

Lietuviškai

THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF LITHUANIA

R U L I N G

On the compliance of Articles 1 and 30 of the Law on Alcohol Control of the Republic of Lithuania, Articles 1, 3 and 11 of the Law on Tobacco Control of the Republic of Lithuania as well as the 2 February 1996 Resolution of the Government of the Republic of Lithuania No. 179 "On the Control of Advertising for Alcohol" with the Constitution of the Republic of Lithuania

13 February 1997, Vilnius

The Constitutional Court of the Republic of Lithuania, composed of the Justices of the Constitutional Court Egidijus Jarašiūnas, Kęstutis Lapinskas, Zigmas Levickis, Augustinas Normantas, Vladas Pavilionis, Jonas Prapiestis, Pranas Vytautas Rasimavičius, Teodora Staugaitienė, and Juozas Žilys,

the secretary of the hearing - Daiva Pitrenaitė, the petitioner - Egidijus Šileikis, a consultant at the Legal Division of the Seimas; Rytis Virbalis, an adviser of the Chairman of the Health Care Committee of the Seimas, both are the representatives of the Seimas; Vygantas Barkauskas, an advocate, the representative of a group of Seimas members,

the party concerned - Virgilijus Savickis, an adviser of Prime Minister, Arvydas Nevas, a consultant at the Office of the Government, both are the representatives of the Government

pursuant to Part 1 of Article 102 of the Constitution of the Republic of Lithuania and Part 1 of Article 1 of the Law on the Constitutional Court of the Republic of Lithuania, in its public hearing on 21-22 January 1997 conducted the investigation of Case No. 6/96 - 10/96 subsequent to the petition submitted to the Court by the petitioners - the Seimas of the Republic of Lithuania and a group of Seimas members - requesting to investigate if Articles 1 and 30 of the Law on Alcohol Control of the Republic of Lithuania, Articles 1, 3 and 11 of the Law on Tobacco Control of the Republic of Lithuania are in compliance with Articles 25, 29 and 46 of the Constitution of the Republic of Lithuania as well as whether the 2 February 1996 Resolution of the Government of the Republic of Lithuania No. 179 "On the Control of Advertising for Alcohol" is in compliance with Part 3 of Article 25 of the Constitution of the Republic of Lithuania.

The Constitutional Court
has established:

I

On 31 May 1996 the Constitutional Court received a petition of a group of Seimas members wherein it was requested to investigate whether Articles 1 and 30 of the Law on Alcohol Control (Official Gazette "Valstybės žinios" No. 44-1073, No. 61-1527, 1995) and Articles 1, 3 and 11 of the Law on Tobacco Control (Official Gazette "Valstybės žinios" No. 11-281, 1996) were in compliance with Articles 25, 29 and 46 of the Constitution, as well as if the 2 February 1996 Government Resolution No. 179 "On the Control of Advertising for Alcohol" (Official Gazette "Valstybės žinios" No. 12-318, 1996) is in compliance with Part 3 of Article 25 of the Constitution.

On 1 July 1996 the Constitutional Court received the 25

June 1996 Seimas Resolution "On appealing to the Constitutional Court with the request to investigate if Articles 1 and 30 of the Law on Alcohol Control as well as Articles 1, 3 and 11 of the Law on Tobacco Control are in compliance with the Constitution of the Republic of Lithuania".

After the Constitutional Court had decided to accept the petition of the Seimas and to institute preparation of the case on the grounds thereof, the validity of Paragraph 4 of Article 1 and Article 30 of the Law on Alcohol Control and Paragraphs 5 and 6 of Article 1, Item 6 of Part 1 of Article 3 and Parts 4 and 5 of Article 11 of the Law on Tobacco Control was suspended pursuant to Part 4 of Article 106 of the Constitution until the promulgation of the ruling of the Constitutional Court regarding this case.

The Constitutional Court joined both petitions submitted by a group of Seimas members and the Seimas itself into one case by its 9 January 1997 decision.

II

The petition of the group of the members of the Seimas is grounded on the following legal motives.

The disputed norms of the aforementioned laws prohibit advertisement for alcoholic beverages and tobacco products in Lithuania. To back this statement, quotations from Paragraphs 4 and 5 of Article 1 and Article 30 of the Law on Alcohol Control and Paragraphs 5 and 6 of Part 1 of Article 1, Item 6 of Part 1 of Article 3 and Parts 4 and 5 of Article 11 of the Law on Tobacco Control were presented. The petitioner alleges that there arise doubts if the aforesaid parts of legal acts are in compliance with respective articles of the Constitution. Part 1 of Article 25 of the Constitution provides that individuals shall have the right to have their own convictions and freely express them; Part 2 of Article 25 provides that individuals must not be hindered from seeking, obtaining, or disseminating information or ideas; Part 3 of Article 25 provides that freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than established by law, when it is necessary for the safeguard of the health, honour and dignity, private life, or morals of a person, or for the protection of constitutional order.

The petitioner indicates that in Lithuania the trade of alcohol and tobacco products is licensed, however, consumption and trade of alcohol and tobacco products as well as performing other operations with them is not prohibited provided established restrictions are followed. Hence, the petitioner concludes that dissemination of information concerning legal activities should not be prohibited unrestrictedly, however, according to "the presented definitions of advertisement for alcohol and tobacco products and those of indirect advertisement for alcohol products and indirect advertisement for tobacco products recognise that advertisement is not only the information directly connected with promotion of alcohol and tobacco products consumption but also the information connected, or that which is not connected at all, with production, import and sale of alcohol and tobacco products. Such definitions of advertisement are, first of all, defective because that they are particularly unspecified and abstract, therefore, on the grounds of such definitions, not only something which actually corresponds the universally adopted concept of advertisement may be recognised as advertisement but also any other information, too".

The petitioner alleges that categorical prohibition of advertisement, and, according to the content of the definitions, any information concerning alcohol and tobacco products is anti-constitutional and not acceptable. The

petitioner admits that the freedom to information is not an absolute one and it may be restricted under principles provided for by Part 3 of Article 25 of the Constitution, i.e., only such information may be restricted whereby the health, honour, dignity, private life or morals of a person, or constitutional order is encroached. However, one may not broadly interpret the content of this constitutional norm and extend its applicability to any information which may be indirectly linked with consumption of alcohol and smoking. The motive of the opponents of advertising that any alcoholic beverages or any tobacco products, along with the information about them, is the same evil is an ungrounded one.

The petitioner is of the opinion that the provision of Part 3 of Article 30 of the Law on Alcohol Control that the criteria for recognising the contents and arrangement of audio or visual information or the ways of transmission thereof as advertisement for alcohol and the procedure of control of compliance with the alcohol advertisement prohibition shall be established by the Government of the Republic of Lithuania, as well as the provision of Part 5 of Article 11 of the Law on Tobacco Control that the Government of the Republic of Lithuania shall establish criteria for recognition of tobacco advertising, according to visual and audio information content, design, and means of presentation, and shall establish the procedure for control of the ban on advertisement for tobacco products, is extremely defective from the legal point of view. Part 3 of Article 25 of the Constitution stipulates that freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than as established by law. Laws mean the Constitution, constitutional laws and other laws. The petitioner points out that according to the disputed legal acts, the Government shall establish which information is to be recognised as advertisement and which is to be banned by implementing the rights delegated to it through substatutory legal acts - resolutions. Such a legal act, however, may not replace the law itself, nor may it create new norms of general legal character which could, by their power, compete with the norms of the law. Therefore the petitioner alleges that the possibility which has been established in the disputed legal acts to regulate legal relations that emerge from the inborn human right established in the Constitution to express convictions, as well as to obtain and disseminate information, by the acts having secondary legal power - Government resolutions - is to be recognised as contradicting the Constitution. In the opinion of the petitioner, on the grounds of the motives indicated, the 2 February 1996 Government Resolution No. 179 "On the Control of Advertising for Alcohol" is to be recognised as contradicting Part 3 of Article 25 the Constitution, too.

