

Rapporteur Audrius Cininas
Judge Mindaugas Striaukas

Criminal case No 1A-815-497/2014 Trial No
1-2025-716-2014

Category of procedural decision: 1.2.20.15.; 2.4.6.

VILNIUS REGIONAL COURTRULING



02 February 2015

The panel of judges of the Criminal Division of the Vilnius Regional Court, consisting of the chairman of the panel Audrius Cininas, Virginija Pakalnytė-Tamošiūnaitė, Virginija Pakalnytė-Tamošiūnaitė, Gintaras Dzedulionis, Judges, with Renata Novickienei as secretary, in the presence of the public prosecutor Danute Kisiniene, the representative of the victim, lawyer Mindaugas Kukaitis, Aurimas Drižis, convicted, the defence lawyer Anatoly Svila

in a public hearing of the court of appeal, heard a criminal case on the *appeal of the convicted person Aurimas Drižius* against the verdict of the Vilnius City District Court of 15 September 2014, by which Aurimas Drižius was convicted:

- under Article 245 of the Criminal Code of the Republic of Lithuania (for the publication on 8 June 2013) for 20 (twenty) days of arrest;
- under Article 245 of the Criminal Code of the Republic of Lithuania (for publication on 29 June 2013) for 20 (twenty) days of arrest;
- under Article 245 of the CC of the Republic of Lithuania (for the publication on 20 July 2013) 20 (twenty) days of arrest
- under Article 245 of the Criminal Code of the Republic of Lithuania (for the publication on 7 September 2013) for 20 (twenty) days of arrest;
- under Article 245 of the Criminal Code of the Republic of Lithuania (for the publication on 05.10.2013) for 20 (twenty) days of arrest;
- under Article 245 of the Criminal Code of the Republic of Lithuania (for the publication on 12-10-2013) 20 (twenty) days of arrest;
- under Article 245 of the Criminal Code of the Republic of Lithuania (for the publication on 19-10-2013) 20 (twenty) days of arrest;
- under Article 245 of the Criminal Code of the Republic of Lithuania (for the publication on 30-11-2013) 20 (twenty) days of arrest.

Pursuant to Article 63(1) and (4) of the CC, the sentences imposed were aggregated and Aurimas Drižis was sentenced to forty-five (45) days of arrest.

Pursuant to Article 63(2), (5)(2) and (9) of the CC, the sentence imposed by this verdict was combined with the sentence imposed by the Vilnius City District Court on 09-12-2013 by the method of aggregation and Aurimas Drižis was sentenced to 1 year and 6 months of imprisonment.

Pursuant to Article 75 of the CC of the Republic of Lithuania, the execution of the sentence of imprisonment was postponed for 1 year and 6 months, obliging Aurimas Drižiai not to leave the city (district) of his residence without the permission of the authority supervising the convicted person.

Aurimas Drižis was ordered to pay LTL 10 000 (ten thousand litas) for non-pecuniary damages to Alvydas Sadecko.

The panel of judges has heard the case,

f o u n d :

Aurimas Drižius was convicted of non-compliance with a non-punitive court decision, i.e. he, knowing that the non-punitive court decision of the 1st District Court of Vilnius City, adopted on 10 April 2009, and finalised on 10 May 2009, in civil case No. 2-117-734-2009, which prohibited him and UAB "Laisvas laikraštis"

from publishing articles in the weekly newspaper "Laisvas laikraštis", in which Alvydas Sadeckas would be associated with the joint stock company "Mažeikių nafta", the privatization of this company and the murder of Gediminas Kiesaus, being the director of UAB "Laisvas laikraštis" and the editorial board of the weekly newspaper "Laisvas laikraštis", the editorial board of which is located in Vilnius, Konstitucijos pr. 23, editor of the weekly "Laisvas laikraštis" (June 8-14, 2013, No. 23(430)), in the article "Car accident?" of June 8, 2013, he linked Alvydas Sadeckas to the joint stock company "Mažeikių nafta", to the privatisation of this company, and publicly disseminated the following statements:

