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CRIMINAL LIABILITY FOR UNLAWFUL COLLECTION OF INFORMATION ON PRIVATE LIFE OF A PERSON: PROBLEMATIC ASPECTS, LINKS WITH DIVORCE PROCEEDINGS

Audronė ŽEMECKĖ - MILAŠAUSKĖ
Mykolas Romeris University
Maironio str. 27, LT 44211 Kaunas, Lithuania
Emails audronekaunas@gmail.com; advokate@zemecke.eu
ORCID ID 0009-0000-2072-2834

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Abstract. *Depending on the nature of the violation, infringements of a person's right to privacy can lead to both ethical and legal liability. In terms of legal liability, they can be analysed in the context of civil, criminal and administrative law. Liability for the unlawful collection of information about a person's private life is briefly provided for in Article 167 of the Criminal Code of the Republic of Lithuania (hereinafter referred to as the "CCL"), but the legislator does not clarify the criteria on the basis of which the collection of information about a person's private life is unlawful, thus leaving it open to interpretation by the courts. In practice, parallel to civil divorce proceedings, criminal proceedings are initiated, where the collection of information by the spouses as participants in the proceedings is assessed. There is a need to assess the constitutional principle of the inviolability of a spouse's private life in the context of the collection of information (about each other) and to declare this process lawful or not. The focus is on the purposes of the data collection. When assessing the case law and linking the collection of information about a person's private life to the purpose of data collection for the purpose of exercising the right of private persons to provide evidence in proceedings for legitimate purposes within the meaning of Article 167 of the CCL, the acts do not always constitute a crime. This situation focuses the need for a deeper analysis of the liability for the unlawful collection of information, with an emphasis on the regulation of the private life of the spouse and its application.*

Keywords: *private life, protection of private life, unlawful collection of information about a spouse's private life.*

Introduction

Depending on the nature of the violation, infringements of a person's right to privacy can lead to both ethical and legal liability. In terms of legal liability, they can be analysed in terms of civil, criminal and administrative law. In the present case, only one aspect of the inviolability of private life will be focused on in the context of criminal liability, namely the unlawful collection of information about a person's private life.

First of all, we would like to mention international legislation: the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), which is the basic instrument for the development of the legal regulation of privacy in national law. Article 8 of the Convention states that “Everyone has the right to respect for his private and family life, the inviolability of the home and the secrecy of correspondence”(European Convention for the Protection of Human Rights[...], 2011); Article 12 of the Universal Declaration of Human Rights states that "No one shall be subjected to arbitrary interference with his private and family life, the inviolability of his home, the secrecy of his correspondence, or attacks upon his honour and dignity. Everyone has the right to the protection of the law against such interference or attempted interference" (Universal Declaration [...], 2006) and Article 17 of the International Covenant on Civil and Political Rights, which provides for prohibitions of interference with private life and for the right to defend oneself against such interference (International Covenant [...], 2002).

The principle provisions in national law on the inviolability of private life are enshrined in Article 22 of the Constitution of the Republic of Lithuania (Constitution[...],1992). According to the official constitutional doctrine, the norms enshrined in this article of the Constitution protect the individual's right to privacy. This right includes private, family and home life, physical and mental integrity, honour and reputation, confidentiality of personal facts, the prohibition to publish confidential information received or collected, etc. Arbitrary and unlawful interference in a person's private life is also an attack on his or her honour and dignity (Resolution of the Constitutional Court, 8 May 2000). A person's private life is his or her personal life: lifestyle, marital status, living environment, relations with other persons, views, beliefs, habits, physical and mental condition, health, honour, dignity, etc. The Constitution enshrines the inviolability of a person's private life, from which the individual's right to privacy derives. Article 22(3) of the Constitution, "information about a person's private life may be collected only by reasoned court decision and only in accordance with the law", and Article 22(4) of the Constitution, "the law and the courts shall ensure that no one is subjected to any arbitrary or unlawful interference with his or her private and family life, or to any attack on his or her honour and dignity" are some of the key guarantees of a person's privacy. They protect a person's private life against unlawful interference by the State, other institutions, their officials and other persons (Resolution of the Constitutional Court, 19 September 2002).

Restrictions on constitutional human rights and freedoms may be made if the following conditions are met: they are made in accordance with the law; they are necessary in a democratic society in order to protect the rights and freedoms of others and the values enshrined in the Constitution, as well as constitutionally important objectives; they do not undermine the nature of the rights and freedoms and their essence; and they comply with the constitutional principle of proportionality.

