[FI] Amended provisions on confidentiality of sources

IRIS 2015-8:1/14

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Provisions on the protection of, and interferences with, the confidentiality of sources were amended in June 2015. For the most part, the provisions correspond to previous ones so far as substance is concerned. The amendments concern the numbering, division, and wording of provisions, as well as introduce some new provisions. The reform was conducted as part of a wider modernisation of procedural legislation, especially provisions on evidence and witnesses. The amendments enter into force 1 January 2016.

Section 16 of the Act on the Exercise of Freedom of Expression in Mass Media (460/2003 - FEA) (see IRIS 2004-1/22) provides originators of messages, publishers, and programme providers, and those in their service, the right to protect their information sources. Publishers and programme providers are also entitled to keep secret the identity of the source of the message. No amendments were introduced in this regard.

According to the Code of Judicial Procedure (4/1734; CJP), persons referred to in the FEA may refrain from testifying on the identity of information sources or creators of messages (17:20(1)). These persons may be obliged to testify in cases where the prosecuted crime has a maximum penalty of at least six years' imprisonment, or concerns a duty of non-disclosure breached in a punishable manner (17:20(2)). Previously, attempt of and accessory to the former were also mentioned, while the latter provision referred to "information given contrary to a duty of disclosure the breach of which is criminalised". Section 22(2) CJP provides those in service of the aforementioned persons with a similar right; previously, both were included in the same Section (17:24).

The duties or rights to refrain from testifying do not apply to information the unjustified obtaining, revelation, or utilisation of which is being prosecuted (17:9(3) CJP).

Section 7:3 of the Coercive Measures Act (806/2011; CMA) forbids confiscation and copying of material for evidence where confidentiality of sources is concerned (7:3). Exceptions apply where the person referred to in 17:20(1) CJP consents, or where the crime has a maximum penalty of at least six years' imprisonment and the court could oblige testimony pursuant to 17:20(2) CJP (7:3(3), points 2-3 CMA). Previously, the provision only contained the latter exception and the

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wording was slightly changed. Then again, an exception for situations where no right to refuse testimony exists pursuant to 17:9(3) CJP excludes material in the possession of a person referred to in 17:20(1) CJP (7:3(3), point 4 CMA). Regarding a search, a special search of a domicile is required where there is an assumption that information would be revealed for which a right exists to refuse testifying pursuant to 17:20 CJP, and the confiscation or copying of which is forbidden pursuant to 7:3 CMA (cf. 8:1(3) CMA). The preparatory works note the aim for conformity with other proposed amendments as well as neutrality as regards objects of confiscation and copying. Section 7:8(1) of the Criminal Investigation Act (805/2011; CIA) notes that the right to refrain from testifying pursuant to 17:20 CJP also applies in pre-trial investigations. A witness is however obliged to testify where the investigated crime, or attempt or accessory thereto, is one with a maximum penalty of at least six years' imprisonment, and in which the court could oblige testimony pursuant to 17:20(2) CJP (7:8(2), point 2 CIA). Regarding investigated crimes where no right to refuse testimony exists pursuant to 17:9(3) CJP, persons referred to in 17:20(1) CJP are excluded (7:8, point 3 CIA). Thus, the possibilities of interfering with the confidentiality of sources remain somewhat different in scope during criminal investigations and trials.

Regarding administrative cases, a new Section (39 b) on the right of a witness to refuse making statements was added to the Administrative Judicial Procedure Act (586/1996), which covers information pursuant to Section 16 FEA (para. 3, point 2). Finally, provisions in the Information Society Code (917/2014) concerning restrictions on corporate subscribers' right to process data where disclosure of business secrets is concerned came to include an updated reference to 17:20(1) of the Code of Judicial Procedure (§ 151(1)). The same is true for the provision containing restrictions on the rights of access to data granted to the Finnish Communications Regulatory Authority and the Data ombudsman pursuant to Section 316(5).

Laki oikeudenkäymiskaaren muuttamisesta 732/2015

http://www.finlex.fi/fi/laki/alkup/2015/20150732

Act amending the Code of Judicial Procedure 732/2015

Laki esitutkintalain muuttamisesta 736/2015

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Act amending the Criminal Investigations Act 736/2015

Laki pakkokeinolain muuttamisesta 737/2015

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Act amending the Coercive Measures Act 737/2015

Laki tietoyhteiskuntakaaren 151 ja 316 §:n muuttamisesta 758/2015

http://www.finlex.fi/fi/laki/alkup/2015/20150758

Act amending Sections 151 and 316 of the Information Society Code 758/2015

Laki hallintolainkäyttölain muuttamisesta 799/2015

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Act amending the Administrative Judicial Procedure Act 799/2015

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