<...> *The founder of Ekskomisarų birojs not only has links to the company, but was also involved in the privatisation of Mažeikių nafta...*

<...> *It has become obvious that Sadecko's involvement in the privatisation of AB Mažeikių nafta, direct or indirect, has finally been recognised. This means that Sadeckas lied when filing the precautionary lawsuit and when testifying in court that he had NO involvement in the privatisation. It is this position of Sadeckas that should be assessed as giving false testimony and spreading lies in the document. <...> Drižius was happy at the time that he had finally succeeded in establishing the fact that Sadeckas had ALWAYS been involved in the privatisation of AB Mažeikių Nafta in some way.*

In addition, Aurimas Drižius was convicted for the fact that he, knowing that by the decision of the 1st District Court of Vilnius City, adopted on April 10, 2009, and finalised on May 10, 2009, which was not related to punishment, in civil case No. 2-117-734-2009, in which he and the UAB "Laisvas laikraštis" were banned from publishing in the weekly newspaper "Laisvas laikraštis" articles in which Alvydas Sadeckas was associated with the joint-stock company "Mažeikių nafta", the privatisation of this company and the murder of Gediminas Kiesaus, being the director of the UAB "Laisvas laikraštis" and the editorial board of the weekly newspaper "Laisvas laikraštis", the editorial board of which is located at Vilnius, Konstitucijos Ave. 23, in disobedience of the aforementioned court decision of April 10, 2009, in the weekly "Laisvas laikraštis" (29 June - 5 July 2013, No. 26(433)) in the article "D. Valys covers up mafia crimes?", linked Alvydas Sadeckas to the joint stock company "Mažeikių nafta", to the privatisation of this company, and publicly disseminated these statements:

<...> *describes the role of A.Sadecko in the privatisation of Mažeikių nafta...*

<...> *Sadeckas personally received 300 litas per hour for these consultations...*

<...> *after learning that Alvydas Sadeckas was involved in all stages of the privatisation of the company.*

<...> *The plaintiff A. Sadeckas participated in the privatisation of AB Mažeikių nafta...*

In addition, Aurimas Drižius was convicted for the fact that he, knowing that by the decision of the 1st District Court of Vilnius City, which was adopted on 10 April 2009 and entered into force on 10 May 2009, and which was not related to punishment, in civil case No 2-117-734-2009, he and UAB "Laisvas laikraštis" was banned from publishing articles in the weekly "Laisvas laikraštis" in which Alvydas Sadeckas was associated with the joint stock company "Mažeikių nafta", the privatisation of this company and the murder of Gediminas Kiesaus, as the director of "Laisvas laikraštis" UAB and the director of the weekly "Laisvas laikraštis", the editorial office of which is located in Vilnius, Konstitucijos pr. 23, in disobedience of the aforementioned court decision of 10 April 2009, in the weekly "Laisvas laikraštis" (20-26 July 2013, No. 28 (435)), in the article "Judges examine cases without even seeing them", he linked Alvydas Sadeckas with the joint stock company Mažeikių nafta and the privatisation of the company, and he disseminated the following statements publicly:

<...> *In the case against Sadeckas in "Laisvo laikrastys", Judge J.Vėgėlienė also ruled that he cannot be linked to Mažeikių nafta and its privatisation, although the Vilnius Regional Court ruled that Sadeckas's involvement in the privatisation of Mažeikių nafta was proven.*

