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Headnotes:

In order to safeguard the right to receive information, some requirements may be introduced concerning the distributors and the sellers of periodical and non-periodical publications. Where the rules on the subject are not obeyed, the imposition of a heavy fine is not unconstitutional. However, suspension of the activities of the sellers of printed materials is contrary to the Constitution.

Summary:

The main opposition party (at the material time, the Motherland Party) applied to the Constitutional Court seeking the annulment of some provisions of the Law 4202 amending the Press Law (5680).

The first sentence of Supplementary Article 7 of the Law provides that the individuals and corporations dealing with the distribution of periodical and non-periodical publications are under an obligation to distribute them if the owners of such publications demand their distribution, provided that they are paid an amount not exceeding the amount paid by the other owners of such publications. According to the second sentence of the Article, persons who do not comply with that rule shall be penalised with a heavy fine not exceeding the total value of such publications that remain undistributed.

Article 28 of the Constitution regulates freedom of press, and the third paragraph of the Article (now, the second paragraph) states: "...[t]he state shall take the necessary measures to ensure freedom of the press and freedom of information".

Freedom of press encompasses the right to receive information, to express ideas, to comment and to criticise as well as the right of publication and distribution. It is natural for the State to take the necessary measures to safeguard the rights of the distribution of printed materials.

On the other hand, Article 48.1 of the Constitution states: "...[e]veryone has the freedom to work and conclude contracts in the field of his/her choice. The

establishment of private enterprises is free". These freedoms may only be restricted by law and with the aim of public interest. The restrictions made on the basis of Article 13 of the Constitution must not be contrary to the requirements of a democratic society, and they must not be used for the aims other than the ones prescribed.

The restrictions in the first and the second sentences of Supplementary Article 7 are directed at the necessary measures to be taken by a State under Article 28 of the Constitution. This arrangement aims at ensuring individuals the right to receive information, and there is no contradiction with the requirements of a democratic society.

Article 18 of the Constitution provides that no one shall be forced to work and that forced labour is prohibited. The individuals and corporations dealing with the distribution of periodical and non-periodical publications are not forced to work under the impugned provisions. Since the delivery of such publications constitutes one of the features of the right of the press and the right to receive information, the obligation of the distribution of such publications is an arrangement that serves the purpose of the public interest.

Moreover, Article 38 of the Constitution sets out the principle of the legality of punishment. As to the provision in the second sentence, it cannot be said that it is uncertain, since it clearly indicates that those who prevent the distribution of the publications shall be liable to pay a heavy fine.

The third sentence of Supplementary Article 7 of the Law provides that if the act mentioned in the first sentence is repeatedly committed, the heavy fine mentioned above shall be doubled, and the activities of the individual or corporate body distributors shall be stopped.

As to repetition, the main opposition party claimed that the kind of activity covered and the period of such repetition are not indicated in the sentence, and it is contrary to the principle of *ne bis in idem*. According to the Constitutional Court, the details of the repetition were not indicated in the Article. However, Article 10 of the Criminal Code states: "the provisions of this Code shall be applied to special criminal laws provided that their provisions are not contrary to the provisions of the Criminal Code". Consequently, there is no doubt that the provisions of the Criminal Code relating to repetition are to be applied to the impugned provision. Therefore, the Constitutional Court found that the request had to be rejected.

As to the suspension of the activities of the distributors, such suspension is in conflict with the aim of ensuring that individuals receive information, as it is the obligation of the distributors to distribute the periodical and non-periodical publications. Since such punishment is not appropriate for the aim pursued, it cannot be asserted that this kind of punishment is an obligation that could be

envisaged. Without considering the aim pursued, the introduction of this kind of punishment may pave the way for an imbalance between aims and means. To restrict excessively the right to receive information, even for a limited period of time, is incompatible with the requirements of a democratic society.

Consequently, the Constitutional Court found that the part of the statement reading: "... their activities shall be suspended up to three months" was contrary to the Constitution and had to be annulled.

According to Supplementary Article 8.1 of the Law, it is obligatory for periodical and non-periodical publications to be offered for sale in sales agencies. If sales agencies do not comply with that requirement, they shall be closed down for three days by the order of the governor. If the action is repeated, that period shall be extended to at least three months.

The administrative sanctions may be applied by the administrative authorities on the basis of administrative rules and without referring the matter to a judicial authority. Suspension, prohibition and stopping of activities are all sanctions by which precautionary measures are applied.

According to Article 13 of the Constitution, fundamental rights and freedoms may only be restricted for the reasons referred to in the article; they may not be contrary to the requirements of a democratic social order; and they may not be used for the aims other than those prescribed (before the October 2001 amendments). Suspension of the sales agencies injures the essence of the right to receive information. The impugned rule seeks to safeguard the right to receive information. Consequently, the suspension of sales agencies in certain conditions is a contradiction.

In some places the sellers of the periodical and non-periodical publications are kiosks, groceries, etc. On the ground that the suspension of these kinds of places of business was contrary to Article 48 of the Constitution (Freedom to Work and Conclude Contracts) and Article 5 of the Constitution (Fundamental Aims and Duties of the State), the Court decided to annul the provision mentioned above.

The Supplementary Article 8.2 provides that individuals who obstruct or hinder the presentation for sale of the periodical and non-periodical publications by means of threat, by tricks of trade or by other means shall be sanctioned.

An objection was raised that these acts were sanctioned in the Criminal Code, and it was not logical to have a law punishing individuals for the same acts.

In the Criminal Code, the acts such as threats, tricks of trade and etc. are deemed to be crimes. There is no rule preventing the parliament from introducing these kinds of amendments for such acts.

Therefore, the objection was rejected.