The legal liability for violation of the provisions enshrined in the Constitution and international legal acts is provided for in Chapter XXVI of the Special Part of the Criminal Code of the Republic of Lithuania. Despite the fact that the legislator has provided the highest hierarchical protection for unlawful interference in private life, there are problematic situations. The qualification of the unlawful collection of information on a person's private life provided for in Article 167 of the CC of the Republic of Lithuania is of particular importance(Criminal Code[...], 2000).The concept of private life is quite broad, Article 167 of the CC of the Republic of Lithuania does not specify it, therefore, the court decides on what is part of the private life of a particular person, what information falls within the sphere of the private life of a particular person by assessing the totality of the facts and circumstances established in the case. The concept of collection of information includes all possible means of unlawful conduct intended for that purpose, such as surveillance of a person, monitoring of the person himself or his home, eavesdropping on conversations, taking photographs and so on. Unlawful collection of information about a person's private life means that the information is collected without the consent of the person concerned or in the absence of a reasoned judicial decision or outside the law. Thus, the legislator, when drafting the disposition of this norm, has made it concise, concentrating the thought on a clear description that does not require additional guidance. This conciseness, however, allows legal practitioners to interpret the elements of the offence in an ambiguous manner, in other words, the interpretation of the law is left exclusively to the legal practitioner. Therefore, in practice, and in particular in the context of divorce proceedings, the courts are often confronted with situations in which they have to deal with criminal proceedings for unlawful collection of information in parallel to divorce proceedings, where the parties to the proceedings are family members - spouses. In the present case, a number of questions arise

as to the circle of relatives who may be held liable under Article 167 CC? Are the spouses private persons? If so, can the gathering of private information about the other spouse give rise to criminal liability under Article 167 of the CC? According to Article 2.23of the Civil Code of the Republic of Lithuania, the inviolability of private life means that information about a person's private life may only be published with his consent. Article 2.23 of the Civil Code of the Republic of Lithuania, which regulates the right to private life and its secrecy, does not stipulate the form in which a person's consent must be expressed (Civil Code[...], 2000). The courts, interpreting the provisions of Article 2.23(1) of the Civil Code of the Republic of Lithuania, have held that a person's consent to the publication of private information may be given orally, in writing, and may also be inferred from his or her conclusory acts (e.g., a person publicly discloses details of his or her private life to other persons, gives an interview to a journalist, etc.). The content of these norms raises a number of problematic aspects which have been little addressed in the scholarly literature.

The object of the study is the problem of interpretation of the objective elements of the criminal offence of unlawful collection of information about the private life of a spouse.

The aim of the study is to analyse whether spouses living in marriage have a protected private life in the context of Article 167 of the CC of the Republic of Lithuania.

Study objectives:

1. To provide an overview of the concept of private spousal life.
2. To investigate whether the spouses' private life is protected by law.
3. Identify the essential elements that would make the collection of information on the private life of his or her spouse a criminal offence.

Methods: qualitative analysis and document analysis methods, as well as synthesis and deduction and generalisation methods were used.

Concept of private spousal life

To start with the analysis of the concept of private life, it is necessary to underline that the content of private life can be analysed from several angles, i.e. doctrinal/theoretical interpretation, statutory law and case law. If we analyse the academic literature, we will not find a precise definition of the right to privacy or the content of private life. However, a number of authors have analysed the right to privacy and its content, such as Lankauskas, M., Mulevičius, M., Zaksaitė, S 2013(Lankauskas, 2013) , Petraitytė, I. 2011 (Petraityte, 2011) and others. It should be emphasised that the jurisprudence of the Constitutional Court of the Republic of Lithuania has also paid attention to this issue.

1. The right to respect for private life is guaranteed by Article 8(1) of the Convention, which provides that everyone has the right to respect for his private and family life, to respect for the integrity of his home and the confidentiality of his correspondence. As pointed out by Ehlers D., Becker U., the right to respect for private life is the most extensive of the four rights mentioned above, while the other three are considered to be specific areas of private life. The right to respect for private life is most often invoked in cases where the more specific rights already mentioned above cannot be applied (Edlers , 2007).

Article 8(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms sets out the cases in which interference with private life is permissible, i.e. when such interference with a person's privacy is provided for by law and is necessary in a democratic society in the interests of national security, public protection or the economic well-being of the country, for the purpose of preventing breaches of public order or crime, or for the protection of health or morals, or for the protection of the rights and freedoms of other persons.

It should be noted that the list of grounds for restriction is exhaustive - the right to privacy cannot be restricted on any other grounds. Meanwhile, the European Court of Human Rights applies a kind of "three-step test" when dealing with a violation of Article 8 of the Convention, i.e. it examines whether the violation of privacy can be justified on the basis of both formal (i.e. strict compliance with the requirements laid down in national law and Article 8(2) of the Convention) and evaluative (whether the violation is necessary in a democratic society and justified by a legitimate aim) criteria. Moreover, even if these criteria are met, the restriction of privacy must be proportionate, i.e. the means used must be adequate to the legitimate aim pursued (Meškauskaitė, 2016).