Part 2 of Article 29 of the Constitution provides that a person may not have his rights restricted in any way, or be granted any privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions, or options. Hence the petitioner concludes that the Constitution guarantees not only the right for every person to have his convictions as to consumption of alcoholic beverages or expediency of smoking etc., but also that persons who have a negative standpoint as regards consumption of alcoholic beverages and smoking may not have any privileges with respect to those whose standpoint concerning analogous matters is indifferent or positive. In the opinion of the petitioner, a person who does not smoke or is a teetotaler is not by himself a greater social value than a person whose standpoint and behaviour are opposite. No one questions the right to disseminate information grounded on objective data

about negative effects, harm, etc., of consumption of alcoholic beverages and smoking. However the petitioner is of the opinion that another part of the society which, in most cases, is more numerous than that of the opponents of consumption of alcoholic beverages and smoking may not be deprived of the opportunity to obtain information concerning legally sold alcoholic beverages, tobacco products, the importers and distributors, product quality, technology of manufacturing, chemical and other properties of the product. When the right to freedom is deprived, then individuals are deprived of the opportunity of choice. The petitioner alleges that the situation when the others decide for a person what information he is entitled to obtain and what information he is not entitled to obtain is characteristic of a totalitarian form of governance and is incompatible with the principles of creation of a democratic state.

Part 3 of Article 46 of the Constitution provides that the State shall regulate economic activity so that it serves the general welfare of the people. The petitioner takes heed of the fact that when deciding the conformity of the disputed legal acts with the Constitution one must bear in mind that advertising in a market economy is one of the factors directly influencing production increase. The enterprises which gain subsistence by manufacturing alcoholic beverages and tobacco products, by their import and selling pay a great number of various taxes, e.g., profit, value-added, duty, excise taxes etc. New jobs are created, foreign capital is invested, etc. The more intensive this activity and the greater turnover, the more income is received by the budget, therefore more means can be allocated for social programmes, health care and similar needs. Items 1-11 of Part 1 of Article 3 of the Law on Alcohol Control establish principles of state alcohol control policy, whereas Items 1-8 of Part 1 of Article 3 of the Law on Tobacco Control establish principles of state tobacco control. The petitioner is of the opinion that in order to implement the objectives raised in the aforesaid items, means are required which are intended to be collected from the entities which gain subsistence from manufacturing of alcoholic beverages and tobacco products, as well as their import and selling, however, it is attempted by the said laws to do so that there were as little as possible of the said means.

It is noted in the petition that unequal conditions of running businesses are created as certain entities which are occupied with legal activities have the opportunity to advertise themselves whereas other entities which also occupy themselves with legal economic activities are deprived of such an opportunity.

The petitioner pays attention to the fact that Item 1 of Part 1 of Article 30 of the Law on Alcohol Control provides that in the Republic of Lithuania advertising of alcoholic beverages shall be prohibited only in the radio and television programmes produced at Lithuania's radio and TV stations. Yet advertising of alcoholic beverages in the radio and television programmes produced at foreign radio and TV stations is not prohibited. For that reason the petitioner concludes that Lithuanian economic entities are evidently placed at a greater disadvantage if compared to foreign economic entities. Alongside, the petitioner alleges that it is possible to contend whether creating better conditions of economic activity to the entities of your country would be in conformity with international standards, nevertheless discrimination of one's own economic entities is incomprehensible and unjustified. Besides, one must not forget that foreign entities do not pay taxes into the budget of the Republic of Lithuania.

The petitioner affirms that restriction of capacities of

certain economic entities, as well as making various obstructions to them, along with decreasing incomes to the budget, is inconsistent with public needs.

During the judicial investigation V. Barkauskas, an advocate, the representative of a group of Seimas members, reiterated the arguments which had been presented in writing and emphasised that consumers do not receive important information because of the ban on alcohol and tobacco advertising, they are deprived of the opportunity to choose a product which is less harmful to health. Thus the representative is of the opinion that such a ban does not help to preserve one's health in such a case. As for the Government Resolution, its Item 2 is most doubtful. In the opinion of the representative, this resolution contradicts Part 3 of Article 25 of the Constitution not only by its form but also by its content.

III

The following motives were set forth in the introductory part of Seimas resolution on appealing to the Constitutional Court.

In the process of discussion and adoption of the Law on Alcohol Control and the Law on Tobacco Control arguments were given concerning non-compliance of some norms of these laws with the Constitution. The harm which is inflicted to health by immoderate consumption of alcohol and smoking, as well as necessity to restrict advertising of alcohol and tobacco products, is beyond doubt, however unconditional ban on information contradicts provisions of the Constitution. According to Part 2 of Article 25 of the Constitution, individuals must not be hindered from seeking, obtaining, or disseminating information or ideas. Part 3 of Article 25 of the Constitution provides that freedom to obtain and disseminate information may not be restricted in any way other than as established by law. In the opinion of the petitioner, the Law on Alcohol Control and the Law on Tobacco Control prohibit to obtain and disseminate information while the Government is commissioned to establish the procedure for the control of ban on advertising.

When the case was being prepared to the court hearing, R. Virbalis, an adviser of the Chairman of the Health Care Committee of the Seimas, a representative of the Seimas, virtually assenting to the arguments set forth in the request of the group of the members of the Seimas and the Seimas Resolution explained the following.

The ban on advertising provided for in Article 30 of the Law of Alcohol Control does not mean total prohibition of supplying information about alcoholic beverages for consumers. However, the provision that "advertising of alcoholic beverages shall be prohibited in other ways or by other means of broadcasting audio or visual information, including indirect advertising of alcoholic beverages" predisposes restriction of supplying information of certain character which may be regarded as advertisement for consumers. The provision "the criteria for recognising the contents and arrangement of audio or visual information or the ways of transmission thereof as advertisement for alcohol and the procedure of control of compliance with the alcohol advertisement prohibition shall be established by the Government of the Republic of Lithuania" of the Law on Alcohol Control conditions a certain indecisiveness as to distinguishing between information and advertisement. The representative points out that the definition of indirect advertisement presented in Article 1 of the Law on Alcohol Control also conditions restriction of supplying of information of certain character about alcoholic beverages for consumers.

The petitioner turns his attention to the fact that the provision of Article 11 of the Law on Tobacco Control that tobacco advertising shall be prohibited conditions restriction of supplying of information of certain character about tobacco products to consumers, even though the definition of advertisement for tobacco products and that of indirect advertisement for tobacco products does not distinguish between information and advertisement sufficiently enough.

The representative is of the opinion that these considerations permit to conclude that the said provisions of respective articles of the Law on Alcohol Control and the Law on Tobacco Control could be specified more exactly.

