Case No. 45/06

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

RULING
ON THE COMPLIANCE OF PARAGRAPH 2 (WORDING OF 14 MARCH 2002) OF ARTICLE 425 OF THE CODE OF CRIMINAL PROCEDURE OF THE REPUBLIC OF LITHUANIA WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA

24 January 2008

Vilnius

The Constitutional Court of the Republic of Lithuania, composed of the Justices of the Constitutional Court: Armanas Abramavičius, Toma Birmontienė, Egidijus Kūris, Kęstutis Lapinskas, Zenonas Namavičius, Vytautas Sinkevičius, Stasys Stačiokas, and Romualdas Kęstutis Urbaitis

The court reporter—Daiva Pitrėnaitė

Seimas member Vidmantas Žiemelis, acting as the representative of the Seimas of the Republic of Lithuania, the party concerned

The Constitutional Court of the Republic of Lithuania, pursuant to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Article 1 of the Law on the Constitutional Court of the Republic of Lithuania, in its public hearing, on 5 June 2008, considered case No. 45/06 subsequent to the petition of the Klaipėda City Local Court, the petitioner, requesting an investigation into whether Paragraph 2 of Article 425 of the Code of Criminal Procedure of the Republic of Lithuania is not in conflict with Paragraph 1 of Article 29, Paragraph 2 of Article 31 the Constitution of the Republic of Lithuania and with the constitutional principle of a state under the rule of law.

The Constitutional Court

has established:

I

The Klaipėda City Local Court, the petitioner, considered a criminal case. By its ruling, the said court suspended the consideration of the case and applied to the Constitutional Court with the petition requesting an investigation into whether Paragraph 2 of Article 425 of the Code of Criminal Procedure (hereinafter also referred to as the CCP) is not in conflict with Paragraph 1 of Article 29, Paragraph 2 of Article 31 the Constitution and with the constitutional principle of a state under the rule of law.

II

The petition of the Klaipėda City Local Court, the petitioner, is grounded on the following arguments.

1. According to the general rules of judicial consideration of cases, upon carrying out the pre-trial investigation, the prosecutor must draw up an indictment, which virtually defines the limits of consideration of the case in court. A copy of the indictment is handed in to the accused as well. Meanwhile, the proceedings for the adoption of a court penal order are begun by the statement of the prosecutor regarding the ending of the proceedings by means of a court penal order. This statement is submitted to the court, but not handed in to the accused. In cases provided for in Articles 422 and 423 of the CCP the proceedings for adoption of a court penal order are discontinued and the case is referred to court for consideration under general procedure (i.e. to the court of first instance of the proceedings). In such cases, instead of reading the indictment during the consideration of the case in court, the prosecutor sets forth the essence of the matter on the grounds of the statement regarding the ending of the proceedings by means of a court penal order (Paragraph 2 of Article 425 of the CCP).

However, in the opinion of the Klaipėda City Local Court, the petitioner, the statement of the prosecutor regarding the ending of the proceedings by means of a court penal order, in view of its content should not be regarded as a procedural document identical to the indictment, since the statement of the prosecutor only points out a shortly described deed of which the person is accused (Item 2 of Article 419), while the indictment provides full description of the criminal deed (Item 3 of Article 219).

2. The right of the person to a proper court process, which stems from Paragraph 2 of Article 31 of the Constitution and the constitutional principle of a state under the rule of law, which is a necessary condition in order to decide the case justly, means that during the criminal procedure in court one must heed the clarity of the proceedings, equality of rights of the participants to the proceedings, their participation in the process of proving, the principle of adversarial argument and other principles, so that the circumstances of commission of the criminal deed could be investigated thoroughly, objectively and impartially and a fair decision would be adopted in the criminal case.

However, Paragraph 2 of Article 425 of the CCP provides for an exception, permitting the prosecutor, when the case is investigated in court, instead of drawing up an indictment and submitting it, to set forth the essence of the indictment verbally, on the grounds of the statement regarding the ending of the proceedings by means of a court penal order, and this exception unreasonably narrows the right of the accused to be comprehensively informed and be aware of what he is accused of as well as to receive the document substantiating this accusation.