2. Meanwhile, the principle provisions in national law on the inviolability of private life are enshrined in Article 22 of the Constitution of the Republic of Lithuania. According to the official constitutional doctrine, the norms set out in this article of the Constitution protect the right to privacy, but the content of private life is not disclosed. This right includes private, family and home life, physical and mental integrity, honour and reputation, confidentiality of personal facts, the prohibition to publish confidential information received or collected, etc. Arbitrary and unlawful interference in a person's private life is also an attack on his or her honour and dignity (Resolution of the Constitutional Court, 23 October 2002). To summarise, the right to privacy covers a wide range of areas, including the informational privacy of a person's data, the inviolability of his or her body, of the transmission of information, of his or her possession of information, of his or her possession of communications, of his or her home or his or her home or his or her home territory, as well as the right of personality, the right to an image, the right to honour, the right to dignity, and the right to the protection of personal data, among others.

Article 2.23(1) of the Civil Code of the Republic of Lithuania reflects the provision of Article 22 of the Constitution, which states that a natural person has the right to the inviolability of his or her private life, and, inter alia, that the law and the court shall protect against arbitrary or unlawful interference with his or her private and family life, or attacks on his or her honour and dignity. As already mentioned, the right to respect for private life is protected by the Convention for the Protection of Human Rights and Fundamental Freedoms, as enshrined in Article 8 thereof. The protection of this right and the means of its defence are laid down in Article 2.23 of the Civil Code. According to Article 2.23(1) of the Civil Code of the Republic of Lithuania, the inviolability of private life means that information about a person's private life may be published only with his/her consent. Article 2.23 of the Civil Code of the Republic of Lithuania, which regulates the right to privacy and confidentiality of private life, does not stipulate the form in which a person's consent must be expressed. The courts, interpreting the provisions of Article 2.23(1) of the Civil Code, have held that a person's consent to the publication of private information may be given orally, in writing, and may also be inferred from his or her conclusory acts (e.g., a person publicly discloses details of his or her private life to other persons, gives an interview to a journalist, etc.).

Married life between two people also falls within the sphere of privacy. All of the elements listed in the content of a person's private life are not analysed in this article, but the focus is on clarifying the term "private", raising the question of whether spouses can have a private life, independent of the other spouse, which would be protected by the criminal law. This question arises from the divorce process and the parallel case law in criminal matters, where the courts have to decide where a spouse's private life begins and where it ends.

It should be emphasised that Article 3.27 of the Civil Code of the Republic of Lithuania lays down the obligation of spouses to be loyal to each other and to respect each other, to provide moral support, to the extent of the capabilities of each of them, to contribute to the

satisfaction of the common needs of the family or of the other spouse, and that the legal regulation of family relations is therefore based on the principles of equality of the spouses and the voluntary nature of marriage. "In exercising family rights and performing family duties, persons shall observe the law, respect the rules of common life, observe the principles of good morals and act in good faith. It shall be prohibited to abuse family rights, i.e. it shall be prohibited to exercise them in such a manner and by such means as to infringe or restrict the rights or legally protected interests of other persons or to cause damage to other persons"(Civil Code[...], 2000).

The Constitutional Court has also noted that the legal concept of privacy also relates to a person's state of expectation of privacy and his or her legitimate expectation of privacy. The Constitutional Court of the Republic of Lithuania, using the concepts of both the right to privacy and the right to private life as equivalent, has stated that the right to privacy includes the individual's private, family and home life, the individual's physical and mental integrity, honour and reputation, the confidentiality of personal facts, the prohibition of publication of confidential information received or collected, and the following(Resolution of the Constitutional Court, 8 May 2000).

