defend him under the procedure established by laws. Such a provision of the Law on Trade Unions is determined by the nature of these organisations. As mentioned, trade unions are joined so as the rights and interests of their members might be defended in an organised way. The provisions of Part 4 of Article 10 of the Law on Trade Unions guarantees that it is this organisation which will represent them in the relation with the employer and, if necessary, will protect them. The employer or a person authorised by him is prohibited to stipulate conditions or propose to keep a job by demanding that an employee should not join or should quit a trade union.

In deciding whether Part 4 of Article 10 of the Law on Trade Unions which is disputed by the petitioner is in conformity with the Constitution, one has to take into consideration the fact that it is provided in the said law that bodies of trade unions of enterprises and institutions are obligated to represent not only trade union members but also

other employees. For instance, Article 11 of the said law provides that trade unions shall represent their members (they may also be representatives of the collectives of employees) in concluding collective and other agreements with the employer, while Article 12 provides that trade unions or their associations shall be entitled to conduct negotiations and conclude agreements with the employers or their organisations or associations concerning employment, retraining, work organisation and wages, amelioration of working and living conditions of the employees, as well as regarding other issues. As a rule, in collective agreements terms of conclusion, amending and annulment of labour agreements, conditions of organisation of work, wages as well as conditions of work and recreation, as well as those of acquiring a speciality, improvement of one's professional skills, and retraining, as well as the guarantees and advantages linked with all this, and other economic and social conditions and stipulations which are important to the parties are established.

The essence of the disputed provision of Part 4 of Article 10 of the Law on Trade Unions is that this norm expresses the duty of trade unions to defend the rights of their members as well as their interests which are protected by laws and to represent them. However, this disputed norm is to be assessed in the whole context of the Law on Trade Unions. As mentioned, Articles 11 and 12 of the said law provide for an opportunity for trade unions to represent other employees as well, therefore there exist no grounds for an assumption that the norm of Part 4 of Article 10 of the Law on Trade Unions denies an opportunity to defend the rights of other employees. Taking account of these arguments, a conclusion is to be drawn that Part 4 of Article 10 of the Law on Trade Unions is in compliance with the Constitution.

2. On the compliance of Article 17 and Part 1 of Article 18 of the Law on Trade Unions with the Constitution.

2.1. Part 1 of Article 17 of the Law on Trade Unions provides: "Trade unions shall be entitled to supervise how the employer abides by and implements labour, economic and social laws, and collective agreements which are linked with the rights and interests of the employees whom they represent. To this end, trade unions may have their inspectorates, services of legal assistance and other offices." Part 2 of the same article prescribes: "Persons authorised by trade unions, exercising the control functions as provided by Part 1 of this Article, shall have the right freely to visit the enterprises, institutions and organisations in which the employees represented by that trade union work, and become familiar with the documents concerning labour, economic and social conditions."

Control is an important method in the activities of trade unions. Exercising the functions of control, it is possible to establish whether the employer violates the professional, economic or social rights and interests of the employees. It needs to be noted that under the 21 November 1991 wording of Article 17 of the Law on Trade Unions, trade unions were granted the right to supervise how the employer implements the laws and collective agreements which were linked with the rights and interests of trade union members only. In attempt to create legal pre-conditions for trade unions to defend all employees, by Article 6 of the 24 May 1994 Law "On Amending and Supplementing the Republic of Lithuania Law on Trade Unions" the trade union powers of control were expanded by granting them the right to supervise as to how the laws and collective agreements which are linked with the rights and interests of the employees (i.e. not only trade union members) whom they

represent are implemented. Thus the norms of Article 17 of the Law on Trade Unions were brought in line with the provision of Part 1 of Article 50 of the Constitution whereby trade unions shall defend the professional, economic, and social rights and interests of employees. Therefore the Constitutional Court holds that the disputed by the petitioner Article 17 of the Law on Trade Unions is in compliance with the Constitution.

2.2. Part 1 of Article 18 of the Law on Trade unions provides: "Trade unions shall be entitled to demand that the employer rescind his decisions which violate the labour, economic and social rights of trade union members which are established by the laws of the Republic of Lithuania."

The employer must conform to the requirements of the norms of the laws concerning labour, economic and social conditions for the employees. In cases when the employer adopts such decisions which in one or the other way violate labour, economic or social rights of trade union members, the trade union has the right to react to this and demand that such decisions be rescinded. Under Part 2 of Article 18 of the Law on Trade Unions, the employer must review these demands within ten days in the presence of representatives of the trade union which had filed the demand, while under Part 3 of the said article, in the case that the employer fails to review the demand of trade unions to rescind such a decision in due time or if he refuses to satisfy it, the trade union shall have the right to appeal to court.