3. Under the Constitution, all persons shall be equal before the law, the court, and other state institutions and officials (Paragraph 1 of Article 29). The requirements of Articles 218–220 of the CCP regarding drawing up and submission of an indictment must be applied equally with respect to the accused to whom the accusation is presented by drawing up the indictment (under the general rules of criminal procedure) and with the respect to the accused, who has refused the proceedings for the adoption of a court penal order and who has demanded the consideration of the case at a court hearing, since the mere circumstance that the accused makes use of the right established in the law to end the proceedings when a court penal order is adopted and later refused this right, cannot be regarded as the one which justifies the difference between these two legal situations.

4. The constitutional principle of a state under the rule of law implies, among other things, also that human rights and freedoms must be secured, that all institutions implementing state power as well as other state institutions must act on the grounds of law and in compliance with law, that the Constitution has the supreme legal force and that other legal acts must be in compliance with the Constitution. However, due to the legal regulation established in Paragraph 2 of Article 425 of the CCP, the rights of the accused to whom the indictment is not presented and, on the grounds of the statement of the prosecutor regarding the ending of the proceedings by means of a court penal order, the essence of the accusation is set forth verbally in the course of the consideration of the case in court, in comparison with the accused to whom the indictment is presented.

III

In the course of the preparation of the case for the Constitutional Court’s hearing, written explanations were received from the representatives of the Seimas, the party concerned, who were A. Staponkienė and V. Žiemelis, in which it was maintained that the impugned Paragraph 2 of Article 425 of the CCP is not in conflict with Paragraph 1 of Article 29, Paragraph 2 of Article 31 the Constitution and with the constitutional principle of a state under the rule of law. The position of the representatives of the Seimas, the party concerned, is substantiated by the following arguments.

1. While assessing the compliance of the impugned Paragraph 2 of Article 425 of the CCP with the constitutional principle of a state under the rule of law, attention must be paid not to the difference of the criminal procedure where the indictment is drawn up, from the criminal procedure where the procedure is ended by means of a court penal order, but to whether the said latter

procedure is justly applied to the accused persons and whether the legal situation of the said accused persons is the same to both of them.

2. According to its legal nature and purpose, the statement of the prosecutor regarding the ending of the proceedings by means of a court penal order is a procedural document amounting to an indictment. In case the suspect disagrees with the ending of the proceedings by means of a court penal order, the prosecutor may not apply to the court regarding the adoption of a penal order, however, the suspect most often agrees to end the proceedings in such a manner, since he thus ensures himself that no other punishment be imposed on him save a fine, and he thus avoids unwelcome publicity. In addition, as practice shows, smaller fines are imposed by court penal orders than those imposed in the same situations by means of judgments of convictions adopted after the case is considered according to the general procedure.

3. The constitutional principle of equal rights means that the law must be applied equally in regard to the accused to whom the accusation is stated by means of an indictment, and to the accused who at first agreed, of their own free will, with the simplified criminal proceedings, but later, by making use of their right to demand the consideration of the case in court, refused the application of these proceedings, however, these two different legal situations cannot be identified. The representatives of the Seimas, the party concerned, by making reference to the provisions of the official constitutional doctrine (set forth in the Constitutional Court's ruling of 16 January 2006), maintain that the constitutional principle of equal rights of persons does not deny a possibility of establishing different (differentiated) legal regulation in respect to certain categories of persons who are in different situations; that, in itself, the constitutional entrenchment of the said model of general criminal procedure does not eliminate an opportunity to regulate the relations of criminal procedure so that in certain cases pre-trial investigation is not conducted and/or charges on behalf the state is not upheld in court; and that the Constitution does not prevent the legislative consolidation of also such kinds of criminal procedure which are more or less different from the constitutional model of general criminal procedure.

4. According to the representatives of the Seimas, the party concerned, it is impossible to completely deny the fact that the implementation of the right of the accused to defence may be made more difficult in the proceedings for the adoption of a court penal order, however, "no essential principles of a state under the rule of law" are violated in the course of application of these proceedings.

IV

At the Constitutional Court's hearing, the representative of the Seimas, the party concerned, who was V. Žiemelis, a Member of the Seimas, virtually reiterated the arguments set forth in his written explanations and presented additional explanations.

The Constitutional Court

holds that:

1. The Klaipėda City Local Court, the petitioner, requests an investigation into the compliance of Paragraph 2 of Article 425 of the CCP with Paragraph 1 of Article 29, Paragraph 2 of Article 31 the Constitution and with the constitutional principle of a state under the rule of law.