3. At the same time, however, it must be stressed that if a person violates the interests protected by the law, whether by criminal acts or otherwise, the limits of a person's private life end. "Interpreting these provisions in conjunction with the above constitutional principle of the inviolability of private life, it follows that the celebration of marriage and the status of individuals as spouses do not negate their privacy in relation to each other, and that they are therefore obliged to respect it and not to violate it, and that, in the event of a breach of this principle, it is incumbent upon the State to protect the right violated. On the other hand, in determining whether a spouse's right to respect for his or her private life has been infringed and violated by the conduct of the other spouse, it is necessary to take into account the particularities of the privacy between the spouses. In family proceedings in which the fault of the spouses in the dissolution of the marriage is at issue, the subject-matter of the evidence relates to the facts and evidence concerning the parties' family life, their conduct within the family (marriage) and the breach of their spousal obligations, and includes the human right to privacy. In such cases, in order to protect the right to privacy, the law even establishes an exception to the principle of publicity of court hearings (Article 9(1) of the Civil Procedure Code of the Republic of Lithuania and Article 379 of the Code of Civil Procedure of the Republic of Lithuania), thus declaring,“ in essence, that the right to privacy is not absolute, and that in such cases, the participants in the proceedings, when arguing their claims and defenses, may refer to the relevant data on the private life of the person concerned“(Criminal case 1A-145-256-2014).It follows from the case-law that the spouses' status as spouses does not negate their privacy vis-à-vis each other, and that they have a duty to respect it and not to violate it, and that, in the event of a violation, the State is obliged to uphold the right violated. „Article 22 of the Constitution of the Republic of Lithuania. The provision that no one shall be subjected to unlawful and arbitrary interference with a person's private life should not be interpreted as an absolute prohibition to restrict the inviolability of a person's private life in certain cases; whether the inviolability of private life will be restricted in a particular case is determined by the nature of this personal non-pecuniary value and its compatibility with the rights and legitimate interests of other persons; a person's expectation to be 'left alone' in this case depends on his or her own desire to prevent access to his or her personal data by other persons in the course of his or her contacts with others"(Civil case 2A-129-883/2016).Thus, to summarise what has been stated in the cases, it should be noted that the State protects and defends a person's inviolable private life and privacy.

Criminalisation of the collection of information on the private life of a spouse: key aspects.

In order to highlight the essential aspects of the criminal liability for collecting information on the private life of a spouse, it is necessary to emphasise which types of collection of information could be distinguished. It should be noted that the law does not specify the means of collecting information, but case law does. As an example, we can single out the administrative case II-279-1049/2019 of the Kaunas District Court, where the court lists "[...] all possible ways of unlawful action, such as surveillance of a person, surveillance of his/her person or his/her home, wiretapping, photography, etc. "Unlawful collection of information about a person's private life means that the information is collected without the consent of the person to whom the information relates, or in the absence of a reasoned judicial decision or outside the law. [...] In judicial practice and legal theory, it is considered that this includes all possible methods of action: surveillance of a person, surveillance of the person himself or herself or of his or her home and private property, eavesdropping on conversations, copying of correspondence, other private documents, collecting, studying, systematising, studying and systematising the sources of information about the person, interviewing the person's acquaintances, his or her co-workers, and recording of the information obtained"(Administrative case II-279-1049/2019).

It must be stressed that private individuals are not generally entitled to collect information, and furthermore, the collection of evidence by individuals cannot in fact be considered as operational (criminal intelligence) activity, the means of which can only be used by persons authorised by the State. Officials authorised to do so must duly authorise such activities and must not exceed their powers. In summary, it can be said that criminal liability arises only from the unlawful collection of information.

In case law, the frequent and potentially unlawful collection of information on a person's private life is often linked to parallel civil proceedings for divorce or to the relationship of persons who have been living together as partners for a long time. A review of the case law on whether a spouse's right to respect for private life has been restricted and infringed reveals the following key points.

In divorce proceedings, if private information about a spouse is gathered for a short period of time, with the aim of gathering evidence of disloyal behaviour or infidelity, and the evidence is intended to be presented in a civil proceeding, this is not considered criminal conduct. I would single out a criminal case (Criminal case 1A-145-256/2014) in which the Vilnius City District Court acquitted V.K. by a verdict of 21 November 2013 under Article 167(1) and 168(1) of the CC of the Republic of Lithuania, without having committed an act having the elements of a criminal offence. V.K. was accused of illegally collecting information about a person's life: in September 2009, at an unspecified time, in an apartment at S. Nėries g. 99-96, Vilnius, he illegally read and photographed text messages contained in the SIM card of L. K.'s mobile phone, subscriber number (-);Continuing his criminal act, on 16 September 2009, he illegally obtained from UAB Tele 2 the telephone number of L. K. (-) detailed call and text message records; In continuation of the criminal offence, in autumn 2009, at an unspecified time, in the city of Vilnius, illegally followed L. K. by car at least several times; in continuation of the criminal offence, in 2009, in the city of Vilnius, in the city of Vilnius, illegally followed L. In autumn 2009, at an unspecified time, unlawfully secretly recorded L. K.'s private conversations; In continuation of the offence, in January 2011, at an unspecified time, unlawfully took photographs of L. K. in the vicinity of the building at 86 E Ateities St., Vilnius, unlawfully. V.K. was also accused of unlawfully using information about the private life of a person, i.e. on 23-12-2009, at Laisvės pr. 79a, Vilnius, he submitted to the 1st District Court of Vilnius

City, in the civil case No. (-) on the divorce of marriage, without the consent of L. K., and thereby unlawfully used information collected during the commission of the offence provided for in Article 167(1) of the Criminal Code of the Republic of Lithuania, about the private life of L. K.