During the court hearing the representative of the Seimas R. Virbalis supported the arguments which had been set forth in writing and added that the provision of Item 4, Part 1 of Article 30 of the Law on Alcohol Control, as well as the definition of indirect advertisement in Article 1 of the Law on Tobacco Control, does not distinguish between information and advertisement sufficiently enough, therefore they should be specified more exactly.

IV

In the course of preparation of the case for the court hearing, E. Šileikis, a consultant at the Legal Division of the Seimas, a representative of the Seimas, explained that Article 25 of the Constitution consolidates different values. Bearing in mind that the norms of different parts of the said article constitute an indivisible whole, it is possible to assert that from the standpoint of harmonious co-existence between the public and the state a certain value which is provided for by Article 25 of the Constitution pales into insignificance before another value. In other words, by legally regulating co-ordination of the values which are provided for in Article 25 of the Constitution and which come into conflict in reality, it is necessary not to violate the essence of the indivisible whole of this article and to seek to rationally co-ordinate clashing constitutional values, i.e., not to provide any of these values with absolute primacy with respect to the other. The representative emphasises that provided such a rational co-ordination ("balancing") principle of clashing legal values, the principle which is widespread in democratic states under the rule of law, were followed and providing one underscored that "human rights and freedoms are the highest legal value" while "protection of common interests in a democratic state may not deny the right of an individual to information as such", then it should be considered that virtual prohibition by laws of even the smallest possibility to disseminate and obtain information having signs of advertisement about alcohol and tobacco products, i.e., to provide human health, as a constitutional value, with the absolute primacy with respect to another constitutional value - human right to freely seek, obtain and disseminate information. All the more that absolute ban on advertising alcohol and tobacco products is rare in west European countries. In the opinion of the representative, Article 30 of the Law on Alcohol Control and Articles 3 and 11 of the Law on Tobacco Control which virtually ban any opportunity emerging from Article 25 of the Constitution to seek, obtain and disseminate information having signs of advertisement about tobacco and alcohol products are to be qualified as violating the indivisible whole of Article 25 of the Constitution, i.e., as contradicting the said article.

The representative states that it is also possible to perceive the non-compliance of Article 30 of the Law on Alcohol Control and Articles 3 and 11 of the Law on Tobacco Control with Article 25 of the Constitution from another standpoint:

the legislator when deciding ways to protect people's health from harmful influence of alcohol and tobacco products must opt for such legal measures which could convincingly be substantiated, i.e., those which would not raise doubts if considered from the standpoint of the practice of modern states that the legislator subjectively and imperfectly restricts the human right emerging from Article 25 of the Constitution to freely seek, obtain and disseminate information with signs of advertisement about tobacco and alcohol products. Assessing objectively the possibilities of different types of mass media to exert influence upon the evolution of society, one may assert that the press, television and radio should be treated differently by legally regulating dissemination and obtaining of information which is harmful to human health. Bearing this in mind and grounding himself on the provision "greater demands are made of Radio and Television than of other means of mass media for their especially great influence upon the broad audience" of a ruling of the Constitutional Court the petitioner alleges that the absolute and adequate ban on advertising of alcohol and tobacco products through the press, television and radio is a deficient one. All the more that in west European states, in the opinion of the representative, absolutely identical ban on advertising of alcohol and tobacco products through the press, television and radio is not widespread.

The representative noted that in the doctrine of human rights and freedoms the right to freely disseminate and obtain information is treated as one of the freedoms of communication which in most part determines free and open communication in the society along with creating of public opinion - one of fundamental attributes of modern democracy. According to Mykolas Riomeris, a professor of Lithuanian constitutional law, the system of a democratic state is based on the domination of public opinion. In other words, it is important from the standpoint of democracy that public opinion had an opportunity to develop freely. The representative alleges that bearing this in mind and noting that public opinion shapes itself with reference to reality as a whole, along with different spheres of reality, including alcohol and tobacco products, it is doubtful whether the precondition of free and open shaping of public opinion about alcohol and tobacco products is not violated when the state virtually unconditionally prohibits advertising of such products. As in reality alcohol and tobacco products prevailing in the western world are advertised, and which neither could be acquired by Lithuanian consumers in Soviet times, nor could the consumers know about them, and following the provision that most consumers in Lithuania consume relatively cheap alcohol and tobacco products chiefly manufactured in Lithuania and rarely advertised, then, in the opinion of the petitioner, Article 30 of the Law on Alcohol Control and Articles 3 and 11 of the Law on Tobacco Control which prohibit the smallest advertising opportunity emerging from Article 25 of the Constitution violate the guarantees consolidated in the said article of free and open shaping of public opinion about alcohol and tobacco products.

The representative paid his attention to the fact that the criteria for recognising information as advertisement for alcohol was established by the 2 February 1996 Government Resolution No. 179 "On the Control of Advertising for Alcohol" and this means that the human right emerging from Article 25 of the Constitution to seek, obtain and disseminate information having signs of advertisement about alcohol products is restricted by a substatutory act and not by a law, which violates Part 3 of Article 25 of the Constitution. Therefore such a Government resolution is to be assessed as contradicting

Part 3 of Article 35 of the Constitution.

During the process of judicial investigation E. Šileikis expressed doubts as to priorities of fundamental human rights and freedoms with respect to each other. It is notably doubtful whether people's health may have primacy over the freedom to information even though the said information has signs of advertisement.

The disputed Government Resolution competes with its significance with the law. It contradicts Part 3 of Article 25 of the Constitution.

The representative is of the opinion that, alongside, difficulties occur in this case because the law-making institution - the Seimas - passed the law and later had doubts as to the compliance of its legislation with the Constitution. Instead of amending the law, it appealed to the Constitutional Court.

V

When the case was being prepared for the court hearing, V. Savickis, an adviser of Prime Minister, A. Nevas, a consultant at the Office of the Government, both are the representatives of the Government, presented the following arguments regarding the formulated statements in the petitions to the Constitutional Court.

Implementing the requirement of Article 30 of the Law on Alcohol Control to establish criteria for recognising the contents and arrangement of audio or visual information or the ways of transmission thereof as advertisement for alcohol, the Government adopted its 2 February 1996 Resolution No. 179 "On the Control of Advertising for Alcohol".

The legislator opted for a rather controversial means of restriction of alcohol and tobacco advertising. On the one hand, both laws attempt to distinguish between the definitions "advertisement" and "information", on the other hand, Article 1 of both laws present the definitions of the notions "advertisement" and "indirect information" which virtually include any information concerning alcohol and tobacco products. Both laws, having established the ban on advertising of the aforesaid products, commission the Government to establish what information is allowed (i.e. what information is not advertisement). Contradictions arise due to the fact that the content of advertisement is also made up by some information, regardless whether it is audile or visual.

Part 3 of Article 25 of the Constitution provides that "freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than established by law, when it is necessary for the safeguard of the health, honour and dignity, private life, or morals of the person, or the protection of constitutional order". Thus the Constitution does not provide for restrictions of information dissemination by substatutory acts.

The representatives allege that it is evident from the arguments set forth that the legislator created a legal situation due to which the Government had no possibilities to adopt the resolution which, according to its content and form, would not violate Part 3 of Article 25 of the Constitution.

Alongside, Part 3 of Article 25 of the Constitution provides for only such restrictions of information which, in attempt to protect people's health, are "necessary". In the opinion of the representatives, such clearly formulated "necessary" restrictions by the state must be established by law.

