[FI] Legislator Proposes Changes to the Protection of the Media's Information Sources for Reasons of Protecting Privacy

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The Finnish legislator intends to make some changes to the protection of the media's information sources in cases in which the published information has been given in violation of a duty of secrecy, which is subject to punishment under a separate provision.

The reason for this is the protection of privacy, as this right is guaranteed as a constitutional and human right. Nowadays it is impossible to breach the confidentiality of information sources during a pre-trial investigation unless the maximum punishment of the suspected crime which is to be investigated is at least six years imprisonment. Because the violation of a duty of secrecy is not punishable with so severe a sentence, the victim of that kind of crime has in practice no possibility or, at best, a very weak chance of finding out who has breached their obligation of maintaining secrecy. This means that the offender cannot be charged with this crime and neither can compensation for the damage caused be sought from him or her. As a result, the right to privacy is not very well protected in this kind of case.

At the trial however, a witness may be ordered to answer a question even when information that has been given in violation of a duty of secrecy, which is subject to punishment under a separate provision, is concerned. In practice trials of this kind have not occurred, as it is exceedingly difficult to determine who should be accused of the crime, when the confidentiality of sources cannot be breached during the pre-trial investigation.

According to the first proposal for the new provisions, the source of information would have been able to be ascertained in a pre-trial investigation if there were probable reasons to doubt the information in question was given under a duty of secrecy and the breach of that duty was subject to punishment under a separate provision, while answering the question would be perceptibly indispensable to solving the case and justifiable in comparison to the seriousness of the crime or of its consequences.

The proposal was strongly criticised as it would have given very wide discretionary powers to the courts and would have had a chilling effect on

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sources' willingness to impart information. Because of this, the proposal has been stalled.

Now the Ministry of Justice is to examine the legislative models in effect in other European countries and on this basis decide what kind of formulation would give on one hand sufficient protection to the individual's right to privacy and on the other hand sufficient protection for information sources' freedom of speech and the free flow of information that appertains to it.

2009:2 Esitutkintalain, pakkokeinolain ja poliisilain kokonaisuudistus. Esitutkinta- ja pakkokeinotoimikunnan mietintö

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The total reform of the Criminal Investigations Act, Coercive Measures Act and Police Act. Report of the Committee of Criminal Investigations and Coersive Measures

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