On appeal, the Prosecutor's Office requested to annul the verdict, to sentence V.K. under Article 167(1) of the Criminal Code of the Republic of Lithuania to a fine of 10 MGL (LTL 1300), under Article 168(1) of the Criminal Code of the Republic of Lithuania to a fine of 15 MGL (LTL 1950), to combine the sentences according to the procedure set out in Article 63 of the Criminal Code of the Republic of Lithuania, and to impose the final fine of 20 MGL (LTL 2600). The applicant submits that the court did not properly assess the evidence, although it found that V.K. recorded conversations and checked L.K.'s personal belongings at home, retrieved a detailed list of the latter's telephone calls and messages, carried out these actions in the context of suspicions of infidelity, in order to record his spouse's improper behaviour in the family, and used the information gathered in order to prove his spouse's fault in the divorce proceedings. There can be no abuse of procedural coercive measures or their use for purposes other than those laid down in the CPC. In the present case, no coercive measures provided for and possible under the laws of the Republic of Lithuania were applied to L. K., and V. K. collected evidence in the civil case on his own initiative, unlawfully, i.e. in violation of the law. He not only illegally read and photographed the text messages on the SIM card of L. K.'s mobile phone, but also illegally obtained detailed call and text message records from UAB 'Tele 2' and illegally recorded L. K.'s private conversations. V.K.'s testimony that he did not secretly record personal conversations, but found the compact disc containing the recorded conversations in the mailbox, should be regarded as a defence and an attempt to evade criminal liability. Although the court stated that V.K.'s version of the discovery of the audio recordings in the mailbox was not refuted, it did not discuss the unlawful use of this information, i.e. the submission of the information to the court in the civil divorce proceedings. The examination of the case shows that V.K. took photographs of L.K. not on Ateities Street but on Didlaukio Street, in front of the building of the State Forensic Service. V. K. admitted the fact of taking the photographs, and this circumstance should therefore be corrected rather than removed from the indictment. This leads to the conclusion that the guilt of Mr V.K. is fully proven and that he should be convicted. Taking into account the personality of Mr V. K., the degree and nature of the seriousness of the offences, the form and nature of the guilt, the absence of aggravating and mitigating circumstances, and the other circumstances provided for in Article 54 of the Criminal Code of the Republic of Lithuania, he should be fined. The appeal was dismissed.

On appeal, the Vilnius Regional Court, after verifying the legality of the verdict, found that when V.K. suspected that L.K. was being unfaithful to him, he checked her phone, found a picture of her lover and love messages, and found a love note in her handbag. When L.K. decided to divorce, he took the phone to a bailiff to record the fact of his wife's infidelity. For the same purpose, he called UAB TELE 2 and asked them to send him detailed messages and call records from his wife's phone. From the records obtained, he found that L. K. was in regular contact with A. B.. L.K.'s conversations with her lover were recorded accidentally because she threatened him and left the earpiece on at home for her own protection. He did not record any of L.K.'s other conversations. On one occasion, he took a picture of L.K.'s car because he saw that she was using a police car for her own purposes. During the divorce proceedings, he submitted all the data he had gathered to the court in order to prove his spouse's infidelity. The Court of Appeal did not consider such actions of V.K. to be criminal, concluding that V.K. was acquitted lawfully and justifiably. The Court reasoned that in September 2009, V.K. and L.K. were voluntarily living together in the same apartment, sharing a common household, and were

equal spouses.It also noted that, according to the circumstances established, Mrs K. had not expressed to her spouse her views on possible problems in her marital life, her desire to live separately, etc., in order to establish the limits of her privacy and to declare her intention to be 'left alone' within the meaning of the principle of privacy. On the contrary, in order to create the illusion of a good relationship between the spouses, she concealed her intimate relationship with A.B. The defendant only took action when he suspected his spouse's infidelity. He did so in a short period of time in order to record his spouse's inappropriate behaviour in the family and used the information gathered to prove his spouse's guilt in the divorce proceedings. This was done for a legitimate purpose which justifies the restriction of the individual's right to respect for private life guaranteed by law. The information on Ms L.K. was not gathered in a context of harassment, manipulation or any other unlawful context, but in accordance with a legally and morally acceptable understanding of the rights and obligations of spouses. V.K.'s actions were based solely on gathering evidence of his spouse's infidelity in the divorce proceedings, thereby seeking to exercise his procedural rights in the divorce proceedings. In the present situation, L.K. could not objectively have consented to the collection of such information, and therefore the recording of conversations, the reading and photographing of SMS messages, and the retrieval of the detailed records of telephone calls and messages are, in the present case, legitimate collection of information about a person's private life and the use of that information in civil proceedings for divorce.