In addition, Aurimas Drižius was convicted for the fact that he, knowing that by the decision of the 1st District Court of Vilnius City, which was adopted on 10 April 2009 and entered into force on 10 May 2009, and which was not related to the sentence, in the civil case No. 2-117-734-2009, he and UAB "Laisvas laikraštis", which banned the publication in the weekly "Laisvas laikraštis" of articles in which Alvydas Sadeckas was associated with the joint stock company "Mažeikių nafta", the privatisation of this company and the murder of Gediminas Kiesaus, being the director of the UAB "Laisvas laikraštis", and the editorial board member of the weekly "Laisvas laikraštis", the editorial board of which is located at Vilnius, Konstitucijos Ave. 23, editor of the weekly newspaper "Laisvas laikraštis" (7-13 September 2013, No. 34 (441)), in the article "The Judges' Clan Works Like a Fist - Although Judge Jolanta Vėgėlienė Examined the Case Without Her, It's Not a Crime", published on 7 September 2013, in the weekly newspaper "Laisvas laikraštis", in the article "The Judges' Clan Works Like a Fist - Even though Judge Jolanta Vėgėlienė Examined the Case Without Her, it's Not a Crime", he linked Alvydas Sadeckas to the joint-stock company "Mažeikių Nafta", and the privatisation of the company, and publicly disseminated the following allegations:

<...> *In the case against Sadeckas in "Laisvo laikrastys", Judge J. Vėgėlienė also ruled that he could not be linked to Mažeikių nafta and its privatisation, although the Vilnius Regional Court had ruled that Sadeckas's involvement in the privatisation of Mažeikių nafta was proven.*

In addition, Aurimas Drižius was convicted for the fact that he, knowing that by the decision of the 1st District Court of Vilnius City, which was adopted on 10 April 2009 and entered into force on 10 May 2009, and which was not related to the sentence, in the civil case No. 2-117-734-2009, he and UAB "Laisvas laikraštis", which banned the publication in the weekly "Laisvas laikraštis" of articles in which Alvydas Sadeckas was associated with the joint stock company "Mažeikių nafta", the privatisation of this company and the murder of Gediminas Kiesaus, being the director of the UAB "Laisvas laikraštis", and the editorial board member of the weekly "Laisvas laikraštis", the editorial board of which is located at Vilnius, Konstitucijos Ave. 23, editor of the weekly "Laisvas laikraštis" (October 5-11, 2013, No. 38 (4445)) in the article "D. Grybauskaitė's favourite D. Valys personally covered up mafia crimes?", linked Alvydas Sadeckas to the joint-stock company "Mažeikių nafta" and the privatisation of this company, and publicly disseminated these statements:

<...> A.Sadeckas *not only participated in, but also practically managed all stages of the privatisation of AB Mažeikių nafta from 2000 to 2006.*

<...> *Sadeckas led the privatisation of Mažeikių nafta...*

<... > *Sadeckas was the personal draftsman of the Law on the privatisation of Mažeikių nafta...*

<...> *Sadecko's complaint in 2008 to ban him from being associated with Mažeikių Nafta and its privatisation was already false and criminal in itself.*

<...> *Sadecko's own complaint against the ban on his association with Mažeikių nafta was false and criminal...*

<...> *A.Sadeckas has been involved in all stages of the privatisation of AB Mažeikių Nafta - as early as in 2000 as a consultant for IVilliams, receiving LTL 300 per hour for consulting Mažeikių Nafta...*

<...> *After becoming a member of the Seimas, Sadeckas drafted the law on the reorganisation of AB Būtingės nafta, Mažeikių nafta and Naftotiekis...*

<...> *I can say that all the actions of A.Sadecko, as the Chairman of the Seimas NSGKP, were potentially illegal and criminal in the privatisation of Mažeikiai Nafta...*

<...> *Sadeckas was directly involved in the privatisation of the company...*

<...> *Mr Sadeckas not only personally participated in the privatisation of AB Mažeikių nafta, and led it, but also personally submitted amendments to the law under which AB Mažeikių nafta was privatised...*

<...> *Mr Sadeckas, as a shareholder of Mažeikių nafta, decided on the privatisation of this company, although he should have recused himself from the discussion of this issue - at the same time, he was a shareholder of AB Mažeikių nafta, which means that he confused public and private interests. Mr Sadeckas not only gave the go-ahead, but actually directed the privatisation of AB Mažeikių nafta, because at the very first stage of the privatisation of AB Mažeikių nafta, which took place in 2000-2001, he was drafting the law ...*