2. On 14 March 2002, the Seimas adopted the Republic of Lithuania's Law on the Approval, Entry into Force and Implementation of the Code of Criminal Procedure, by Article 1 whereof it approved the Code of Criminal Procedure of the Republic of Lithuania. The new CCP came into force on 1 May 2003 and as from that date the CCP that had been in force until then became no longer valid.

3. The CCP (wording of 14 March 2002) was amended and/or supplemented more than once, however, Paragraph 2 of Article 425 thereof, the compliance of which with the Constitution is impugned by the Klaipėda City Local Court, the petitioner, has not been amended or supplemented.

4. Paragraph 2 (wording of 14 March 2002) of Article 425 of the CCP provides: "The consideration in court arranged upon the demand of the accused or upon the initiative of the judge shall be conducted according to the rules established in Part V of this Code, save the fact that in the course of the consideration in court instead of reading the indictment, the prosecutor shall set forth the essence of the accusation on the grounds of the statement regarding the ending of the proceedings by means of a court penal order."

5. Part V "The Case Proceedings at the Court of First Instance" of the CCP, to which reference is made in Paragraph 2 (wording of 14 March 2002) of Article 425 of the CCP, regulates the case proceedings at the court of first instance. This part is composed of Articles 221–310 of the CCP.

It needs to be noted that the Klaipėda City Local Court, the petitioner, does not impugn the provision that the consideration in court arranged upon the demand of the accused or upon the initiative of the judge shall be conducted according to the rules established in Part V of the CCP; quite to the contrary: according to the petitioner, such proceedings must be held by following all the requirements established in this chapter without any reservations.

Thus, although the Klaipėda City Local Court, the petitioner, requests an investigation into the compliance of entire Paragraph 2 (wording of 14 March 2002) of Article 425 of the CCP with the Constitution, it is clear from the arguments of the petition that the petitioner impugns only the reservation "save the fact that in the course of the consideration in court instead of reading the indictment, the prosecutor shall set forth the essence of the accusation on the grounds of the statement regarding the ending of the proceedings by means of a court penal order".

6. Article 425 "The Consideration in Court Arranged upon the Demand of the Accused or

upon the Initiative of the Judge" of the CCP, the compliance of Paragraph 2 whereof with the Constitution is impugned by the Klaipėda City Local Court, the petitioner, in the constitutional justice case at issue, is set forth in the First Chapter "The Procedure for Adoption of Court Penal Orders" (Articles 418–425) of Chapter XXXI "Simplified Case Procedure" of this code; some of the articles of this chapter are set forth in the wordings of 10 April 2003 and 8 July 2004, but not in the wording of 14 March 2002.

Taking account of the fact that, in the constitutional justice case at issue, the petitioner impugns the reservation "save the fact that in the course of the consideration in court instead of reading the indictment, the prosecutor shall set forth the essence of the accusation on the grounds of the statement regarding the ending of the proceedings by means of a court penal order" of Paragraph 2 (wording of 14 March 2002) of Article 425 of the CCP, it needs to be held that the Klaipėda City Local Court, the petitioner, impugns not the compliance of the articles (parts thereof) of the CCP which regulate the procedure for adoption of court penal orders with the Constitution, but whether the keeping one of the elements, namely, the statement of the prosecutor regarding the ending of the proceedings by means of a court penal order, of the procedure for adoption of court penal orders, instead of the indictment, i.e. in the general model of criminal procedure, to which one returns from the procedure for adoption of court penal orders.

7. Therefore, in the constitutional justice case at issue the institute of the procedure for adoption of court penal orders *per se* is a matter of investigation only inasmuch as it is necessary to reveal the content of one element—the statement of the prosecutor regarding the ending of the proceedings by means of a court penal order—of the procedure for adoption of court penal orders, so that it would be possible to decide whether the keeping of this element instead of an indictment in the model of general criminal procedure, to which one returns from the procedure for adoption of court penal orders, is not in conflict with the Constitution.

8. The provisions of Chapter XXXI of the CCP reinstated the institute of the procedure for adoption of court penal orders in the legal system of the Republic of Lithuania. This institute had not been present in the law of criminal procedure of this country for quite some time. It needs to be mentioned that in the inter-war Lithuania the criminal procedure law consolidated the institute of the procedure for court penal orders.