Another case could be the example of the Court's conviction (Criminal case 2K-198/2013). In this case, the collection of information about a spouse and his/her private life was criminalised. In this case, the court convicted the defendant, declaring it a criminal offence to collect information about a spouse's private life. The cassation appeal of K.Č., the defence counsel of the convicted N.Z., was rejected by the ruling of the Supreme Court of Lithuania on 23 April 2023. The essence of the case is that N.Z. was convicted under Article 167(1) of the Criminal Code of the Republic of Lithuania for the fact that since the summer of 2010, in Kaunas, at his home, at (-), at his work, at (-), and in other places of the city, N. N. Z.., threatening to commit an act dangerous to life, health or property, and systematically intimidating her by means of mental violence: suspecting her of infidelity, disseminating this information to her friends and acquaintances, restricting her freedom of communication with other persons, calling her obscene names in a clear display of his disapproval and disrespect towards other persons, constantly following her where she was going in her car in order to ensure her unconditional obedience, and causing her constant fear and tension; since 2010 On 20 September 2010, after A. N. Z. had notified her of her wish to divorce, he sought to restrain her from doing so by making her aware that the divorce might not be good for her, at around 7.30 a.m., on 30 September 2010, at around 7.35 a.m., he called A. N. Z., who was at home, and threatened her that in the event of a divorce he would deprive her of the opportunity to work at the public enterprise (-), and said that 'if I bury, I'll bury everything, there won't be any such name'; on the same day at around 7.35 a.m., he called her and told her to think about the meaning of what he had just said, saying 'I'm going to turn 60, I'm not going to have anything to lose, I'm out of date...'; on 2 November 2010 On November 2, 2010, at an unspecified time, he called J. P. and threatened to destroy his wife and everything else; On November 2, 2010, on an unspecified date, he met V. M. in Kaunas, near the house (-). M. M., on M. M.'s day of arrival in M.V.'s home in M.V., said that he would like to find a person who could "break" his wife's alleged lover K.A. and "kill" his wife in order to give her a good party for beating up K.A., and to pay LTL 10 000 to kill A. N.Z.; and also, between 1 September and 1 October 2010 In Kaunas, at an unspecified location, in the car of A. N. Z., a Renault Megane (registration No. (-), secretly installed a device to determine the location of the mobile object in real time

and continuously tracked the route and location of A. N. Z.'s movements until 23 December 2010 at 8.45 a.m., when he dismantled the device himself during a spot-check at the house in Kaunas, at the instruction of police officers; between 14 December 2010 at 7.47 p.m. and 22 December 2010 at 9.05 a.m. On 22 December 2010 and 22 December 2010, he secretly installed a listening device in the common dressing room of the employees of (-) in Kaunas, (-), and listened to the conversations of A. N. Z. and other persons.

In her cassation appeal, the defence counsel of the convicted person requested to set aside the verdict of the Kaunas City District Court of 31 May 2012 and the ruling of the panel of judges of the Criminal Division of the Kaunas Regional Court of 30 October 2012, and to terminate the case.

The appellant argued that the courts had incorrectly assessed the evidence collected and the circumstances established, and therefore misapplied the criminal law. The Court of First Instance, while acknowledging that this case involves a sensitive situation, as the accused and the victim are married, drew incorrect and unlawful conclusions that N.Z. had acted unlawfully towards his spouse. This conclusion of the court contradicts not only the principles of logic and reasonableness, but also the provisions of the Civil Code of the Republic of Lithuania, the Code of Civil Procedure of the Republic of Lithuania, and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The court's verdict does not comply with the requirements of Article 305 of the CPC, as the court's conclusions are not based on a legal assessment of the specific circumstances, nor does it set out the legal arguments confirming the constituent elements of the offences charged in the actions of N. Z.

According to the defence counsel, the verdict is unfounded and unlawful. The circumstances established in the case, that a microphone was installed in the sinking room at (-) and GPS equipment was installed in the car, do not prove that any criminal acts were committed (terrorising and collecting data on a person's private life), and it has not been established which data on the victim's private life were collected. The make-up room (-) was used by all employees. The car is community property until the divorce is finalised and the property is divided (Article 3.117 of the Civil Code). The fact that Ms Z's whereabouts at the quarry with Mr K. were established confirms Ms Z's unauthorised and unlawful conduct as a spouse within the meaning of the provisions of the Civil Code of the Republic of Lithuania on marriage and family. According to the appellant, the courts, in qualifying the former disagreements between the spouses, confused the law governing marriage and family relations (Article 3.60 of the Civil Code of the Republic of Lithuania, which provides that the other spouse is guilty of dissolution of the marriage if he or she has been unfaithful or has breached his or her duties as a spouse; Articles 177 and 178 of the Civil Procedure Code of the Republic of Lithuania, which require the parties in a civil case to provide written evidence, photographs, and so on) with the criminal law rules. In the appellant's view, in this case, the public authorities have infringed the right to respect for family life, and the reasons for the breakdown of the family are to be determined by the law in divorce proceedings. The Zs are now reconciled, have been living together since the last hearing at first instance, and are raising and educating their two minor children, and the conviction is not in the best interests of the children.