The representatives allege that were the formulations of the Law on Alcohol Control and the Law on Tobacco Control understood as total ban on alcohol and tobacco products, they

would contradict not only Article 25 of the Constitution but also most international obligations which, according to Article 138 of the Constitution, must be carried out by the Government and which "shall be the constituent part of the legal system of the Republic of Lithuania".

During the court hearing the representatives of the Government reiterated their arguments presented in writing and emphasised that the Government by no means intends to promote alcohol and tobacco consumption, however, it would approve of clear amendments of the law whereby regulations of restrictions on advertising were provided for yet they would not prohibit to enjoy the constitutional right to inform consumers and the consumers would not be prohibited from accomplishment of their right to choose alcohol and tobacco products of better quality.

VI

Vytenis Andriukaitis and Kazimieras Kuzminskas, the representatives of the opposing group of the members of the Seimas who stated that they are supportive of the provisions of the disputed laws and presented their arguments regarding the motives formulated by the petitioners, spoke in the court hearing.

The following specialists spoke in the hearing of the Constitutional Court: Prof. Antanas Goštautas, Head of the Laboratory of Medical Psychology at the Institute of Cardiology; Tomas Stanikas, an assistant lecturer at the Chair of Prophylactic Medicine at Kaunas Academy of Medicine, the co-ordinator of the tobacco control in Lithuania under the World Health Organisation; Vytautas Silickas, a deputy Director General of the State Public Health Centre; Giedrė Žilinskienė (M.D.), Chairperson of the Co-ordinating Council of Children's Affairs under the President of the Republic of Lithuania; Gediminas Jakubčionis, Chairperson of the Lithuanian Abstinence from Alcohol Foundation; Gintaras Songaila, President of the Association of Lithuanian Radio and Television; Marius Jakulis Jason, a lawyer, specialist in patent law. Ona Grimalauskienė, a consultant on psychical health issues at the Medical Division of the Ministry of Health Care, a deputy chairperson of the Government Commission of Drugs Control, submitted her conclusions to the Court in writing.

The Constitutional Court

holds that:

1. Questions of the legitimacy of the ban on advertising of alcoholic beverages and tobacco are under investigation in this case. Their solution is possible only in the wider context, investigating the concept of freedom of information as well as the possibility of restricting this freedom. At the same time, it is necessary to elucidate the reciprocity between information and advertising and possible consequences of the consumption of alcohol and tobacco on human and public health.

1.1. Every person has his or her views and convictions; unrestricted possibility to express them is an elementary precondition to commune with other people. Only free exchange of information provides a possibility for an individual to expand his or her knowledge, develop his/her world outlook, improve his/her personality. Free and universal exchange of information, its unrestricted dissemination are a particularly important factor in democratic processes. This factor ensures not only the formation of individual opinion and subjective convictions but also that of group views, including political, as well as that of the whole nation's will. That is why freedom of information is a fundamental element in a pluralistic democracy.

Freedom of information is usually treated in a wide sense and covers freedom of speech, freedom to have convictions and freely express them, freedom to obtain and disseminate information and ideas, freedom of the press and other means of the mass media. Freedom of information comprises not only the right to inform (i. e. to disseminate information) but also the right to receive information. Wrong information, i. e. misinformation, is usually banned by the laws of states. Thus, the requirement of the truth is applicable to information (including advertising).

1.2. Between the rights and freedoms of individuals on the one hand and the interests of society on the other, conflicts occasionally arise, sometimes contradictions occur. In a democratic society such contradictions are solved by co-ordinating different interests and seeking not to upset their balance. One of the ways to co-ordinate interests is restriction of the rights and freedoms of individuals. Incidentally, the European Convention for the Protection of Human Rights and Fundamental Freedoms provides for such a possibility. According to the Convention and the established practice of the European Court of Human Rights, this kind of restriction is possible, i.e. they are regarded as grounded if they meet two conditions: (1) they are legitimate, and (2) they are indispensable in a democratic society. The requirement of legitimacy indicates that restrictions have to be set only by a law that is publicly declared; the norms of the law are to be formulated lucidly enough. Legally defining the limits of the implementation of laws, it is necessary to take account of the purpose and meaning of a corresponding right (or freedom) and the possibilities and conditions of its restriction established in the Constitution. Looking for the answer to the question whether a concrete restriction is indispensable in a democratic society, the first step is to find out the aims and purpose of the restriction, and secondly, to find out whether the means of the restriction are proportionate to the legitimate aim.

Cases are possible, when the meaningfulness of a corresponding restriction lies in the nature of a concrete right (or freedom) or when corresponding restrictions are established in order to avoid collision with other fundamental rights. In the aforementioned cases, the validity of restrictions of fundamental rights should be assessed by the criteria of common sense and those of evident necessity. Another important thing is that often a conflict arises between essentially equivalent constitutional legal values. Therefore, in such cases, certain restrictions should not considerably upset the former balance between them.

1.3. "Advertising is a form of communication intended to promote the sale of a product or service, to influence public opinion, to gain political support, to advance a particular cause, or to elicit some other response desired by the advertiser" (The New Encyclopaedia Britannica, vol. 1, p. 103). The notion of advertising is also defined in the European Convention for Transfrontier Television (1989): "Advertising is a public announcement which pursues a specific objective, that is to promote the sale, purchase or rental of a product or service, to advance a cause or idea or to bring about some other desired effect. The transmission time has been given in return for remuneration or similar consideration." The advertising message, or advertisement, is usually delivered to its intended audience through the mass media, billboards, or direct mail. Advertising is distinguished from other forms of information in that the advertiser pays the mediator to deliver the message at the same time receiving the opportunity to control the content and form of the message as well as the time and place of its delivery.

Thus, at least two elements make up the concept of advertising: (1) it pursues a specific objective, that is to promote consumption of a product or service, or to bring about some other effect desired by the advertiser, (2) remuneration (the transmission time is given in return for remuneration or similar consideration). Therefore a conclusion is to be made that usually advertising relates to material profit: it aims to directly increase profit (increase consumption of products and services), or to ensure this in the future (by advertising corporate trade-mark or activities, i. e. by helping the company to establish itself in the market). Furthermore, the client also pays for the delivery of the advertising message.

Much attention in the aforementioned Convention for Transfrontier Television is allotted to regulation of advertising. The Convention establishes the following most important rules for advertising: all advertisements shall be fair and honest; advertisements shall not be misleading and shall not prejudice the interests of consumers; advertisements addressed to or using children shall avoid anything likely to harm their interests and shall have regard to their special susceptibilities (Article 11). Subliminal advertisements shall not be allowed; surreptitious advertisements shall not be allowed, in particular the presentation of products or services in programmes when it serves advertising purposes (Article 13).

The Convention establishes restrictions on the amount of transmission time: the amount of advertising shall not exceed 15 per cent of the daily transmission time; duration of insertion of advertisements shall not exceed 20 per cent of an hour. It should be noted that the restriction on duration is not applied to other kinds of information.

1.4. In Paragraph 1 of Article 1 of the Law on Alcohol Control it is indicated that ethyl alcohol means material having a narcotic effect, which can bring about addiction to it and dependence upon it. In Paragraph 2 of Article 1 of the Law on Tobacco Control it is indicated that tobacco products contain nicotine, tar and other harmful substances and cause nicotinism (nicotine dependency).

The World Health Organisation Expert Committee on Drug Dependence in its reports 20 and 29 (WHO Technical Report Series No 551, No 836) reckoned alcohol and tobacco among materials producing dependence.