9. The procedure for adoption of court penal orders is simplified criminal procedure. This specific model of criminal procedure is characteristic of the law of a number of states of Europe, however, it has some peculiarities in various systems of national legal systems. The spread of this institute in Europe was prompted by the 17 September 1987 Recommendation No. R(87)18 of the Committee of Ministers of the Council of Europe to Member States concerning the simplification of criminal justice, which established the standards of this procedure and, alongside, stressed its

importance in the search for possibilities in order to simplify the criminal procedure.

10. Under Paragraph 2 (wording of 14 March 2002) of Article 29 of the CCP, a court penal order is a variety of judgments.

11. While applying the model of the procedure for adoption of court penal orders consolidated in Chapter XXXI of the CCP, the criminal cases regarding the criminal deeds for which, under the Criminal Code of the Republic of Lithuania (hereinafter also referred to as the CC), only a fine is imposed, or this punishment is provided for as alternative one, are considered by following the general norms of criminal procedure, however, with exceptions, which enables speeding up the criminal procedure and considering the criminal case within a reasonable time.

Under the CCP, it is permitted to deviate from the model of general criminal procedure and the criminal procedure can be ended by means of a court penal order only when there are all these conditions: (1) the corresponding article of the special part of the CC provides for a fine—only a fine may be imposed, or this punishment is provided for as alternative one (Paragraph 1 (wordings of 14 March 2002 and 8 July 2004) of Article 418); (2) the culprit redeems or removes the inflicted damage, if the damage was inflicted, or commits to redeeming or removal of such damage (Paragraph 1 (wording of 8 July 2004) of Article 418); (3) the prosecutor brings forth an initiative to end the procedure by means of a court penal order, and the accused does not oppose to this initiative (Paragraph 3 (wording of 14 March 2002) of Article 418); (4) the victim does not lodge a complaint against the decision of the prosecutor to end the procedure by means of a court penal order, and if he lodges it, the judge of pre-trial investigation does not grant this complaint (Paragraph 4 (wording of 14 March 2002) of Article 418); (5) the circumstances of the case are clear, otherwise (if the circumstances were not sufficiently clear and if the existing doubts could be removed only during the consideration in court) the judge would, by means of a ruling, have to refer the case for consideration in court, i.e. to enter the model of general criminal procedure (Paragraph 1 (wording of 14 March 2002) of Article 423); (6) the accused agrees to the imposition of the fine by means of a court penal order and does not demand the consideration of the case in court under general procedure (Paragraph 1 (wordings of 14 March 2002 and 8 July 2004) of Article 418).

12. While deciding, subsequent to the petition of the Klaipėda City Local Court, the petitioner, requesting an investigation into whether the reservation “save the fact that in the course of the consideration in court instead of reading the indictment, the prosecutor shall set forth the essence of the accusation on the grounds of the statement regarding the ending of the proceedings by means of a court penal order” of Paragraph 2 (wording of 14 March 2002) of Article 425 of the CCP is not in conflict with Paragraph 1 of Article 29, Paragraph 2 of Article 31 the Constitution and with the constitutional principle of a state under the rule of law, it needs to be noted that Article 419 (wording of 14 March 2002) of the CCP established the content of the statement of the prosecutor

regarding the ending of the proceedings by means of a court penal order; the statement of the prosecutor regarding the ending of the proceedings by means of a court penal order must contain the following: (1) the name, surname of the accused, the date of his birth, identity code, marital status, profession, place of employment and, at the discretion of the prosecutor, also other personal data; (2) brief description of the deed due to the commission of which the accused must be punished by means of a penal order; (3) the indication of the criminal law providing for liability for the committed criminal deed; (4) enumeration of the main data upon which the accusation is grounded; (5) the specification of the size of the fine, which is proposed to be imposed, and the setting forth of the opinion of the accused regarding this.

13. The Constitutional Court has held that the relations of criminal procedure must be regulated by means of a law in a way that legal pre-conditions might be created to speedily detect and thoroughly investigate criminal deeds, also that the legal regulation of criminal procedure should not create any pre-conditions for procrastinating the investigation into criminal deeds or the consideration of criminal cases, nor should it create any pre-conditions for participants of the criminal procedure to abuse their procedural and other rights. Otherwise, the constitutional obligations of the state to ensure by legal measures the security of each person and the entire society and the implementation of the legal order based on the constitutional values would become more difficult (the Constitutional Court's ruling of 16 January 2006).