The panel of judges of the Supreme Court of Lithuania dismissed the cassation appeal, noting that the allegations referred to in the cassation appeal by the convicted person's defence counsel that the courts did not properly investigate the evidence contained in the case, because they ignored some of it, and that the court's conclusions were not based on the legal assessment of specific circumstances, must be rejected.

The Chamber of Judges pointed out that the scope of protection of a person's private life against interference by another private person depends, inter alia, on the nature of the

relationship between those persons, which determines the limits of privacy in relation to each other. The legal regulation of family relations in the Republic of Lithuania is based, inter alia, on the principles of the voluntary nature of marriage and the equality of spouses (Article 3.3(1) of the Civil Code of the Republic of Lithuania). In exercising family rights and performing family duties, persons are obliged to observe the law, respect the rules of common life, the principles of good morals and act in good faith (Article 3.5(2) of the Civil Code). It is prohibited to abuse family rights, i.e. to exercise them in such a way and by such means as to violate or impair the rights or legally protected interests of other persons or cause damage to other persons (Article 3.5(3) of the Civil Code). The spouses must be loyal to each other and respect each other, as well as support each other morally and materially (Article 3.27(1) of the Civil Code).

On the other hand, in this context, it is necessary to take into account the particularities of the privacy between the spouses when determining whether their right to respect for private life has been infringed and violated as a result of the other spouse's conduct. In the present case, it is relevant in this respect that, according to the facts established by the courts, the victim expressed to her spouse as early as the summer of 2010 her views on the problems she was experiencing in her family life, her desire to live separately, her disagreement with his constant control, etc., in order to define the limits of her privacy and to declare her desire to be relatively 'left alone' in the sense of the principle of the inviolability of private life. The cassation appeal submits that the installation of the GPS equipment in the Renault Megane is lawful, since the car is owned jointly by the perpetrator and the victim. However, the Chamber of Judges points out that in this case, the decisive factor for the classification of the act under Article 167 of the CCL is not the ownership of the car, but the fact that the equipment installed in the car was used to collect information about the victim, who used it. It was N.Z. who followed the route of A.N.Z., who was unaware of the equipment, in the car for a considerable period of time (at least about three months). GPS tracking is different in nature from other means of video and audio surveillance, which reveal more information about a person's behaviour, thoughts or feelings and may therefore be more restrictive of a person's right to respect for private life. However, the systematic collection of information about a person by means of GPS equipment may restrict a person's right to privacy, especially when such information is used to exert a certain influence on the person, in the present case by terrorising him (mutatis mutandis Uzun v. Germany, no. 35623/05, judgment of 2 September 2010).

Although the complaint alleges that the installation of a listening device in the dressing room of the employees does not confirm the collection of information on the private life of a person, since that room was used by everyone, the Chamber of Judges noted that private life may include professional activities and relations with other persons outside the person's home or private quarters. Certain expectations of privacy also exist in the workplace and when several people are in contact. For more than a week, Mr Z kept a listening device in his dressing room and eavesdropped on the conversations of his wife and others. The latter could not have foreseen that their conversations were being listened to by a person who was not present at the time, as they were not informed of this in any way. The Chamber of Judges found that the actions of the convicted person went beyond the limits of normal acceptable communication and care between spouses. The celebration of a marriage does not in itself imply the unconditional abolition of privacy between the spouses and, consequently, of the right of one spouse to control the other's relations with the outside world. Mr Z. collected information about his spouse of a kind which is generally considered to be part of a person's privacy, although not intimate in itself. According to the circumstances established by the Courts, this was done without any legitimate aim which could justify a restriction of the right to respect for private life guaranteed by the Constitution and the Convention.

The Chamber of Judges drew attention to the argument of the cassation appeal concerning the proof of the infidelity of the spouse in the civil procedure and stressed that according to the circumstances established by the courts, N. Z. did not essentially relate her actions, qualified under Article 167 of the CC of the Republic of Lithuania, to the gathering of evidence for the divorce proceedings. On the contrary, throughout the criminal proceedings, the convicted person, in his testimony, justified his actions on the grounds of taking care of his wife, his desire to preserve the family independently of his spouse's wishes, and similar motives.