In edition 10 of International Classification of Diseases (Geneva, 1992) it is indicated that alcohol and tobacco are psychoactive substances that can cause somatic harm, acute intoxication (alcohol), dependence syndrome, other mental and behavioural disorders (subdivisions F10 - F19). Dependence syndrome is defined as "a cluster of behavioural, cognitive, and physiological phenomena that develop after repeated substance use".

In 1977, a group of experts made up by the European Community Commission Health and Prevention Directorate, World Health Organisation, and International Council for Alcohol and Narcotic Addiction presented the following findings: "Due to toxic effect brought about by alcoholic beverages, the European Community Commission should not regard them as ordinary foodstuffs and beverages. The Commission should revise its economic activities as soon as possible in order to reduce the great harm of the consumption of alcohol to health and social welfare. The Commission and the European Community member countries are to co-ordinate their policies on the production and support of alcohol in order to reduce the consumption of alcohol."

Special medical research and statistics confirm harm of alcohol to human health. The International Agency for Research on Cancer has acknowledged that cancer of mouth, pharynx,

larynx, oesophagus, and liver relates to the consumption of alcohol (International Agency for Research on Cancer. Alcohol Drinking. IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Lyon: IARC, 1988). The research ascertains that a relative risk of cancer of the breast increases for smoking women. Alcohol consumption also increases the risk of haemorrhage stroke (Holder H., Edwards G. (Eds.) Alcohol and Public Policy: Evidence and Issues, Oxford: Oxford University Press, 1995). Alcohol consumption especially increases overall sickness rate and death-rate for people over 50 years old (Edwards G. et al. Alcohol Policy and the Public Good, Oxford: Oxford University Press, 1994). By decreasing the amount of alcohol consumption per head by 10 per cent, male alcohol-attributable mortality decreases by 20 per cent, and total number of suicides, manslaughters and murders - by 5 per cent (Holder H., Edwards G. (Eds.) Alcohol and Public Policy: Evidence and Issues, Oxford: Oxford University Press, 1995).

Findings of scientific research on narcotic effects of tobacco carried out in different countries in this century were summarized in the US Department of Health and Human Services' publication "The Health Consequences of Smoking: Nicotine Addiction. A Report of the Surgeon General" (1988). The following conclusions were published therein: cigarettes and other forms of tobacco cause dependence; nicotine is the active material which causes this dependence; pharmacological and psychological processes causing dependence upon nicotine are similar to those causing dependence upon such narcotic materials as heroin and cocaine. Irrespective of the way of tobacco use (smoking, chewing, snuffing) the nicotine that it contains easily gets into the blood and causes various biochemical and bioelectric changes in the brain, vegetative nervous system, as well as those in the heart and blood-vessels, and endocrine system. Nicotine dependency is defined as a disorder that can be medically cured. The dependency therefore should be regarded as a disorder caused by using any other dependence-producing substance. Thus possibilities to cure humans suffering from symptoms of withdrawal by psychological and pharmacological means are to be admitted. In countries where smoking is widespread, 90 per cent of total mortality from lung cancer, 75 per cent of total mortality from bronchitis and emphysema, and approximately 25 per cent of total mortality from heart diseases, were attributed to smoking (The Physician's Role. Smoke-free Europe: 1 WHO Regional Office for Europe, 1987).

Therefore, alcoholic beverages and tobacco products are reckoned among the goods for special purpose for the reason that their consumption is harmful to human health.

Thus the provision of Paragraph 1 of Article 1 of the Law on Alcohol Control which says that "ethyl alcohol (hereinafter referred to as alcohol) means material having a narcotic effect, which can bring about addiction to it and dependence upon it", and the provision of Paragraph 2 of Article 1 of the Law on Tobacco Control which says that "tobacco products include materials for smoking, produced from the potato family tobacco plant leaves (Nicotiana) of the genus (Nicotiana tabacum, Nicotiana rustica and other varieties) (cigarettes, cigarillos, Russian cigarettes, pipe tobacco, low-grade tobacco, chewing and snuff tobacco) containing nicotine, tar and other harmful substances and also causing nicotinism (nicotine dependency)" are grounded by findings of scientific research.

History has seen attempts to fight against alcoholic beverages and tobacco products and their consumption by categorical ban on their production, trade and consumption. However, such attempts of prohibition did not give the desired

result. Habits of consumption that have been established throughout centuries and consumers, who appeared due to the habit and dependence, assured the demand of the aforementioned materials. Therefore even the ban could not prevent from finding a way (most often illegal and illegitimate) to satisfy the demand. Later on, administrative methods of categorical ban were replaced by means of various economic and financial bans as well as the ban on advertising. Those means were usually applied together with preventive medical means, means of health education, popularization of healthy lifestyle, etc.

It should be noted, that Article 15 of the aforementioned European Convention for Transfrontier Television establishes special bans or restrictions on advertising of particular products. For example, Paragraph 1 establishes: "Advertisements for tobacco products shall not be allowed." It is a categorical ban covering all tobacco products - cigarettes, cigars, pipe tobacco, chewing tobacco, snuff or any other tobacco-based product. Paragraph 2 establishes the following restrictions on advertisements for alcoholic beverages: the advertisements shall not be addressed to minors; they shall not link the consumption of alcohol to physical performance and driving; they shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal problems; they shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light; they shall not place undue emphasis on the alcoholic content of beverages. The Convention says that alcoholic beverages means beverages which contain alcohol. Therefore cider, beer, and wine are also regarded as alcoholic beverages. The aim of the aforementioned restrictions on the advertisements for alcoholic beverages is at least to protect consumers (particularly minors) and to prevent immoderate and harmful to human health consumption of alcoholic beverages. Finally, restrictions are also applied to advertisements for a third type of products, namely, medicine. In Paragraphs 3 and 4 of the aforementioned Article it is established: "Advertisements for medicines and medical treatment which are only available on medical prescription in the transmitting Party shall not be allowed. Advertisements for all other medicines and medical treatment shall be clearly distinguishable as such, honest, truthful and subject to verification and shall comply with the requirement of protection of the individual from harm."

Such restrictions on television advertisements first of all are linked with an exclusive status of this means of the mass media, i. e. its status allows almost unrestricted possibilities of influencing (positively or negatively) people in a state, region, even continent and the whole world. On the other hand, the number of transmitting channels is limited, therefore the probability that competing stations will correct their mistakes and compensate for the harm done by biased information to society diminishes. The aforementioned restrictions on tobacco and alcohol advertising are to be regarded as one more official international confirmation of harmfulness of those materials to society.

2. On the compliance of Articles 1 and 30 of the Law on Alcohol Control as well as Articles 1, 3 and 11 of the Law on Tobacco Control.