<...> *Sadeckas was personally involved in the privatisation of Mažeikių nafta as early as 1999...*

<... > *Sadeckas personally provided management services to AB Mažeikių Nafta, i.e. Sadeckas not only participated in the privatisation of this company, was a shareholder, but actually managed it and received remuneration for this...*

<...> *Alydas Sadeckas, participated in the privatisation of AB Mažeikių nafta...*

<...> *Alydas Sadeckas not only participated in, but actually led the privatisation of AB Mažeikių nafta...*

In addition, Aurimas Drižius was convicted for the fact that he, knowing that by the decision of the 1st District Court of Vilnius City, adopted on April 10, 2009, and finalised on May 10, 2009, which was not related to punishment, in civil case No. 2-117-734-2009, in which he and UAB "Laisvas laikraštis" were banned from publishing articles in the weekly "Laisvas laikraštis", in which Alyvydas Sadeckas would be associated with the joint stock company "Mažeikių nafta", the privatization of this company and the murder of Gediminas Kiesaus, being the director of UAB "Laisvas laikraštis" and the editorial board member of the weekly newspaper "Laisvas laikraštis", the editorial office of which is located in Vilnius, Konstitucijos pr. 23, editor of the weekly newspaper "Laisvas laikraštis" (12-18 October 2013, No. 39 (446)), in the article "Is it possible to say that Judge Daiva Pranytė-Zaleskienė, who convicted Uspaskich, is a criminal?" of 12 October 2013, in disobeying the above-mentioned judgment of the court of April 10, 2009, he associated Alyvydas Sadeckas with the joint-stock company "Mažeikių Nafta", and with the privatization of this company, and publicly spread these statements:

<...> *A.Sadeckas not only participated in, but actually led the privatisation of AB Mažeikių nafta...*

<...> *that Sadeckas was personally involved in the privatisation of Mažeikių nafta back in 1999...*

<...> *The applicant also notes that Mr Sadeckas led and participated in all stages of the privatisation of Mažeikių nafta, starting in 2000 and ending in 2007...*

<...> *disregards the arguments put forward by the applicant that Sadecko's unlawful participation in the privatisation of AB Mažeikių nafta is proven.*

In addition, Aurimas Drižius was convicted for the fact that he, knowing that by the decision of the 1st District Court of Vilnius City, adopted on April 10, 2009, and finalised on May 10, 2009, which was not related to punishment, in civil case No. 2-117-734-2009 forbidding him and UAB "Laisvas laikraštis" from publishing in the weekly newspaper "Laisvas laikraštis" articles in which Alyvydas Sadeckas would be associated with the joint stock company "Mažeikių nafta", the privatization of this company and the murder of Gediminas Kiesaus, being the director of UAB "Laisvas laikraštis" and the editorial board of the weekly newspaper "Laisvas laikraštis", the editorial office of which is located at Vilnius, Konstitucijos Ave. 23, editor of the weekly "Laisvas laikraštis" (19-25 October 2013, No. 40 (447)), in the article "Courts and the prosecution covered up the crimes of A. Sadeckas for five years", in which he linked Alyvydas Sadeckas to the joint-stock company "Mažeikių Nafta", the privatisation of the company, and publicly disseminated the above statement:

<...> *Sadeckas led all three stages of the privatisation of the company...*

Moreover, Aurimas Drižius was aware that the non-punitive decision of the 1st District Court of Vilnius City in civil case No. 2-117-734-2009, in which he and UAB "Laisvas laikraštis" were banned from publishing articles in the weekly "Laisvas laikraštis", in which Alyvydas Sadeckas would be associated with the joint stock company "Mažeikių nafta", the privatization of this company and the murder of Gediminas Kiesaus, being the director of UAB "Laisvas laikraštis" and the editorial board of the weekly newspaper "Laisvas laikraštis", the

editorial board of which is located in Konstitucijos pr., Vilnius. 23, editor of the weekly "Laisvas laikraštis" (30 November - 6 December 2013, No. 45 (452)) in the article "Corrupt decisions opened the way for Vytautas Zelianka, the President of the Vilnius Regional Court, to Supreme Court", linked Alvydas Sadeckas to the joint-stock company Mažeikių Nafta and the privatisation of this company, and publicly disseminated these statements:

<...> *Sadecký's allegedly false testimony in four cases, in which he denied any involvement in the privatisation of Mažeikių nafta...*

<...> *Mr Sadeckas was involved in all stages of the privatisation of the company...*

<...> *A. Sadeckas was not only the author of the law on the privatisation of Mažeikių nafta...*

<...> *He (A. Sadeckas) also drafted the laws on the privatisation of Mažeikių nafta...*

<...> *I categorically state that the actions of A. Sadeckas in participating in the privatisation of AB "Mažeikių nafta" as illegal and malicious...*

In his appeal, *the convicted person Aurimas Drižius asks the Vilnius City District Court of 15 September 2014 to annul the verdict and acquit him, as he has not committed an act which has the elements of a crime. In his appeal, the appellant points out that the court had prohibited the printing of the articles by the UAB "Laisvas laikraštis" and not by the UAB "Laisvo laikraščio leidyba", which printed them. The appellant has submitted as evidence in support of its appeal a contract with Lietuvos Pasts, which delivers the weekly newspaper Laisvas laikraštis to subscribers, dated 2 November 2009. It states that, if necessary, it can also submit to the court any contracts with partners which would prove that, since 1 November 2009, the weekly 'Laisvas laikraštis' has been published by 'Laisvo laikraštis leidyba' UAB, which is not subject to any censorship.*

The appellant submits that the District Court censored him from publishing the statements in question and prosecuted him after their publication. According to the appellant, the imposition of censorship is not in conformity with the Constitution of the Republic of Lithuania, nor with the international obligations of the Republic of Lithuania, and infringes the right of journalists to inform the public about negative phenomena. According to the appellant, it was only for the fact that he disregarded this censorship and continued to provide evidence by writing articles about the involvement of Mr Sadecko and his firm Ekskomisarų biuras in the privatisation and management of Mažeikių nafta that he was convicted by the decision of the Vilnius City District Court of 9 April 2009 in the case.

According to the appellant, the decision was aimed at controlling the volume of information published before it was published, and censorship was imposed on "Laisvim laikras newspaper", for the violation of which he had already been convicted in five cases, with Sadecký giving false testimony in this case. Only the Vilnius Regional Court ordered the Prosecutor's Office to open a pre-trial investigation into Sadecki's false testimony, but the Vilnius District Prosecutor's Office closed the investigation without even interviewing Sadecki.

The appellant also points out that as early as 21 January 2008, Sadeckas asked the court to prohibit the appellant from publishing articles in the weekly newspaper "Laisvas laikraštis" in which Sadeckas was associated with AB Mažeikių nafta, its privatisation, and the murder of Gediminas Kiesaus. The Vilnius City District Court upheld the complaint of Mr Sadeckas by a decision of 9 April 2009 and banned the appellant from publishing the above-mentioned articles in the weekly newspaper "Laisvas laikraštis". However, the Court of First Instance failed to take into account the fact and the documents submitted proving that the publishing rights of the weekly newspaper 'Laisvas laikraštis' (paper version) had been transferred to 'Laisvo laikraščio leidyba', a limited liability company established for that purpose, as early as 26 October 2009. The appellant therefore takes the view that, since there is no court decision prohibiting the publication of articles in which the appellant is prohibited from publishing the above-mentioned statements, the persecution of the appellant, which has been going on for years, is also unlawful.

At the hearing, the convicted person and his defence lawyer requested that the appeal be upheld, and the prosecutor requested that the appeal be rejected.

The appeal should be dismissed.