14. While assessing the procedure for adoption of court penal orders as a specific procedure which deviates from the model of general criminal procedure, in the context of the norms and principles of the Constitution, it should be noted that that the Constitutional Court has held that, in regulating the relations of criminal procedure, the legislature enjoys rather broad discretion and may establish, by means of a law, different kinds of criminal procedure, as well as peculiarities of criminal procedure in the investigation into certain criminal deeds and/or in the consideration of criminal cases of individual categories, *inter alia,* different rules of investigation into certain criminal deeds, the peculiarities of the legal status of participants of the criminal procedure etc.; when implementing the said discretion, the legislature must pay heed to the norms and principles of the Constitution, *inter alia,* the provisions of the Constitutions, which are pointed out by the petitioner, and which consolidate the equal rights of persons, the right to apply to court, the right to a fair and impartial court, the independence of the judge and courts when they administer justice, the duty of the judge to suspend the consideration of the case when he applies to the Constitutional Court, as well as the constitutional status of prosecutors (the Constitutional Court's ruling of 16 January 2006). The legal regulation of the criminal procedure must be grounded upon the constitutional principles of lawfulness, equality before the law and the court, presumption of innocence, public an fair consideration of the case, impartiality and independence of the court and

the judge, separation of the functions of the court and other state institutions (officials) that participate in the criminal procedure, guarantee of the right to defence and other principles (the Constitutional Court's rulings of 5 February 1999, 8 May 2000, and 19 September 2000). In regulating the relations of criminal procedure, heed must also be paid to the fact that the Constitution consolidates the institutes of pre-trial investigation, consideration of criminal cases in courts and of upholding charges on behalf of the state, which imply the following constitutional model of general criminal procedure: pre-trial investigation and consideration of a criminal case in court are different phases of criminal procedure; in the course of pre-trial investigation one collects and assesses the information necessary so that it could be decided whether the pre-trial investigation should continue and whether after it is completed the criminal case must be referred to court, also, in order that the criminal case could be considered in court and that the case might be settled justly; charges on behalf of the state are upheld when the criminal case is considered in court. On the other hand, in itself, the constitutional entrenchment of the said model of general criminal procedure does not eliminate an opportunity to regulate the relations of criminal procedure so that in certain cases (especially when one takes account of the nature, danger (gravity), scale, other signs of criminal deeds as well as other circumstances of importance) pre-trial investigation is not conducted and/or charges on behalf the state are not upheld in court; the Constitution does not prevent the legislative consolidation of also such kinds of criminal procedure which are more or less different from the constitutional model of general criminal procedure, however, such kinds of criminal procedure should be treated as exceptions to the constitutional model of general criminal procedure; their establishment must be constitutionally grounded (the Constitutional Court's ruling of 16 January 2006).

15. In the context of the constitutional justice case at issue, it needs to be noted that the legislature, while establishing the types of criminal procedure as exceptions to the constitutional model of general criminal procedure, may, while heeding the Constitution, regulate the relations of criminal procedure also in a way, where the purpose of criminal procedure would be implemented by means of a single-person decision adopted by the judge subsequent to the charge on behalf of the state formulated by the prosecutor in a corresponding procedural document whereby the pre-trial investigation is finished and subsequent to the material collected comprehensively and impartially, provided the circumstances of the case are clear (i.e. they are not doubtful) and the person who committed the criminal deed agrees to such application of the procedure.

However, it needs to be emphasised that even in such a case sufficient and efficient procedural guarantees must be established, securing, *inter alia,* the right of the person, who is accused of commission of a criminal deed, to defence, his right to a public and fair hearing of his case by an independent and impartial court, and the independence of the judge and the court in

administration of justice.

In order to avoid any doubts that the above-mentioned things are not secured, the law must establish the cases when one returns to the general criminal procedure from the specific criminal procedure.