It goes without saying that decisions of the employer can violate the rights not only trade union members but also those of the employees who do not belong to that organisation. Article 30 of the Constitution guarantees the right of individuals to appeal to court, therefore the employees who are not trade union members may protect their rights which have been violated by decisions of the employer directly in court. It is to be noted that in the Lithuanian judicial practice it is held that an employee who is not a trade union member may directly protect his rights in court (Ruling No. 42 of 21 June 1996 of the Senate of Judges of the Supreme Court of Lithuania).

Taking account of the arguments and motives set forth, a conclusion is to be drawn that Part 1 of Article 18 of the Law on Trade Unions is in compliance with the Constitution.

3. On the compliance of Article 21 of the Law on Trade Unions with the Constitution.

Part 1 of Article 21 of the Law on Trade Unions provides: "The employer may not dismiss an employee who is a member of the trade union operating in that enterprise on his own initiative (with the exception of cases as provided for by Items 1 and 8 of Article 29 of the Law on Labour Agreements) and of his own will without prior consent of the body of the said trade union which is elected in the same enterprise." This legal norm means that a trade union member makes use of trade union defence when the issue of his dismissal is decided. Thus, such a person, if his rights are compared with those of the other employees, enjoys additional guarantees due to his trade union membership.

The norms of Parts 2, 3, 4, 5 and 6 of Article 21 of the Law on Trade Unions regulate labour and social guarantees of those trade union members who are elected to elective bodies of the trade union. These guarantees for such trade union members are provided so that they would not be discriminated against because of their work in the elective bodies of the trade union, i.e. so that one would not do away with them because of their activities in the said bodies (for instance, groundless imposition of disciplinary penalties, dismissal, moving to

another, worse job, etc.), as well as so that during their work in the said bodies their equal rights with the other employees would be preserved. Besides, Article 1 of Convention 135 concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking adopted by the International Labour Organization, which was also ratified by the Republic of Lithuania on 23 June 1994, reads: "Workers' representatives in the undertaking (under Article 3 of the Convention, such are also considered trade union representatives designated or elected by trade unions or members of such unions) shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed agreements." Thus the provisions of Parts 2, 3, 4, 5, and 6 of Article 21 of the Law on Trade Unions are in line with the requirements of the said Convention to protect the representatives of employees from the dangers which may occur in connection with their activities in the trade union.

The disputed norms of Article 21 of the Law on Trade Unions regulate such labour relations when trade unions may defend only the persons who belong to this organisation. All said norms are to be assessed as additional guarantees of the rights of trade union members which on their own accord do not deny the defence of the rights of the other employees. Therefore it is to be concluded that Article 21 of the Law on Trade Unions is in compliance with Article 50 of the Constitution.

4. On the compliance of Part 2 of Article 23 of the Law on Trade Unions with the Constitution.

Part 2 of Article 23 of the Law on Trade Unions provides: "Trade unions, protecting the rights of their members, shall be entitled to declare a strike under the procedure as established by laws." This norm of the Law on Trade Unions is to be linked with the right of employees to strike which is entrenched in Article 51 of the Constitution. The said article of the Constitution prescribes:

"Employees shall have the right to strike in order to protect their economic and social interests.

The restrictions of this right, and the conditions and procedures for the implementation thereof shall be established by law."

The implementation conditions and procedure of the constitutional right of employees to strike and that of the right of trade unions to declare a strike are regulated by the Republic of Lithuania Law on the Regulation of Collective Disputes. Part 1 of Article 10 thereof provides that the right to declare a strike (including a preventive one) shall be vested in the trade union by the procedure as established in its regulations (statute). A strike is declared

(1) in an enterprise in case this decision is approved of in a secret ballot by at least 2/3 of the employees;

(2) in a structural unit of an enterprise in case this decision is approved of in a secret ballot by at least 2/3 of the employees of the said unit and more than one half of all the employees of the said enterprise.

Thus the right of trade unions to declare a strike derives from the right of employees to strike which is guaranteed by the Constitution and the laws. A trade union has the right to declare a strike provided this is approved of a majority of persons working at the enterprise, institution or organisation. By declaring a strike, the trade union implements the will of both trade union members and the other employees of the

enterprise. Taking account of these arguments and motives, it is to be concluded that Part 2 of Article 23 of the Law on Trade Unions is in compliance with Article 50 of the Constitution.

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

To recognise that Part 2 of the Preamble of the Republic of Lithuania Law on Trade Unions as well as Part 4 of Article 10, Article 17, Part 1 of Article 18, Article 21 and Part 2 of Article 23 of the same law 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.