Article 245 of the CC of the Republic of Lithuania provides for the liability for non-execution of a court decision in a civil case - whether or not the court decision can be enforced by means of civil and/or administrative proceedings. If it is accepted that it cannot be done by these means, then it must be established whether it is the perpetrator's intentional conduct that has created this legal situation. A person is liable under Article 245 of the CC if he/she acted with direct intent, i.e. if he/she was aware of the fact that he/she was unlawfully failing to perform his/her duty and if he/she intended to do so (Supreme Court of Lithuania, Criminal Cases No. 2K-47/2009 and 2K-584/2010).

By the decision of the Vilnius City 1st District Court of 10 April 2009 in civil case No 2-117-734/2009, A. Drižis and Laisvas laikraštis UAB were banned from publishing in the weekly Laisvas laikraštis any articles in which A. Sadeckas was associated with Mažeikių Nafta AB, the privatisation of the company, and the murder of Gediminas Kiesaus. The judgment became final on 10 May 2009. It is apparent both from the judgment under appeal and from the content of the appeal that the appellant is aware of the judgment of the Court of 10 April 2009 and of the injunction/obligation. The appellant regards this decision as unlawful and as a censorship of the press, but in the present criminal case the legality and validity of the decision of 10 April 2009 of the District Court of Vilnius

City District No 1 is not the subject of any evidence or dispute. That judgment has become final and must be enforced in accordance with the law. It is proved in the present case, and the convicted person himself does not dispute it, that he was aware and understood the prohibition on the publication of the abovementioned articles imposed by that judgment, but deliberately failed to comply with it.

The appellant submits in its application that the publishing rights of the weekly newspaper 'Laisvas laikraštis' were transferred to UAB 'Laisvo laikraščio leidyba' as early as 26.10.2009, and that the court's decision prohibiting UAB 'Laisvo laikraščio

leidyba' to publish articles prohibiting the appellant from publishing the aforementioned statements linking Mr Sadeckas to AB Mažeikių nafta, the privatisation of that company and the murder of Gediminas Kiesaus, does not exist. However, the appellant's argument is rejected. Although the publishing rights of the weekly newspaper 'Laisvas laikraštis' were transferred to UAB 'Laisvo laikraščio leidyba' on 26.10.2009, Aurimas Drižius continued to be not only the editor but also the manager of that company. In the opinion of the Panel, this circumstance does not exempt the appellant from criminal liability, since Aurimas Drižius, in his capacity as the editor of the publishing house, while approving and directly influencing the content of the weekly newspaper, allowed the publication of an article in which A. Sadeckas was linked to AB Mažeikių nafta, the privatisation of this company and the murder of Gediminas Kiesaus. Since Aurimas Drižius is not only the editor, but also the head of the company which publishes the newspaper, it is therefore in accordance with his duties that he takes decisions on the content of the article, its publication, and that he implements and is responsible for those decisions. Moreover, the ban did not only apply to the publication, but also to Auriš Drižius personally.

Criminal liability for non-compliance with a court decision should be applied only after taking into account the possibilities of ensuring its execution by means of civil and/or administrative proceedings (Supreme Court rulings No 2K-36/2012, 2K-219/2012). In the present case, such possibilities do not exist, since the enforcement of a court decision consists in refraining from the actions prohibited by the court. As long as the injunction is complied with, the judgment is enforceable. Breach of the injunction in itself indicates that the judgment is already outstanding and there is no question of its enforcement by civil or administrative means. In the view of the Chamber, the District Court came to a reasonable conclusion as to the appellant's guilt under Article 245 of the CC.

In the light of the established circumstances, it can be concluded that the verdict of the Vilnius City District Court of 15 September 2014 is lawful and well-founded, and that there are no grounds to amend or annul it on the grounds of the appeal.

The Chamber of Judges, pursuant to Article 326(1)(1) of the Code of Criminal Procedure of the Republic of Lithuania, P-,

Resolved:

Dismisses the appeal of the convicted person Aurimas Drižys.

President of the College

Audrius Cininas

Judges
V i r g i n i j a P a k a i n y t ė - T a m o š i ū n a i t ė

Gintaras Dzedulionis