The petitioners - a group of Seimas members, as well as the Seimas itself - appeals to the Constitutional Court with the request to investigate whether Articles 1 and 30 of the Law on Alcohol Control as well as Articles 1, 3 and 11 of the Law on Tobacco Control are in compliance with the Constitution, however, in the part of argumentation of respective petitions they, in fact, limit their requests to particular parts or

paragraphs of the aforementioned articles. For instance, a doubt is expressed in the part of argumentation of the petition filed by the group of the members of the Seimas concerning the compliance of Paragraphs 4 and 5 of Article 1 and Parts 1 and 3 of Article 30 of the Law on Alcohol Control, as well as that of Paragraphs 4 and 5 of Article 1, Item 6 of Part 1 of Article 3 and Parts 4 and 5 of Article 11 of the Law on Tobacco Control, with the Constitution. In the resolutive part of the Seimas 25 June 1996 Resolution on appealing to the Constitutional Court it is requested to investigate if Paragraph 4 of Article 1 and Article 30 of the Law on Alcohol Control, as well as Paragraphs 4 and 5 of Article 1, Item 6 of Part 1 of Article 3 and Parts 4 and 5 of Article 11 of the Law on Tobacco Control are in compliance with the Constitution. Conforming to the provisions of Part 6 of Article 106 of the Constitution, the Constitutional Court will investigate and assess only such norms of the said laws the unconstitutionality whereof is alleged on the basis of legal motives.

2.1. Article 1 of the Law on Alcohol Control and Article 1 of the Law on Tobacco Control formulate the definitions of main notions used in the said laws. The petitioners call in question the content of the two definitions - "advertisement" and "indirect advertisement" which are set forth in these articles.

Article 1 (Paragraphs 4 and 5) of the Law on Alcohol Control defines them as follows:

"Alcohol advertisement denotes impersonal transmission of visual or audio information related to alcoholic beverages, promoting their production, domestic trade, import and use, through various means and measures, including indirect advertisement of alcoholic beverages, in order to achieve a direct or indirect effect in promotion of alcoholic beverages.

Indirect advertisement of alcoholic beverages includes promotion of sales and consumption of alcoholic beverages in popularising the names of enterprises which manufacture, import or sell alcoholic beverages, employing product marks, symbols or other signs typical of alcoholic beverages, and also the products and articles sold in the Republic of Lithuania, and other material information carriers and services not directly linked with alcoholic beverages and their consumption."

Article 1 (Paragraphs 4 and 5) of the Law on Tobacco Control defines the aforesaid notions as follows:

"advertisement of tobacco products denotes impersonal transmission of visual or audio information related to tobacco products, smoking attributes, their production, domestic trade, import and use, through various means and measures, including indirect advertisement of tobacco products, in order to achieve a direct or indirect effect in promotion of tobacco products;

indirect advertisement of tobacco products includes promotion of tobacco product sales and consumption in popularising the names of tobacco product manufacturing, importing or selling enterprises, employing product marks, symbols or other signs typical of tobacco products, and also the products and articles sold in the Republic of Lithuania, and other material information carriers and services not directly linked with tobacco products and their consumption."

Comparing these formulations according to their most important legal elements, one may draw a conclusion that the notions "alcohol advertisement" and "advertisement of tobacco products" are identical with respect to each other, and this may be stated as regards the notions "indirect advertisement of alcoholic beverages", "indirect advertisement of tobacco products", too. It provides grounds to investigate them concurrently taking account of their peculiarities if necessary.

The petitioner - a group of Seimas members - is of the

opinion that according to "the presented definitions of advertisement for alcohol and tobacco products and those of indirect advertisement for alcohol products and indirect advertisement for tobacco products recognise that advertisement is not only the information directly connected with promotion of alcohol and tobacco products consumption but also the information connected, or that which is not connected at all, with production, import and sale of alcohol and tobacco products. Such definitions of advertisement are, first of all, defective because that they are particularly unspecified and abstract, therefore, on the grounds of such definitions, not only something which actually corresponds the universally adopted concept of advertisement may be recognised as advertisement but also any other information, too".

When investigating the definitions of advertisement presented in the laws, it was established that the said definitions are similar as to their main indications to the concept of such an advertisement existing in the laws of other countries and international documents. For example, in Norwegian legal acts advertisement is defined as follows: "Advertisement is any form of public information which is used for the purpose of marketing; it includes advertising in writing or print, films, illuminating advertising, posters, marks and like means, pictures, products' exhibition etc., as well as spreading of printed material or samples etc." The European Communities document 92/C 129/04 of 1992 presents the following definition of Tobacco advertising: "advertising: any form of communication, printed, written, oral, by radio and television broadcast and cinema, with the aim or direct or indirect effects of promoting a tobacco product, including advertising which, while not specifically mentioning the product, tries to circumvent the advertising ban by using brand names, trade marks, emblems or other distinctive features of tobacco products". Thus the most significant objective of advertising is to promote respective products, to form their positive image and to promote, directly or indirectly, their consumption.

In most cases the content of advertisement of tobacco products is one-sided and biased: tobacco, smoking often is associated with youth, sport, virility, sexuality, beauty of nature, female elegance, romantic aura, independence, etc., i.e. opinion is formed that smoking is socially acceptable and that it should be urged. Meanwhile, such advertisements do not mention the harm caused by tobacco not only to the smoker but also to the environment. Thus it is obvious that permission to advertise and promote consumption of tobacco products means nothing but definite assent to the stereotype pressed upon that smoking is a socially acceptable habit, meanwhile ban on advertising of tobacco products contributes to the formation of the opinion that the norm of social behaviour is non-smoking.

As it has been held, alcoholic beverages and tobacco products belong to the group of materials the use whereof undoubtedly is harmful to human health. Conforming to Part 3 of Article 25 of the Constitution, the legislator was entitled to restrict information regarding alcoholic beverages and tobacco products. The said laws, in essence, establish restriction of commercial information concerning alcoholic beverages and tobacco products and identify it as the prohibition of advertising of alcoholic beverages and tobacco products, as well as that of promotion of their selling and consumption. Thus the allegation of the petitioner that the laws prohibit any information concerning alcoholic beverages and tobacco products does not correspond to reality.

Alongside, one must pay attention to the fact that the laws under investigation present the definitions of "indirect

advertisement" which are too much broad and not concrete. It is obvious that the end of Paragraph 5 of Article 1 of the Law on Alcohol Control "and also the products and articles sold in the Republic of Lithuania, and other material information carriers, and services not directly linked with alcoholic beverages and their consumption", and the end of Paragraph 5 of Article 1 of the Law on Tobacco Control "and also the products and articles sold in the Republic of Lithuania, and other material information carriers, and services not directly linked with tobacco products and their consumption", do not fit in the common concept of advertisement and they groundlessly broaden it. Following the aforementioned formulations it is possible to declare that information which is not directly linked with alcohol and tobacco products is advertisement of alcohol and tobacco products and thereby to ban it. It would mean a groundless, therefore, illegal restriction of the freedom to information. Taking account of the motives indicated a conclusion is to be drawn that the provision "and also the products and articles sold in the Republic of Lithuania, and other material information carriers and services not directly linked with alcoholic beverages and their consumption" of Paragraph 5 of Article 1 of the Law on Alcohol Control and the provision "and also the products and articles sold in the Republic of Lithuania, and other material information carriers, and services not directly linked with tobacco products and their consumption" of Paragraph 5 of Article 1 of the Law on Tobacco Control contradict Part 3 of Article 25 of the Constitution.

The representative of the petitioner - a group of Seimas members - alleged that the ban on alcohol advertising violates the manufacturer's right to a trade mark as in fact it restricts the opportunity to make use of it. Alongside thereby the Paris Convention for the Protection of Industrial Property is violated. The Constitutional Court notes that the disputed laws do not contain any norms which impose direct prohibition to make use of trade marks. Essentially the said laws prohibit to make use of trade marks for the purpose of advertising therefore these questions are to be investigated jointly. One has to consider the fact that Article XX of the General Agreement on Tariffs and Trade (GATT) provides that "nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures necessary to protect human [...] life or health". The GATT group of experts indicated that this ensures the priority of public health over trade liberalisation. Thus, there are no legal grounds to assert that the right to a trade mark has priority over people's health. Let alone that the Lithuanian legislator saw no need to consolidate trade mark priority over people's health.