16. It needs to be specially emphasised that, as it has been held by the Constitutional Court, the constitutional right of the person to apply to court and the instance system of courts imply that the law must establish such legal regulation so that it could be possible to appeal against the final act adopted by a court of general jurisdiction or a specialised court established under Paragraph 2 of Article 111 of the Constitution at least in one court of higher instance (the Constitutional Court's rulings of 16 January 2006, 28 March 2006, 21 September 2006, 27 November 2006, and 24 January 2007). Justice is implemented by always leaving an opportunity to rectify a possible mistake or change the judgment in the light of new circumstances (the Constitutional Court's ruling of 9 December 1998). The Constitutional Court has held that the law must establish not only the right of the party to the proceedings to lodge an appeal with at least one court of higher instance against any final act which was adopted in a case by a court of first instance, but also it must establish a procedure of such appeal, which would permit correcting possible mistakes of the court of first instance; otherwise, one would deviate from the constitutional principle of a state under the rule of law and the constitutional right of the person to the due process of law would be violated (the Constitutional Court's rulings of 21 September 2006 and 24 October 2007); the said correction of mistakes of courts of lower instance and the related prevention of injustice is *conditio sine qua non* of the confidence of the parties of corresponding cases and society in general not only in the court of general jurisdiction which considers the corresponding case, but also in the whole system of courts of general jurisdiction (the Constitutional Court's ruling of 28 March 2006).

In this context it needs to be noted that the purpose of the institute of lodging a complaint against a final act of the court of first instance is the defence and protection of the rights and legitimate interests of not only the person (convict) who has been brought to legal liability, but also the defence and protection of the rights and legitimate interests of other persons, *inter alia,* the victim, as well as the defence and protection of the public interest and the legal order of the state.

17. Under the CCP, it is possible to return to the general criminal procedure from the procedure for adoption of court penal orders either upon demand of the accused after the court penal order has been adopted, or upon initiative of the court itself. For instance, Article 422 (wording of 8 July 2004) of the CCP provides, *inter alia,* that the court penal order drawn up by the judge shall be handed in to the accused (if the accused is temporarily away the court penal order is handed in upon signature to a full-aged person, who resides together with him, or to the administration of the place of employment of the accused), while the latter, if he disagrees with the imposition of a fine by

means of a court penal order, shall have the right, within fourteen days of handing in of this document, to lodge an application with the court that has drawn up the said court penal order, requesting the arrangement of the consideration of the case in court (Paragraph 1), also, if the accused lodges an application, requesting the arrangement of the consideration of the case in court, the court penal order shall not acquire legal force (Paragraph 2). Article 423 (wording of 14 March 2002) of the CCP provides, *inter alia,* that, as mentioned before, when the circumstances of the case are not sufficiently clear and if the existing doubts can be removed only during the consideration in court, the judge adopts a ruling to refer the case for consideration in court (Paragraph 1). In addition, under Paragraph 4 (wording of 8 July 2004) of Article 425 of the CCP, if improper application of the criminal law and essential violations of the CCP could also be influential with regard to the other accused persons, who have not lodged applications demanding to arrange the consideration of the case in court, the court shall verify whether the penal order is reasonable and lawful also with regard to the said accused persons; while following this provision, the legal situation of the accused persons, who have not lodged their applications to arrange the consideration of the case in court, may not be aggravated.

18. While deciding, whether the impugned provision is not in conflict with the Constitution, the fact is of essential importance that the statement of the prosecutor regarding the ending of the proceedings by means of a court penal order is possible only when the accused is not against such initiative of the prosecutor, and when the victim is not against it, either (or, if the victim disagrees with it, the judge of pre-trial investigation does not grant such a complaint), while the deed for which the accused must be punished by the penal order and the size of the proposed fine to be imposed on the accused are known to the accused (since his opinion regarding the size of the fine is required). Thus, the statement of the prosecutor regarding the ending of the proceedings by means of a court penal order contains the elements from which the accused can be aware of what he is accused of and understand the essence of the accusation.

The circumstance is of essential importance that, as mentioned before, under Paragraph 1 (wordings of 14 March 2002 and 8 July 2004) of Article 422 of the CCP, the accused, if he disagrees with the imposition of a fine by means of a court penal order, shall have the right, within fourteen days of handing in of this document, to lodge an application with the court that has drawn up the said court penal order, requesting the arrangement of the consideration of the case in court according to the rules of general criminal procedure. This right of the accused to initiate the consideration of the case in court should be construed in an expansive manner, i.e. as the right to initiate the consideration of the case in court in all cases when he disagrees with the ending of the procedure by means of a court penal order.