To summarise the situation, it should be stressed that in this case, the collection of information on the spouse did not involve the exercise of procedural rights, but rather was detrimental to the spouse. Taking into account the clearly expressed expectations of A.N.Z. of greater privacy in her relationship with her spouse, the use of technical means adapted to the collection of secret information, the relatively long duration and systematic nature of the collection of secret information, the fact that the information was collected without any justifiable purpose and was used for the purpose of A.N.Z. N.Z., the Chamber of Judges finds that N.Z.'s actions were quite dangerous, violated the inviolability of A.N.Z.'s private life, and were reasonably assessed as unlawful collection of information about her private life within the meaning of Article 167 of the Criminal Code of the Republic of Lithuania.

To summarise, the right to private life is one of the fundamental human rights enshrined in both Lithuanian and international law (Article 22(1) of the Constitution, Article 8(1) of the Convention, Article 7 of the Charter of Fundamental Freedoms of the European Union, Article 2.23(1) of the Civil Code). The inviolability of private life presupposes the individual's right to privacy. This right includes the inviolability of personal, family and home life, honour and reputation, physical and mental integrity of a person, confidentiality of personal facts, prohibition to publish confidential information received or collected, etc. (Resolutions of the Constitutional Court of the Republic of Lithuania of 21 October 1999, 8 May 2000, 19 September 2002, 23 October 2002, 24 March 2003).

The constitutional regulation of the principle of the inviolability of private life implies that, in order to ensure the effective protection of privacy, the process of collecting information about a person's private life is essentially formalised, linked to the procedure established by law and the adoption of a court decision. Thus, private individuals acting freely are generally not entitled to collect such information [...]. On the other hand, taking into account the specific nature of the relations between private individuals in certain areas and the different expectations of privacy that this entails, as well as the importance of the information in question for the exercise of the rights of others, the constitutional principle of the inviolability of private life has in some cases been subject to a more flexible and broader interpretation at the legislative level and in the case law, but without undermining the essence of the principle. One of such cases is the exercise of the right of private parties to the proceedings to adduce evidence[...]. In cases where information is gathered for the purpose of providing evidence in divorce proceedings, the Court assesses the relationship between the parties, their conduct, the purposes for which the information was gathered, the means by which it was gathered, and the duration and intensity of the action.

Conclusions

The content of private life can be addressed in several ways, i.e. doctrinal/theoretical interpretation, statutory law and case law. The right to respect for private life is guaranteed by Article 8 of the Convention, paragraph 1 of which states that everyone has the right to respect for his private and family life, the inviolability of his home and the secrecy of his

correspondence. The concept of private life is defined in Article 2(40) of the Law on Public Information of the Republic of Lithuania. According to Article 40 of the Law on Information Society, private life shall mean the private life of a person, his family, the living environment consisting of the person's dwelling, the private territory belonging to the dwelling and other private premises used by the person for his/her economic, commercial or professional activities, leisure, recreation, as well as other areas of the private life of the person, in which he or she has a reasonable expectation of privacy, a person's mental and physical integrity, honour and reputation, sensitive personal facts, photographs or other images of a person, information about a person's health, private correspondence or other communications, a person's views, beliefs, habits and other data which may be used only with his or her consent.

According to Article 167(1) of the Criminal Code of the Republic of Lithuania, whoever unlawfully collects information about a person's private life is liable. Thus, the object of this offence is the inherent, conventional and constitutional value of the inviolability of a person's private life, and the subject matter is information, the content of which consists of knowledge about a person's private life. The objective aspect of this offence consists in the unlawful collection of information about a person's private life. The collection of such information is prohibited, except where authorised by law or by a court.

The principle of the inviolability of a person's private life is enshrined in Article 22 of the Constitution of the Republic of Lithuania. According to paragraph 3 of this Article, information about a person's private life may be collected only by a reasoned court decision and only in accordance with the law, and paragraph 4 stipulates that the law and the court shall protect a person against arbitrary or unlawful interference in his/her private and family life, and against attacks on his/her honour and dignity. Article 28 of the Constitution stipulates that in exercising his/her rights and freedoms, a person must respect the Constitution of the Republic of Lithuania and the law, and must not infringe the rights and freedoms of others. The Constitution thus guarantees everyone's right to private life and its inviolability. It must be stressed that this right is not restricted by marriage. It should therefore be noted that Article 167 of the Criminal Code of the Republic of Lithuania provides for the protection of both the rights of the spouses to respect for their private and family life and the actions of one spouse towards the other. In the case-law, when assessing the gathering of information on a person's private life, the relationship between the parties, the conduct of the spouse, the purposes of the gathering of the information, the means by which it was gathered, and the duration and intensity of the acts.

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El. paštas: vsa@mruni.eu