2.2. The petitioners call in question Part 1 of Article 30 of the Law on Alcohol Control which stipulates:

"In the Republic of Lithuania advertising of alcohol beverages shall be prohibited:

(1) in the radio and television programmes produced at Lithuania's radio and TV stations, as well as in the Lithuanian press;

(2) by using specialised promotional publications devoted to the advertising of alcohol which have been published in foreign countries and imported into the Republic of Lithuania;

(3) by mail (using postcards, envelopes, stamps); and

(4) in other ways or by other means of broadcasting audio or visual information, including indirect advertising of alcoholic beverages."

Furthermore, the provision "prohibiting of tobacco product advertisement and sales and consumption promotion" of Item 6 of

Part 1 of Article 3 of the Law on Tobacco Control and Part 4 of Article 11 of the said law which stipulates: "Tobacco advertising shall be prohibited in the Republic of Lithuania."

In the opinion of the petitioners, the aforementioned norms violate the provision "a person may not have his rights restricted in any way, or be granted any privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions, or options" of Part 2 of Article 29 of the Constitution. They allege that the Constitution guarantees not only the right to everyone to have his convictions regarding expediency of alcoholic beverages consumption or smoking etc., but also that persons who have a negative standpoint as to alcoholic beverages consumption or smoking may not be granted any privileges with respect to people who have indifferent or positive standpoint as regards analogous phenomena. When a person is deprived of the right to information, he is also deprived of the opportunity of choice.

The Constitutional Court notes that advertisement also is information as it provides its receiver with certain cognizance about goods, services or other objects (subjects) advertised. However, this is a peculiar sub-class of information which is, as a rule, called commercial information. Advertising is inseparable from the sphere of business and marketing as in fact it serves the latter and it is an important means of competition. And yet the ban on tobacco products and alcohol advertising alone may not be treated as people's discrimination or granting privileges, because that such a ban concerns the whole society and not particular groups of people. On the other hand, such a ban strives for humane purposes - to protect young people from psychological pressure to smoke or consume alcoholic beverages; to stop the spread of smoking and drinking among women; to protect consumers from, as a rule, biased and tendentiously limited information; to consolidate the standpoint that smoking and alcoholic beverages consumption is harmful to public health. These purposes go hand in hand with the tasks raised by the World Health Organisation in the sphere of public and people's health.

The petitioners express their doubts as to the lawfulness of the propositions "prohibition of advertising" which are used in the Law on Alcohol Control and the Law on Tobacco Control as Part 3 of Article 25 of the Constitutions merely mentions the opportunity to restrict the freedom of information. For instance, it is set forth in the Seimas Resolution on the appeal to the Constitutional Court that "the Law on Alcohol Control and the Law on Tobacco Control prohibit to receive and disseminate information concerning products of alcohol and tobacco [...]".

It should be noted that the aforesaid doubt is a groundless one because it is based on the virtually erroneous assumption that information is equivalent to advertisement. Advertisement is information, however, not every information is advertisement. Therefore the ban on the advertisement for alcohol and tobacco products may mean only the ban on certain type of information (the supposed commercial, or marketing, information) which on a scale of the whole information may be assessed as merely a restriction of information. On the other hand, the notion "prohibition" which is used by the legislator does not always mean absolute prohibition, even that of advertising. For example, Part 1 of Article 30 of the Law on Alcohol Control wherein prohibition of advertisement for alcoholic beverages is mentioned establishes prohibition of particular forms and ways of advertising. It is obvious that they do not include all possible ways of alcohol advertising, therefore in this case it is impossible to assert that this is total ban on alcohol advertising. In fact it is only partial

(even though significant) restriction of commercial information concerning alcohol.

The prohibition of tobacco products advertising is of different character. The Law on Tobacco Control proclaims such a prohibition a principle of state tobacco control policy (Article 3). Article 11 of the said law consolidates the norm that tobacco advertising shall be prohibited. This may actually be understood as a total ban on tobacco products advertising, however, from this one cannot draw the conclusion that every information concerning tobacco products. Part 6 of Article 11 of the Law on tobacco Control stipulates that "locations of tobacco product sales shall be permitted to furnish information on specific features, kind, and quality of tobacco products sold there and the levels of the materials harmful to health contained therein". Besides, the law provides for the procedure of presenting compulsory information concerning tobacco products and restrictions of their sale: locations of tobacco products sales must contain notices warning about harmful effects of smoking to health, informing about prohibition to sell tobacco products for persons under the age of 18 as well as other restrictions of selling tobacco products. By the way, the most important information must be presented to the consumer on the package of tobacco products, too, i.e. they must have: notices in Lithuanian (on the sides of the packages) as to the level of tars and nicotine contained in the tobacco products; warning notices in Lithuanian about harmful effects of smoking to health; trade marks. Without such notices sale of tobacco products in Lithuania is prohibited.

The Constitutional Court notes that the Constitution does not define the level of restriction of the freedom to information. It means that to choose and establish the level of restriction is an unquestionable prerogative of the legislator. Of course, in order that such restrictions were in compliance with the concept and requirements of justice, the aforementioned criteria of lawfulness and necessity in a democratic society should be taken account of. Various restrictions of advertising of alcoholic beverages and tobacco products are established in some other countries, too. According to the data of the World Health Organisation, in 1991 total ban on tobacco advertising was imposed in 27 countries of the world (13 of the said countries were in Europe). In addition, in 77 states various partial restrictions on tobacco products advertising are imposed. There is a still greater variation as regards restrictions of alcoholic beverages advertising: in 10 European states ban on advertising for strong alcoholic beverages on television, radio and billboards is imposed, whereas ban on advertising for beer - in 6 European countries (Alcohol in Europe - a Health Perspective: WHO Regional Office for Europe, Copenhagen, 1995). Therefore it should be concluded that the prohibitions or restrictions of advertising provided for in the Lithuanian Law on Alcohol Control or the Law of Tobacco Control may not be regarded as unprecedented if compared to other European or world states.

The petitioner also points out that Part 3 of Article 46 of the Constitution stipulates that "the state shall regulate economic activity so that it serves the general welfare of the people". Therefore when judging whether the disputed legal acts are in compliance with the Constitution one has bear in mind that in a market economy advertising is one of the factors directly influencing production increase. It is emphasised in the petition that different economic entities have not equal conditions of their economic activity as certain entities occupied with legal activity have the opportunity to advertise themselves while other entities occupied with legal activity are deprived of such an opportunity.

Assessing legal regulation of advertising in Lithuania, one indeed has to take account of the provision of Article 46 of the Constitution. The provision "the State shall support economic efforts and initiative which are useful to the community" of Part 2 of the said article means, first of all, the possibility consolidated by the Constitution for the institutions of power to assess spheres of economic activity as to their benefit for society. Secondly, only on the basis of such an assessment and grouping is it possible to realise the consolidated right of supporting particular spheres of economic activity or particular economic efforts. Finally the said assessment of economic activity constitutes necessary preconditions to implement the provision of Part 3 of Article 46 of the Constitution which reads: "The State shall regulate economic activity so that it serves the general welfare of the people." One of the most important emphases of this provision is a possible differentiated legal regulation of economic activity. Its main criterion is a general welfare of the people. It is a rather general and broad criterion and in its application one may base oneself on the concept of general welfare as well as the arguments of purposiveness.