19. In addition, after one returns from the procedure for adoption of court penal orders to the

general criminal procedure, the accused receives also a copy of the statement of the prosecutor regarding the ending of the proceedings by means of a court penal order, from which he is aware of what he is accused of and upon what the accusation is grounded. While in the cases where one returns from the procedure for the adoption of court penal orders to the general criminal procedure on the grounds that the accused disagrees with the ending of the procedure by means of a court penal order and with what he is accused of, then, the fact of what he is accused of and other circumstances of the case are evident from the court penal order, against which a complaint was lodged under Paragraph 1 (wordings of 14 March 2002 and 8 July 2004) of Article 422 of the CCP by the accused, since he disagreed with the said court penal order.

20. Thus, there are no legal grounds to assert that, allegedly, the impugned legal regulation deviates from the provision of Paragraph 2 of Article 31 of the Constitution whereby a person charged with the commission of a crime shall have the right to a public and fair hearing of his case by an independent and impartial court.

21. It also needs to be held that there are no legal grounds to assert that, allegedly, the impugned legal regulation discriminates the accused person, who has refused the procedure for adoption of a court penal order and demanded to arrange the consideration of the case in a court hearing, in any manner on the grounds specified *expressis verbis* in Paragraph 1 of Article 29 of the Constitution or any other grounds, in comparison with the other accused persons; the difference in his legal status and the legal status of the accused persons to whom the accusation was presented by drawing up an indictment (according to the general rules of criminal procedure) is determined by the fact that he, being aware of what is the deed for which he must be punished by means of a penal order and of the size of the fine proposed to be imposed upon him, has agreed that the procedure for the adoption of a court penal order had to begin, by which the criminal procedure could be ended; in addition, after one returns from the procedure for adoption of court penal orders to the general criminal procedure, the accusations presented to the accused in the statement of the prosecutor regarding the ending of the proceedings by means of a court penal order, remain the same.

22. Alongside, it needs to be held that there are no legal grounds to assert that, allegedly, the impugned legal regulation deviated from the requirements of the constitutional principle of a state under the rule of law.

23. Taking account of the arguments set forth, the conclusion should be drawn that the reservation “save the fact that in the course of the consideration in court instead of reading the indictment, the prosecutor shall set forth the essence of the accusation on the grounds of the statement regarding the ending of the proceedings by means of a court penal order” of Paragraph 2 (wording of 14 March 2002) of Article 425 of the CCP is not in conflict with Paragraph 1 of Article 29, Paragraph 2 of Article 31 the Constitution and with the constitutional principle of a state under

the rule of law.

24. It has been mentioned that in the constitutional justice case at issue the institute of the procedure for adoption of court penal orders *per se* is a matter of investigation only inasmuch as it is necessary to reveal the content of one element—the statement of the prosecutor regarding the ending of the proceedings by means of a court penal order—of the procedure for adoption of court penal orders, so that it would be possible to decide whether the keeping of this element instead of an indictment in the model of general criminal procedure, to which one returns from the procedure for adoption of court penal orders, is not in conflict with the Constitution.

Therefore, it needs to be emphasised that not a single provision of this ruling of the Constitutional Court may be interpreted as *a priori* justifying or approbating, in the aspect of their compliance with the Constitution, some other provisions constituting the institute of the procedure for adoption of court penal orders consolidated in the CCP *(inter alia,* the provisions regulating the implementation of the initiative of the prosecutor to end the procedure by means of a court penal order, the content of a court penal order and the procedure of its adoption, the grounds and procedure for lodging a complaint against a court penal order, the rights of other persons in this specific criminal procedure).

Conforming to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Articles 1, 53, 54, 55 and 56 of the Law on the Constitutional Court of the Republic of Lithuania, the Constitutional Court of the Republic of Lithuania gives the following

ruling:

To recognise that the reservation “save the fact that in the course of the consideration in court instead of reading the indictment, the prosecutor shall set forth the essence of the accusation on the grounds of the statement regarding the ending of the proceedings by means of a court penal order” of Paragraph 2 (wording of 14 March 2002; Official Gazette *Valstybės žinios,* 2002, No. 37-1341) of Article 425 of the Code of Criminal Procedure of the Republic of Lithuania is not in conflict with the Constitution of the Republic of Lithuania.

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

The ruling is pronounced in the name of the Republic of Lithuania.

Justices of the Constitutional Court: Armanas Abramavičius
Toma Birmontienė
Egidijus Kūris
Kęstutis Lapinskas
Zenonas Namavičius
Vytautas Sinkevičius
Stasys Stačiokas
Romualdas Kęstutis Urbaitis