Thus it would be incorrect to comprehend the quoted provision of Article 46 of the Constitution as the duty of the state to decisively support any economic efforts or activity. On the contrary, as it has been mentioned, in this case the state has the opportunity of choice. On the other hand, people's welfare may not be understood only in material (financial) sense. Furthermore, hardly would it be fair and moral to seek material welfare in such a way which is harmful to people's health.

It should also be noted that restriction of advertising is one of the ways applied to reduce the unrestricted promotion and consumption of materials which are harmful to people's health. For instance, Part 1 of Article 3 of the Law on Alcohol Control determines: to reduce accessibility of alcoholic beverages through taxation; to limit through state regulatory means, private profit, obtained from the manufacture of alcoholic drinks, import and trade in alcoholic beverages; to limit the support and sales of alcoholic beverages; to augment public informativeness concerning the questions of social and economic harm to health and economy, resulting from alcohol use etc. Accordingly, Part 1 of Article 3 of the Law on Tobacco Control determines: reduction of smoking product availability through taxation; prohibiting of use of state and local budget funds for growing tobacco, manufacture of its products and development of domestic trade and import; increase public information concerning social and economic harm inflicted upon health through smoking product consumption. Besides, in order to ensure the control for observing laws a special system of institutions has been created, as well as responsibility has been established for violations of laws.

2.3. The petitioners question the provision "the criteria for recognising the contents and arrangement of audio or visual information or the ways of transmission thereof as advertisement for alcohol and the procedure of control of compliance with the alcohol advertisement prohibition shall be established by the Government of the Republic of Lithuania" of Part 3 of Article 30 of the Law on Alcohol Control, as well as that of Part 5 of Article 11 of the Law on Tobacco Control which stipulates: "the Government of the Republic of Lithuania shall establish criteria for recognition of tobacco advertising, according to visual and audio information content, design, and means of presentation, and shall establish the procedure for control of the ban on advertisement of tobacco products".

In fact every disputed provision is composed of 2 parts: one part speaks of the criteria whereby certain information would be recognised as advertisement, the second part speaks of the procedure for control of the ban of advertisement. Besides, the said laws establish the system of control institutions, as well as the fundamentals of their competence. They also authorise the Government to prepare the control programmes, to accomplish the legal regulation of the control procedure, to supervise the activities of respective institutions. It is in compliance with the competence of the Government, as well as the Constitution. However, commissioning the Government with the establishing the criteria on the grounds of which information is recognised as advertisement virtually means the right to decide which information will be recognised as advertisement and, therefore, should be prohibited. It is nothing but the delegation of the right to restrict advertising for alcohol and tobacco products to the Government. Meanwhile in Part 3 of Article 25 of the Constitution a categorical stipulation is consolidated that "freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than as established by law".

Therefore the Constitutional Court has concluded that the provision "the criteria for recognising the contents and arrangement of audio or visual information or the ways of transmission thereof as advertisement [...]" of Part 3 of Article 30 of the Law on Alcohol Control, as well as the provision "criteria for recognition of tobacco advertising, according to visual and audio information content, design, and means of presentation [...]" of Part 5 of Article 11 of the Law on Tobacco Control, contradicts Part 3 of Article 25 of the Constitution.

3. On the compliance of the 2 February 1996 Government Resolution No. 179 "On the Control of Advertising for Alcohol" with the Constitution.

On 2 February 1996 the Government adopted Resolution No. 179 "On the Control of Advertising for Alcohol" whereby "The criteria for recognising the content and arrangement of audio or visual information concerning alcohol and the ways of transmission thereof as advertisement for alcohol" The petitioner - a group of Seimas members - points out that Part 3 of Article 25 of the Constitution provides that freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than established by law. In addition, it is maintained, that in the disputed legal act it was the Government which established what information is advertisement and is to be prohibited, therefore, a conclusion should be drawn that the disputed Government Resolution according to its form contradicts Part 3 of Article 25 of the Constitution.

The disputed Government Resolution was adopted when implementing Part 3 of Article 30 of the Law on Alcohol Control. The Resolution is comprised of 2 items: Item 1 lists the subjects which are commissioned to control alcohol advertising (it is provided for by the law, too) while Item 2 approves "The criteria for recognising the contents and arrangement of audio or visual information concerning alcohol and the ways of transmission thereof as advertisement for alcohol". Taking account of the fact that the aforesaid provision of Article 30 of the law whereby the Government was delegated to restrict information has been recognised as contradicting the Constitution, thus Item 2 of the 2 February 1996 Government Resolution No. 179 "On the Control of Advertising for Alcohol" is recognised as contradicting Part 3 of Article 25 of the Constitution.

Conforming to Article 102 of the Constitution of the Republic of Lithuania and Articles 53, 54, 55 and 56 of the Law of the Republic of Lithuania on the Constitutional Court, the Constitutional Court has passed the following ruling:

1. To recognise that:

(1) Paragraph 4 of Article 1 of the Law of the Republic of Lithuania on Alcohol Control is in compliance with the Constitution of the Republic of Lithuania;

(2) the provision "and also the products and articles sold in the Republic of Lithuania, and other material information carriers, and services not directly linked with alcoholic beverages and their consumption" of Paragraph 5 of Article 1 of the Law on Alcohol Control contradicts Part 3 of Article 25 of the Constitution of the Republic of Lithuania;

(3) Part 1 of Article 30 of the Law on Alcohol Control is in compliance with the Constitution of the Republic of Lithuania;

(4) the provision "the criteria for recognising the contents and arrangement of audio or visual information or the ways of transmission thereof as advertisement" of Part 3 of Article 30 of the Law on Alcohol Control contradicts Part 3 of Article 25 of the Constitution of the Republic of Lithuania.

2. To recognise that:

(1) Paragraph 4 of Article 1 of the Law of the Republic of Lithuania on Tobacco Control is in compliance with the Constitution of the Republic of Lithuania;

(2) the provision "and also the products and articles sold in the Republic of Lithuania, and other material information carriers, and services not directly linked with tobacco products and their consumption" of Paragraph 5 of Article 1 of the Law on Tobacco Control contradicts Part 3 of Article 25 of the Constitution of the Republic of Lithuania;

(3) Item 6 of Part 1 of Article 3 of the Law on Tobacco Control is in compliance with the Constitution of the Republic of Lithuania;

(4) Part 4 of Article 11 of the Law on Tobacco Control is in compliance with the Constitution of the Republic of Lithuania;

(5) the provision "criteria for recognition of tobacco advertising, according to visual and audio information content, design, and means of presentation" of Part 5 of Article 11 of the Law on Tobacco Control, contradicts Part 3 of Article 25 of the Constitution of the Republic of Lithuania.

3. To recognise that Item 2 of the 2 February 1996 Resolution of the Government of the Republic of Lithuania No. 179 "On the Control of Advertising for Alcohol" contradicts Part 3 of Article 25 of the Constitution of the Republic of Lithuania. The remaining part of this Government Resolution is in compliance with the Constitution of the Republic of Lithuania.

This Constitutional Court ruling is final and not subject to appeal.

The ruling is promulgated on behalf of the Republic of Lithuania.